

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 12, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Al Bishop, Bob Brown, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. "Dick" Pinsoneault, and Bill Yellowtail.

Members Excused: Senator John Harp.

Members Absent: None.

Staff Present: Valencia Lane, Staff Attorney and Rosemary Jacoby, Committee Secretary.

Announcements/Discussion: None.

HEARING ON SENATE BILL 10

Presentation and Opening Statement by Sponsor: Senator Mike Halligan of Missoula, representing District #29, opened the hearing stating that the purpose of the bill was to address efficiency and cost for persons involved in the dissolution of marriage.

List of Testifying Proponents and What Group they Represent:

Bruce Barrett, Associated Students of the University of Montana  
Mike Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

Senator R. J. "Dick" Pinsoneault, St. Ignatius, District #27, representing the District Clerks of court.

Testimony:

Bruce Barrett, representing ASUM, presented written

testimony which was distributed to committee members (See Exhibit 1). In addition to the written testimony, he made further comments. He said the bill provides for consent of both parties including a waiting period; the parties must be notified of conciliation services if that county has them; and lastly if the parties have children or property in excess of \$13,000 or debts of \$4,000 or more, they cannot use this simplified procedure. Simple divorces can take as little as 30 seconds or one minute, he said, so why waste the court's time, the couple's time and cost considerably more. With the divorce rate approaching 50% of all marriages, there is a definite need for this law, he commented. He stated that the marriage must be irreconcilably broken. He also stated the bill would prevent a backlog in the courts, and avoid the problem of people having to wait perhaps many hours for their case to come before the judge. Other states have had good luck with this law, he said.

Mike Sherwood, representing MTLA, said his clients are people who represent people. He said that there is a 3-year backlog and that this bill would eliminated the day-to-day tedium in the courts handling many divorces. (See Exhibit 2.) Another point he wished to mention was that the bill could improve the quality of the judiciary, that many qualified persons do not apply for the positions because of the day-to-day tedium.

Senator R. J. "Dick" Pinsoneault appeared as an opponent to the bill. He distributed copies of a letter from Katherine E. Pedersen, Clerk of District Court in Lake County (See Exhibit 3), which expressed objections to the bill for several reasons. He said he didn't want divorce to be extremely difficult, but felt this made it far too easy and took away from the dignity of the state of marriage. He commented that mishandling of cases was more likely the cause of court backlog. He said attorneys did not like divorce cases. But when they occurred, he wanted the couple to have counselling he felt would not be available in this type of divorce. He asked the committee to seriously consider the Clerk of Court's objections which included additional cost.

Questions From Committee Members: Senator Jenkins asked if on page 2, subsection 6, line 11, the \$13,000 referred to personal property assets. He was told yes by

Senator Halligan. Senator Jenkins continued saying that, in line 11, it stated that "neither party has separate property assets, excluding all encumbrances and automobiles in excess of \$13,000." In his view that added up to \$26,000 and he asked for clarification of that part of the bill. Senator Halligan said he didn't practice dissolution law, but thought property owned before marriage was considered separately in a dissolution. Chairman Crippen interjected that Senator Mazurek could explain the matter to the committee. Senator Mazurek said that, in a divorce all property was divided equally, that it didn't matter whose name the property was held. If a person brought a house and car to a marriage, that is considered part of the marriage estate. Mr. Barrett said this bill would not apply if sole property or joint property totaled more than \$13,000.

Senator Mazurek commented on the filing fees being lowered in the bill, saying the reason the filing fees were raised previously was to fund projects for Big Brothers, for battered wives and for other worthwhile projects. By lowering the fees, funds are lost for good causes, he said. Mr. Barrett said that many young couples seeking divorce are severely short of funds and found it difficult to come up with \$125 as opposed to \$50. He said in cases where a couple can't come up with any money for a filing fee, he believed the court would have to grant a divorce regardless. He said there would be fewer free filing fees if the fees are lowered. As to the complaint about clerks of court having additional workloads, he thought if the Attorney General does his job well in developing a form, there will be no burden for clerks of court. At present, self-restraining forms, developed by the Attorney General's office for protecting abused spouses are handed out by the clerks of court. They were drafted well and haven't increased the workload. The same could occur in this instance. As to counselling, he agreed that parties with complicated divorces or where money or property divisions were difficult, he thought couples should be advised to see a lawyer.

Senator Mazurek asked Senator Halligan if he had contacted the Attorney General's office about developing the forms that would be required by the bill. Senator Halligan said he had called, but hadn't been called back.

Senator Beck referred the committee to page 2, lines 9 and 10, regarding fair market value of property assets and asked if a person had a \$15,000 car on which he still owed \$10,000, how would that be valued. Senator Halligan said the bill states "excluding all encumbrances". The portion owed would be deducted to determine the assets.

Senator Beck said he saw some suggested amendments (See Exhibit 4 - a letter from District C. B. McNeil, Twentieth Judicial District of Montana distributed by Senator Halligan). Senator Halligan said he agreed with the first suggested amendment and felt it pertained to an older couple with children grown and gone. He didn't agree with the second amendment which would throw the dissolution back into court.

Senator Pineseault said that, in Missoula County, a "master" process exists where a judge can appoint "to assist". He didn't know how it was funded, but, procedurally at present, there exists a system whereby four judges could get together and have a "master" handle all the domestic relations. It could be done very expeditiously, rather than put another law on the books, he stated. Mike Sherwood said a "master" of this type would be subject to disqualification and, too, funding would have to be raised. But, he seemed to agree that it would clear up the calendar for a while. Lawyers can make suggestions but judges don't always want to go along with them, he said. A problem, he explained, exists because of delay. He had a case settled last spring for \$20,000 which was filed in 1981. In 1988, \$20,000 is worth less than \$9,000 would have been if the case had been settled in 1981, he said. He said other systems might work as well, but they have been suggested and not implemented.

Senator Bishop asked if the provision for doing away with a hearing was constitutional. Senator Halligan thought constitutionality was not a problem.

Senator Crippen said the Clerk of Court in his county (Yellowstone) agreed with Katherine Pederson of Lake County that the \$50.00 filing fee was inadequate. Bruce Barrett agreed that the filing fees were used for good causes. But as to the cost of mailing, he reminded the committee that there is only one mailing provided by the bill, which would be a 50 cent cost. Senator Crippen also mentioned the cost of the brochures and Mr. Barrett thought that was a legitimate

concern. He said he didn't know how it would be funded or how the self-help restraining order was funded, but suddenly they appeared in public buildings all over the state.

Senator Crippen asked if the Clerks of Court were not put in a position of giving advice to persons seeking divorce. Barrett thought not. He said nearly everyone seeking divorce was already contacting the Clerks of Court and obtaining advice. Many people contact the Clerk attempting to handle their own divorce, and in most cases, are forced to go to lawyers because of complications. So, the Clerks are already handling a huge number of them.

Senator Crippen asked, of all persons who attempt divorce, how many actually go through with the process. Mr. Barrett felt only three or four per cent do not actually go through with it, that most people who get to the point of attempting divorce have already exhausted reconciliation attempts. And, he said, there are a huge number of them. Many of the parties have nothing, but simply say: "I'll keep my stuff, you keep yours." This type of case happens time after time after time, he commented, and felt the need for counselling was being overstated. He also said he knew people who went to school to get divorced.

Senator Crippen asked if a Fiscal Note should be obtained and Senator Halligan said he would look into it.

Closing by Sponsor: Senator Halligan said he would contact the AG's office regarding the brochure. He also stated that there could be a problem with the effective date. He thought, if the committee looked favorably upon the bill, he would suggest that the AG's office go ahead and print the brochures. He said the bill was an attempt We are trying to balance judicial economy with protections in the judicial process. Answering the question about the solemnity of marriage, he commented that many marriages are not performed in a solemn, dignified manner, and inferred that many couples do not regard marriage the same as do most of the committee members. He also stressed that both, not one party, must sign the petition. He said that Clerk and Recorder offices grant divorces where the assets are less than \$7,500 in small states at this time for \$35.00. He hoped the committee would consider the bill favorably. He then closed the hearing.

DISPOSITION OF SENATE BILL 10

No disposition was made at the meeting, giving the sponsor further time for study.

ANNOUNCEMENTS

Chairman Crippen said that, since Senator Nathe was not present, the committee would not consider Senate Bill 83 Executive Session but would do so at a future meeting.

ADJOURNMENT

Adjournment At: 11:45 a.m.



BRUCE D. CRIPPEN, Chairman

BDC;/rj

minutes.112

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-12-89

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

NAME: Bruce Bennett DATE: \_\_\_\_\_

ADDRESS: 1945 McDonald, Missa MT 59801

PHONE: 542-2563 / 243-6213

REPRESENTING WHOM? ASUM — self as 9774

APPEARING ON WHICH PROPOSAL: Bill 10 — Senate

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

COMMENTS: prepared statement submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



SUPPORTING THE MONTANA SUMMARY DISSOLUTION BILL

Testimony by Bruce Barrett, Director of ASUM Legal Services at University of Montana

I appear today in support of the proposed Summary Dissolution Law. The divorce rate in the United States. is reaching 50% for new marriages. Many divorces involve complicated property division, child custody disputes, and complicated allocation of debts between the parties. These divorces absorb a tremendous amount of time on the part of our court system, which is wrestling with a heavy caseload.

A certain number of divorces, however, are uncomplicated and uncontested. These are cases where the parties have been married a short time, or for some reason their marriage did not develop into a complicated one in terms of children or property. This bill is aimed at providing an uncomplicated divorce procedure for these persons.

Basically, if a marriage has no children and there are relatively little debts or property, the parties may agree to jointly ask the Court to grant a summary divorce. This means (usually) no attorneys and no court appearances. The parties pay a small filing fee, file an application, and their divorce is granted after a waiting period has expired.

This bill is good for the parties involved. If parties to an uncomplicated divorce jointly agree to sever their relationship, they could do so without becoming enmeshed in complicated legal procedures. The cost is minimized, as it should be for uncomplicated dissolutions. (Presently even the most uncomplicated divorce has a \$125.00 filing fee, even without considering the attorney's fees which are almost always incurred).

This bill is good for the Court system. Uncomplicated and uncontested divorces frequently take the Court only a few minutes to grant. The formal hearing in these cases does little in terms of counseling the parties. The Petition is frequently "rubber stamped" by the acting judge, who is trying to get through a busy session so that complicated matters can be handled. Often a judge will run through ten divorces per session in our larger cities. Each divorce involves a personal appearance by a client, by an attorney, and involves the full procedures of the court such as a stenographer, and the full staff. Attorneys and clients do not know in advance how long they must wait for their twominute hearing. In the larger cites, an attorney and client will sometimes wait an hour, or even several hours, to conduct a one or two-minute hearing. In short, this bill is in the interest of judicial economy. A tremendous number of assets are being wasted when such waste is not necessary.

EXHIBIT NO. 2, p. 3

DATE 1-12-88

BILL NO. SB 10

Most cases, of course, require the scrutiny of a judge to insure justice for the parties. This bill is limited to the uncomplicated and uncontested divorces. This bill only applies to marriages with no children and little debt or property. Even in these cases, there are safeguards to protect the parties from an unjust result.

First, the summary divorce can only be granted if both parties consent. Even if both parties consent, the divorce will not be granted until a waiting period has expired. During this waiting period, either party may withdraw from and cancel the process for any reason. Then the parties must proceed with a traditional Court divorce. Second, the parties must be notified of conciliation services if that particular county has them available.

Third, if the parties have children, or significant amounts of property (\$13,000 or more) or debts (\$4,000 or more), they cannot use this simplified procedure. Thus third parties are protected.

This bill will streamline and simplify procedure for persons who really do not require a personal appearance before the Court to obtain their dissolution. Everyone involved in the process will benefit.



Bruce B. Barrett, Attorney At Law

NAME: Mike SherwoodADDRESS: 1220 8<sup>th</sup>, Helena, Mt.PHONE: 442-8205REPRESENTING WHOM? MTLAAPPEARING ON WHICH PROPOSAL: 10DO YOU: SUPPORT?  AMEND?  OPPOSE? 

COMMENTS: The district courts throughout the  
state are back logged. In Missoula county  
there is a delay of more than 3 years for  
jury trials. Hopefully, this legislation would  
alleviate the demand for in-court time.

One of the reasons that ~~are~~ lawyers  
are reluctant to serve as district court judges  
is the large amount of domestic litigation  
both because it involves tedious day to day work  
in law and motion and creates stressful, emotional  
court room conflicts often over the most trivial  
of matters. This bill will probably alleviate some of  
the former and may impact favorably on the latter.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 1-12-89

BILL NO. SB 10

Katherine E. Pedersen  
CLERK OF DISTRICT COURT  
Lake County Courthouse  
106 4th Avenue East  
Polson MT 59860  
883-6211, ext. 310

January 10, 1989

RE: SB 10, Procedure for Summary Dissolution of Marriage

TO: Bruce Crippen, Chairman of Senate Judiciary Committee  
✓ Dick Pinsonault, member of Senate Judiciary Committee

As Clerk of District Court in Lake County, I have several objections to this bill.

Section 1 (1): "Each party has met the requirements of 40-4-104 with regard to dissolution of marriage." MCA 40-4-104 (2)--does it apply for legal separations?

Section 1 (7): "The parties have executed an agreement....." How will the parties know how to "execute an agreement" without legal advice?

Section 4: The clerks don't have time to keep track of the 90 days and we do not want to have to send notices of entry of judgment. That is the responsibility of the parties or an attorney.

Section 7(1): Who wants to pay for printing these brochures? We cannot afford to supply them or supply blank forms.

Section 7(2)(ii): If the parties are not to rely on the brochure exclusively, then who are they to rely on if they don't want to hire an attorney? They will ask the clerks questions which we should not answer because we must not give them legal advice.

Section 8: Filing fee of \$50.00 is inadequate as this procedure will take more of the clerk's time telling the parties to read the brochure and explaining that we can't help them. What is the disposition of the fee? It should all be deposited to the district court fund.

I hope this bill will be killed in committee. Thank you for your time.



TWENTIETH JUDICIAL DISTRICT  
STATE OF MONTANA

SENATE JUDICIARY

EXHIBIT NO. 4

DATE Jan 12, 1989

BILL NO. SB 10



C. B. MCNEIL  
DISTRICT JUDGE



LAKE COUNTY COURTHOUSE  
POLSON, MONTANA 59860  
406-883-6211

SANDERS COUNTY COURTHOUSE  
THOMPSON FALLS, MT 59873  
406-827-4316

January 9, 1989

Senator Mike Halligan  
Montana State Senate  
State Capital Station  
Helena, MT 59620

Re: Senate Bill No. 10

Dear Senator Halligan:

I have received a copy of your Senate Bill No. 10 relating to summary dissolutions and respectfully suggest that you consider the two following proposed amendments:

Section 1. ...

(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage who have not attained the age of 18 years or older, and the wife, to her knowledge, is not pregnant.

Your summary dissolution proceeding statute is obviously intended to only apply to actions in which there are no issues of child custody, support or visitation. The suggested amendment would make the summary proceeding available to those situations in which there have been children of the marriage but where they are all of legal age. As I am sure you are aware, it is not uncommon for married couples having problems with their marriage to wait until the kids are out of school before ending the marriage.

The second amendment I ask you to consider is as follows:

Section 4. Final Judgment...

After 90 days from the date of the filing of the joint petition for summary dissolution, and following an evidentiary hearing requested by either co-petitioner, the District Court shall enter the final judgment dissolving the marriage. ...

The foregoing amendment would preserve the present requirement imposed by the Montana Supreme Court that even in an uncontested default dissolution at least one party to the action must testify under oath that the marriage is irretrievably broken. Couples frequently reconcile after a dissolution action has been filed and this suggested amendment would avoid the entry of an "automatic" entry of a final judgment of dissolution by the mere passage of the 90 days without the appearance in Court of at least one of the parties after said time.

Your consideration of these suggestions would be appreciated.

Very truly yours,



C. B. McNeil  
District Judge

CBM:sm

DATE

Jan. 12, 1989

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Nike Sherwood	NTLA	10	✓	
<del>Blanks</del>	ASUM	10	✓	
Krystin Deschamps	ASUM	10	✓	
<del>A. Shuster</del>	<del>As of</del>			