



Children, Families, Health, and Human Services Interim Committee

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59th Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES

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September 12, 2006

Capitol Building, Room 172
Helena, Montana

COMMITTEE MEMBERS PRESENT

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

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

REP. EMELIE EATON
REP. EVE FRANKLIN
REP. DON ROBERTS

STAFF PRESENT

SUSAN FOX, Lead Staff
SUE O'CONNELL, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Attachments

Agenda (Attachment 1)
Visitors' list (Attachment 2)
Member Attendance (Attachment 3)

COMMITTEE ACTION

- The Committee adopted the minutes of June 8 and 9, 2006 meetings.

TAPE 1A

CALL TO ORDER AND ROLL CALL

SEN. SCHMIDT called the meeting to order at 8:35 a.m. Secretary noted roll (**ATTACHMENT 3**). Sen. Schmidt thanked everyone on the Committee for their hard work. She introduced Sue O'Connell as the new staff researcher. Ms. O'Connell gave a brief background of her experience as a journalist and reporter.

ADOPTION OF JUNE 8 AND 9, 2006 MINUTES

It was moved and seconded to adopt the minutes of the June 8 and 9, 2006. The motion passed.

ADMINISTRATIVE RULE REVIEW ISSUES - David Niss

MR. NISS discussed the memorandum he sent regarding DPHHS Compliance with 2-4-302, MCA (**EXHIBIT 1**).

NCSL PRESENTATION - Jack Tweedie, Director, Children and Families Program

MR. TWEEDIE gave a presentation on federal changes in the TANF program (**EXHIBIT 2**).

TAPE 1B

INTERIM STUDY: SJ 37: CHILD PROTECTIVE SERVICES

UPDATE ON DIVISION LEGISLATION AND BUDGET ITEMS - WORKLOAD STUDY - Shirley Brown, Division Administrator, Child and Family Services

MS. BROWN talked about the Division's four legislative proposals:

- 024 - clarify division's role when a child is placed with a noncustodial parent
- 027 - permissive guardianship; addresses issue of children aging out of foster care who still are in need of services
- 035 - amends Title 41, Chapter 3, to comply with federal requirements
- 001 - change timeframe of filing petition after removal child (pending)

MS. BROWN discussed the DPHHS' budget (**EXHIBIT 3**):

- CFSD Overtime - paid to social workers as a routine cost of doing business and if there is staff vacancies because of call outs
- FMAP changes - rate of federal reimbursements; rate decreases from the current 76% to 68.41% in FY2008 and 67.75% in FY2009
- Foster Care Caseload Increase - amount requested in budget reflects a 10% per year increase in foster care
- Mental Health Case Management - SW Caseload Increase - a contingency request because of the Deficit Reduction Act of 2005 has changed the provision of case management to children and has also changed the provision of case management to foster children
- Subsidized Adoption Caseload Increase - 8.15% for FY08 and 7.8% for FY09
- Rent Increases - two offices will be experiencing rent increase
- Replace computers and servers

Ms. Brown discussed new proposals:

- Request of 15 new FTEs in the first year and an additional 5 FTEs in the second year
- Converting modified in-home FTEs to permanent
- Expansion of SSI Program
- Federal law changes because of the provisions in the Deficit Reduction Act of 2005 - 1) federal law change in targeted case management; and 2) the amendment of Title IV-E of the Social Security Act

QUESTIONS

SEN. WEINBERG asked if the federal government had a rationale for cutting the targeted case management. MS. BROWN said that the rationale that is in the law itself states that if there is another party that provides those services to non-Medicaid children, then that party should be providing the services to all Medicaid children and we shouldn't and won't be able to access the Medicaid.

SEN. WEINBERG asked if that made sense or is it a cost shift. MS. BROWN said that her personal opinion is that what they are looking at in terms of Medicaid is to be sure that Medicaid is used for things that CMS says are Medicaid appropriate and this is one of those areas where they thought it wasn't.

WORKLOAD MEASUREMENT STUDY - Shirley Brown

MS. BROWN discussed the Workload Measurement Study (**EXHIBIT 4**).

COMMITTEE LEGISLATIVE PROPOSALS

GRANDPARENTS TAKING CARE OF GRANDCHILDREN PROPOSALS

- LCCF02 (**EXHIBIT 5**) - grants a relative who is a caretaker the power to enroll the child in school and consent to school related medical care
- LCCF04 (**EXHIBIT 6**) - allows continued custody of a child by a caretaker relative if the parent voluntarily leaves the child with the caretaker relative
- LCCF05 (**EXHIBIT 7**) - relative medical authorization affidavit
- LCCF06 (**EXHIBIT 8**) - clarifies the right of a grandparent

PUBLIC COMMENT

KANDI MATTHEW-JENKINS, Missoula, said that in going through those bills, she was concerned about arbitrary comments and that in reading Art. II, sec. 15, and that she doesn't understand what rights they are talking about and that should be clarified in the legal language. She asked whose police powers are we talking about in the statement, "For these reasons, it is the purpose of the legislature in enacting sections 1 and 2 to exercise its police powers for the health...", when the Department of Family Services is an Executive Branch, not a Judiciary Branch, and they don't have any police powers that she knew of. She said that she would hate to see that put into the law that would give them unwarranted authority that they are not granted under the Executive Branch. Ms. Matthew-Jenkins said that she did not understand where there is an issue of immunity from prosecution. If parents aren't immune, then how can a grandparent, godparent, legal guardian, or anybody else be immune from prosecution if harm is done to the child. She said that this language needs to be cleaned up and made more specific and not giving powers to an executive department that they don't have.

TAPE 2A

DAVID NISS, Legal Counsel, said that in reference to Ms. Matthew-Jenkins' comment to police power, police power has nothing to do with acting judicially or like a policeman, it is a term that courts use sometimes to refer to the authority delegated by the legislature to an executive branch agency to make decisions regarding residents' health and welfare that are binding as a matter of law and has nothing to do with acting like a cop. He said in reference to "violates children's rights" in Art. II, sec. 15, it says that unless specifically delineated otherwise, children have all the rights of adults. As to immunity, the reason that the immunity section is in there is because CF04 would grant immunity to governmental employees in the event they are sued by either a caretaker relative or a parent who wants a child returned in violation of the proposed bill.

CHILD PROTECTIVE SERVICES PROPOSALS

- LCCF01 (**EXHIBIT 9**) - creating a child protective services statute revision commission

SEN. WILLIAMS said that SJR 37 resulted because of child protective services statutes that have been found to be unclear. A conference put on by the Supreme Court regarding child protective issues found that there were problems with discovery and the statutes. Kathleen Jenks, Attorney General's Office, stepped forward and worked on issues that she thought were most pressing. Sen. Williams said that she would hope that the Committee would listen to Ms. Jenks' proposed changes so that she could then move forward and present a bill for the session. She hoped that some of the members of the Committee will participate as co-sponsors.

SEN. SCHMIDT said that the Committee has a copy of two emails from Sarah Corbally (**EXHIBIT 10**) containing comments on both draft LCCF01 and LCCF11.

- LCCF11 (**EXHIBIT 11**) - providing for discovery for child protective services court procedures

KATHLEEN JENKS, Assistant Attorney General, Child Protection Unit, discussed all the proposed changes made to Title 41 found in LCCF11.

SEN. WILLIAMS said that Kathleen Jenks and Susan Fox did a lot of work in the draft LCCF11 that is before the Committee. She said that it is a work in progress and would appreciate the Committee's input. She said that although there is a consensus on the draft, they have not heard from the public defenders or the judges on it. She thanked the Committee for their time in listening to Ms. Jenks' presentation on LCCF11.

TAPE 2B

SUSAN FOX said that the Statute Revision Commission is comprised of 11 members with a list of about 5 advisors, plus legislative staff who would work with the Commission, to be staffed by the Department of Justice with an appropriation in the bill for a .5 FTE for 11 months. The original proposal is still before the Committee for their consideration.

PUBLIC COMMENT

KANDI MATTHEW-JENKINS, Missoula, said that she would like to object to the statement that two-parent homes are basically non-existent any more. She said that it is our society that has cleared this country of two-parent homes, not the parents of these kids. She said that she

agreed with Ms. Jenks' statement that it was very radical to rewrite all these provisions and that the system is broken and we need to fix it.

FOSTER PARENTS AND LIABILITY

- LCCF12 (**EXHIBIT 12**) - providing liability insurance for foster parents providing foster care or therapeutic foster care for a youth under 18 years of age placed by a state agency

TWILA COSTIGAN submitted Ms. McCall's testimony (**EXHIBIT 13**). Ms. Costigan said that most of the foster parents take kids because they have a heart for kids. In terms of this bill and this legislation, many parents are unaware of the liability that they are taking on. She said that retention of foster parents is important if you want to have parents available to take care of kids who are in trauma. You cannot have a successful recruitment campaign if you can't retain the parents. She said that providing liability insurance for foster parents will give the foster parents the knowledge and security that the legislature, as well as the state, is supportive of them. She thanked the committee for their attention and support and would ask that they vote in favor of this bill as part of the package that is presented to the legislature.

PUBLIC COMMENT

ANGIE FURLONG, Helena, foster parent, said that this bill is important to show foster parents that they are cared for but also that the state cares about their kids to make sure that if someone was disabled from an auto accident that they would have the finances to make sure that they are cared for.

MELISSA WORTHAN, Missoula, said that she did not understand why the Committee would give liability to foster parents or give immunity to foster parents when if they do something wrong, they are not immune.

JAN PETEK, foster parent, encouraged the Committee to support the insurance aspect of the bill for families that are putting their home and their property on the line for foster children.

LILLIAN GUNDER, Stevensville, said that they are the parents of children who have been unnecessarily taken away from them by the DFS. They are here today like they have been many times before and suggested that there should be a bill to start an investigation of both DFS and APS cases.

SHIRLEY BROWN, Division Administrator, CFS, said that she had information related to insurance for foster parents. She said that there are two issues when it comes to insurance for foster parents: property insurance and liability insurance. She said that they are researching what is available in terms of coverage and researching the costs. They have been working with the risk management people because they are the ones who are responsible for purchasing insurance for all state government.

BILL GIANOULIAS, Chief Defense Counsel, Risk Management and Tort Division, said that LCCF12 directs that insurance be purchased, directs specific things that the insurance should cover, but also states that a foster parent isn't liable for an injury caused by an act or omission of the child, and a foster parent isn't liable for acts committed by the foster parent that would be against the child or may cause harm to the child. He said that the biggest problem with the bill is that the bill would be giving immunity for what would be ordinary negligence and there can be

liability for intentional, grossly negligent or criminal conduct. He said that there are two other things that the Committee might want to consider: the immunity provision which was addressed in the Issues and Options paper and the question of constitutionality. He said that it is important to review what it is that you want to do, and how you execute that should you decide to purchase insurance for foster parents.

KANDI MATTHEW-JENKINS, Missoula, said that, again, we come to the issue of immunity. She said that if the Committee would do some research on immunity for caseworkers, judges, foster parents, they will find that many cases are being fought and won in court by people who are not immune from prosecution when a criminal act has been done or a constitutional violation has been made against parents. She said that you should stop the problem in the beginning and it begins with the caseworkers on the cases and anonymous phone callers and undereducated central in-take workers who are blind, who are immune, and making judgments without even seeing people. Immunity issues are huge, they keep parents from being able to go forward to bring their families back and reunite because everybody is covered by a government protection.

METHAMPHETAMINE BILL - Pam Bucy, member of the Drug Endangered Children Board

Ms. Bucy presented legislation (**EXHIBIT 14**) proposed by the Drug Endangered Children Board. Ms. Bucy said that the Board is an inter-disciplinary group consisting of social workers, medical community, and law enforcement community that are trying to track children who have meth addicted parents throughout the law enforcement system, the court system, and to trace their medical history as a result from effects of methamphetamine use in their house. This bill furthers that mission in that it adds to the endangering the welfare of a child statute to include methamphetamine related crimes. Ms. Bucy said that they are finding that if you produce or manufacture meth in a house with children, if you possess any of the toxic materials for the use of meth in a house with children, or if you cause a child to inhale secondhand smoke of meth use, you are endangering their welfare. She said that the point of Drug Endangered Children Boards across the country is to trace the long term medical impacts of the use of meth by secondhand smoke, the toxic chemicals, and what that does to both the physical health and emotional health of children.

PUBLIC COMMENT

There was no public comment.

TREATMENT COURTS - Rep. Tom McGillvray, HD 50, and Damon Gannett, Attorney, Billings

MR. GANNETT said that he is an attorney and has been performing duties as a guardian ad litem and in Youth in Need of Care matters in Yellowstone County since 1977. Policy decisions are those that have the greatest potential to affect the greatest number of children possible. The advantage that Drug Court presents to the management of these cases is that it presents a level of accountability that previously had not been seen in any Youth in Need of Care matters. The accountability factor is extremely important and is a major component for the success that they have had. They have made a positive impact on the lives of the children whose parents have been involved in Drug Court as well as on the Drug Court parents. Mr. Gannett said that it is labor intensive, that the numbers of parents that are able to be involved in Drug Court at any period of time appear to be a relatively small number, but that given the success rate and the difficulty of the task, Drug Court is a wonderful investment in the future lives in the children who have parents that have been chemically dependent and have come in contact with their Drug

Court.

TAPE 3A

REP. TOM MCGILLVRAY said that his involvement in Drug Court is recent but encouraging. All of us who serve in the legislature and who are concerned about the issue of drugs in the state of Montana know that most, if not the large majority of our prisoners in the State Prison systems, are there as a result of drug related crimes, and that it is extremely expensive to house and rehabilitate someone in prison. Rep. McGillvray said that Drug Courts are providing an alternative to that, not just in holding people accountable and being successful in helping people regain their independence from drugs, but they are also saving the state financial resources. He said that he would like encourage the Committee to consider legislation which 1) either shifts resources such as FTEs from other services that relate into Drug Court; or 2) financial resources from other agencies that are being benefitted by the productive work of Drug Courts; or 3) new funding. Rep. McGillvray presented to the Committee the Billings Drug Court's Essential Services Budget for their record **(EXHIBIT 15)**.

QUESTIONS

SEN. O'NEIL asked if it would be better to change our laws and give more importance for the judge to back up the people in the probation and parole offices to allow them to do some of the functions of the Drug Courts, rather than have those people come before the judges. MR. GANNETT said that the problem with dealing with the population once you get them involved with adult parole and probation is that they are grown. The adult probation and parole office generally does not become involved with management of the welfare of the children of those participants. One of the ideas behind Drug Court is that you intervene at a time when the children are young enough so that the parents can make the changes and then they can raise their children.

SEN. O'NEIL asked if it would be possible to amend statutes so that when a person comes before the judge the first time, the judge could send them directly to the probation office and not to Drug Court and give the probation officer the power to consider the children and families? MR. GANNETT said that their drug court program is entirely voluntary. No one is ordered to come to it. It is presented as an alternative to parents who are already involved with the Department of Public Health and Human Services as a result of their addiction.

SEN. ESP asked if Rep. McGillvray had an idea of how much funding is need for Essential Services. REP. MCGILLVRAY said that Yellowstone County Family Drug Treatment Court's Essential Services are \$165,000; Custer County Treatment Court is \$70,000; Missoula Youth Drug Court is \$141,000; and the average of those might give the Committee an idea of the costs.

PUBLIC COMMENT ON LCCF01

There was no public comment.

BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS - Rep. Paul Clark

REP. CLARK presented the Montana Board of Private Alternative Adolescent Residential or Outdoor Programs Report to the Committee **(EXHIBIT 16)**. This was a report of findings to the

Economic Affairs Interim Committee.

QUESTIONS

SEN. WEINBERG asked what happened to the five programs that did not respond, why were they not included in the report, and did Rep. Clark think that if they got information on them that it might skew the results that he had already found? REP. CLARK said that he is only familiar with three of the five. One program is run by a lady who objected to regulators coming onto her property and she would consider that to be an affront to her individual freedoms. The other two are religious programs and had difficulty in ascertaining as to whether or not this law applied to them, and even though they were not affiliated with the church, there was still some resistance because of their religious philosophy to adhere to state regulations which they might feel might infringe upon that philosophy. Rep. Clark said that the majority of their results covering over 80% of the population that is being served by these programs probably won't be skewed by programs which he believes are extremely small. He said that the question before the legislature would be compliance authority. He said that they would like to mandate that these programs register and that there will be a penalty if they don't register.

SEN. SCHMIDT said that in the list compiled in 2004 there were about 34 residences in Montana; have some disappeared or stopped, or couldn't be found; what happened to those residences? REP. CLARK said that at the time there were somewhere between 35 and 40 programs. Some may have fallen by the wayside and are no longer in operation since that list came out. Some programs, after being examined, don't qualify and some never existed as programs.

TAPE 3B

SEN. SCHMIDT asked Rep. Clark to explain why there are some programs that do not have licensed or certified staff. REP. CLARK said that that depends on what the programs are servicing. For example, if it is a religious-based program, they may have a staff that is servicing their clientele based on the religious philosophy. They may be dealing with substance abuse issues by not having substances available and speaking to that from their religious philosophy rather than from chemical dependency philosophy. In that case, there wouldn't be a licensed chemical counselor there.

SEN. WEINBERG asked why religious-based operations were not included in the report. REP. CLARK said that at first all programs were included in the bill. There was an amendment put on the bill in the House because one of the programs, a religious program, had an objection and they felt that it was infringing upon their religious freedom to have to comply with government regulations. That amendment in HB 628, exempted programs that were officially affiliated with churches.

SEN. WEINBERG said that he would make a recommendation that they go back and include the church-based operations as well. REP. CLARK said that the Board doesn't have a position on that. He said that that is an issue for the legislature to decide because it is a contentious issue, much like the issue of home schooling.

PUBLIC COMMENT

CINDY BREEN, Program Manager for the Private Alternative Adolescent and Outdoor Programs, clarified the issue with the schools and the number of registers and the discrepancy

in the numbers. She said that they actually had a couple of faith-based schools that have asked to join the Board and have signed on as members. On the original list, she added that there were at least three on the original list that had contracts with the Department of Public Health and Human Services which exempted them from being on their list. That would account for some of the schools that dropped off from the 35 or 40 to the 29 that they have now. Of the 29, one of those five is a partial registration in that the school couldn't afford the fees but has made a partial payment. There are two other schools that they have actually had contact with. There was some confusion with them as far as the registration, plus there was a new association that became active about the same time this Board did. (Note: Ms. Breen refers to the programs as schools.)

RECESS UNTIL 1:00 p.m.

INTERIM STUDY: SJ 41: MENTAL HEALTH CRISIS RESPONSE

AMDD Division Legislation and Budget Items - Lou Thompson, AMDD, Bureau Chief; and John Chappuis, Deputy Director, DPHHS

MS. THOMPSON requested that discussion on AMDD legislation be postponed until September 13. She said that the three budget items are topics which Ms. DeCunzo has covered with the Committee in the past. There has not been any substantial change in what their proposal is from what she has discussed previously.

72-Hour Presumptive Eligibility and Support

This is a proposal that provides some funding and some limited reimbursement to hospitals that provide a period of stabilization for individuals who are uninsured in the community. This proposal includes the development of professional support for hospitals and other sites where an individual may be admitted or committed in a jail or in a hospital and provides for psychiatric support for those facilities as they attempt to develop a reasonable plan for the treatment or the disposition of the individual.

Community Services Development Proposal

The second proposal is the Community Services Development Proposal. First, it would provide support services for individuals being discharged from the State Hospital; provide some funding for community support that would assist in a timely discharge of an individual and help the individual get established in the community after a hospital stay, and provide some medications for the individual upon discharge. Second, the implementation of community support liaison officers. Third, the development of a peer support implementation plan. Fourth, contracting for a workforce development and retention study.

Meth and Chemical Dependency Treatment Expansion

The third proposal is a meth and chemical dependency treatment expansion. This is a proposal that will develop up to eight community facilities, group home-type facilities for individuals who are stepping down from inpatient chemical dependency treatment or those who are at risk of going into inpatient chemical dependency treatment and are designed to provide a long term treatment for individuals who are methamphetamine recovering and/or who have a serious mental illness.

JOHN CHAPPUIS, DPHHS, spoke on the type of services on crisis stabilization that they want to establish in the community. He said that the Department remains committed to the 72-hour SDMI. One of the things that has recently happened is the Department was able to re-route

about \$400,000 per year into Crisis Stabilization Services that would not be necessarily targeted towards hospitals. These would be more in the community to be handled as services. The idea being is not to inappropriately place individuals into the State Hospital and also to provide them with the cool down period to where they can receive the appropriate services that are available through the public mental health system. At this time, however, the \$400,000 has not been approved by the Governor's Office.

QUESTIONS

SEN. WEINBERG asked if the 72-hour program were to be in place, would that decrease the population at the State Hospital, and increase the population in the community of those people who need those services, or would it be some sort of combination. MS. THOMPSON said that it is likely to be some combination. What she anticipates will happen is that initially there will be a period of time in the community when law enforcement, courts, and the decision making authority people learn that there is another place to put them. She expects that there would be a decrease in a number of court-ordered and emergency detentions at the State Hospital.

SEN. SCHMIDT said that she has received letters from the Gallatin County LAC, the Cascade County LAC, NAMI, and the Central SAA encouraging that MHSP receive adequate funding. She asked if Mr. Chappuis could comment on that. MR. CHAPPUIS said that they do not have money in there at this time to be able to put it into MHSP. The priority is to try to slow the growth in the State Hospital so that they don't end up with supplemental appropriations.

REP. WARDEN asked Ms. Thompson to enlighten him in terms of the thought process that the Department went through to make it so that the Hospital was the only resource for a 72-hour presumptive eligibility. MS. THOMPSON said that when the Addictive and Mental Disorders Division began its EPP process, they started with a list of all of the ideas that they had for the coming biennium that included all of the things that were recommended to them from their listening tour and from the Service Area Authorities. As the EPP process evolved, their list was then blended with the list of all of the other divisions within the Department. Choices had to be made and the things that they had at a high priority, had other divisions' priorities included as well and a line had to be drawn financially. What they ended up with were three or four proposals that appeared to be fragmented and didn't connect to anything and didn't necessarily make good sense.

REP. WARDEN asked if what she is saying is that they are restricted to hospitals is because it will save money. MS. THOMPSON said that it will save money and that individuals will be diverted from the State Hospital, and if it saves money insofar as individuals who are currently uninsured, some of them will have the ability to receive stabilization within the community and to not be transported. For many individuals in the state, if you're not on the mental health services plan, and if you have a serious mental illness, or you experience a psychiatric crisis, the only place where they can get treatment is at the State Hospital because they don't have anyone to pay for it.

REP. ROBERTS asked Mr. Chappuis if he felt that the rising population in Montana plays into the increasing pressure of more patients in Warm Springs; does he feel that some of the intervention programs are trying to keep people out of the correctional institutions, and is Corrections benefitting from what is going on so that more people are being shipped to mental health. MR. CHAPPUIS said that he believes that the population of Montana plays into how many people are in the State Hospital, but the social pressures that have been identified and

emphasized with chemical dependency also play a part into the population increase. He said that he also believes that some intervention programs identify those individuals, and if appropriate, those individuals are transferred to the State Hospital. He said that it is hard to get those people home from the State Hospital because their living has been disrupted, they don't have a place to live anymore, or they don't have family ties or friends and their support system is harmed.

SEN. ESP said that at some point somebody has to have a better answer than what we have been getting on why the 72-hour presumptive eligibility wouldn't follow the person and not the institution. MR. CHAPPUIS said that when you are talking 72-hours, it is an assessing or calming period and they are not going to be cured. He said that there is also the licensing issue. If you go over 24 hours, you are no longer outpatient, you are inpatient.

CHILDREN'S MENTAL HEALTH, UTILIZATION REVIEW - Mary Dalton, Division

Administrator

Ms. Dalton discussed the memorandum regarding proposed competitive Centers for Medicaid Services demonstration project (**EXHIBIT 17**).

TAPE 4A

Ms. Dalton discussed the memorandum regarding Proposed Changes in Children's Mental Health Services (**EXHIBIT 18**).

QUESTIONS

SEN. WEINBERG asked why we are using First Health, which is located in Tennessee, and not an in-state provider. MS. DALTON said that when they issued an RFP for providers no in-state groups responded. She said that she had looked at utilization review over the years, and there were parts of that service that were expensive to provide. She said that First Health offers a reviewer in each of the regions who is familiar with that region. First Health is an out-of-state corporation that has a Montana presence.

Sen. Weinberg said that there is a transportation issue in Montana where there are areas where there are no services and a person has to be transported to an area where they can receive those services. SEN. WEINBERG asked if Ms. Dalton considers the transportation issue important enough for this population that something should be done about it. MS. DALTON said that Medicaid will pay for private transportation to a service but they only reimburse at 13.7¢ per mile; they did look at raising that rate but it did not make it into the final cut of the Executive Budget. It is less expensive to reimburse using taxis and commercial transportation.

SEN. WEINBERG said that his concern is the availability of transportation in many areas. What happens to the SED children who can't get treatment because of transportation limitations. He feels that transportation is equally as important an element to children's mental health and getting them to treatment should be as an important decision as the treatment itself because one won't happen without the other. He said that this may be something that the Department needs to take back and be responsible for.

REP. ROBERTS asked why there is an increase of out-of-state patients. MS. DALTON said that they saw the increase happening at the same time that they began having licensing problems in the Butte area residential treatment center when they had looked at some children

who had problems too difficult for them to handle at that time. The other area might be the increase in acuity.

PUBLIC COMMENT ON AMDD MENTAL HEALTH

KANDI MATTHEW-JENKINS, Missoula, said that she didn't have comments but questions concerning the children's mental health.

- She wanted to know if it was true that there are children at Shodair who are two and three years of age.
- She said that since there is Shodair and Children's Comprehensive Services, why are we saying we don't have any facilities in Montana that they can stay in.
- She said that she would also like to know the percentage of these children that come into the mental health system via Child Protection Services with a myriad of attachment disorders, schizophrenia, bipolar diagnoses.
- She would like to know who is diagnosing these mental disorders; is it the people involved with child protection cases, or is it outside psychiatric care that doesn't have a vested interest in the Department.
- She would also like to know why we are having so many children with problems. She said that she wanted to see if it is a systemic problem or if it is an actual organic, emotional problem.

She said that before any discussion of any kind of money is being spent, some of those questions need to be answered thoroughly.

CURT CHISHOLM, Special Project Coordinator, Rocky Mountain Development Council, said that if the state was serious in trying to reduce the numbers in the State Hospital, DPHHS and AMDD need to form the necessary partnerships for the development of community-based inpatient treatment programs and facilities; change the reimbursement policies to be flexible to the point that these facilities and programs can operate; assist in the capital construction or remodeling costs for these kinds of facilities; and to be more flexible with its licensing prerogatives. Mr. Chisholm said that not only does it make fiscal sense, it is the appropriate thing to do. NAMI representatives all over this community would like to encourage the development of these things and let the local people develop these programs to reflect the needs of their local communities.

MICHELLE LEWIS, Vice Chair of WSSA, said that she is receiving disability income with Medicare benefits. She is embarking on a part time self-employment which will interfere with her mental health service plan benefits, which are very important in the face of the peer initiatives around the state. For those on disabilities that qualify for Medicare, it is important to note that Medicare does not cover case management, crisis stabilization, and groups such as Dialectical Behavior Therapy. These are services that support individuals in recovery. She said that in her opinion, the Montana Mental Health Services Plan increase to \$200 and the funding to follow it is critical.

PATTI JACQUES, mother of mentally ill child, said she found out that there were no services available when her child needed help. When she called the Crisis Line, they referred her to the police. If it wasn't for the police, she said that she doesn't know what she would have done to have kept her son alive or possibly kept any harm from anyone else. She said that it is important to provide staffing for these facilities if you want the numbers to go down at the State Hospital.

LILLIAN GUNDER said that in 2001, her son was deeply upset because his grandfather had passed away. The DFS case worker or the counselor he was seeing didn't help him and that has caused the problems that we have now. With this new program, she said that it might have changed the whole outcome of their family problem in his life.

TAPE 4B

SERVICE AREA AUTHORITY UPDATE

TOM POLUSO, Chair of Central SAA, member of MOAC and Gallatin Local Advisory Council, Chair of NAMI Bozeman

JOAN DALY, Eastern SAA, member of Mental Health Oversight Advisory Council, member of NAMI Billings, Local Advisory Council and Community Crisis Center

CHARLES BAKER, Western SAA, vice chair of Hamilton Local Advisory Council, consumer of mental health services

TOM BARTLETT, chair of Western SAA, chair of Kalispell Local Advisory Council, consumer representative for the State of Montana for NAMI

CHARLES BAKER gave an update on the Service Area Authority (**EXHIBIT 19**).

TOM POLUSO spoke about a letter from the Central Service Area Authority to Ms. DeCunzo of AMDD regarding critical funding for Community Mental Health Services (**EXHIBIT 20**).

JOAN DALY said that the 72-hour presumptive eligibility would cover a broader range of services and she supports the Board's initiative to get this as a priority. She said that currently, the mental health service plan does not cover inpatient hospitalizations but that might be a better way of funding certain types of inpatient care.

TOM BARTLETT commended the Committee for their work on the Gravely Disabled Bill. He said that lawyers from the Treatment Advocacy Center in Arlington, Virginia, believe that the statutes in the state of Montana are sufficient, but the one item that they feel that needs to be addressed is education of county officials and mental health professionals. This information is contained in the copy of his email to Ms. Fox (**EXHIBIT 21**).

BILLINGS COMMUNITY CRISIS CENTER UPDATE - Joan Daly, Board Member; and Tylena Merkel, Director

MS. MERKEL gave an update on the Billings Crisis Center that has been opened for three months. She said that they have been developing and redesigning and working to meet the needs of the mentally ill in the Billings community and to educate providers as well as referral sources about our services. They have not been able to open 24/7 yet because of a lack of sufficient staff in order to be open. Ms. Merkel distributed and discussed several graphs depicting the living status, the total number of clients since June 14, 2006 to present, and referral sources of clients (**EXHIBIT 22**).

MS. DALY thanked AMDD for the grant funding that will help them promote other programs and help them develop their Wellness Recovery Access Program. She said that they are just starting the crisis intervention team activities to get their police and sheriff's departments and other key people in their community trained in crisis intervention. They have also been able to expand their Pathways Program to other hospitals in other areas in the eastern region.

QUESTIONS

SEN. ESP asked if Ms. Merkel has thought about doing some 90-day or 6-month followups. MS. MERKEL said that they do followups a week later and that they are doing followup phone calls. They have a survey that they designed with such questions as, "did you get the services we referred you to", "how were you received by those services", "did those services help", "in reflecting back, was the Community Crisis Center the right place for you to come".

BREAK

COMMITTEE PROPOSALS AND COMMITTEE ACTION ON DRAFT LEGISLATION

SUSAN FOX gave a brief overview of the LCCF07: Gravely Disabled; and LCCF09: Mental Health Parity (**EXHIBIT 23**).

PUBLIC COMMENT ON LCCF09

MIGNON WATERMAN, said that she had the pleasure of carrying the original mental health parity bill when she served in the State Senate. She thinks that this is the next logical step. She believes that the legislation that is on the books in Montana now requires mental health coverage but there isn't any enforcement. She urges that the Committee look at what happens if an insurance company does not comply with the statute.

ANITA ROESSMANN, Montana Advocacy Program, said that the Montana Advocacy Program would support a bill calling for insurance parity for people with mental illness. She said that for most people the obstacle to getting treatment is not having a paying source, and therefore, not having access to it. When people don't have access to services, there will be a crisis somewhere down the road, and that is where the folks at the State Hospital come from. She feel that it is critical to free up resources in the state and come to a more rational system of care.

BONNIE ADEE, Mental Health Ombudsman for the State, said that she would suggest that the words "must provide a scope and level" replace the words "must provide a level of benefits necessary for care and treatment". She is concerned that the word "level" means quantity, amount of, and she thinks that "scope" is quality and variety and diversity. She would like language to reflect something that requires not just level, but quality and type of service.

KATHY MCGOWAN, Community Mental Health Centers, said that they have long supported parity. She gave the Committee a copy of an article from the New England Journal of Medicine that supports the idea of parity (**EXHIBIT 24**). Ms. McGowan said that there are many plans that do not follow the mandate and people think they have coverage when they don't.

TAPE 5A

LCCF13: Amending Provisions for Behavioral Health Inpatient Facilities to Behavioral Health Facilities (Secure Crisis Stabilization)

SUSAN FOX said that LCCF13 (**EXHIBIT 25**) would fill in the licensure category for those areas which Mr. Chisholm had discussed earlier. This bill intended to use the old BHIF statutes that were department-controlled oriented and hospital-based for inpatient facilities that were an alternative to the State Hospital and allow the Department some authority to adopt rules necessary for those facilities. She said that she talked to the licensure people at the Department and they suggested changes for language to make sure that the Department is

adopting standards for the life, health and safety, that they are not insuring the life, health and safety of the individuals. The two characteristics that she put in the rulemaking were: length of stay duration and whether or not they are medically stable.

PUBLIC COMMENT ON LCCF13

ANITA ROESSMANN, Montana Advocacy Program, said that she did not remember why the behavioral health and patient facilities were described as facilities for people who have been involuntarily committed for care and treatment. She said that it isn't necessary for somebody to be involuntarily committed to a facility in order for Medicaid to be billed. Medicaid is taken care of in the description of BHIFs because if they are facilities of 16 beds or less, they are not considered facilities for which the feds will not pay Medicaid dollars. She said that she has heard stories about people who were driven voluntarily to the State Hospital only to be told that they have to be committed in order to be admitted to the State Hospital. You can go to the State Hospital if a mental health professional certifies that your level of need rises to the level of the State Hospital. She said that it should be possible in this state to admit yourself for this level of care. Each one of us should have this level of care at our disposal for those times when it is necessary, and it should not be necessary for us to get in front of a judge and be relegated to a status of reduced civil rights in order to get medical care.

SUICIDE PREVENTION - Crisis Lines 2-1-1 - Jane Smilie, Public Health and Safety Division, DPHHS

MS. SMILIE distributed a report on the progress they made on the 2-1-1 Telephone Service (53-1-704 MCA) (**EXHIBIT 26**). She said that the Governor did not sign the bill nor did he veto it. They decided to form a work group to work on the bill. The work group brought together stakeholders that mirrored what is outlined in the report, which included call centers, health and human service providers, advocates and people from the Department. She said that the group met and will have a draft proposal by November 1. Ms. Smilie said that progress has been made and that call centers have created a statewide database of health and human services and is available as a website (**EXHIBIT 27**). They have increased their service area to about 20 counties and are planning on expanding to another 20 by February 2007.

QUESTIONS

REP. FRANKLIN asked if Ms. Smilie sees any requests coming forward this session for funding or restructuring. MS. SMILIE said that at this point, there is no request in their budget. She said that they need to continue to work with stakeholders to try and come up with ideas of what would a more robust planning phase costs and/or what might an option for statewide service delivery costs.

LCCF10 - TRANSPORTATION (EXHIBIT 28)

DAVID NISS said that not only is it thought that sheriffs have to transport the mentally ill, but that there is also a legal requirement that persons who need mental health treatment should be restrained. He said that there are no provisions in law that makes that requirement just as there is no provision that sheriffs provide transport in the first place. He said that this bill was drafted for that reason as new law, there's no current requirement to amend. He pointed out another thing for the Committee's consideration that LCCF10 only deals with physical restraints; i.e., handcuffs. This does not deal with chemical restraints.

PUBLIC COMMENT

JOHN HONSKY, RN, Missoula, distributed his testimony in support of LCCF10, "Transportation

with Dignity" (**EXHIBIT 29**). He encouraged the Committee to pursue legislation on this issue.

ANITA ROESSMANN, Montana Advocacy Program, said that what people remember the most years after commitment is the transportation and the way they were treated by law enforcement officers. It is the foremost and most terrifying and most humiliating moments of their lives and is vividly remembered and leaves scars. She urges the Committee to support LCCF10.

CHARLES BAKER, consumer of mental health services, said that he liked Section 4 of LCCF10, allowing someone to be accompanied by a peer support person during transport.

KATHY MCGOWAN, Montana Sheriffs and Peace Officers Association, said that the Association is not thrilled about LCCF10. She said that after asking the members of the Association, many said that there should be more discussions on more community services so they don't have to be doing the transports; that this bill is full of liability issues; and soft restraints are not reliable. She said that the direction that they should go is contracting out to counties for this service. Contracting has its deficiencies as well, but the sheriffs are familiar with that. Ms. McGowan said that by pursuing this bill, we are only further entrenching ourselves into something that we all say isn't right and that we don't want.

CHERYL WOOD, Associate Director of MACo, said that MACo provides insurance coverage for property and liability and workers compensation to their counties. MACo has significant concerns over the drafting of LCCF10 in that there are some serious exposure for liability, injury, and workers comp claims. They agree that these people need to be treated with dignity and respect but they are not sure that this is the answer. Law enforcement's job is to protect public safety, they need to restrain these people to protect themselves, to protect the public, and to protect the individual. She said that they would propose that the state assume transportation, liabilities and costs and take sheriffs and deputies out of it. She said that MACo will oppose this bill if passed in its present form.

PATTI JACQUES said that she is in favor of the bill and that restraints do leave a lasting impression on the consumers and the patients.

LCCF07: Gravely Disabled

SUSAN FOX talked about LCCF07 (**EXHIBIT 30**) to include the condition of being gravely disabled in the definition of "emergency situation" for the purposes of involuntary commitment of persons with mental illness. She said that since we don't use the term, gravely disabled, but the more you look into it, the more it reveals the differences in practice and not necessarily in statute.

PUBLIC COMMENT on LCCF07

CHARLES BAKER, consumer of mental health services, said that he would not like to see a law passed to reword some things. He said to leave the current statute as is, and that 53-21-1226(1)(d) is comprehensive enough. He said that Montana law is sufficient, it is just the practice of it and that to educate law enforcement, such as what is going on through the state of Montana with NAMI for the crisis intervention training, also county officials and mental health providers, to have them better educated, that there is this option. Also education of families and friends. If there are no services in the community, then the communities look like they are electing to send them off to the State Hospital and let the state pay for it. If there is the 72-hour presumptive eligibility for hospitals and community health centers, that can help and also

including an increase in crisis service fundings.

TAPE 5B

ANITA ROESSMANN, Montana Advocacy Program, said that this committee has heard that we have a system in which communities are primarily responsible for responding to mental health crisis; the committee has heard that communities do not have comprehensive, well-working plans, people do not know where to go, emergency rooms are stressed and there are not enough beds; the committee has heard that people are ending up in crisis because the waiting list for services are so long and people have no way of paying for services so they cannot access them. She said that it is troubling to her that there is a bill that addresses the failure of our system to be available to and responsive to people and the way that we are responding is by imposing yet another legal liability on those people and making it easier to commit them. She said that we need to have adequate crisis response in our community and we need to respond comprehensively. She said that she did not think that this bill is the solution to a problem.

LCCF14 - Professional Persons

SUSAN FOX said that LCCF14 comes at the request of the Montana Psychological Association (**EXHIBIT 31**) to include psychologists as professional persons. The bill as drafted does not include the word "licensed because psychology could be a degree for which you may get a degree but not licensure and is different than a medical doctor or an APRN, which does not refer to the licensure statute. If the committee goes forward with this bill, the committee may need to amend it to accomplish the goal that it was intended.

PUBLIC COMMENT on LCCF14

PATRICK DAVIS, Ph.D., Licensed Psychologist, Great Falls, said that as a Montana psychologist and a representative of the Montana Psychological Association, he expressed his support of LCCF14. The Montana Psychological Association has issued a formal statement in favor of this amendment to the statute with the change of including the word "licensed" before the word "psychologist". The Association is also in favor of the language as written. He distributed his written comments on other matters which the Committee is considering today (**EXHIBIT 32**). He said that the most important thing he has to say is that the Montana Psychological Association supports the proposed amendment and believes that moving forward with this bill will help accomplish one of the goals of this committee, which is to make some progress in closing the gap in the mental health crisis response system. The reason is, if psychologists are included under the statutory definition of a professional person, that will make a substantial number of additional professional persons immediately available to assist in the civil commitment process both at the time of initial evaluation of a person to whom a petition has been brought and when that person requests his statutorily allowed second opinion evaluation.

REPORT ON EARLY CHILDHOOD SUMMIT - Mary Jane Standaert, Head Start

MS. STANDAERT gave a report on the Governor's Early Childhood Summit that was held in June 2006. She said that she has been the Head Start State Collaboration Director and the Coordinator for the Early Childhood Comprehensive Systems Grant. The Early Childhood Comprehensive Systems Grant is a maternal and child health grant in the Department of Public Health and the Head Start Grant is a grant through Health and Human Services. She discussed early childhood school readiness (**EXHIBIT 33**).

PROPOSED LEGISLATION

JUDY SMITH, homeWORD, said that it is important to know that families are finding it harder and harder to meet the basic needs of their children and themselves. We are still in the top number of states for poverty, particularly child poverty, and we are still in the top number of states for people uninsured. People need extra income and they need support services that they can keep on with their lives, so that they can get to work, so that they can do the basic things they need to do to be a family. She discussed the legislative proposals (**EXHIBIT 34**) and said that she is looking for sponsors.

PUBLIC COMMENT

AARON CHRISTIANSEN, Hamilton, submitted his testimony to the Committee regarding his situation in trying to get custody of his children (**EXHIBIT 35**).

TAPE 6A

ED MILLER, Billings, said that there is a hole in the system. He said that he believes that there is a need for the department but there needs to be accountability. Mr. Miller discussed his family situation and that he feels that his children have been abused by the system. He said that there are many families asking for help and there is no one they can go to.

KANDI MATTHEW-JENKINS, Missoula, said that her testimony is an answer to Sen. Weinberg's comment about the suicide rate between people of 10 years of age and 24 years of age. She said that she received information from NAMI Montana that said suicide is the third leading cause of death in youth aged 15-24. Ms. Matthew-Jenkins told of the suicide of a young man in Pine Hills who is a victim of the system and that she has asked that the cases be looked into for their involvement in government intrusion into their lives. She feels that there needs to be an investigation and there need to be prosecutions.

COMMITTEE ACTION ON PROPOSED LEGISLATION

LCCF02 Granting to a relative who is a caretaker but not a parent of a child the power to enroll the child in school.

SEN. O'NEIL asked if, as stated in (4)(a), a person who acts in good faith reliance on a caretaker relative education authorization affidavit is basically immune, wouldn't that apply whether we had this bill or not, and if they act in good faith on an affidavit, are they subject to liability? Do we need that part in the bill, and if we didn't have that part in the bill, would we need a 2/3 vote for it. DAVID NISS said that there are governmental immunity provisions in CF02, 04 and 05. It is because of the existence of those provisions in those three bills that all of them carry a section towards the end requiring the 2/3 vote. The reason is because the Montana Constitution says, "the legislature can't grant immunity to governmental entities without passing it by at least 2/3 vote of each house." How the staff has implemented that requirement of the constitution is to put in every bill where there is immunity provision, this section that says, "reminds you that the bill has to be passed by 2/3 of each house". Mr. Niss said that it is not 2/3 of this committee, it is 2/3 of each house. That provision has to be in the bill if the immunity provision stays in the bill. You take out the immunity provision, the 2/3 vote requirement comes out of the bill, and then it only has to pass by a majority of each house.

SEN. O'NEIL said that his question is, what liability would a person who acts in good faith without reliance on such an affidavit actually have anyhow without us giving them immunity. It

seems to him that if they act in good faith, he can't imagine that they would have virtually any liability. DAVID NISS said that a plaintiff may not see it that way. SEN. O'NEIL said that yes, the court should throw it out on hopefully a motion for summary judgment or motion to dismiss at the beginning of the case. He didn't see where they would have any liability that would stick to them. DAVID NISS said that it depends upon the facts of the case.

DAVID NISS said that he wanted to raise an issue and that is there is some differences between some members of the committee over a provision in all three of the bills, requiring that the DPHHS treat the affidavit as an allegation of abandonment and requiring the Department investigate the case. He is raising that because the last conversation between him and Sen. Esp about that provision, Sen. Esp objected to it and a solution to that was a discussion in the committee. This is now the next committee meeting after these four bills have been drafted and that provision is in LCs02, 04, and 05.

SEN. ESP said that since his conversation with Mr. Niss, he had visited with the Department about it and there is an informal process that they do on something like this, rather than a full blown investigation. He said that he thought that when we get to the session, all this will come out and there will be testimony and we will find out whether there is a problem or not. If it is actually a bill that comes to a hearing, then the legislature will get to the bottom of this issue.

REP. FRANKLIN asked Rep. Warden how he felt about it. REP. WARDEN said that he is good with these. He said that there is no guarantee of any bill coming out of this committee with committee endorsement that is going to be signed by the Governor. There may be changes during the course of committee hearings and that is fine.

REP. FRANKLIN said that the issue of medical care and access to medical care for kids in uncertain situations is legitimate to pursue. She would support this as a committee bill with the understanding that we may support changes on LCCF05.

It was decided that the Committee will make formal motions on each LCCF so that it is clear to the committee and to Mr. Niss that we have adopted them and to have a vote on each bill respectively.

REP. WARDEN moved that LCCF02 be adopted as committee bill.

SEN. O'NEIL said that it is a good idea to have an affidavit for medical care and for school, but because of the fact that the Department shall treat the affidavit as an allegation of abandonment and because it gives immunity where he didn't think it is required, he said that he will vote against the bill.

MOTION PASSED 7-1 with Sen. O'Neil voting nay.

LCCF05 Granting to a relative who is a caretaker but not a parent of a child the power to approve medical care for the child under certain conditions.

REP, WARDEN moved that LCCF05 be adopted as committee bill. MOTION PASSED 7-1 with Sen. O'Neil voting nay.

LCCF04 Allowing continued custody of a child by the child's caretaker relative

following voluntary surrender of the child under circumstances indicating abandonment.

DAVID NISS said that this bill provides that the writing and filing of an affidavit has a legal consequence where a parent has left children with a caretaker relative and allows that caretaker relative some protection while the affidavit is written and filed with the court. After it is filed, the bill requires the court within two days, to review the affidavit and make a determination whether or not the affidavit filed by the caretaker relative shows prima facie evidence of abandonment, to provide some kind of a mechanism to weigh the rights of the parent against the rights of the caretaker relative who has been taking care of the child at least six months to a year or two years, and for the court to say if the parent abandoned the child or not. If the court finds prima facie evidence of abandonment, it must enter an order to that effect and then the custody of the child can be retained by the caretaker relative for 14 days, a denial of the parents' constitutional right to the custody of the child, whether that denial can occur based on the filing of the affidavit. The purpose of the bill is a piece of time that gives the caretaker relative 14 days to maintain the custody of their grandchild and decide what to do next.

SEN. ESP said that he had some of the same concerns from one of the testimony as to the language in section 1, which was subjective language. He asked if that could be changed a little before it is introduced. REP. WARDEN said that he is fine with that. He said to get it out and fix it if it makes it to session.

DAVID NISS said that he took notes on what those objections were to the testimony and with the committee's approval, we could vote on the motion and he will clean it up in response to those objections and discuss it with Sen. Esp. The changes would be with regard to the statement of legislative intent.

REP. WARDEN moved that LCCF04 be adopted as a committee bill. MOTION PASSED unanimously.

TAPE 6B

LCCF06 Clarifying the right of a grandparent to have contact with a grandchild in light of decisions by the U.S. Supreme Court and the Montana Supreme Court.

DAVID NISS said that he has briefed the committee one U.S. Supreme Court case and one Montana Supreme Court case regarding the constitutional basis for parent's right to custody. We have in Montana law a grandparent and grandchild contact statute by which if a grandparent wants to have contact with a grandchild, they can with or without consultation with the parent, file a petition for contact with the district court, and again under current law, the district court determines whether that grandparent/grandchild contact is in the best interest of the child and makes a ruling. Judge Neil did that in a case in which a grandparent was vehemently opposed by the father of the child and would not allow any contact with the child and so the grandparent filed a petition for contact, and Judge Neil awarded it. It got to the Montana Supreme Court, and the Montana Supreme Court said "aren't parents constitutionally entitled to control who their child can see as a visitor to the home and who they can't?" They answered their own question and said, "yes, parents have a constitutional right to the custody of their child." In that decision, Polasek vs. O'Meara, the Montana Supreme Court said that Judge Neil's mistake was to grant the petition and really, hear the petition without first inquiring as to the fitness of the parent. If

you read the opinion, the Montana Supreme Court came to about a hair's breadth of holding our grandparent/grandchild contact statute unconstitutional because it did not account for the parent's constitutional right of control. It was his feeling, based upon the existence of the statute not including any reference to what the court required in Polasek vs. O'Meara, that the statute is now misleading because a grandparent, let alone a district court, will look at the statute and say, I can determine if it is in the best interest of the child and rule on the petition. That decision is still out there and because it is based on a constitutional right found now in other cases, both by the U.S. Supreme Court and the Montana Supreme Court that makes our grandparent/grandchild statute a contact statute close to unconstitutional. If left unamended, that grandparent/grandchild contact will continue to mislead grandparents and judges.

SEN. ESP moved that LCCF06 be adopted as a committee bill with Sen. Weinberg and Sen. Esp as sponsors.

DISCUSSION

SEN. O'NEIL asked if we should at least do a partial termination of parental rights before we give those rights to the grandparent? REP. WARDEN asked Sen. O'Neil if he was asking what the sequence of events would be in the event that the court determines that the parents were unfit. What happens if they come to that conclusion? SEN. O'NEIL said that the conclusion gives you cause to terminate a parent's right and the court could do that after finding the parent unfit, but he isn't sure if that is what we are trying to do here. He thinks that we are trying to do a partial termination of the parent's rights so that we can give that partial right to the grandparent. SEN. ESP said that this says you can temporarily visit your grandchild. It doesn't say that you have any custody or any rights to custody, it says you can visit them occasionally and the judge can grant that to you. SEN. O'NEIL said that even if you are declared to be an unfit parent, you still have complete control over your child until that control is taken away from you by the state. We haven't taken that control away from that parent in this bill. Maybe we should partially take that control away so we can give it to the grandparent. DAVID NISS said the reason that he wrote the language on page 3 is because it is a very conservative draft. That wording is in the Supreme Court's Opinion and he didn't want to drag out the effect of that finding of unfitness into all kinds of other ramifications and cause and effect. The Supreme Court expressly denied in that opinion, paraphrasing, "we offer no comment upon the effect of a finding of unfitness". All they said was that the district court had to undertake this judicial inquiry as to whether or not the parent was a fit parent because Judge Neil failed to do that. The court remanded the case back to the district court for that finding. The Supreme Court expressed no opinion upon what the subsequent effect of that finding is. It may be necessary for the court, after a finding of unfitness, to go back into all of the existing statutes regarding child abuse and a finding of abuse or neglect. The issue that isn't addressed here, and the Supreme Court has not addressed yet, is whether a full termination is required in order to grant a grandparent a right to contact. The parent is unfit as to a parental interest in custody and control of the child, but might still maintain complete custody because the parent has been adjudicated to be unfit only as to one aspect of parenting. That issue has not yet been addressed in Montana. It is not necessary for the committee to address that here in this statute.

MOTION PASSED unanimously.

LCCF10 Regulating whether and the manner in which an individual with a mental disorder may be restrained while being transported to or from a mental health facility at public expense; authorizing a county to provide transportation by

either a sheriff or a contractor.

DISCUSSION

SEN. WEINBERG said that the strong testimony against the bill indicates that people are not understanding the intent of the bill. He thinks it is a very good bill. He was surprised to hear testimony against it. He wanted to add that testimony for it was equally as strong.

SEN. ESP said that he doesn't think that this is a good bill. He understands the intent and what it is trying to do. He is not sure that it is making it safer and better for people than the way it is. He said that if the bill goes forward, it needs to have in the criteria the safety of consumer and officers and public. He said that this bill does not speak to any of those issues. If a particular person was violent, strong and in a manic phase, someone would have to write that all down before you could restrain him. There is a need to allow for officer judgment and to err on the side of caution. He said that you have to protect those folks because most are being transported because they are a danger to themselves or others. That is the standard. Sen. Esp said that he would be against having this as a committee bill.

REP. ROBERTS said that the intent is wonderful but he is also opposed to it. The length of time a person is being transported is important. That person at the beginning of transport may not be the same as the person at the end of transport. He thinks acquiring more vehicles and having several people sit with the patient as they travel might be an alternative.

REP. FRANKLIN said that the other piece of this that goes against a lot of the principles that they use is that they are asking a sheriff or peace officer to make a psychosocial medical decision. We are asking them to make an assessment about whether someone is safe or not and we don't do that in any other realm. As inappropriate as it is for people to be transported in shackles routinely, it is equally inappropriate to ask a peace officer to make that judgment. She said that she supports the concept of the most appropriate way to transport psychiatric patients but just to say that they can't transport them with the tools that they know how to use, when that's the only alternative that we are giving them, it is not consistent with the other things that we ask of a peace officer.

SEN. WEINBERG said that in this bill, the question is, shall they have no restrains or all the restrains. Everyone is taking a very extreme view here. What it says is, when restrains are needed, to use the least restrictive and use soft restrains if that is appropriate. It is also asking folks who put the person in restrains to have a reason for doing it. If we don't have this bill, then we have a default process in our state that everybody gets the most restrictive transportation that they can. Unlike any part of the work we do, this stands out. We rarely take the most restrictive actions against people. What's wrong with doing what we can to treat people with dignity and respect. What's wrong with using less restrictions when it is appropriate. This does not say that everybody gets to ride in the car with no restrains. It says you need a reason for doing what you are doing. This also opens the door on people contracting for this service, which might be a very good thing as well.

SEN. O'NEIL said that he agrees with Sen. Weinberg but it would be nice to have the peace officers say that they don't need handcuffs or whatever on this person. If we do that, then the next point is, the peace officer picks up a person and they have to make a decision on whether or not to put handcuffs or restrains on a person or whether they are going to transport unrestrained. If they make a choice and transport them restrained, then that person can sue

them for over-restraining or if they transport them unrestrained, and that person hauls off and hits her hand into the window and breaks her hand, or if they get loose and run and hurt themselves, they can sue for not restraining. So the peace officer has a difficult decision to make, whether to be humane to this person, or whether to be safe. It would be easier for the peace officer if we say this is the way you will do it. Otherwise, if we are going to do it the other way, we should also put some immunity for the police officer. He agrees it would be nice to transport people more humanely. We should leave well enough alone.

SEN. WEINBERG moved that LCCF10 be adopted as a committee bill. MOTION FAILED 1-7 with Sen. Weinberg voting yes.

LCCF07 Include the condition of being gravely disabled in the definition of "emergency situation" for the purposes of involuntary commitment of persons with mental illness; amending "emergency situation" to reflect the commitment criteria; defining gravely disabled.

DISCUSSION

SEN. ESP moved that LCCF07 not go forward as a committee bill.

REP. FRANKLIN said that the statute in its current form does allow for deteriorating condition, but it has been interpreted as not being the case. It has been most narrowly interpreted. SUSAN FOX said that Mr. Bartlett had sent her the email from the Advocacy Center and he was given a different level of comfort with our existing statutes based on what the Treatment Advocacy Center said. If you can look on page 7, that section helps you see that we did have a phrase that "whether the respondent's medical disorder, as demonstrated by the recent acts or admissions, will if untreated, predictably result in deterioration." That means the same thing, it is just that we don't use the term. Where the practice problem is, when you go to the disposition section, if (1)(d) is the only option that you have, you can't commit to the State Hospital, but you can commit to a community commitment. If that is all that they have and they can't say that they are substantially unable to provide for your own needs, whether you cause self-injury or injury to others, or if there is imminent threat and that's all you have, you can't get them into the State Hospital.

MOTION TO NOT HAVE LCCF07 AS A COMMITTEE BILL PASSED UNANIMOUSLY.

LCCF14 Defining "professional person" to include psychologists.

REP. FRANKLIN moved that LCCF14 be adopted as a committee bill as amended by the recommendation of Dr. Patrick Davis that psychologists be a licensed Ph.D.

SEN. O'NEIL moved for a substitute motion that this professional person be certified or licensed. SEN. O'NEIL said that the psychologists that we will be giving power to with this bill should either be certified or licensed rather than limiting it to licensure. DR. DAVIS said that that is unnecessary because an individual who is certified as a mental health professional person already has the privileges that we are attempting to have statutorily granted to licensed psychologists. If the bill as not amended were to go forward and if it were to pass, it would allow licensed psychologists to be professional persons without having to become certified. He said that if you were to include language that said a licensed psychologist or certified professional person, it would be redundant with existing statute and would not accomplish

anything.

SEN. O'NEIL withdrew his substitute motion.

The original motion of Rep. Franklin passed unanimously.

RECESS

SEN. SCHMIDT recessed at 6:44 p.m., to reconvene at 8:00 a.m., September 13, 2006.

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