

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BOB CLARK**, on March 8, 1995, at  
8:00 AM.

**ROLL CALL**

**Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Shiell Anderson, Vice Chairman (Majority) (R)  
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)  
Rep. Chris Ahner (R)  
Rep. Ellen Bergman (R)  
Rep. William E. Boharski (R)  
Rep. Bill Carey (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Duane Grimes (R)  
Rep. Joan Hurdle (D)  
Rep. Deb Kottel (D)  
Rep. Linda McCulloch (D)  
Rep. Daniel W. McGee (R)  
Rep. Brad Molnar (R)  
Rep. Debbie Shea (D)  
Rep. Liz Smith (R)  
Rep. Loren L. Soft (R)  
Rep. Bill Tash (R)  
Rep. Cliff Trexler (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** John MacMaster, Legislative Council  
Joanne Gunderson, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 206, SB 272, SB 297  
Executive Action: None

{Tape: 1; Side: A}

HEARING ON SB 297

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, opened the hearing on SB 297 by saying it was brought as an attempt to deal with the lack of responsibility of those in Montana who drive without insurance. He felt this bill was a good recommendation from the Department of Justice to further tighten down the penalties. He said it would create the offense of failing to carry or exhibit the insurance card and it would cost five points upon conviction.

Proponents' Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, Department of Justice, mentioned the background for this bill in previous legislation. He said that when an officer stops someone for a traffic violation, they would be cited for that violation plus another violation for failure to carry an insurance card. He said that in 90% of the cases, the person does not have insurance. The penalty for failure to carry an insurance card would be identical to the penalty for failure to have insurance except for the five-point violation. The bill provided that the five-point violation will extend to failure to carry the card.

Brenda Nordlund, Department of Justice, spoke in favor of SB 297.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. DANIEL MC GEE described a scenario where in his business the vehicles are in the field when the updated insurance cards arrive in the mail. Sometimes the cards get buried on the desk so they might not be in the vehicle when involved in an accident. He wanted to know if the driver would be subject to the penalty.

Ms. Nordlund answered, "No." She directed him to current law as shown on page 2, line 23 - 25, to validate her answer.

REP. LOREN SOFT asked if the Department of Justice had ever considered doing random safety checks.

Ms. Nordlund said there is a random safety check program which the Highway Patrol engages in now, but could not speak to that, but knew it was not for the purpose of checking on drivers license or insurance. There is a privacy clause in the state Constitution and this becomes a delicate balance in weighing the compelling state interest against individual privacy.

**REP. JOAN HURDLE** asked for a description of the differences between SB 297 and SB 113 which also dealt with drivers without insurance.

**Ms. Nordlund** said these bills were sent in under independent requests. SB 113 was already in the process when this one came out and they had decided to move forward with both bills. SB 113 would extend the possible outside penalty up to six months' imprisonment in the county jail for violation under "304." Under SB 297 a five-point penalty was included. All the penalties with SB 297 would come under section 304. The result would be six months' imprisonment under SB 113 with an additional five points under this bill.

**REP. HURDLE** asked if it was correct to conclude that they would work well together to strengthen the law in this area.

**Mr. Nordlund** answered, "Absolutely."

**REP. WILLIAM BOHARSKI** said it appeared that the only thing the bill did was to add five points for failure to carry the card, but if the card was produced, they would not receive five points.

**Ms. Nordlund** said that was true.

**REP. BOHARSKI** asked why they were doing this.

**Ms. Nordlund** replied that if they did not have the card and failed to carry the nonexistent card, they would be convicted of failing to carry the card. Only for appearance in justice court to show a card that was valid at the time of the citation can a conviction be avoided. Subsequent purchase of the insurance would not bring a dismissal of the charge.

**REP. BOHARSKI** and **Ms. Nordlund** discussed the process whereby an officer makes the decision about what citation to issue both under current law and under this proposed legislation.

**Ms. Nordlund** said the only change in the bill was to attach the five points for failure to carry an insurance card and all the other changes on the bill were simply to move text around to make the bill clearer. There were some sections deleted which did not appear elsewhere in the bill on lines 12 through 16.

**REP. BOHARSKI** asked if it was true that the person could not be convicted if they produced a card and **Ms. Nordlund** affirmed that was true. And then he asked how they could give the person five points.

**Ms. Nordlund** said the division does not put one point against the record unless there is a conviction for the underlying offense. They are not notified until after the conviction. A citation does not appear on the record.

**REP. BOHARSKI** asked for further clarification of the need for the bill.

**SEN. DOHERTY** explained the difference as being simply that if convicted currently, there would be no five points added to the record. The bill would provide an additional penalty of five points. He said it becomes a policy question about whether it is a good idea to add the points.

**CHAIRMAN CLARK** clarified that there could be no conviction if the driver had insurance.

**REP. CLIFF TREXLER** compared the reckless driving five points with the number of points for lack of insurance. He said that if the person drove without license plates, he would only get two points but could speed and only get three points, have a moving violation and get two points. Then he asked if a five-point penalty wasn't just a little high by comparison.

**Mr. Roberts** said he didn't think so because in all cases where a driver did not have insurance, the innocent other party is automatically affected. Generally they are found to be without insurance when involved in an accident.

**REP. DEB KOTTEL** asked what the five points would do to the insurance rates.

**Mr. Roberts** said he could not answer that directly.

**REP. KOTTEL** said her point was that made insurance even more unaffordable for those individuals who could not afford it, and asked if they had not perpetuated to some degree the fact that they would continue to not have insurance and force them to drive without it.

**Mr. Roberts** said that was true. But he said there were people who just had not made insurance a priority and could purchase it and most of these laws were directed at those people. He suggested considering that driving is still considered a privilege under the law. If it were a right, there would be other ways to take care of people who did not have insurance. He said they did not see much of a segment of people who drive carefully without insurance, but rather that they see those who abuse traffic laws of all kinds.

**REP. ELLEN BERGMAN** asked if it was already against the law to drive without liability insurance and what the penalty for that was.

**Mr. Roberts** said there was a three-tier penalty structure:

1. A fine and possible jail time and five points,
2. A larger fine, possible jail time, lose the plates, and five point penalty, and

3. A fine, possible jail time and lose plates plus a five point violation.

REP. BERGMAN asked how this was different if they would already add the five points.

Mr. Roberts answered that conviction of the failure to have insurance would bring a five-point violation. This bill would add the conviction of the failure to carry the card.

REP. BERGMAN asked REP. WILLIAM RYAN to answer the same question.

REP. RYAN said the difference was that when the law enforcement officer asks if the driver has insurance, and the person says they do, but have no card, he can write the citation for not having proof of insurance in the vehicle. The judge cannot put points on the record on that violation currently even if convicted, but the bill would provide for the addition of the points.

REP. AUBYN CURTISS asked if they were to understand that they could get two five-point situations which would be for failure to have insurance as well as failure to carry the proof of insurance.

CHAIRMAN CLARK said only one ticket would be issued.

REP. CURTISS asked at what level of points a person would lose their drivers license or license plates.

SEN. DOHERTY said the habitual traffic offender language was outlined on page 3 and page 4. To lose a license, he thought that accumulation of 30 points over a three-year period qualified.

REP. BOHARSKI asked if it was a matter of policy or a matter of law that the officer would not write a citation for both violations.

SEN. DOHERTY believed it was a matter of policy.

REP. BOHARSKI asked if he did write it for both and the person was convicted of both, would he receive ten points.

SEN. DOHERTY said it was his understanding that he could.

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Closing by Sponsor:

SEN. DOHERTY said the intent of the bill was to clear up something which was neglected in previous legislation. The idea behind it was that if this law were violated, there would be a penalty. Habitual traffic offender programs with points does

mean something to someone who might have to walk to work for a year if they continued to violate. He said it was important to remember that the person who usually gets hurt the most in those kinds of instances is the one who is the innocent person. In response to the situation where someone could not afford the insurance, he felt the issue was responsibility.

#### HEARING ON HB 272

##### Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, said SB 272 was significant in that it would change the requirements of the surviving joint tenant for filing with the inheritance tax division. This would simplify the requirements for the surviving spouse by eliminating the need to file where taxes are not due and no probate is involved.

##### Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue, explained that the bill was intended to streamline the process which now involves a great deal of paperwork only to certify that no tax is due. He said the department encouraged the passage of SB 272.

##### Opponents' Testimony:

None

##### Questions From Committee Members and Responses:

REP. CURTISS asked if this was new language.

SEN. GROSFIELD answered that subsection 2 was new language which amended the current section of law.

REP. CURTISS asked what the purpose of all the information was as outlined on page 4 and if it was required under current law.

SEN. GROSFIELD said it was, under 7-4-2613, MCA, which deals with local government and recording. He said the amendment was on page 3, line 17.

REP. DIANA WYATT asked what the policy was related to the retroactive applicability going back to July 1979.

SEN. GROSFIELD recalled that it was there to cover some properties which had not gone through the system immediately.

Mr. Miller responded that the retroactive date reflected that it was in July 1, 1979, that spouses became exempt in the first

place. This would just take everything forward from that point in time.

Closing by Sponsor:

SEN. GROSFIELD described the genesis of the bill and the difference between this bill and one in Wyoming after which it is modeled.

HEARING ON HB 206

Opening Statement by Sponsor:

SEN. "JIM" BURNETT, SD 12, submitted a list of names he had gathered over the last four years. These names were of those who had had problems with the Department of Family Services (DFS) in how they operated. **EXHIBIT 1** He asked the committee to ignore the bill which had come out of the Senate and asked that the committee act on the original bill. **EXHIBIT 2** He presented his opening remarks to the committee. **EXHIBIT 3** Then he took the committee through the bill. He provided the committee with the minutes of the hearing in the Senate Judiciary Committee. **EXHIBIT 4**

{Tape: 1; Side: B; Approximate Counter: 12.4.}

Proponents' Testimony:

Kenneth Haugen, Missoula, Family for Families, said he had personal knowledge of the difficulties families had had with the methods used by DFS in removing children from homes and termination of parental rights based on unsubstantiated allegations. He said that people in the group he has organized had not received help from the director of DFS and had talked to the Governor and had not received satisfaction in their complaints. He gave examples of parents' experiences within the group. He said that parents are treated as if they are guilty until proven innocent.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR SHIELL ANDERSON.

Hank Hudson, Director, DFS, originally came as a proponent of the amended version and said he was not a proponent of the original version of the bill. He made a general statement that the department is aware of how serious and how far reaching the decisions are which they make. He said that he deals daily with cases half of which involve people who are outraged because DFS is not removing children and the other half outraged that they are. Everything the department does is highly emotional, he claimed, and that they had done everything possible to balance the rights of citizens to be left alone by the government with the responsibility of the state to protect children. He listed

the department's actions over the last two years to strike that balance. He said they would not "buy into an idea that's going to end up with children being hurt."

Two provisions in the original bill had been opposed in the Senate hearing by several opponents. These opponents were not present in this hearing because the amended bill was thought to be the one under consideration according to **Mr. Hudson**. He described the actions the department has been taking to keep families together and said that if it is moved into the criminal arena, everything they had done would be lost. He said that before anyone's parental rights are terminated they have been investigated by a social worker, regional administrator, supervisor and the director of the department with the agreement of a county attorney, a judge and a guardian ad litem who represents a child and the family can have an attorney. There is also a citizen foster review committee which is involved in the decision process. He said that those he listed were not DFS employees and provide the checks and balances in the process and demand proof of the grounds for termination of parental rights.

He said that there was a group being formed for the purpose of making the argument that the criminal system would never be able to protect young children from sexual molestation. He said they had worked with the Senate to find those things which were possible and reiterated that he had come to testify as a proponent of the Senate's amended version of the bill and not on the original bill. He defended the department's actions from the allegation that children are removed for unsubstantiated reasons and suggested that those making the accusations were not telling the whole story which is demonstrated in the files which prove the documentation of reasonable cause for the termination of parental rights. He said the confidentiality of those files is maintained to protect the children.

**VICE CHAIR ANDERSON** clarified that the committee was considering the blue bill as it came from the Senate and that the white copy was used only for reference in the opening sponsor's testimony.

**Larry Lekse** appeared as a parent who said DFS had removed his child. He described the situation and the unresponsiveness to his requests concerning his daughter. He asked the committee to consider the bill in its original form.

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**REP. LARRY GRINDE, HD 94**, appeared as a proponent and related incidents in his own community and how it reflected on the practices of DFS. He said that in his community the decisions were not coming down on the side of the child. He felt the bill which had come out of the Senate needed some changing, but did not know if it should be returned to its original form. He said there was a need in the bill for some recourse for the parents who had lost their children.

He also addressed the hiring process and qualifications for the social workers. He believed that education should not be the only criteria for hiring, but that there needed to be background checks on candidates for those positions. He said the case workers should not be given the degree of authority they have in family matters without a thorough background check. He also suggested moving the case workers on a regular basis to circumvent undue influences from the familiarity of the community.

**CHAIRMAN CLARK** resumed the chair.

**REP. BRAD MOLNAR, HD 22**, rose in support of SB 206. He presented a form letter to the committee which he had discovered was given to parents claiming that they had been found to have substantiated claims against them in abuse or neglect. He discussed the elements of abuse in spanking a child as determined by the department. He said the letter had been wrongfully used in divorce cases in custody disputes.

Further, he discussed the interpretation of abuse from skin discoloration which lasted more than two days. He said there were instances where the parents may have had to use some force in dealing with an older child for their own protection; i.e., a child drunk from whom the keys to the car need to be taken or a child who needed to be restrained to take medicines prescribed for their own health. He said that in those cases the child or the neighbor may be asked where the bruise came from, but the parent will not be asked but then are found guilty of abuse and placed under investigation.

**Mike Billedeaux, Blackfeet Indian Nation**, described his personal case where he was charged with child abuse and was denied access to his children or even information about their whereabouts. He said he was denied justice in the case and for three years he had been unable to prove his case because he was never charged but had capitulated so that his wife could regain custody.

**Karen Kowalczyk** presented written testimony. She also cited the DFS policy manual which said their mission was to protect children and adults by supporting community and family strengths and said just the opposite was being done. She quoted the manual regarding removal and placement of children and said that in their case, the investigative actions were contrary to the stated policy. **EXHIBIT 5**

**REP. GRINDE** reflected on items he felt the committee should consider in deliberations on the bill. One item had to do with proper investigation of telephone complaints. The other item had to do with immunity for the case workers. He explained his concern and suggested that the complete immunity they currently have prevented the more responsible and complete investigation that is needed.

**Informational Testimony:**

**Laurie Koutnik, Executive Director, Christian Coalition,** said she was neither an opponent or proponent of SB 206. She had come to be a proponent of the Senate version though she had concerns about the rewritten version. She presented her testimony as given in the Senate which was in opposition to the original bill.

*{Tape: 2; Side: A}*

She was concerned that some of the proposed changes would exacerbate the problem with the shortage of foster care families. On page 3, line 24, section (1)(c), she pointed out one of the difficulties in restricting the foster parents from exposing the foster child to their faith. She was also concerned about the proposal to move the social workers from time to time and felt this would have a chilling effect on qualified people entering or staying in that field. She recounted her personal testimony of having been accused of abuse and the way she was fairly treated by DFS and that the system works with DFS personnel doing their job.

She said the original bill was poorly written because of the mixing of civil and criminal penalties, the inclusion of video cameras for investigative purposes and the provisions dealing with confidentiality. She said she could not wholeheartedly support the Senate amended version either and asked the committee to proceed carefully in their deliberations.

*{Tape: 2; Side: A; Approx. Counter: 17.6.}*

**EXHIBITS 8 through 12** are letters supporting passage of SB 206 in its original form.

**EXHIBITS 13 and 14** are letters in support of SB 206.

**Opponents' Testimony:**

**Mary Alice Cook, Advocate for Montana's Children,** cited the volatility of teens and their ability to manipulate to get what they want. She felt that the children can use the system to get what they want. She also knew from her experience that there are children who are truly abused. She said that a hearing in another committee haunted her where a group of teens between the ages of 10 and 15 gave testimony revealing the list of sexual crimes they had committed and testified of the sexual abuse they had endured. She was concerned about the perpetuation of the crimes in the society. She said this bill would strip the children of protection and urged a vote of SB 206 in its original form.

**Robert Torres, Montana Chapter of National Association of Social Workers,** reluctantly rose in opposition to the bill as presented

and would have preferred to have stood in favor of the bill as amended by the Senate. **EXHIBIT 6** summarized his comments.

**Alan Cranford, Christian Science Churches of Montana**, was concerned about the protection of religious rights and suggested amendments to the bill to preserve this right. **EXHIBIT 7**

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Questions From Committee Members and Responses:

**REP. BILL TASH** asked the sponsor to discuss the Senate amendments to the original bill.

**SEN. BURNETT** said he was not present at the time of executive action and felt they had "stripped the bill very badly" and he did not know the rationale behind some of the amendments.

**CHAIRMAN CLARK** relinquished the chair to **VICE CHAIR WYATT** who clarified that the committee was considering the bill as amended by the Senate.

**REP. SOFT** asked if there was a consensus of opinion of **REPS. GRINDE** and **SIMPKINS** on the bill in its original form.

**SEN. BURNETT** answered that the original bill before it was drafted for presentation was supported. He discussed the theory behind the meetings which were held in preparing the bill for drafting.

**REP. SOFT** referred to testimony that proper procedures are not in place upon the hiring and screening of social workers in the field. He asked what steps and procedures are taken by DFS.

**Ann Gilke, Attorney, DFS**, outlined those steps and procedures. She said the education and experience requirements are a Bachelor's Degree in Social Science or a related field with a year's experience in social work or related field. Reference checks are done on the top applicants; criminal background checks are not currently being done.

**REP. SOFT** requested that **Ms. Gilke** address the allegation that parents have no recourse and receive no communication when they lose their parental rights.

**Ms. Gilke** described the internal departmental checks and balances in investigation of every referral of alleged child abuse. Upon investigation if the social worker believes that the abuse or neglect is substantiated, the parent is notified that the investigation has taken place and that the charge was substantiated and that they have the ability to appeal the decision. She further outlined the process if an appeal is upheld or denied involving the county attorney and a judge. She said that the cases are reviewed on an ongoing basis.

**REP. SOFT** stated that testimony had been given to the committee that the foster care review committees were not working and communication was not complete with them. He asked for her opinion about the effectiveness of the foster care review committee system.

**Ms. Gilke** said she did not have much direct information about them, but did know how they were supposed to work and was aware of the pilot program for a citizen review board which was being studied as an alternative. She felt that in many areas the current system worked well.

**REP. SOFT** asked why major sections of original language had been amended out from section 10 to the end of the bill.

**Ms. Gilke** said that in respect to 41-2-302, MCA, it took those sections and that reference in the title out of the bill while the existing law would remain on the books.

**REP. MC GEE** referred to previous testimony about what is in statute regarding abuse and neglect versus what is in department rules. He asked if spanking a child which would leave a red mark on the buttocks was considered child abuse.

**Ms. Gilke** quoted that the law stated, "permanent or temporary disfigurement of a child due to excessive corporal punishment is physical abuse." She said spanking is legal in Montana, but they cannot be temporarily disfigured; i.e., a red mark that is still visible after two or three days, might be considered excessive corporal punishment. If a child were accidentally injured in the attempt to protect it, that would not be child abuse.

*{Tape: 2; Side: B}*

**REP. MC GEE** asked what the obligation was of a third party who would see the red marks on the buttocks of a child.

**Ms. Gilke** said there was a mandatory reporting requirement of someone in an official capacity such as a teacher, swim instructor, etc. They would not be required to report in a social setting, but as a concerned citizen they could report suspected child abuse.

**REP. MC GEE** requested a summary of the process if the person does report it and **Ms. Gilke** provided the information.

**REP. MC GEE** asked if the social worker would make an appointment to go to the home of the child to investigate the alleged abuse.

**Ms. Gilke** answered that in the case of a young child, that would be the case; where in the case of an older school-aged child, the social worker frequently would go to the school to interview the child often without the parent. She said the parent is notified.

**REP. MC GEE** refuted the statement that the parent is notified. He asked if in the case of the younger child a social worker would, upon examining the child, make an adjudication whether the child had been abused.

**Ms. Gilke** replied that was correct.

**REP. MC GEE** asked if that concluded their investigation.

**Ms. Gilke** said if there was an obvious large bruise after a length of time and they decided abuse had occurred, by policy they would have to notify the parent in writing that they had substantiated physical abuse.

**REP. MC GEE** asked what the term, "substantiated," meant.

**Ms. Gilke** answered, "The term, 'substantiated,' means that the social worker has determined that physical abuse of that child occurred."

**REP. MC GEE** repeated, "The social worker has determined that."

**Ms. Gilke** answered that was correct.

**REP. MC GEE** asked where there was a check or a balance for substantiation in what she had just described. He also asked what the difference was between determination and substantiation.

**Ms. Gilke** said the substantiation and the determination would be that the worker believed that the child had been physically abused by the care giver. The check and balance would come once the parent was notified and given the opportunity to appeal the determination through the review process which she had previously outlined.

**REP. MC GEE** said she was saying to the committee that a person, possibly with prejudice, could come into a person's home, make a determination, call it substantiation..... He asked when the child is withdrawn from the home and if it occurred at the point of that determination/substantiation.

**Ms. Gilke** said the child would be removed when it was at imminent risk of substantial harm. She said a spanking which resulted in a mark was not usually a reason for a child to be removed.

**REP. MC GEE** asked who determined when a child was at substantial risk.

**Ms. Gilke** answered, "The social worker."

**REP. MC GEE** said she was telling the committee that a social worker can walk in, make a determination that there has been physical abuse, substantiate his own determination and then determine that there is potential for further harm and take the

child. He asked her to explain to the committee what the due process is at that point before the child is removed from the home.

**Ms. Gilke** answered that in any removal a supervisor would have to okay it. The social worker would have to obtain that approval before they could remove the child. A child could not be removed for any longer than 48 hours without a petition filed by a county attorney and a judge sanctioning the action.

**REP. MC GEE** asked when the supervisor would give the approval, before or after the fact.

**Ms. Gilke** said each case was unique. They try to get the supervisor involved in any removal but if it is a very severe case, the worker might have to take action immediately and then get the sanction later, but typically that is not the case.

**REP. MC GEE** asked **Mrs. Koutnik** if the person who reported the allegation against her was known by her.

**Mrs. Koutnik** said she did know the person.

**REP. MC GEE** asked if this was standard operating procedure on the part of social workers to call the accused parent in advance of the investigation.

**Mrs. Koutnik** said the child had conveyed the allegation to a youth group leader, a private counselor who was bound to report, and it was the youth group leader who called.

**REP. MC GEE** asked if the youth group leader was bound by law to call the parent.

**Mrs. Koutnik** answered, "No."

**REP. MC GEE** asked if the reason she called was because she knew **Mrs. Koutnik**.

**Mrs. Koutnik** answered, "Yes, because she was concerned....."

**REP. MC GEE** asked if this was not a unique situation.

**Mrs. Koutnik** said the youth leader was not bound by standing operating procedures of DFS, and believed she called because she knew her and because she was concerned and wanted her to know it was being reported. She said the department did call her husband to say there had been a report and that they were going to interview the child.

**REP. MC GEE** asked if those people had never known her, did she believe they would have received a phone call prior to receiving a form letter announcing the allegations and investigation.

**Mrs. Koutnik** said they probably wouldn't have.

**REP. MC GEE** stated that approximately 15 pages of the original 24-page bill had been stricken and asked the sponsor if the committee were to have the option of amending everything back in the original bill or acting upon the (blue) amended copy, would he prefer the amended copy be passed or killed.

**SEN. BURNETT** said it was his opinion and desire that the committee consider the original copy and amend that to something this committee could accept.

**REP. MC GEE** asked if they couldn't amend, did he want the blue copy killed.

**SEN. BURNETT** said he did not want that because it did contain some provisions they wanted.

**REP. MC GEE** asked **Mr. Torres** about the qualifications for a social worker and asked if he could explain what a year's experience meant to DFS.

**Mr. Torres** said he could not answer that question. He understood that they preferred that a person had a year's experience in child protective services.

**Richard Kerstein, Administrator, Field Services Division, DFS,** clarified the qualifications of a field social worker.

**REP. MC GEE** asked if he had said that one degree that might be considered was education and **Mr. Kerstein** said it was correct.

**REP. MC GEE** asked if an elementary education degree would qualify.

**Mr. Kerstein** said it would if there were no other applicants for a particular position and the applicant had experience in a related field preferably other than only classroom teaching.

**REP. MC GEE** asked how a person acquired the experience in child protective services.

**Mr. Kerstein** said it would hopefully be in a social services agency or perhaps in residential treatment or in a mental health center.

**REP. MC GEE** asked him to speak from his experience as a field worker, when he walked into a home that looked abusive, what in his mind constituted substantiation.

**Mr. Kerstein** discussed the extended training a social worker would have prior to field work which would involve policy and law and standards for determining whether a child was in imminent risk.

**REP. MC GEE** expressed a great concern that DFS had moved in a direction in which, at all expense and almost at any cost to protect the child as interpreted by somebody, was resulting in the child being taken from the home without due process. He said that no matter who he had asked, he had not been given an answer of what substantiated was even though that was the basis upon which a child is taken from the family. He asked if **Mr. Hudson** sensed that there was some additional action which DFS must take to restore the balance.

**Mr. Hudson** replied that one part of the equation which had not been discussed was common sense. He said the people who work for the department basically know the difference between spanking a child and child abuse. In his experience of two years and handling hundreds of cases, there had only been one spanking case which involved the use of a metal tent pole. He said he did not see the workers get involved in issues which defied common sense.

He said he would be shaken if he did not know that the full process had been administered which included the checks and balances in persons involved outside of the department in making the decisions to remove children. He said they constantly deal with the issues swinging between rights to be left alone and the need to protect children and the timing of taking action. He was concerned about the pendulum swinging too far in either direction and he said he thought the original bill was too big a swing leaving kids in danger. He felt they were moving toward spending more effort with the birth families and leaving them in homes. He said the community standards were reflected in the behavior of county attorneys, judges, and mental health officials. He said Montanans were not very tolerant in their communities and judges are quick to remove children because the community standard in Montana is, "you don't hurt children."

**REP. MC GEE** said though he supported what DFS was trying to do, he felt that what occurs in the field reflected the pendulum swinging too far and that there needed to be more of a move toward due process. He was concerned about the system operating as if the parent was guilty until proven innocent.

**REP. DUANE GRIMES** asked about the issue on page 3 concerned with proselytizing and asked why that was included and if the provision in the bill would prevent a foster parent from taking a child to church with them.

**SEN. BURNETT** said the intent was to prevent someone from being persuaded away from the faith of their birth family.

**REP. GRIMES** asked if the provision created a problem in placing kids in foster homes and asked what considerations the department had in that issue particularly with Native American children.

**Mr. Hudson** said they have a policy which would prohibit children placed in a foster home from being under undue influence to

change their beliefs. The issue most often seen by him is Native American children having to have hair cuts. He said the sentence did not bring an objection from the department because they did not want children to lose their culture or heritage. He felt that using the word, "proselytizing," was not necessary.

*{Tape: 2; Side: B; Approx. Counter: 38.9}*

**REP. TASH** discussed the reasonable cause provision and his concern that the determiner of reasonable cause would be DFS. He asked what rationale was used when it was amended out along with some of the other provisions dealing with due process and recourse.

**Ms. Gilke** discussed the substantive changes in the sections of the original bill and the rationale behind them.

**REP. TASH** asked if she would agree that there should be some attempt at the validity of the reasonable cause report order and asked if she had any recommendations or thoughts about how to guarantee the credibility of someone reporting child abuse.

**Ms. Gilke** said that produced a struggle because it is rare that vindictive or invalid referrals are made. She said that it was hard to define when a suspected abuse should be reported, but when one is reported DFS has to investigate and in that process they are all "washed out." She felt it was important to require the initial call so that a professional could investigate to make the determination.

**REP. CURTISS** asked about the record keeping process for DFS in making recommendations to a judge. She wondered about the keeping of the files for backup of their recommendation to the judge.

**Ms. Gilke** spoke of the forms, statutes and procedures and could not answer the question pertaining to specific judges not receiving the backup information.

**REP. WYATT** asked if it was correct that there were over 2,000 children taken by DFS.

**Mr. Hudson** said there were around that number of children currently in out-of-home placement.

**REP. WYATT** asked if the process had been properly followed in their placement.

**Mr. Hudson** said that the only variable would be a voluntary agreement to foster care placement while the parent obtained treatment.

**REP. WYATT** asked if it was true that a case involving DFS had never been lost.

**Mr. Hudson** said they lost regularly though they win in most of the cases and he discussed that judges frequently disagreed with them and the judge-appointed foster care review committees disagree with them. He said that if judges are dissatisfied with the review committee's recommendations, they can remedy that. He said that it may be a reflection of the workload that judges have that they often prefer to agree with the committee's recommendations rather than scrutinize the case intently.

**REP. WYATT** was concerned about video taping and confronting young girls who are alleged to be in sexual assault situations. She asked him to address that if it went back to the original language of the bill.

**Mr. Hudson** said the issue of video taping in the original bill or involving other people in an interview was difficult. He said their goal was to limit the numbers of times they would be interviewed while providing the elements of developing a fair case.

**REP. SOFT** expressed his concern about the social workers not following clearly defined operating procedures in dealing with the investigations.

**Mr. Hudson** said that there are policies, practices and law in which the workers are trained. He agreed that the application of those can't vary depending on each county or worker, but they needed uniformity.

**REP. SOFT** had a concern about the hiring criteria for social workers and asked about hiring people who may not meet the standards.

**Mr. Hudson** said they were limited by the amount of money they have to spend in hiring qualified people. They design the applications to attract a large enough pool of people to hire the best person they can with at least bottom line qualifications.

**REP. SOFT** asked if there was a standard of excellence below which they cannot go.

**Mr. Hudson** said there was. He said the policy was that if there was no one qualified to do the job, they don't hire.

**REP. SOFT** voiced concern about the immunity provision of the bill.

**Mr. Hudson** said that if a social worker operates outside the policy and violates the policy, they are liable. If they operate inside the policy and job description, people still sue the department and the department is liable. They receive the same immunity that legislators receive, he said, in doing the job they have been hired to do.

**REP. LINDA MC CULLOCH** asked about the concept of moving social workers around.

**Mr. Hudson** said he did not support that option. He said if someone was not doing their job, they need to be terminated. The department would have trouble recruiting people if they knew they might be asked to move at any time.

*{Tape: 3; Side: A}*

He said he did not want to make them aliens working in foreign communities but rather to be part of the fabric of the community.

**REP. MC CULLOCH** asked **Ms. Koutnik** to discuss the possible result to the children in not removing them from a home.

**Ms. Koutnik** believed that for the most part children were being removed soon enough. She wanted to err on the side of protection for the children even though she was a strong advocate for families. A child left in an abusive situation tells the child that the advocates in the system are not to be trusted. The worst result could be death.

**CHAIRMAN CLARK** asked how much time was spent on an average on each of the cases by judges.

**Ms. Gilke** said each case varied by the numbers of witnesses and documentation; therefore, she could not answer the question.

**CHAIRMAN CLARK** addressed the fact that the proponents were advocating the bill in its original form. He said he had only heard denial from DFS that the situations described by the proponents really do happen. He asked if she felt that the people who had testified in the hearings on SB 206 were not being truthful about what is really happening or did she feel there were some abuses by DFS.

**Ms. Gilke** said she agreed with **Mr. Hudson** that there were legitimate concerns and that something had happened to cause them to testify in support of the bill.

**CHAIRMAN CLARK** asked the director of the department to respond.

**Mr. Hudson** apologized if they had left the impression that they were in denial. He said that on all levels of the department they had had discussions about treating clients with respect and the implications and consequences of what they do. He said they take the issue head on.

**CHAIRMAN CLARK** asked if those who had abused their authority should be terminated from employment and in the last two years how many in the agency had been terminated because of abuses.

**Mr. Hudson** spoke in admiration of the majority of the people who work in the field for the department. He said that two years ago they had examined the department closely and over those two years had terminated 11 people, twice that number on corrective action and there were a few who had voluntarily resigned.

**REP. LIZ SMITH** asked what procedural steps were taken in disciplinary action when there had been a complaint.

**Mr. Hudson** outlined the procedure.

**REP. SMITH** complimented the director and the positive steps he had taken to correct real and perceived problems with DFS.

**Mr. Hudson** stated the mission of the department and assured the committee that they would respect everyone involved in the system.

*{Tape: 3; Side: A; Approx. Counter: 18.8}*

**Closing by Sponsor:**

**SEN. BURNETT** said that the caseworker in the field had too much power which was being used to intimidate the people. He did not want to imply that the department was not necessary, but that those abuses needed to be addressed. He said that the problems which had arisen were the result of one person having too much authority. He said that the constitutional right to be considered innocent until proven guilty needed to be re-established in and by the department. He recounted cases which he felt substantiated his position and the need for the bill.

**Motion: REP. MC CULLOCH MOVED TO ADJOURN.**

*{Comments: This set of minutes is complete on three 60-minute tapes.}*

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:30 PM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

# HOUSE OF REPRESENTATIVES

## Judiciary

ROLL CALL

DATE 3/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1  
DATE 3/8/95  
SB 206

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

NAME	ADDRESS	TOWN	ZIP	PHONE
Ashcraft, Teresa	Box 1224	Thompson Falls	59873	827-3046
Assay, Donna		Frenchtown	59834	626-4558
Blake, Dorothy	7830 2 Augg Dr.	Missoula	59802	258-2864
Brown, Rick	Box 471	Phillipsburg	59858	
Buckman, Spring		Missoula	59802	251-2926
Buffington, Tim	Box 104	Miltown	59851	523-6399
Gibson, Meg	1919 Strand	Missoula	59801	251-6392
Hansen, Fred	Box 5718	Missoula	59801	251-6392
McAdams, 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

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
Rough, 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 <i>Ron &amp; Jean</i>	Riverview C	Great Falls	59044	
White, Catland	Box 350008	Grantsdale	59385	363-5383
Wiley, Rebecca	Box 91	Grantsdale	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	
Mcgillis, Vivian		Sun River	59483	
Miller, Brenda		Sun River	59483	
McBurrey, Ethel		Sun River	59483	
Raeder, Hudd		Vaughn	59487	
Gancello, 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	
Brown, Candi		Vaughn	59487	
Corly, Sharon		Sun River	59483	
Volkman, James		Sun River	59483	
Jones, Jamie		Vaughn	59487	
Denning, Andy		Sun River	59483	
Phillips, Jason		Sun River	59483	
Nirling, Al		Sun River	59483	
Sisko, Connie		Sun River	59483	
Nirling, Ruby		Sun River	59483	
Peterson, Cliff				
Bradbury, Ray				
Pier, James R.		Sun River	59483	
Aavces, Keith				
Lowry, Carol		Sun River	59483	
Pier, 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	

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	
Leskam, Victor H.	2719 4th Ave.	Billings	59102	
Jansen, James W.	460 Swan Hill Dr.	Big Fork	59911	
Long, LeRoy L.	P. O. Box 1073	Big Fork	59911	
Arman, Harry L.	728 - 8th St. W.	Kalispell	59901	
Kerr, Ralph T.	862-4807	Whitefish	59937	
Bernard, David H.	149 Ferndale Dr.	Big Fork	59511	
Walters, Gordon R.	130 Yarrow Ave. P. O. Box 1965	Whitefish	59937	
Mauzof, Richard E.	804 - 8th Ave. W.	Kalispell	59901	
Schmidt, Vivian	22 Meadowlark	Kalispell	59901	
Nordhaper, Darrell	621 Sapphire Ave.	Billings	59105	
Lee g P. ?	Montana Vets.Home	Columbia Falls	59912-0256	
Raush, Ronald	12157 Hy 212	Charlo	59824	
Meadows, Robert	General Del.	Charlo	59824	
Doughty, Phillip H.	P. O. Box 332	Augusta	59410	
Fusano, John R.	P. O. Box 145	Augusta	59410	
Thompson, Bruce O.	P. O. Box 89	Geraldine	59446	
Rause (?), Thomas A.	P. O. Box 173	Geraldine	59446	
Lau?...Glen C.	P. O. Box 95	Geraldine	59446	
Atchison, Russell M.	Box 242	Geraldine	59446	
Sanders, Gordon H.	Box 331	Geraldine	59446	
Hanks, 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	
Follick, 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	
Brownwell, Robert	P. O. Box 463	Dutton	59433	
Anderson, James	P. O. Box 318	Power	59468	
Bakke, Emil G.	P. O. Box 175	Power	59468	
Schultz, William	P. O. Box 246	Power	59468	
Bremer, Otto	Rte 1 Box 127	Fairfield	59436	
Richter, William	P. O. Box 201	Choteau	59422	
Inbody, Roy	Rte 2 Box 136	Choteau	59422	
Tetzel, LeRoy R.	Rte 1 Box 31A	Fairfield	59436	
Goodmundson, Darrell	P. O. Box 235	Dutton	59433	
Reilly, Diana	36 Willington Ln.	Cascade	59421	
Jenkins, Paul K. (?)	221 36 St. So.	Great Falls	59404	
McNess	256 22nd Ave NW	Great Falls	59405	
Hull, Ardell		Fort Shaw	59443	
Haffner, Dolores		Great Falls	59401	
Haffner, Bob L.		Great Falls	59401	

NAME	ADDRESS	TOWN	ZIP	PHONE
Mahn, Gene		Lincoln	59639	
Mahn, Carol R.		Lincoln	59639	
Haffner, Alan G.		Great Falls	59404	
Johnson, Ella		Great Falls	59401	
Olsen, Edith		Great Falls	59401	
John E.		Great Falls	59401	
Brutosky, 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	

NAME	ADDRESS	TOWN	ZIP	PHONE
Olsen, Leon R.	Starroute-Box 58	Vaughn	59487	
Esmay, David M.	Box 63	Fort Shaw	59443	
Wohlgmuth, Joyce G.	Box 9	Vaughn	59487	
Gasmoda, Dick		Sun River	59483	
Genger, Daisy		Fairfield	59436	
Olson, Margaret		Fairfield	59436	
Konen, Amelia		Fairfield	59436	
Sink, Ruth		Fairfield	59436	
Pike, Donna		Fairfield	59436	
King, Karen		Fairfield	59436	
Kjelsrud, Robert	P. O. Box 606	Lincoln	59639	
Prescott, Gordon	P. O. Box 787	Lincoln	59639	
Misfeldt, Otis				
Robbins, Ken	585 Highland	Helena	59601	
Fairclough, Mike		Helena	59601	
Savoy, Walter		Fort Shaw	59443	
Williams, K.F.	P. O. Box 2413	Great Falls	59403	
Kelly, Larry		Fort Shaw	59443	
Can't distinguish name		Fort Shaw	59443	
Schrock, Robert		Fairfield	59436	
Walston, Terri A.		Fort Shaw	59443	
Effelberg, Brenda		Fort Shaw	59443	
Greiting, Carol		Fort Shaw	59443	
Olsen, Norma		Fort Shaw	59443	
Miller, David L.		Fort Shaw	59483	

Matrigrom ardythe Box 274, 240 Sodd St Simms 59477  
 Moreno ~~Little~~ Linda 526 7th ave Great Falls 59044

SENATE BILL NO. 206

INTRODUCED BY

Burnett Simpkins  
AKLESTAD Benedict Wash

GRINOE John

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR ENDANGERMENT OF THE CHILD'S WELFARE; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-609, AND 41-3-1103, MCA."

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

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

WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and

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

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

WHEREAS, child abuse and neglect is a crime and must be addressed as a crime.

1 (d) any person having legal custody of a child by court order if the parental rights of the parents  
 2 have been judicially terminated, but ~~in such case~~ the court having jurisdiction of the custody of the child  
 3 ~~must~~ shall consent to adoption, and a certified copy of its order ~~shall~~ must be attached to the petition.

4 (2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ must be acknowledged before an  
 5 officer authorized to take acknowledgments or witnessed by a representative of the department, ~~of family~~  
 6 ~~services~~ ~~of~~ of an agency, ~~or witnessed by a representative~~ of the court."

7  
 8 **Section 2.** Section 41-3-101, MCA, is amended to read:

9 **"41-3-101. Declaration of policy.** (1) It is ~~hereby declared to be~~ the policy of the state of Montana  
 10 to:

11 (a) ~~insure~~ ensure that all youth are afforded an adequate physical and emotional environment to  
 12 promote normal development;

13 (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty  
 14 owed to the youth;

15 (c) achieve these purposes in a family environment whenever possible; ~~and~~

16 (d) preserve the unity and welfare of the family whenever possible and provide legal redress for  
 17 the unlawful interference with the family's right to remain intact; and

18 (e) ensure that there is no forced removal of a child from the family because of suspected abuse  
 19 or endangerment of the child's welfare by an immediate family member or family associate without the filing  
 20 of a criminal complaint charging abuse or endangerment against that immediate family member or family  
 21 associate.

22 (2) It is the policy of this state to:

23 (a) protect, whenever possible, family unity;

24 (b) provide for the protection of children whose health and welfare are or may be adversely  
 25 affected and further threatened by the conduct of those responsible for their care and protection; and

26 (c) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
 27 maintain ethnic, cultural, and religious heritage free from proselytism.

28 (3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by  
 29 professional people and other community members to the appropriate authority will cause the protective  
 30 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;  
 2 (d) who is destitute;  
 3 (e) who is dependent upon the public for support; or  
 4 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has  
 5 been transferred to a licensed agency.

6 (8) "Family" means at least one natural or adoptive parent or legal guardian with at least one minor  
 7 child.

8 (9) "Family associate" means a person who may or may not live within the household of a child  
 9 but who is or has been granted unencumbered access to the child by a natural or adoptive parent,  
 10 stepparent, or legal guardian of the child.

11 ~~(8)~~(10) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or  
 12 other person responsible for the child's welfare:

13 (a) knowingly inflicts or knowingly allows to be inflicted upon the child physical or mental injury;

14 (b) knowingly commits or knowingly allows to be committed sexual abuse or exploitation of the  
 15 child;

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

18 ~~(e)~~(d) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to  
 19 supply clothing, shelter, education, or adequate health care, though financially able to do so or offered  
 20 financial or other reasonable means to do so;

21 ~~(d)~~(e) abandons the child by leaving the child under circumstances that make reasonable the belief  
 22 that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully  
 23 ~~surrendering~~ surrenders physical custody for a period of 6 months and during that period does not manifest  
 24 to the child and the person having physical custody of the child a firm intention to resume physical custody  
 25 or to make permanent legal arrangements for the care of the child; or

26 ~~(e)~~(f) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify  
 27 and locate the parents have failed.

28 (11) "Immediate family member" means a parent, guardian, or natural relative of a child and includes  
 29 the natural grandparent of the child.

30 (12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required

1 infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and  
 2 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely  
 3 to be effective in ameliorating or correcting the conditions. ~~However, the~~

4 (b) The term does not include the failure to provide treatment (other than appropriate nutrition,  
 5 hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical  
 6 judgment:

7 ~~(a)~~(i) the infant is chronically and irreversibly comatose;

8 ~~(b)~~(ii) the provision of treatment would:

9 ~~(i)~~(A) merely prolong dying;

10 ~~(ii)~~(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

11 or

12 ~~(iii)~~(C) otherwise be futile in terms of the survival of the infant; or

13 ~~(e)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and  
 14 the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22),  
 15 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been  
 16 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term  
 17 disability. The reference to less than 1 year of age may not be construed to imply that treatment should  
 18 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing  
 19 protections available under state laws regarding medical neglect of children over 1 year of age.

20 ~~(17)~~(23) "Youth in need of care" means a youth who is dependent, abused, or neglected ~~as defined~~  
 21 ~~in this section.~~

22  
 23 **Section 4.** Section 41-3-201, MCA, is amended to read:

24 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have  
 25 reasonable cause to suspect, as a result of information that they receive in their professional or official  
 26 capacity, that a child is abused or neglected, they shall report the matter promptly to the department of  
 27 ~~family services~~ or its local affiliate, which then shall notify the county attorney of the county where the  
 28 child resides.

29 (2) Professionals and officials required to report are:

30 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,

1 any evidence of previous injuries;

2 (c) any other information that the maker of the report believes might be helpful in establishing the  
3 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible  
4 ~~therefor~~ for the injuries or neglect; and

5 (d) the facts ~~which~~ that led the person reporting to ~~believe~~ testify under oath that the child has  
6 suffered injury or injuries or willful neglect, within the meaning of this chapter."

7

8 **Section 5.** Section 41-3-202, MCA, is amended to read:

9 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child  
10 is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly  
11 conduct ~~a thorough~~ an initial investigation into the home of the child involved or any other place where the  
12 child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial  
13 matters ~~which~~ that in the discretion of the investigator are relevant to the investigation. In conducting an  
14 investigation under this section, a social worker may not inquire into the financial status of the child's  
15 family or of any other person responsible for the child's care, except as necessary to ascertain eligibility  
16 for federal assistance programs or to comply with the provisions of 41-3-406.

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

21 ~~(2)(3)~~ The social worker is responsible for assessing the family and planning for the child. If the  
22 child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent  
23 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and  
24 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records  
25 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer  
26 conducting an interview of the child, an employee of the public school attended by the child involved may  
27 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

28 (4) All examinations of the child must be attended by the independent examining psychologist or  
29 physician representing the family and by the social worker. If the child is interviewed by the social worker,  
30 an unedited videotape with audio track must be made available for unencumbered review by the family.

1 or guardian. The cost of the x-rays ordered and taken under this section ~~shall~~ must be paid by the county  
2 child protective service agency.

3 (5) Evidence collected in the questioning of a child by an investigator without the presence of a  
4 videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child  
5 from the family, grant temporary custody, or terminate parental rights.

6 ~~(5)(6) All~~ At the time that the written confirmation report is sent or as soon after the report is sent  
7 as possible, all written, photographic, or radiological evidence gathered under this section ~~shall~~ must be  
8 sent to the local affiliate of the department and copies must be sent to the child's family at the time the  
9 ~~written confirmation report is sent or as soon thereafter as is possible.~~"

10  
11 **Section 7.** Section 41-3-205, MCA, is amended to read:

12 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
13 social and rehabilitation services, the department ~~of family services~~ and its local affiliate, the county welfare  
14 department, the county attorney, and the court concerning actions taken under this chapter and all records  
15 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.  
16 ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized  
17 dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

18 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.  
19 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an  
20 issue before it.

21 (3) Records may also be disclosed to the following persons or entities in this state or any other  
22 state:

23 (a) a department, agency, or organization, including federal agencies, legally authorized to receive,  
24 inspect, or investigate reports of child abuse or neglect;

25 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the  
26 family or child who is the subject of a report in the records;

27 (c) a licensed health or mental health professional who is treating the family or child who is the  
28 subject of a report in the records;

29 (d) a parent, ~~or~~ guardian, or person designated by a parent or guardian of the child who is the  
30 subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with disclosure

1           (5) A news organization or its employee, including a freelance writer or reporter, is not liable for  
 2 reporting facts or statements made by an immediate family member under subsection (4) if the news  
 3 organization, employee, writer, or reporter has made every effort to avoid publicly identifying the child who  
 4 is the subject of the proceeding.

5           ~~(5)(6) Nothing in this~~ This section is not intended to affect the confidentiality of criminal court  
 6 records or records of law enforcement agencies."  
 7

8           **Section 8.** Section 41-3-206, MCA, is amended to read:

9           **"41-3-206. Procedure in case of child's death.** (1) ~~Any~~ A person or official required to report by  
 10 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall  
 11 report under oath his the person's suspicion to the appropriate medical examiner or law enforcement officer.  
 12 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or  
 13 neglect may report under oath his the person's suspicion to the appropriate medical examiner or law  
 14 enforcement officer.

15           (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,  
 16 to the local law enforcement agency, the appropriate county attorney, the local child protective service,  
 17 the family of the deceased child, and, if the person making the report is a physician, the physician."  
 18

19           **Section 9.** Section 41-3-301, MCA, is amended to read:

20           **"41-3-301. Emergency protective service.** (1) ~~Any~~ A child protective social worker of the  
 21 department of ~~family services,~~ a peace officer, or the county attorney who has reason to believe that any  
 22 a youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the  
 23 youth in a protective facility. The department may make a request for further assistance from the law  
 24 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify  
 25 the parents, parent, guardian, or other person having legal custody of the youth at the time the placement  
 26 is made or as soon ~~thereafter~~ after placement as possible.

27           (2) ~~No~~ A child who has been removed from ~~his~~ the home or any other place for ~~his~~ the child's  
 28 protection or care may not be placed in a jail.

29           (3) A petition shall must be filed pursuant to 41-3-401 within 48 hours of emergency placement  
 30 of a child unless arrangements acceptable to the agency for the care of the child have been made by the

1 any period of separation from the family, and make recommendations to the court concerning the child's  
2 welfare; ~~and~~

3 (f) to be a friend and to provide for the daily nurturing needs of the child while separated from the  
4 family;

5 (g) to act as a medium for communication with the immediate family members, other family  
6 members, and friends of the child during the separation period;

7 (h) to retrieve from the family any personal property that the child desires to have during the  
8 separation period;

9 (i) to report directly to the judge on a regular basis the guardian ad litem's observations regarding  
10 the needs and emotional state of the child during the separation period and the impact of the separation  
11 on the child; and

12 ~~(j)~~ (j) to perform other duties as directed by the court."

13  
14 **Section 11.** Section 41-3-401, MCA, is amended to read:

15 "**41-3-401. Abuse, neglect, and dependency petitions.** (1) ~~The~~ After filing criminal charges alleging  
16 abuse or endangerment against a family member or family associate, the county attorney, the attorney  
17 general, or an attorney hired by the county welfare department or office of human services shall be is  
18 responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney, or the  
19 attorney general, or an attorney hired by the county welfare department or office of human services with  
20 the written consent of the county attorney or attorney general, may require all state, county, and municipal  
21 agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as  
22 that may be necessary.

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

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

28 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth  
29 named in the petition, if residing in the state, shall must be served personally with a copy of the petition  
30 and summons at least 5 days prior to the date set for hearing. If ~~such~~ the person or agency cannot be

1 ~~where~~ in which it appears that a youth is abused or neglected or is in danger of being abused or neglected,  
2 the county attorney, the attorney general, or an attorney hired by the county welfare department or office  
3 of human services, after filing criminal charges alleging abuse or endangerment, may file a petition for  
4 temporary investigative authority and protective services.

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

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

12  
13 **Section 13.** Section 41-3-403, MCA, is amended to read:

14 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of criminal charges and  
15 a petition for temporary investigative authority and protective services, the court may issue an order  
16 granting relief that may be required for the immediate protection of the youth.

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

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

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

1 an unencumbered telephone call to the child at least 3 days each week for a minimum of 1 hour each call.  
 2 The family or family member is also entitled to at least one personal visit each week for a minimum of 3  
 3 hours.

4 ~~{4}{6}~~ (a) If the court determines that the youth is not an abused, neglected, or dependent child,  
 5 the petition ~~shall~~ must be dismissed and any order made pursuant to 41-3-403 ~~shall~~ must be vacated.

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

10  
 11 **Section 15.** Section 41-3-406, MCA, is amended to read:

12 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If  
 13 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making  
 14 any of the following dispositions to protect the welfare of the youth:

15 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions  
 16 and limitations the court may prescribe;

17 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided  
 18 in 41-3-408;

19 (c) transfer legal custody to any of the following:

20 (i) the department;

21 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care,  
 22 and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide  
 23 care of the youth; or

24 (iii) a ~~relative~~ family member or other individual who, after study by a social service agency  
 25 designated by the court, is found by the court to be qualified to receive and care for the youth;

26 (d) order any party to the action to do what is necessary to give effect to the final disposition,  
 27 including undertaking medical and psychological evaluations, treatment, and counseling that does not  
 28 require an expenditure of money by the department unless the department is notified and a court hearing  
 29 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all  
 30 family, insurance, and other resources have been examined.

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
- 2 (ii) be in writing and be signed by a representative of the department and the person required to
- 3 make contributions; and
- 4 (iii) if approved by the court, be entered into the record of the proceeding.
- 5 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
- 6 the court may modify its order for the payment of contributions required under subsection (3).
- 7 (6) (a) If the court orders the payment of contributions under this section, the department shall
- 8 apply to the department of social and rehabilitation services for support enforcement services pursuant to
- 9 Title IV-D of the Social Security Act.
- 10 (b) The department of social and rehabilitation services may collect and enforce a contribution order
- 11 under this section by any means available under law, including the remedies provided for in Title 40,
- 12 chapter 5, parts 2 and 4."

13

14 **Section 16.** Section 41-3-609, MCA, is amended to read:

15 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal

16 relationship upon a finding that any of the following circumstances exist:

17 (a) the parents have relinquished the child pursuant to 40-6-135;

18 (b) the child has been abandoned by his the child's parents as set forth in 41-3-102~~(8)(d)~~(10)(e);

19 (c) the child is an adjudicated youth in need of care and both of the following exist:

20 (i) an appropriate treatment plan that has been approved by the court has not been complied with

21 by the parents or has not been successful; and

22 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a

23 reasonable time; or

24 (d) the parent has failed to successfully complete a treatment plan approved by the court within

25 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent

26 legal custody under 41-3-410.

27 (2) In determining whether the conduct or condition of the parents is unlikely to change within a

28 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship

29 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders

30 the parents unfit, unable, or unwilling to give the child adequate parental care. In making such

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

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

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

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

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

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

12 (ii) the cost per facility for services rendered;

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

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

15 (v) a profile of public institutional placements; and

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

19 (2) The department may:

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

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

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

26 (3) The department shall pay for room, board, clothing, personal needs, transportation, and  
27 treatment in youth foster care homes and youth group homes for youths committed to the department who  
28 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must  
29 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under  
30 this subsection may not exceed appropriations for the purposes of this subsection.

SENATE BILL 206

THE CONSTITUTION SAYS, "...YOU HAVE A RIGHT TO CONFRONT YOUR ACCUSERS, AND THE RIGHT TO CROSS-EXAMINE THEM." UNDER THE PRESENT SYSTEM OF DFS, WHEN A HEARSAY ACCUSATION IS INTRODUCED, YOU DON'T HAVE THAT RIGHT.

IN VIRTUALLY ALL CASES IN WHICH ALLEGATIONS OF CRIMINAL CONDUCT ARE MADE, POLICE INVESTIGATE AND MAKE ARRESTS. YET, WHEN THE CHARGE IS CHILD ABUSE, SOCIAL WORKERS CALL THE SHOTS, AND THE SYSTEM DOES NOT HOLD THEM ACCOUNTABLE.

WHAT IS WORSE, ONCE PARENTS ARE ACCUSED, THE BURDEN OF PROOF IS ON THEM TO PROVE THEIR INNOCENCE, UNLIKE IN A CRIMINAL TRIAL, WHERE THE BURDEN OF PROOF IS ON THE ACCUSER. CHILDREN ARE OFTEN TAKEN AWAY WITHOUT THE PARENTS EVEN HAVING A CHANCE TO STATE THEIR CASE.

WE'VE REACHED THE POINT WHERE AN ACCUSATION IS ALMOST TANTAMOUNT TO A CONVICTION. BASELESS CHARGES ARE RUINING MANY FAMILIES AND PEOPLES' LIVES.

UNDER FEDERAL LAW AND IN ALL 50 STATES, EVERYONE WHO REGULARLY WORKS WITH CHILDREN, (TEACHERS, COUNSELORS, DOCTORS, NURSES) IS REQUIRED TO REPORT SUSPICION OF CHILD ABUSE TO LOCAL AUTHORITIES. SUSPICION, HOWEVER, IS NOT FACT AND WHEN SOCIAL WORKERS MAKE MISTAKES, THE PEOPLE THE SYSTEM IS DESIGNED TO PROTECT (INNOCENT CHILDREN), OFTEN WIND UP AS VICTIMS. CHILDREN ARE REMOVED NEEDLESSLY FROM FAMILIES. A NUMBER WILL BE FAR MORE

SERIOUSLY HARMED, WHETHER PHYSICALLY OR PSYCHOLOGICALLY, THAN IF STATE OFFICIALS HAD NEVER HEARD OF THEM.

EVERYONE AGREES THE SAFETY AND WELFARE OF OUR CHILDREN MUST BE PARAMOUNT. STILL, EXPERTS ALSO AGREE, WE CAN HELP CHILDREN WHO NEED PROTECTION IN WAYS THAT PREVENT FAMILIES FROM BEING TORN APART.

UNDER CURRENT LAW, SOCIAL WORKERS HAVE AN INCENTIVE TO PUT CHILDREN IN FEDERALLY FUNDED FOSTER CARE PROGRAMS, BECAUSE IF THEY KEEP FAMILIES INTACT THEY GET MUCH LESS FINANCIAL FUNDING.

THE KEY IS TO REVERSE THE FINANCIAL INCENTIVES, THEN THE FOSTER CARE POPULATIONS WILL DROP DRASTICALLY. WHY IS THIS CRUCIAL? WHEN PLACING A CHILD IN FOSTER CARE, "YOU HAVE SENTENCED HIM TO A DYSFUNCTIONAL LIFE".

SENATE BILL 206 WILL REQUIRE CASE WORKERS FROM REMOVING CHILDREN FROM THEIR HOMES UNLESS THERE IS A CLEAR, COMPELLING THREAT TO THEIR WELL-BEING. IN TOO MANY INSTANCES, CASEWORKERS ARE USING THERAPISTS AND COUNSELORS TO HAMMER STATEMENTS OUT OF BEWILDERED CHILDREN, WHILE THE POLICE, WHO ARE TRAINED TO CONDUCT INVESTIGATION, JUST GO ALONG; "THAT'S THE TAIL WAGGING THE DOG".

ALL CASES SHOULD BE EXAMINED THE BROAD CATEGORY OF "NEGLECT" WHICH ACCOUNTS FOR 50 PERCENT OF ALL CHILD ABUSE REPORTS. THERE IS NO UNIFORM DEFINITION - CASE WORKERS AND JUDGES ARE FREE TO INTERPRET IT AS THEY WISH. THIS IN ITSELF INVITES ABUSE.

CHILD PROTECTION AGENCIES AND THEIR EMPLOYERS SHOULD BE HELD ACCOUNTABLE, CONFIDENTIALITY LAWS ARE SUPPOSED TO PROTECT THE CHILDREN AND FAMILY, INSTEAD THEY SHIELD THE BUREAUCRATS AND THE

LEGAL SYSTEM. THE IMMUNITY FROM LAWSUITS THAT CASEWORKERS ENJOY, INVITES SYSTEMATIC ABUSE. POLICE CAN BE CHARGED WITH A CRIME AND HAULED INTO COURT AND THOSE WORKING FOR CHILD PROTECTIVE AGENCIES SHOULD NOT BE TREATED DIFFERENTLY.

CHILD ABUSE CASES SHOULD NEVER HAVE BEEN REMOVED FROM THE CRIMINAL JUSTICE SYSTEM WITH ITS CONSTITUTIONAL SAFEGUARDS INCLUDING THE RIGHT TO A PUBLIC TRIAL BY JURY.

UNTIL CHILD ABUSE IS RETURNED TO THE CRIMINAL JUSTICE SYSTEM WITH ITS CONSTITUTIONAL GUARANTEES, WHERE THERE IS PUBLIC SCRUTINY AND ACCOUNTABILITY OF THE ACTIONS OF THE DEPARTMENT, THERE IS NO REMEDY FOR THE FAILURES OF OUR PRESENT SYSTEM.

SENATOR JIM BURNETT

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

{Tape: 1; Side: A; Approx. Counter: 00}

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 is 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 Mystic, 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. Mystic** 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 fiance~, 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 through 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

EXHIBIT 5  
DATE 3/8/95  
SB 206

March 7, 1995

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

Dear Senator Burnett and Representative Bob Clarke;

Enclosed are articles my fiance' 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 fiance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206 as it was originally written. If passed with the current ammendments, the bill will not make DFS any more accountable than they are now. We urge you to have the bill reinstated as it was originally written. If we can be of any further help please feel free to call us at (406) 323-1451.

This is our nightmare which occured with Michelle Soboyna and the DFS:

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 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, Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging 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 and indicated that Kara could come back home after a 48 hour "cooling off" period. 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. Evidently, 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. Evidently 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 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".

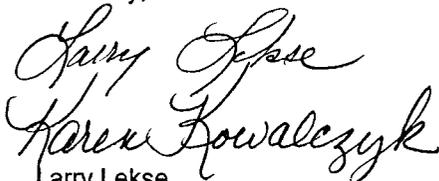
Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. 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,

Handwritten signatures of Larry Lekse and Karen Kowalczyk in cursive script.

Larry Lekse

Karen Kowalczyk

P. O. Box 373

Roundup, MT 59072

1-406-323-1451

# OPINION & LETTERS PAGE

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 fiancée, 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 liv-

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 fiancée, 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

## 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 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 fiancée and me and informed us of the charges. We asked Kara to 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

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 his 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

# 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 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

Dear Editor

I guess I should respond to the letters that have all been written about ME!!!!!! It is really sad when EVERYONE has to talk about me. You know I am a human being NOT ROUNDUP B.S. I would like to clear up a few things that were in my father's letter and Vicki Knudsen's letter.

To start I would like to say that my mother did NOT abandon me! She felt that she could not take me to a new school in a town of 100,000 people when I was 12 years old and I agree with her. I would have probably felt abandoned if she would have taken me seeing that she was starting over again.

I did not have a "perfect" little family life at my father's home. No one can tell me that when someone tells their own daughter that they are a slut like her mother and another incident where someone puts a dead butterfly in your hand and tells you to take your things home with you. That is trying to be a mother figure. And in regards to Karen's letter my mother (like I said before) did not walk out on me! We're not trying to get at your mother. I think only two people in Roundup know what I am talking about. My mother is only supported my decisions and encouraged me to change for the better. My grades are now up and it is like I will graduate with an advanced opportunity to go to college.

In regards to my personal belongings my daybed was bought by my mother when she was living in Billings. The telephone was also bought by Mom for Christmas one year. The eyeglasses were given to me by my mother and my mom for Christmas. My brother also received one exactly like mine for that Christmas. I bought my horse, Sonny Mount, was sent to me for my 14th birthday but I guess I was mistaken.

The piano is my biggest gripe. The only one in Roundup that knows me says that I have played the piano for ten years. My mother bought the piano in 1979. In fact I believe that Harry Kowalczyk helped move the piano into our old house on 1st Avenue West.

The day I went to the police station my father and I didn't just have a little argument, or I would not have died. If you put me back there I will die away or kill myself. I refused to go back there. DPS did not force me to go away.

I know my mistakes and I have come to terms with my problems. I never said that I was perfect. In fact I have done some pretty stupid things but I will admit I have no reasoning behind dragging my life story through the Roundup papers when all the people that have cannot even admit their mistakes. I will take part of the blame for this but I won't take all because I have changed my life around for the better. What have they done?

I even feel stupid for getting in the mud and slinging around with the rest of the pigs but I feel like I must defend myself. I hate sinking this low. I would like to thank some of those people who have been behind me, including the Saunders family, Snider family and the Ken Lekse family. Thank you for being with me through the rough times. I could not have made it without all of you!

Out of all the family services or deals that I have gone through, I think Donna Marmon and Betty Goffena did the best job they could, so I would appreciate it if everyone would stop beating them up. I may not agree with everything they did but I do think they had me in mind, not their personal life or reputation.

To the Youth

Please listen to what is being said. Stay out of trouble and do well in school. You're not 15 years old. That day will come but let it come don't hurry it up. Your main goal should be school. Not parties, or boyfriends or girlfriends or sex. If you plan to go to college, you had better know that it gets tougher and you had better be prepared. I wish I could take five years away and start over again. Things would change for me! How often can you figure out how many times you went up main and down main when you could have spent that money to buy something worth value instead of gas? I don't even have a car here and I work on top of going to school.

To the Community

Now that I can stand back and look at Roundup in a different way, I think that the youth are going down hard! I'm sorry to say this and not have any suggestions for improvement, but you all need to do some-

To Vicki:

You have a foul mouth. You should have remembered on that day of October 29 and on the day before that you were an officer of the court. I am suppose to look up to you or respect you as a role model? Not when you are in my face about one daughter's basketball game and the other's waterbed. If you would like, I can give you the names of three people, including a sheriff's deputy, that were there on October 29 and that heard you and your foul mouth!!!! Don't talk about "And we wonder where our children learn it!?" and

"Wouldn't life be better if everyone took responsibility for their own actions instead of just blaming everyone else?" Do you have a personal conflict or what???? And by the way I do not hide people underneath the stairs.

Both my mother and father know that I am writing this letter and they have no quarrel with it. They have not influenced me either, for, these are my feelings. I would appreciate it if my personal life was not discussed in the paper and that this letter be the end of it. I don't care if other people are discussed but I am a 17 year old girl trying to get my life straightened out and I didn't need this disturbance.

Kara Lekse

OPINION & LETTERS PAGE

# Letters

Dear Editor:

Over the past several weeks I have followed the discussion of the Musselshell County Department of Family Services with much interest and some amusement. It is almost humorous to see what some people try to pass off as the truth in an effort to save face, especially in small communities. However, "facts" and good old common sense have been so perverted concerning some of the people and incidents involved, I find it necessary to respond, in fairness to those who can't. Issues of professionalism and confidentiality that govern some people's lives obviously do not apply when parental damage control and coffee house reputations are at stake.

Mr. Lekse and his latest girlfriend, through their letters to the editor, have placed what should have been a confidential youth proceeding into the public forum. This is highly unfair not only to his daughter, but also to the many people who worked so hard to help Kara when she left his "loving home" and flatly refused to return. Kara informed everyone involved with her case that if she were ever placed back in her father's house, she would run away. This did not result from some one-time discussion about her dog on an isolated occasion, as Mr. Lekse would try to have you believe. This incident was simply the straw that broke the camel's back for Kara and she made

a difficult (and very wise) decision to seek help.

Mr. Lekse and his girlfriend state in their letters that Kara's mother "abandoned" or "walked out on her" some seven years ago. I found it interesting to witness Kara's response to these particular comments. She could hardly wait to get her dad and his girlfriend on the phone to give them a piece of her mind, and did she ever. Incidentally, her father has lied to her, other family members, and the community for years about her mother not paying any child support. According to the public record, Brenda paid in excess of ten-thousand dollars up front, a fact of which Kara and her brother are now well aware of. The ultimate irony is that Kara's father is having to return a portion of that support he lied about for so long, plus a matching amount of his own, to Kara's mother every month. Crow isn't all that bad with a little salt and pepper is it, Mr. Lekse.

Without going into a lengthy point-by-point discussion of Mr. Lekse's so-called facts, which I could easily do, I will simply summarize my experience and feelings concerning this whole affair. Once Kara decided she no longer was willing to live in the house with her father and his new "friend" she became a ward of the State of Montana. Since she refused to return home, especially after her father blew up and walked out of a meeting arranged by DFS (a meeting arranged at the suggestion of Kara's mother) certain actions needed to be taken by the state. One was to place Kara with Betty Goffena for temporary foster care. This was agreed to, in writing, by both of Kara's parents. When this situation became unworkable, her mother and I were immediately notified that Kara would be placed in the Youth Facility in Billings.

the Youth Probation Officer so she could make the difficult adjustment to the group home. At the request of everyone involved, Mr. Lekse's girlfriend was not allowed to call or visit Kara. On several occasions contact by her father upset Kara and was discussed as an ongoing problem, but he was never cut off from calling her. The "three wise people" had frequent discussions with Kara's mother and myself concerning Kara's future placement, and we maintained daily contact with Kara and Donna Marmon. Additionally, Mrs. Marmon made herself available to us at any hour of the day or night, whether in the office or at home. We were informed, and agree, that returning Kara to her father's house, or Roundup for that matter, was out of the question.

Contrary to what Mr. Lekse would have you believe, the Youth Probation Officer has not set "rules" for Kara to live by except those that are established by her mother and I. She is required to contact Mrs. Marmon every other week which she does by faxing her on our home computer. As to whether the "three wise people" ever discussed Kara's case among themselves, I was a party to many discussions with all of them. On occasion, they were all in the same room on a speakerphone.

Kara has gotten a grip on her life since leaving her father's house and is doing very well in her new home, school and job. She was failing several classes in Roundup, receiving three F's on her first semester report card from RHS. Given her situation, she was not going to graduate with her friends, as her father tries to claim.

She has completely turned her grades around here in Boise, receiving three B's and two C's on her semester report card, along with comments like "she is a pleasure to have in class." Her father has been provided with copies of both progress reports. Kara will still need to attend school until next January to graduate and is considering attending the whole year to raise her grades in order to get into a good college.

In closing, I would like to commend DFS and especially Donna Marmon for doing an outstanding job with a difficult situation. Thanks also to Floyd Brower and Vicki Knudsen for their part in helping Kara. An extra special thank-you from Kara, her mom and myself to a wonderful friend of all of ours who visited Kara every day while she was in Billings. These visits did more for her than anyone will ever know.

If the mission of the Department of Family Services and the Youth Probation Offices is to help kids in trouble, who find their home life impossible to cope with any longer, then this exercise has been a success. It was not easy, and some of the people involved were not always right or even professional at times, but an honest effort was made and a kid was rescued. In the end, isn't that what really matters?

Bill Brockett  
Boise, Idaho



EXHIBIT 6  
DATE 3/8/95  
SB 206

MONTANA STATE CHAPTER

National Association of Social Workers

555 Fuller Avenue

Helena, MT 59601

(406) 449-6208

**Members of the House Judiciary Committee,**

**Please consider this additional testimony on SB 206.**

**SB 206 as introduced attempts to address concerns certain families have had with the administration of duties of child protection by the Department of Family services. While DFS handles tens of thousands of child protective service cases over the years, it is surprising that the number of complaints is not larger. Their work has perhaps among the most difficult and heart rending day to day decision making any public servant could be asked to do. Their dedication and consistency should make Montana proud.**

**Nevertheless, not all workers are exemplary, and the amended form of SB 206 the Senate has passed offers an additional check on this process.**

**SB 206 as introduced also tried to prevent redress for "interference with families" by criminalizing child abuse, neglect and endangerment. This would make it virtually impossible to temporarily protect a child and provide a proper treatment plan for the family. We must not sacrifice are children on the presumed altar of "rights", when these "rights" are based on perceived public opinion and not based on the constitution or Montana Law.**

**In attempting to offer parents additional rights of "due process" it criminalizes child endangerment and neglect as well as abuse. By so doing, this bill may inadvertently penalize children and parents by preventing DFS from actually being able to provide treatment to the family as a whole in their homes.**

**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.**

**This is not unavoidable. The degree of the "swing" can 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 identify and MUST be kept in its proper perspective if we are ever going to have hope of achieving the proper balance.**

**The question is HOW we address the problem. We must prevent the overzealous protection of family rights as surely as we must protect children. That way, we may keep too many children from needlessly suffering and dying. SB 206 as introduced DOES NOT contain the necessary measures to achieve either of these goals. As amended by the senate, and with the passage of SB 270 and SB 271, we have taken some appropriate steps. Let us not attempt to push issues which are a matter of life and death for Montana's children beyond prudence, and into a nightmare.**

**Please concur with the version of SB 206 the senate has passed.**

**Thank you, Respectfully yours,**

**Robert L. Torres  
Lobbyist, Mt. Chapter NASW**

Statement submitted regarding SB 206

March 1995

My name is Alan Cranford. I am representing the members of the Christian Science churches in Montana. I live in Bozeman with my wife and our five year-old daughter.

Thank you for the opportunity to make this statement. As a rule our church does not speak for or against a bill in its entirety but tries to help any legislation be accommodating to the freedom of religion. Sections of this bill obviously have such an intent and I have an amendment to offer which I think is in keeping with its stated purpose "to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the state and federal constitutions." It is also in line with Senate Joint Resolution 3 which asserts states rights, and with Senate Bill 143 which rejects federal mandates.

In 1993, the U. S. Department of Health and Human Services threatened Montana with the loss of federal grant money for child abuse prevention unless we changed our laws to eliminate the phrase "non-medical remedial health care" from the definition of "adequate medical care" in section 41-3-102. Historically this phrase has protected Montana parents from a finding of child abuse for the sole reason that they rely on non-medical means such as religious prayer to maintain the health of their children.

As a result of the federal mandate, the 1993 Montana legislature changed the wording to the satisfaction of the department. The phrase "non-medical remedial health care" was removed. But, with some help from state senators, representatives, and administrators we were able to preserve some accommodation for our religious practice. With the minor changes under SB 206 the provision now reads as follows: "~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing in this~~ chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child."

The first sentence of this provision accommodates religious rights, but the second sentence could be interpreted as restricting those rights by imposing non-spiritual care against the wishes of a parent. During a time of great need, loving parents should not be made to fear state intervention when they are using a spiritual method of healing which they have proven by experience to be safe and reliable. Christian Science families have been successfully relying on Christian healing for the prevention and cure of disease since before Montana statehood. We are known as responsible, law-abiding members of our communities and we have a well-earned reputation of providing loving care for our children. Our conscientious practice of Christianity does not fit the definition of neglect and should not be associated with statutes which assert the proper state responsibility to protect children from the harsh human condition of abuse and neglect. Parents who practice spiritual healing are not the problem.

Our church members would like to have the provision returned to its original simple language so that our prayerful method of care cannot be mistaken for child abuse. In our proposal the 1993 provision under Section 41-3-102 (3) (b) would be deleted and the previous paragraph would be changed to read, "Adequate health care" means any medical or non-medical remedial health care...."

In our view, the Department of Health and Human Services exceeded its departmental authority, violated the intent of Congress regarding the Child Abuse and Treatment Act of 1974, and acted contrary to the Religious Freedom Restoration Act signed by President Clinton in 1993. Other states have been targeted by HHS, but most states resisted this pressure to conform, saying that they were being asked to fix something that wasn't broken. California sued HHS when the department threatened to withhold funds—and California won. The Federal Court found HHS "arbitrary and capricious." Last summer, Congress stopped the department from threatening any more states, and some states have already restored their original provisions.

The Christian Science church supports the right of parents to make responsible choices for their children's health care. We agree that every child must have access, if needed, to the protective services of the state. However, the government does not need to weaken or eliminate religious provisions to do this.

In a related section of SB 206 regarding the reporting of child abuse, Christian Science practitioners are listed as among those required to report. A later paragraph in this section states that "a member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

We would like to recommend that this paragraph be revised to include a Christian Science practitioner as one not required to report for reasons of confidentiality. We are a church of laymen. We have no ordained ministers. A Christian Science practitioner is the closest thing we have to a minister, in fact the work is referred to within the church as a healing ministry. Our church's governing By-laws require all private communications to practitioners be held in sacred confidence.

Article VII, Sect. 22, entitled, "Practitioners and Patients" reads in part, "Members of this Church shall hold in sacred confidence all private communications made to them by their patients; also such information as may come to them by reason the their relation of practitioner to patient. A failure to do this shall subject the offender to Church discipline." We feel this By-law fits the requirements of the statute and that it should be amended to read as follows:

#### Section 41-3-201 Reports

(4) (c) "A ~~clergy person~~ member of the clergy, a Christian Science practitioner, or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

Your careful consideration of this request for an amendment is sincerely appreciated.

Alan Cranford  
Christian Science Committee on Publication  
for Montana  
314 N. 16th Avenue  
Bozeman MT 59715  
585-7601

# JUDITH MOUNTAIN COUNSELING

EXHIBIT 8  
DATE 3/8/95  
SB 206

(406) 538-2976  
By Appointment Only

**John R. Foster, LCPC, NCC, CCMHC**  
National Certified Counselor  
Certified Clinical Mental Health Counselor  
Montana Licensed Clinical Professional Counselor

Office: Suite 504, Montana Bldg.  
Lewistown, Montana 59457

Mailing Address: P.O. Box 581  
Lewistown, Montana 59457

MARCH 7, 1995

HOUSE JUDICIARY COMMITTEE  
Capitol Station  
HELENA, MONTANA 59620

RE: SB 206  
SB 270  
SB 271

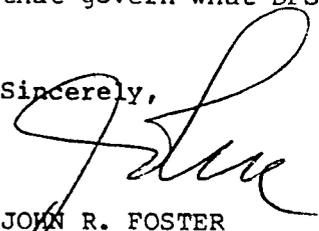
Dear Members of the Committee:

Senator James Burnett has introduced <sup>SB</sup> ~~SB~~ 206 (plus SB 270 and 271), which deals with reform of the DEPARTMENT OF FAMILY SERVICES and their treatment of CHILD ABUSE or ALLEDGED CHILD ABUSE. SB 270 and SB 271 deals with the same issue.

I support all three bills.

ENCLOSED PLEASE find copy of my letter to the SENATE JUDICIARY COMMITTEE supporting SB 206 over there. No sense in duplication. MY REASONS FOR SUPPORTING ARE STILL THE SAME.

DFS has abused many innocent people, and I think we need to tighten up the rules that govern what DFS is doing. I think Senator Jim Burnetts bills will help.

Sincerely,  


JOHN R. FOSTER

enclosure

COPY: Representative Larry Grinde  
Representative Dick Knox

# JUDITH MOUNTAIN COUNSELING

EXHIBIT 9  
DATE 3/8/95  
SB 206

(406) 538-2976  
By Appointment Only

John R. Foster, LCPC, NCC, CCMHC

National Certified Counselor

Certified Clinical Mental Health Counselor

Montana Licensed Clinical Professional Counselor

Office: Suite 504, Montana Bldg.  
Lewistown, Montana 59457

Mailing Address: P.O. Box 581  
Lewistown, Montana 59457

FEBRUARY 6, 1995

SENATE JUDICIARY COMMITTEE  
Capitol Station  
HELENA, MONTANA 59620

RE: SB 206

Dear Members of the Committee:

SB 206 comes up for hearing on February 6th before SENATE JUDICIARY. I do fully support the bill, as introduced by SENATOR JIM BURNETT.

Two years ago when Senator Burnett brought up a similar bill, I testified for same in the committee. It seems like a hundred were there testifying for it -- most of them victims of the DFS or aware of atrocities committed by the DFS against innocent people. Unfortunately, nothing was done and the bill was tabled in committee.

AGAIN THIS YEAR, Senator Burnett again brings a bill (SB 206) before the Legislature. THIS TIME LETS PASS IT!! I SUPPORT IT FULLY.

I am a therapist in private practice, and I have seen people abused by the DFS numerous times. In summary:

A) IT SEEMS LIKE THE PEOPLE ACCUSED OF ABUSING THEIR CHILDREN HAVE NO RIGHTS AS GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (and Federal Bill of Rights). I think they should have every right as guaranteed by the citizens in all other matters. This bill does that.

B) This business of people calling in to the DFS, and accusing others of abusing their children, and NOT HAVING TO TESTIFY TO SAME IN A COURT OF LAW, must stop. We have a host of people who do this out of spite - it is common in divorce and domestic abuse cases - and many kids have been pulled unjustifiably by DFS personell on gossip - spiteful gossip - alone. This bill does that.

C) CHILD ABUSE should be defined. The current law is VERY VAGUE. Actually, child abuse is whatever any welfare worker thinks it is at any given time in any given place. This bill does not deal with this, but it might be a good task for the committee. Making something illegal that we cannot adequately define ought not to be done.

D) If a child is in protective custody of the DFS, then the DFS should pay all of the childs bills. This bill does that.

.) The DFS should have no power to settle these accusations of "child abuse" out of court. I have known people accused whom I believe were not child abusers, who opted to go to therapy and special classes on how to raise kids (at their own expense), and in the process resented the intrusion and went bankrupt trying to pay the extra bills. THIS IS NOT FAIR. Therefore, I have no objection to making CHILD ABUSE a CRIME. Thatway, the accused will at least have some rights. IF IT IS WORKED OUT SO IT IS NOT A CRIME, THEN THE ACCUSED OUGHT TO HAVE JUST AS MUCH RIGHTS AS A COMMON CRIMINAL, including the right to a decent defense.

WE NEED ADEQUATE LEGISLATION and a good DFS staff to protect abused children, to that fact I have no doubt. MUCH OF WHAT I HAVE SEEN over the past several years is overzealousness by the DFS caused by gossips reporting child abuse, DFS personall who are not trained well enough to do a good job, and many people who are totally innocent "wrung through the wringer" of despair by the DFS under allegations of child abuse. THAT MUST STOP. This bill does that.

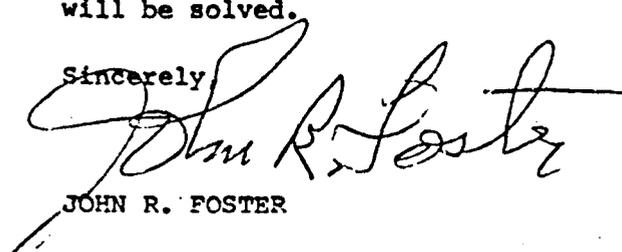
THIS MUST STOP and I hope this bill passes so innocent people can be protected.

IT SEEMS TO ME that many (if not all) of those accused by the DFS of child abuse are GUILTY until proven innocent. IT SHOULD BE THE OTHER WAY AROUND. This bill provides for INNOCENCE until proven GUILTY in a competent court of law. THAT IS THE AMERICAN WAY.

DO PASS SB 206. Two years ago SENATOR AKLESTAD had a bill in there that would have eliminated part of the problem. In the last days of a hectic legislature, it did not make it out for a final vote. I THINK THIS BILL ADDRESSES THE ISSUES RAISED BY SENATOR AKLESTAD two years ago.

THERE HAS BEEN FAR TOO MUCH ABUSE by the DFS to innocent people all over Montana. This must stop. WITH THE PASSAGE OF SB 206, I do feel the most of the problems will be solved.

Sincerely



JOHN R. FOSTER

cc: Senator Jim Burnett  
Senator John Hertel  
Senator Gary Aklestad

PS: In one section of Welfare law, it says the client (or accused) must go to a therapist or counselors or psychologist of the "DEPARTMENTS CHOICE." This should be changed to "the clients choice." Lets have freedom of choice of practitioners. THAT IS THE AMERICAN WAY.

EXHIBIT 10  
DATE 3/8/95  
SB 206

Representative Robert Clark  
Capital Station  
Helena, MT 59620

Re: Passage of Senate Bill 206 in it's entirety

Dear Bob;

This is in reference to Senate Bill 206. You have heard from me before and so you know the nightmare that my family and I were put through. It's a long and heartbreaking story so I will not go into it again. Please refer to my letter dated February 3, 1995.

As you are probably aware The Department of Family Services, as it stands right now, has to much power. They are not made to be accountable for any of there actions in what they call keeping the family together. It has been my experience that this is not what they do or even try to do.

If Bill 206 is put back to the original form this would make DFS be accountable and prove "beyond a reasonable doubt" that someone is abusing or neglecting their children. As this bill stands with all the corrections and omittance it is right back to the way it is right now. We need this changed. A lot of lives have been ruined over rumors. Lets stop it before anyone else gets hurt. If there is really a problem then the Department of Family Service would not have any trouble in proving the claims.

A tax payer that knows what happens to families from experience.



Debbie Hannum  
423 3rd Street East  
Roundup, MT 59072

EXHIBIT 11  
DATE 3/8/95  
SB 206

Representative Robert Clark  
State Capitol Building  
Helena, MT 59620

This is with reference to Senate Bill 206. This bill as originally written was the answer to the multitude of problems that are presently and continually going on with the Department of Family Services Departments.

I have been personally but indirectly involved with the pain and humiliation that very good friends have been put through being involved with this so called system. Not wanting to drag this out into a complete horror novel, it is enough to say these people have been drug through hell and back several times through what I consider to be complete mis-use of authority of the DFS and also the Judicial System, such as it is.

If something isn't done to stop this completely insane situation there will be countless more people, not to mention children, that will be totally destroyed by this ridiculous system. This Bill, as it was written was, I feel, a great step in the right direction. The way it has been amended, or hacked up, is the craziest thing I have seen yet. Is there no way to stop these people from destroying peoples lives?

I therefore, as a very concerned citizen of the United States, and a firm believer in the U.S. Constitution, say this madness has got to be stopped. I urge anyone with any power to pass this Senate Bill, as originally written before more damage has been done. Most of the damage is irreversible but maybe we can save someone else from the insanity that is going on with the way the DFS is now operating.

A concerned tax payer residing in Musselshell County

Karlene Johnson

*Karlene Johnson*  
*1215 - 1st St. East*  
*Roundup Mt. 59072*

EXHIBIT 12  
DATE 3/8/95  
SB 206

Representative Robert Clark  
Capital Station  
Helena, MT 59620

Dear Bob;

As you know our family was put through hell over a situation with the Department of Family Services, so I will not go into the whole story.

We went to Helena when Senate Bill 206 was introduced as we were in complete support of the changes that need to be made in the DFS policies. We still feel that DFS needs to be made accountable for their actions just as we all have to be accountable for our own. Please encourage anyone involved in the passing of this bill to pass it in it's original format. With all the corrections that have been made to the original bill it seems to us to be back to the way things stand now. If DFS was made to be accountable we would not be depleting the monies that could be going to people or Departments that the funds were originally designated for such as Social Security. Let's put the burden of proof on DFS and put the monies that they receive toward keeping the families back together. Everytime the Department of Family Services rips off someone children they are just justifying their jobs and a long list of others. Let's keep the families together and quit spending all this money on foster care. **Let's give the people back their constitutional rights and Stop DFS from playing GOD.**

Please encourage the passing of this bill in it's original form. If you need any further assistance from us in the future on this bill, please feel free to contact us.

Mr. & Mrs. Gerald Bartow  
217 4th Ave. East  
Roundup, MT 59072

*Gerald Bartow*  
*Mrs. Gerald Bartow*

EXHIBIT 13  
DATE 3/8/95  
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.

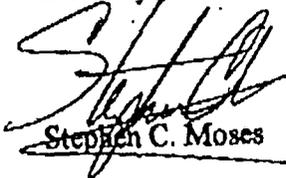
When a child is taken, the child usually feels they have done something wrong. The Department helps this feeling by keeping the child out of the house. Children understand punishment. If they can't see mommy or daddy or both, someone is being punished. Their entire value system is destroyed. Most children 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 than 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 14  
DATE 3/8/95  
SB 206

Martha Adolph  
#4 Camp 3 Road  
Roundup, MT 59072

Representative Robert Clark  
Capital Building  
Helena, MT 59604

March 6, 1995

Dear Representative Clark;

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 husband's 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 quiet 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 hole 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 be accountable for what they are doing.

Take to power away from them and put it back into the hands of the law. Right now the way it 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.

A handwritten signature in cursive script that reads "Martha Adolph". The letters are fluid and connected, with a prominent loop at the end of the word "Adolph".

Martha Adolph

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/8/95

BILL NO. SB 297 SPONSOR(S) Sen Roberts

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<i>Sen Roberts</i>	<i>DOJ</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Brenda Nordlund</i>	<i>DOJ</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

