MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 17, 1999 at 9:12 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 76, HB 106, HB 180, HB 204, HB 209, HB 366, HB 593

EXECUTIVE ACTION ON HB 106

SEN. HALLIGAN commented that the effective date of the Act was October. He questioned whether this should take effect at an earlier date. **Steve Bullock, Department of Justice**, responded that this was not an issue.

Motion: **SEN. HALLIGAN** moved that **HB 106 BE CONCURRED IN.**

Discussion:

SEN. GRIMES related that page 3 of the bill contained a definition of "non criminal justice purposes". He questioned where the term was used in the bill. **Mr. Bullock** explained that the term was used on page 7, line 22; page 4, line 17 and page 6, line 13. He added that there were several more orphan definitions that the Compact had passed which had been changed.

SEN. BISHOP questioned whether this process would increase the cost to the state. **Wilbur Rehmann, Department of Justice,** contended that there would be no cost to the state that they were aware of at this time. The Compact Commission which will be appointed after the Compact is entered into by the states, will set whatever fees there may be for the exchange of criminal justice information between the states. Currently the charge for a fingerprint background search is $32 and this includes the current fee for the FBI.

SEN. BISHOP further questioned whether it would be necessary to check all 50 states to run the check. **Mr. Redmann** that all signatories to the Compact will be exchanging criminal justice information between themselves. The FBI will maintain a national fingerprint file which will simply contain an index. This index will provide the information on which states needs to be checked.

SEN. BARTLETT asked for more information regarding the procedure for a background check. **Mr. Redmann** explained that they are members of the Western Identification Network (WIN), which is a repository for ll western states fingerprint file. The fingerprints would be checked there first and then they will go to the FBI index. This will alert them to a hit in any of the other non-WIN states. If there is no record, it will come back as it does today stating that there is no record.

SEN. BARTLETT asked if this process would provide a quicker service on reports. **Mr. Redmann** believed they would be receiving the reports in a more timely fashion. Also, the belief is that the information would be more accurate. They have discovered mistakes between the Montana repository and the FBI repository on the same fingerprint check.

Vote: Motion **carried unanimously - 9-0.**

{Tape : 1; Side : A; Approx. Time Counter : 9.2}

EXECUTIVE ACTION ON HB 180 AND HB 366

Ms. Lane conveyed that both bills deal with the Child Protection Services. House Bill 180 was brought by the Department of Public Health and Human Services which would create subsidized guardianships in child abuse case. House Bill 366 is more comprehensive in that it implements federal law. They both deal with Title 41, Chapter 3. House Bill 180, in the amendments to 41-3-412 on page 5 contains a conflict between the amendments in that section and the same section in HB 366. The same is true on page 9 of HB 180, amending 41-3-1103.

EXECUTIVE ACTION ON HB 180

Motion: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED, HB018003.avl, EXHIBIT(jus60a01).**

Discussion:

SEN. HALLIGAN explained that on page 6, line 15, a guardian ad litem would be able to submit a petition for a guardianship in an existing abuse and neglect proceeding. This is amendment no. 3.

The next amendment addresses the issue of the ability of the court to create non-subsidized guardianships. The Supreme Court would not care whether this is subsidized or not. The question would be whether, in the abuse and neglect proceeding, the authority is present. This states that the guardianship may be subsidized by the Department under subsection (8) if the guardianship meets the Department's criteria. It does not differentiate whether the guardianship is subsidized or unsubsidized.

Amendment no. 5 makes sure that before the Department is saddled with the responsibility of a subsidized guardianship, they have the ability to approve the same.

SEN. HALLIGAN explained that amendment no. 10 on page 7 removes the language "the department gave the child's parent or parents written notice of any hearings held under this part". He maintained that the parents are parties to the proceedings and as such are receiving copies of every document. This is a duplication. Also, the language referring to the child giving written consent to the guardianship has been removed.

Chuck Hunter, Department of Public Health and Human Services (DPHHS), maintained that they concur with all the amendments thus far with exception of removing the age 12 limitation. If this limitation is removed, it opens the door for judges to place

younger children in guardianship situations where adoption may still be their best opportunity. Also, at age 12, the youth has a lot of voice and this is recognized by courts. As the youth reaches the adolescent years, his or her view about the relationship becomes important. They have a lot of ability to disrupt the setting if they do not feel that it is in their best interest. The youth is not being asked to chose between their parents and a guardianship. The parental rights are not being terminated in this situation.

SEN. HALLIGAN responded that if the Department want to, they could adopt rules for subsidized guardianships. If the judge wanted to create an unsubsidized guardianship, this should be permitted. Parental rights are not being terminated. In many cases, the parents are still working with issues.

SEN. BARTLETT questioned whether a guardian ad litem was appointed for every child who was in this process so that in every instance there is a guardian ad litem who could submit a petition for a guardianship. **SEN. HALLIGAN** affirmed that this was true in every case.

SEN. HALLIGAN withdrew his motion.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED, ALL AMENDMENTS EXCEPT AMENDMENTS 7 AND 9.**

Discussion:

SEN. BARTLETT remarked that amendment 10 would strike subsection (j), page 7, line 6. She questioned why this language was being stricken. **SEN. HALLIGAN** explained that the parents are already receiving a copy of all filings. This is not only a duplication but may also be confusing.

Vote: **Motion carried unanimously -8-0** with **SEN. DOHERTY** being excused from the meeting.

Motion: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED, Amendment no. 7.**

Discussion:

SEN. HALLIGAN explained that this addressed the 12-year-old issue. He added that it was important that these amendments not affect the progress of this legislation in the House. **Mr. Hunter** did not believe that the amendments would affect the progress of the bill in the House. They would consider adopting rules for

subsidized guardianships. This would maintain the faith they have with the federal government on their waiver.

SEN. GRIMES asked for clarification of the 12-year age limit. **Mr. Hunter** explained that the 12 year limitation and the consent worked together. They are looking at youth at age 12 as being more appropriate for these guardianship settings. As youth reach adolescents, they become much more difficult to place in adoptive settings. If they don't want to be in the guardianship setting at that age, they can do a lot of things that will disrupt that placement.

Ann Gilkey, Assistant Program Administrator, Citizen Review Boards, remarked that HB 366, on page 22, contains an option for long-term custody. There is a sibling group exception which would allow for the situation involving a twelve or thirteen year old with younger siblings and it is important for them to go into guardianship together.

SEN. HALLIGAN remarked that the language could state that the child is in a group of siblings, at least one of whom meets the minimum age of 12. **Ms. Gilkey** added that this could be tied to the criteria in Section 4. At least one of whom would meet the criteria under (2)(b)-(i). She added that very few people are able to take these children without financial assistance. The majority of children who are not going to an adoptive home will go into the long term custody under HB 366 or a subsidized guardianship through the department.

CHAIRMAN GROSFIELD pointed out that in HB 180, the codification instruction stated that Section 4 goes in Title 41. He questioned whether a reference would be all that was needed.

Ms. Lane asked whether **Ms. Gilkey** believed that the age 12 criteria should stay in HB 180 or whether it needed to be related to the changes in HB 366. **Ms. Gilkey** explained that she was simply pointing out the long term custody provision of HB 366. It did not need to be tied to it. She added that she shared the concerns of the Department in opening this up to any age of child to have a potential guardianship. She also appreciated the desire for flexibility.

Ms. Lane summarized that the age 12 restriction should stay in HB 180 and there should be language to address the sibling group. **Ms. Gilkey** affirmed.

Ms. Lane pointed out that the long term custody provision in HB 366 was not the same as the guardianship in HB 180. **Ms. Gilkey** agreed but added that the Department drew from the criteria of

long term custody in developing Section 4 for the guardianship criteria. They are very similar.

Mr. Hunter related that they would be amendable to provide the flexibility of having younger siblings go along with a twelve year old sibling into these guardianship placements. The specific language added to the section would be their preference. The language should read, "A child age 12 or younger children, a member of a sibling group, where one of the children is age 12 . . .

{Tape : 1; Side : B; Approx. Time Counter : 9.49}

Ms. Lane stated that in HB 180, page 6, line 26, subsection (d) would remain and language regarding the sibling group would be added.

SEN. HALLIGAN withdrew his motion on amendment no. 7.

Motion: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED BY REINSERTING (d) WITH THE ADDITIONAL LANGUAGE THAT THE CHILD IS AT LEAST 12 YEARS OLD OR THE CHILD IS IN A GROUP OF SIBLINGS AT LEAST ONE OF WHOM IS TWELVE YEARS OLD.**

Discussion:

SEN. GRIMES explained that the clear intent is that this would only be applied if it were reasonable to do so. If the older sibling were an abuser, this could be a problem.

SEN. HALLIGAN clarified that the children would have already been adjudicated as youths in need of care. The Department would have already made reasonable efforts to reunite the family.

Ms. Gilkey suggested additional language that this be in the best interest that the siblings remain together.

SEN. BARTLETT recommended that the two subsections be deleted and specific language be added for the Department to address those kinds of issue in rule making, at least on subsidized guardianships.

Mr. Hunter insisted that they have concerns about guardianships being applied at too young an age. They have viewed guardianship as a good permanency option for older children where termination of parental rights is not in the best interests of the children or when termination has taken place but adoption is not in the best interest of the child. They do not want to open the door

for judges to place children in legal, long-term guardianships when they could be placed adoptively.

SEN. HALLIGAN summarized that (d) would be reinserted. The language would state that the child is at least 12 years old

Motion: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED ON PAGE 6, LINE 26, FOLLOWING THE WORDS "TWELVE YEARS OLD" INSERTING THE LANGUAGE "OR THE CHILD IS IN A GROUP OF SIBLINGS, AT LEAST ONE OF WHOM IS AT LEAST 12 YEARS OF AGE AND THE GUARDIANSHIP IS IN THE BEST INTERESTS OF THE SIBLING GROUP."**

SEN. GRIMES suggested that language hold that this be in the best interests of the siblings rather than the group. Currently the Department considers the importance of keeping the group together, sometimes at the detriment of the individuals. If the older brother is an abuser, the scenario is obvious.

SEN. HALLIGAN accepted this as a friendly amendment.

Vote: **Motion carried unanimously.**

Motion: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED, AMENDMENT NO. 9.**

SEN. GRIMES questioned whether the word "written" should be eliminated rather than the words "written consent".

SEN. HALLIGAN explained that the court can always talk with the children privately.

Mr. Hunter added that the judge has the opportunity for informal discussion. The guardian ad litem is also present and can speak to the interests of the children and would likely be familiar with their views.

SEN. BARTLETT questioned whether the Department had the rule making authority to place the written consent requirement into the consideration when only one child is involved. **Mr. Hunter** maintained that they would have the authority to do so.

Vote: Motion **carried unanimously - 8-0.**

Ms. Lane explained that the amendments, HB018001.avl, **EXHIBIT(jus60a02)**, would take out the right to a jury trial provision which was added on the House floor. These were requested by the sponsor when he presented his bill.

Motion: **SEN. BARTLETT** moved that **HB 180 BE AMENDED.**

Discussion:

SEN. HOLDEN questioned why a jury trial provision should be removed. **SEN. HALLIGAN** maintained that a jury in a proceeding for termination of parental rights has not had a chance to hear all of the record in all of the separate hearings from the temporary investigative authority to permanent legal custody. The judge is aware of how many chances parents have had in these instances.

SEN. HOLDEN remarked that a DPHHS employee from Billings sent a letter regarding her experiences working for the Department. She may be a disgruntled former employee but she does state that appointments were changed so that they could document parents failing to keep scheduled appointments with regard to their treatment plan. She added that social workers made statements in the files that were not necessarily to the best interests of the parents. She complied all the statistics for Yellowstone County on an annual basis and it was imperative that the numbers remain high so that FTE positions would not be cut. She concluded by saying that most parents are basically good parents and never intend to harm their children. The parent makes a poor judgment call or unintentional error in regard to the welfare of their children and suffer from then on.

He remarked that the Department was seeking an entirely new section of law and specifically stated that there is no right to a jury trial at the proceedings. He questioned whether this was self serving.

SEN. HALLIGAN maintained that the calls of potential child abuse and neglect to the Department of Family Services are phenomenal. Actual filings may be about 50%. He guessed that the final termination cases would be down to approximately 1% of the cases.

Mr. Hunter contended that the lack of a right to a jury trial has been the practice for years. This dates back to the 70s. This bill does not change this section. This section deals with a new option of guardianship. The debate to a right for a jury trial was brought in by amendments from **REP. MOLNAR.**

In their view, the right to a jury trial has a number of problems. The child would be subject to invasions of privacy by having to deal with details in a public forum that are very painful to deal with on a private basis. Also, in the

proceedings that take place before a termination proceeding, the Department needs to convince the county attorney that there is just cause to take the actions. The county attorney then needs to convince the judge who needs to make the findings of fact in each of those cases. Having a jury trial at the end when the facts have already been determined, left a procedural difficulty for the courts.

Jury trials are costly and time consuming. This will stretch the time frame to approximately twice its current length.

SEN. GRIMES asked **Ms. Gilkey** to summarize the egregious nature of some of the activities of a parent whose rights have been terminated. **Ms. Gilkey** responded that the parents who find themselves in court have done some very serious things. It is usually an ongoing pattern in the family. This involves broken bones, intentional scalding and burns, not enough food or clothing, homes with incredible filth such as accumulation of animal feces, etc. This is ongoing and is not corrected. The children are damaged severely.

SEN. GRIMES questioned whether a measure of abuse was usually included. **Ms. Gilkey** affirmed that ongoing abuse was usually the case. She added that regarding the jury trial, the confidentiality that is normally involved in these proceedings would be lost. It is not good for all this information to be available to the public.

SEN. BARTLETT added that one of the calls she received in support of the bill with the amendment involved a person who, after finding out the jury trial was at the point of terminating parental rights, stated that this was way too late. She added that the people who are supporting this amendment may have understood that there would be a jury trial much earlier in the process.

Vote: Motion to **adopt amendments HB018001.avl carried unanimously.**

{Tape : 2; Side : A; Approx. Time Counter : 10.23}

Ms. Lane explained that there was still the issue of the amendments in 41-3-412 and 41-3-1103 which are both in HB 180 and HB 366. She added that **Judge Larson** believes that the amendment in HB 366 is the preferable approach. The concern is with subsection (4)(b) of that section which appears on page 5 of HB 180 and page 21 of HB 366.

SEN. HALLIGAN suggested that the language in HB 366 would need to be reinserted to the stricken language in HB 180.

Ms. Lane remarked that in HB 180, page 5, lines 17-20, should include (b) which should be amended to read as page 21, lines 24-28 in HB 366.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 180 BE AMENDED BY REINSERTING (B) LANGUAGE. Motion carried unanimously -8-0.**

Ms. Lane further explained that both bills amend 41-3-1103. In HB 180 this is found on page 9. In HB 366, this is found on page 28, lines 24-25.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 180 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 9-0.**

EXECUTIVE ACTION ON HB 204

Ms. Lane explained that the amendments, HB020401.avl, **EXHIBIT(jus60a03)**, were requested by the judges in Bozeman who are currently receiving grant money from the federal government to help establish drug courts. This would amend the jurisdictional sections dealing with justice of the peace courts so that it is clear that they can establish a drug court and receive the federal funding.

REP. SHOCKLEY added that this is optional with the districts on whether or not they want to have a drug court. This needs to be with the concurrence of the lower court justices or city court judges.

Motion/Vote: **SEN. MCNUTT** moved that **HB 204 BE AMENDED. Motion carried unanimously 9-0.**

Motion: **SEN. MCNUTT** moved that **HB 204 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN questioned the rationale behind not returning the interest to the convicted person in the event that this person was innocent. **REP. SHOCKLEY** maintained that this would be an administrative nightmare. The amount of money involved would require more labor than the money was worth. Currently the only people who benefit would be the bank. This bill allows that instead of the banks using the money for no reason, the courts are able to use the interest which the money earns.

Vote: Motion **carried unanimously - 9-0.**

EXECUTIVE ACTION ON HB 209

Ms. Lane explained that amendments HB020902.ajm, **EXHIBIT(jus60a04),** address the concerns of the county attorneys. There is a conceptual amendment from **SEN. GRIMES** to not allow the use of nolo contendere in sexual crimes.

Motion: **SEN. HALLIGAN** moved that **HB 209 BE AMENDED.**

Discussion:

REP. SHOCKLEY remarked that the amendments would give the county attorney a veto in all circumstances. The purpose of this legislation is to make it easier to move things through the criminal justice system.

Vote: The motion carried unanimously - 9-0.

Ms. Lane explained that the conceptual amendment would amend Section 8 of the bill, 46-12-204. A new subsection (4) would be added to that section which would state that the court may not accept a plea of nolo contendere in sexual offense cases. Sexual offense cases would be defined as in 46-23-502(6). This would include any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 503, 504(2)(c) and 507, or 45-5-625.

SEN. GRIMES remarked that it is important to get this people in sexual treatment. They need to be convicted of the crime before this can occur.

SEN. HOLDEN added that this is a public policy issue and he would like to have additional testimony on the issue before this was changed.

SEN. GRIMES insisted that his option would then be to strike Section 8 in its entirety or table the bill.

SEN. BARTLETT commented that there was testimony at the hearing by the county attorneys that no prosecutor should ever be allowed to accept a nolo contendere plea in sex offenses because the treatment requirements for sex offenders specify that they have to acknowledge that they have committed this kind of an act. If they get by in their plea by not admitting guilt, they will never meet the treatment requirements for sex offenders.

Motion: **SEN. GRIMES** moved that **HB 209 BE AMENDED BY ADDING THE NEW SUBSECTION (4) TO THE BILL.**

REP. SHOCKLEY did not object to the amendment. A person can still plead not guilty, be convicted, and has not acknowledged guilt. He strongly supports that county attorneys have veto power over any plea.

Ms. Lane further explained that the definition of sexual offense should be referenced which is in the Registration of Sexual and Violent Offenders Law, 46-3-3502(6). She suggested that on page 20 of the bill, a new subsection (4) be inserted which stated that the court may not accept a plea of nolo contendere in a case charging or involving sexual offense as defined in 46-23-502(6). This would include sexual assault, sexual intercourse without consent, third offense indecent exposure, incest, and sexual abuse of children. She added that 45-5-505, deviant sexual conduct, is not within the definition.

Vote: **The motion carried unanimously - 9-0.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 209 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 8-1** with **SEN. DOHERTY** voting no.

{Tape : 2; Side : A; Approx. Time Counter : 11.02}

EXECUTIVE ACTION ON HB 366

Motion/Vote: **SEN. GRIMES** moved that **HB 180 BE AMENDED BY INSERTING THE LANGUAGE APPEARING ON PAGE 9, LINES 25-27 OF HB 180 INTO HB 366 ON PAGE 28, LINES 24-25. The motion carried unanimously - 8-0.**

Mr. Hunter explained that the first two amendments removed the immediate effective date. This bill will cause a change in social work practice. It will also cause a change for the county attorneys and the courts. Everyone needs to be aware of the new practices which will occur as a result of this bill.

Amendment no. 4 addresses the interviews which take place when a social worker is going out to interview a child regarding a report of abuse and neglect. This language allows that the social worker continue to do interviews and they be videotaped or audio taped as appropriate. The social worker could ask the child if they wanted to have someone else present at the time of the interview.

Amendment no. 8 involves a change in terminology. House Bill 243 set up a new structure of emergency placement hearings. This was not adopted but the language about emergency placement hearings was brought over in place of the show cause hearing.

There was discussion regarding shortening the time frame for the hearing to take place. This would strike the ten day time frame and replace the 20 day time frame that was the case in the past. The Department favored the 10 day time frame.

Shirley Brown, Child and Family Services Division, added that they have some concern with amendment no. 11. This would change the language from "upon declaration that a child is a youth in need of care the court may order a treatment plan" to "upon granting of an order for temporary investigative authority, the court may order a treatment plan". Currently the temporary investigative authority is used for the social worker to perform an in-depth investigation to receive enough information to determine the issues that led to the removal of the child. Having a court-approved treatment plan at the temporary investigative authority stage may be a little to premature. Enough information to develop a good treatment plan may not be available at that point.

Amendment no. 12 changes the language to state that the only time a court-approved treatment plan may be changed is either upon stipulation and order or an order. Currently the court-approved treatment plan could be changed with approval of the parent and it would not be necessary to obtain an order before the treatment plan could be changed.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl, EXHIBIT(jus60a05) - AMENDMENTS 1, 2, 3, and 13. The motion carried unanimously - 8-1.**

Motion: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl - AMENDMENT 4.**

Discussion:

SEN. HALLIGAN questioned how much discretion the social worker had to have a parent or third-party present for the first interview when the child is being observed. **Ms. Brown** explained that currently this is at the social worker's discretion. There is authority under statute to have someone involved based upon how the child is acting.

Ms. Brown added that the conference committee included a lot of discussion on whether the parent should be present at all times

when a social worker is interviewing the child. The compromise is that the parent or guardian did not need to be chosen, but someone else could be chosen. An employee of the school or the child care center could be chosen.

SEN. GRIMES asked why this amendment was added in the House. **Mr. Hunter** clarified that this was proposed in HB 243 and would have included videotaping of every interview. It was suggested that perhaps the parents needed to be present at every interview. However, one of the parents may be the perpetrator of the act that the interview is meant to discuss or uncover and that would be a problem. The discussion centered around giving the child the permission to state whether they wanted a parent or someone else present. The child would be unlikely to choose the perpetrator as the person they wanted present, but may feel comfortable having the other parent or someone else present.

SEN. GRIMES assumed that the Department considered the wishes of the child. He further added that it was his understanding that this interview was informal and raised a concern that this may be taking the matter into a more formal area. **Mr. Hunter** affirmed that they had the opportunity to make someone available to the child if it were appropriate in the situations. He added that these interviews are on an informal basis but many times do form the basis of things which occur subsequently in the case. There was quite a bit of sentiment that some third party be present to make sure the Department is not conducting an investigation in a way that leads the children down a particular path.

SEN. HOLDEN stated that the amendment allowed that, with the child's consent, the interview could be conducted in the present of the parent. The child would not choose the parent who was the abuser. If the child is asking for his or her mother, that is exactly what they want.

SEN. GRIMES stated that in a case where all the siblings have a very obvious problems with regard to sexual issues, they know more than they should, potential signs of abuse are noted and this is brought to the attention of one or the other parents with no action. When the abuse becomes necessary to report, it is important that the parent who is found guilty not be able to come back later and say that the child was not asked whether or not they wanted the parent present for the interview.

SEN. BARTLETT viewed this from the opposite direction. As long as the phrase is kept in the language and the child does not want anyone present, there will be no third party present even if the social worker believes that it would be appropriate to have a third party present.

SEN. HALLIGAN asked the Department to explain their protocol used to make sure that the child is not traumatized by the initial contact by the social worker. **Ms. Brown** explained that they have policy which the social worker follows when responding to an investigation. If it seems that the child wants someone present, they have the discretion to have someone present.

CHAIRMAN GROSFIELD questioned the permanency of the policy. **Ms. Brown** explained that their policy is based upon the statute. They will be developing rules. Social workers are trained in how to conduct investigations.

Vote: **The motion carried on roll call vote - 6-3.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl - AMENDMENT 5. The motion carried unanimously-9-0.**

Discussion:

SEN. HALLIGAN maintained that there is a concern that parents do not understand what is involved in a show cause hearing. This is why they wanted to change the term to an emergency placement hearing. When parents receive notice of an emergency placement hearing, there is concern that the children will be taken away.

{Tape : 3; Side : A; Approx. Time Counter : 11.30}

Motion: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl - AMENDMENTS 6, 7, 8, 9 and 10, WITH EXCEPTION OF THE 20 DAY TO 10 DAY ISSUE ON PAGE 15, LINE 8.**

Discussion:

Mr. Hunter explained that HB 243 replaced the show cause hearing with an emergency placement hearing. House Bill 366 retained the TIA and show cause hearing. The term "emergency placement hearing" was borrowed from HB 243.

Ms. Brown added that the order states that it is necessary to come to the hearing to show cause why you shouldn't be required to do what was ordered in the Protective Services Order, which is the ex parte received upon the filing of the petition. A petition is filed and an order is received based upon the petition. That order is a Order for Protective Services and Show Cause Hearing. The hearing is to be scheduled within 20 days of issuance of the first Protective Services Order. The purpose of the hearing is for the parents to tell the court why they should

not be required to do all of the things required in the initial order.

Vote: **The motion carried unanimously - 9-0.**

Motion: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl - AMENDMENT 7 - MOVING 10 DAYS BACK TO 20 DAYS.**

Discussion:

Ms. Gilkey clarified that the intent was to speed up the process of getting parents into court. If the child is removed from the home, 20 days before the show cause hearing is an eternity. Other states have these hearings within 72 hours.

SEN. HALLIGAN questioned the situation when they were unable to find the parents and the hearing needed to be held within 20 days. He withdrew the amendment.

Motion: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HB036602.avl - AMENDMENT 11.**

Discussion:

SEN. HALLIGAN explained that once the TIA is filed, there is enough information to prepare a quasi-treatment plan. It is important to get parents on the path to enhancing their parenting skills and allows them to have their children back sooner.

Ms. Brown remarked that under the TIA, a quasi-treatment plan is established by the court at the time the petition is filed and the Protective Services Order is set in place. The court can grant the right of entry and also ask for medical and psychological evaluations of the youth or parents, require that they receive counseling services, place the child in a temporary medical facility, require that the parents, guardian, or other persons having physical or legal custody furnish services that the court may designate.

Ms. Gilkey suggested language set upon stipulation of the parties or a judicial finding that the child is a youth in need of care.

SEN. HALLIGAN withdrew his motion.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED ON PAGE 24, (1), LINE 5, TO READ "UPON STIPULATION OF THE PARTIES OR UPON A JUDICIAL FINDING THAT A CHILD IS A YOUTH IN NEED OF CARE". The motion carried unanimously - 9-0.**

Motion: **SEN. HALLIGAN** moved that **HB 366 BE AMENDED, HBO36602.avl, AMENDMENT NO. 12.**

Discussion:

SEN. HALLIGAN wanted to make sure that the parents have the ability to sign a stipulation, that also includes a court order attached by the county attorney, before a hearing was set.

Ms. Lane added that this would read "A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents and guardian pursuant to a stipulation and order or order of the court."

Vote: The motion carried unanimously - 9-0.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 366 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 9-0.**

{Tape : 3; Side : A; Approx. Time Counter : 11.53}

EXECUTIVE ACTION ON HB 593

Ms. Lane explained the amendments, HB059301.avl, **EXHIBIT(jus60a06).** The exception for agreement by the parties went to one subsection. The request was that the exception clause be moved up to the beginning of the subsection.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 593 BE AMENDED. The motion carried unanimously - 9-0.**

Motion/Vote: **SEN. MCNUTT** moved that **HB 593 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 8-1.**

EXECUTIVE ACTION ON HB 76

Motion: **SEN. HOLDEN** moved that **HB 76 BE CONCURRED IN.**

Discussion:

SEN. HOLDEN remarked without the address, it would be difficult to find out if the sex offender was living in the neighborhood.

CHAIRMAN GROSFIELD remarked that the goal is to provide incentive for these people. Based on the presentation from **Sandy Heaton, Montana State Prison**, there appears to be some success with these people. A level three offender who successfully completes treatment and convinces the judge that they have changed, can have a level three changed to a level two. If the two levels are almost equal, the incentive is taken away.

In the bill, level two uses the word "may" and level three uses the word "shall".

SEN. MCNUTT remarked that there needs to be some substantial changes in attitudes and philosophy to get from a level three status to a level two status.

Vote: The motion carried on roll call vote 5-4 with SENATORS BARTLETT, HALLIGAN, MCNUTT, and GROSFIELD voting no.

ADJOURNMENT

Adjournment: 12:20 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus60aad)