PUBLIC HEALTH, WELFARE & SAFETY

Exhibit No. 2

Date 1-8-07

Bill No. SB 83

Testimony on Senate Bill 83
Clarify When the Noncustodial Parent May be Considered for
Custody of a Youth in Need of Care

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Division's Mission: Keeping Children Safe and Families Strong

- SB 83 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 bill

- **Purpose of SB 83:** Address confusion related to Mont. Code Ann. § 41-3-438(3)(b)—If the court finds the child is a youth in need of care, the court may make any disposition from a list of dispositions including, but not limited to:

  order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding. **(pg. 2, lines 5-8)**

  This disposition was incorporated into Title 41, chapter 3, (Child Abuse and Neglect) in 2003.

- **Background**: SB 83 continues work of other Legislatures in clarifying in statute that the noncustodial parent should be considered as a placement option when determining the best placement for the child. Current references in Title 41, chapter 3 include:

  - 41-3-427(2)(a)—right to place with noncustodial parent at immediate protection and emergency protective services phase of the proceeding;
  - 41-3-427(2)(e)—parent must provide the name and address of the other parent at immediate protection and emergency protective services phase; and
  - 41-3-437(7)(b)(iii)—the court may order the department to evaluate the noncustodial parent as possible caretaker upon adjudication of the child as a youth in need of care.

- **SB 83 in brief**: SB 83 addresses the confusion related to 41-3-438 (30(b) by expanding the options the court has available as to consideration of the noncustodial parent as a placement/custody option for children who have been removed from the custodial parent. The bill addresses placement with the noncustodial parent at the following:

    - disposition;
    - extension of temporary legal custody; and
    - permanency hearing.

- Rationale for the changes requested in SB 83:

    - **Section 1—Disposition (41-3-438):**

        - (b) **Adds** that the court can order the department to evaluate the noncustodial parent as a possible placement option (**pg. 2, line 1**).

          The current disposition does not provide for the department to officially evaluate the noncustodial parent as a placement option at the dispositional phase.

          Current statute allows the court to order the department to evaluate the noncustodial parent at the adjudication stage 40-3-437(7)(b)(iii) so the same language is proposed for the dispositional stage.

        - (c) **Adds** that the court may place the child with the noncustodial parent temporarily and keeps the proceeding open until the custodial parent successfully completes the treatment plan (**pg. 2, lines 2-4**).

          County Attorneys and social workers have stated that the current statute creates confusion. The confusion arises when the parent from whom we have removed the child is working his/her treatment plan intending to have the children reunified with that parent once they have successfully completed the plan. The current disposition does not provide for this situation.

        - (f)(iii) **Adds** to the provision related to other possible placement options:
            - "nonparent" before "relative" and
            - the family must be evaluated by the department (**pg. 2, line 16**).

          Noncustodial parent issues are addressed in the other proposed changes so the only remaining relatives to consider as placement options are nonparent relatives.

- **Section 2—Temporary Legal Custody (41-3-442):**

  - (4)(b) **Adds** that, at the temporary legal custody phase, the county attorney may petition:
    - for the child to remain temporarily with the noncustodial parent (**pg. 4, lines 13-14**); and
    - for the permanent placement of the child with the noncustodial parent, superseding any existing custodial order (**pg. 4, lines 17-18**).

  Some argue that the only time the above can be granted is at the disposition phase (which must be within 20 days of the adjudication). Therefore, these changes make clear that the court can order either of them at the extension of temporary legal custody phase (generally after the child has been in care for approximately six months.)

- **Section 3—Permanency Hearing (41-3-445)**:

  - (7)(a) **Adds** that the permanency options for the child include permanent placement with the noncustodial parent (**pg. 6, lines 29-30**).

  The permanency option listed in current statute related to parents is "reunification of the child with the child's parent). Permanent placement with the noncustodial parent does not fit within any of the other permanency options listed. This proposed change clarifies custody with the noncustodial parent as to permanency.

Please vote "do pass" on SB 83