

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 10, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 132, SB 170
Executive Action: SB 85

HEARING ON SB 132

Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA

Proponents: Sharon Hoff-Brodowy, MT Catholic Conference
Steven Ertelt, MT. Right to Life
Julie Millam, Coalition of Montana

Rosemary Miller, Catholic Social Services
Colleen Murphy, MT National Assoc. of Social
Workers
Kim Kvadolfer, Assistant Attorney General/Self
John Larson District Judge, Missoula MT

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Comments : Did not record until counter was three minutes into recording.}

SEN. MIKE HALLIGAN, SD 34, MISSOULA, stated that a parent who may be so traumatized by the birth of that child that they would go to the length of actually taking steps to terminate that life. Trying to draft that legislation we have to deal with the delicate balance that exists between the liberty interest of parents, the constitutional rights of that child having been born and then the appropriate role of the state to intervene and deal with the issue of the child.

He said that this bill is not done now and it will need amendments and the input from the people who were here to testify with concerns about the bill. He said that during the process the existing child abuse and neglect process was used effectively to be able to handle the issues and deal with the abandonment and proceed on to an adoption.

He said that this bill attempts to establish safe havens where traumatized young people or traumatized mom and dad might think of if they were going to drop their baby off, if they thought they could not continue or be the parent for that child, where would they take that child. He added that this bill allows for the baby to be dropped off at a medical facility, to not limit the ability of rural areas to be able to respond in case there might not be a medical facility nearby.

Another major public policy issue with a person who voluntarily drops off a child, and the child appears to be no more than thirty days old, to a law enforcement agency they would be covered under this bill. He felt that by using the thirty days as time enough to allow for the parent to regain the child or the child to go to social services would be responsible.

The medical or law enforcement entity could take control of that child and take any steps necessary in order to treat that child and it will get medical attention. The Department of Public Health and Human Services then has the responsibility of taking

control of the situation from that point and providing care, custody and control.

He stated the bill is drafted in order to encourage parents who would want to take advantage of this particular piece of legislation. If the parent does voluntarily relinquish the child to a law enforcement facility or to a medical facility, then the parent is immune from civil damages if they do that within the thirty day period.

The law enforcement entity and the medical facility are also immune from liability or criminal liability if they make good-faith efforts in order to protect that child and provide services to that child.

He went on to add that the third major public policy issue is how much information can we possibly get from an individual, who would be willing to take advantage of this particular piece of legislation. In subsection 7 it says that the person is not required to disclose the persons' name or other identifying information. He said that if the medical facility provides services, they would be allowed to be reimbursed for their services and the department should keep track of any events that occur offering a reporting requirement in the bill.

There are concerns about the bill and the non-relinquishing parent as well as the relinquishing parent. If you are a traumatized mother and you drop off your child to one of the facilities, the bill essentially says that your rights are terminated and it is by operation of law. It does allow in this bill for the putative father to have thirty days to try and assert his rights, but it doesn't allow the mother to do so. If you were the mother and wanted to come back within the process during that period we should allow for that to occur.

Proponents' Testimony:

Sharon Hoff-Brodowy, Montana Catholic Conference, said she had the opportunity to read the laws from Florida, Texas and Illinois and they are very similar to this. She said it becomes difficult when dealing with anonymous dropping off of babies at safe places because of adoption issues.

Steven Ertelt, Montana Right to Life, said that there may be some concerns regarding this bill and some amendments that are in order to improve or strengthen the bill. He stated that per year over one hundred abandonments take place across the United States and in 2001, in the first few days of the year, abandonments have already taken place in Louisiana and South Carolina. Montana is not alone in this, other states have this happen. The goal we would like to see is that children can be protected and we know

now that one-third of the children that are abandoned do end up dying. He added that they would like to make sure that the children receive proper medical care and they do find supportive families or an adoptive home.

Julie Millam, Coalition of Montana, said there is a need for medical and psychological assistance for the mother and some protection for the maternal and paternal rights. She added that another on-going concern would be the right of the child to know their personal medical history.

Rosemary Miller, Catholic Social Services, said that she works with many children who have been abandoned, mostly internationally at the doorsteps of orphanages, and those abandonment issues for those children are large. She mentioned the issue of the father's rights and the ability of the mother to be able to get around the father's rights by abandoning the child. She is in support of counseling that will be needed for the child and parents involved.

Colleen Murphy, Montana National Association of Social Workers, mentioned a fact sheet produced by the National Abandoned Infants Assistance Resource Center in August 2000, gives a profile of mothers who discard their infants. She said that research is limited in this area because of the small proportion of mothers who are identified or apprehended having discard their infants. She said that these mothers generally have made no plan for the birth or care of their child and receive no prenatal care. The women are often not mature enough to thoughtfully weigh their options or the consequences of their actions.

Kim Kvadolfer, Assistant Attorney General, said that with due process issues dealing with the immediate termination of the birth parent's rights, where the birth parent may find themselves in such distress and turmoil that they have felt forced to abandon a baby under these circumstances, there should be a window of opportunity for the birth parent to come forward and reclaim the child if she receives appropriate counseling, learns that there is support available for her and feels she is ready to parent the child.

John Larson, District Judge - Missoula, said that from the practical standpoint the advantage of **SENATOR HALLIGAN'S** bill is to identify one or both of the parents. He added that the main goal is to get the children to a safe permanent home as quickly as possible. He said that most of the children in a foster care situation get moved three or four times before they are found a safe permanent home and there is a shortage of foster parents.

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape 1; Side B}

CHAIRMAN LORENTS GROSFIELD asked if encouragement of this counseling is offered and if there was counseling available.

SEN. HALLIGAN answered that they want to make it constitutionally sound and a young mother, with no support system to help them take care of their child, is in need of counseling.

CHAIRMAN GROSFIELD asked if a birth certificate or at least the date of birth should be recorded and how other states dealt with that. **SEN. HALLIGAN** answered there is a provision in state law now that allows us to establish a birth date of a child in which we do not know the birth date.

SEN. DUANE GRIMES questioned if there would be sufficient effort made to find the other parent. **SEN. HALLIGAN** answered that the existing legislation puts enough statutory language with any force in affect that requires the agency or the department to find that non-relinquishing parent.

CHAIRMAN GROSFIELD asked if someone were to receive a phone call from the hospital down the street with an abandoned baby, how long to actually place a child in a home. **Rosemary Miller** said that according to this bill the department would respond immediately. She added that the baby would be placed in a concurrent home, which is a home that acts as a foster home and would become the adoptive home for the baby.

CHAIRMAN GROSFIELD asked Judge Larson to respond to that same question, if 60 days is too much or not enough. **John Larson** answered 60 to 90 days would work.

Closing by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, summarized that regarding Indian Child Welfare Act issues, we have to be cognizant of the potentially Native American children being abandoned - taken to an urban center off of the reservation and if the parent doesn't disclose that it is a Native American child there is still an obligation to deal with Indian Child Welfare Act issues and that may have to be addressed in this bill as well.

He said that if everyone was to look at the delicate balance, where they are trying to provide a safe haven in extreme cases, where young people are traumatized and are using this avenue then

they are not trying to encourage abandonment by any way, shape or form. He added that this becomes a delicate balance due to the education component, with developing hotlines or publishing materials in newsletters to get the word out.

HEARING ON SB 170

Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA

Proponents: **Chuck Hunter, Administrator Child & Family
Services of D.P.H.H.
Ann Gilkey, Court Assessment Program
John Larson, District Judge
Jeff Weldon, Chief Legal Counsel - Dept. of Public
Instruction
Colleen Murphy,
Tom Ebzery, St. James Healthcare Butte, MT.
Tara Huber, State Coordinator with CASA/GAL of MT.**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA MT, said that many of the changes in this bill are attempting to deal with federal legislation in the adoption of the Safe Families Act that has essentially accelerated the time frames, which people have to get their act together when their children, who are found to be abused and neglected. He said that the most important provision is the early hearing on abuse and neglect petition.

He pointed out that this bill discusses the removal of the child within ten days or sooner and if they can get into court. He said that for rural areas where someone may not have a judge, within a two week period, they would be able to use telecommunications, which they use in many other states to get a hearing regarding the removal issues at an earlier time rather than twenty days.

He mentioned the importance of appointing an attorney to the case because this is a stage where a parent's liberty and privacy interest in parenting their family are at risk. He added the need for Temporary Investigative Authority (T.I.A.) and how temporary legal custody, petitions for guardianship, long term custody and petitions for determination of parental rights are all listed in one area where everyone is able to find them. Within T.I.A. there is a clear and convincing evidence for termination stages and preponderance of the evidence in temporary legal custody.

He said that the child's health and safety is a paramount concern throughout these proceeding and that the liberty interests of parents are constitutional protected rights, but once they have proven if abuse and neglect has occurred then that is when the child's health and safety becomes a major concern.

Proponents' Testimony:

{Tape 2; Side A}

Chuck Hunter, Administrator of Child & Family Services Division for Department of Health and Human Services, said that they went around the state to nine different locations, held public meetings about child abuse and neglect laws and asked the various parties involved in the public, people who work with this system, and they found that this law has been amended many times and is hard to follow. He added that with reorganization of this bill there are a number of things that provide clarity of time frames and for the rights and responsibilities of the parties involved with the proceedings.

He stated that this bill is proposing so limit the period to a single 90 day period and it offers the court and the department time to get involved with the families. In cases where physical or sexual abuse has taken place they remove the child from the home and place them in a protective setting and the Alternate Dispute Resolution (A.D.R.) is being added to this bill for these cases.

Ann Gilkey, Court Assessment Program, handed in her testimony.
EXHIBIT (jus07a01)

John Larson, Fourth Judicial District, District Judge, handed out a memo offering amendments. **EXHIBIT (jus07a02)** He explained the amendments that were handed out and he added that reasonable efforts was a word that is heard often and it is hard to define. He then handed out information on Reasonable Efforts.
EXHIBIT (jus07a03)

He asked the committee to consider the guardianships of these families and the need for this bill and how mediation, Alternative Dispute Resolution (A.D.R.) and family group conferencing techniques have been proven very effective in courts.

Jeff Weldon, Chief Legal Counsel for Office of Public Instruction, said that federal law generally takes the approach that school officials cannot disclose information about students without parental consent and his concern is that the added

language may conflict with federal law. He said that information from school officials would be invaluable in this effort.

Colleen Murphy, Executive Director of Montana Chapter of Association of Social Workers, felt that the high points of this bill deal with the health and safety of the child. She said that the idea of removing the perpetrator and not the child seems fair because it is extremely disruptive for children to be removed from their homes. She stated the new time line limits in rural areas, which are difficult for people who may have scarce resources and a long way to travel. She said there is a need to create more opportunities for children to be placed more quickly.

Tom Ebzery, Attorney on behalf of St. James Healthcare, handed in his testimony. **EXHIBIT(jus07a04)**

Tara Huber, State Coordinator for Casa GAL of Montana, said that this is a Guardian Ad Litem program and she is in support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN asked if a fiscal note should be present with the bill. **Chuck Hunter** said that he had talked about the fiscal impact and believed the costs associated with this bill were unusual enough to rise to a level of need to identify new resources or services.

SEN. HOLDEN questioned if with movement of a child, out of a troubled home, would the state incur some sort of cost when the child is abandoned. **Chuck Hunter** said that is correct.

SEN. HOLDEN asked if the costs would then be taken on by the parents or whichever parent is being removed from the home. **Chuck Hunter** said yes that would be correct.

SEN. HOLDEN stated that someone should look over last years' estimates of how many children were moved out of their homes and what the costs were because those costs would no longer be expended. **Chuck Hunter** remarked that it would be used in a various small percentages of cases. He said that only when there was the type of abuse that represented an on-going threat to the child, a definitive act that the court felt could be pinned down and was appropriate in that case to remove the perpetrator instead of the child.

SEN. HOLDEN commented that possibly advancing legislation, give a more positive favor with the legislature would also indicate the department's willingness to recognize when the department does save money with pieces of legislation.

Chuck Hunter mentioned the issue of A.D.R. and it could be found on lines eight through 12.

SEN. HOLDEN questioned if this bill would require that. **Chuck Hunter** said it does not require that.

SEN. HOLDEN asked if it is not in the bill wouldn't his fears be unfounded. **Chuck Hunter** said that a district court judge could decide in each and every case to order mediation.

SEN. HOLDEN asked if an amendment to this section is needed to clarify that issue. **SEN. HALLIGAN** answered the fears that are being raised deal with some cases where a district court judge, under the current language, would allow the judge to have that discretion, they could say they are not going to hear any of these cases and would appoint someone to be the A.D.R. person in this jurisdiction.

SEN. GRIMES asked if abuse has occurred, but it is still being litigated as to who the responsible party is. **Judge Larson** answered yes, but not until after adjudication.

SEN. GRIMES asked if there would be a permanency hearing even if there is still litigation. **Judge Larson** answered that is correct and that it might be focused more on the child than on the family.

SEN. GRIMES asked if that permanency hearing would consider elements of the litigation. **Judge Larson** said yes all of the parties would be able to participate.

SEN. GRIMES asked if there was a significant change from how they currently function, a child has been in foster care for a length of time, is that rearranged and clarifying current practice. **Judge Larson** commented that this is a federal statute that is followed. He added that a foster care review board should look at these placements every six months.

SEN. GRIMES asked if an amendment could be summarized in the middle of that page. **SEN. HALLIGAN** said that if there is one child under 12 years of age there could be a guardianship.

SEN. GERALD PEASE asked if the federal Indian Child Welfare Act and this bill go hand in hand. **SEN. HALLIGAN** answered the Indian Child Welfare Act has never been referenced in the child abuse and neglect statutes, but in fact the Indian Child Welfare Act is very critical to this and it needs to be referenced. He mentioned that the federal Adoption and Safe Families Act recognized the existence of the Indian Child Welfare Act when it dealt with the 12 month permanency hearing and the termination after 15 months. He added that these are to be read together and these time frames do apply on reservations as well.

SEN. PEASE asked if it would be dangerous if some people had something against another parent, for example, if a parent reported to the school district an abuse was taking place, would this open it up for the procedure to occur. **SEN. HALLIGAN** said that teachers and administrators are required to report abuse. The language is personally identifiable from the education records.

SEN. HOLDEN asked the chairman to request the department to send up a fiscal note for this piece of legislation. **CHAIRMAN GROSFIELD** replied that a fiscal note can be requested, however, his sense was that they may end up with significant amendments to this bill.

SEN. GRIMES asked if federal requirements required all of the language about immediate protection. **SEN. HALLIGAN** said there is no change to existing law with respect to this.

Closing by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, summarized that two sessions ago the bill went through the process that took the hearing from 20 days down to five days and he had changed it back to 20 days after it was pointed out that they could not comply with this in rural areas. He said that this is a major change of the bill allowing a period of time to have the issue discussed and attorneys and social workers working on the case.

{Tape 3; Side A}

He stated that they do not know how much abuse is going to go on throughout the state and the normal case load is about 3,500 children, who are in care right now. The child welfare agencies could possibly go through a particular case dealing with removal of a child or they may have worked with the families over the years and they have family conferences to work with them. He said there is a need to have the services for families available,

otherwise they cannot terminate due to the constitutional rights that were not protected all the way through.

EXECUTIVE ACTION ON SB 85

Motion: SEN. GRIMES moved SB 85 BE AMENDED. EXHIBIT(jus07a05)
Amendments were handed out.

Discussion:

Valencia Lane, Legislative Staffer stated that this is the very same amendment requested by the clerks of district courts at the hearing and requesting that there be a delayed effective date and an applicability date and that is included in the number eight amendment, which is reflected in the gray bill in the title because it has to go within the title. The other changes are internal reference changes and basically they clarify the responsibility of the clerks of district court as to making these lists for all of the courts.

CHAIRMAN GROSFIELD asked if the effective date was October 1 and if there was any particular reason for that date. **Ms. Phippen, Clerk of District Court**, answered that there was not a particular reason for that. She said that since there was not an effective date on the bill, they thought that the effective date should be October 1, 2001 therefore the complete jury list provided by the department would have to be submitted on the second Monday of June 2002.

CHAIRMAN GROSFIELD asked if they were comfortable with the development of the technology taking place by October 1, 2002. **Valencia Lane** said that the attempt was to delay the effect by one year. She stated that if they make it effective sooner, so funds can be expended if needed, then the law has changed and you have to start preparing the jury list immediately from the drivers license list.

CHAIRMAN GROSFIELD said that they should not be stuck having to wait around until October 1, 2002 before they can do anything. **Valencia Lane** assumed they are already working on the computer programs with assistance from the court administrator's office.

Ms. Phippen mentioned that a few counties have a pilot program regarding jury selection, but it has not been integrated with the Department of Justice and the Motor Vehicle Registration and the I.D. bureau.

CHAIRMAN GROSFIELD said that this is a concern that they might have to check into.

SEN. JERRY O'NEIL asked if it is suggested they would change it back to 2003 rather than 2002. **CHAIRMAN GROSFIELD** said no and his concern was whether it ought to be 2001 due to developing the program, but not requiring them to implement the program between the effective date and the applicability date.

Vote: Motion **carried unanimously.**

SEN. GRIMES said that if he was subject to a jury trial or a family member, he would be concerned about the quality of the jury pool.

SEN. STEVE DOHERTY said that a far more practical point is a jury of peers and they are entitled to a jury of their peers. He mentioned that people do not want to go to jury duty so they do not register to vote.

SEN. GRIMES said there are some attendant duties and responsibilities that people assume and if they assume those, that qualifies them for participation.

SEN. O'NEIL said that it seems probable that a person does not want to register to vote because they do not want to be on a jury pool.

SEN. HALLIGAN asked how the clerks are soliciting the jurors currently. **Ms. Phippen** said the way that they were summoning jurors wasn't clear as a requirement to do by mail or phone call. She said that currently the summons is received by mail.

SEN. HALLIGAN asked if they referred to the list of registered voters. **Ms. Phippen** said there are two processes in providing a jury, one is to send out the questionnaire that informs them that they have been selected for a panel to serve for a year by mail and the second deals with determining how many jurors are requested to come in for any individual trial and it is done all over the state by mail.

{Tape 3; Side B}

SEN. HALLIGAN said that despite the fact that by expanding the pool to receive registered motor vehicle drivers and anyone who wants to show their identification may bring in all types of people.

Motion: **SEN. HALLIGAN** moved that **SB 85 DO PASS AS AMENDED.**

Discussion:

SEN. DOHERTY said that not all people, who register to vote, want to be called for jury duty. He felt that all responsible citizens should be eligible to serve on a jury. **SEN. GRIMES** added that it is an honor to serve on a jury duty and he thought that the Senate as a whole needs to vote on this issue.

SEN. HOLDEN said this bill forces people to participate when they do not want to and that is the last bunch of people he would want sitting on a jury when he has to go into a court room.

SEN O'NEIL asked if this bill would be unconstitutional because it requires people to pay money before they appear on a jury duty, drivers license has a fee and the registration card requires a fee. **CHAIRMAN GROSFIELD** answered that this bill would require paying money before serving on a jury duty.

SEN. HALLIGAN mentioned that if a person simply does not get a drivers license they can get an identification card.

SEN. GRIMES said that they would have to trust the attorney to be able to screen the jurors well.

CHAIRMAN GROSFIELD asked if while questioning prospective jurors can an attorney ask a wide variety of questions related to the case and would it be a legitimate question to ask a juror if he/she is a registered voter. **SEN. DOHERTY** answered yes that would be a permissible question.

SEN. HALLIGAN said that an expanded pool of people should be required and it may help for the attorney or judge to ask questions to jurors to weed them out.

Vote: Motion carried 7-2 with **SEN. HOLDEN** and **SEN. O'NEIL** voting no.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus07aad)