

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

February 9, 1987

The twenty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 9, 1987 by Chairman Joe Mazurek in Room 325 of the State Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 256: Senator Judy Jacobson, Butte, introduced SB 256, regarding an act to clarify the responsibility of the Dept. of Social and Rehabilitation Services to conduct custody investigations and to allow the department to charge a fee for custody investigations. (Exhibit 1)

PROPOSERS: John Mattson, Department of SRS, said SRS wants out of custody investigations and we feel it is inappropriate use of our time to do custody investigations. He stated there are communities where there are not other people that can do custody investigations, and therefore, the agency would be doing the studies, but having the agency charge the fee. He gave an example of what the fee would be where the state of Idaho has a similar statute where they have a flat fee of \$600. They charge that fee and it needs to be paid prior to the custody investigation. He said the parties come in and pay the \$600 and the agency will do the investigation and give the results.

OPPOSERS: There were no opposers.

QUESTIONS BY THE COMMITTEE ON SB 256: Senator Pinsoneault asked if Idaho had any provision in the law if neither party can afford the \$600 to do an investigation.

Mr. Mattson replied he was not aware of one, but their intention would be that in the rules we would allow for matters of indigency, to be able to waive the fee.

Senator Mazurek asked how frequent are judges doing this. Mr. Mattson responded that he did a phone study of the districts in the state, and we did about 200 cases last year. He said taking a 10 hour minimum, it would run into about 150 hours per case, and that is an expensive use of social workers time.

Senator Mazurek inquired what caseworkers should be doing when they are not doing these investigations.

Mr. Mattson said they do investigating in protective services for children and adults. We are not doing this now, which the state law mandates us to do, because of the custody investigations.

Senator Pinsonneault asked if it is the moving party that will pay the cost or will the costs be shared for the investigation fee. Mr. Mattson assumed both parties would share the cost.

Senator Mazurek questioned that provisions are already existing in the statutes for assessing cost. Mr. Mattson replied it is not clearly defined that the department can assess a cost and we would like that to be assessed prior to the investigation, so the parties would pay the money up front and then we would do the investigation. Senator Mazurek felt that was something even a private person can't insist upon; that many wait until after a divorce hearing to determine costs, so why should the department be paid up front.

Mr. Mattson said we are trying to limit our involvement in these cases and we felt this would be the best way to handle it. He felt the other issue is how to collect once you provided your service and that is a problem we want to stay out of and we felt this is the best way to handle it.

Senator Halligan commented that being the county attorney in Missoula, I understand where Mr. Mattson is coming from. In a contested battle, neither attorney wants to make the decision for where the kids are going to go, then the judge, with SRS not present, will ask SRS to make an investigation and they are not even part of the proceedings. He said being the county attorney, this kind of situation comes to him, and then he has to contact both attorneys to find out what is going on, get ahold of SRS, which does a case analysis that lasts 30 days. He felt we should caution the judges to do these things because it is not the SRS's affair.

Senator Jacobson closed the hearing on SB 256.

CONSIDERATION OF SENATE BILL 258: Senator Bob Brown, Whitefish, sponsor, stated SB 258 was requested by the Senate Judiciary Committee for the Magistrates' Assn. He said the present law provides that the orientation course newly elected justices of the peace need to take every four years be conducted under the University of Missoula law school. He said this has never been the case. It has always been conducted by the Supreme Court, and the purpose of the bill is to bring the law into conformity with the practice. He stated the magistrate representative came before our committee to present this problem a couple weeks ago. He explained the change is at the top of page 2 of the bill, and there is another change on lines 19 and 24 of page 1.

PROPOSERS: Judge Bernard F. McCarthy, Chairman of the Magistrates Assoc. Committee on Legislation and Law Improvement supported the bill. (See witness sheet) He said the change in line 19 and line 24 on page 1 did not make sense to him. He said the requirements in subsection 2 are requirements of the law for a justice of peace. He felt in line 19, where "either" is struck out, that "either" should remain and in line 24, that the amendment in subsection (c) where either is placed in, should be taken out. He felt it read easier, and he said right now the requirements for a JP are either being an attorney or that you have held the position within the last 5 years, or you have completed the course we have talked about in this bill.

OPPOSERS: There were no opponents.

QUESTIONS BY THE COMMITTEE ON SB 258: Senator Crippen asked if we should take the word "either" out, or should we put in the word "or" on line 24. Valencia Lane believed they are as drafted because there is an "or" on line 23 and the use of the "or" at the end of series indicates that all them are "or". Valencia said taking the word "either" out would not change the meaning of the series. Senator Crippen said he did not agree because he reads it is one, (a) an attorney; a person who has held an office for the preceding 5 years, and then you have a "; or" and to me if I interpret it, it might be "or, or, or", but I don't think that is how it will be accepted. Ms. Lane thought it should be read "or, or, or", but if it makes you more comfortable, there is no harm putting "either" back in line 19. Senator Crippen asked if we can take "either" out and put "or, or, or" instead. Ms. Lane said the

editors won't like that. Senator Crippen asked if they have to interpret it after it is law.

Judge McCarthy thought the "or" in the 3rd provision is a principle statutory construction and is read to apply to the sentence before that as well. He said the courts would interpret it that those are 3 different alternatives, and leaving the "either" in or out would not make that much difference. He said his problem and Senator Brown's problem is that leaving it out makes it look like you have to be an attorney to be a justice of the peace, and that is not the case.

Senator Brown closed.

ACTION ON SENATE BILL 258: Senator Blaylock moved to strike lines 19 and 24 on page 1, the word "either". The motion carried and Senator Pinsoneault moved the bill DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SENATE BILL 256: Senator Pinsoneault stated the SRS has the custody investigations to help the judge make a decision on custody cases. He stated he didn't care who paid for the investigations as long as the children were well cared for.

Senator Halligan told stories of custody cases that involved confusion of who would pay for the investigations.

Senator Mazurek wanted to insert language in (2) on page 1, "a reasonable fee will be approved by the courts, if the court authorizes the SRS to conduct an investigation", and strike the first sentence in (2) on page 1. He said the defendant will pay the reasonable fee to the court. Senator Mazurek thought this would give the court the room they needed.

Senator Halligan said the bill will put SRS in a court hearing where everyone can find out how much an investigation does cost.

Senator Pinsoneault suggested local authorities that live in the area of the custody investigation do the investigating.

Senator Halligan moved to allow the SRS department to charge a fee for custody investigations and he moved Senator Mazurek's idea on "reasonable fees". Senator Halligan also struck in this motion, (2) on page 1, in its entirety. The motion CARRIED.

Senator Halligan moved the bill DO PASS AS AMENDED.  
The motion CARRIED.

ACTION ON SENATE BILL 241: Mark Murphy, Attorney General's Office, handed out a section from the Crimes and Criminal Procedure. (Exhibit 2) He wanted to strike in the title on line 11, "17-7-502" and insert "44-12-205".

Senator Pinsoneault asked if the state really needed this bill.

Mr. Murphy felt the state needed it for the increasing drug cases in the state.

Senator Beck asked if the procedure of sale of these items collected changes because of the amendments. Mr. Murphy said no.

Senator Blaylock asked if the judge has to sell the property that was collected from a drug bust. Mr. Murphy said that because of technicalities, the department loses much of the material collected in a drug bust. He said many times the court is not on the side of the Attorney General's office.

Senator Mazurek presented the committee with prepared amendments. (Exhibit 3)

Senator Bishop was concerned the bill would still allow an innocent person to be caught in the middle of the act and have property taken from him because he was at the wrong place at the wrong time. Ms. Lane explained the amendments would only allow the department to spend money received through drug busts if the legislature approves it. Senator Pinsoneault moved the amendments. The amendments PASSED.

Valencia Lane explained that Mr. Murphy's 44-12-204 and 44-12-205 sections he wanted to insert into the bill belong in subsection (h) of the bill.

Mr. Murphy explained that the spouse or children of a drug offender are protected in this bill. Senator Pinsoneault wanted to make sure a family was protected so he asked for more work on the bill.

The committee waited on action.

Judiciary Committee  
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ACTION ON SENATE BILL 225: Valencia Lane handed out amendments. (Exhibit 4)

Senator Halligan moved the amendments. Senator Halligan asked if the Clerk and Recorders would have to spend a lot of time with this statute. Senator Mazurek said no. The motion CARRIED.

Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED with Senator Crippen voting no.

ADJOURNMENT: The committee adjourned at 11:55 a.m.

  
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SENATOR JOE MAZUREK, Chairman

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ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB. 9th

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NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE

Feb. 9th

COMMITTEE ON

JUDICIARY SENATE

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
BERNARD F. MCCARTHY	MT. MAGISTRATES ASSOC.	258	<input checked="" type="checkbox"/>	<input type="checkbox"/>



DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

Testimony on S.R. 200

TED SCHWINDEN, GOVERNOR

P.O. BOX 4210



STATE OF MONTANA

HELENA, MONTANA 59604

January 8, 1987

TO: Senator Judy Jacobson

FROM: Leslie C. Taylor, Attorney  
Office of Legal Affairs  
Department of Social & Rehabilitation Services

RE: An act to clarify the responsibility of the Department of Social and Rehabilitation Services to conduct custody investigations and to allow the department to charge a fee for custody investigations; amending section 40-4-215, MCA

The department proposes amendments to the divorce statutes pertaining to custody investigations in contested custody proceedings.

The department has been inundated with court orders to conduct custody investigations in private divorce proceedings where there is a custody dispute. These investigations are very time consuming and are currently being conducted on behalf of private parties without charge. In 1981, this statute was amended to eliminate the reference to the county welfare department as the department to conduct the investigation. However, the judges continued to order the department to conduct these investigations.

Currently there are a number of licensed social workers in private practice who are qualified to conduct these investigations for a fee. Because the department does not charge a fee for these services, parties involved in contested custody proceedings continue to request the court to order the department to conduct these investigations.

The department hopes that the amendments will preclude the court from ordering the department to conduct these investigations when there are qualified licensed social workers available in the community to conduct the investigation. Because there are a number of a rural areas that do not have qualified licensed

SENATE JUDICIARY

EXHIBIT NO. 1

DATE Feb. 9, 1987

BILL NO. SB 256

social workers to conduct the investigations, it will be necessary for the department to continue to conduct these investigations in those areas. When the department conducts the investigation, the department would charge a reasonable fee for the time spent. Considering the current economic crisis facing state government, the department can no longer offer free services to private parties engaged in contested custody proceedings. Persons engaged in these proceedings are responsible for the payment of their attorney's fees and should be prepared to pay the costs of the custody investigation as well. Custody investigations are optional in contested custody proceedings. Therefore, if the parties can not afford to pay the costs of a custody investigation, the parties will have to present their evidence as to the best interests of the child through other testimony without the benefit of a custody investigation.

The department proposes to amend the statute to remove reference to the fact that the costs of the investigations and report shall be paid according to the final order. The department has removed this section to allow the department to charge its fee for the investigation before initiating the investigation. In many cases the department conducts the custody investigation only to have the parties settle on the terms of custody at a later date. The ability to charge the parties for the cost of the investigation before conducting the investigation will assure that the investigation is only conducted in those circumstances where it is absolutely necessary and will eliminate the department having to engage in bookkeeping and enforcement activities.

It is estimated the department conducts 200 of these investigations each year. The average length of time a social worker spends on conducting these investigations is 25 hours. The time spent by a social worker conducting an investigation in these private custody disputes is time taken away from the department's responsibility to provide protective services to children and adults. It is hoped that this bill will dissuade judges from ordering the department to conduct investigations and will allow the department to collect a reasonable fee in those cases where they are court ordered to conduct the investigations.

LCT/rm

SENATE JUDICIARY

EXHIBIT NO. 1

DATE Feb. 9, 1987

BILL NO. SB 256

defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(j) Except as provided in subsection (m), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture,

1. Title, line 9.

Following: " ENFORCEMENT "

Strike: " AND EDUCATION PURPOSES "

2. Page 5, line 12.

Following: " (3) "

Strike: " There is "

Insert: " Net proceeds received under subsections (1)(d) and (1)(e) shall be deposited in "

3. Page 5, lines 13 through 17.

Following: " fund "

Strike: the remainder of lines 13 through line 17.

Insert: " to the credit of the department of justice. The department may expend the money in the account only for purposes of drug laws enforcement, as ~~provided~~ appropriated by the legislature. "

4. Page 5, lines 18 through line 12, page 8.

Following: line 17

Strike: Section 3 in its entirety

Renumber: subsequent section

Proposed amendments to SB225 (Halligan) -- prepared by Senate Judiciary Committee staff.

1. Title, line 5.  
Following: "40-2-312"  
Strike: "THROUGH"  
Insert: ", "

2. Title, line 6.  
Following: "40-2-314"  
Insert: ", "  
Following: "MCA;"  
Insert: "REPEALING SECTION 40-2-313, MCA;"

3. Page 5, lines 7 through 13.  
Strike: section 12 in its entirety  
Re-number: subsequent sections

4. Page 6, line 8.  
Following: line 7  
Strike: "premarital agreement of the parties;"

5. Page 8, line 2.  
Following: line 1  
Insert: "(5) Premarital agreements must be enforced as provided  
in [sections 1 through 10].  
NEW SECTION. Section 14. Repealer. Section 40-2-313, MCA, is  
repealed."

C:\LANE\WP\AMDSB225.

NAME: EDWARD F. McARTHY DATE: 2/9/57

ADDRESS: 224 BROADWAY - LOWER CLARK B. CHASE

PHONE: 442-1011 ext 332

REPRESENTING WHOM? MAGISTRATES ASSOCIATION

APPEARING ON WHICH PROPOSAL: SB 258

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: This is simply a house cleaning bill  
present law requires the U. of M. Law School  
to conduct a two year training course after  
every general election the practical matter  
is the Supreme Court Administration's office  
does the training and has the resources  
to do the training. This bill merely gives  
to Supreme Court the responsibility they  
have already assumed for training

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# STANDING COMMITTEE REPORT

February 9 1937

MR. PRESIDENT

We, your committee on Senate Judiciary

having had under consideration SENATE BILL No. 225

first reading copy ( white )  
color

**Adopt the uniform premarital agreement act.**

Respectfully report as follows: That SENATE BILL No. 225

## BE AMENDED AS FOLLOWS:

1. Title, line 5.

Following: "40-2-312"

Strike: "THROUGH"

Insert: ", "

2. Title, line 6.

Following: "40-2-314"

Insert: ", "

Following: "MCA:"

Insert: "REPEALING SECTION 40-2-313, MCA;"

3. Page 5, lines 7 through 13.

Strike: section 12 in its entirety

Re-number: subsequent sections

4. Page 6, line 8.

Following: line 7

Strike: "premarital agreement of the parties;"

5. Page 3, line 2.

Following: line 1

Insert: "(5) Premarital agreements must be enforced as provided in (sections 1 through 10).

NEW SECTION. Section 14. Repealer. Section 40-2-313, MCA, is repealed."

DO PASS

DO NOT PASS

Senate Hazarek

Chairman.

# STANDING COMMITTEE REPORT

February 9

19 87

MR. PRESIDENT

We, your committee on Senate Judiciary

having had under consideration Senate Bill No. 256

first reading copy ( white )  
color

**Clarify SRS responsibility incustody investigations.**

Senate Bill 256

Respectfully report as follows: That..... No.....

## BE AMENDED AS FOLLOWS:

1. Title, lines 6 through 9.

Following: "TO" on line 6

Strike: the remainder of line 6 through "AND TO" on line 9

2. Title, line 9.

Following: "DEPARTMENT"

Insert: "OF SOCIAL AND REHABILITATION SERVICES"

3. Page 1, line 10.

Following: "child."

Insert: "If the court orders the department of social and rehabilitation services to conduct the investigation, the department may charge a reasonable fee, to be determined by the court."

4. Page 1, lines 22 through line 2, page 2.

Strike: subsection (2) in its entirety

ReNUMBER: subsequent subsections

5. Page 2, line 14.

Strike: "(4)"

Insert: "(3)"

6. Page 2, line 24.

Strike: "(3)"

Insert: "(2)"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

.....  
Senator Mazurek

.....  
Chairman.



# STANDING COMMITTEE REPORT

February 9 19 27

MR. PRESIDENT

We, your committee on Senate Judiciary

having had under consideration Senate Bill No. 258

first reading copy ( white )  
color

**Revise laws relating to training of justices of the peace.**

Respectfully report as follows: That Senate Bill No. 258

**BE AMENDED AS FOLLOWS:**

1. Page 1, line 19.  
Following: "either"  
Insert: "either"

2. Page 1, line 24.  
Following: "who"  
Strike: "either"

~~XXXXXXXXXXXXXXXXXXXX~~

~~DO NOT PASS~~

DO PASS

~~DO NOT PASS~~

Senator Nazarek

Chairman.