



Children, Families, Health, and Human Services Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

59th Montana Legislature

SENATE MEMBERS

TRUDI SCHMIDT--Chair
JOHN ESP
JERRY O'NEIL
DAN WEINBERG

HOUSE MEMBERS

BILL WARDEN--Vice Chair
EMELIE EATON
EVE FRANKLIN
DON ROBERTS

COMMITTEE STAFF

SUSAN FOX, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

January 27, 2006

Capitol Building, Room 152
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. TRUDI SCHMIDT, Chair
REP. BILL WARDEN, Vice Chair

SEN. JOHN ESP
SEN. JERRY O'NEIL
SEN. DAN WEINBERG

REP. EMELIE EATON
REP. DON ROBERTS

COMMITTEE MEMBERS EXCUSED

REP. EVE FRANKLIN

STAFF PRESENT

SUSAN FOX, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, [Attachment #1](#).

CALL TO ORDER AND ROLL CALL

SEN. SCHMIDT called the meeting to order at 8:00 a.m. The secretary noted roll. Rep. Eve Franklin was excused.

COMMITTEE WORK SESSION

Sen. Schmidt asked each committee member to present their three options.

SEN. O'NEIL said that he would like to do some progress on Maureen O'Malley's presentation on the difficulties of Social Workers to bill for MHSP and to allow private providers to do more, such as to work under the supervision of a psychiatrist and do some of what a psychiatrist does, so that there is more provision of these services in the state of Montana. He said that psychiatrists, like a physician's assistant, works under the physician so that they can provide some of these psychiatric services to the public if they can find a psychiatrist to work under.

SEN. WEINBERG said that psychiatrists dispense medication and physicians assistant have training in following medication protocols so they find it easier to work with physicians. Social workers would not have any medication training that he is aware of, so maybe what we are talking about are social workers working under psychologists, or do you mean to have them follow medication protocols? SEN. O'NEIL asked if it should be put in that they be required medication protocol training before they are allowed to do this. SUSAN FOX said that currently the other professional that is allowed to have prescriptive authority, if they have appropriate training, is an advance practice registered nurses, but they do not have to be under the supervision of a psychiatrist. Currently, the only social workers that are licensed in the state are master level social workers and many of them have independent practices. She said she could explore what the issues are under the recruitment and retention of mental health professionals and not go so specific as to prescriptive authority for social workers. SEN. O'NEIL said that he basically wanted to raise the function of the higher level of social workers and would like to allow them to work under the supervision of a psychiatrist and help them get paid for the things that they can't get paid for.

SEN. SCHMIDT asked Sen. O'Neil what he meant by lower level and higher level, does lower level mean a bachelor's and a higher level mean a master's MSW. SEN. O'NEIL said that he didn't know the level of social workers and if that's the levels, that is fine, but that he would like to progress with this to some degree and get information.

SEN. ESP said suggested the issue of upgrade crisis beds to secure. If crisis beds were secure in Bozeman or Missoula that they could hold people for three or four days to do the emergency evaluations and they would not have to be transferred back and forth to do the evaluation and then taken back to Warm Springs after the legal proceedings that commit them, it would save money. SEN. SCHMIDT asked if he was talking about emergency room issues or crisis beds.

SEN. ESP said that the Department is considering whether a judge can order you to stay there and get your evaluation, or you can go to Warm Springs and get your evaluation. He said it is worth pursuing, figuring out how to pay for that at a higher level than for non-secure crisis beds. He said that he also thinks that we should look at temporary crisis beds in communities like Big Timber or other smaller communities.

SUSAN FOX told the Committee Rep. Franklin's options: insuring clinical quality assurance for community programs and develop referral protocols for emergency departments.

REP. WARDEN said that he was struck by the fact that there were a couple of reoccurring themes and one of them was certainly a rural/urban issue where the ability to interact with psychiatrists or whomever doesn't exist. He said that we should look at what is available in terms of new technologies, MetNet, the ability in a hospital environment to access someone at Warm Springs and have an evaluation made effectively in that remote location. Another reoccurring theme was that there isn't any interagency cooperation, that everybody seems to be going in separate direction, whether it be the medical profession or the law enforcement profession, that we need to look at how to deal with that. The 72-hour presumptive eligibility is an issue that has some fiscal ramification that could be a legislative issue. He said that he didn't know if the Committee was going to work on any of the rules that was heard at yesterday's meeting. He said that it always concerns him that there are onerous government regulations that result in potential of businesses going out of business. We need to address those regulations that are dealing with the daycare issue.

SEN. SCHMIDT asked Susan Fox if the update on the licensure of daycare facilities would be as a report. MS. FOX said that David Niss will make sure this Committee sees any proposed amendments to rules from Mr. Kemp before they are adopted.

SEN. O'NEIL said that he would like a followup on no immunization for preschool in daycare because of religious belief. REP. ROBERTS said that the reason people are living to the age of 77 is because of the vaccination public health policies that we have put into place. There are going to be people who react differently to different things, but in the whole scheme of things, it is an extremely effective way of helping to insure longevity in our society. SEN. SCHMIDT said that she thinks what is good for the people that have their child vaccinated in this group of children and then a child comes in without a vaccine, how fair is that to those who are in the daycare and complying.

SEN. ESP said that we should continue to encourage communities to work together to provide crisis services and allow the Department to do that on an ongoing basis. REP. EATON said that she would like to monitor the progress of communities as they make their efforts to create separate non-duplicative services for crisis centers; encourage communities to develop crisis centers without the advice or financial dependance on the Department of Public Health and

Human Services; and emphasized that those communities have an individual response to their community or their regional needs. She does not want cookie cutter ideas.

SEN. WEINBERG said that he had four options: One, develop an organized manner of collecting statistics on suicides that show as exact as possible where people fell through the cracks. Second, have detailed followup on people who leave the crisis center to find out if the referral system was working. Third set up a drug diversion program specifically for methamphetamine statewide. Fourth, have an organized way of finding those people who are having difficulties with the Medicaid Part D and providing assistance to get them on track.

SUSAN FOX discussed a program out of Billings, a treatment court, and a psychologist who works with that program who has information about treatment and the effects of methamphetamine on children and parents, what kind of recovery process there is, and if the Committee is interested in hearing a presentation on that, she could have the psychologist come as a resource. SEN. WEINBERG said that he would like that.

REP. ROBERTS said that he would like to look into the protection of psychiatrists, psychologists, and police officers who are dealing with difficult people in crisis situation; would like to contact the Salish and find out why they have such a low suicide rate compared to other tribes and find out what they are doing; secure beds for hospitals that have multiple uses; find out what groups would like to participate in crisis care areas and see what it would take to have them come onboard as entities in communities.

SEN. SCHMIDT said that she is interested in the insurance parity issue, why mental health is treated differently than physical health issues; interested in the suicide issue; would like continued information from Joanne Dotson regarding the prevention grant; interested in the certified consumer peer support services in the state hospitals and communities; interested in the interaction with the criminal justice system and AMDD; interested in followup on crisis services for youth.

SUSAN FOX said that any issues that the Committee looks at for mental health, she would like to look at it from both perspectives, how is it working in the adult system, how is it working in the children system, and is there a continuum or transitional care for them.

Ms. Fox summarized the Commission work session on mental health on a flip chart:

Hospital-related Issues - testimony was received that many hospitals do not have any capability to address mental health crises. Missoula has psychiatrists who will not take emergency calls from emergency department because it detracts from the ability to serve their day-time practice and much of it is uncompensated care. Other mental health professionals do not have admitting privileges and are

not considered resources for hospitals. Mental health professionals appear to only be used for commitment purposes.

- Use of other resources, least restrictive
- Provide assistance to community hospitals to answer MH emergencies
- Temporary crisis beds in hospitals - licensure and reimbursement
- Use of tele-mental health to support local hospitals and remote locations
- Development of referral protocols for EDs
- Professionals - psychiatrists, community mental health centers
- Multi-use beds (don't leave hospital beds open and unused - reminds me of swing bed capability)

Crisis Issues - need more crisis services locally, need continuum of care from certified peer support services to local crisis response, range of crisis beds from outpatient, to inpatient, to secure inpatient. Need to be able to pay for these services up front (presumptive eligibility), how to estimate need, how many will have source to reimburse the service, how many will be eligible for Medicaid, MHSP, and how many will be left with no resource after 72 hours?

- AMDD proposal to create secure crisis beds - hospital-based? commitment law changes required? what would be the standard for a secure crisis bed? licensure and reimbursement
- Incentives to communities to develop crisis response
- Follow-up on the discharge and referrals from the Yellowstone County Crisis facility. Where are they 6 months later?
- Certified Peer Support Services (get more information - from testimony)
- 72-hour presumptive eligibility - services, reimbursement, providers

Suicide - how do we determine what is the root problem and did those who commit suicide fall through the cracks?

- What data is collected?
- Who are these people, did they have prior contact with medical or mental health system, emergency departments, did they have diagnosed mental illness, treatment, medications?
- Talk to CSK - low rates of suicide?
- Follow - up on prevention grant
- (2-1-1 followup fit here?)

Insurance Parity - could this address the portion of the population with insurance coverage but who have maxed out their insurance?

Community/Misc. Issues - how do we get more community resources involved - should private providers be able to see MHSP clients, how do we get all of the community stakeholders to communicate and work with each other, how do we provide protection to persons and institutions when responding to potentially violent situations, what other community persons could be trained, provide assistance, how do we know that the community services being provided are the most effective use of resources?

- Open MHSP plan up to other providers (NASW concern)
- Interagency cooperation needed - how to make sure everyone is at the table (related to community incentives - what role can LACs and SAAs, KMAs play, Could an RFP incentive system be used and require participation from law enforcement, CMHCs, private MH providers, county government, hospitals, county health departments, suicide prevention, etc.
- Safety issues and liability (emergency departments and violent persons?) - (how could CHCs fit in picture for federal tort coverage?) safety for law enforcement, medical, and mental health professionals
- CJ/meth/AMDD - diversion and treatment issues
- Providers - what other providers could be on call for MH emergencies
- Clinical quality assessment - how do we know the quality of the public mental health services being rendered in the communities? Amount, scope, duration, access, timely access.

Next Meeting

SJ 41

- Information requests
- CMH - report on MetNet and recommendations (Targeted Case Management first element)
- EPP fine-tuning

TAPE 6B

SJ 37 - CHILD PROTECTIVE SERVICES

SUSAN FOX said that there were some issues that resulted from the October 20th meeting with the panel discussion on child protective services and one area that arose regarding grandparent's rights, why we return children to families when we are not sure that they can handle it. She said that she asked Mr. Niss to talk about the basis of those legal rights and responsibilities as parents and as children.

Ms. Fox said that she wanted to discuss the federal laws that apply, to ground the Committee in legal principles, and to give background for the March meeting which will be looking more closely at court-related issues that have to do with child protective services.

Ms. Fox said that workforce and training issues were a major concern. A report was sent to you from the Department that dealt with the different training resources that the Department has. Later in the day the Committee will hear what prevention activities are in the state.

LEGAL RIGHTS AND RESPONSIBILITIES - David Niss, Legal Staff, and Susan Fox, Research Analyst

DAVID NISS discussed his legal memorandum (**EXHIBIT 1**) regarding legal basis for parental right of custody and state right of regulating parent-child relationship. His comments and conclusions are contained in the memorandum.

QUESTIONS

SEN. ESP asked if the standard to prove that a parent is unfit found in statute or is there a checklist that finds a parent to be fit or unfit. MR. NISS said that there isn't in the Constitution. To some extent, there is a checklist of attributes of either a fit or unfit parent in the definitions in the child abuse and neglect chapter and it is that definition upon which the whole system is based.

SEN. MCGEE asked Mr. Niss what *parens patriae* meant. MR. NISS said that it is a doctrine that says "in the event of harm to a child, the state has the right as a parent, standing in the place of the child's natural parent, to take that child away in order to protect its health and life.

SEN. MCGEE said that (e) on page 3 is about procedure and burden of proof, how does time relate in these actions, is that something that comes as a consequence of either statute or rulemaking, is there something that defines the timeliness of any of this succinctly? MR. NISS said that he is not aware of in any of the cases of the Montana Supreme Court.

SUSAN FOX asked if Sen. McGee was talking about when sequence of events happen in a court case. SEN. MCGEE said yes, what is the time limits for these things to occur, if the state finds the parent is unfit, the court therefore ruled that the only situation in which a child can be taken involuntarily from his parent and given to a third party. If finding a parent unfit is not clear and succinct, then the impression would be, even if the state were righteous in their actions, that the state is acting in a rogue manner. MR. NISS said that issue has not been addressed in those Montana Supreme Court opinions that he mentioned and so it certainly exists in statute, but what he is saying is there is no constitutional standard by which the statute can be measured.

SEN. WEINBERG said that some years ago he wanted to correlate personalities of judges with their decision making, and through the research, he found out that family court judges had the most discretion of any branch of the judiciary. He said that he thinks that family court judges have been given very broad discretion because of the idea of the best interests of the child and

the fact that each case is different. He thinks this is an area to look at.

SEN. WILLIAMS asked regarding Sen. McGee's question on the timelines, is there something in the Department practices, using our statutes, to give some general idea of what we are talking about here. She thinks it would be interesting to have information on a range of cases, what happens with these timelines from the time the hearing starts to the time the decisions are made. MS. FOX said that she would give her some more information on that.

TAPE 7A

SUSAN FOX provided additional information on Legal Rights and Responsibilities. She said that in Title 40, family law and divorce issues, the same standard of best interests of the child is used. Title 41, chapter 3, contains child abuse and neglect statutes; Title 42 is adoption of a child; Title 52 deals with family services, child welfare, youth residential services. There are many statutory provisions that deal with child protective services and some are reflective of what is found in federal law.

Ms. Fox discussed the Indian Child Welfare Act of 1978, an act to protect the best interests of Indian children and to promote stability and security of Indian families. Some of the provisions of the Indian Child Welfare Act were put into Montana law to make it more apparent and easier to follow. Standards for qualified witnesses were put into Montana law in the last Legislative Session; in 1997, it was put in that ICWA applies to adoption proceedings and in 1987, an Indian Child Welfare Specialist was put into DHPPS. Ms. Fox said that she provided to the Committee copies of statutes that deal with family members and the different burdens of proof.

Ms. Fox discussed the Adoption and Safe Families Act of 1997. Ms. Fox said that the Child Welfare and Adoption Assistance Act, in 1980, was the beginning of our modern child welfare system. It came in under the Aid to Families with Dependent Children, what welfare was called before it was named TANF. We now have separate divisions within the Department, but they are interrelated. It was the precursor to the Adoption and Safe Families Act and created new standards for child safety, permanency and well-being. This retained the reasonable effort standards and respects those constitutional rights of parents to have their child. It also created exceptions when reunification or preservation of that family should not be made.

Ms. Fox reminded the Committee that Montana has a unique constitutional provision for children, Article II, Section 15, Rights of Persons Not Adults. This states that the rights of persons under 18 years of age shall include but not be limited to all the fundamental rights of the Article unless specifically precluded by laws which enhance the provisions of such persons. Our children in Montana are given all the same rights as adults are.

Ms. Fox said that the Committee should think about not only the visitation rights of grandparents, but their responsibilities. She provided to Committee members a document from the National Conference of State Legislatures (NCSL) (**EXHIBIT 2**) listing audio-conference

series on Youth and Child Welfare. Ms. Fox said that she listened to the Grandparents Raising Grandchildren: Policy Options for State Legislatures. She said that in Montana, 11,098 grandparents are living with grandchildren; 54% are responsible for the children and 40% have no other parent present. In those cases, those grandparents are the parents for all intents and purposes. That tends to be cultural and so it is higher for American Indians.

WORKFORCE AND TRAINING ISSUES - Susan Fox and Shirley Brown

SUSAN FOX discussed her report, Child Protective Services: Workforce Issues and Options (**EXHIBIT 3**) The issues Ms. Fox discussed are: qualifications, training, compensation, recruitment and retention, proposals for licensure, standards, and accountability. As an introduction, Ms. Fox said that the report is intended to give an overview of some of the issues and to present options for the Committee's considerations.

QUESTIONS ON TRAINING

SEN. WEINBERG asked that of the social workers trained in Montana, what percentage stays in Montana and what percentage leaves? MS. FOX said that she has asked for that information but has not found any and that she will continue researching it.

REP. WARDEN said that he is interested in whether that was a Department rule or a legislative issue. SHIRLEY BROWN, Division Administrator of Child and Family Services, said that those are established by the Division in policy, it is not a legislative decision. The requirement under IV-E is that if a person gets a stipend, they have to pay back for a year. They went to two years for their employees and two years for the non-employees because they were having problems with people who went through the program under the stipend and then left. They looked at giving an incentive to people who had already stayed around and that was the reasoning for the five years.

REP. WARDEN asked if she would agree or disagree with Ms. Fox's conclusion that this program as it exists now is not achieving the desired results. MS. BROWN said that what she would say is where people who get the master's under the stipend program eventually leaves. She said that she thinks that they haven't been able to get master's level as they had hoped. They have had budget problems and had hiring freezes and that made results inconclusive and not normal in terms of numbers, but they are getting qualified staff who have done internships in their office.

TAPE 7B

STANDARDS ON THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, COUNCIL ON ACCREDITATION STANDARDS

SUSAN FOX said that she did not have all the job profiles, so she did not do a deep analysis to

see if Child and Family Services Division's job profiles matched up. She said that if the Committee wanted to measure them to see how they were doing, they might have more information in the context of the Child and Family Services review next time.

ACCOUNTABILITY

SUSAN FOX provided information on the Child and Family Services Division's Internal Complaint Resolution Guideline, in draft stage (**EXHIBIT 4**). There are four stages which follow an organizational chart. The first stage goes to the supervisor; the second stage to the regional administrator; the third stage could be a panel of citizens or a division administrator review which would be Shirley Brown; and the final stage if after the Division Administrator's decision, you don't agree with, it would go up to the Citizen's Advocates Office in the Governor's Office.

SUSAN FOX discussed Accountability in **EXHIBIT 3**.

QUESTIONS ON ACCOUNTABILITY

SEN. ESP asked Shirley Brown if the marked out portion in the Complaint Process document highlighted on the original or is it proposed to be deleted. SHIRLEY BROWN said it is in color on the original. She said that they have not finalized who is going to be on the panel. They discussed having a regional panel with members internal to staff, perhaps bringing in someone who serves on one of the regional advisory councils. The reason for doing it this way is that the best way to deal with an issue is between the social worker, supervisor, and the client who is the complainant.

SEN. WEINBERG asked Ms. Fox if there was a problem in an institution and if someone wasn't satisfied with the internal result of an investigation, could they go to the Judiciary. MS. FOX said that the problem comes when you have a child who doesn't have the same access and there is no one to bring that on their behalf or it does not rise to that level because there has not been enough investigation to find out what the issue was.

SEN. WILLIAMS commented that she and Sen. McGee are involved in a study on Access to Justice and on many of these issues, it is assumed that people have access to the Judiciary and/or a lawyer, and/or other avenues in which to get information about cases they might want to bring. These are very limited and a lot of services are not there. SEN. ESP said that most of the people he believes are younger, lower income people and don't necessary have life skills to know how to access the legal system or the 6-page complaint form. He said that he thinks they need somebody independent to help them navigate the internal grievance process and that was why he brought the bill last time.

SHIRLEY BROWN gave a report on the Workload Study. She said that they have developed a workload study that they have implemented, an electronic task-based system where the social workers have to for a certain period of time, enter into the system what they are doing and how

long it takes. They will analyze the first batch of data. A resource person will look at it and find out where the anomalies are and along with that, there will be a structure estimation. What they will get is what social workers do and what social workers have to do. They will work on it the first part of February and hope to have some preliminary information for the Committee in March to explain how the process worked and what they had hoped to glean from that information.

PUBLIC COMMENT

BETH BRENNEMAN, Attorney with the Montana Advocacy Program, talked about working with the abuse and neglect in institutions. They monitor those who monitor the entities that look into issues of abuse and neglect in the State's institution; i.e., the State Hospital, Montana Developmental Center and in three psychiatric residential treatment facilities for children, including Shodair, Yellowstone Boys and Girls Ranch, and the Kids Behavioral Health Facility in Butte. Ms. Brenneman said that she would recommend that the Committee look into issues of children and institutions, parents who don't have parental rights to those children, and what happens to the children in these institutions when staff members abuse them, look at the Board of Visitors, Child Protective Services, and licensing to see where those legislative and practical gaps are. She said that she could provide information they have; i.e., the comparison they have between the work of the oversight agencies, and provide that before the next meeting. She said that the Montana Advocacy Program could be a resource to the Committee.

COLLEEN MURPHY, Licensed Clinical Social Worker, Executive Director of Montana Chapter Montana Association of Social Workers, said that the Committee should look at changing the language of the definition of community social work contained in the statute concerning the qualifications of a community social worker. Ms. Murphy said that she did not think that the statistics from the Department of Labor and Industry are accurate. Ms. Murphy discussed recruitment and retention in Montana. She thought that the Committee could consider the law forgiveness programs to encourage people to go into that profession and to have some incentives to continue to work in that profession. Ms. Murphy said that the biggest concern of her organization is the title. What does a title act do to protect the public? If there was a title act, it would say only those people who have the appropriate qualifications could be called a social worker.

SEN. WEINBERG asked if Ms. Murphy knew what percent stay and what percent leave of those people who study social work in Montana? MS. MURPHY said that at the baccalaureate level, a lot leave the state; at the master's level, not as many leave the state. SEN. WEINBERG asked if she had done a salary comparison between Montana, Idaho and North Dakota. MS. MURPHY said that she probably did but she does not have those figures but could get them.

SEN. WILLIAMS asked Ms. Murphy if she has done any work in the interim with the department who opposed her bill in terms of coming to the next session with something a little different. MS. MURPHY said that they have been in the process of trying to determine what they will do

and they have not made that determination yet. They are in the process of securing a lobbyist to assist them in that.

TAPE 8A

MS. SCHMIDT asked Ms. Murphy that in beginning she talked about changing language, where was she referring to in the report. MS. MURPHY said that it was on page 1, the duties, and she was not sure which part is actually in statute and which part of this was in rule. She said that the statute does say the qualifications for staff, and it says baccalaureate or master's degree in social work. Ms. Murphy said that she thinks that is statutorily driven but she was not sure if the "performing professional social work" part of the language is statute.

SEN. WEINBERG asked Ms. Murphy why she thinks that the BA level social workers are leaving state? MS. MURPHY said that it is her educated guess of nine years at her job, but she thinks it is salaries.

PASTOR COOK, Stevensville, said that he would like to make an observation. There has been discussion in previous testimony from the public about the need of oversight and clarification and education. Mr. Cook held up a newspaper ad for a Sealy Posterpedic mattress from a local newspaper in Missoula and said that the area of concern with him is that there is a gentleman presumed to be the father in the top left corner but is laughing and there's a daughter laying on the bed who is laughing. He said that he has been told that this is incest and it is worth a hundred years in prison, but if you question it, you are somehow trying to break up the system or throw a rod or a monkey wrench into the system, and people who do this need to be investigated. He said that this is the type of things that families are being faced with by workers who, in his opinion, are unqualified to be there in the first place. Mr. Cook said that we are putting division in the families and when you tell wives they must divorce and accuse their husbands, that doesn't help either.

KANDI MATTHEWS-JENKINS, Missoula, said she thought the reports were good and that she was glad to hear the question brought up of, do we need to have Child Protective Services in the state of Montana? She commented on reasonable efforts to reunite families, what are the preventative measures to stop the removal of children from their families. She said that she would like to see a study using case examples that would show that the state is doing something to prevent the removal of the children and reasonable efforts to reunify. Ms. Matthew-Jenkins commented on training for case workers or social workers, that she feels that a graduate in social work is writing opinions for the court about people they have no idea who they are, where they came from, what their family life is, they've never been into their homes, they have not done the investigation and talked to any person prior to the removal of the child. She said that there is nowhere that a parent can go to complain, if you complain to the social worker about her attitude, you get your visits cut. If you complain higher up, they say they can't

do anything. She said that she has talked for several years, since March of 2002, about redress of grievance and that she has entered evidence into the public record that shows that their children are being taken away and they are asking for that redress. She said that she would like the Department and the Committee to read Chief Justice Karla Gray's opinion of November 5, 2005, on the case In the Matter of the Custody of Parental Rights of D.S.

SUSAN FOX said that staff did note Chief Justice Karla Gray's comments in the Montana Law Week and that a copy of the case will be provided for the Committee.

SEN. MCGEE said that in working on the Public Defender Act, they tried to incorporate the essence of Sen. Esp's bill into the Act and those people whose children are being taken from them, and if they are indigent, they are entitled to public defense. He said that the Public Defender Commission is running, they have hired a chief public defender, but the office will not be in operation until July, so the mechanism of providing those services to the individual is still at the county level and still through the courts.

SEN. SCHMIDT said that Ms. Matthew-Jenkins mentioned that their cases are not being heard, and this Committee is not the courtroom, but if they wanted individual members on the Committee read their case, they must sign a release and they must ask the members of the Committee or any Legislator to do that.

ROD WILLIAMS, CRYSTAL WILLIAMS, and JAMES WILLIAMS, Deer Lodge, told the Committee that his issue is prevention and investigations. He talked about his case where CPS came with an emergency order on his family and that CPS did not tell him that he needed legal representation, and about what has happened since the emergency order was placed on his family.

PRIMARY PREVENTION - Shirley Brown, Division Administrator, Child and Family Services

SHIRLEY BROWN discussed primary prevention and directed the Committee to the handout, Fact Sheet on Child Abuse and Prevention in Montana, provided by Susan Fox (**EXHIBIT 5**). She said there are three types of prevention: primary, secondary and tertiary. She said that the services provided under all types of prevention become part of what the department documents in terms of reasonable efforts. She said that the secondary and tertiary services are provided by contracts. Those services are parenting skills, organization skills such as budgeting and housekeeping, behavior skills such as anger management and conflict resolution, transportation and respite, and those are provided to children in the home. About \$2M in resources are for secondary and tertiary services.

She talked about primary prevention services and the Children's Trust Fund (**EXHIBIT 5**) and the programs that the Children's Trust Fund provides. There are three main sources of funding for the Trust Fund: a federal community-based child abuse prevention grant of \$175,000

annually; state special revenue account made up of fees generated from \$5.00 from each divorce filed in the state; and the contribution which is checked up when filing state income tax returns. Ms. Brown talked about the domestic violence prevention services that is provided through the Division. These services are provided by 24 programs statewide. Those services are: shelter and safe home, individual crisis and counseling, legal advocacy, 24-hour crisis lines, transportation, support groups. The budget for domestic violence programs is a combination of federal/state and special revenue.

REP. ROBERTS asked Ms. Brown if there is any money left over every year from this fund, is it spent, or do you use the interest out of the fund. MS. BROWN said that they can carry over the money in a federal grant if they do not use it all in one year. They have to use all of the general fund. She said that the state special revenue is spent.

TAPE 8B

CHILDREN'S TRUST FUND - Betty Hidalgo, President of the Board

MS. HIDALGO gave an overview of the Children's Trust Fund. She said that the Trust Fund is a 7-member volunteer board appointed by the Governor for 3-year terms. The Board is actively involved in selecting and funding innovative community-based programs that provide family support and prevention services. The Trust Fund program is administratively attached to DPHHS in the Child and Family Services Division. The Board makes all decisions regarding program design and expenditures, and signing contracts with providers. The main function of the Board is to award grants annually to local non-profit organizations to help support the work that they do in their communities and to help prevent child abuse and neglect before it occurs.

PARENTING PLACE, MISSOULA - Teresa Cowan and Marty Smith

TERESA COWAN, Director of Parenting Place, Missoula, said that their program in the Missoula Community has been providing comprehensive, wrap around services designed to promote positive parenting and to strengthen the family as a unit. She said that they offer primary through tertiary preventive services with their focus on the primary and the lower end of the continuum of secondary prevention. She said that she knows that the costs for intervention treatment in Montana can be reduced, but to do that, the focus should be made clearly and purposefully toward prevention.

MARTY SMITH, Parenting Place, Missoula, talked about the parenting classes that they have been doing at the Prerelease Center for the last four years, funded by Montana Children's Trust Fund. Some of the subjects they address in their classes: do parents have appropriate developmental expectations for their children, how to offer choices and consequences, identifying needs as parents and how they are met, identifying needs of their children and how to get those met, discipline, nurturing routines, anger management for parents and children.

SEN. WEINBERG asked if there is quantitative data that this program works? MS. SMITH said that with the 160 families that they have served to date, they have had six referrals to DFS and only two were substantiated, so the program works. MS. COWAN said that a comprehensive approach and strategy works which includes meeting the person and building the relationship, offer the parent education piece and following them out into the community as they leave, which is their Parent Aid Program, a long-term program that supports the entire family.

SEN. O'NEIL asked, of the parents who are out of prison, what is the percentage of male and what is the percentage of female. MS. SMITH said that because the Missoula Prerelease has 80 beds for male and 20 beds for women, the number they serve is about the same ratio; however, most of the enthusiasm comes from the male population.

PUBLIC COMMENT RELATED TO PREVENTION

MELISSA WORTHEM, Missoula, said that she was not given an opportunity or no one told her that she could have assistance; she was told to accuse and testify against her husband or she would never see her children again. She said CPS upheld that and she has not seen her children for three years nor has she gotten supervised visitation. Ms. Worthen said that every social worker should be licensed because parents do get threatened and intimidated when they don't have an attorney present or have an advocate or family member with them. She said that the Committee should assess the need for accountability on a social worker's actions. She said that she can provide documentation for proof and that she has given release for information for the past two years.

MATTHEW COOK, Stevensville, said he was taken out of home at age 12 and not released until his 18th birthday, he did not have any due process, he was not given a chance to defend himself or speak on his behalf to a social worker. He did have face to face meetings but they never discussed what he would like to happen in his case. He said that he would like to see more effort made on behalf of the children, what their desires are.

COMMITTEE WORK SESSION

SUSAN FOX spoke to the Committee regarding the next meetings' agenda: a report on Child and Family Services Review will be presented; a presentation from the Chief Public Defender on plans for training and dealing with child abuse and neglect issues, a presentation from the Court Assessment Program in the State Court Administrator's Office on helping courts with child abuse and neglect issues, the CASA's training of guardian ad litem.

SEN. WEINBERG said that he would like to work with the Department in finding solutions to their needs, but until he has heard from the Department on what those needs might be, he can't do anything about them. He also said that he would like to learn more about why some counties use specifically trained experts in child abuse cases and why some counties don't go that way and are ill-equipped to prosecute those kinds of cases, how that happens and why it happens

and can this Committee be helpful in sorting that out. He said that he would like to know why Montana has such a low percentage of sex abuse cases, 4.2%, while nationally, 9.9% of reported cases are sex abuse cases.

SEN. ESP said that he would like more information on accreditation of behavioral modification academies for children; i.e., an academy in the Swan Valley. He said that he wanted to know if they are one of those accredited institutions. He said that he would like to give some time at the next meeting to the issue of MAP oversight on institutions that protect children. He said he would like to hear more about Sen. McGee's concerns about timelines and constitutional issues surrounding timelines. SUSAN FOX said that most of that information that Sen. Esp is requesting will come out of the reports from Court Assessment and Child and Family Services Review. She said the desk book that is prepared by the Department for attorneys has a section on timelines.

REP. ROBERTS said that he would like to look into MetNet programs and how they were working on out-patient versus in-patient, and their successes.

REP. WARDEN said that he agrees with Sen. Weinberg in terms of issue of pay; however, he would respond that every person who lives in Montana works for less money than somewhere else.

TAPE 9A

REP. EATON said the U of M program and the relationship to licensure is of interest to her. She said that she knows that there is a problem with the public's perception of not just social workers but of social workers within the Department and the Department itself. She said that she thinks that this committee should keep the information we received in the back of our heads with regard to the public's perception, keep an eye on the accountability of the Department and the chain of how to submit a complaint because a complaint received can take on a different perspective than what Joe Q. Public intended when he wanted to say that somebody took my child away. They are trying to make a complaint on that basis and instead it becomes a licensure issue.

SEN. SCHMIDT asked Shirley Brown if she wanted to comment on anything or clarify anything that was questioned at this time.

SHIRLEY BROWN said she wanted to speak on the pay issue. The Division has to go through the EPP process. The budgeting process starts out with the Division identifying what they have as a needs list and then it goes to the Department Director and then the Department Director puts together the Department budget and then it goes to the Governor. Sometimes it is hard to

tell you what we want because there is a process for that. There was a reclassification suit filed by the union for social worker pay back in 1999, and when she became Division Administrator, that had not been resolved. We ended up settling that. Gail Gray, who was then the Department Director, worked with us to settle the classification appeal of the social workers. The CPS workers went up to a grade 15. The reason for disparity of salary between the CPS workers and the licensing workers is because the licensing workers were not part of that classification settlement. What she is hearing anecdotally from regional administrators and supervisors is that they are now, for the CPS workers and CPS supervisors, more able to compete with other human service agencies who are hiring the same people. Turnover is hard to measure because someone may leave a town and transfer and it shows up as turnover because somebody left a position but stayed within the system.

She suggested looking at the definitions because that is what we have to look at in terms of abuse and neglect. Our definition of abuse and neglect is, the child is either actually abused or neglected or substantial risk of harm. The child doesn't actually have to be hurt, they have to be at substantial risk of harm to fit into the definition of abuse and neglect.

She said that the other thing is that in order to substantiate a report of abuse or neglect, we have to have a preponderance of the evidence and that is perhaps a higher standard than other states have. Some states have a more of a probable cause standard, a reasonable cause to suspect standard. She said that she has not asked their attorney to research it and doesn't know how many states have a preponderance of evidence before they can substantiate or not, but she thinks that it is higher than a lot of states. That might lead to why some states have a substantiation rate on sexual abuse, for example, of the national standard you said is a 9.9%, but we have a 4.0% and sometimes when you look at those substantiation rates, it is sometimes comparing apples to oranges.

SUSAN FOX asked, if there is not a preponderance of evidence for sexual abuse, does that sometimes end up showing under physical abuse or neglect or deprivation? Is it easier to prove other kinds of neglect even though sexual abuse may be suspected? MS. BROWN said that it can because it depends upon what is going on in that child's home. If it's preponderance on sexual abuse, you have to have a lot more. If a child is saying it happened, then you have to look at, particularly if it is in the middle of a custody dispute, do you have specifics, has the child been coached by the other parent, and so it's more difficult on sexual abuse. Physical abuse, you have bruises, you have something, but sexual abuse, if it's a fondling for example, you don't have any physical evidence to look at. It does make it more difficult.

SEN. WEINBERG asked if the preponderance of the evidence, or how high we raise the bar for these kinds of substantiations, is that in law or in code? MS. BROWN said that right now, the substantiation is or unsubstantiated is defined if the investigator did not have a preponderance of the evidence and that is in code. That actually was Sen. O'Neil's bill in 2003 Session.

SEN. WEINBERG said that realizing now that many states have different requirements to

substantiate this, would it be worth our while to take a look at that and see where we are in relation to other states and to see if we are where we want to be.

SEN. SCHMIDT asked Ms. Brown about the meth programs in-patient and out-patient, is the Department documenting meth cases in child abuse and neglect? MS. BROWN said yes.

SEN. SCHMIDT asked about something that Colleen Murphy mentioned about children in institutions and what happens to them when staff members abuse them, Board of Visitors, and Child Protective Services. MS. BROWN said that when there is an allegation of child abuse in an institution, they are the ones who get those calls via Centralized Intake. She said that they do an assessment, questions are asked, and then they become involved if the alleged perpetrator of the treatment is responsible for the child's care. The "person responsible for the child's care" is defined in statute. If the initial report is child on child abuse, what they have to figure out is, was it child on child abuse and there was a staff person there who tried to stop it immediately, or was it child on child and it's because the staff person wasn't there and there wasn't any supervision. When it comes to a licensing, for example, if an institution is licensed, it's a two-prong investigation. First of all, was there abuse or neglect and can that be substantiated because that is going to impact the licensing. There are some things that happen in an institution that aren't abuse and neglect, but are licensing issues. SEN. SCHMIDT asked if they document when they get a call, are they able to distinguish when they get a call from these unlicensed youth residential treatment facilities, do you document that in that way. MS. BROWN said that she was not sure and that she would let her know. SEN. SCHMIDT said that she would like to have a report regarding those youth residential treatment facilities and the licensing process.

SEN. SCHMIDT said that she likes Sen. Weinberg's comment about working with the Department to let us know how we can be more helpful. SUSAN FOX said that she thinks when Ms. Brown goes through the results of the reviews, we can ask her to bring to our attention those areas that could require some policy changes. MS. BROWN said that what they are focusing on in their EPP requests is funding for services and staff.

SEN. ESP asked Ms. Brown if it was more labor intensive to keep kids safe or more labor intensive to help families reunite? MS. BROWN said that it is not an either or, that they have to keep kids safe in their homes when they can. If they can't, then they have to remove them. She said that they have contractors who provide the services when the children stay in the home where there is staff involvement if the children are removed because a social worker has to work with parents in developing a treatment plan, to be approved by the court and arrange all services, etc. SEN. ESP asked if she contracts for services once a child is home. MS. BROWN said that if they have a case where they make referrals and provide services, those services are provided by contracted people.

ANNOUNCEMENTS

SUSAN FOX said that the Court System and Child Protective Services System will be having a State Leadership Summit on August 29 and 30, 2006. She said that she has been asked to participate in it. The Legislators are invited to come to the planning committee meeting on February 7, 2006.

MS. FOX said that the Burton K. Wheeler Center will be putting a meth conference on May 15 and 16, 2006, in Helena.

MS. FOX said that the Montana School Readiness Summit will have a state team and 10 local teams; if anyone is interested in being on a state team, let her know, or if anyone is interested in a local team, contact their local Head Start or Resource and Referral Agency.

DAVID NISS said that he wanted to note for the Committee that pursuant to the letter from Dawn Hagedorn who made the incorrect allegations concerning the Department's immunization exception process, that he looked at a copy of the form and it states religious exemptions are not allowed in daycare, which is contrary to statute and to the Department's own rule. Mr. Niss said that he brought that to Roy Kemp's attention.

NEXT MEETING

The next meeting will be March 30 and 31, 2006.

ADJOURNMENT

SEN. SCHMIDT adjourned at 2:00 p.m.

CI2196 6075fhxb.