SENATE PUBLIC HEALTH, WELFARE & SAFETY
EXHIBIT NO. #8
DATE: 1-12-05
BILL NO. SB 119

Testimony on Senate Bill 119

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Division's Mission: Keeping Children Safe and Families Strong

- SB 119 has been introduced at the request of the Department of Public Health and Human Services, Child and Family Services Division

- Thanks to Sen. Schmidt for graciously agreeing to sponsor the legislation

- The Division characterizes SB 119 as our "compliance" bill in that most of the proposed amendments will better allow the Division to comply with various federal requirements. Non-compliance with those requirements does or could have a negative impact on the Division's budget.

- The Child and Family Services Division is experiencing a general fund shortfall this year. One reason for the general fund shortfall is a decrease in the number of children eligible for federal foster care funding.

- This decrease is attributable, in part, to the number for children for whom a permanency hearing has not been held or the required findings have not been issued by the court. The Division cannot access federal foster care monies if the permanency hearing has not been held or the findings have not been issued within the required statutory timeframe.

- The Division has been addressing this issue internally. In some areas, Division staff have been meeting with county attorneys and judges on a informal basis. In addition, the Division sent letters to the district court judges and county attorneys in those judicial districts with more than nine children experiencing delays in the hearings/findings.

- Because of the projected general fund shortfall, the most critical amendments in SB 119 are those relating to the permanency plan hearing.

- Federal regulations require that every child who is otherwise eligible for federal foster care funding must have a permanency hearing either 12 months after the court determines the child is abuse/neglected or 12 months after the first 60 days in care, whichever comes first.

- If a child has not had a permanency hearing or if the court has not issued the required findings, the Division cannot access federal foster care funding for that child. Lack of the permanency hearing and the required findings costs the Division approximately $28/day in general fund.

- As of January 10, 126 children had been "turned off" of federal foster care funding because either no hearing had been held or the Division had not received the required findings. This means that as of Monday the lack of permanency hearings and the subsequent required findings is costing approximately $3,528 general fund/day.

- Federal regulations allow either the court or an administrative body appointed by the court but not under the supervision of the department to conduct the permanency hearing.

- With the proposed amendments in SB 119, the foster care review committee could serve as an administrative body appointed by the court but not under the supervision of the department. The foster care review committee meets to review the child's case every six months--this timeframe is statutory, has been institutionalized, and is in place in each judicial district

- SB 119 has an immediate effective date because of the criticality of the permanency plan hearings. If this bill becomes law, the court **may** delegate responsibility for the permanency hearing to the foster care review committee.

- The Division believes that in those jurisdictions where the court docket is extremely tight, the district court may be amenable to delegating responsibility of some of the permanency hearings to the foster care review committee.

- The SB 119 amendments to the foster care review committee and permanency hearing provisions make clear that the court, not the department, oversees the foster care review committee. In those judicial districts, the Division will work with the district court judge to establish procedures for the delegation of that responsibility.

- Other amendments of note include:

  - Requiring guardians ad litem to participate in training in child abuse/neglect before being appointed as a guardian ad litem;

  - Allowing adoption records to be open during a federal child and family services review if the case was a foster care case when the randomly-selected list of cases to be reviewed is pulled.

- The following is the rationale for the proposed amendments:

  - **Section 1** - Mont. Code Ann. § 41-3-112 (Guardian ad litem): This section proposes two amendments to this provision.

    a) Changes who can be a guardian ad litem so employees of the other divisions within the department may serve as volunteer Court-appointed Special Advocates; and

    b) Incorporate the federal requirement under the Child Abuse Prevention and Treatment Act (CAPTA) that guardians ad litem must receive training before the court can appoint them. Although the CAPTA grant is small, the monies are used for much of the staff training offered by the Division. Without this amendment the court may appoint a guardian ad litem who has not received training in child abuse/neglect proceedings. Without the training, the grant could be jeopardized.

  - **Section 2** - Mont. Code Ann. § 41-3-115 (Foster care review committee): This section proposes a major re-write of the statute to allow the foster care review committee to conduct the permanency hearing if the state district court so delegates.

    The amendments to this section also expand the membership of the foster care review and remove references to department rules/supervision.

  - **Section 3** - Mont. Code Ann. § 41-3-201 (Reports): This amendment removes the reference to "local affiliate" in accordance with the Attorney General's opinion regarding centralized intake.

- **Section 4** - Mont. Code Ann. § 41-3-202 (Action on reporting): This amendment removes the reference to "local affiliate" in accordance with the Attorney General's opinion regarding centralized intake. There are also some "language clean-up" amendments put in by the drafter.

- **Section 5** - Mont. Code Ann. § 41-3-438 (Disposition - hearing - order): This amendment changes the name of the "permanency plan hearing" to "permanency hearing" to comply with the federal name for the hearing.

- **Section 6** - Mont. Code Ann. § 41-3-443 (Treatment plan - contents - changes): This amendment changes the name of the "permanency plan hearing" to "permanency hearing" to comply with the federal name for the hearing.

- **Section 7** - Mont. Code Ann. § 41-3-445 (Permanency plan hearing): The primary amendments to this section allow the court to delegate responsibility for the permanency hearing to the foster care review committee. References to the citizen review board are also incorporated in the event that program is funded by this legislature.

  The Division loses approximately $28/day for every day a child who is otherwise eligible for federal funding hasn't had a permanency hearing. Hopefully those courts with an extremely busy court docket will be willing to delegate the responsibility for the permanency hearing and, thus, we will be able to recoup more federal monies.

- **Section 8** - Mont. Code Ann. § 41-3-1010 [Review - scope - procedures - immunity (of the citizen review board)]: The primary amendment allows the citizen review board to conduct the permanency hearing if the court so delegates. The other amendments are drafter "clean-up".

- **Section 9** - Mont. Code Ann. § 42-6-102 (Disclosure of adoption records): This amendment will allow information to be shared with federal reviewers as part of a federal child and family services review. The Division was penalized during the federal child and family services review conducted in August, 2002, because reviewers were not able to access the records of children who were in foster care when the randomly-selected list of cases was run by the feds but whose adoption was finalized after the random sample was pulled.

- **Section 10** - Effective date: Because of the criticality of the permanency hearing and findings to the Division's budget, this bill proposes the provisions of SB 119 become effective upon passage and approval.

- Please vote "do pass" on SB 119