

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 9, 1995,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 29
Executive Action: SB 1, SB 10, SB 29

HEARING ON SB 29

{Tape: 1; Side: A }

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District No. 29, said SB 29 is a technical bill which addresses problem areas in our child support enforcement laws. Sections 1 through 6 and Section 10 all relate generally to the same topic and are simply changes in different

portions of the Code so that all portions relating to statutes of limitations will be the same. Sections 7, 11 and 13 all relate to withholding of income. Section 17 is a coordinating instruction. Section 9 covers a topic which is addressed much more extensively in another bill. If that bill passes, Section 9 of this bill will be void. If the other bill does not pass and this bill does pass, Section 9 of this bill will take effect.

SENATOR BARTLETT asked **Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator**, to give the committee a brief overview of child support and explain the problems this bill is trying to address.

Proponents' Testimony:

Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator, presented her written testimony, **EXHIBIT 1**. **Ms. Wellbank** handed out a pamphlet entitled, "Department of Social and Rehabilitation Services Program Descriptions", **EXHIBIT 2**. The section dealing with child support enforcement was developed for legislators to give an overview of their program. The Division is authorized under Title IV-D of the Social Security Act. The CSED has the administrative authority, without going to court, to establish a new child support order. Their primary means of enforcing child support is through income withholding. They also distribute money if the obligor, person paying child support, has several different families. Their agency is also responsible for establishing the Montana Child Support Guidelines. The CSED has an administrative law judge who puts out orders every time they take an action. These orders are appealable to the district court and Supreme Court. Montana now has over \$120 million in arrearages owed by obligors. **Ms. Wellbank** stated that Section 7 of SB 29 addresses the problem of a three pay period month, wherein the amount withheld exceeds the amount per month of the child support order. Currently, they must return the excess to the obligor which causes a disruption in regular child support to the obligee. Section 12 of SB 29 addresses an unintentional quirk in the law that stays their ability to collect current child support while a hearing on arrearages is pending. Section 15 addresses interstate cooperation in establishment of court orders. A provision was left out of the Uniform Interstate Family Support Act, adopted by the state in 1993. When there are court orders running simultaneously in two states, any money the obligor pays toward one order is credited for the same time period to the other order.

Kate Cholewa of the Montana Women's Lobby stated they are in support of the bill.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked how many obligors who have fled the state are included in the \$120 million of arrearages. There are approximately 42,000 individuals, of course, not all are delinquent. They will have a new computer program in operation in a couple of weeks and she would be able to give a number at that time. **SENATOR ESTRADA** further asked about the difficulty of collecting from obligors who now live in another state. **Ms. Wellbank** stated that each state has jurisdiction over the people in their state and many different rules apply making it difficult to collect past due amounts.

SENATOR LORENTS GROSFIELD asked for clarification between the terms "child care" and "child support". **Ms. Wellbank** stated different terms are use by different judges. The Division's authority allows them to collect for "child support". If an order is not worded correctly, they cannot collect the money. **Ms. Wellbank** stated that the obligor still owes for both child care and child support, however, their department cannot collect for child care.

SENATOR STEVE DOHERTY asked whether Montana is at the mercy of other states in order to get past due money. **Ms. Wellbank** stated there is a federal law entitled Federal Child Support Recovery Act where a U. S. attorney will prosecute the most egregious cases. **SENATOR DOHERTY** asked how often a mother owed less than \$100,000 to \$200,000 will get anything. **Ms. Wellbank** stated that would not happen very often. **SENATOR DOHERTY** further asked whether the Division has considered turning some of these bills over to bill collectors. **Ms. Wellbank** stated that within the coming biennium they would start turning over severely past due cases. They can only turn over AFDC arrearages. Non-AFDC arrearages are monies owed the obligee and the state has no interest in these funds.

SENATOR BRUCE CRIPPEN stated that he had received written testimony from **Peter S. Blouke, Director of SRS**, and it would be included with the minutes as **EXHIBIT 3**.

Closing by Sponsor:

SENATOR BARTLETT did not offer any more remarks in closing.

EXECUTIVE ACTION ON SB 1

Motion/Vote: **SENATOR MIKE HALLIGAN** moved SB 1 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON 29

Motion/Vote: SENATOR GROSFIELD moved SB 29 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON SB 10

Motion: SENATOR HALLIGAN moved that SB 10 DO PASS.

Discussion: SENATOR HALLIGAN stated that prior to 1991 the state had this authority. Valencia Lane stated that the state prepared a criminal procedure reorganization bill which had been worked on by county attorneys for up to four years before the bill was presented to the legislature. This bill completely reorganized criminal procedure statutes and in this package the law was changed. SB 10 would return this authority to the state the way it was before the reorganization bill.

SENATOR LARRY BAER stated he was not in favor of the state diluting the rights of a criminal defendant.

SENATOR REINY JABS questioned whether the defendant would lose any rights. SENATOR BAER stated that as it now stands, the defendant has a right to request a trial by judge. If this bill passes, the defendant will no longer have that discretionary power and be subject to a trial by jury if the prosecution so desires and thus the defendant would lose a discretionary right.

SENATOR GROSFIELD stated that in a case of perceived prejudice on behalf of the prosecution, the state would be able to appeal.

SENATOR AL BISHOP said this bill gets tough on crime by giving the state a better shot at going after a defendant.

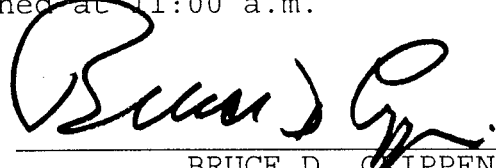
SENATOR BARTLETT commented that prosecutors will not be asking for jury trials which are substantially more expensive than a trial by judge unless it is absolutely essential to their case.

SENATOR CRIPPEN stated he opposes the bill. The state's job is to show that the defendant has committed the crime. The state has to deal with the burden of proof. The defense does not have any burden of proof. SENATOR CRIPPEN feels the change in 1991 does not take any rights away from the prosecution.

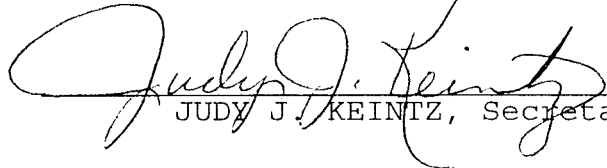
Vote: The Do Pass motion for SB 10 CARRIED with SENATORS CRIPPEN, BAER, ESTRADA, GROSFIELD, and HOLDEN voting NO.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:00 a.m.



BRUCE D. CRIPPEN, Chair



JUDY J. KEINTZ, Secretary

BC/jjk

DATE _____

1-9-95

SEN:1995
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB1 (first reading copy -- white), respectfully report that SB1 do pass.

Signed: _____
Senator Bruce Crippen, Chair

 Amd. Coord.
SA Sec. of Senate

071118SC.Srf


SENATE STANDING COMMITTEE REPORT


Page 1 of 1
January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB10 (first reading copy -- white), respectfully report that SB10 do pass.

Signed: _____
Senator Bruce Crippen, Chair

 Amd. Coord.

 Sec. of Senate

071126SC.SRF


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 29 (first reading copy -- white), respectfully report that SB 29 do pass.

Signed: _____
Senator Bruce Crippen, Chair

 Amd. Coord.
Sec. of Senate

071118SC.SPV

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/9/95 BILL NO. 10 NUMBER _____

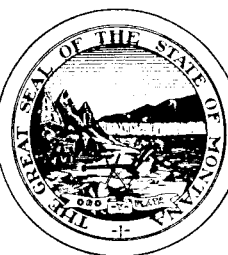
MOTION: Senator Halligan moved that SB 10
do pass.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD		✓
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON	✓	

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1
DATE 11/9/95
FILE NO. 29
PETERS, BLOOMER, AND
DIRECTOR



MARCRACICOT
GOVERNOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

Senate Bill 29
"Omnibus Bill"

Sponsored by Senator Sue Bartlett

Testimony of Mary Ann Wellbank

SRS Child Support Enforcement Division Administrator

The Child Support Enforcement Division of the Department of Social and Rehabilitation Services serves over 42,000 individuals. The division caseload is growing at a rate of 300 new cases per month. The CSED is responsible for performing various^{various} federally mandated functions, all with the ultimate goal of collecting support for children. This starts with locating absent parents, establishing paternity in out-of-wedlock births, establishing support orders, enforcing and modifying support orders, and collecting and distributing monies among families in a timely manner. Each process I have just described is legally driven requiring very specific statutory authority for our actions. As the demand for services increases, we need to continue to find ways of operating the division more efficiently and ironing out existing problems to meet the needs of our constituents. That is why the SRS/CSED must constantly re-evaluate and develop legislation.

This particular bill was developed as a clean-up of existing statutes with the aim of improving the efficiency and effectiveness of the program. The provisions of the bill are as follows:

Sections 1 through 6 & 10 clarify changes made to various statutes of limitations and collection limitations on child support during the 1993 session. At that time these statutes were amended to read or to provide that liens and judgments for child support continue and may be collected for 10 years from the termination of the support obligation. These provisions have been clarified to provide that the collection period is 10 years from the termination of the support obligation "OR 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later." Example - a private attorney goes into court, reduces entire arrears to a judgment of \$15,000, representing arrears owed for last nine years. That entire obligation may be collected for ten years from entry of that judgment, as the regular judgment statute of limitations has always provided. Without the change some attorneys have wondered whether their efforts to reduce the debt to judgment are worthless because due to the wording of the statute, they might only have 10 years from each monthly payment due, regardless of the entry of the lump-sum judgment. This was not the intention of the changes in 1993.

Section 7 would allow an obligee to retain amounts collected from the obligor through income withholding, which are in excess of the amount owed for that month, if the withholding is the result of a payor annualizing the withholding. The overwithheld amount would be applied to the obligor's child support obligation for the next month. Right now, we are required to return excess monies to the obligor which causes a disruption in regular child support to the obligee.

Section 8 clarifies that the definition of support order in MCA 40-5-201 includes money ordered for the payment of medical and health needs of a child, child care, transportation and other related expenses and costs specific to the needs of the child.

Section 9 expands the CSED's ability to enforce an order for medical and health needs of a child.

Sections 11 & 13 clarify that when withholding is annualized, the amount deducted each pay period must be sufficient to pay all installments within a twelve month period.

Section 12 clarifies the circumstances under which income withholding will be initiated or continued pending a hearing on an income withholding action.

Section 14 clarifies the responsibilities of the public assistance recipient in notifying the CSED of any action concerning the support obligation.

Section 15 adds a provision to the Uniform Interstate Family Support Act, adopted by this state in 1993. The provision was inadvertently left out of the proposal last session. The language clarifies, that, when an amount is collected and credited for a particular period pursuant to a support order issued by a tribunal of another state, it must be credited against the amount accruing or accrued for the same period under a support order that is issued by a tribunal of this state.

Thank you for your consideration of this legislation.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 1/9/95

FILE NO. 29

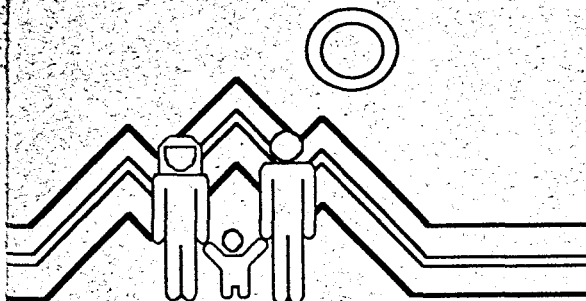
**Department of
Social and Rehabilitation Services
Program Descriptions**

January 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(brochure)

**Peter S. Blouke, PhD
Director**

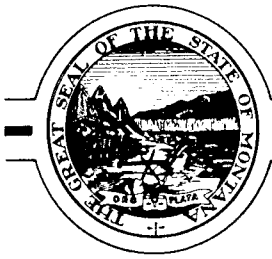


DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

LEGISLATIVE COUNCIL

DATE 1/9/95

BILL NO. 29 PETER S. BLOUKE, PhD
DIRECTOR



MARC RACICOT
GOVERNOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210
(406) 444-5622
FAX (406) 444-1970

Senate Bill 29
Sponsored by Senator Sue Bartlett
Written Testimony of Peter S. Blouke, PhD, Director
Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services, Child Support Enforcement Division currently handles over 42,000 child support cases, with the caseload increasing at the rate of approximately 300 cases per month.

The SRS/CSSED's primary mission is to ensure that children receive the monetary support that is rightfully and legally theirs by locating absent parents, establishing paternity in out-of-wedlock births, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies to the families to which they belong. As the caseload and the public's need for SRS/CSSED services continues to grow, the department is continually searching for methods of more efficient division operation while, at the same time, serving and satisfying the needs of its constituents.

With this goal in mind, the department has proposed SB29 to assist in enhancing the efficiency and effectiveness of the state Child Support Enforcement Program.

Thank you for your consideration of this legislation.

Submitted by: Peter S. Blouke
Peter S. Blouke, PhD, Director
Department of Social and
Rehabilitation Services

DATE 1-9-95

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

SB 209

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
<i>Mary Ann Wellbank</i>	<i>SRS - Child Support</i>	<i>SB29</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kate Cholewa</i>	<i>MT Womens Lobby</i>	<i>SB29</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY