

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 17,
1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, John Harp, Mike Halligan,
Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill
Yellowtail

Members Excused: Senator Bob Brown

Members Absent: None

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 544

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, opened
the hearing. He said the bill's purpose was to expand
the scope of appeal by the state by allowing for appeal
from judgments that are alleged to be contrary to law.

List of Testifying Proponents and What Group they Represent:

John Connor, County Prosecutors Services
Pat Paul, Cascade County Attorney and the County
Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said the bill responds to a frustrating
situation. He told of a man who plead guilty in 1986 to 3

counts of criminal sale of dangerous drugs. The offender was given concurrent, deferred sentences on all 3 counts, said John. In 1988, John charged him with 2 counts of sale while he was still on probation. He plead guilty to those. And while he was awaiting sentencing, he was arrested by local authorities and charged with 2 more counts of sale. He ended up with 7 total counts, plead guilty to the final 4 and got suspended sentences running concurrently on all 4 of those. So, he never went to prison even though statute that specifically requires, that for the sale of dangerous drugs, the person is to receive a 2-year sentence with no probation or parole. That statute wasn't followed, said John, and there was nothing that could be done. This bill is designed to address that problem. He didn't think it would result in a considerable number of appeals. It would not be done as a matter of policy, but would make appeal possible when sentencing was felt to be inappropriate.

Pat Paul agreed with John Connor's testimony. He said the state had minimum mandatory sentencing guidelines that are not followed by judges. Apparently there is no remedy for the state, he said, to allow appeal or to seek relief from the supreme court. He feels the bill would help the situation.

Questions From Committee Members: Senator Jenkins asked if there was some way at present to take a judge to task. John Connor said this bill would allow a way. It would allow a higher court to examine at a judge's action in a particular case and decide whether that judge acted appropriately. He felt it should be done in a lawful process.

Senator Jenkins asked what would be done to a judge to make him "straighten out his act." Senator Crippen said he could be put out of office.

Senator Mazurek asked how broad the law would be. John said that being dissatisfied with the law doesn't take away all discretion to impose anywhere from zero to the maximum allowed by the statute. But in cases where mandatory minimums apply, that is a different situation and the minimum mandatory sentences should be given.

Senator Crippen said he didn't understand why there wasn't the right of appeal when the judge was ignoring a mandatory sentence. John said that mandatory minimums were the best example, but that there were other acts that a court uses in a discretionary fashion where the statute requires procedures with respect to how sentencings are to be conducted. They are not followed, either, he said. He said

he considers that contrary to law, too. He didn't differ with Senator Crippen's judgment of the situation. He said that he didn't want to use the words "and are illegal", because it might be construed as a presumption on his part. He thought the language in the bill might encompass any illegality that might occur. He said he would be happy to discuss any wording change the committee might want to consider. He just didn't want to make it too limiting, he said.

Closing by Sponsor: Rep. Rice closed saying he didn't really like the language "judgment that results in". He thought it would be better to say "imposing a sentence that is contrary to law".

DISPOSITION OF HOUSE BILL 544

Discussion: Senator Yellowtail asked about the term "alleged to be" as stated in the bill. Senator Crippen said that, when a lawyer is in court, he must use the term "alleged to be" contrary to law, rather than state an act is contrary to law.

Senator Pinsoneault asked for an opinion of amending that portion of the bill. Valencia explained that on line 45, after "is", strike "alleged to be" and insert "not consistent with mandatory sentencing procedure or as otherwise contrary to law." That would only make specific the mandatory sentencing procedure, she said.

Amendments and Votes: Senator Yellowtail MOVED to amend House Bill 544 on line 25 to delete "alleged to be". The MOTION CARRIED on a vote of 8 to 1, with Senator Crippen voting NO.

Recommendation and Vote: Senator Halligan MOVED that House Bill 544 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 578

Presentation and Opening Statement by Sponsor: Representative Jim Rice of Helena, House District 43, opened the hearing. He said that House Bill 578 was to provide legal protection for children from potential

child abuse. The bill was requested by a constituent, he said. Several other states have similar legislation, he added, and said this bill was based upon a Colorado law. The bill would provide an objection process to visitation rights of a parent convicted of one of several serious crimes as listed on pages 3, 4 and 5 of the bill. Under current law, the mother would have to hire an attorney, and have a court order drawn up to modify visitation rights. This law would allow her some procedural leniency. She would only have to provide the father a 20-day notice of her objection to continued visitation between him and the children. If he does not respond to the notice, his visitation rights would be automatically suspended, according to Rep. Rice. If he responds and objects, then there would be a hearing, with the burden of proof being on the convicted parent to show that continued visitation would not be a pose a menace to the children and would be in their best interest. One section of the bill deals with a situation in which one parent has custody of the children, with the other party having visitation rights. The other section deals with a situation in which there is joint custody of the children.

List of Testifying Proponents and What Group they Represent:

Becky Walensek, herself
Dr. Karen Landers, Pediatrician, Montana Maternal and
Child Health Council
Judith Carlson, Montana Chapter of the Association of
Social Workers
John Connor, Montana County Attorneys Association
Peter Funk, Department of Justice
Christy Marron, Montana Mental Health Centers

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Becky Malensek said she requested the bill as the result of a personal situation. Currently, she said, the states of Hawaii, Texas and Massachusetts have enacted this law. She said that her divorced husband was convicted of raping a little girl. He was sentenced to 40 years, with 20 years suspended. He was out of prison after 5 1/2 years and was placed on parole. She was then informed that he would have all of the visitation rights that were granted at the time

of the divorce. She was told the burden of proof would be up to her to prove that her ex-husband would be a danger to her children. She presented Exhibits 1 and 2 to the committee.

Dr. Karen Landers presented written testimony to the committee (Exhibit 3).

Judith Carlson said this was an excellent way to preventing child abuse and sexual assault. She agreed that the burden of proof should be on the offender.

John Connor said he had attended a seminar on prosecution of child sexual abuse cases. He said that he learned that, recent studies on the counselling and therapy level, sexual deviants are not necessarily inclined to spare their own children from their sexual deviancy. Statistics have shown that they commit abuse within the home and get away with it in many cases. He concurred with this bill.

Peter Funk supported the bill. He said it was a very important in terms of its potential effect on the general situation of abuse of children. It will help out custodial parents and children who may be exposed to the behavior addressed by the bill. There is a misdemeanor offense included in the list, and he thought the committee should look at that. He wasn't suggesting removal of that, but called attention to the fact that the rest of the list names felonies. If constitutional challenge were brought, it might be easier to defend if the list were exclusively felonies, he said.

Christy Marron supported the bill.

Questions From Committee Members: Senator Crippen asked Peter Funk what the penalty was for sub (7). Peter Funk said for a regular offense it was \$500 and 6 months or a "high misdemeanor" subsection which is up to \$1,000.

Senator Crippen said he didn't share Mr. Funk's concern, as the misdemeanor listed had to do with children. He said the court would still have some discretion.

Senator Beck asked about "endangering the welfare". Peter Funk said he couldn't quote the particular statute, but that it talked about failure to maintain certain duties and care and defined those. It is a much broader statute than any of the other felonies on the list pertaining to the types of behavior that could be charged under that subsection. The rest are more clear, but for "endangering the welfare."

However, he didn't think it would place the bill in jeopardy by leaving that portion in it.

Senator Halligan commented that the bill indicated a requirement for conviction before the rest of the provisions "trigger in." He said he knew of cases where a major charge is made and the person remained out on bail and requested visitation. He thought the wording might be changed to "conviction or charge" of "plea of guilty." He thought "20 days" might also be a problem. If the party shows up and demands visitation within that time, what could be done to prevent it, he asked. A woman could be legally charged if she didn't allow visitation, but yet there might be cases when visitation shouldn't be allowed during the waiting period.

Representative Rice answered that they hadn't considered that. They were concerned about keeping parts of statute in effect, such as asking for a temporary restraining order. This simply expedites procedure without tightening the law more than was reasonable.

Senator Halligan asked what happened if the custodial parent were the one convicted. Rep. Rice said he believed the custodial parent would also be subject to the suspension of visitation under the second section of the bill.

Senator Jenkins asked if the mother would file for the 20-day notice. Rep. Rice said a notice would be filed very quickly after conviction.

Senator Crippen asked how long the suspension of visitation rights would be in effect. Rep. Rice said the rights of visitation would be suspended only until further action of the court (p. 6, l. 3). This provision is not making a permanent arrangement, only until the court decides otherwise, he said.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 578

Discussion: Senator Halligan brought up his concern with the 20-day waiting period and the fact that the person might have visitation during that time. He was also concerned that visitation might occur when a person was out on bail awaiting trial, or had plead guilty to a serious crime.

John Connor said the custodial parent could deny visitation during that period of time.

Senator Halligan said a lawyer might have to be contacted to do so and John Connor said not under this act.

Senator Mazurek suggested that the custodial parent could go to a "safe house" or do whatever she has to in order to keep the children away from a deviant father.

Senator Mazurek asked how often the term "knowingly endanger" was used. John answered not very often.

Senator Beck said he thought the "misdemeanor" portion of the bill should be deleted.

Amendments and Votes: Senator Beck MOVED to adopt an amendment to delete p. 4 and p. 6 referrals to "misdemeanor." The MOTION CARRIED FAILED by a vote of 3 to 5, with Senators Beck, Jenkins and Yellowtail voting YES.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 578 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 594

Presentation and Opening Statement by Sponsor:

Representative Fred Thomas of Stevensville, House District #62, opened the hearing. He said the bill was to revise district court judge's residency requirement. The law requires a district court judge to live within the city limits of the county seat. This bill strikes that requirement, allowing the judge to reside in the countryside or in any of the municipalities within the district. In years past, he said, there may have been a need for the judge to live within walking distance of the courthouse to provide immediate access to the court. Today's transportation outmodes that requirement, he stated.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Thomas closed the hearing.

DISPOSITION OF HOUSE BILL 594

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House Bill 594 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 113

Presentation and Opening Statement by Sponsor:

Representative Dennis Rehberg of Billings, House District 88, opened the hearing stating that it had been requested by the Department of Family Services. It addresses legislation passed during the 1987 session, he said, to address placement of youth in Mountain View or Pine Hills schools. The law specified that the facilities be licensed and those schools were not licensed facilities. This bill is an attempt to define those schools as licensed facilities, so the department can continue doing what it is already doing, he said.

List of Testifying Proponents and What Group they Represent:

Gary Walsh, the Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Gary Walsh presented written testimony to the committee (Exhibit 4).

Questions From Committee Members: Senator Pinsoneault asked how many youth placement facilities the state had. Mr. Walsh said there was one in each judicial district.

Senator Halligan asked if the bill would allow for other placement. Mr. Walsh said it did not exclude other options, and that youths could be placed with parents or guardians.

Closing by Sponsor:

DISPOSITION OF HOUSE BILL 113

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 113 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 582

Discussion: Senator Jenkins said there were only two manufacturers, most people have more than one vehicle and the great distances in the state which could cause problems in monitoring the devices were the reasons for his recommendation.

Chairman Crippen called attention to the amendments submitted by Rep. Eudaily (Exhibit 5).

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 582 BE TABLED. The MOTION CARRIED by a vote of 8 to 1 with Senator Halligan voting NO.

DISPOSITION OF HOUSE BILL 57

Discussion: Senator Crippen announced that House Bill 577 had been rereferred to committee for further amendment. Two sets of amendments were distributed for the committee's consideration (Exhibits 6 and 7).

Steve Browning said amendments were being proposed on the gross negligence standard. They had been discussed but not adopted during the previous executive session. Senator Mazurek had intended to make floor amendments, but it had been suggested to rerefer the bill to committee to work on a compromise with the Trial Lawyers regarding emergency services payment, whether survivors would pay for them or expect to pay for them. He said there were 3 different places in the bill where it could be clarified that there was no expectation of compensation for those services. With those insertions, the Trial Lawyers agreed to then allow the "gross negligence" standards. He said there would be very few cases where this would occur, and they were articulated on sec. 1, p. 2, lines 17 through 23. Essentially, he said, it was for cases where normally a health care practitioner would not provide services i.e. referrals in most circumstances which are prohibited by an emergency situations. He said the gray bill was agreed to in addition to this amendment by the Trial Lawyers.

Mike Sherwood said this amendment recognized that the Good Samaritan rule could be applicable in situations other than at the scene of the emergency: When a doctor or health care provider has an emergency brought to him and there still is no expectation of payment -- then "gross negligence" would be applicable.

Senator Jenkins asked for a definition of "reasonable expectation of payment." Senator Mazurek said, if a patient has any ability to pay, he would be expected to pay. Mike Sherwood said the language was taken from California statute. He said there hadn't been any interpretation of statute to date, but he agreed with Senator Mazurek.

Amendments and Votes: Senator Pinsoneault MOVED the amendment requested by Senator Mazurek (Exhibit 6). The MOTION CARRIED UNANIMOUSLY.

Recommendations and Votes: Senator Mazurek MOVED that House Bill 57 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 606

Discussion: Senator Mazurek said he thought the bill was conflicting and didn't offer enough guidelines. Senator Beck wondered if parents were supposed to administer breathalyzer tests. Senator Crippen brought up the wine

used in churches. Senator Mazurek said there had many alcohol abuse experts present at the hearing and that none testified in opposition of the bill.

Amendments and Votes: None

Recommendations and Votes: Senator Jenkins MOVED that House Bill 606 BE CONCURRED IN. The MOTION CARRIED on a vote of 5 to 4 with Senators Harp, Pinsoneault, Yellowtail and Crippen voting NO.

DISPOSITION OF HOUSE BILL 393

Discussion: Valencia said the bill increases the penalty for possession in minors between the ages of 18 and 21. They essentially gutted the bill in the House and the heart of the bill was on p. 18, she said.

Wally Jewell said he had favored the bill before it had been "gutted." He said he thought it would help in the prosecution of youths and possibly discourage the consumption of alcohol.

Amendments and Votes: None

Recommendations and Votes: Senator Pinsoneault MOVED that House Bill 393 BE TABLED. After further discussion, he WITHDREW his motion.

Senator Halligan MOVED that House Bill 393 BE CONCURRED IN. The MOTION CARRIED by a vote of 7 to 2, with Senators Beck and Jenkins voting NO.

DISPOSITION OF HOUSE BILL 495

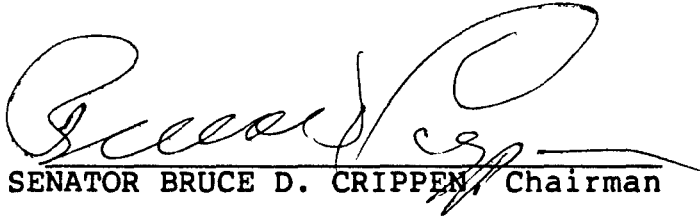
Discussion: Senator Jenkins said the bill was to remedy the law that, if a person under 21 has been discovered to have consumed alcohol or drugs, they cannot be charged with possession. Senator Halligan said "constructive possession" is sometimes charged when there is no actual possession. Valencia said "probable cause" could apply.

Amendments and Votes: None

Recommendations and Votes: Senator Jenkins MOVED that House Bill 495 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 12 noon



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.317

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-17-89

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.

SENATE STANDING COMMITTEE REPORT

March 18, 1989

MR. PRESIDENT:

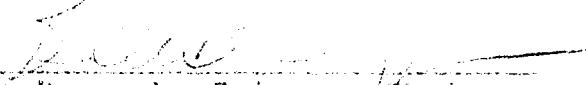
We, your committee on Judiciary, having had under consideration HB 544 (third reading copy -- blue), respectfully report that HB 544 be amended and as so amended be concurred in:

Sponsor: Rice (Balligao)

1. Title, line 6.
Strike: "ALLEGED TO BE"

2. Page 1, line 25.
Strike: "alleged to be"

AND AS AMENDED BE CONCURRED IN

Signed: 
Bruce P. Clippin, Chairman

Handwritten notes:
J. B. 1. 1. 89
3/19/89
G. G. M.

SENATE STANDING COMMITTEE REPORT


March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 578 (third reading copy -- blue), respectfully report that HB 578 be concurred in.

Sponsor: Fice (Hazurek)

BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

Handwritten notes:
y. p.
3/17/89
y: 40
p. 11

SENATE STANDING COMMITTEE REPORT

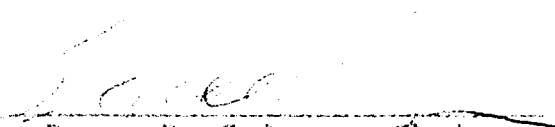
March 17, 1982

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 594 (third reading copy -- blue), respectfully report that HB 594 be concurred in.

Sponsor: Thomas (Hazurek)

BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

4.0.1.82
3:17 p.m.

SENATE STANDING COMMITTEE REPORT

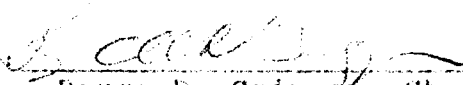
March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 113 (third reading copy -- blue), respectfully report that HB 113 be concurred in.

Sponsor: Rehberg (Pinsonneault)

BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

410
4/3/89
3:40
P.M.

SENATE STANDING COMMITTEE REPORT

March 18, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in:

Sponsor: Marks (Jenkins)

1. Title, lines 10 through 13.

Following: "ACTS" on line 10

Strike: remainder of line 10 through "LOCALITY" on line 13

Insert: "GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS"

2. Page 2, lines 2 through 6.

Following: line 1

Strike: "AN" on line 2 through "LOCALITY" on line 6

Insert: "gross negligence or by willful or wanton acts or omissions when rendering such emergency care or assistance"

3. Page 2, line 11.

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient."

4. Page 2, line 25.

Following: "hospital"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient."

5. Amend Senate Judiciary Committee amendment dated 3/14/89, as follows:

Amendment No. 5

In fourth line

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient."

AND AS AMENDED BE CONCURRED IN

Signed:

[Signature]
Bruce B. Crippen, Chairman

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11-21-70
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9
serhh057.318

SENATE STANDING COMMITTEE REPORT

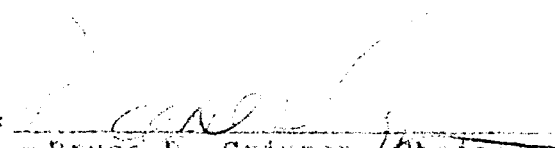
March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 606 (third reading copy - blue), respectfully report that HB 606 be concurred in.

Sponsor: Grady (Blaylock)

BE CONCURRED IN

Signed: 
- Bruce D. Crippen, Chairman

Handwritten notes:
2/10/89
- J.P.M.

SENATE STANDING COMMITTEE REPORT

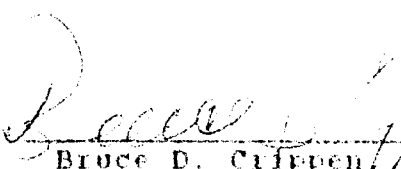
March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 393 (third reading copy -- blue), respectfully report that HB 393 be concurred in.

Sponsor: Darko (Vaughn)

BE CONCURRED IN

Signed: 
Bruce D. Clippert, Chairman

*File
3/17/89
J.P.*

SENATE STANDING COMMITTEE REPORT

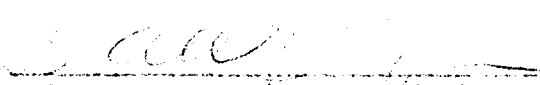
March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 495 (third reading copy -- blue), respectfully report that HB 495 be concurred in.

Sponsor: Strizich (Vaughn)

BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

Handwritten notes:
4/11/89
B.D.C.
3/17

**MONTANA COMMITTEE FOR
PREVENTION OF CHILD ABUSE**



SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-17-89
CALL NO. HB 578
P.O. Box 20152
Billings, MT 59104

March 15, 1989

Becky Malensek
2655 Valley Drive
E. Helena, MT 59635

Dear Ms. Malensek, and Members of the Committee:

On behalf of the children of Montana, the Montana Committee for Prevention of Child Abuse urges support for legislation that limits or restricts visitation rights of non-custodial parents who have committed certain crimes, including child abuse, as outlined in HB 578.

It is the belief of the Montana Committee for Prevention of Child Abuse that the non-custodial parent should bear the burden of proving at the court hearing that visitation by the non-custodial parent is in the best interest of the child or children. Eliminating any possibility of harm or further abuse to the child by the non-custodial parent is a critical factor to insure before any visitation occurs.

We trust that the necessary legislative changes can be initiated that will best insure the child's safety and well being and not further subject them to unnecessary and preventable risk. Our state agencies, communities, and legislature must work together cooperatively in preventing child abuse for all of Montana's children. Our children's future depends on our cooperative efforts.

Please don't hesitate to contact our organization for any additional information.

Yours for Children,

Susan Sandwell
Susan Sandwell, PHN, President
440 Parkway Drive
Kalispell, MT 59901
752-5583, 756-5633

March 17, 1989

Bruce Crippen, Chairman
Members of the Senate Judiciary Committee

RE: HB578

I am a custodial parent, whose ex-husband has been convicted of sexually assaulting an 8 year old girl. If this bill were law, the safety and well-being of my two children, as well as many other children would be established. To force children to submit to unsupervised visits with a parent who has been convicted of sexual assault with a minor is an unwise experiment. Unfortunately, my children and I have had personal experience which makes it important to us that you help.

My worst fear is still unknown, had he molested his own two children? Interviews with welfare, the sheriff's office, counselors and our attorney's were inconclusive. Upon conviction of sexual assault on the 8 year old girl, my ex-husband was sentenced to 40 years as a dangerous offender with 20 years suspended. During the sentencing, the judge said he was still entitled to visitation - even while in prison.

After serving only 5 1/2 years, he is eligible for parole. I have consulted with an attorney and found that he is entitled to all visitation as set forth in our divorce. In spite of his conviction of the heinous crime described above and his refusing to go through the prison sexual offender treatment program.

To change the visitation order, I have to prove that his seeing the children would seriously endanger their physical, mental, moral or emotional health. I have to retain an attorney for myself, an attorney for the children, counselors for the children, all at my own expense. The burden of proof (and it is a heavy burden) is on me, the custodial parent.

I need your help. It has been established that sexual offenders cannot be cured, only treated. It is folly to trust them with children. These children need and deserve the protection of all the resources this society can provide.

This bill can help us all. My children and the many other abused children can be protected. My ex-husband must take responsibility for his actions and be required to prove he has reformed. He must assume the burden of proof to a court of law that his visitation would not be detrimental to our children.

If this bill becomes a law, I believe it could act to prevent child abuse. It would certainly protect children and it would make it possible for custodial parents to protect their families without choosing desperate measures such as going underground.

Children should not have to live in fear for their lives or losing their innocence because of an abusing parent.

Sincerely,

Rebecca C. Malensek

Rebecca C. Malensek
2655 Valley Drive
East Helena, MT 59635

227-6953 (home)
444-2803 (work)

6-13

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-17-89
BILL NO. HB 578

TESTIMONY FOR THE SENATE JUDICIARY COMMITTEE

Support HB 578 Visitation Rights of Noncustodial Parents
Convicted of Certain Crimes

Name: Karen Landers, MD, Pediatrician from Helena

Representing: Montana Council for Maternal and Child Health

The Montana Council for Maternal and Child Health represents hundreds of health care professionals serving Montanans statewide. Because their primary concern is the health and well-being of mothers and children, I speak in support of HB 578 which provides for changes in custodial laws when a noncustodial parent has been convicted of specified crimes.

Data from the Department of Family Services indicates that abuse of Montana children is on the increase. In FY 86, there were 1,187 substantiated cases of physical and emotional abuse, and 620 substantiated cases of sexual abuse.¹ While there is no typical child abuser, 80% of violent or negligent parents were themselves abused as children, and studies indicate that most violent criminals were severely abused.

Children need and deserve a nurturing and safe environment in which to grow and develop. It is both reasonable and desirable to provide our children with caretakers who will meet their children's needs with love and responsibility. Persons convicted of violent and sexual crimes should carry the burden of proving their ability to care for their children in this way when it is called in question.

The Montana Council for Maternal and Child Health advocates prevention in its goals for improving the health of mothers and children in Montana. We recognize in HB 578, a

step towards preventing child abuse and urge your support.

Please give this bill your concurrence.

References

¹ Department of Family Services, 1987.

E-44

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900



STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 113

Submitted by Gary Walsh
on behalf of the Department of Family Services

The Department of Family Services requested this bill to clarify the placement options of the Youth Placement Committees. The Youth Placement Committees are interdisciplinary committees which review youths committed to the Department of Family Services for the purpose of recommending an appropriate placement of the youth. Youths which are reviewed by the Committees are youths who have been adjudicated as a youth in need of supervision or a delinquent youth by the Youth Court.

Currently, Section 41-5-526, MCA, states that the committees may recommend placement only in a "licensed facility". However, under Section 41-5-523, MCA, the Youth Court may specify that a delinquent youth who is a "serious juvenile offender" be placed in physical confinement if the court finds such confinement necessary for the protection of the public. In Montana, the only facilities which can provide long-term "physical confinement" are the two youth correctional facilities - Pine Hills and Mountain View Schools. These facilities are not required to be licensed by statute and are not licensed facilities. When the Youth Court specifies physical confinement, the committee routinely recommends placement in the youth correctional facilities. To clarify this apparent inconsistency in the statutes, the Department is proposing the words "licensed facility" be removed from Section 41-5-526 to authorize the Youth Placement Committees to recommend placement in the youth correctional facilities.

This bill would also allow the Youth Placement Committees to recommend placement of the youth with his parent or with relatives if appropriate. Under Montana law, these people are not required to be licensed.

The House amended the introduced bill to list the specific placement options available to the committees. The Department has no objection to these amendments.

To allow the greatest flexibility to the Youth Placement Committees when recommending a placement for youths committed to the Department of Family Services, the Department urges this Committee to give this bill your favorable consideration.

Ex 5

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-17-89

BILL NO. HB 582

Amendments to House Bill No. 582
Third Reading Copy (BLUE)

Requested by Representative Eudaily
For the Committee on Judiciary

Prepared by Valencia Lane
March 16, 1989

1. Page 7, lines 15 through 18.
Following: "court." on line 15
Strike: remainder of line 15 through "costs." on line 18

Ex 6

SENATE JUDICIARY
EMENDIT NO. 6
DATE 3-17-89
BILL NO. HB 57

Amendments to House Bill No. 57
Third Reading Copy (BLUE)

Requested by Senator Mazurek
For the Committee of the Whole

Prepared by Valencia Lane
March 15, 1989

1. Title, lines 10 through 13.
Following: "ACTS" on line 10
Strike: remainder of line 10 through "LOCALITY" on line 13
Insert: "GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS"

2. Page 2, lines 2 through 6.
Following: line 1
Strike: line 2 through "LOCALITY" on line 6
Insert: "gross negligence or by willful or wanton acts or
omissions when rendering such emergency care or assistance"

Ex 7

SENATE JUDICIARY
EXHIBIT NO. 7 Pg 1
DATE 3-17-89
BILL NO. HB 57

Amendments to HB 57

Agreed to by Montana Hospital Assn & Mont Trial
Lawyer
March 17, 1989

Page 2, line 10 after "office,"	} insert "when the health care provider has not received compensation in any form and has no no reasonable expectation of payment for the emergency services provided to the patient."
Page 2, line 25 after "hospital,"	
Pink Sheet, last paragraph page 1 line 5, after "person"	

1 HOUSE BILL NO. 57
 2 INTRODUCED BY MARKS, BOHARSKI, CODY, CONNELLY,
 3 J. BROWN, THOMAS, KASTEN, SWYSGOOD, GRADY,
 4 MENAHAN, GILBERT, PETERSON
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM
 7 LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY
 8 SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR
 9 LIABILITY FOR DAMAGES CAUSED BY GROSS--NEGLECT--OR--BY
 10 WILLFUL--OR--WANTON--ACTS FAILURE TO EXERCISE THE DEGREE OF
 11 CARE AND SKILL ORDINARILY EXERCISED IN A LIKE CASE UNDER A
 12 SIMILAR EMERGENCY SITUATION IN THE SAME OR A SIMILAR
 13 LOCALITY; AND PROVIDING AN APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. Section 1. Limits on liability for care
 17 rendered in emergency situations in hospital or physician's
 18 office. (1) (a) Except as provided in subsection (1)(b), a
 19 health care provider who in good faith renders care or
 20 assistance in an emergency situation occurring in the
 21 provider's office or in a hospital is not liable for any
 22 civil damages for acts or omissions committed in rendering
 23 the emergency care or assistance.
 24 (b) A health care provider is liable for damages
 25 caused by gross-negligence-or-by-willful-or-wanton--acts--or

1 omissions--when--rendering--such--emergency--care--or--assistance,
 2 (AN ACT OR OMISSION THAT FAILS TO MEET THE DEGREE OF CARE AND
 3 SKILL ORDINARILY EXERCISED BY REPUTABLE MEMBERS OF THE
 4 HEALTH CARE PROVIDER'S PROFESSION, OCCUPATION, OR
 5 ASSOCIATION IN A LIKE CASE UNDER A SIMILAR EMERGENCY
 6 SITUATION IN THE SAME OR A SIMILAR LOCALITY.

7 (2) As used in this section, the following definitions
 8 apply:

9 (a) "Emergency situation occurring in the provider's
 10 office" means a situation that occurs in an office, other
 11 than a hospital, used by a health care provider for the
 12 examination or treatment of patients and that requires
 13 immediate services for alleviation of severe pain or
 14 immediate diagnosis and treatment of medical conditions
 15 that, if not immediately diagnosed and treated, would lead
 16 to serious disability or death. AND:

17 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY
 18 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER
 19 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;
 20 OR

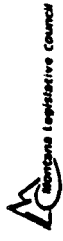
21 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND
 22 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE
 23 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

24 (b) "Emergency situation occurring in a hospital"
 25 means a situation that occurs in a hospital whether-or--not

When the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,

Ex 7 pg 2
3/17/99

HB 57



Ex. 7 pg 3
3-17-89
HB 57

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 14, 1989

MR. PRESIDENT,

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in;

Sponsor: Marks (Jenkins)

1. Title, line 13.
Following: "LOCALITY."
Insert: "PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY OBSTETRICAL SERVICES IN CERTAIN SITUATIONS;"

2. Page 1, line 14.
Insert: "STATEMENT OF INTENT"

This legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are frequently required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians and other health care providers who, despite these hardships, respond to calls to provide emergency medical care."

When the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,

3. Page 1, line 17.
Following: "emergency"
Insert: "nonobstetrical"

4. Page 1, line 18.
Following: "in"
Insert: "[section 2] and"
Following: "(1)(b)"
Insert: "of this section"

5. Page 3.
Following, line 23
Insert: "NEW SECTION. Section 2. Limits on liability for care rendered in emergency obstetrical situations in hospital or physician's office. (1) Notwithstanding the provisions of [section 1(1)(a)], a health care provider who in good faith renders emergency obstetrical services to a person is not liable for any civil damages as a result of any negligent act or omission by the health care provider in rendering the emergency obstetrical services. The immunity granted by this section does not apply to acts or omissions constituting gross negligence or to willful or wanton acts or omissions. (2) The protection of subsection (1)(a) does not apply to the health care provider in any of the following cases:

(a) The health care provider had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on its relevance to the treatment of the obstetrical condition that required emergency services.
(b) Before rendering emergency obstetrical services, the health care provider had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer on the patient's behalf to provide obstetrical care for the patient.
(3) As used in this section, the following definitions apply:

(a) "Emergency obstetrical care" means a situation occurring either in a physician's office or a hospital that requires immediate services for the alleviation of severe pain or immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, would lead to severe disability or death of either the patient or the unborn child.

(b) "Health care provider" means:
(i) a physician, registered professional nurse, licensed practical nurse, or physician's assistant, duly licensed under the provisions of Title 37; or
(ii) a hospital.

(c) "Hospital" means a licensed hospital, infirmary, or health care facility, as defined in 50-5-101.

Renumber subsequent sections

6. Page 3, line 25.
Strike: "section"
Insert: "sections"
Following: "1"
Insert: "and 2"

7. Page 4, line 9.
Following: "1"
Strike: "and 2"
Insert: "through 3"

8. Page 4, line 12.
Following: "1"
Strike: "and 2"
Insert: "through 3"

AND AS AMENDED BE CONCURRED IN

Statement of intent adopted.

Signed: 
Bruce D. Crippen, Chairman

SENATE

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 544 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 to 1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: C. G. Amend - Sen. Yellowtail

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 578 Time _____

NAME	YES	NO
SEN. BISHOP		✓
SEN. BECK	✓	
SEN. BROWN	<i>absent</i>	
SEN. HALLIGAN		✓
SEN. HARP		✓
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT		✓
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	3	6

Rosemary Jacoby _____
Secretary

Sen. Bruce Crippen _____
Chairman

Motion: Senator Beck - Amend - to delete
"misdemeanor"

Motion failed 3 to 6

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 582 Time _____

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

1 no

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: J. Pahl - Senator Jenkins

ROLL CALL VOTE

SENATE COMMITTEE _____ JUDICIARY _____

Date 3-17-89 House Bill No. 606 Time _____

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	<i>absent</i>	
SEN. HALLIGAN	✓	
SEN. HARP		✓
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT		✓
SEN. YELLOWTAIL		✓
SEN. CRIPPEN		✓

5 to 4

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Sen. ^(C) Jenkins B.C.I. Passed 5 to 4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 393 # 1
Time 1

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: Pinsonneault Tabled. With
Drawn

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 393 Time #2

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	<i>absent</i>	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Sen. Halligan - Be Concurred In