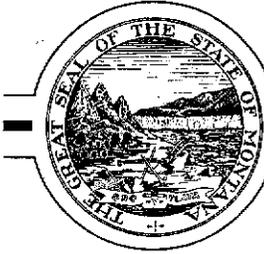


DEPARTMENT OF
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To: Sen. Trudi Schmidt
From: Shirley K. Brown, M.A., J.D.
Child and Family Services Division Administration
Re: SB 119

SENATE PUBLIC HEALTH, WELFARE & SAFETY	
EXHIBIT NO.	1
DATE:	1-19-05
BILL NO.	SB 119

Date: January 17, 2005

I would like to take this opportunity to respond to Judge Sherlock's comments in opposition to SB 119. The proposals in SB 119 opposed by Judge Sherlock are:

- A. Amend the guardian ad litem statute to allow employees of the Department of Public Health and Human Services (other than Child and Family Services Division staff) to serve as guardians ad litem; and
- B. Amend the foster care review and permanency hearing statutes to allow the court, at its discretion, to delegate responsibility for the permanency hearing to the foster care review committee.

I will respond to each of the above separately in the order of importance to the Division.

A. Amendments to the foster care review/permanency hearing statutes:

Authorizing a district court judge the discretion to delegate responsibility for the permanency hearing is, essentially, a matter of public policy. The issue is:

Does the Legislature believe that each individual district court judge should have the discretion to delegate responsibility for the permanency hearings after balancing the importance of the hearing against the court's ability to conduct the hearing in a timely manner or, in the alternative, does the Legislature believe that the permanency hearings are so important that the hearings cannot be delegated regardless of the court's ability to conduct the hearings in a timely manner.

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Judge Sherlock indicated he would work with the Division to draft language acceptable to those judges who oppose these amendments. However, SB 119 proposes to authorize the court to delegate responsibility to the foster care review committee and Judge Sherlock opposed that delegation. There doesn't appear to be any room for compromise on these two mutually exclusive positions – the courts can either delegate responsibility or they can't.

Judge Sherlock opposed the foster care review and permanency hearing amendments based on a survey of district court judges conducted by Judge Larson, Fourth Judicial District, Missoula. Judge Sherlock didn't provide any specifics regarding the actual number of judges responding to the survey or the number of those responding who were either opposed or in support of the amendments.

Judge Sherlock indicated that a majority of those responding did not support the proposed amendments. The reasoning, as I understand his comments, is threefold:

1. The judges responding to the survey believe the permanency hearing is an important hearing which should be conducted by the judge, not an administrative body;
2. The "Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases" published for the National Council of Juvenile and Family Court Judges recommend that the permanency hearings be conducted by the court; and
3. Those judges opposing this proposal were fearful that judges who would prefer not to hear child abuse/neglect proceedings would delegate all the permanency hearings in their jurisdictions to the foster care review committee.

The Division made this proposal because of the difficulty we have in complying with the permanency hearing requirement. In the federal Title IV-E review conducted in June, 2003, 29 cases failed the review – 20 of them because of either no permanency hearing or a late permanency hearing. In response to this review, one of the elements of both the Title IV-E Corrective Action Plan and the Program Improvement Plan based on the federal Child and Family Services Review is to propose these amendments to the 2005 Legislature. We worked with federal staff from the Children's Bureau in drafting the legislation.

After the Title IV-E review, we had to pay back \$317,749 in federal monies based on the cases that failed. We are scheduled for a follow-up review late this calendar year. Any sanctions imposed subsequent to that review will be extrapolated across the entire Title

IV-E foster care population – not just the cases reviewed. Therefore, it is incumbent upon the Division to take every possible measure in assuring the permanency hearings are conducted in a timely manner.

Against this backdrop, we drafted SB 119 to provide statutory authority to the court to delegate responsibility for the permanency hearing to the foster care review committee. The reasoning in support of this proposal is:

1. Federal regulations allow for the permanency hearing to be conducted by either a court or an administrative body appointed by the court. At the time the regulations were drafted, consideration was given to requiring the hearings to be conducted by the court. However, the final regulations provide for an alternative to the court. This proposal would provide an alternative in Montana.
2. The proposed amendments in SB 119 allow for the delegation at the discretion of the court. If a district court judge believes the permanency hearing is of such importance the court must conduct the hearing, the judge is not required to delegate the hearing to the foster care review committee. However, if the amendments to SB 119 related to the permanency hearing become law, those courts unable to meet the required timelines have the option of delegating the permanency hearings. In addition, the court has the option of delegating some hearings but not all. The Division believes it is better to have an administrative body conduct the hearing than to have no hearing conducted.
3. Under SB 119, the court must concur with the recommendations of the foster care review committee. If the court does not concur, the court can require that a permanency hearing be conducted by the court subsequent to the review by the foster care review committee.

B. Amendments to the guardian ad litem statute:

Judge Sherlock opposed the guardian ad litem amendment because of the appearance of impropriety in allowing any Department staff to serve as a guardian ad litem. The Division included this proposed amendment at the request of the Court-Appointed Special Advocate (CASA) program. The CASA program is a volunteer program in which lay people are trained to serve as volunteer guardians ad litem for children who are the subject of a child abuse and neglect proceeding. The current statute eliminates approximately 2,650 individuals from serving as a CASA. Because this proposal did not originate with the Division, we would not be adverse to amending this proposal out of SB 119.

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I hope this response to Judge Sherlock's comments is helpful to the Committee. I will, of course, be available to respond to any questions from the Committee during Executive Action on SB 119. If you have any questions after receiving this memorandum, please feel free to call me at 5906.