

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 2, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Daily

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown announced the committee would hear SB 31, SB 177, SB 324, and SB 36.

HEARING ON SENATE BILL 31

Presentation and Opening Statement by Sponsor:

Sen. Gage opened the hearing on SB 31 stating that this bill tightens penalties for some activities that are going on in the state. If a person commits a crime that's a continuing thing and all of the damage that's done is with regard to a common scheme, presently, unless they get to \$300 they get a \$500 fine or six months in jail or both. Many times these damages are of a minor amount to any one person but in the end conglomerate to quite a bit of money. This allows for aggregating those lost amounts in order that the person receive a tougher penalty or fine. If they get over \$300 they are subject to a fine of up to \$50,000 and imprisonment up to ten years.

Testifying Proponents and Who They Represent:

John Connor, County Prosecutor Services Bureau and Department of Justice

Proponent Testimony:

John Connor stated this bill was requested by several county attorneys to address the problem of multiple offenses committed at approximately the same time, but the value of each does not amount to a felony. The bill proposes to allow aggregation of value for purposes of a single felony

prosecution. Mr. Connor asked the committee for a Do Pass recommendation.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Aafedt asked if this was an ongoing situation for weeks, could the same aggregation procedure be used? Mr. Connor said you could if you could prove that this was part of a continuing criminal behavior.

Closing by Sponsor: Sen. Gage closed.

DISPOSITION OF SENATE BILL 31

Motion: Rep. Rice moved SB 31 BE CONCURRED IN. Rep. Wyatt seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion was voted upon and CARRIED with a unanimous vote.

HEARING ON SENATE BILL 36

Presentation and Opening Statement by Sponsor:

Sen. Hofman opened the hearing on SB 36 stating that this bill has been presented for the State Auditor's Office. The State Auditor is responsible in the insurance division for all of the agents, agencies and insurance companies that sell insurance policies in the state. Her job is to see to it that the public is protected from any abuses of this industry in any of those three areas. This bill establishes the insurance division of the State Auditor's Office as a criminal justice agency. The reason for this bill is because of an abuse in Gallatin County.

Testifying Proponents and Who They Represent:

Susan Witte, Staff Attorney with State Auditor's Office
Mike Sherwood, Montana Trial Lawyer's Association

Proponent Testimony:

Susan Witte spoke in favor of SB 36 which would designate the Montana Insurance Department a criminal justice agency (See EXHIBIT 1). Ms. Witte also provided the committee with two letters supporting her testimony (EXHIBITS 2 and 3).

Mike Sherwood told the committee the Montana Trial Lawyer's Association supports SB 36 provided the amendment stays in it. In section 2 when the bill was first introduced it provided immunity beyond that of a standard law enforcement agency. Now that section 2 has been stricken, they support the bill as amended.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Sen. Hofman said this will not enable the department to go out and do a great deal of investigative work. It does mention detection, collection, storage and dissemination of criminal justice information. The thing they need is the ability to get information from other agencies like sheriff's departments, FBI and any investigative agencies that might have some information that would be useful to them in the insurance division.

DISPOSITION OF SENATE BILL 36

Motion: Rep. Darko moved SB 36 BE CONCURRED IN. Rep. Brooke seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion and CARRIED with Rep. Hannah voting Nay.

HEARING ON SB 324

Presentation and Opening Statement by Sponsor:

Sen. Beck opened the hearing saying this is a simple bill to allow the courts to conditionally discharge people on probation or the parole board to conditionally discharge people on parole that have met all the requirements and have

the recommendation of the parole officer. It's a program that's already being used but they are trying to put it into the statutes.

Testifying Proponents and Who They Represent:

Mike Ferriter, Field Services Supervisor for Community Corrections Bureau

Nick Rotering, Legal Counsel for Board of Pardons and Department of Institutions

Proponent Testimony:

Mike Ferriter said SB 324 is a bill recommended by the Governor's Council and is supported by the Department of Institutions. Essentially the bill provides statutory authority for a longstanding practice of providing a conditional discharge from supervision for probationers and parolees who have long terms of supervision with satisfactory adjustment. This practice of recommending a conditional discharge from supervision is used most frequently when other states supervising their people be curtailed because of successful performance on the part of the probationer or parolee. Typically these individuals have been under supervision for several years and have paid all of their restitution and have had no problems in the community. When an individual receives a conditional discharge, he must report in annually in writing and are still subject to revocation for any violation of the law. At the present time there are 39 individuals on conditional discharge out of a total probation and parole population of 3200. These people served over 4 1/2 years under community supervision and had an average sentence of 26 years. Mr. Ferriter expressed that they support the amendments proposed by Sen. Beck as they are necessary to clarify the intent of the Governor's Council that these are conditional discharges and not complete discharges from supervision.

Nick Rotering stated that both the Board of Pardons and the Department of Institutions request this law in order to clarify a gray area concerning a practice that has been going on for several years. He commented that he has always felt that the Board of Pardons, with their rulemaking authority has had the jurisdiction to conditionally discharge somebody from active supervision, but obviously it's a question of whether or not the court on the suspended portion had the statutory authority to do it without this bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Sen. Beck said in the Senate they did add the word conditional so that if somebody did violate that parole, justice could be taken against them. It's a good bill. He asked the committee's recommendation.

DISPOSITION OF SENATE BILL 324

Motion: Rep. Boharski moved SB 324 BE CONCURRED IN. Rep. Brooke seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion CARRIED with Rep. Gould voting against the motion.

HEARING ON SENATE BILL 177

Presentation and Opening Statement by Sponsor:

Sen. Yellowtail introduced SB 177 stating that this bill would create an administrative mechanism for determining paternity for children receiving child support enforcement services from the state. At present that function is carried out in the courts, however, caseload projections for the next few years indicate an exploding burden on the courts. This bill would offer relief for the court system and at the same time streamline the process for determining paternity and insuring that the state does not fall out of compliance with the federal rules on the subject and thereby cost significant amounts of money.

Testifying Proponents and Who They Represent:

Brenda Nordlund, Montana Womens' Lobby

Proponent Testimony:

Brenda Nordlund spoke in favor of SB 177 on behalf of the Montana Womens' Lobby (See EXHIBIT 4).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Eudaily asked Sen. Yellowtail why the section at the top of the bill that says "at the request of the Department of Revenue" has been stricken. Sen. Yellowtail said the bill was originally requested by the former administration. The new administration came in and while they don't oppose the bill, felt more neutral and asked to be removed from the title.

Rep. Boharski commented that his impression of these DNA tests is that they are either yes or no. This is state of the art technology and he wondered if Brenda Nordlund could expand on the 95%. It worries him about the situation where somebody comes in and does the test and it is published that this person is the father and he hasn't received a judicial review or anything like that and someone could be saying yes, you are on the basis of a test that doesn't prove it.

Ms. Nordlund deferred the question to John McCray, staff attorney with Child Support and Enforcement Bureau, who responded that the DNA test itself does not create a presumption at all. Therefore, it would not come in this provision about the presumption of paternity based on statistical figures. You would not get a 95% figure. In the DNA they will merely come out and say yes, he is the father or no, he is not the father. The DNA would be excluded from this presumption of paternity that is created by the 95% figure. That figure is in reference to the HLA test.

Closing by Sponsor: Sen. Yellowtail said the blood test that is utilized for determination of paternity is the standard procedure at present and there is nothing that would change there. The advantage of this bill is that it will expedite the process in the division of state government that already deals with child support enforcement.

DISPOSITION OF SENATE BILL 177

Motion: Rep. Darko moved SB 177 BE CONCURRED IN. Rep. Brooke seconded the motion.

Discussion: Rep. Mercer said he has a concern about the bill and wonders if it could be addressed by an amendment. He said the issue he's worried about is the trouble the state can create for a single mother and her family perhaps against her wishes. If you have a mother who has a child and the mother happens to be on some kind of government aid and she would just as soon not have anything to do with a ~~punitive~~ ^{putative}

father or alleged father and the state takes it upon themselves to drag it into court and then, as soon as paternity is established, the state bails out. This could cause tremendous turmoil to somebody's life. The only protection that seems to be in the bill now is on page 5 lines 15-18 where it says "it's presumed to be in the best interest of the child to determine paternity and it's a presumption that could be rebutted by a preponderance of the evidence". I wonder what would be wrong with putting in some kind of a standard that said the department may not proceed to establish paternity under this act without the consent of the mother. That way the mother would have a little protection against somebody dredging up something that she doesn't want brought forward. Just because somebody is on AFDC, the state shouldn't have the independent right to create chaos in somebody's life.

John McCray said the state is required to establish paternity in all cases in which the mother is receiving AFDC benefits from the state. She can exempt out of that only if she has a good cause showing. For example, if a child is born as a result of rape, incest or something of that order or if there is likely to be some kind of a physical or emotional harm coming back either upon the child or the mother. In that case there is a good cause and the case will not be pursued. That is already built into the regulations. There are examples where the mother is unwilling and there is no good cause finding and they must pursue the paternity. She, as a recipient of AFDC, must cooperate in the establishment of paternity.

Rep. Eudaily asked if they are required by statute or administrative rule. John McCray said this requirement is a federal regulation imposed on us as a condition of the use of federal money in Montana. In other words, if we want the federal share of AFDC money in Montana, we must do certain things. We are audited periodically to be sure we are in compliance with the federal regulations.

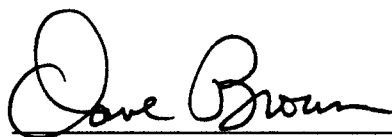
Rep. Hannah asked if this bill would require the blood testing of any accused man as the father of a child? In other words, could someone come forward and say some public figure was the father of the child in question so would the person would have to submit to a blood test to determine that accusation? Rep. Rice said he would only have to submit to a blood test after a probable cause hearing was held. If they could establish probable cause from the other evidence, he would have to submit to a blood test.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Question was called for on the motion SB 177 BE CONCURRED IN and CARRIED with 11 voting aye, and 5 voting nay (See attached Roll Call Vote).

ADJOURNMENT

Adjournment At: 9:20 a.m.

A handwritten signature in cursive script, reading "Dave Brown".

REP. DAVE BROWN, Chairman

DB/je

4908.min

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE MARCH 2, 1989 BILL NO. SB 177 NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY	X	
REP. PAULA DARKO	X	
REP. RALPH EUDAILY		X
REP. BUDD GOULD		X
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON	X	
REP. JIM RICE	X	
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH		
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

11 5

Julie Empe
Secretary

Dave Brown
Chairman

Motion: Rep. DARKO MOVED SB 177 BE CONCURRED IN,
seconded by Rep. Brooke. Motion CARRIED.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 177DATE MARCH 2, 1989SPONSOR SEN. YELLOWTAIL

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Brenda Nordlund	MT Women's lobby	x	
John McRae	DOE/CSRB		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 324

DATE MARCH 2, 1989

SPONSOR SEN. BECK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Nick Roterino	Dept. of Institution	✓	
Mike Ferriter	Dept. of Inst.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 36DATE MARCH 2, 1989SPONSOR SEN. HOFMAN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
KATHY ANDERSON	IND INS AGENTS ASSOC OF MT	✓	
Michael Sherwood	MTLA	✓ as amended	
Jacqueline H. Durrell	Am. Ins. Assoc.	✓	
Edson C. White	State Auditor's Office	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

DATE MARCH 2, 1989

IMPORTANT ASPECTS OF SB 177:

Prepared by Brenda Nordlund, Lobbyist
Montana Women's Lobby

1. Administrative Process to Establish Paternity
 - a. Voluntary Acknowledgment
 - b. Partial contested case, with blood test results
 - c. Default cases

JUDICIAL REVIEW OF THESE ORDERS UNDER MAPA

2. Compelled Blood Tests in Administrative Context

PROBABLE CAUSE HEARING

3. Admission of Blood Test Results on Affidavit/Chain of Custody
4. Rebuttable Presumption of Paternity at 95% or higher
5. Fully Contested Case (Denial of Paternity in face of blood test results < or > than 95%) Referred to District Court under UPA, except as otherwise provided in bill

TRIAL DE NOVO

Norway experience:

When Norway instituted a policy placing responsibility on the father in every out-of-wedlock birth, illegitimacy levels were halved. Analysis of effect holds:

Presumably, if the male partner knows that he will be responsible for approximately eighteen years, he is likely to want to prevent conception (or childbirth) with the women he does not want to marry . . . When responsibility is immediately and consistently placed, persons recognizing the probable outcome may use a variety of means of prevention. When only a few fathers are occasionally held responsible, each may support he will not be one of those.

[Source: Hartley, Shirley Foster. Illegitimacy. Berkeley: University of California Press, p. 249 (1975)]

It is possible that this approach could remove a disincentive to having a child out-of-wedlock for women, since the father would share the responsibility that otherwise would be hers alone. Nonetheless, the empirical evidence in this case shows that the law made a significant difference.

Testimony in Support of SB 177
Before the House Judiciary Committee
March 2, 1989

RATIONALE:

1. If paternity is not established, child support obligations cannot be established and the state and federal government lose any means of recouping public assistance dollars, including AFDC and Medicaid, from absent parents.
2. Size of caseload and size of staff deter expeditious establishment of paternity in IVD cases, if the same must be established exclusively in district court.
3. The Family Support Act of 1988 requires HHS Secretary to set standards for measuring the state performance in establishing paternity of children receiving AFDC or IV-D child support services.

FAILURE TO MEET THE PERFORMANCE STANDARDS COULD RESULT IN FINANCIAL SANCTIONS, RANGING FROM 1 TO 5% OF FEDERAL REIMBURSEMENT FOR AFDC.

The Act further encourages each state to implement a simple civil process for voluntary acknowledgment of paternity, and a civil procedure for establishing paternity in contested cases.

4. Oregon experience with administrative determination of paternity shows that:

30% of cases will be resolved by voluntary acknowledgement
10% of cases will be resolved following voluntary blood test
50% of cases will proceed to probable cause hearing and compelled blood test
10% of cases will be referred to district court

SURVEY OF OTHER JURISDICTIONS

Sixteen states allow an administrative body to conclusively establish paternity where both parents acknowledge.

Eleven states permit the resolution of paternity against party refusing to obey an order for blood testing, or by refusing to appear for scheduled blood testing. An additional four states permit resolution of paternity against party refusing to participate in process at any phase (not specifically for blood testing).

This is similar to Rule 37(b)(2) sanctions under federal and Montana rules of civil procedure.

Eight states establish, by statute, rebuttable presumption of paternity, based on probability of paternity from ordered blood tests. (Range 95% to 99%) One state has established presumption by case law. Utah: 95%.

Three states permit admission of blood test results into evidence upon affidavit of the expert. (Oregon, Washington and Wisconsin)

California permits exclusion of other issues from paternity case.

California and Washington specifically exclude the administrative agency from having to pay fees for guardians ad litem and appointed counsel for indigent defendants.

By Brenda Nordlund, Lobbyist
Montana Women's Lobby

MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

EXHIBIT

3

DATE 3-2-89

3
NB 36

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

January 11, 1988

Honorable Sam Hoffman
State Senator
Capitol Station
Helena, MT 59604

Re: SB 36

Dear Senator Hoffman:

I strongly support legislation to statutorily establish the Insurance Department of the State Auditor's Office as a criminal justice agency.

My office and other county and other county attorneys work with Insurance Department personnel on a regular basis in dealing with very serious insurance fraud cases that involve many thousands of dollars literally stolen from scores of victims across the State of Montana. These cases frequently result in successful felony prosecutions and significant prison sentences for convicted defendants. Under these circumstances it is obvious that the Insurance Department has functioned as a de facto criminal justice agency for years. Frankly I am surprised that the Insurance Department has not always been statutorily recognized as such since criminal investigations are a major part of that Departments responsibilities.

Because of recent federal and state laws severely restricting access to criminal history and criminal investigative information by entities that are not specifically designated to be criminal justice agencies the Insurance Department effectiveness is in serious danger of being compromised. Accordingly, I not only support the proposed legislation, but also believe it is a matter of significant public safety and welfare that it be enacted into law.

Sincerely,

Robert L. Deschamps III
ROBERT L. DESCHAMPS, III
Missoula County Attorney

RLD/jln

cc: Bob Post

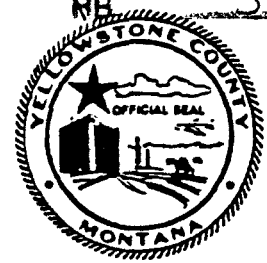
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STATE AUDITOR'S OFFICE
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HELENA, MONT.

EXHIBIT 2
DATE 3-2-89
\$ 36

County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508
(406) 256-2870



- | | |
|---|--|
| <input type="checkbox"/> Criminal Division | <input type="checkbox"/> Victim/Witness Assistance |
| <input type="checkbox"/> Civil Division | <input type="checkbox"/> Child Support Enforcement |
| <input type="checkbox"/> Deferred Prosecution | |

January 4, 1988

Honorable Gene Thayel
Chairman, Business & Industry Committee
State Senate
Helena, MT 59620


RECEIVED
STATE AUDITOR'S OFFICE
JAN 5 8 08 AM '89
HELENA, MONT.

Re: Senate Bill 36

Dear Senator:

This office supports S.B. 36 which would make the insurance department of the state auditor's office a criminal justice agency. This designation will expedite sharing information with them for purposes of investigation and prosecution. Unfortunately, we are seeing more criminal conduct in this area.

Sincerely,


Harold F. Hanser,
County Attorney

HFH/cr

cc: Senator Tom Hager
Andrea Bennett, State Auditor ✓

EXHIBIT 1
DATE 3-2-89
SB 36

TESTIMONY ON SENATE BILL 36

STATE AUDITOR'S OFFICE

March 3, 1989 -- House Judiciary
Susan C. Witte, Chief Legal Counsel

Senate Bill 36 designates the Montana Insurance Department a criminal justice agency. Such a designation would allow the Department to gather information from other law enforcement agencies and it would provide the Department with a means of insuring the confidentiality of its investigative files.

The Department presently cannot receive confidential criminal justice information from other criminal justice agencies, such as local law enforcement agencies, the U.S. Postal Inspection Service, or even the Montana Securities Department, which is within the same office as the Insurance Department. The Insurance Department can share information with any of these agencies, but those agencies cannot in turn share confidential criminal investigative information with the Insurance Department. A criminal justice agency designation would provide for effective investigations of violations of the Insurance Code which may also involve criminal conduct.

Senate Bill 36 has the support of the County Attorneys of Yellowstone and Missoula Counties. Letters from ^{some of} those agencies have been provided to the Committee.

Gallatin, Ravalli,
Butte, Silver Bow and
Cascade

Section 33-1-311 gives the Commissioner of Insurance the power to make investigations necessary to determine whether violations of the Insurance Code have occurred. Senate Bill 36 would designate the Montana Insurance Department as a criminal justice agency as defined in Section 44-5-103 of the Montana Criminal Justice Information Act of 1979. The Act contains guidelines for the effective protection of individual privacy in the collection, storage, and dissemination of criminal justice information.

Designation as a criminal justice agency may, in the long run, discourage criminal conduct in a very consumer-oriented industry. The State Auditor and Commissioner of Insurance consequently urges this committee to give Senate Bill 36 a "do pass" recommendation.

STANDING COMMITTEE REPORT

March 2, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 177 (blue reference copy) be concurred in.

Signed: 
Dave Brown, Chairman

[REP. ADDY WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 2, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 324 (blue reference copy) be concurred in.

Signed: 
Dave Brown, Chairman

[REP. CAMPBELL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 2, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 31 (blue reference copy) be concurred in.

Signed: 

Dave Brown, Chairman

[REP. RICE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 2, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY			X
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		