

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

JANUARY 17, 1983

The meeting of the Public Health, welfare and Safety Committee was called to order by Chairman Tom Hager on Monday, January 17, 1983 at 1:00 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present. Woody Wright, staff attorney, was also present.

Many visitors were in attendance. (See attachments.)

CONSIDERATION OF SENATE BILL 61: Senator Bill Norman of Senate District 47, sponsor of Senate Bill 61, gave a brief resume of the bill. This bill is an act refining the definition of death.

Senator Norman stated that he felt this was a much needed bill. The problem is faced numerous times in emergency rooms. This bill attempts to protect human life. It also fixes criteria by which a doctor or coroner may use. This would bring about uniform code laws in the United States. Thirty one states have already adopted this code.

Bob Sullivan, representing the Uniform Law Conference and also Chief of the Montana Uniform Law Committee, stood in support of the bill. He stated that he has been Montana's Uniform Law Commissioner since 1957, before that he was Dean of the Montana State University Law School. The Commission recommends to the Governor uniform laws which should be considered for enactment in Montana. This year the Commission studied several laws and picked up 12 which they felt were the most important. The refining of death is one of the twelve bills which they are having introduced in the Legislature. Kansas was the first state which adopted this law. It is a very necessary bill in determining when death does occur. This is a very carefully considered bill. It does not set the time of death, it only helps set the medical criteria.

Jerome Loendorf, representing the Montana Medical Association, stated this bill provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The interest in these statutes arises from modern advances in life-saving technology. Part one, codifies the existing common law basis for determining death---total failure of the cardiorespiratory system. Part two, extends the common law to include the new procedures for determination of death based on irreversible loss of all brain functions.

Senator Jacobson addressed the amendments which she had presented the day of the hearing.

A motion was made by Senator Norman that the proposed amendments for this bill be accepted. Motion carried. (See exhibit 3 for a copy of the amendments.)

Senator Hager asked if diabetics would be covered in this bill. Senator Jacobson stated that they would be included in the bill along with many other impairments.

Senator Jacobson stated that she felt that this bill would be a ehlp to protect the public.

A motion was made by Senator Jacobson that Senate Bill 12 receive a Do PASS, as amended recommendation from the Committee. Motion carried 4 to 3. (See exhibit 4)

DISPOSITION OF SENATE BILL 22: This bill is an act requiring use of a safety restraint system to transport a child less than 4 years old; establishing standards, exemptions, and penalty; providing for admissibility of evidence in civil suits without presumption of negligence and providing an effective date.

Senator Jacobson spoke briefly about the amendments which the Committee received on Friday at the hearing on Senate Bill 22.

A motion was made by Senator Jacobson that the proposed amendments which the Committee received be adopted. Motion carried.

A motion was made by Senator Marbut that the bill be amended on page 1, line 41 to include weighing less than 40 lbs. Motion carried.

Senator Hims1 again brought up the question concerning the exemption of pickup trucks from the bill. He stated that in his area many many people drive pickups. Senator Jacobson stated that this was not even considered in the drafting of the bill and she would check on the matter.

Senator Jacobson stated that 85% of the people follow the law, however, 15% need to be directed.

A motion was made by Senator Jacobson that Senate Bill 22 receive a DO PASS, as amended recommendation from the Committee. Motion failed on a 3 to 4 vote. (See exhibit 5)

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The overwhelming majority of cases will continue to be determined according to part 1, When artifical means of support preclude a determination under part 1, the Act recognizes that death can be determined by the alternative procedures.

Under part 2, the entire brain must cease to function, irreversibly. The entire brain includes the brain stem as well.

Mr. Loendorf handed a copy of the notes from the NCCUSL.
See Exhibit 1)

Mickey Nelson, representing the Montana Corner's Association, and also himself as a corner, stood in support of the bill. He stated that Senate Bill 61 would aid the corners of Montana greatly as in the field they are confronted with much different circumstances than those in the hospitals of Montana. This bill meets the needs of both the corners and the hospitals of this state in a more realistic way. Mr. Nelson turned in a copy of the letter which he had written to Senator Norman. (See exhibit 2)

Steve Brown, the Junior members of the National Committee on State Laws, stood in support of the bill. He stated that he is in complete agreement with what everyone else has said.

John Frankino, representing the Montana Catholic Conference, stated that his group has done a review of this bill and does support passage of Senate Bill 61.

With no further proponents, Chairman Hager called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Hims1 wondered if perhaps the bill should be amended on page 1, line 14; Following: functions; Strike, or, and Insert: "and".

Senator Norman closed asking the Committee for a Do Pass on the bill and start it on its way.

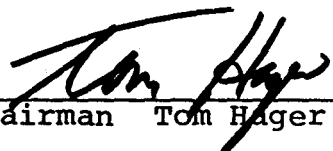
DISPOSITION OF SENATE BILL 12: This bill is an act allowing physicians to report to the Division of Motor Vehicles, patients with conditions that impair their ability to safely operate a motor vehicle; and providing limited immunity for such physicians.

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A motion was made by Senator Himsel that the vote be reversed on the bill in question. Motion carried 4 to 3. (See exhibit 6). The bill then received a DO NOT PASS, as amended.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Wednesday, January 19, 1983 in Room 410 of the State Capitol to hear Senate Bill 56, sponsored by Senator Tom Hager.

ADJOURN: With no further business the meeting was adjourned.


Chairman Tom Hager

eg

ROLL CALL

PUBLIC HEALTH, WELFARE, SAFETY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 1/17/8

[illegible]

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with committee)

STANDING COMMITTEE REPORT

January 18

9

President

We, your committee on Public Health, Welfare and Safety

having had under consideration Senator Bill No. 12

Respectfully report to follow: That Senate Bill No. 12

introduced in this body, be amended as follows:

1. Page 1, line 18.

Strike: "Subsection (1) is subject to the provision of 26-1-805,
and the

Insert: "(a) The"

2. Page 1, line 21.

Strike: "not"

3. Page 1, line 24.

Following: "court."

Insert: "(b) The physician's report may not be utilized in a
criminal proceeding, or in a civil proceeding other than as
provided in this subsection, without the consent of the patient."

and, as so amended,

DO PASS

J.C.

Exhibit 1

PREFATORY NOTE

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa. L. Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in life-saving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiorespiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions." There is, then, a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal—extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death—total failure of the cardiorespiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible loss of all brain functions. The overwhelming majority of cases will continue to be determined according to part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

Under part (2), the entire brain must cease to function, irreversibly. The "entire brain" includes the brain stem, as well as the neocortex. The concept of "entire brain" distinguishes determination of death under this Act from "neocortical death" or "persistent vegetative state." These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

UNIFORM DETERMINATION OF DEATH ACT

1 §1. [*Determination of Death.*] An individual who has sus-
2 tained either (1) irreversible cessation of circulatory and res-
3 piratory functions, or (2) irreversible cessation of all functions
4 of the entire brain, including the brain stem, is dead. A de-
5 termination of death must be made in accordance with ac-
6 cepted medical standards.

1 §2. [*Uniformity of Construction and Application.*] This Act
2 shall be applied and construed to effectuate its general purpose
3 to make uniform the law with respect to the subject of this Act
4 among states enacting it.

1 §3. [*Short Title.*] This Act may be cited as the Uniform
2 Determination of Death Act.

50-21-106. Penalty for unauthorized post-mortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding \$500.

History: En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

Section

50-22-101. Definition of death.

Part 1

General Provisions

50-22-101. Definition of death. A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes.

History: En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201.

CHAPTER 23

RABIES CONTROL

Part 1 — Restrictions on Possession of Wild Animals

Section

50-23-101. Definitions.

50-23-102. Prohibition of possession of wild animals — exceptions.

50-23-103. Quarantine — destruction — testing.

50-23-104. Payment of expenses.

50-23-105. Authority to adopt rules.

50-23-106. Injunction — recovery of costs.

Part 1

Restrictions on Possession of Wild Animals

Part Compiler's Comments

1981 Title: The title to Ch. 448, L. 1981 (HB152) read:

"An act to minimize transmission of rabies by prohibiting the possession of bats, skunks, foxes, or raccoons and providing for prohibition of possession of certain other animal species known to

be capable of transmitting rabies to human beings; and providing an exemption for such animals that are possessed for six months prior to January 1, 1982."

Severability: Section 7, Ch. 448, L. 1981, was a severability section.

50-23-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

to Y. Hulit 2



OFFICE OF THE CORONER

LEWIS AND CLARK COUNTY COURTHOUSE

228 BROADWAY

HELENA, MONTANA 59601

PHONE 406-442-7398

M. E. "MICKEY" NELSON
CORONER

7 January 1983

Senator Bill Norman
State Senate
Capitol Building
Helena, MT 59620

RE: SB-61

Dear Senator Norman,

I find that SB-61 if passed would aid the coroners of Montana greatly as we in the field are confronted with much different circumstances than those in the hospitals of Montana, and it is my feeling that this bill meets the needs of both the coroners and hospitals of this state in a more realistic way.

Truly,

M.E. "Mickey" Nelson, Coroner

Amendments to Senate Bill 12 (Introduced copy)

1. Page 1, line 20.

Following: "(2)"

Strike: "Subsection (1) is subject to the provisions of 26-1-805, and the"

Insert: "(a) The"

2. Page 1, line 21.

Following: "may"

Strike: "not"

3. Page 1, line 24.

Following: "court."

Insert: "(b) The physician's report may not be utilized in a criminal proceeding, or in a civil proceeding other than as provided in this subsection, without the consent of the patient."

SENATE COMMITTEE PUBLIC HEALTH, WELFARE, AND SAFETYDate January 17 SENATE Bill No. 12 Time 2 p.m.

NAME	YES	NO
SENATOR TOM HAGER		<input checked="" type="checkbox"/>
SENATOR REED MARBUT	<input checked="" type="checkbox"/>	
SENATOR MATT HIMSL		<input checked="" type="checkbox"/>
SENATOR STAN STEPHENS		<input checked="" type="checkbox"/>
SENATOR CHRIS CHRISTIAENS	<input checked="" type="checkbox"/>	
SENATOR JUDY JACOBSON	<input checked="" type="checkbox"/>	
SENATOR BILL NORMAN	<input checked="" type="checkbox"/>	

Blaine Gravelley
Secretary

Tom Hager
Chairman

Motion: A motion was made by Senator Jacobson that Senate Bill
12 receive a DO PASS, as amended recommendation from the
Committee. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH, WELFARE, AND SAFETY

Date January 17, 1983 Senate Bill No. 22 Time 2:30

NAME	YES	NO
SENATOR TOM HAGER		✓
SENATOR REED MARBUT	✓	
SENATOR MATT HIMSL		✓
SENATOR STAN STEPHENS		✓
SENATOR CHRIS CHRISTIAENS	✓	
SENATOR JUDY JACOBSON	✓	
SENATOR BILL NORMAN		✓

Shirley Grady
Secretary

Tom Hager
Chairman

Motion: A motion was made by Senator Jacobson that Senate Bill
22 receive a DO PASS as amended recommendation from the Committee
Motion failed.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH, WELFARE, AND SAFETY

Date January 17 Senate Bill No. 22 Time 2:35

NAME	YES	NO
SENATOR TOM HAGER	✓	
SENATOR REED MARBUT		✓
SENATOR MATT HIMSL	✓	
SENATOR STAN STEPHENS	✓	
SENATOR CHRIS CHRISTIAENS		✓
SENATOR JUDY JACOBSON		✓
SENATOR BILL NORMAN	✓	

Shane Gravelly
Secretary

Thomas D. Hays
Chairman

Motion: A motion was made by Senator Matt Himsl that Senate Bill
22 receive a DO NOT PASS as amended recommendation from the
Committee. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

NAME: Robert E. Sullivan DATE: 1-17-83

ADDRESS: 105 Remount #102 Butte mt 59701

PHONE: (406) 494-2260

REPRESENTING WHOM? Uniform Laws Conference

APPEARING ON WHICH PROPOSAL: S.B. #61

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: As a Uniform Laws Commissioner
from Montana - Since 1957 - I am required by law
to recommend to the Governor, Uniform Laws
that should be considered for enactment in
Montana

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jerome T. Loendorf DATE: 1-17-83

ADDRESS: Helena, Mt.

PHONE: 442-6350

REPRESENTING WHOM? Mt. Natural Resources

APPEARING ON WHICH PROPOSAL: S.B. 61

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

~~10~~ Preliminary Note of NCCASL distributed
to Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: M.E. "Mickey" Nelson, Larone DATE: 17 Jan 83

ADDRESS: hac County Courthouse Helena, MT 59601

PHONE: 442-7398

REPRESENTING WHOM? MT COYNER'S HSSN. & SELF

APPEARING ON WHICH PROPOSAL: SB-61

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.