MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL,** on March 14, 2003 at 3:13 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:
Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Brent R. Cromley (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 464, 2/26/2003; HB 90, 2/27/2003; HB 681, 3/5/2003
Executive Action:

HEARING ON SB 464

Sponsor: **SEN. BOB KEENAN, SD 38, Bigfork**

Proponents: **Brad Griffin, MT Restaurant & Retail Association**
Bill Stevens, MT Food Distributor Association
Gordon Morris, Montana Association of Counties
Bill Kennedy, Yellowstone County Commission
Jim Carlson, Director of Environmental Health, Missoula Co.
Travis West, Director of Environmental Health, Stillwater Co.
Don Hargrove, Director of Environmental Health, Gallatin Co.
Cristine Cox, Gallatin City County Health Department
Stuart Doggett, MT Innkeepers Association

Opponents: **None**

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork said he was in the restaurant business for a long time and he was there to present SB 464 which was long over due, more than eight years. SB 464 dealt with a temporary risk establishment being required to have a license; requiring annual inspections and allowing more than one inspection per year; and requiring training for inspectors. **SEN. KEENAN** worked with **Joan Miles** and **Brad Britt** with Lewis & Clark County. The fees were currently $60.00 a year for food suppliers and **SEN. KEENAN** was raising it to $75.00 per year on January 1, 2004 and then to $90.00 in 2005. The $60.00 fee had been in existence since 1991. The first area of significance was on Page 3, Line 28, establishing a temporary risk establishment, such as operations like at the County Fair. The bill established a temporary food license fee of $40.00 and those people would fall under the code to get inspected. Those were places that were definitely an at-risk establishment because of the time of the year, the heat, time of day, and temperature. They were a concern and they need to be covered in the statute. On Page 4, Line 15, advisory councils were talked about, asking the department to include those, who had been at the table for the last 6-8 years, in any rulemaking that came forth and have a distribution of the membership to include a balance of the industry as well. On Page 5, Section 4, had to do with fees that he mentioned earlier and the distribution of those fees. The money there was what could easily be called unfunded mandates

passed down to the counties where they were required to do these inspections and by rule these inspections were twice a year. **SEN. KEENAN** said in the bill he was changing that to one per year but as many inspections as were needed, at the judgment of the sanitarian, could be done. In other words, follow up inspections for places that were at-risk were needed. There were many restaurants, especially fast food places that had excellent food safety programs and did not need to be inspected twice a year unless the sanitarian found a problem on which they needed to follow up. Right now it was twice a year and the counties were losing money. An FTE for an inspector, was about $40,000 a year with a $60.00 fee. Approximately 85% was coming from each establishment, two inspections per year, which was a drain on the county resources. He addressed that issue in the set of amendments passed out. **EXHIBIT(phs54a01)** One thing included was that the County Sanitarian goes to schools and there was no fee from the schools. He wrestled with whether the restaurant industry or the food purveyor industry should subsidize the inspections of those schools and the amendments took care of that. Another amendment addressed the political subdivision of a state employee, who was a full time sanitarian. They would be exempt from paying the fee or having the inspection and that was specific to the University of Montana and Montana State University. That fee was $40.00 for the temporary licensee. On Page 6, by phasing in the fee, some effective dates and terminations was put in for the $75.00 when it rolled to $90.00.

Proponents' Testimony:

Brad Griffin, MT Restuarant & Retail Association, said there were many reasons why he was there as a proponent. The first one was that he and his Board were just tired of dealing with the issue and it seemed like such a trivial amount of money when it increased the fee $15.00 this year and then another $15.00 in two years. His association asked for four things in the bill that did not cost the county anything. They asked for the County Sanitatarians to become certified or its equivalent. A certification developed by the National Restaurant Association had become the industry standard. His friend **Bill Stephens** from the Grocers Association, their national group was the Food Marketing Institute and they had just come out with a new certification program. We are not trying to say it has to be Serve Safely or the FMI program, but it had to be a nationally recognized equivalent to Serve Safely. Another reason they were proponents was it made sense. They needed to get the money down to the counties. By adjusting the percentages of this bill the additional $15.00 would flow down to the counties and hopefully for the next 10-12 years they could focus on education rather than regulation. Mr. Griffin said as far as educating his

restaurant people on the ways of handling food safely, they were to focus on the Serve Safely certification and how to prevent food born illness from becoming a reality because it was just a matter of time before there was an outbreak. A number of minor outbreaks occurred throughout the years with lettuce and other different things. Much came from the source in the fields, but sometimes it happened right in the restaurant where hands were not being washed. What it came down to was educating restaurant workers on how to handle food safely so that they were not contaminating through cross contamination or passing their cold or hepatitis onto unsuspecting consumers. The other thing the MT Restaurant and Retail Association liked about the bill was that it reduced the number of inspections from two per year to one that the County Health Officers had to do and if they found reason to do more, then they were free to do that. The final reason they liked the bill was the Advisory Committee, where the bill required all future laws and all future rule making go through this Advisory Committee first. Mr. Griffin saw this as a betting process where the industry and the regulators were 50/50 split on the committee and both looked at either the proposed law or the proposed rule before it came out. If the industry had a problem with it, they could express their concerns then, as well as if the regulators have a problem with it. He suggested in Section 2, Paragraph 3, where it said "the Department may use the Food Safety Task Force or Advisory Council" and it went on to say "any Task Force Advisory council must be proposed," he suggested putting "the Department must use the Food Safety Task Force or Advisory Council." He asked to consider substituting "must" for "may."

Bill Stevens, MT Food Distributor Association, said most of the reasons they had opposed this in the past had been taken care of with this bill and he was pleased to support it. The only concern he had was that he was not sure in Section 4 that the numbers were accurate. He did not think the computations included all of the amendments that had been put into this bill. He thought in the succeeding year those figures, if it were meant the way it was written, those computations were going to have to be recomputed at the beginning of the second year for the additional $15.00 and again when it went to $90.00.

Gordon Morris, Montana Association of Counties (MACO), said the work had been a long time in coming and it was a pleasure to be able to appear and have **Mr. Griffin** and **Mr. Stevens** go ahead of him in support of the bill. MACO actually worked with the food distributors and others and participated with the consensus counselors to try to work through the issue. Like **SEN. KEENAN** said, it was something that has been before us for more than eight years and here they were. It looked like they finally had a

meeting of the minds, coming to a solution that would take them well into the future. He pointed out that the figures were 88% and 90% were correct. **Mr. Morris** handed in Cherry Loney, **Executive Director, Cascade City County Health Department,** written testimony supporting SB 464. **EXHIBIT(phs54a02)** He said **SEN. KEENAN** pointed out how much **Joan Miles, Director of the Lewis & Clark County Health Department** was involved in working on the bill and submitted her written testimony as well. **EXHIBIT(phs54a03)** Mr. Griffin said he stood as the **Executive Director of the Montana Association of Counties** and MACO supported the bill. It was clean and the amendments upon review were acceptable. He commended the bill for very favorable consideration.

Bill Kennedy, Yellowstone County Commission, said he was the Chair of the Health and Human Service Committee for the Montana Association of Counties and the first Vice President and they supported the bill. **SEN. KEENAN'S** bill was a bill they had worked on last session and it had not gone forward. They were pleased to have everyone as proponents of the bill this time and they hoped for a Do Pass.

Jim Carlson, Director of Environmental Health, Missoula Co. read and submitted his written testimony. **EXHIBIT(phs54a04)** He also submitted testimony in support of HB 464 from the Missoula County Commissioners. **EXHIBIT(phs54a05)**

Travis West, Director of Environmental Health, Stillwater County, said his county was a small county compared with the larger ones and yet they were a fast-growing county and experienced the growth and the same problems of larger counties. They supported the bill because they supported the increased revenue they would receive from the bill that would help them in education processes with industry and with their inspections. They believed the bill would support their goals in Stillwater County and that was basically to protect Public Health and to help them with industry and providing safety.

Don Hargrove, Director of Environmental Health, Gallatin County, said they supported the proposed legislation. It was a practical approach to the Public Health challenge and the minor adjustments in training and certification, particularly with flexibility offered for decision making at the local level was good. The fee adjustments over time were much less than inflation. **Mr. Hargrove** said we might consider a formula as opposed to coming back all the time and changing that, but these were reasonable and they supported that.

Cristine Cox, Gallatin City County Health Department, said she was a registered sanitarian and a program manager of Gallatin City County Health Department license establishment program. Gallatin City County Health Department supported SB 464 as it was amended. It strengthened the local health department's ability to conduct food service establishment inspections and clarified the licensor of temporary food service establishments. She handed in written testimony from their Health Office**r Stephanie Nelson. EXHIBIT(phs54a06)**

Stuart Doggett, MT Innkeepers Association, said their membership was made up of rooms only members, they had full service properties as well as the newer types of properties such as Holiday Inn Express and Fairfield Inn. They were greatly influenced by what the department did and they felt this was a good compromise bill and that it was going to provide some logical solutions. They really liked the language on Page 4, Line 15-19, the makeup of the Advisory Council in developing the rules, reviewing them, and how they thought the fees were fair. They also liked the credentials on Page 6, for the Inspectors, and thought it was fair that there was a delayed effective date so people could get educated: both the department and the house rules that were affected.

Opponents' Testimony: None.

Informational Testimony: None.

Terry Krantz, DPHHS, said he was available for questions.

Questions from Committee Members and Responses:

SEN. JOHN ESP, SD 13, Big Timber, asked what it cost to become certified under the Serve Safe Program.

{Tape: 1; Side: A}

Mr. West believed the training could be provided in their conference registration so there would be no increased fees.

SEN. JOHN BOHLINGER, SD 7, Billings, said that it was stated that the present food licensing paid for only about a third of the cost of the service provided. **SEN. BOHLINGER** asked if **Mr. Carlson** had a chance to do any calculations about how much of that cost would be covered now. **Mr. Carlson** said if they could get it back up to the 50% level so that the counties paid for 50% of the cost, according to their numbers in Missoula County and his conversations with other departments, a ball park figure would be 50% of the cost.

SEN. BOHLINGER asked if that allowed for the two inspections per year. **Mr. Carlson** said they did not anticipate that would change much regarding the number of inspections. They were allowed, under the rules, to have what was called a modified inspection program that provided quarterly newsletters, training, other things instead of two inspections a year. Although, they were by rule, required to return to those establishments that had problems and prioritize the higher risk ones. Some would go in four or five times a year, depending on the situation and the circumstances when they were there.

SEN. ESP asked **Mr. Stevens** if he had put his amendments to paper or if he had any concerns written down anywhere. **Mr. Stevens** said the amendments he recommended went through the sponsor before the meeting. He said his only problem, was in the copy he had, with the numbers as far as the numbers were computed before he submitted his request. He requested that both the government-run organization and the non-profit be licensed, which would put an infusion of extra money with the intent that the extra money went to the counties.

SEN. ESP asked **SEN. KEENAN** if **Mr. Stevens** concerns were in the amendment he proposed. **SEN. KEENAN** did not think so. He said the fiscal note would have to be adjusted because it would be a big difference in the numbers. He said there were 65 licensed food establishments and he suspected that number to jump up considerably. A revised fiscal note might be in order considering his amendments.

SEN. ESP asked if **Mr. Griffin's** amendment suggested was within **SEN. KEENAN's** amendment. **SEN. KEENAN** said it was not. Nor was Page 5, Line 22, there was a grammatical error and it needed to be fixed.

SEN. TRUDI SCHMIDT, SD 21, Great Falls asked if on Page 5, Lines 22 and 23, if something was left out or should it read "establishment shall collect." **SEN. KEENAN** thought if they crossed out the word that it worked but it almost looked like the Board agreed with that. *"Temporary Risk establishment"* and *"shall collect a fee."*

Dave Bohyer, Legislative Services Division, said on Page 5, Line 22, after this establishment, strike *"that."*

Closing by Sponsor:

SEN. KEENAN said the bill came from an October 1996 performance audit by the legislative auditor, so it did go back a long way. The Serve Safe Program was expanding hugely. More than two

million people were served by it and there were 200,000 a year and multiplying, people that were going through the program. He said it was a good program. He was a certified trainer and he had been asked by the Community College to teach a course in that.

HEARING ON HB 90

Sponsor: **REP EDITH CLARK, HD 88, Sweetgrass**

Proponents: **Shirley Brown, DPHHS, CFS**
Kathy Deserly, National American Indian Welfare
Chris Christiaens, MT Chapter National Association of Social Workers
Beth Satre, MT Coalition for Domestic Violence & Sexual Assault
Coleen Magera, Attorney, Custer County
John Larson, District Judge

Opponents: **Kandi Matthew-Jenkins**

Opening Statement by Sponsor:

REP EDITH CLARK, HD 88, Sweetgrass, said HB 90 had two purposes: it codified as a statute the current practice of providing voluntary protective services and it established that a district court must dismiss a child abuse and neglect case. It specified conditions of that to prove the case was resolved. In Sections 1-5, it focused on the voluntary protective services provided to the child and the parent designed to keep the child safely in the home. The division had federal and state mandates which required them to try to prevent a foster care placement. They currently provided these services, but this puts it into a statute. It would provide more guidance for the court to decide if the social worker tried to prevent out of home placement.

Proponents' Testimony:

Shirley Brown, DPHHS, CFS, read and submitted written testimony that explained the HB 90's mission and a section by section analysis. **EXHIBIT(phs54a07) Ms. Brown** also handed in correspondence regarding HB 90 from **Judge Larson** and a copy of a letter she had written to **Judge Larson. EXHIBIT(phs54a08)**

Kathy Deserly, National American Indian Welfare, said she supported HB 90 after working with the department and for the National Indian Child Welfare Association. The strongly stated the use of voluntary services when it came to working with Indian

families. They saw many cases where once the children were in the system, getting them out again was really hard. The clarification of voluntary services spoke to the Indian Child Welfare Act requirement of preventing the removal of Indian Children from their families and they were really doing everything possible to prevent that removal.

Chris Christiaens, MT Chapter National Association of Social Workers, said they supported HB 90 because they believed it put into statute what had been going on in the Department of Family Services already. The purpose was to intervene when there was a potential for child abuse and the one thing everyone wanted, was to reunite the family if possible. He urged the legislators to make sure the funding was available when it got to HB 2 for those in home services. Right now there was money in the bill but anything that could be done to bolster that would be appreciated and to insure that so many of Montana's kids did not continue in foster care. The rising use of methamphetamines across the state was probably one significant reason for children being removed from homes right now.

Beth Satre, MT Coalition for Domestic Violence & Sexual Assault urged support for the bill and she wanted to echo **Mr. Christiaens** comments.

Colleen Magera, Attorney, Custer County, said she had been with the Custer County Attorneys Office more than eight years and before that she was the Powder River County Attorney for two years. During that 10-year period she was in the County Attorneys office, she handled many neglect cases for the department and she saw a change in how the department handled cases during that 10-year period. She initially saw where the department filed petitions in most of the cases and provided services after the provisions were filed. In the last five or six years she saw that practice change where the department began to offer more voluntary services up front, before filing petitions. **Ms. Magera** said it was her opinion that the current practice was the better practice. She believed that she saw a better case management by the department when they went to court with cases now, and could show the efforts of the department had made to prevent removal of the child or to provide reunification. She thought the practice provided better services to the parents and to the children and that the current practice gave the parents a choice on how they wanted to work with the Department, if they wanted to work voluntarily or whether a petition would be filed. She said the current practice of providing the up-front voluntary services also de-emphasized the advisory nature of the process when the petitions were initially filed. **Ms. Magera** supported HB 90 and its codification of the current practices of

providing voluntary services, but was opposed to the limitation of the voluntary out of home protective placement of children for 30 days. Especially to the limitation of 30 days because when she worked in Eastern Montana over the last 10 years, there was a profound shortage of professional services in Eastern Montana.

{Tape: 1; Side: B}

The dependent and neglect cases increased as well as health issues that required treatment for chemical dependency, mental health treatment, and sexual treatment. They had limited ability to provide those services. They did not have psychiatrists East of Billings, only one clinical psychologist, who was available in Miles City, one day a week. There was not anyone qualified under the Montana Sex Offender treatment association guidelines to do psychosexual evaluations. She recently had a criminal defendant who was also a parent in a dependent and neglect case who was arrested, who needed to have an evaluation to continue, which could only be done by a licensed clinical psychologist. She tried to get the evaluation, but it was going to be a month before she could get the evaluation done for the criminal defendant. As a result, they ended up transporting the individual to Billings, a two and a half hour drive, and back again Friday of that same week in the middle of one of the worst blizzards she had seen in Eastern Montana in the last 10 years. The department also had to face the lack of services in Eastern Montana when they were trying to provide services to families. She said at any given time, approximately 20% to 25% of the case load of the department in Eastern Montana involved voluntary parental agreements in which the department provided voluntary services under the agreements. In the past, that practice amounted to six or seven years she had not witnessed or was aware of the department using those voluntary agreements to coerce parents. The voluntary service agreement the parents entered was the practice of case workers to review those services agreements, line by line with the parents, and to provide a revocation clause in which the department emphasized to the parents their right to revoke a voluntary out of home protective placement of the child. She handed in a copy of **District Judge Gary Day's** written testimony. **EXHIBIT(phs54a09)**

John Larson, District Judge 4th Judicial Missoula and Mineral County, said when HB 90 was in the House he stood up in opposition. The House Public Health Committee made several significant and helpful amendments and he now supported the bill with those amendments. He had a few more amendments to suggest. One was simple: In Section 6, the second half of the second part of the bill dealt with dismissal. Section 6 dealt with cases

that were already in court. There were attorneys, a guardian ad litem, may be attorneys for the parents, and they were in front of a judge in court. If they got a motion to dismiss, judges were used to dealing with motions to dismiss, but that was not to say each time a judge got a motion to dismiss, it was going to be handled. He said he did not doubt what **Ms. Brown** said about dismissals sometimes not happening, but he thought fairness had to be put back in the court room and allow the attorney or the custodian of the child to come in on it. **Judge Larson** referred to **Mr. Christiaens** comments about methamphetamine. He said a parent went through methamphetamine treatment and was clean for a while, maybe six months, but it was not a guarantee from a child's perspective that the home was safe. The children were the most important aspect of these cases and they ought to have a voice in dismissal. If they agreed, he was sure there would be no opposition from the court, but putting a new subsection in, allowing the guardian ad litem to comment about dismissal pending actions was appropriate and if there was a dispute between the department and the child or the department and the parents, then a hearing occurred and the judge made a decision. That was his first amendment. He said his second amendment dealt with the Indian Child Welfare Act touched on by **Ms. Brown** when a child was removed from the home. Everybody agreed that if it were a voluntary work place in the home, and he agreed that a family could be worked within the home, it was cheaper, it was more effective, and the job usually got done. He said criminal defendants and methamphetamine addicts could not be worked the same way. Those cases demanded intense services with a parent in another location such as the Montana State Prison or a treatment program with which to begin. If those cases involved a child that was under the Indian Child Welfare Act, that act said to go in front of a judge and he or she would decide whether it was voluntary. He suggested that for everyone, not just for children under the Indian Child Welfare Act. He asked if it were truly voluntary, what was the problem with having a judge take a couple of minutes to go over it with both parties. He said if we put ourselves in the shoes of the parent. What if it were all laid out for a person and it was his first time in the system and he did not know his rights. **Judge Larson** said that sometimes there were addictions, sometimes there were mental health issues, and they expected some kind of advocate. If the children were going to be out of the home, the parents were obligated to do certain things, and the department promised to do certain things, therefore it would not hurt to do so in front of a judge for a few minutes. There were many done in Eastern Montana and some was done with broadband, where they could hook in live, via teleconference. That was what the Indian Child Welfare Act required when a child was taken out of the home. He thought the Indian Child Welfare Act made a positive contribution to the

field by saying if a child was going to be voluntarily removed, there was discussion on the record so that each person knew their rights and understood how it was going to work. The example **Ms. Magera** gave was where there was a pending dependant neglect case about the 30-day requirement that the House of Human Services put in the bill. The 30-day requirement did not apply to a case that was in court. The 30 days applied only to cases that were not in court and there were no attorneys, no guardian ad litem, only the parent was there and it was their first time and they were having a problem. After 30 days, some additional services were necessary, then these people should come in and see **Judge Day** and have a little chat about what was expected and let him find an additional 30, 60, 90, even a 120 days if appropriate. He said there were many courthouses even if there were only two judges, which was why there were courthouses still in those smaller areas. **Judge Larson** said there was a budget issue and if kids were going to be taken out of the home and put into foster homes, it would cost money. It was more money if they were put into treatment centers. He suggested again, a 30-day requirement made sense. The voluntary services in the home were not going to be in the same level of expenditure as the ones in the more expensive out of home placements, which was why he thought the house amendments were good and supported them. He said he was willing to concede some extra time to people in the rural areas and he thought an accommodation could be made for those families who came in and visited briefly before the judge, just like they would under the Indian Child Welfare Act. The judge was going to be the most skilled person in making inquiries whether or not the child fell under the Indian Child Welfare Act and he had more training in what to do in that situation. Furthermore, money was saved. If it were a tribal issue, they could contact the tribal court right away to start working with them to find out who wanted to handle the case. **Judge Larson** urged more communication and fairness in all of his amendments. He commended the department for putting it in statute.

Opponents' Testimony:

Kandi Matthew-Jenkins, Missoula, read and submitted her written testimony. **EXHIBIT(phs54a10)**

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESP asked **Ms. Magera** what her reaction was to **Judge Larson**'s comments regarding the 30-day limitation. **Ms. Magera** understood **Judge Larson** to say that in Eastern Montana there might be difficulties in providing services within a 30-day period and

realized that there may need to be additional time. She said that was basically what she said concerning specific voluntary out of home protective placement of children. She said her argument was that because of limited services, people virtually could not get services in place during that time to a family and that a more reasonable period, not less than 90 days, would be sufficient.

SEN. ESP asked if 30 days were insufficient and approaching the court for an extension was reasonable way to do it rather than to change the law to completely allow for some extensions if necessary. **Ms. Magera** said it would be a compromise.

SEN. ESP asked what **Ms. Magera's** thoughts were regarding that a case of voluntary removal of protective services go before a judge for a few minutes of testimony to verify on the record that it was voluntary action and it was done by the parents. **Ms. Magera** was not sure she agreed with **Judge Larson.** She was not opposed to some discussion between the court and the parent to assure that they understood their rights and that it was voluntary placement of the child and they agreed with voluntary placement of the child. She was not sure how to do all that without a petition filed.

{Tape: 2; Side: A}

SEN. ESP asked **Judge Larson** if **Ms. Magera's** comments summarized what he had in mind as far as informal discussion within his chambers, to enter a voluntary agreement. **Judge Larson** said yes. He said they had informal meetings in their caucuses all the time and it was the committee's pleasure to be on record. They could bring in a court reporter. Nevertheless, it gave them opportunity, not in a big public setting, but in a very private setting, to go over the agreement briefly and ask them if it was what they wanted to do, explain how it worked, and what their rights were.

SEN. ESP asked if he had looked at the bill and where would he insert it in the bill. **Judge Larson** said the limitation on 30 days out of home placement was the amendment they were dealing with and before the implementation of the out of home placement, the parties would have to meet with the Judge in their district in chambers to determine the voluntary agreement and if any additional time beyond the 30 days were necessary.

SEN. ESP asked what the department's position would be on amendments similar to what **Judge Larson** outlined. **Ms. Brown** did not think it was a practical to assume it would happen. She said

presently they had many statutorily established time frames they could not meet because they could not get into court. They have currently planned hearings that were supposed to be done and they were not done, now they will lose federal funding. They just did a review of more than 100 cases, more than 50% of them did not currently have planned hearings because they could not get into court. Ms. Brown thought, given what the court dockets were like, getting into court would be difficult. She said maybe in **Judge Larson's** court it was not, but she used to practice in a judicial district where there was one judge for three counties and with a law and motion one day a week, or one day every two weeks, and the judge was not available. She thought it would be difficult to do, but to actually do the concept would be very good.

SEN. ESP asked how many voluntary agreements she anticipated the department might enter a given month. **Ms. Brown** said they now had contracted services for in home service providers and most of those services were provided to children in their homes. They provided services in the last fiscal year to more than 2800 children, between ages 12 and 14. The budget that was approved for HB 2 had their funding level just a little lower than they had in the past and in the next fiscal year, she thought they would serve that same number of children. Those were children who could get services in their home. She did not know the number of children who were placed voluntarily in foster care. They had policy on limiting voluntarily placement agreements to certain things. The policy was they did not use voluntary placement agreements instead of going to court if the child's mental treatment was serious.

SEN. ESP asked what percentage, out of the 1,400 children they were serving in the home now, were without a home placement for a period. **Ms. Brown** said she had two numbers in her head, one was 2,800 children were provided services in their home and another was about 400 children being provided reunification services by the same provider to get the child back into the home. She thought the 2,800 children were serviced in the home.

SEN. ESP said if she did not have the information then, he would like to get some idea of how many kids or families they were talking about, if they followed **Judge Larson's** suggestion that the ones removed from the home, would see a Judge weekly before that happened. **Ms. Brown** did not know if that was available but would try to get something to him.

SEN. ESP said the reason for that was it might be impractical if it were 600 cases a year and more practical if it were 15 cases a year. He wanted to get an idea of what was anticipated.

SEN. SCHMIDT asked **Ms. Brown** to comment on what **Judge Larson** said about the Indian Child Welfare Act (ICWA). **Ms. Brown** thought currently there were safeguards in place where amending the bill to comply with it was not necessary. She said the reason she said that was because there was a provision in 41-3-109 or something like that, which was in Part One of the Child Abuse and Neglect Statute that said *"in proceeding under this act you must comply with ICWA if the child's needs to find an Indian under the law."* She thought the intent of the legislature in passing that was that any activity done by the department under Title 41, Chapter 3, had to comply with ICWA . The other thing they already had in policy was that if the child who was being placed in a voluntary foster care placement was an Indian child as defined by the Indian Child Welfare Act, the policy already required the voluntary placement agreement be signed in front of a Judge.

SEN. GRIMES asked if there was a report and investigation where at that point, a social worker thought the person was a good candidate for the voluntary protective services. He asked where those people entered the system because he thought it had everything to do with whether they should be in the judicial system before a judge. **Ms. Brown** said that was correct. They got the report, the social worker did the investigation, and then made a determination on the case whether the child was either at risk of abuse & neglect or being left abused and neglected. The type of family for which in home services worked the best was where it was physical neglect and they actually had substantiation of abuse and neglect. The big category they had was physical neglect. The social worker had to make a determination on whether the child could remain in the home with services and continue to be safe. Generally, when the social worker determined that the child could stay in the home, if there were services, they called an intervention and they provided services then, to avoid a foster care placement. It would depend on the seriousness of the child's mental treatment.

SEN. GRIMES asked at what point they got a record and were entered into the system. **Ms. Brown** said when it became a concern that there was child abuse and neglect and it was substantiated. It could be substantiated for abuse and neglect if the child is at risk of or being abused or neglected by the definitions in statute and the social worker had evidence.

SEN GRIMES asked if that was in the investigation that would take place before or after that. **Ms. Brown** said it would take place before because it could be that the social worker investigated and determined that there was a risk of child mental treatment. They may not have a preponderance of the evidence but there could be something that showed there were services that could be

provided and the social worker would refer it to **Ms. Brown**. Most of the in-home services they provided were done by an independent contractor. They sometimes refer the family to the contractor and the contractor was the one that provided the major service and the family liked that.

SEN. GRIMES asked what prevented either the contractor or the department from going with a voluntary protective plan and what stopped them from over using it. **Ms. Brown** said they were already doing that. The bill codified the services they were already doing, but did not give them more authority. It just put it in statute. She said the only thing that would prevent the over use of a voluntary protective plan would be a lack of resources. There were some practical safe guards or restrictions and that was because they did not have the services available for everybody. Two years ago they changed the contracts for in-home service providers who could provide what they called a primary prevention service to families that never came into contact with their system, because they did not have enough resources for families that were contacting their system. All of those contracts provided services only to families which were referred by the department.

SEN. SCHMIDT asked why the part in Section 6, where it talked about the child remaining *"in the home for a minimum of six months with no additional confirmed reports of child abuse of neglect."* **Ms. Brown** said it was because it was an equity issue if they had done an investigation. They had a court ordered treatment plan and the parents did everything in a treatment plan or additional reports, then the department felt it was an equity issue for the parents to get them out of the family's life. It was a resource issue as well, they did not have the resources to have social workers monitoring the families where the child had been home for a year and there were no concerns. They had cases in the past where they were required to monitor families continually when a child had been home for up to two years. The department did not think it fair for the parents and they did not have the social workers to do it.

SEN. SCHMIDT asked if the court dismissed it, was it done. **Ms. Brown** said yes.

SEN. SCHMIDT asked **Judge Larson** what he did not like about Section 6. **Judge Larson** said he proposed as an amendment to give the guardian ad litem and the parents or an attorney for the parents an opportunity to comment on the motion, have input in it. Typically, with two sides in a court case, each side could comment on a motion to dismiss. The section cut off any comment

from either party with any other meaningful input about the case, including the child or the parents.

SEN. SCHMIDT asked if there were no additional confirmed reports of abuse and neglect after six months, did he want a guardian ad litem person to confirm that. **Judge Larson** said no, just to have the opportunity.

SEN. SCHMIDT asked if they had that already if they had to come to court to have it dismissed. **Judge Larson** said they just needed to file a motion and the practice said the County Attorney that represented the department filed the motion. He was suggesting an amendment that allowed the other parties, under the rules, each side had 5 days after that motion was filed to file their response or their position so that everybody who was in the case, could go on record where they stood. If they did not want to file anything, that was fine. If the motion was unopposed, it should be granted. He wanted to be fair if for some reason a case should go on for another month or two, there could be an in home test or a UA but they were not observed so the person might remain clean for six months. However, the children knew if that person was clean or not. Given that, the court could say they were going to get observed for another month to decide if they were clean. He said an amendment on Section 6 gave each side the opportunity to comment. The judge would have to wait until they commented, and it was not to say that they had to say something, just have the opportunity to do so. If there was a disagreement then the court would decide.

SEN. SCHMIDT asked **Ms. Brown** for her response to that. **Ms. Brown** said if they were only being kept in cases another month or two they would not have asked for legislation but they were being kept in cases for up to two years and giving a guardian ad litem the opportunity to comment at the risk of offending somebody. Guardian at litems were lay people most of the time and they were not professionally trained. She said commenting was one thing but allowing a non-professionally trained lay volunteer's opinion to mean more than a professionally trained social worker or professionally trained therapist sounded logical but she wondered how it would play out and she suspected if it happened they would still be involved in those cases for up to two years.

SEN. ESP asked **Judge Larson** if Section 6, Subsection 4 said the Judge could consider without having to act on the opinions of the guardian ad litem, if the guardian ad litem said something contrary to the social worker, so that it would not bind the judge, but he could consider it, and asked if that would suffice in his opinion. **Judge Larson** said yes. They already had a statute that had a guardian ad litem appointed for every child

every time and in many counties, these court appointed advocates or lay people were not required to be lawyers. They had a whole list of duties to speak for the child in those cases and what Section 6 did was completely cut out the guardian ad litem from commenting on this motion to dismiss the case. This case was about the child. He gave Statute 41-3-112 for the Statute of the Guardian.

{Tape: 2; Side: B}

SEN. ESP asked if there was any discussion if the three criteria were met, referring to the section where it stated the court shall dismiss the following if the criteria were met. **Judge Larson** said there was no discretion and the department had control over those criteria because they were the ones who confirmed the other instances of abuse and neglect.

SEN ESP suggested it was worked on in the next day or two because it looked to him the way it was written, there would not be any discretion, regardless if the criteria were met. **Judge Larson** well I would change the "shall" to "may" to give it more discretion.

SEN. JERRY O'NEIL, SD 42, Columbia Falls, said he understood the parties to come before the court when the voluntary treatment plan was put into place which was before the petition was filed. **Judge Larson** said that was only if there was a removal of the child. He thought the department had already conceded that if there was an Indian child in a voluntary agreement, the removal had to come in front of a judge. He said that what he was suggesting was that it was a great idea under the Indian Child Welfare Act that everybody who had a child under one of the agreements, who was being removed, to come in front of a judge as they would under the Indian Child Welfare Act. **Judge Larson** thought it would be good to find out how many cases there were because the department did not know currently how many there were.

SEN. O'NEIL asked if during that time a guardian ad litem would be appointed. **Judge Larson** said there would not but the judge could ask if they wanted one.

SEN. O'NEIL asked if an attorney would be appointed for the parent. **Judge Larson** said no, not with voluntary agreements.

SEN. O'NEIL asked if the parent would be allowed to bring their next door neighbor, parent, or a friend to court. **Judge Larson** said it was an informal proceeding. He would do this in his chambers but he would not allow the whole neighborhood.

SEN O'NEIL asked if they would be allowed to bring a paralegal or somebody else. **Judge Larson** said in an informal proceeding they probably could.

SEN. SCHMIDT asked **Ms. Brown** for clarification in Section 6. She asked if they were talking about the child possibly being reunited again, and if the child were, were they talking if a child were strictly going back to the home. **Ms. Brown** said yes. The provision would only apply if a child had been in foster care, had been reunited with the parents, and had been there a period of six months, where the social worker had been monitoring. This was if there were no concerns seen by the social worker and no additional reports of abuse and neglect confirmed. This would only apply when a child was reunited with the parents.

SEN. ROBERT DEPRATU, SD 40, Whitefish, said he had trouble understanding why **Ms. Brown** was determined that the other option was not there. He did not think it was unreasonable and it was hard to find a "one size to fit all." He said maybe the child would want to speak. He thought that **Judge Larson** made some good points and that it was just an option. **SEN. DEPRATU** did have a problem with "shall" in this type of case. He thought "may" was a much better word because "shall" was not going to fit every case that came up. **Ms. Brown** said the reason was that they had encountered cases where they were involved for so much longer with the social worker, not really understanding why but maybe a guardian ad litem was the one that did not want us out of it and so the reason they proposed this was to put the brakes on the department having to monitor families for an extended length of time. If they monitored the family, the question became "at what point was the child going to go back to foster care and if the child did go back into foster care, the case continued, needing more monitoring and the department could not access federal money. They had to start over, get that one dismissed, and file a new petition. She said it was hard to explain how difficult it was to monitor a case when they did not know what they were monitoring.

SEN. ESP asked if the code that dealt with the dismissal of a petition by the department was in Section 6 or another Section. **Ms. Brown** said what they had hoped to do with the provision was to establish something called a case exit standard. It would be something for everyone to look at to dismiss a case. Right now there was nothing in statute that said if this was met, then a motion could be filed to dismiss it.

SEN. DUANE GRIMES, SD 20, Clancy, asked if the bill would make it if it went back to the House amended. **REP. CLARK** thought they could get it through if the amendments were not too extensive.

SEN GRIMES asked what the house vote was. **REP CLARK** thought there was only six who opposed but they had put amendments on it as well.

SEN. O'NEIL asked **Ms. Matthew-Jenkins** if she could think of one amendment that would make the bill more satisfactory to her. **Ms. Matthew-Jenkins** believed that anything that had to do with voluntary or involuntary removal of children, there should be some kind of legal representation, or an advocate, to represent the parent.

SEN. O'NEIL said if she had any amendments, she should bring them before the committee before Monday.

Closing by Sponsor:

REP. CLARK said she served on the Children and Family Services Advisory Committee and that she brought the bill forward because the department requested it to give statutory authority to provide voluntary protective services to children and families and to provide authority to dismiss a case from court when a child had been reunited with the parents after a period of six months and after the issues surrounding the reason for the removal was resolved. It was a reasonable request. This bill would help children and families and protective services people solve problems together in a less intimidating atmosphere and have a much better outcome.

HEARING ON HB 681

Sponsor: **REP EDITH CLARK, HD 88, Sweetgrass**

Proponents: **Rose Hughes, Director, MT Health Care Association**
Betty Beverly, MT Services Association
Ray Hoffman, Peak Medical Corporation
Casey Blumenthal, Mental Health Association
Judy Annin, Vintage Suites
Marianne Chrider, Son Heaven Assisted Living
Fred Annin, Vintage Suites

Opponents: None.

Opening Statement by Sponsor:

REP EDITH CLARK, HD 88, Sweetgrass, said assisted living facilities is a middle ground. It is between living at home and living in a nursing home for the elderly. Most residents in

assisted living facilities needed some help with administration of medications and under current Montana law, administration of medications was considered a practice of nursing. When she worked in a personal care work group to work on statutes and regulations governing personal care facilities over assisted living facilities, this discussion came up regarding how they could help them not have to have a professional give medication. She worked on the Governor's conference on Health Care Work Force Authority and there was a shortage of health care workers. It facilitated a series of meetings with the Board of Nursing that took place for nearly a year, to discuss the possibility of allowing the use of medication aides in personal care facilities. The Board voted to support the concept of medication aides in personal care as long as they had the authority and were the body that licensed and oversaw the level of practitioners. In 26 states, properly trained medication aides were authorized to administer medications in personal care facilities. In some of these states, this law had been in effect for more than 20 years, so it was a proven fact. The bill would allow for qualified medication aides in personal care facilities and they would only be allowed to administer medication in personal care facilities. The medication aide was defined on Page 2, Lines 3-6. The Board of Nursing would be authorized to establish qualifications of licensure for medication aides and set the parameters for educational requirements and levels of licensure depending upon education and responsibility. The Board of Nursing would determine the type of medication that would be allowed to be administered and set limitations. They would set the guidelines and supervision under which a person would practice. There was just a codification for "personal care facility" to be changed to "assisted living facility." In HB 50 it did pass. This was a bill to help small facilities with elderly care and to help the health care work force shortage.

Proponents' Testimony:

Rose Hughes, Director, MT Health Care Association, read and submitted her written testimony. **EXHIBIT(phs54a11)**

Betty Beverly, MT Senior Citizens Association, said her association sat in on this work group and they thought there was a great need. The first thing that came up in the work group was medication and how it was dispensed. The next thing that came up was the need for seniors to have it happen in assisted living without the high cost of skilled nursing. A family member could already go in and do many of these things and maybe incorrectly without a nurse's supervision. She said it put it under the nurses' guidelines for training and education, especially with CNA's that were working in assisted living, caring for the

elderly. They gave another piece of education about drugs and the key component was under a nurse's supervision to set up the system which they supported.

Ray Hoffman, Peak Medical Corporation, said the bill did two things that gave options not only to seniors, but to the provider. He said Peak Medical Corporation would like to see the next step and that was to go into nursing homes. Of the seven states that Peak Medical Corporation provided services in, three of those states currently had a certified medication aide in them and they felt this would be very beneficial. They found such auspices such as the Board of Nursing was a good way to control this type of situation.

{Tape: 3; Side: A}

Casey Blumenthal, Mental Health Association, MHA, said she was also involved in the assisted living work group. They represented assistant living providers in Montana, nursing homes, Hospices, Health agencies, and hospitals. She said the American Association for Homes and Services for the Aging Assisted Living work group was a national collaboration of various providers at the National level. They recommended medication assisted personnel to work in assisted living facilities with a state approved training course which would occur under the auspices of the Board of Nursing and the Assisted Living Federation of America. They supported using trained non-nurse professionals to administer medications in the Assisted Living Facilities, as long as there was a trained health professional involved.

Judy Annin, Vintage Suites, read and submitted her written testimony. **EXHIBIT(phs54a12)**

Marianne Chrider, Son Heaven Assisted Living, submitted written testimony for Linda Sandman, owner of Son Heaven Assisted Living. **EXHIBIT(phs54a13)**

Fred Annin, Vintage Suites, read and submitted his written testimony. **EXHIBIT(phs54a14)**

Opponents' Testimony: None.

Informational Testimony:

Jim Brown, Department of Labor & Industry, said the Board strongly supported HB 681. He had **Lisa Addington** and **Barb Swehla** there to answer some questions.

Questions from Committee Members and Responses:

SEN. BOHLINGER asked **Ms. Annin** what the pay scale was for RN's, LPN's, and CNA's and how much were they saving. **Ms. Annin** said an RN that was overseeing a facility the size that she managed, which was 55 apartments, was going to make anywhere between $20.00-$25.00 per hour. An LPN $12.00-$15.00 per hour and a care-giver could come in at a minimum wage in some facilities. She said they started theirs at $7.50 if they did not have any experience. A CNA would probably make about $8.00 per hour and a medication aide would be somewhere between a CNA and an LPN. It was about a $5.00 per hour savings for a facility when they are using a medication aide.

SEN. BOHLINGER asked if the $5.00 per hour savings was passed on to the person that was living in the facility and not added to the profits of running the organization. **Ms. Annin** said the rates would not drop, but it would help prevent rates from going up.

SEN. GRIMES asked if there was any significance to the word general supervision and were there levels of supervision that were not intentionally included in the bill. **Ms. Hughes** said yes, they intentionally said "general supervision" so that the Board of Nursing for rule making could probably describe the level when a supervisor had to be in the room watching and when they had to be in the building. They had to train somebody and know what their intent was that the Board of Nursing through their rule making could probably establish what the appropriate level of supervision is for these facilities.

SEN. GRIMES asked if facilities in her organization would be assuming any additional liability. **Ms. Hughes** said all the facilities were having horrible liability problems and she did not know if it could get any worse. There were significant issues because of things that were going on in other states and law suits because sometimes insurers did not understand the difference between the different types of facilities. They did not see in other states that trained medication aides were a liability issue.

SEN. GRIMES asked what the difference between medications and drugs were and why that was important. **Ms. Hughes** said the reason the House changed the word "medication" to "drugs" was because there were attorneys on the House & Human Services Committee and it was good they noticed there was a definition of what a drug was in State Law but there was not a definition for medication. They wanted to put the word in so we could then go to the law and say this is what it was and this is what it meant. They were used interchangeably but in our state law the word was

drug and the committee believed it should be drug and the Board of Nursing agreed with that.

SEN. GRIMES asked if drug classification was going to be established. **Ms. Hughes** said under the legislation, the Board would have the authority and they thought they should determine what types of drugs would not be allowed for a medication aide to give. There were scheduled drugs and narcotics and there were drugs the aides would not be allowed to handle and this gave the Board of Nursing the ability to determine what those were.

SEN. GRIMES said all medications were drugs and there was not going to be medications the Board of Nursing would make rules over that were not drugs. **Ms. Hughes** said that was correct. They were using the words "drugs" and "medications" interchangeably and if the definition of drugs in the State law was looked at, it was inclusive.

SEN. ESP asked if general supervision was defined clearly. **Ms. Swehla** said their physical set up, where they would be administering medications to residents, as well as a system to reduce the opportunity for human error and how much general supervision was required would have to be defined by the Board of Nursing. The Board was aware of the fact that there was not a requirement that there be a nurse in the facilities 24/7 and that was why the term "general" was in this bill because it allowed the Board to put a nurse in a distant role. It would be based on the decreased level of how acute the illness was that these people typically presented.

SEN. ESP thought **REP. CLARK's** other bill heard earlier talked about different classifications of facility types and there was a classification that did not include skilled nursing. He asked would the medication aide be trained to help patients with their medication in each type of facility they would work in. **REP. CLARK** said yes.

Closing by Sponsor:

REP. CLARK said passage of this legislation would assure that personal care facilities could continue to operate under a social model rather than a medical model and it was what the seniors wanted. It would insure that those who administered the medications in those facilities were qualified.

{Tape: 3; Side: B}

ADJOURNMENT

Adjournment: 5:41 P.M.

_____
SEN. JERRY O'NEIL, Chairman

_____
ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT(phs54aad)