

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 24, 1989, at 10:00 a.m. in Room 325 at the State Capitol.

ROLL CALL

Members Present: Sen. Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, John Harp, and Bill Yellowtail.

Members Excused: Sen. R. J. "Dick" Pinsoneault

Members Absent: Sen. Pinsoneault

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

Announcements/Discussion: None

HEARING ON SENATE BILL 105

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, representing District 23 stated that the bill was requested by the Selective Service system requiring the Department of Justice to provide them with a list of licensed drivers. The country no longer has a draft, he stated, but does require that youths register with the Selective Service within 30 days of their 18th birthday. For those who don't register, the penalties are very significant. They can be sentenced to prison for up to five years and pay a fine of up to \$250,000, said Senator Mazurek. They can never hold a job with a federal agency, including summer jobs, nor can they ever receive federal financial assistance of any kind -- PEL grants, student loans, financial assistance, benefits in the Job Training partnership act, he told the committee. He urged passage of the bill as it would be good for both youths required to register and for the Selective Service.

List of Testifying Proponents and What Group they Represent:

Bill Yeager, Selective Service System  
Richard Gillespie, Selective Service System  
Peter Funk, Department of Justice

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Bill Yeager presented his testimony to the committee. (See Exhibit #1.)

Mr. Richard Gillespie wanted to clarify that PEL educational grants, employment and loans are allowed unless the person fails to register by age 26. Those bills do provide an escape clause, providing a person the opportunity to demonstrate their failure was not willful or intentional. Since the early 1980's the selective service program has undergone a national public awareness program, he stated, and indicated there was little excuse for not knowing about the required registration.

Peter Funk stated that the Department of Justice supports the language in this bill because, for several years, they were prohibited from releasing that type of information.

Questions From Committee Members: Sen. Halligan asked Sen. Mazurek if he had checked with other states to see how they made sure that the names were not used for any other purpose. Sen. Mazurek stated that most other states have provisions for that. Twelve states have passed statutes for state sanctions for failing to register, he added. Mr. Yeager stated that all states except Hawaii and Montana provide lists to the Selective Service.

Sen. Halligan asked Mr. Yeager if women's names might be kept in the event they would be required to register at some time in the future. Mr. Yeager stated he didn't know about that.

Sen. Jenkins asked Sen. Mazurek if the Social Security number could possibly be used to accomplish this purpose. Sen. Mazurek stated that this bill would use names and addresses only. Mr. Gillespie stated that the system would

all done by computer, and that it would be programmed to include only the name, address and date of birth. It wouldn't include the drivers license number or social security number, he said.

Sen. Jenkins asked Mr. Gillespie why the social security number was excluded. Mr. Gillespie stated that in the last two sessions they brought a similar bill forward which did not include the prohibition on the social security numbers. It was opposed for that reason, he said. The Selective Service system did a cross-match with the social security system, he told the committee, in order to pick up a substantial number of names (approximately 100,000 per year) that had escaped detection. Many people do not have Social Security numbers, yet they drive. This, he said, is the reason for using the drivers license list to supplement the cross-match with Social Security numbers.

Closing by Sponsor: Sen. Mazurek stated the selective service will pay any costs connected with this proposal and urged passage of the bill. He closed the hearing.

#### DISPOSITION OF SENATE BILL 105

Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Halligan MOVED that Senate Bill 105 DO PASS. The MOTION CARRIED UNANIMOUSLY.

#### HEARING ON SENATE BILL 140

Presentation and Opening Statement by Sponsor: Sen. Jergeson of Chinook, representing District 8, stated that his bill proposed to include the possession of phenyl-2-propanone on the list of dangerous drugs. It takes two precursors to make "speed", he said, of which P-2-P is one. In most drugs, he told the committee, any of the precursors conceivably could be used to produce something other than illegal drugs. As I understand it, phenyl-2-propanone is used only to make speed. He felt it would be appropriate to have this precursor be named as a dangerous drug.

List of Testifying Proponents and What Group they Represent:  
John Connor, Department of Justice, County Prosecutor  
Services Bureau, representing the Montana County  
Attorney's Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor stated that this bill was introduced at the request of the Montana County Attorney's Association. The bill, he said attempts to address an increasingly serious problem in Montana with the production of speed. The drug is clandestinely manufactured in laboratories that are set up "from bedrooms to garages to warehouses," said Mr. Connor. He said he had spoken to the DEA in Montana and the Criminal Investigation Bureau regarding the problem. In addition, he had prosecuted approximately 50 drug cases since beginning in Prosecutor Services a year ago last October. The number of these labs is increasing in Montana at an alarming rate, he told the committee. The chemicals used in this process are very toxic, flammable and potentially explosive, depending on what manufacturing process is actually used, he said. One of the most common methods is to use P-2-P in conjunction with other substances to produce "speed," Conner said. When one of these labs is discovered, and it is often discovered by accident, only residue in glassware that may have been used in the production of the substance is generally found. This is almost always P-2-P residue. There are legitimate uses of P-2-P, he said. The air force uses it to de-ice the wings of planes. He added that there are exceptions in the law that providing for possession of the substance, if one has a legitimate reason to possess it.

This bill would have been of value to enforcement about 18 months ago in Missoula, he said. Someone was "busted" who was in the process of putting together a P-2-P lab in a school bus. There was several thousand dollars worth of glassware found in this school bus, much of which had P-2-P residue on it. The person who had been operating the school bus had been involved in this on the East Coast. Another example from the Drug Enforcement Administration was the group of people who were "busted" in Oregon with two tractor-trailer operations that were loaded with chemicals they intended bringing into Montana to produce methamphetamine. They were coming to Montana because enforcement was getting "too much" in Washington and Oregon, and Montana looked like a likely operation.

This bill would give enforcement an opportunity to charge properly those people who were involved with large scale drug manufacturing operations, he said.

Questions From Committee Members: None

Closing by Sponsor: Sen. Jergeson thanked the committee for hearing the bill.

DISPOSITION OF SENATE BILL 140

Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 140 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 170

Presentation and Opening Statement by Sponsor: Sen. Jergeson of Chinook, representing District #8, stated that the bill was introduced at the request of the Montana County Attorneys' Association. He said the bill provided that a dangerous offender designation could be made at the time of parole violation, rather than at the time of sentencing. He added that there were some problems in the drafting of the bill and he had prepared some amendments. (See Exhibit #2.)

List of Testifying Proponents and What Group they Represent:

John Connor, Department of Justice, representing the Montana County Attorney's Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor explained that this bill was also requested to address a problem that occurred with respect to the statutes in criminal offenses. He said that MCA 46-23-201 provided that a person may not be paroled until he has served one half of his time, unless he is designated a non-dangerous offender. Then, he is eligible for parole when he has served one quarter of

his time. MCA 46-18-44 deals with the process by which the court makes its determination of eligibility for designating a dangerous or non-dangerous offender. The problem is that, when most people appear in court for sentencing, they are not sentenced to prison. This bill presumes a prison sentence. This bill proposes to give the court the discretion to make that determination of dangerous or non-dangerous offender for purposes of parole.

Questions From Committee Members: Sen. Crippen asked Mr. Connor about the amendments. Mr. Connor explained that there was a problem in final drafting of the bill. The bill, as it was originally introduced, was a little confusing and needed clarification.

Sen. Mazurek asked Mr. Connor about the amendments, questioning the use of the term "dangerous offender." Mr. Connor thought it would be appropriate to use the term "dangerous offender".

Closing by Sponsor: Sen. Jergeson thanked the committee for hearing the bill.

#### DISPOSITION OF SENATE BILL 170

Discussion: Senator Crippen asked that the word "a" be added to the amendments on p. 2, line 10, as well as on lines 17 and 22. Senator Mazurek asked about retroactive possibilities. Valencia Lane said she had discussed that with the Attorney General, who thought it could be a problem.

Senator Crippen wondered about striking New Section 2. Valencia said that, if that portion was not included, there would be litigation. She said that, unless the "dangerous offender" designation was made, it was assumed the person was "non-dangerous." She said there had been a case in which the the State unsuccessfully attempted to declare a person "dangerous." She told the committee there was a problem with the statute because it contained a double negative. The intent of this bill was to say that a determination should be made at the time of probation.

Senator Mazurek asked if the "dangerous offender" designation would be made at the time of sentencing if the person plead guilty. Senator Halligan said that the sentencing court could take everything into consideration.

Valencia said that, if a person is a "dangerous offender,"

they were required to serve the full time. In some cases, the designation was never addressed, she stated, because the person hadn't gone to jail. The intent was simply to be able to address the issue when the person was being sent to prison.

Amendments and Votes: Senator Halligan MOVED the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan MOVED that Senate Bill 170 DO PASS AS AMENDED. The MOTION CARRIED on a vote of 9 to 1 with Senator Mazurek voting NO.

#### HEARING ON SENATE BILL 180

Presentation and Opening Statement by Sponsor: Sen. Mazurek of Helena, representing District #23 stated that he introduced this bill on his own. The bill allowed for the creation of a custodial trust, simply done, and allows the owner of the property to retain control of the property with the right and benefit of the trust currently and in the future. It would allow someone with moderate means, who could not afford to have worked with an attorney, to set up an elaborate estate, plan tax avoidance, generation skipping and avoid probate, he stated. It would allow for the transfer, ownership and management of property, and for preservation of the property, on behalf of the owner. This different from other trusts, in that it gives beneficiaries control to direct the payment of income to themselves, he said. It also allows them to direct the investment and management of the property. He said there were limitations on the trust. Section 6 allows others to use the provisions of this act. He said that a debtor owing money may designate and pay a custodial trustee the debt. In addition, a third party can take advantage of this provision to pay a debt that is owed to someone and make that person a custodial trustee to satisfy that obligation. (Exhibit 3)

List of Testifying Proponents and What Group they Represent:

Molly Munro, AARP

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Molly Munro said the AARP offered support of SB 180. (See Exhibit #4.)

Questions From Committee Members: Sen. Halligan asked Sen. Mazurek how are creditors dealt with in the transfer of property. Sen. Mazurek stated that, if a person tried to transfer property into trust to avoid creditors, present law is discretionary and would allow that sort of transfer to be set aside.

Senator Halligan asked if this bill would be discretionary. Senator Mazurek said yes, that it could be used to avoid the time and expense of a conservatorship.

Sen. Pinsoneault said that County Attorney John French from Lake County told him he was concerned about "financial advisors" and their qualifications. Mr. French was close to 70 years old and felt that older people are very vulnerable, he commented. Sen. Mazurek stated that a lot of people were peddling trusts that would allow an individual to avoid probate. People would still have to be careful in selecting fiduciaries, said Senator Mazurek.

Sen. Beck asked Sen. Mazurek what the monetary limit would be. Sen. Mazurek stated that a value of \$1.2 million would go to "kick in." At \$600,000 per person, a person must be concerned about federal estate tax. As long as an estate deals with lineal descendants, they don't have to pay inheritance tax in Montana. Neither would the bill of value to a person with large holdings, he said.

Sen. Jenkins asked Sen. Mazurek if there would be a fiscal note. Sen. Mazurek stated there would not be because this was purely a private enterprise matter.

Closing by Sponsor: Sen. Mazurek thanked the committee for hearing the bill and closed the hearing.

## DISPOSITION OF SENATE BILL 180

It was the consensus of the committee that disposition of this bill should be postponed until a further meeting.

EXECUTIVE SESSION ON BILLS HEARD PREVIOUSLY



DISPOSITION OF SENATE BILL 92

Recommendation and Vote: Senator Pinsoneault MOVED that Senate Bill 92 be TABLED. The MOTION CARRIED on a vote of 8 to 2 with Senators Brown and Jenkins VOTING NO.

DISPOSITION OF SENATE BILL 10

Recommendation and Vote: Senator Halligan MOVED to TABLE Senate Bill 10. The MOTION CARRIED UNANIMOUSLY.

SENATE BILL 164

Action to be taken at some future time after further study. Senator Crippen said that persons working on amendments should present them to the committee as soon as possible.

SENATE BILL 134

The committee is withholding action until a Fiscal Note has been obtained.

SENATE BILL 107


Valencia Lane asked that the bill be held for possible amendments being prepared by Tom Keegan, and asked that persons interested in amending contact her.

SENATE BILL 112

Senator Mazurek requested a delay on executive action.

ADJOURNMENT

Adjournment At: 11:40 a.m.



SEN. BRUCE CRIPPEN, Chairman

RJ/MINRJ.124  
MINRJ.124

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-24-89

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

Each day attach to minutes.

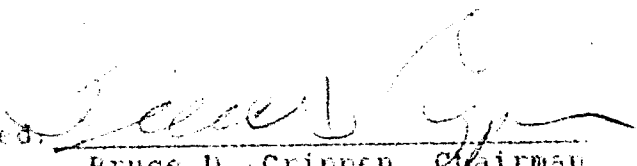
SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 105 (first reading copy - white), respectfully report that SB 105 do pass.

DO PASS

Signed: 

Bruce D. Crippen, Chairman

*Handwritten notes:*  
d.c.  
1/24/89  
3:10 P

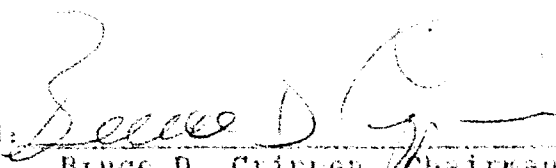
SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration  
SB 140 (first reading copy - white), respectfully report that SB  
140 do pass.

DO PASS

Signed: 

Bruce D. Crisp, Chairman

*H.C.*  
*1/24/89*  
*3:30 p.m.*

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 170 (first reading copy -- white), respectfully report that SB 170 be amended and as so amended do pass:

1. Title, line 5.

Following: the first "OF"

Insert: "DANGEROUS OR"

2. Page 2, line 10.

Strike: "(a)."

3. Page 2, line 11.

Following: line 10

Strike: "not eligible to be designated as a nondangerous offender"

Insert: "a dangerous offender"

4. Page 2, line 14.

Strike: "(b)."

5. Page 2, lines 16 and 17.

Following: "determination" on line 16

Strike: the remainder of line 16 through "nondangerous" on line 17

Insert: "that the offender is a dangerous"

6. Page 2, lines 22 and 23.

Following: "of" on line 22

Strike: the remainder of line 22 through "nondangerous" on line 23

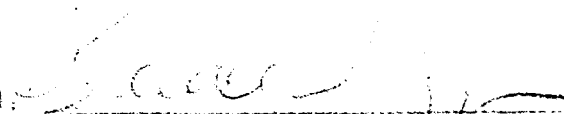
Insert: "whether the"

7. Page 2, line 23.

Following: "offender"

Insert: "is a dangerous or nondangerous offender"

AND AS AMENDED DO PASS

Signed: 

Bruce D. Crippen, Chairman

## TESTIMONY ON SB 105

Bill Yaeger

I am here in support of SB105, which would amend 2-6-109, MCA, to allow the Montana Department of Justice to furnish the Director of Selective Service System with lists of male drivers' license holders born in specified years. Selective Service will pay any costs associated with gaining the lists and will keep confidential the names of the young men that it receives.

Senate Bill 105 has the support of Attorney General Marc Racicot. The Department of Justice, through the Motor Vehicle Division, will administer the program.

The Selective Service System will use the drivers' license lists to cross match against the lists of known Montana registrants in its data bank. Young men, whose names appear on the drivers' license lists, but not as Selective Service registrants, will receive up to three letters reminding them of their obligation to register under the Military Selective Service Act, 50 U.S.C. section 541, et seq. A young man's name will be turned over to the U.S. Department of Justice for further action only when he has failed to register within a reasonable time after receiving the third letter. Even then, the goal is registration compliance -- not punishment. In all cases so far, the Justice Department has stopped legal action when the young man registers.

The Selective Service System seeks to register every American male within 30 days of his 18th birthday for several reasons:

(1) It's the law and Congress has set penalties very high for those who violate the Military Selective Service Act (up to five years in prison and a fine of up to \$250,000, or both).

(2) 5 U.S.C. 3328 prohibits any man born after December 31, 1959, who has not registered from ever holding a job in a federal executive agency. (That means that most federal jobs will be denied the young man who has failed to register before reaching the age of 26.)

(3) 50 U.S.C. 462(f)(1) makes the same individual forever ineligible for any type of assistance or benefits (Pell grants, for example) provided under title IV of the Higher Education Act of 1965.

(4) Training is also denied under the Job Training Partnership Act.

(5) Finally, it's only fair that every 18-year-old male register with Selective Service.

It is for the sake of the futures of young Montana men that the Selective Service System seeks access to our state's drivers' license lists. The purpose is to encourage them to comply with the law so that they might have every opportunity possible open to them in their futures.

Selective Service statistics show that seven years ago, nearly 7,700 young men from Montana registered. In 1986, only a few more than 6,000 did so. In 1987, the number dropped to about 5,800 and, last year, just 4,164 had registered through October 31, 1988. While we can assume that some of the decline may be attributed to residents leaving our state, we cannot assume it is the only explanation.

Despite an extensive, ongoing public awareness campaign, we are certain that there are many who are unaware of the severe consequences of their failure to register. Senate Bill 105 will

SENATE JUDICIARY

EXHIBIT NO. 1, p. 3

DATE 1-24-89

BILL NO. SB 105  
~~Montana to comply~~

do much to cause the unregistered young men in Montana to comply with the law.

We wish to emphasize that there has not been a draft in the United States since 1973. Registration is a simple matter. A young man, within 30 days of his 18th birthday, goes to his local post office and fills out a card like the one attached. It takes about five minutes of his time.

There is no classification of registrants. That would occur only if a draft were reinstated by Congress during a national emergency. Only at that time, facing possible induction, the young man could answer his country's call or seek one of a variety of postponements or deferments that will be offered under the law.

Sixteen states have forms of legislation which encourage registration compliance. Without proof of registration, many states prohibit financial aid. Some prohibit enrollment in state schools and a few prohibit public employment. Montana does not have such laws.

In case you feel the Selective Service is unique to its request through SB105, we call your attention to a law enacted by the Montana Legislature in 1969, in what is now 13-38-103, MCA, which requires the state Department of Justice to provide the major political parties in Montana with the names and addresses of all persons who have reached voting age since the last general election. The information sought by the Selective Service System are the names, addresses, and dates of birth of the young men in this same group.

I ask your support for SB105 and will be happy to answer any questions that you may have.





# SELECTIVE SERVICE SYSTEM

## Registration Form

READ PRIVACY ACT STATEMENT ON REVERSE  
PLEASE PRINT CLEARLY

SENATE JUDICIARY

EXHIBIT NO. 1, p. 4

DATE 1-24-59

DO NOT WRITE IN THE ABOVE SPACE

BILL NO. SB 105

SSS FORM 1 (MAY 65) (JAN 62, JAN 64 EDITIONS MAY BE USED) OMB APPROVAL 3740-0002

1	DATE OF BIRTH			2	SEX	3	SOCIAL SECURITY NUMBER		
	Name of Month	Day	Year of Birth		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		---	---	---
4	PRINT FULL LEGAL NAME								
	Last	First	Middle	JR., II, III, etc.					
5	CURRENT MAILING ADDRESS								
	Number and Street							Apt. or Room No.	
	City	State or Foreign Country				Zip Code (Must be Entered)			
6	PERMANENT MAILING ADDRESS								
	Number and Street							Apt. or Room No.	
	City	State or Foreign Country				Zip Code (Must be Entered)			
7	CURRENT TELEPHONE NUMBER								
	Area Code			Number					
8	I AFFIRM THE FOREGOING STATEMENTS ARE TRUE								
	Today's Date				Signature of Registrant				

Postal Date Stamp

ID

NO ID

Clerk Initials

**MEN BORN IN 1960 OR LATER AND WHO ARE AGE 18 THROUGH 25 ARE REQUIRED TO REGISTER.**

### MEN BORN IN 1960 OR LATER AND WHO ARE AGE 18 THROUGH 25 ARE REQUIRED TO REGISTER

#### HOW TO COMPLETE THIS FORM

- Read the Privacy Act Statement.
- Print all entries except your signature clearly in ink.
- Do not sign or date the form until asked to do so.
- Complete Blocks 1 thru 7 and take your form to the clerk.
- Print your date of birth in Block 1. Use a three-letter abbreviation for the month and numerals for the day and year (Example: OCT 29 1967).
- Check the correct box in Block 2.
- Print your Social Security Number in Block 3.
- Print your full legal name in Block 4 in the order listed.
- Print your current mailing address in Block 5. Include ZIP Code.
- Print your permanent mailing address in Block 6, include ZIP Code. If it is the same as your current mailing address (Block 5), leave this block blank.
- Print your telephone number in Block 7.
- When you have completed your form to this point, recheck it and take it to the clerk.

#### PRIVACY ACT STATEMENT

The Military Selective Service Act, Selective Service Regulations, and the President's Proclamation on Registration require that you provide the indicated information, including your Social Security Account Number.

The principal purpose of the required information is to establish your registration with the Selective Service System. This information may be furnished to the following agencies for the purposes stated.

Department of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals and identification of prospects for recruiting.

Department of Transportation—for identification of recruiting prospects for the U.S. Coast Guard.

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement and supervision of performance of alternative service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's compliance with the Immigration and Nationality Act.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veterans' Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for location of parents pursuant to the Child Support Enforcement Act. (42 U.S.C. 651 et seq.)

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification, Military Selective Service Act Section 6; 50 U.S.C. App. 456.

Your failure to provide the required information may violate the Military Selective Service Act. Conviction of such violation may result in imprisonment for not more than five years or a fine of not more than \$250,000 or both imprisonment and fine.

NAME: BILL YAEGER

ADDRESS: 620 DEARBORN

PHONE: 443-5732

REPRESENTING WHOM? SELECTIVE SERVICE SYSTEM

APPEARING ON WHICH PROPOSAL: SB 105

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

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Richard W. Gillespie DATE: 1/24/89

ADDRESS: 38 So. East Avenue, Welch

PHONE: 442-0230

REPRESENTING WHOM? Selective Service System

APPEARING ON WHICH PROPOSAL: SB105

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

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to Senate Bill No. 170  
First Reading Copy (WHITE)

Requested by the Attorney General's Office  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 23, 1989

- ✓1. Title, line 5.  
Following: the first "OF"  
Insert: "DANGEROUS OR"
  
- ✓2. Page 2, line 10.  
Strike: "(a)"
  
- ✓3. Page 2, line 11.  
Following: line 10  
Strike: "not eligible to be designated as a nondangerous offender"  
Insert: "dangerous"
  
4. Page 2, line 14.  
Strike: "(b)"
  
- ✓5. Page 2, lines 16 and 17.  
Following: "determination" on line 16  
Strike: the remainder of line 16 through "offender" on line 17  
Insert: "that the offender is dangerous"
  
- ✓6. Page 2, lines 22 and 23.  
Following: "of" on line 22  
Strike: the remainder of line 22 through "nondangerous" on line 23  
Insert: "whether the"
  
- ✓7. Page 2, line 23.  
Following: "offender"  
Insert: "is dangerous or nondangerous"

1st Legislature

LC 0678/01

LC 0678/01

*Shelley* BILL NO. 170

INTRODUCED BY Debra Johnson  
Radwin Bob Thomas Neilson

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION  
5 OF A **DAVINGEROUS OR** NONDANGEROUS OFFENDER TO BE MADE AT THE TIME OF  
6 REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION  
7 46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY  
8 DATE."  
9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11  
12 **Section 1.** Section 46-18-404, MCA, is amended to read:  
13  
14 \*46-18-404. Designation as nondangerous offender for  
15 purposes of parole eligibility. (1) Except as provided  
16 in subsection (4), the sentencing court shall designate an  
17 offender a nondangerous offender for purposes of eligibility  
18 for parole under part 2 of chapter 23 if:  
19 (a) during the 5 years preceding the commission of the  
20 offense for which the offender is being sentenced, the  
21 offender was neither convicted of nor incarcerated for an  
22 offense committed in this state or any other jurisdiction  
23 for which a sentence to a term of imprisonment in excess of  
24 1 year could have been imposed; and  
25 (b) the court has determined, based on any presentence  
report and the evidence presented at the trial and the  
sentencing hearing, that the offender does not represent a

1 substantial danger to other persons or society.  
2 (2) A conviction or incarceration may not be  
3 considered under subsection (1)(a) if:  
4 (a) the offender was less than 18 years of age at the  
5 time of the commission of the present offense; or  
6 (b) the offender has been pardoned for the previous  
7 offense on the grounds of innocence or the conviction for  
8 such the offense has been set aside in a postconviction  
9 hearing.  
10 (3) ~~the~~ If the court determines that an offender is  
11 ~~a~~ dangerous ~~nondangerous offender~~, it  
12 shall make that determination a part of the sentence imposed  
13 and shall state the determination in the judgment.  
14 ~~the~~ Whenever Except as provided in subsection (4), if  
15 the sentence and judgment do not contain such a  
16 determination of the offender's status as a  
17 nondangerous offender, the offender is considered to have  
18 been designated as a nondangerous offender for purposes of  
19 eligibility for parole.  
20 (4) If an offender is given a probationary sentence  
21 that is subsequently revoked, the court may make the  
22 determination of whether the offender is dangerous or  
23 nondangerous at the time of the revocation  
24 proceeding."  
25 NEW SECTION. Section 2. Retroactive applicability.



NAME: John Connor

DATE 1-24-89  
DATEBILL NO. 24/89 SB170

ADDRESS: Dept of Justice

PHONE: 444-2026

REPRESENTING WHOM? Mont. County Attorneys Assn

APPEARING ON WHICH PROPOSAL: SB170

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

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

3, p. 1  
1-24-86  
5B 186

# CHANGING TIMES

*Sen. Nazareno  
handout*

## **EASY TRUSTS**

Now there's an inexpensive and relatively painless way to put your property into a living trust, a legal device that lets you control your assets and appoint a trustee who can manage when you can't (see "Trusts You Can Change at Will," Nov.). The only catch is that your state must adopt the new Uniform Custodial Trust Act.

The UCTA was drafted by the Uniform Law Commissioners, a group of state-appointed lawyers, judges and law professors that drafts laws to solve problems common to all states. It lets you create a trust as easily as setting up a custodial account for a minor under the Uniform Transfers to Minors Act, the inspiration for the new act. You don't even need a written trust agreement. All you have to do is change the name on your bank accounts, for instance, to that of your chosen trustee.

A UCTA trust can cover any kind of property, real or personal, tangible or intangible. You cannot be your own trustee, but you can name a family member, friend or institution to become the owner of your stocks, bank accounts or other assets you designate. As the beneficiary, you have the right to direct the management of the assets, to receive income and principal, and to cancel the

trust whenever you want to. If you become incapable of handling your own affairs, the trustee takes over and manages the trust according to the very broad powers built into the statute. You can also use the trust as a will because you can direct what happens to the assets after your death.

According to Lawrence Bugge, a Madison, Wis., lawyer who headed the drafting committee, both the UCTA trust and a durable power of attorney (which gives the person you name the power to act for you if you are incapacitated) get around the need for a costly, distressing court proceeding to appoint a court-supervised conservator or guardian. But the trust, he says, is better than a durable power because the safeguards against mishandling of your assets, such as periodic accounting and penalties for misappropriation of funds, and the details of the fiduciary relationship between you and the trustee are clearer and more elaborate than those surrounding durable powers.

Older people who want to maintain control over their assets will probably benefit most, but someone who is going abroad temporarily or is a parent of an incapacitated child can set one up, too.

It is too early to tell how much interest there will be in the act; to date, no states have adopted the UCTA. If you are interested in encouraging its adoption in your state, write to your state legislator.

DEC 27 1987



**JANE  
BRYANT  
QUINN**

**Proposed 'custodial trust' is cheap, easy way to avoid probate**

**E**verybody hates probate. A few years ago, Americans rushed to buy books of legal forms by author Norman Dacey, for their do-it-yourself trusts to avoid probate (which is the process of approving the legality of your will at death).

But there were a couple of problems with these trusts.

First, they didn't provide any other important protections — like naming a trustee to manage your money if you become senile.

Second, Dacey trusts simply weren't accepted by many stock-transfer agents, insurance companies and title companies. Sometimes the forms were filled in wrong. Sometimes title in the property hadn't been properly passed to the trustee. Sometimes, even when the paperwork was done right, it looked fishy. Reasonably or not, many agents simply decided it was safer not to transfer property ownership based on a hand-drawn trust.

So Dacey trusts faded. But the need for a similar — and better-recognized — document persisted. And finally, one is on the horizon.

A proposed new "custodial trust" has been created by the National Conference of Commissioners on Uniform State Laws. It still has to be approved by the American Bar Association and then presented to each state for adoption. But if accepted, it will be a cheap and easy way of avoiding probate — and more. Among the trust's virtues:

- You can set it up yourself, by signing a standard document established by law. There don't have to be any legal fees, although you may want a lawyer to answer questions about the trust.

- It names a trustee to manage your money in case you become mentally incompetent. But until that moment arrives (if it ever does), "you have total control over your assets," said Madison, Wis., attorney Lawrence Bugge, chairman of the committee that drew up the trust. A wife can be her husband's trustee and vice versa. You can cancel the trust any time you want.

- By naming a beneficiary for the trust's assets, you can keep them out of probate.

- You can arrange to have the money managed for the joint lifetimes of yourself and your spouse. The surviving spouse, too, can effectively manage the money or even take it out of trust (as long as he or she is mentally competent).

- The trust sets up tests to determine mental incompetence. Your family won't face the expense and embarrassment of having you declared bonkers in court. (However, if for some reason you think that your trust has mistaken your mental condition, you yourself can force the issue into court.)

- You can use a custodial trust to provide money management for an adult child who may be retarded or otherwise incapacitated.

SENATE JUDICIARY

EM 3, p. 2  
DATE 1-24-89  
BILL NO. SB 180

*Sen Mazurek's  
handout*

- It's a good device for short-term money management. Says Eugene Scoles of the University of Illinois: "If I'm out of the country for eight months and want some of my property administered for my kids in college, I could use the custodial trust." A durable power of attorney could achieve the same thing. But the power of attorney stops if you die, whereas the custodial trust can continue.

Also, some insurance companies resist the durable power-of-attorney, if it's used to change beneficiaries or cash in a policy, says Richard Wellman of the University of Georgia's law school.

A custodial trust doesn't handle complicated jobs. It can't be used to pass money in trust from one generation to another, or restrict access to assets. It's not a discretionary trust that might work, in some cases, to provide extra money to a person living on Medicaid in a nursing home or mental hospital. For that, you need a lawyer.

I see only one problem with the proposed new trust. Despite all the labor that has gone into it, it truly cannot be made so simple that the average person can understand it. You face some of the same risks you did with a Dacey trust: mistakes in filling in the documents, not getting your property properly transferred to the trustee, and neglecting the trust's tax forms.

I'll be pleased to have a simple trust on the market. ■





SENATE JUDICIARY

EXHIBIT NO 4 p. 1

DATE 1-24-89

BILL NO SB 180

1988-1989  
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN  
Mrs. Molly L. Munro  
4022 6th Avenue South  
Great Falls, MT 59405  
(406) 727-5604

SECRETARY  
Mr. John C. Bower  
1405 West Story Street  
Bozeman, MT 59715  
(406) 587-7535

January 24, 1989

TO: Senate Judiciary Committee

FROM: *Molly Munro, Chmn., State Legislative Committee*  
American Association of Retired Persons

Re: In support of SB 180 - Uniform Custodial Trust Act.

American Association of Retired Persons supports this act for the following reasons:

Problem: No simple way exists to establish a trust for the benefit of one's self or a third person. Benefits of trusts are not available to persons without extensive financial assets.

Solution: The Uniform Custodial Trust Act provides an informal means for seniors to manage and protect their property without losing control of that property.

Proposal: The Uniform Custodial Trust Act provides that any person may in writing:

1. Transfer any property for the benefit of himself or any other person;
2. Name himself or any other person as trustee or as a beneficiary;
3. Instruct the trustee as to benefits;
4. Provide reimbursement for the trustee.

The trust may terminate upon written notice from the beneficiary or at the death of the beneficiary.

Position: The Montana State Legislative Committee of AARP believes that this Act would be particularly beneficial to Montana's older citizens who want to provide for the

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700

Louise D. Crooks *President*

Horace B. Deets *Executive Director*

Page Two

## Uniform Custodial Trust Act

management of assets in the event of future incapacity. We strongly support its passage and adoption.

- provides a simple inexpensive process to avoid probate
- easy to initiate & easy to cancel
- creator of trust retains control until incapacitated or dies or other specified event
- beneficial to older persons of limited means
- requirement to file protects parties and public

DATE 1-24-89, SB180

BILL NO. 1-24-89

NAME: Molly Munro

ADDRESS: 4022 6th Ave. So. St. Falls, MT 59405

PHONE: 727-5604

REPRESENTING WHOM? GARP

APPEARING ON WHICH PROPOSAL: SB 180

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 105 Time \_\_\_\_\_

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Halligan - Do Pass UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 140 Time \_\_\_\_\_

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: May Do Pass UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 170 Time \_\_\_\_\_

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Amend - UNAN  
DPA - 9-1

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 92 Time \_\_\_\_\_

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN		✓
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

8. 2

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Pinsonault moved to table



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 10 Time 11:28

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Halligan - moved Table - UNAN