

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on January 19, 2005
at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: SB 29; SB 86; SB 94; SB 119; SB 42;
SB 46; SB 105; SB 113

EXECUTIVE ACTION ON SB 29

SEN. SCHMIDT moved SB 29 DO PASS.

Discussion:

SEN. SCHMIDT reminded the committee this bill affects families of felony drug offenders.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2}

SEN. O'NEIL, referring to page 3, line 21, asked who requires the person to participate in treatment. **SEN. SCHMIDT** said when people complete their obligation to the DMC and remain in the program this remains in place. If they return to drug abuse, they are rarely able to meet these requirements.

Vote: Motion carried unanimously by voice vote. **SEN. GRIMES** voted aye by proxy.

EXECUTIVE ACTION ON SB 86

Motion: **SEN. ESP** moved that SB 86 BE AMENDED.

Discussion:

SEN. SCHMIDT asked **Shirley Brown, Department of Health and Human Services (DPHHS)**, for a brief explanation of the bill. **Ms. Brown** told the committee SB 86 incorporates the definition of the federal Indian Child Welfare Act. It defines Indian child, Indian tribe, clarifies neglect, and serious emotional physical damage. It incorporates this into the body of the statutes when the court is required to use a qualified expert witness, as well as what the qualified expert witness should testify to. Courts have had questions as to the role of the qualified expert witness.

Motion/Vote: **SEN. WILLIAMS** moved that SB 86 BE AMENDED WITH SB008601.ASB. Motion carried unanimously by voice vote.

SEN. CROMLEY asked **Ms. Brown** to clarify **SEN. SCHMIDT'S** amendment. **Ms. Brown** explained the amendment was omitted when the bill was drafted.

Motion/Vote: **SEN. SCHMIDT** moved that SB 86 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 94

Motion: SEN. CROMLEY moved that SB 94 DO PASS.

Discussion:

SEN. CROMLEY presented amendment SB009401.ASB. Page 2, line 22 by changing may to must makes the bill stronger; it didn't make sense to serve the agency so strike "the agency"; and page 4, line 26 adds the additional requirement that they must notify by certified mail.

SEN. GRIMES asked if the Department would explain the amendment. Ms. Brown explained that they must serve, but they can still serve it the best way either by certified mail, personal service or by publication.

{Tape: 1; Side: A; Approx. Time Counter: 12 - 17.7}

SEN. GRIMES thought "or" should be inserted so it must be served by a, b, c, "or" d and they wouldn't unintentionally be forced to serve by more than one of the above. He mentioned it might be challenged later. Mr. Niss told SEN. GRIMES it would have been clearer if it said the attorney of record by certified mail as one subsection; by personal service; or by publication as provided in as the next subdivision so it showed all as individual choices. He said the construction would not meet this.

{Tape: 1; Side: A; Approx. Time Counter: 17.7 - 19.8}

SEN. CROMLEY added changing the must didn't change the intent. SEN. ESP said with "may" it could be read, you could serve one of those people in one of three ways, or didn't have to do any of them. With "must", they must serve one of those people in one of three ways.

{Tape: 1; Side: A; Approx. Time Counter: 2 - 21.3}

SEN. GRIMES thought a semicolon would clarify it. Mr. Niss told him it might, but these are separate issues. One is must among any of the three choices, and the other is may among any of the three choices.

{Tape: 1; Side: A; Approx. Time Counter: 21.3 - 21.9}

Motion/Vote: SEN. CROMLEY moved that SB 94 BE AMENDED WITH SB009401.ASB. Motion carried unanimously by voice vote.

Motion/Vote: SEN. CROMLEY moved that SB 94 DO PASS AS AMENDED.
Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 119

Motion: SEN. SCHMIDT moved SB 119 DO PASS.

Motion: SEN. O'NEIL moved that SB 119 BE AMENDED WITH SB014601.ADN.

Discussion:

People contacted SEN. O'NEIL regarding this bill stating that it gives the Department too much power and giving the family no power. The amendment makes the foster care review team a neutral party. This refers to both the title and page 3, line 1.

{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 27}

SEN. CROMLEY asked if some of the persons in the group could fulfill two roles. SEN. GRIMES answered they are already representing the various socio-economic racial methods. He didn't think the amendment encompassed people from the private sector and there was overlap there. SEN. O'NEIL said some of the families may have chemical or mental disabilities and the people he's included are knowledgeable of these problems.

{Tape: 1; Side: B; Approx. Time Counter: 4 - 5.2}

SEN. WEINBERG referred to the people listed within the amendment not having specialized knowledge regarding foster care. The same would hold true in the bill itself. A person in an organization that advocates on behalf of a racial minority could be someone not at all connected to that particular minority. Someone who has expertise in addictive behavior counseling may have absolutely no expertise in what the bill is purported to do.

{Tape: 1; Side: B; Approx. Time Counter: 5.2 - 6.1}

SEN. CROMLEY had concerns about mandating those persons to be on the committee when the issues may not relate. SEN. ESP thought three people was insufficient. SEN. O'NEIL said they already have seven members on the committee (p. 2, line 17).

{Tape: 1; Side: B; Approx. Time Counter: 6.1 - 8.5}

SEN. SCHMIDT, referring to line 6, page 3, asked SEN. O'NEIL if he was not satisfied with the at-large community member. She did

not agree with mandating the person as it may be difficult to find this person in some communities. **SEN. O'NEIL** was trying to add various people with different view points involved.

Motion/Vote: **SEN. O'NEIL** moved that **SB 119 BE AMENDED WITH SB014601.ADN**. Motion failed 2-7 with **SEN. O'NEIL** and **SEN. ESP** voting aye.

SEN. SCHMIDT presented a letter from **Shirley K. Brown, Child and Family Services Division, DPHHS**, addressing **Judge Sherlock's** concerns which were expressed at the January 12th hearing.

EXHIBIT (phs14a01)

SEN. CROMLEY explained that, at the discretion of the court, they can transfer to the committee and the committee reports back to the court.

SEN. ESP was concerned that an employee of Child Protective Services would have a conflict with guardianship. **Ms. Brown** referred to page 1, lines 16 through 19, which explains that issue.

{Tape: 1; Side: B; Approx. Time Counter: 8.5 - 14.8}

SEN. WEINBERG didn't understand **Ms. Brown's** comment regarding rules not being reflected in the statute. **Mr. Niss** said the reason is, there is an implication not directly stated, that the Director reorganize the Department governing that into doing it, which the part of the statute.

{Tape: 1; Side: B; Approx. Time Counter: 14.8 - 17.1}

SEN. SCHMIDT answered that, when the legislature gets done, rules are written saying exactly what this means and the rule would say the Division could not do this. Every month they would get a packet of rules.

{Tape: 1; Side: B; Approx. Time Counter: 17.1 - 17.9}

Motion: **SEN. O'NEIL** moved to amend **SB 119** by deleting on page 1, line 18, "who has a direct conflict of interest".

Discussion:

SEN. O'NEIL explained that they expect the members of the Family Services Department to have a conflict of interest but other departments are involved by association, and he felt a neutral

source would be better. **Ms. Brown** said there are approximately 2800 to 3000 employees. The Division of Family Services has about 300 employees. **SEN. CROMLEY** asked if some of those persons now serve ad litem. **Ms. Brown** responded, no.

{Tape: 1; Side: B; Approx. Time Counter: 17.9 - 21.5}

Vote: Motion carried 5-4 by voice vote with **SEN. CROMLEY, SEN. GRIMES, SEN. SCHMIDT,** and **SEN. WILLIAMS** voting no.

Motion: **SEN. SCHMIDT** moved that SB 119 DO PASS AS AMENDED.

Discussion:

SEN. GRIMES addressed **Judge Sherlock's** concerns regarding various judge's discretion on turning permanency plan hearings over to the committees when some judges might use this to lighten workloads.

SEN. O'NEIL wanted the foster care review committee to have someone to keep the family together and someone to protect the child, thus representing both views.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.2}

SEN. WEINBERG said in the area of child custody, family court judges are given more discretion than other areas of law. He didn't think this area should be changed.

SEN. WILLIAMS asked someone to address Judge Sherlock's thoughts that there would more grounds for appeal when going to the other system.

SEN. CROMLEY drew the committee's attention to page 4 line 23. This would go back to the discretion of the court. He thought maybe that language is loose and could be changed to: following the review of finding the recommendations, the court will issue appropriate orders. The court is referring this matter out to a committee for fact finding.

Committee discussion continued regarding Judge Sherlock's concerns.

{Tape: 2; Side: A; Approx. Time Counter: 1.2 - 7.7}

SEN. SCHMIDT withdrew her motion on SB 119.

The bill remained in committee.

EXECUTIVE ACTION ON SB 42

Motion/Vote: SEN. COBB moved that SB 42 BE AMENDED WITH SB004201.ASB. Motion carried unanimously by voice vote.

Discussion:

SEN. GRIMES wondered if they were having difficulty now if things would get clearer later on.

SEN. SCHMIDT said the service areas are still working hard at being one of the Service Area Authorities (SAAs) and determining what their responsibilities and authority is.

SEN. ESP told SEN. GRIMES the SAAs are more of a mental health care entity in the children's system of care within communities, so the bill says the two systems will communicate with one another. The SAA concept was more of an adult concept and the children were left out. They wanted some money.

Motion/Vote: SEN. COBB moved that SB 42 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 46

{Tape: 2; Side: A; Approx. Time Counter: 8.5 - 14.7}

Motion: SEN. O'NEIL moved that SB 46 DO PASS.

Motion: SEN. O'NEIL moved that SB 46 BE AMENDED WITH SB004601.ASB.

Discussion:

SEN. O'NEIL asked Ms. Adee to explain the amendment. Ms. Adee said the Department was concerned about taking out the language that the ombudsman must have written authorization to access Medicaid.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. O'NEIL moved that SB 46 DO PASS AS AMENDED.

Discussion:

SEN. O'NEIL said the Mental Health Ombudsman had problems accessing some records. Under present law she was still denied

the records. She needs to access the records to be able to do her job.

SEN. WEINBERG asked **Ms. Adee** if she had trouble getting this information and, once she had the releases, were they honored. Her answer was yes. He thought if she couldn't get the information, perhaps she shouldn't have it. Mental health records and information is covered under the Health Insurance Portability and Accountability Act (HIPPA). He had asked **Ms. Adee** at the hearing if she had training in HIPPA and she had said no, but she had voluntarily taken it upon herself to learn many of those regulations. He did not think that was enough.

{Tape: 2; Side: A; Approx. Time Counter: 14.7 - 23.5}

SEN. CROMLEY asked **SEN. WEINBERG** if it would make a difference that it was the ombudsman requesting the records and not the agency. **SEN. WEINBERG** answered that was his understanding.

The committee had considerable questions regarding HIPPA and whether or not these medical records would be protected as well as the necessity to obtain these records for Medicaid benefits.

{Tape: 2; Side: A; Approx. Time Counter: 23.5 - 27}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 15.4}

Motion/Vote: **SEN. O'NEIL** moved that SB 46 DO PASS AS AMENDED. Motion carried 8-1 by voice vote with **SEN. WEINBERG** voting no.

EXECUTIVE ACTION ON SB 105

Motion/Vote: **SEN. COBB** moved that SB 105 DO PASS. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 113

Motion: **SEN. CROMLEY** moved that SB 113 DO PASS.

Discussion:

SEN. CROMLEY explained the bill requires county attorneys to represent the Department when they petition for guardianship of an incapacitated person.

SEN. GRIMES questioned whether this was a mandate on local governments and whether the attorneys could represent the Department.

SEN. CROMLEY told the committee that **David Niss** said it was unusual for this bill to get this far because of the mandate upon local governments and funding.

David Niss quoted legislation included in Section 1-2-112 that says a bill cannot be introduced if it mandates a cost-shift to a local government and there is no way to pay for it in the bill. There is no fiscal note attached.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.1}

Motion/Vote: SEN. GRIMES moved that SB 113 BE TABLED. Motion carried 6-3 by voice vote with SEN. COBB, SEN. ESP, and SEN. WILLIAMS voting no.

{Tape: 3; Side: A; Approx. Time Counter: 2.1 - 5.5}

ADJOURNMENT

Adjournment: 4:50 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs14aad0.PDF](#))