**MINUTES**

**MONTANA SENATE**
**58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN JERRY O'NEIL**, on March 21, 2003 at 3:32 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. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)

**Members Excused:** Sen. Trudi Schmidt (D)
Sen. Emily Stonington (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:**

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| Hearing & Date Posted: | HB 693, 3/5/2003; HJ 31, 3/10/2003; HJ 29, 3/10/2003 |
| Executive Action: | HB 681; HB 693; HB 647; HB 499 |

## HEARING ON HB 693

**Sponsor**: **REP. JOHN SINRUD, HD 31, Bozeman**

**Proponents**: None.

**Opponents**: None.

**Opening Statement by Sponsor**:

**REP. JOHN SINRUD, HD 31, Bozeman,** said HB 693 added one caveat to what the Child Support Enforcement Division (CSED) could do. He gave an example of a woman who was living with a gentleman and got pregnant and ended up moving. She had a paternity test taken and the man she was living with was the father, who had refused to pay any child support. She went through the Child Support Enforcement Division and had gone through the court system. It had taken roughly nine months so far and **REP. SINRUD** was not sure if she had come down to a final decision for child support. Meanwhile, she had taken the financial responsibility of the child altogether and it was draining her savings. It was eventually going to remove her from having any type of remedy of the situation for the responsibility of the father to pay for child support. It will probably move her onto the TANF or the Welfare program. **REP. SINRUD** thought what could be done was to have CSED come up with a temporary dollar amount for child support so that the father or the mother took responsibility as well as the responsible parent for staying with the child. Putting the burden of support of raising the child solely on one person was not right or fair in the given situation. It changed the makeup when having to pay for child care, the job had to pay well enough to pay for child care which could be expensive. On Page 1, Section 1, Lines 24-26, allowed a *"monthly support obligation was effective on the date of service of the notice and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations."* It allowed CSED to go ahead and put the child support up front once the paternity had been determined.

**Proponents' Testimony**: None.

**Opponents' Testimony**: None.

**Informational Testimony**:

**Lonnie Olson, Child Support Enforcement Services, Administrator,** said he was there to answer questions.

**Questions from Committee Members and Responses**:

**SEN. JOHN ESP, SD 13, Big Timber,** asked what happened if the temporary amount decided was more than what the judge decides. **REP. SINRUD** said there would be a proceeding to revise the child support dollar amount and there would have to be a payback system.

**REP. ESP** asked if that mechanism were in the bill or somewhere else. **REP. SINRUD** said he would have to refer that question to **Mr. Olson.**

**Mr. Olson** said the bill did not contain any provisions that would establish any additional revenue to the Child Support Agency or to the district court. Currently the district court had equitable powers that would allow a set off of the ongoing obligation if he had overpaid in child support. The CSED did not share those powers because the agency was not granted that judicial remedy. He believed what was contemplated with the bill was that in the event an adjustment needed to be made at the time of the hearing, such as the child's court order goes down, that adjustment would be made. After that, a debt would be created between the obligor and the obligee for that difference. How that difference was handled could be done many ways. For instance, one judge reduced the amount of child support until caught up. If there was a mistake and it had to be adjusted, that adjustment would take place at the hearing. He hoped the hearing would be shortly after the service of the notice for child support obligation.

**SEN. ESP** asked how the dollar amount would be arrived at for temporary child support. **Mr. Olson** said the way the child support was determined, in the state of Montana and everywhere in the United States, was by the application of certain guidelines contained in the Administrative Rules. The purpose of those guidelines was to make child support uniform so those people in similar situations had the same outcome. The amount was determined using a formula that included the incomes of both parents.

**REP. BRENT CROMLEY, SD 9, Billings,** asked if this were generally a situation where there was a question of paternity. **REP. SINRUD** said he could not do generalities. He knew here that was what happened and it was just two people choosing to do something that was their decision.

**REP. CROMLEY** asked where the money would go that was collected, if the bill passed. **REP. SINRUD** said it would go to the responsible parent taking care of the child.

**REP. CROMLEY** asked if there was any suggestion given that the amount should be retroactive to the date of birth. **REP. SINRUD** said concerning the situation he spoke of, it would be at birth. That would have to come out of the court hearing that took place after the judgment took place. What the bill was trying to avoid were people trying to skirt the system and go through the legal channels just to draw the whole process out for a long period. When that happened, the responsible parent became impoverished taking care of their obligations for the child. That could be remedied and hopefully alleviate some welfare situations we currently had.

**REP. CROMLEY** asked if this were an interim solution pending the process. **REP. SINRUD** said that was correct. The responsible parent did not lose their right to a hearing, it just made it up front, without drawing the system out and drawing out the progress in such a length and time that it jumbled up our court systems.

**REP. CROMLEY** said on Page 4, Line 1, the final order was retroactive to the date of service of the notice of responsibility. He asked if that would preclude the final order being retroactive to the date of birth. **REP. SINRUD** said no. Once the judgement had been ruled on, it would go back to the very beginning. Therefore, if the payment were higher, then that obligation would have to be paid in arrears, and if the obligation was last, then there would have to be an adjustment made in the future.

**SEN. JOHN BOHLINGER, SD 7, Billings,** asked what remedies were available through child support enforcement division for collecting money. **Mr. Olson** said the primary method used to maintain the child support was an income report order served on the employer and the obligor with a compelling statement sum for child support. Other mechanisms were that if the delinquency met the statutory period that was just six months, they could go forward with license suspension. There was also the opportunity to do liens against assets. There can be the opportunity to do attachments against cash assets in banks or elsewhere. There was also the "contempt to process" that can be brought to whoever to go to a court and ask the court for an "entry order of contempt" against the obligor for failure to obey the child support order. Finally, a criminal remedy was beyond the power of civil agencies such as the CSED. There were both federal and state criminal penalties attached to the intentional nonpayment of child support over a certain specified time.

**SEN. BOHLINGER** asked for more detail what the time frames were for bringing people into compliance. **Mr. Olson** said it was only

in certain aspects of their collection process limited by time. One would be the license statute. If a person fell six months in arrears, a notice could be sent, or delivered by personal service if that notice were not accepted, saying they had two months to enter some type of payment plan or they were going to try to suspend the olbigor's license. There was a six-month provision in the criminal code if a person fell substantially behind and it was intentional, then a criminal action could be brought.

**SEN. BOHLINGER** asked if HB 693 would help CSED's efforts to bring people into compliance. **Mr. Olson** said yes. It would be helpful.

**Closing by Sponsor:**

**REP. SINRUD** said in the state we needed to expect responsibility for people's actions and when a child was involved, that responsibility should be demanded. Those people together formed a child who was their responsibility and obligation to take care of that child's welfare. It was only right that when one parent took the responsibility of the child after the other one left the relationship, that the one that left also understood they still had a responsibility and it was not just left up to society or to the responsible parent remaining behind. It was still up to that person who had left.

## HEARING ON HJ 31

**Sponsor: REP. TOM FACEY, HD 67, Missoula**

**Proponents: Judy Smith, Women's Opportunity & Resource Development (WORD)**
**Mary Caferro, Working for Equality & Economic Liberation (WEEL)**
**Hank Hudson, Department of Public Health & Human Services (DPHHS)**
**Steve Yeakel, MT Council of Maternal & Child Health**

**Opponents:** None.

**Opening Statement by Sponsor:**

**REP. TOM FACEY, HD 67, Missoula,** said HJ 31 was for providing communication to the legislature and the Department of Public Health and Human Services. Welfare rolls have dropped approximately 50% since welfare reform was initiated. The number of participants in food stamps in Medicaid and home heating assistance programs and other assistance programs in the state were relatively stable. What that said was welfare reform was working and we were getting the families off welfare but we had

not been successful moving families away from poverty. States have struggled in trying to find programs that moved families off the welfare and away from poverty so they were not taking part in the assistance programs, Medicaid, home heating, other assistance programs. The purpose of the resolution was to encourage the Department of Public Health and Human Resources to develop an IDA or Individual Development Account. IDA could be used to pay for schooling, make a down payment on a home, or start an entrepreneurial business. It was a way for the family to take charge of their future. It was also a cost saving mechanism to the state and would have a safety method.

**Proponents' Testimony**:

**Judy Smith, Women's Opportunity & Resource Development (WORD),** passed out a packet of information to the committee. **EXHIBIT(phs60a01)**

***{Tape: 1; Side: A}***

**Ms. Smith** said they had programs particularly with families that were trying to move out of poverty in both Missoula and Billings. She said the first part of her handout was an article from the Missoulian that talked about the kinds of situations and environments that the families found themselves in. This was Missoula but it was true in most of Montana. Many families they worked with found themselves in minimum wage jobs, and with the high cost of housing they found themselves at a high level of poverty so that often, families were working and were paying a significant amount of what they made for their housing. Unless child care was available they were also paying a significant amount for that. Many families they worked with found it very difficult to get out of poverty as employment was occurring. **Ms. Smith** was on the Governors Advisory for Welfare Reform back in the 90's and was involved in putting the Families Achieving Independence in Montana (FAIM) program together. She was particularly interested in how families were worked with who were not only off welfare but also out of poverty. She referred to the second piece of her handout that showed an evaluation done about a year and half ago that said what FAIM really helped families do was move into minimum wage jobs. Most of the families, once they move off the welfare rolls into a job, still found themselves in poverty and only made $7.00 an hour without benefits. One of the things they were interested in was moving onto the next stage of how to work with families to get them out of poverty. One thing they talked about at the national level and in the state was how to help families build assets. The program they talked about putting into place with some money from TANF was to work with families who had a child support order

established and encouraged them to stabilize that child support so they could perhaps go to school. If they saved, their savings could be matched with TANF money and they could start a business or buy a house. In other words, they could have a stable income package to allow them to get credit and move on in their lives, move forward out of poverty. She gave some examples currently being done in Missoula as private programs and they worked as partners with the local banks because they were a group that actually built houses. WORD also offered home owner training. They offered match money and if people could save $1667.00, they could match that so those families could have a $5,000 down payment. Families who were low income or working at minimum wage jobs were successful in WORD's programs. **Ms. Smith** referred to a news letter from her organization and a short article in the newsletter that said they had helped more than 100 families buy their own home through this kind of project. **Ms. Smith** said what they were advocating was allowing the department, if money were ever available, the ability to do something called a Diversion Program so that families that chose to move toward an optional path where they could do an IDA, go to school, and could get their child support, collect it, and build their income package, rather than going on cash assistance.

**Mary Caferro, Working for Equality & Economic Liberation (and WEEL)** read submitted her written testimony. **EXHIBIT(phs60a02)**

**Hank Hudson, Department of Public Health & Human Services (DPHHS),** said the**ir** department administered the TANF block grant and he was there to support the resolution. He looked at it as a message to the Department to think outside the box and to look at different solutions for different people. When welfare reform was on the drawing board and the first debates were taking place, part of the debate involved what was a better strategy of putting people directly into the work force immediately. They called it the Work Force Attachment Model. The question was what was the best way to get started: go straight to work, build their capital, give them more training, more asset development, and the debate goes on today, but he thought what was really needed were all the options, because there were different types of families attempting to access the department's assistance and some families really needed a good shot at a disability determination because they could not easily be expected to work. He said they had other families who were ready to go to work, but needed assistance in getting a job and maybe some child care assistance. Other families could benefit greatly from some education, some asset development strategies, like the housing program that **SEN. BOHLINGER** was involved in, or the IDA program. **Mr. Hudson** said this was the message coming from **REP. FACEY** who served on the Advisory Council which was to continue to look at the whole range

of options and have all the tools available. There was an amendment added in the House that also reminded them to consider the unique needs of the reservation population in Montana.

**Steve Yeakel, MT Council of Maternal & Child Health and the Montana Human Resource Development Council,** said he would add that there was just an air of enthusiasm and confidence as we worked with the FAIM projects and felt like the money that was in the TANF program was being energized and synergized to help those who needed the help, not only to get financing, but acquire skills and tools. He said it was for that reason and for many others they supported the bill.

**Opponents' Testimony**: None.

**Informational Witnesses**: None.

**Questions from Committee Members and Responses**:

**SEN. CROMLEY** asked what FAIM was. **Mr. Hudson** said FAIM was an acronym that stood for Families Achieving Independence in Montana. It was Montana's Welfare Reform Model implemented through waivers before the federal law.

**SEN. CROMLEY** said it seemed like a wonderful idea. He said he was thinking that if it were discussed on the Senate floor a question might be raised. There might be persons who would say the department should be looking at all the opportunities anyway and why is this needed. **Mr. Hudson** said that question had come up before and he answered it in two ways: First, they did do that through the FAIM project. They received a block grant and when their case loads were low, they had funds left from the block grant that they could be creative with. When their case load was low two or three years ago, with the encouragement from advocates and the Advisory Council, they tried several activities that were successful by and large. Their case load had gone back up and they needed the entire block grant to pay the benefits now. The resolution served to say next time the case loads went down and funds were available it could be used for something besides paying benefits and to look to those activities again. The second answer to that was that any organization had a tendency to discourage creativity. Big organizations were not receptive to big changes on how they did business. He said he had to energize his troops to do things differently and he could use a resolution like this to say that the legislature was also going to try some new things.

**SEN. ESP** asked why it was an important part of the bill for any of the programs not being counted against the time limits for

assistance. **Ms. Caferro** said when a welfare reform went into effect they put the 5-year time clock on all families and whether the time clock was just a time clock and it was not dependent on any other circumstances such as the economy. Part of the diversion project was to divert people from having to be on assistance and to only use assistance when it was absolutely necessary. It was called the diversion project because people were diverted from being on assistance and on a different program.

**SEN. ESP** asked **REP. FACE**Y to answer the same question. **REP. FACEY** said a pretense of what could happen would be a mother and two children that received child support payments of $200.00 per month and the exhusband paid that 10 months out of the year. For some reason the husband forgets and does not pay February and November. The family said they did not want to be on the FAIM program, but wanted to be insured or have that payment made up when the husband missed those two months. The family would be on the cash diversion program and the family said they did not want the FAIM payment, so money was being saved there. The state was saying they would make up that missing child support payment. The family had to pay them for February which might count for three months on the time clock. The family got one payment for one month but it would count for three months because it might go quarterly. The same would be true for the November payment, which was why the time clock issue was important.

**SEN. ESP** asked what if the language said something to the effect that the program would allow for the extension of the time limit for the system in certain circumstances. **REP. FACEY** said the department was hesitant to extend time limits. It was his vision that these types of programs would save the state money. He said they did not intend to spend more money than a family would get under the normal type of payment received. The families that moved toward these types of programs wanted to move away from poverty and did not want to be on the FAIM program. He did not think extending the time clock would be something the department or the participants of the program would consider.

**SEN. ESP** asked about those who might be on the program longer than the five years and were there sideboards that could be put on to keep it less than five years. **REP. FACEY** said that if sideboards are looked at, then the department would be asked to select families that would be good participants in the asset building program. Not every family on FAIM would be a good family on the asset building program and should trust the department's judgement to see who would be best. This was an effort to give families an opportunity to build assets and it was not his or the department's intention to allow families to stay

on FAIM longer than necessary.

**SEN. ESP** said the bill stated that the program should and it had parts 1,2,3,4,5. Did that mean the programs had to do all of those or they could do either. **Mr. Hudson** said in this case, it was recommended that the program go along with this.

**SEN. CROMLEY** said the program had much potential and he saw it as taking people from the edge of poverty to becoming law abiding, asset owning, income producing, and productive citizens.

**Closing by Sponsor**:

**REP. FACEY** said the reason for the bill was communication so that the department knew the legislative intention but also some members of the legislature had seen and were aware of it and the possible programs. He said it was not a mandated program and the word they were using on Line 27 was "encourage." This was not a study. It was a way of communication between the department and the Legislature and he hoped for a Do Concur.

## HEARING ON HJ 29

**Sponsor**: **REP. STEVE GALLUS, HD 35, Butte**

**Proponents**: **Jani McCall, Montana Children's Initiative (MCI),**
**Deaconess Billings Clinic (DBC),MT Association of Independent Disability Services Providers (MAIDS)**
**Bonnie Adee, MT Ombudsman**
**Steve Yeakel, MT Council of Maternal & Child Health,**
**Montana Human Resource Development Council Director's Assn. (MHRDCA ),**
**Intermountain Children's Home & Services (ICH),**
**Montana Child Care Votes! (MCCV)**
**Kristi Blazer, Kids Behavioral Health**
**Shirley Brown, Child and Family Services**

**Opponents**: None.

**Opening Statement by Sponsor**:

**REP. STEVE GALLUS, HD 35, Butte,** read "a joint resolution of the Senate and the House of Representatives of the state of Montana reaffirming the legislature's commitment to enhancing the state's capacity to improve care for Montana's children and families through strengthening community-based health services." He went on to add several other types of service but they all fell under the community-based philosophy. The resolution was brought to

him by **Jani McCall**, who would address the committee in more detail. One small amendment was made in the House to make the resolution inclusive for all groups involved, by adding one for profit. Originally it had talked about not for profit groups and **Ms. McCall** would explain in more detail where that came from, why it came about, and why it was important.

**Proponents' Testimony**:

**Jani McCall, Montana Children's Initiative (MCI), Deaconess Billings Clinic (DBC), MT Association of Independent Disability Services Providers(MAIDS), YMCA's of Montana**, said she appreciated **REP. GALLUS** bringing forth the resolution for Montana's nonprofit organizations. They believed that it was time for Montana and for the legislature to see nonprofit organizations in a different light. They provided essential services that were an important part of the Montana economy. Montana's nonprofit organizations provided vital services for Montanans including, but not limited to, Health and Human Services, child care, work related and social and recreational services. Many services provided were for individuals with special needs. They created quality private sector jobs, they provided economic opportunity by making investments, they raised money for expansion and growing new businesses. They provided critical state wide work force development and training, they signed both sides of the pay check and worked closely and collaborated with their private for profit partners. In 1998 the nonprofit sector was the fifth largest source of wages in Montana and it was larger than agriculture mining and road construction. Also, in 1998, the 501C3 nonprofit organizations paid their Montana employees more than $638,000,000 in wages. The nonprofit organizations employed tens of thousands of Montanans who paid State and Federal taxes. These individuals bought and rented housing, purchased goods and services, and participated in the economic life of their local communities just as the profit sector employees did. A Medicaid study done recently by **Doctor Steve Seninger** from the University of Montana, which was commissioned by Deaconess Billings Clinic and St Vincent's Health Care, indicated that Montana's health care in a world made up largely of nonprofits, provided 36,000 jobs in the State of Montana. By passing the resolution to the Montana Legislature it elevated the stature and importance of good businesses and recognized the value they brought to Montana citizens and to the economy. **Ms. McCall** said **Bonnie Adee** with **MT Ombusman** had to leave but asked her to state for the record, they supported the bill.

**Steve Yeakel, MT Council of Maternal & Child Health, Montana Human Resource Development Council Director's Assn. (MHRDCA ), Intermountain Children's Home & Services (ICH), Montana Child Care Votes! (MCCV),** said that when he was younger and greener, he was part of a move to help the government work more like a business and now that he worked with some of those businesses he wondered if he were a business, whether or not he would be as interested in working with the government as he used to be. It seemed that the relationship between the state and its business partners for profit and nonprofit could be improved in Human Services. He said the resolution was a commitment to do that and they would appreciate the support.

***{Tape: 1; Side: B}***

**Kristi Blazer, Kids Behavioral Health,** said Kids Behavioral Health was established last session, better known as Children's Comprehensive Services. She said the meat of the resolutions was the resolved language promoting all state government with the Department of Health and Human Services as the implementing agent in the development and maintaining consistent and a complete compendium of community. The amendment that was put on in the House to include for profit entities recognized there was a fabric of community-based activities that included both segments, private and nonprofit, as well as for profit. She said that providing residential treatment for troubled youth was important for community-based services. **Ms. Blazer** quoted an excerpt from the Kids Behavioral Health web page: "Kids Behavioral Health provides quality treatment programs that serve the individual needs of the youth and their families in the communities in which they live."

**Shirley Brown, Child and Family Services, DPHHS,** said the department also supported the resolution. The department was either staffed to or actively participated in three of the amendments to the resolution. There were two actions that were happening during the current session which would enhance the relationship between the department and the private sector. The first one was HJ 13 which was related to the redesign of the Medicaid and Public Dependant Health Care Program. During this redesigned rule they would be looking at how to deliver health care services to children and families better. The second one was the commitment from **DIRECTOR GRAY** to form a new division within the department that would emphasize community based state Medicaid and children's services. Included in the new division would be the Children's Mental Health Services. **Ms. Brown** said

from her perspective in Child and Family Services Division, they could not do what they needed to provide services to abused and neglected children without the private sector, the nonprofit, or the for profit. She said it was because of those reasons they urged support for HJ 29.

**Opponents' Testimony**: None.

**Informational Testimony**: None.

**Questions from Committee Members and Responses**:

**SEN. DUANE GRIMES, SD 20, Clancy,** said he agreed with everything that had been said. It was what had not been said that he had questions about. When community-based programs were viewed in developmental disabilities, the issue came up of the old 1970's institutional issue and the court cases that were driving the legislature now on that issue. He said he was all for community-based programs for those disabilities when they made sense. Community based-programs were not necessarily the community of the person's choice. The Montana Developmental Center was an example that became a major battle ground among all the interested groups on where the community setting should be and what was more efficient. **SEN. GRIMES** said those issues came to mind and he just wondered if it were envisioned in the bill at all. **REP. GALLUS** said he got involved from the ground floor mainly through email and that there were many changes made before they could come to the legislature. He said **SEN. GRIMES** concerns were discussed and they felt that on Line 19, it was appropriate to say "community-based." They had an understanding that there were some difficult decisions that had to be made at times and they wanted it to be permissive, inclusive. The essence initially said they wanted everyone to agree, and that the community-based philosophy was healthy for communities. He assured that it was recognized and they felt the language did not cement that in any way.

**SEN. GRIMES** asked Ms. McCall to add to that.

**Ms. McCall** said it was indicated when looking at Line 19, "whereas when appropriate," ends saying community-based services would be utilized. She thought the language used throughout clearly serviced for any individual who had special needs to be

looking at specifically about that individual and that the language secured that. There was no intent to interfere with that process between an institutional setting or a state agency versus a community.

**SEN. GRIMES** said he did not want to take advantage unintentionally or tie the hands of the department through the document and have it taken care of in the courts. He asked **Ms. Brown** if she would check with **JEFF STERN** or someone from the department to make sure they were comfortable with the way the language was structured.

**SEN. JERRY O'NEIL, SD 42, Columbia Falls,** asked if the community-based services would include an intermediate care facility for the developmentally disabled. **Ms. Brown** said she had knowledge of children's services and of group homes and those kinds of programs, but did not have a personal knowledge about programs for the developmentally disabled.

**SEN. O'NEIL** asked if an intermediate care facility for the developmentally disabled was a community base service. **Ms. McCall** said there were no longer any nonprofit private providers who provided that level of care. They were all state and that what they were talking about here were private nonprofit organizations in the community.

**SEN. O'NEIL** said it seemed to him one of the reasons there were not any intermediate care facilities for the mentally retarded was because of the certificate of need program and the reason they did not give a certificate of need was that there was a $3.6 million dollar financial impact on it.

**MS. BROWN** I cannot respond to that, maybe **Mr. Olson**

**Mr. Olson** said he had been around those Intermediate Care Facility for the Mentally Retarded (ICFMR)issues for a long time. The institutional concept of dealing with people who were mentally retarded had given way to group homes and so the moratorium that **SEN. O'NEIL** referred to in the certificate of need was to help prompt the creation and development of community services, that being the group homes. The only remaining ICFMR was the one operated by the State at Lewistown, which was for the aged. The last remaining ICFMR was a group home in Ronan which dropped the nursing home license and moved onto the group home

model about eight or nine years ago. He said it was not that the state was preventing the development of ICFMR's, but that the whole development of treatment for the developmentally disabled had gravitated toward the group home model. They did not exist because that was not how it was done any more.

**SEN. O'NEIL** asked if the certificate of need program did not prevent them from building that intermediate care facility for the mentally retarded, then we did not have to worry about some day building one. **Mr. Olson** said correct. We did not have to worry about people building one, but under the current Medicaid program and the current federal rules, one could be created which would obligate the state then to deal with it. The postponement was to cement the policy position in place, as a matter of public policy.

**SEN. ESP** said the "appropriate, safe, and practical" was in the WHEREAS section, but not in the THERFORE section. He asked if **REP. GALLUS** would agree to a friendly amendment to put it in there. **REP. GALLUS** said he would.

**SEN. ESP** said his second suggestion would be at the beginning of "THEREFORE", to encourage all branches of state government to work toward, etc., and in that be it further resolved that we provide a copy of the resolution to the Governor and the Chief Justice of the Supreme Court and the Director of Public Health and Human Services. **REP. GALLUS** did not have a problem with that either.

**Closing by Sponsor**:

**REP. GALLUS** thought it was a strong resolution. He said a perfect example was a nonprofit he worked for that started a new project in Butte, developing an early Head Start program. They employed about 40 people in the program. They built two new structures in up town Butte, on East Mercury street, in a very dilapidated part of the community. They landscaped that, made a beautiful building, got people to work, and most important, they provided a much needed service in his community that benefitted families in the community at large.

## EXECUTIVE ACTION ON HJ 31

**Motion**: **SEN. HARRINGTON moved that HJ 31 BE CONCURRED IN.**

**SEN. ESP** had amendments but they were not ready yet. **SEN. HARRINGTON** withdrew his motion.

***{Tape: 2; Side: A}***

## EXECUTIVE ACTION ON HB 693

**Motion**: **SEN. ESP moved that HB 693 BE CONCURRED IN.**

**Discussion**:

**SEN. HARRINGTON** thought it was a great bill and it showed there was a problem out there in this area and it moved it in the direction to correct that. He thought it was one of the most serious problems we were faced with in some communities.

**SEN. DEPRATU** said as an auto dealer, they had to check for additional liens when someone traded in their vehicle. They find liens that were $50,000 to $100,000 on vehicles. He said the $15,000 to $25,000 range was extremely common. He thought the bill was good and it brought notice right up front. Despite gender, if people bring children into the world, he or she needs to be responsible for them. He said anything that would get their attention needed to be done.

**SEN. O'NEIL** asked **Al Smith, Montana Trial Lawyers Association,** what was wrong with the bill. **Mr. Smith** said they did not take a position on the bill because the problem was taking property without notice of opportunity to be heard, which was a violation of their constitutional right to due process. He said he guaranteed the first time the child support enforcement did that, and they took money from someone they should not have, one of his members will get the case and sue for violation of constitutional right and collect money and attorney's fees for it. He said he did not know if that were a reason to kill the bill, but it was something to be aware of.

**SEN. HARRINGTON** said the reason it would come into effect was that paternity was proven. He asked if paternity were proven, how would it be a violation. **Mr. Smith** said the paternity was only one part of the child support. It was also the setting of the amount to be taken, and that was where it would come into

play.

**SEN. DEPRATU** said he understood **Mr. Smith,** but he also knew the department had a firm formula that considered most things. The figure that was come to was very close and if they were off it would not be by many dollars. He thought the chances would be remote.

**SEN. CROMLEY** said there did need to be clear and convincing evidence of paternity on Page 2, Line 11. He thought they were talking hopefully about a temporary support order, which was a common tool currently during a divorce. The court would award that in court and **SEN. CROMLEY** did not see that as much different. The court could eventually decide it was retroactive from the date of the filing as opposed to a 'there after' type of support.

**SEN. O'NEIL** asked **Mr. Smith** what proper notice consisted of. **Mr. Smith** said proper notice would be when a person would get some sort of notice such as with property that it was going to be taken and it stated the reasons why and it gave the opportunity to contest that. If someone was going to come and get a person's property, notice had to be given before it was taken away.

**SEN. BOHLINGER** said earlier testimony was given by **Mr. Olson** about the procedure in which notices were given. **Mr. Olson** had given examples of remedies used to obtain the child support, which sounded methodical. He thought safeguards were built into the procedure that would prevent what was being described. He asked **Mr. Smith** if he were familiar with the methods CSED employed to collect child support. **Mr. Smith** said he did not do child support but he was some what familiar with it. He was not there to hear **Mr. Olson** give examples of remedies. **Mr. Smith** said notice might be given, but the opportunity was not there to be heard. The way he understood the bill that was what would happen: give notice but not give an opportunity to be heard.

**SEN. CROMLEY** asked if **Mr. Smith** had a copy of the bill. **Mr. Smith** said he did not.

**SEN. CROMLEY** said on Page 2, line 14, "an action to establish temporary support commenced by serving notice." On line 17 it said "a party may request a hearing to show the temporary support obligation is inappropriate under the circumstances." **SEN.**

**CROMLEY** said it seemed to him there was an opportunity for the person to be heard.

**Motion/Vote: SEN. ESP moved that HB 693 BE CONCURRED IN. Motion carried 8-0 with SEN. STONINGTON voting by PROXY.**

## EXECUTIVE ACTION ON HB 681

**Motion: SEN. GRIMES moved that HB 681 BE CONCURRED IN.**

**Discussion:**

**Dave Bohyer** said a technical change needed to be made on Page 2, Line 4. The reference number 37-7-701 was incorrect and needed to be replaced with 37-7-107 and could be done as an amendment.

**Motion/Vote: SEN. O'NEIL moved that HB 693 BE AMENDED. Motion carried 8-0 with SEN. STONINGTON voting by PROXY.**

**Motion/Vote: SEN. GRIMES moved that HB 693 BE CONCURRED IN AS AMENDED. Motion carried 7-1 with SEN. ESP voting no and SEN. STONINGTON voting by proxy.**

**SEN. GRIMES** said he would carry HB 693.

## EXECUTIVE ACTION ON HB 90

**Motion: SEN. GRIMES moved that HB 90 BE CONCURRED IN.**

**Discussion:**

**SEN. O'NEIL** had an amendment. **EXHIBIT(phs60a03)** He asked **Ms. Brown** to comment on it. **Ms. Brown** said it would be workable and could do it.

**SEN. GRIMES** questioned the word "entitled" in the amendment. He asked **Mr. Bohyer** what his comments were on that. **Mr. Bohyer** said

the way **SEN. O'NEIL** had asked him to prepare it, was to ensure that the person whose child might potentially be removed, be entitled to have someone there so that he did not have to be questioned without support, so that it would not be just their word against theirs. He said to satisfy **SEN. O'NEIL's** objectives, "entitled" seemed the appropriate word.

**SEN. GRIMES** was concerned that it would imply that every parent should have someone there. If parents do not want someone else there, he did not want to tie the department's hands to make sure someone was there for that person every time. **Ms. Brown** said the way she read it, if the social worker was working with the parent, they could inform the parent they could have someone there, but that was as far they would go.

**SEN. CROMLEY** said the word "may" would accomplish what was wanted. It could be argued with the word "entitled" that a person was "entitled" to have his sister who lived in Florida to be there, but could not afford to pay her way. The state would have to pay her way.

**SEN. O'NEIL** asked if the word "may" were used, would the department have an obligation to inform the person if they had a right.

**SEN. CROMLEY** said it could read "the department *shall* inform the parent or other person responsible for the child's welfare who was considering entering into a voluntary protective services agreement that the parent or other person *may* have another person of the parent's or responsible person's choice present..."

**SEN. GRIMES** said he liked that because it brought it back to the voluntary nature of what they were trying to encourage there. He said if **SEN. CROMLEY** wanted to structure that as a friendly amendment, it would still accomplish **SEN. O'NEIL's** goals and not have any unintended consequences.

**SEN. BOHLINGER** liked that as well. **Mr. Bohyer** repeated it back for clarification.

**<u>Motion/Vote</u>: SEN. O'NEIL moved that SEN. O' NEIL'S AMENDMENT BE ADOPTED. Motion carried 8-0 with SEN. STONINGTON voting by PROXY.**

**SEN. DEPRATU** said there had been earlier discussion on Page 11, Line 9 whether the word should be "the court *shall*" or "the court *may*." **Ms. Brown** said the way it was written in terms of "shall" meant if all three conditions were met, then the court had to dismiss if a party made the motion. The motion would not have to come from the department. It could be a motion made by the parent. It did not preclude, however, the court dismissing a case if the criteria were not met, because that left out that the court "may" dismiss a case under motion of a party, under other circumstances. The reason it was put there was because they believed that getting out of the case when the parents had done everything was important for them. They did what they were asked to do and had done the treatment plan and the child had been home six months. There had been cases where the judge had kept them in a case for 1-2 years after the child had been home six months and the criteria had been met. Changing the "shall" to a "may" completely changes it. What it did was it would then say the only circumstances under which the court could dismiss a case was if the three circumstances were met and that would cause hardship. There were some cases now where the court would dismiss and they recommend the case be dismissed if the child had been home for 2-3 months. Changing the "shall" to "may" did not make it discretionary. What it did was say these were the only circumstances the court can dismiss the case. She preferred not to do that, but keep it as "may," rather than "shall."

**SEN. HARRINGTON** said it was good the way it was because changing it would change the whole meaning.

**SEN. GRIMES** said he was comfortable with the way it was also.

**SEN. DEPRATU** asked about **Ms. Matthew-Jenkins's** amendments, if they would be heard. He thought they should be looked at.

**SEN. O'NEIL** asked **Ms. Matthew-Jenkins** to pass out her amendments and to explain them. **EXHIBIT(phs60a04)**

**SEN. GRIMES** said he was uncomfortable with reorganizing the code and he suggested that if they did not feel comfortable with those that they could go ahead with the bill. If they were, then have someone draft it in proper form.

**SEN. O'NEIL** said he suspected there were things the department would and would not agree to do. He said if she got someone to

help her do a grey bill and went over it with the department to see what they would agree to and then to come back to him with what they could come up with.

**Ms. Brown** said she did get a copy and reviewed them. She said there were very few amendments with which the department would agree. She was willing to work with **Ms. Matthew-Jenkins** but did not think they would have a meeting of the minds.

**SEN. O'NEIL** asked if any of the amendments would be helpful to the public. **Ms. Brown** said she would have to look at them again. Some amendments did substantially change several provisions in the bill.

**SEN. ESP** suggested the department look at the amendments and see if there was anything of substance and bring the committee a report back Monday and look at it then.

**SEN. GRIMES** withdrew his motion to concur.

**SEN. O'NEIL** said he would like to see if the two could take 15 minutes to see what they could agree on and could they meet back Monday or Wednesday. **Ms. Brown** said Wednesday.

**SEN. CROMLEY** said **SEN. ESP** had raised the issue about the judge's signature and he asked the committee members to consider the papers he passed out concerning other judges input.

## EXECUTIVE ACTION ON HB 647

**Motion: SEN. GRIMES moved that HB 647 BE CONCURRED IN.**

**Discussion:**

**SEN. GRIMES** passed out some amendments requested by the Mental Health Association. **EXHIBIT(phs60a05)**

**Mr. Bohyer** had some amendments given to him by Susan Fox for **REP. BILL THOMAS**, the sponsor of the bill. **EXHIBIT(phs60a06)**

**Motion/Vote: SEN. GRIMES moved that AMENDMENT HB064711.adb BE ADOPTED. Motion carried 7-0.**

**Motion/Vote: SEN. GRIMES moved that AMENDMENT HB064701.asb BE ADOPTED.**

**Discussion:**

**SEN. GRIMES** said this amendment was brought by the sponsor. He asked **Mr. Bohyer** if there were substantive change in it. **Mr. Bohyer** said on Page 1, Line 29 there was some additional description of who was included as far as providing health care information. It included physician assistants certified, professional counselors, and social workers. One section was eliminated from the bill. The term "medical treatment" was changed to "health services." The action of medical or surgical care would be removed from the validity of the consent of a minor under Section 41-1-402, which happened in a couple places and was replaced with "health services." The word "consented in writing" was changed to "authorized in writing," which happened on Page 7, Line 11 and Page 12, Line 21.

**SEN. GRIMES** asked **Mr. Bob Olson** to address, remind the committee the purposes of the amendment since it was a large amendment.

**Mr. Olson** said the amendments were the result of many other groups besides the hospitals to make sure the language comported to federal standards. The change of the word "consent" to "authorized," the federal document talked about was a request for authorization, not a request for consent. It was a housekeeping amendment. The section deleted was the section that touched on peer review processes on Page 4, Section 6 in the bill, due to concern by Mr. Smith. The amendment being proposed on Page 13, the method of compulsory process, that was the new section added back into the bill. They had some attorneys that deal with compulsory process that pointed out it was a state process, not a federal process and wanted to retain the standard when dealing with the local judicial systems. It was the language that currently existed in the Uniform Health Care Information Act for compulsory process of Montana. Page 14, Line 4 was another housekeeping amendment.

**SEN. O'NEIL** asked what did it do to the public's access to service. **Mr. Olson** said the statute that defined health care

professionals had fallen behind the statute where people were actually being licensed. Physicians' assistants had emerged in the last seven or eight years in Montana as a licensed health professional. This statute needed to catch up with that. The same would be true for professional counselors added about four or five years ago in a legislative session to expand that to a licensed profession. They were trying to catch up those people who were required to comport with the health care privacy requirements with those who were licensed as health professionals.

**Mr. Bohyer** said the amendments were drafted before the amendment **SEN. GRIMES** proposed and was adopted. Some amendments they were currently going over would drop off because they would not be needed anymore. Amendment 25 of Page 4 of the amendments would disappear. If other changes needed to made due to **SEN. GRIMES** amendment, he would make them.

**Motion/Vote: SEN. GRIMES moved that HB 647 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.**

## EXECUTIVE ACTION ON HB 499

**SEN. ESP** moved HB 499 and he had an amendment on Page 7, Line 15, striking "in" through "department."

**Motion/Vote: SEN. ESP moved that AMENDMENT # 620824SC.SJO BE ADOPTED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.**

**Motion/Vote: SEN. ESP moved that HB 499 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.**

**ADJOURNMENT**

Adjournment: 5:55 P.M.

_____
SEN. JERRY O'NEIL, Chairman

_____
ANDREA GUSTAFSON, Secretary

JO/AG

**EXHIBIT(phs60aad)**