

SENATE PUBLIC HEALTH, WELFARE & SAFETY	
EXHIBIT NO.	<u>11</u>
DATE	<u>1-10-05</u>
BILL NO.	<u>SB 94</u>

Testimony on Senate Bill 94  
 Revising Service of Process Procedures in Child Abuse/Neglect Actions

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Division's Mission: Keeping Children Safe and Families Strong

- SB 94 has been introduced at the request of the Department of Public Health and Human Services, Child and Family Services Division
- Thanks to Sen. Cromley for graciously agreeing to sponsor the legislation
- SB 94 has two major provisions:
  - 1) Provides options for serving intermediate child abuse/neglect petitions on the parents/caretaker of the child; and
  - 2) Removes the requirement to publish in an out-of-state newspaper if the person's last known address is outside Montana.
- **Section 1 - Rationale for proposed amendments to 41-3-422:**
  - This provision was amended in 2003. Previous to 2003, all petitions filed under Title 41, chapter 3, had to be personally served.
  - The 2003 amendment provided for personal service for the initial petition and the petition to terminate parental rights--other petitions "**must** be served by certified mail." In retrospect, the "must" really should have been a "may".
  - SB 94 proposes that:
    - 1) the initial and termination petition continue to be personally served; and
    - 2) all other petitions may be served personally, by certified mail, or publication. SB 94 are also proposes that the county attorney have

the option of serving the individual's attorney if the court has appointed one.

- We believe this amendment will expedite service of the "intermediate" petitions. Frequently when the department attempts to serve by mail, the individual doesn't accept the mail. It then becomes necessary to personally serve.
- **Section 2 - Rationale for proposed amendments in 41-3-428:**
  - This amendment is "clean-up" as well and clarifies that service either has to be in accordance with Title 41, chapter 3, or the Montana Rules of Civil Procedure. This change is recommended because the existing language is confusing.
- **Section 3 - Rationale for proposed amendments in 41-3-429:**
  - These amendments change where the department must publish if the last known address is out of state but the social worker does not have a definite address. Currently, if the last known address is out-of-state, the department must publish based on that last known address.
  - Many county attorneys/deputy county attorneys who handle child abuse/neglect cases object to the requirement of publishing in an out-of-state newspaper.
  - The department proposes that 41-3-429 be amended to remove the requirement to publish out of state. Under this bill, if the person's last known whereabouts is outside Montana, the county attorney may publish in a newspaper in the county in which the action is pending.
  - The department proposes this amendment for three reasons:
    - 1) Publishing in the local paper is more practical. We believe it is more likely that, by publishing in a newspaper where the action is pending, a relative of the person will see the notice and contact the person.
    - 2) Generally speaking, publishing out of state is more expensive than publishing in Montana papers.

3) This change makes the child abuse/neglect publication requirements more in line with the requirements under the Rules of Civil Procedure.

- Please vote "do pass" on SB 94.