

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 11, 1983

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Senator Frank Hazelbaker on February 11, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Chairman Turnage and Vice-Chairman Crippen, who were excused.

CONSIDERATION OF SENATE BILL 371: Senator Fuller, sponsor, advised that the purpose of this bill is to provide that a child custody decree can be modified to consider placement of a child with the parent he desires, when the child reaches age 14.

PROPOSERS: Fred Easy, a Helena resident, spoke in support of this bill, saying he felt the current statute restricts changes in custody. He spoke about his own family situation and the need for young people to have their desires regarding their placement considered. Written testimony was submitted for inclusion in these Minutes (Exhibit "A").

Chuck Smith also spoke as a proponent to this bill. He reviewed the current law which requires the non-custodial parent to show that the custodial parent is unfit and he felt it was not fair to require a child to testify against a parent they love. He stated that children of age 14 are capable of making important decisions regarding their life. Written testimony was also submitted (Exhibit "B").

There being no further proponents, no opponents, and no discussion by the Committee, the hearing was closed.

CONSIDERATION OF SENATE BILL 373: Senator VanValkenburg advised that he was sponsoring this bill at the request of a title company in Missoula. Section 2 would provide for validation of conveyances that have technically defective executions in them. This will assure that no challenge can arise that will affect the rights of the purchaser previous to 1983. Section 1 will validate unacknowledged deeds. Actions now pending in the courts will not be affected under the provisions of SB373.

There being no proponents or opponents, and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 323: Representative Veleber, sponsor, advised that this bill is being introduced to require incumbant municipal and city court judges to be subjected to voter approval when there is no opponent running for their office.

There being no proponents or opponents, the hearing was opened to questions from the Committee.

Senator Mazurek inquired if all municipal court judges are now elected. He was advised that they are. Senator Berg questioned what would happen if the voters did not approve the incumbant judge. He was informed that the city council would then appoint someone to fill the position.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 452: Representative Daily advised that this bill was being introduced to require a polygraph examiner to be licensed and to put the licensing procedure under the Department of Commerce. He also advised the Committee of the changes adopted by the House before this bill was referred to the Senate.

PROPONENTS: Bob Graham, a detective with the Sheriff's Office in Butte, supported the bill. There is a need to add a degree of professionalism to examiners and to prevent unqualified examiners from practicing in the state. He advised that the major use of polygraphs was in the area of criminal investigation.

John Scully, representing the Montana Sheriff and Peace Officer's Association, supported HB452 and informed the Committee that the lie detector is a "great" tool to law enforcement. He stated that it is not used as a tool of truth in the courtroom, but it does serve a useful purpose. There is a need to license polygraph examiners so as to maintain quality and professionalism.

Dick Kane, Administrator for the Department of Labor and Industry, Labor Standards Division, advised that he was neither for or against this bill. He then distributed proposed amendments (Exhibit "C") and said there is a need to prevent examiners from being licensed on the basis of reciprocity. He also felt it was essential for the polygraph examiner to be required to notify the examinee, in writing, that the test cannot be used for employment purposes.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

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Senator Daniels inquired as to how many examiners there are in the state who are employed by law enforcement. He was advised that there are 22 examiners, 20 of which are employed by a law enforcement agency.

Senator Mazurek brought up the subject of admissibility and questioned if lie detector tests are now admissible in court. John Scully advised him that they are not. He then reiterated the need for licensing so as to avoid abuses by unqualified examiners.

Chuck O'Reilly, Sheriff of Lewis and Clark County, advised that there are now two non-law enforcement polygraph operators in this state and that there are currently no laws to regulate them. He also advised that the Montana Chief of Police Association supports this bill.

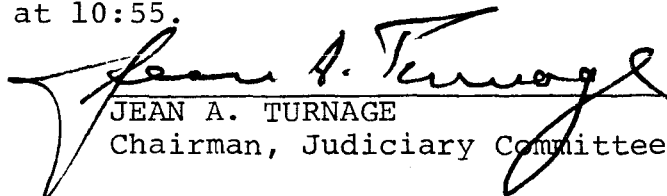
Senator Shaw asked John Scully if he had reviewed the amendments proposed by Dick Kane. John Scully stated he had reviewed them and was of the opinion that they placed an unnecessary burden on the examiner.

Sgt. Ron Cutting of the Gallatin County Sheriff's Office explained the use of the polygraph equipment to the Committee.

Senator Berg questioned if continuing education courses are available to these examiners. Bob Graham advised that there are usually four or five seminars a year and the examiners usually try to attend one of these. Senator Berg asked Bob Graham if he had reviewed the proposed amendments. Bob Graham felt that Dick Kane's concerns that a lie detector test could not be administered for pre-employment purposes is addressed in Section 39-2-304, MCA.

There being no further questions, Representative Daily closed by stating HB452 would not create a new board, but would provide that licensing duties would be handled directly by the Department of Commerce. He also felt the Committee should review the amendments which the Business and Industry Committee inserted on page 3, lines 12 through 14 of the bill.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 10:55.

  
JEAN A. TURNAGE  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-11-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)			✓
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)			✓

SENATE

## Judiciary

COMMITTEE

BILL HB 323 HB 452

VISITORS' REGISTER

DATE 2-11-83

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

~~I am not a lawyer and I am not a judge~~

~~I am not a lawyer and I am not a judge~~

~~I am not a lawyer and I am not a judge~~

I believe our young people have a right to input their desires

~~upon a court~~ requesting a custody modification upon a court.

The existing statute restricts changes in custody.

Sec. 1 (c) disenfranchises a child from expressing his desires unless the petitioner and

child under oath ~~attest~~ alleges and proves the

child's "present environment endangers seriously his physical, mental or emotional health." This

requirement completely ignores the wishes & desires

of a young child who has attained an age of

reason. (11)

2. "A"  
2-11-83

( Opposed custody changes can at present be made only pursuant to the petitioner proving that section 1(c) exists.

The result is that this section has set in concrete that the first custody situation is for all practical intents & purposes unalterable.

( Prior to 1975 almost ALL divorces decreed that children of tender age regardless of sex were awarded to the mother unless she were shown unfit.

In 1979 sec 1(c) was codified. This 1979 law affects all divorces. The young children of pre 1979 divorces are now reaching an age of reason or are 14 yrs of age or

older. At the time of these children

3.

"A"  
2-11-83

original custody decision award  
their input and opinions were not considered  
in most cases due to their tender ages.  
I believe these young people should  
be given an opportunity to be loved and  
nurtured by the influence of both their  
parents. However, section 1(c) puts a protected  
individual who desires a change in custody  
in a position <sup>when</sup> ~~where~~ the change is opposed  
of advocating the existence of the adverse  
conditions described in the section.

Prior to the 1979 codification of 1(c)  
the courts historically modified custody  
based upon the best interests of the minor



4.

"A"  
2-11-83

( the protected persons request and set an unwritten but fairly well documented, accepted and adhered to rule that it would listen to the testimony of a child who had reached the age of 14. reasoning that the child had reached the age of reason and had the ability to input and question what his custodial relationships should be.

The courts also historically have looked to legal precedents that had been established in the appointment of a guardian for a minor.

S.

"A"  
2-11-83

Why 14!

In Montana

We protect a young persons legal right to appoint or remove a guardian. Under guardian and ward laws a protected person 14 yrs of age or older can.

i.e. sec 72-5-410 MCA

- Nominate their own guardian/conservator of ~~the~~ assets when both ~~of his~~ parents are dead.
- They can also petition to remove an appointed guardian conservator i.e. sec 72-5-234 MCA, and
- They can object to a testamentary guardian appointed in a will. i.e. 72-5-234 MCA

These statutes establish a precedent acknowledging that upon reaching the age of 14 a protected persons opinions and desires

## T. Age Statues

"A"  
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Constitution statues have always existed addressing<sup>ed</sup> age criteria regarding when ~~they~~<sup>citizens</sup> can assume legislated rights. Citizens cannot be denied the right to vote if they are 18 years of age or older. Prior to the adoption of the 1972 MT. constitution the age of majority for girls was 18 and 21 for boys. The 72 constitution reduced the age of majority for all citizens to 18. Age statues in effect codify when a citizen has reached an age of reason. i.e. 18 for voting, 35 for president of the U.S., and 30 to become a US Senator, 18 for voting, 14 for nominating a guardian.

"A"  
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## Rebutal to Opposition

ON opinions where ICC establishes stability.

1. Section 1 still requires that the court serve the best interest of the child.
2. The child has the right to be loved, raised & nurtured by living with both his parents during his formative years.
3. An age of reason is best codified by historically accepted guardian and ward laws for protected persons. 14!

Good Morning Ladies & Gentlemen,

My name is Chuck Smith & I am  
here to voice my support of Senate Bill  
271.

Under current Montana law obtaining  
a change of custody is nearly impossible.  
The first two provisions for custody  
change require that the custodial parent  
not use the child as a weapon. In most  
cases this is likely to occur.

In the third provision the two  
parents are put into an adversary position  
because the non custodial parent  
must prove that the custodial parent  
is endangering the physical, mental  
moral or emotional health of the children.

→ Either by legislative action or  
by judicial interpretation under this third  
provision the non custodial parent is  
required to prove that the custodial  
parent is indulging in some extremely  
harmful acts towards the children.

This is a very undesirable situation which  
often causes problems for the children.

(2)

"B"  
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In my own case my daughters  
are punished & on occasions knocked  
down & kicked by their mother as  
punishment. When I confronted my  
ex-wife with this fact she denied  
it, however the children related to  
me later that they were disciplined  
for telling me.

On the chance that the girls were  
playing their mother & I against each  
other I took the girls to a psychologist  
who confirmed that the girls were in  
fact telling the truth and that the  
abuse had occurred. I was also  
told that one of the girls was suffering from  
minor psychological trauma from the  
incidents. The psychologist also said  
that the trauma had to be fairly severe  
before it could be used in court.  
This was confirmed by four different  
Doctors. This to me seems to be  
an extremely unfortunate situation  
where a girl is worse than a child  
must suffer severe enough trauma  
to have bruises or cuts or must suffer  
some mental or emotional damage  
before it can be used in court.  
Chance of custody.

(3)

"B"  
2-11-83

In private law situations of  
course would wish to give the  
father a share your children's  
once a marriage is dissolved case.  
of the parents winds up in the  
unhappy position of not having  
I would have been the children

South Bill will allow this  
to be a change of custody without  
making a decision of the parent.  
It allows the child a chance to change  
custody without having to testify against  
their parents who they love. It makes  
the change of custody easier and less  
traumatic for parents & children alike.

EXHIBIT "C"  
February 11, 1983

House Bill 452

Testimony of

Dick Kane

Department of Labor and Industry

Mr. Chairman, members of the committee.

I neither oppose or support H.B. 452 but would like to suggest some amendments to the bill.

As you know, the Labor Standards Division administers a law, 39-2-304, that prohibits the use of polygraph machines or other mechanical forms of lie detector tests as a condition for employment or continuation of employment. These tests are being administered on an increased frequency in Montana.

One problem we have in enforcing the law is that a violation constitutes a misdemeanor. We have to advise the examinee to go to the county attorney and ask that criminal charges be filed against the employer.

Most county attorneys have work loads of criminal cases that carry a much higher priority than those involving lie detectors so very few complaints are processed. We believe that the amendments we are suggesting would address that problem.

The first amendment would be to Section 5. Section 5 is a reciprocity licensing provision.



"C"  
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The first amendment is on page 5.

On line 4, delete the word "and".

On page 5, line 6, delete the period, insert the word "and".

Insert the following on line 7.

(c) has not violated the provisions of 39-2-304 or any similar law in any other state or jurisdiction.

Beginning with line 2, page 5, the bill would then read;

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; ~~-and-~~

(b) meets the requirements for licensing set forth in [Section 6] ~~÷~~ and

(c) has not violated the provisions of 39-2-304 or any similar law in any other state or jurisdiction.

The second amendment would be to Section 12. Section 12 provides for the suspension and revocation of the license.

The second amendment would be on page 9.

On line 11, delete the word "or" insert a new subsection (11) "has failed to notify the examinee in writing, of the provisions of 39-2-304; or"

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On line 12, change (11) to (12).

On line 13, delete the period and add the word "or".

Insert a subsection (13) that reads "has administered a test that is prohibited by 39-2-304 or by a similar law in any other state or jurisdiction".

Beginning with line 9, page 9, the amended bill would read;

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; ~~-or-~~

(11) has failed to notify the examinee in writing of the provisions of 39-3-304; or

(12) has failed to notify the examinee of the results of an examination if requested- ; or

(13) has administered a test that is prohibited by 39-2-304 or by a similar law in any other state or jurisdiction.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DICK KANE DATE: FEB 11, 83

ADDRESS: HELENA

PHONE: 449-5600

REPRESENTING WHOM? DEPT OF LABOR & INDUSTRY  
LABOR STANDARDS DIV

APPEARING ON WHICH PROPOSAL: HB-452

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? ☒ OPPOSE? \_\_\_\_\_

COMMENTS: SEE PREPARED STATEMENT

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.