

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BRUCE CRIPPEN**, on January 11, 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 36, SB 69  
Executive Action: SB 36

**HEARING ON SB 36**

**Opening Statement by Sponsor:**

**SENATOR AL BISHOP**, Senate District 9, Billings, presented SB 36 which was introduced at the request of the Child Support Enforcement Division of the Department of Social and Rehabilitation Services. The reason for the bill is that the Division is tied closely to federal funding and the Federal Omnibus Budget Reconciliation Act of 1993 amended a portion of the Social Security Act. Montana has in place most of the law that is required but some small changes are needed. If this legislation is not passed, it will result in the loss of some

federal monies. This legislation benefits both children and parents because it expedites and finalizes the question of paternity which is the first thing necessary in a child support enforcement proceeding. This bill sets out the way to accomplish that and it also provides for notifying the parents of their rights and responsibilities.

Proponents' Testimony:

**Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator**, presented her written testimony, **EXHIBIT 1**. She handed out information on genetic testing and also a paternity glossary. **EXHIBIT 2**. This bill is required to conform with the federal OBRA law and finalizes paternity for the child, which is the first step for child support. The amendments to the bill make the effective date July 1, 1995, which is required by OBRA. The amendments also clarify that both the child's mother and the child's father need to acknowledge on one form that the father is the father of the child. Also in the amendment the word paternity is substituted for parentage in the hospital paternity acknowledgement process.

**Laurie Koutnik, Executive Director of Christian Coalition of Montana**, said the Coalition supports SB 36 and feels it is timely in view of the desire of citizens of this state to see a crackdown on deadbeat fathers.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**SENATOR MIKE HALLIGAN** asked **Amy Pfeiffer, Social and Rehab Services**, to clarify page 2, line 1, "weightier considerations of policy and logic controls". **Ms. Pfeiffer** explained that the phrase came from the Uniform Parentage Act. Their Division has seen more and more instances in which there are two conflicting presumptions of paternity. The first part of Section 1, (5) states that if there are conflicting presumptions, the one based on a blood test would outweigh the other one. However, when there are conflicting presumptions not based on blood tests, the Division does not think it is appropriate for them to rank which presumptions were more important and wants to leave that decision to be left to a judge or hearing officer. **SENATOR HALLIGAN** asked when using blood testing, who pays for the blood testing? **Ms. Pfeiffer** stated that when their department establishes paternity, they have a contracted lab which they use. The Division asks the hearing officer to order that the alleged father pay for the blood test if he is found to be the father. If it is a Title IV-D case and it is necessary for the Division to establish paternity, blood tests may be offered or the hearing officer may order them. In a private case in District Court, the Court decides who pays for the blood test if one is necessary.

**SENATOR RIC HOLDEN** stated he is generally supportive of this legislation, however, he questioned the situation wherein the father voluntarily signs the acknowledgement and later questions his paternity. **Ms. Wellbank** commented that at the time of the birth the hospital gives the father a pamphlet explaining his rights and responsibilities before signing. **Ms. Pfeiffer** stated that this bill does not change the above situation. If someone signs an acknowledgement of paternity they are presumed to be the father and the Division can act on that presumption until the father brings an action in District Court asking the Court to determine that he is not the father.

**SENATOR SUE BARTLETT** remarked that it was her understanding that the Division has provided training to hospital personnel regarding the acknowledgement of paternity forms. **Ms. Wellbank** maintained that they had provided very intensive training to the hospitals and the forms were all written in simple and clear language.

**SENATOR LORENTS GROSFIELD** asked for clarification of lines 18 through 21 on page 9. His understanding is that if there is only one alleged father and he refuses to submit to a blood test, the court designates that he is the father. What is the procedure when there is more than one alleged father and they all refuse to submit to a blood test? **Ms. Pfeiffer** stated that when the mother alleges there is more than one possibility, the Court may be able to proceed against one of them. One or more of the alleged fathers may not live in this state thus they may not have jurisdiction over one or more of the alleged fathers. The Court or the Division's administrative process could proceed against one of them at a time asking the alleged father to submit to a blood test or go through the level of proof necessary to have a hearing officer or a judge order a blood test. If the first person failed to appear, that default could not be entered if there are other possible people out there because there would be the possibility of ending up with two or three defaults and this would mean two or three fathers by default. The Division continues to try to find the other alleged fathers. **SENATOR GROSFIELD** further questioned the situation wherein both alleged fathers were local and both refused to submit to a blood test. **Ms. Pfeiffer** stated they would not be able to take default against either one.

**CHAIRMAN BRUCE CRIPPEN** asked **SENATOR HALLIGAN** if an order to show cause could be issued. **SENATOR HALLIGAN** stated the Division could have the alleged fathers show cause as to why they are not appearing on the order and then issue a contempt. **Ms. Pfeiffer** stated they can have a contempt issued, however, if the fathers continue to ignore them, this provision would prevent the Division from issuing a default against one of the alleged fathers. **SENATOR HALLIGAN** questioned whether there would be a way to work with other jurisdictions when an individual does not respond at all. **Ms. Pfeiffer** stated that when two people continue to ignore all their orders, this provision would

prohibit them from entering a default against either one of the alleged fathers. **Ms. Pfeiffer** said they are usually able to talk one of the alleged fathers into a blood test because he thinks he is not the father. If the Division can get one excluded, they can enter default against the other.

**SENATOR GROSFIELD** referenced the phrase "95% or higher statistical probability of paternity" and asked whether the natural father would always show in the 95% or higher statistical probability by blood test. If a thousand people with the same blood type took a blood test, how many of those would show a 95% or higher statistical probability of paternity. **Ms. Pfeiffer** commented that the hand out distributed earlier (**EXHIBIT 2**) explained paternity testing. They use human leukocyte antigens (HLA) testing or DNA. It is a cross matching of a number of tests. Most of the tests come back 98% to 99.8% or excluded. After the blood test has come in, the alleged fathers can ask to have their case referred back to District Court.

**SENATOR GROSFIELD** asked for clarification of the strikeout of the words "by rule" on page 11, line 7. **Ms. Wellbank** stated the maximum they are allowed by federal formula to reimburse hospitals is \$20 for each paternity acknowledgement. The Division did not feel a rule was necessary.

**SENATOR SHARON ESTRADA** asked whether there is retroactive action when it takes a long time to establish paternity. **Ms. Pfeiffer** said the Court can go back to the time of birth to include birth costs. The Court uses the Child Support Guidelines and looks at what the father's income would have been during that time.

Closing by Sponsor:

**SENATOR BISHOP** offered no further remarks in closing.

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HEARING ON SB 69

Opening Statement by Sponsor:

**SENATOR HOLDEN**, Senate District 1, presented SB 69, which is an act relating to military justice. The Montana Department of Military Affairs currently adopts by reference federal laws, regulations, forms, precedents and usages governing the Armed Forces of the United States and has been doing so since 1974. This bill will bring the adoption of the Uniform Code of Military Justice in line with today's circumstances.

Proponents' Testimony:

Brigadier General Gary Hindoien, Assistant Adjutant General for

**Air for Montana**, stated that Lee v. Montana went into effect in 1983. The Lee decision takes them back to the 1974 manuals for court martials and procedures. These manuals, which were adopted in 1974, were changed and updated in 1984. This bill will clean up Title 10 of the Montana Military Code portion of the Montana Code. This is a military matter which would affect the 4,000 members of the National Guard who fall under this military jurisdiction for about 39 days a year. On page 1, line 30 of SB 69 they would like to delete "The senior judge advocate of any element of the Montana National Guard that may convene a court martial" and replace that with "When a court martial is convened the senior judge advocate of that element". In (3) the term judge advocate is replaced by adjutant general. In (3) they also change the word "soldiers" to "members".

**Master Sergeant Roger A. Hagan, representing the Officer and Enlisted Associations of the Montana National Guard**, presented his written testimony **EXHIBIT 3**.

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Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**SENATOR STEVE DOHERTY** referred to lines 14 and 15 on page 2 of SB 69 and asked if there would be any appeal beyond the adjutant general. **Lt. Col. Charles Erdmann, Senior Judge Advocate 120th Fighter Group in Great Falls**, responded that the court martial is the fact finder and also makes the determination regarding the sentence. The court martial could be appealed to the convening authority, which in Montana is the Governor. This language is intended to say that once that determination is made, that is appropriate for a petition for judicial review. The individual in the court martial has other judicial remedies available. What the courts have generally held is that from a military determination, you cannot start over again on the civilian side. **SENATOR DOHERTY** asked if an aggrieved party felt that there was constitutional flaw in the case, would they have access to the Federal Court. **Lt. Col. Erdmann** affirmed that they would have access to both state and federal court. **SENATOR DOHERTY** questioned whether active duty guardsman could go to the higher federal military courts. **Lt. Col. Erdmann** answered that active duty guardsman in Montana have the full rights afforded them for all members of the armed forces. **SENATOR DOHERTY** remarked that they would not only be adopting the act itself but also manuals, forms, precedents and usages. He questioned the term "usages". **Lt. Col. Erdmann** explained that the term usages is a unique military term found in the Uniform Code of Military Justice. Usages means the same thing as precedents.

**SENATOR GROSFIELD** asked the significance of substituting "members" for "soldiers". **Sgt. Roger Hagan** explained that the difference is that "soldiers" would mean Army National Guard. The National Guard is made up of both air and army and thus to make it clear they used the term "members".

**SENATOR DOHERTY** asked the difference between the air national guard and naval reserve units. **Sgt. Roger Hagan** explained the naval reserve is a reserve component of the navy and that has no connection with the State of Montana aside from being located here. The Montana Air National Guard is a reserve component of the Air Force. The Montana Army National Guard is a reserve component of the army and air national guard. They have dual membership and have dual responsibilities, both state and federal. The navy reserve, army reserve, air force reserve and marine corps reserve do not have state duties.

**CHAIRMAN CRIPPEN** asked for an explanation of the Lee v. Montana case. **Sgt. Roger Hagan** stated that the Montana Legislature adopted the Montana speed limit by making a reference to federal law. The Supreme Court found that that was an impermissible delegation of legislative authority. The Lee case says, if you adopted the UCMJ in 1974, that was the authority. There have been significant changes since 1974, so now we have to go back and adopt the UCMJ effective July 1, 1995 so we can incorporate all of those changes.

**SENATOR BARTLETT** questioned whether there was some way to remove the date to avoid the need to return and update periodically in the future. **Sgt. Roger Hagan** stated that the military court has held that they could not do that.

**SENATOR GROSFIELD** commented that he was concerned about the large amount of changes they were adopting in this bill. **Brigadier General Gary Hindoi**, explained that they should have made these changes every biennium since the Lee case. They are trying to clean up and make things more current. **Lt. Col. Mike McCabe, Judge Advocate for the Department of Military Affairs**, explained that the rules changed to afford greater protections and to clarify changes that had gone into force and effect in the Supreme Court decision and the military court decisions since the original UCMJ was adopted. The reason they want to adopt the UCMJ is to provide for uniform standards for the active duty personnel and to handle the uniquely military offenses. The most common uniquely military offense would be failure to obey an order of a superior officer. Title 32, U.S.C. covers annual training and weekend drills and in that capacity they are limited to giving letters of reprimand, order forfeiture of pay and allowances, or impose a fine of up to \$200.

**SENATOR REINY JABS** asked whether the members were under military or civil jurisdiction during their weekend drills and annual training. **Lt. Col. McCabe** stated that any time the members are under military orders issued by the Governor of the State of

Montana under Title 32, they would be subject to the code of military justice for the State of Montana. **SENATOR JABS** further asked about the jurisdiction while overseas. **Lt. Col. McCabe** explained that the rules in effect for out of the continent travel for purposes of national guard duty are covered by Title 10. If a member commits any offense that would be subject to the Code of Military Justice, they would be prosecuted by the federal authorities under Title 10 status.

**SENATOR LARRY BAER** asked **Sgt. Roger Hagan** if his organization represented the consensus of the enlisted personnel. **Sgt. Roger Hagan** stated that all members of the enlisted force of the national guard of Montana are members of their association.

**SENATOR CRIPPEN** questioned what would happen under a Title 32 status if a felony was committed. **Lt. Col. McCabe** explained that the UCMJ on the federal side is established to protect soldiers from enforcement of state laws against active duty federal soldiers who may be in a state. In Montana, it is their policy that if there is a violation of a criminal code of the state of Montana by a guardsman, they will seek to have that prosecuted through the appropriate State District Court and then deal with that soldier militarily in the administrative matter which follows.

**SENATOR GROSFIELD** expressed concern that the way the bill is drafted, subsection 2, lines 21 through 28, is the only subsection which is affected by the effective date of this act and an additional amendment might be needed. **Lt. Col. McCabe** said they would certainly accept that clarification.

Closing by Sponsor:

**SENATOR HOLDEN** said it is timely that this bill be passed with the proper amendments to help define and clarify the military court system here in Montana.

EXECUTIVE ACTION ON SB 36

Motion/Vote: **SENATOR BISHOP** moved to AMEND SB 36. EXHIBIT 4  
The motion to AMEND SB 36 CARRIED UNANIMOUSLY.

Motion: **SENATOR BISHOP** moved SB 36 DO PASS AS AMENDED.

Discussion: **SENATOR GROSFIELD** questioned the phrase "weightier considerations of policy and logic", page 2, lines 1 through 2. **Ms. Pfeiffer** explained that they felt a need for some kind of standard. This phrase refers to the standard the court or hearing officer would use. The judge or the hearing officer would have to decide when given the facts of those particular families and the child's relationship with the possible fathers, what does the court consider as the weightier consideration of public

policy. **SENATOR GROSFIELD** felt that this language says that the policies the legislature has passed are not clear and the judge is to set the policy. **SENATOR BARTLETT** questioned whether the judges would understand what is meant by the phrase since it is not a commonly used phrase. **Ms. Pfeiffer** felt that many of them would look at the case law and try to figure out what public policy would be for this child. They are asking the court to weigh policy and logic.

**SENATOR LARRY BAER** stated that there is a substantial difference between law and policy. The legislature establishes the law. Is that law going to be subject to certain policy or is the policy going to be subject to the law. **VALENCIA LANE** explained that when the word policy is used it means policy that has been adopted by the legislature in statute. The presumptions referred to are set out in statute. On page 2, line 1 the policy they are talking about is statutory policies established by the legislature. You can have legislative policy or statutory policy. The problem is delegation of legislative authority to adopt policy.

{Tape: 2; Side: A}

**Ms. Pfeiffer** said they could add the word statute, however, there is no statutory policy ranking presumptions. **SENATOR BARTLETT** asked if it would be possible to delete the sentence. The direction to the courts would be that a presumption based on paternity blood test is the most significant presumption and would bear out over other presumptions. The second sentence was added so that the legislature could give some guidance to the courts about what they should look to in deciding between different presumptions. **Ms. Pfeiffer** said that would be fine. In Section 5, both those sentences are not part of the mandates of the OBRA. The first sentence would give some direction and they could do without the second sentence.

**CHAIRMAN CRIPPEN** stated that the suggestion was that they strike the language after the word presumptions on line 30, page 1, through line 2, page 2. **Ms. Pfeiffer** said that was correct. **CHAIRMAN CRIPPEN** further stated that on page 8, lines 23 starting with the word "If" strike the remainder of line 23 and all of 24 and 25.

**Withdrawal of Motion:** **SENATOR BISHOP** withdrew the motion SB 36 DO PASS AS AMENDED.

**Motion:** **SENATOR BARTLETT** moved to AMEND SB 36 by striking the language "if there are conflicting presumptions not based on paternity blood testing, the presumption that is factually founded on weightier considerations of policy and logic controls" and the two sections of the bill in which that currently appears.



Discussion: SENATOR JABS stated that the above amendment would then base everything on a blood test. SENATOR BARTLETT said that would be true only in those cases where a blood test has been performed and provides a sufficient basis to presume paternity. The effect of the amendment leaves us with no statutory guidance to the courts in terms of what would be weightier evidence to consider when there is no blood test. Where there is a blood test and the results of that are sufficient to presume paternity, 95% or greater, that is the standard to be used to establish paternity.

SENATOR GROSFIELD felt that there is still the issue of whether the legislature should be setting a policy of the state. He asked if the Department would consider bringing in a short summary of the presumptions that are in the law so the committee could decide if they want to set some priorities.

Withdrawal of Motion: SENATOR BARTLETT withdrew the motion to AMEND SB 36.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 12:00 p.m.

  
\_\_\_\_\_  
BRUCE D. CRIPPEN, Chairman

  
\_\_\_\_\_  
JUDY J. KEINTZ, Secretary

BC/jjk

DATE \_\_\_\_\_

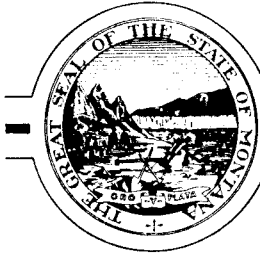
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DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
CHILD SUPPORT ENFORCEMENT DIVISION

11/11/95

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MARCRACICOT  
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Senate Bill 36  
"OBRA Paternity"  
Sponsored by Senator Al Bishop  
Testimony of Mary Ann Wellbank  
SRS Child Support Enforcement Division Administrator

A handwritten signature in cursive script, likely belonging to Mary Ann Wellbank.

This bill deals with the state's paternity establishment process.

Title IV-D of the Social Security Act, 42 USC 651 et seq. creates the federal/state child support enforcement program. In return for federal public assistance funds, Title IV-D mandates that states pass specific laws providing for the establishment of paternity, child support and health insurance obligations, and for the enforcement of these obligations.

The federal Omnibus Budget Reconciliation Act of 1993 (OBRA 93), amended 42 USC 666 to require states to adopt some new paternity legislation. Fortunately, much of Montana's administrative paternity process and our in-hospital paternity acknowledgement program meet the requirements of OBRA 93 but some changes must be made to our administrative process and to the Uniform Parentage Act, 40-6-1-1 et seq., to comply with the requirement. The failure to adopt such legislation this session subjects the CSED to loss of the federal funding program which supports our program as well as the state welfare program.

The importance of this legislation is that it tightens up and finalizes the paternity establishment process. In Montana alone, 3,000 or around 27% of all children are born out of wedlock. This means that paternity needs to be established for those children to ensure they have access to their birthright - of knowing who their father is, of paternal medical history and medical conditions that may affect them, and of having rights to benefits the father may be eligible for (social security, veterans), and of course, being eligible for child support.

The very first step in gaining child support for a child is establishing paternity. Many single-parent children are receiving welfare and medicaid benefits from the state. Once paternity and a child support obligation are established, many children begin receiving support and either no longer need welfare benefits, or the money collected is used to partially or fully reimburse the state and federal governments for welfare benefits paid. The paternity establishment aspect of child support enforcement is one

of the cornerstones of welfare reform. As a result of last session's legislation, the CSED established an in-hospital paternity acknowledgement program which is projected to result in voluntary acknowledgements of 50% of Montana's out of wedlock births.

Just to give you a brief summary of the principals under which Montana establishes paternity:

MCA 40-6-105 (page 7, section 7)

Paternity is **presumed** or a presumption of paternity exists when:

- the child is conceived or born during marriage (or attempted marriage) or within 300 days of the termination of the marriage
- the child's natural mother and the man have attempted to marry after the child's birth
- the man holds himself out to be the child's natural father
- the natural mother and father legally and formally acknowledge paternity in writing. Montana has in-hospital paternity establishment program allowing them to do so at time of child's birth.
- if the scientific evidence from a blood test shows a 95% or higher statistical probability of paternity.

There are three major parts of this legislation. Sections 1-5 deal with Montana's administrative process where the CSED establishes paternity for all state welfare cases and for others who apply for state services. Sections 6-10 deal with the Uniform Parentage Act in which courts establish paternity. Our goal is to make these two processes consistent with eachother as well as to comply with OBRA. The last section 11 is in the code used by the Department of Health. It represents clean-up from last session's legislation.

The necessary changes resulting from OBRA include:

- 1) a requirement that CSED provide the parents information regarding the rights and responsibilities of acknowledging paternity as part of a voluntary acknowledgement of paternity;
- 2) a requirement that full faith and credit be given to a determination of paternity made by any other state, whether established by voluntary acknowledgement or established by administrative or judicial process;

At present, some states, such as Montana, may establish paternity by administrative, rather than judicial process. In many, but not all states, a parent or state agency is entitled to rely on a presumption of paternity created by statute to establish a child support obligation. This is true until the presumption is rebutted in an appropriate action. Since not all states have the same law in this area, one state may establish a paternity order, and a child support order based

on the paternity order, and the paternity determination may not be recognized by another state, requiring the parents to re-litigate the issue. The full faith and credit provision will end duplicative paternity adjudications.

- 3) a requirement that a voluntary acknowledgement of paternity must be recognized as a basis for seeking a support order without requiring further proceedings to establish paternity;

In some states, such as Montana, a voluntary acknowledgement of paternity, filed with the Department of Health, Vital Statistics Bureau, creates a presumption of paternity that may be relied upon until that presumption is rebutted in an appropriate action in district court. This is not the law in all states. When this provision is adopted in all states pursuant to the federal requirement, it will reduce the need to have paternity adjudicated in either a court or administrative forum before a support obligation may be created.

- 4) a requirement that an objection to genetic test results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence and that if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

In Montana, this provision is already part of Montana law in the administrative paternity determination process. This provision would extend the principle to paternity actions in district court. It allows the parties to know sufficiently prior to the hearing whether it will be necessary to involve an expert witness from the testing laboratory. It streamlines the proceeding by letting the parties know what issues are in dispute.

- 5) a requirement that genetic testing results indicating a particular threshold probability of paternity establishes a rebuttable or conclusive presumption of paternity (this must be added to the Uniform Parentage Act);

For administrative paternity proceedings in Montana, a 95% probability of paternity based on paternity blood testing, creates a presumption of paternity. There is no similar presumption based on blood tests conducted pursuant to a district court proceeding. Many other states also have created presumptions of paternity based on certain threshold levels of probability. This provision will make uniform the law in Montana, as well as complying with the federal requirement that such a threshold probability of paternity apply to all paternity determinations.

- 6) a requirement that a default paternity order be entered upon a showing of service of process;

This is more of a clarification provision. The CSED, in its administrative paternity process, is authorized to enter default orders upon a showing of proof of service on the alleged father. MCA 40-5-233. The Uniform Parentage Act provisions of Montana law, for paternity actions in district court, don't clearly state that this is the case. OBRA requires that a paternity default order may be entered upon a showing of service of process. For this reason it was necessary to specifically so state in the UPA provisions. Service of process requires notice and an opportunity to appear. Depending upon whether the action is initiated in district court or through an administrative proceeding, and at what stage of the proceeding a party wishes to have a default entered, service of process may require service of a notice or petition by personal service or certified mail, or of a motion for default by regular mail after proper service of the initial pleading.

The CSED has also added other, related provisions to clean up provisions of the current administrative paternity establishment process. These include: a provision establishing priority of presumptions of paternity; a provision allowing the CSED to hold an additional hearing if there is reason to believe a person submitting to blood testing was not the person ordered to appear for testing; and a provision allowing the CSED to enter an order of non-paternity based on a blood test exclusion.

PATERNITY ESTABLISHMENT INFORMATION  
CHILD SUPPORT ENFORCEMENT DIVISION  
MARY ANN WELLBANK, ADMINISTRATOR  
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Background on Genetic Testing

All human cells contain twenty three (23) pairs of chromosomes containing the genetic makeup of that person. A child inherits one-half of his/her chromosomes from each parent. The 23rd gene determines a person's sex, the 6th determines human leukocyte antigens (HLA), and the 9th determines blood type. The genetic lab does red blood cell (RBC) and HLA test systems on all blood samples to identify genetic markers from each person being tested. The lab compares these genetic markers to determine if the genetic markers from the child are a composite of those identified in the mother and the alleged father. The lab requires that more than one test system must be done to accomplish the testing, even though one system could be conclusive. HLA excludes 93.5% of all non-fathers and RBC excludes 63-72% of all non-fathers, and the two combined will exclude 99% on all non-fathers. DNA testing is done if the RBC and HLA do not reveal conclusive results. DNA is done by comparing short sections of DNA called a probe. The child's DNA probes are compared to that of the mother and the alleged father. If these two people are the biological parents of the child, exactly one-half of the child's DNA will exactly match with each of the parents. Two probe systems are run for absolute accuracy. DNA testing excludes 99% of all non-fathers.

The paternity index, shown on the test results, is set by comparing the genetic markers of the alleged father to a random man of the same race and calculating the ratio of the frequency that the random man could produce the same genetic markers. A probability factor of .05% assumes the alleged father and a random man had an equal chance to father the child and is used

in a formula to determine the final percentage of probability that the alleged father is the father of this child. If a blood test result shows a 2000 : 1 probability, the alleged father is 2000 times more likely to be the father of the child than a random man of the same race given access to the same mother.



## PATERNITY GLOSSARY

Alleged Father	A man against whom there exists an assertion, declaration, or statement indicating that he may be the father of a child/ren in a case.
Acknowledgment of Paternity	A legal document signed and notarized by both parents of a child and filed with the birth records at the Bureau of Vital Statistics. This document may be challenged in the courts.
Admission of Paternity	An administrative document, signed, notarized, and sworn-to by the alleged father declaring that he is the father of the child named. This document cannot be challenged in the courts.
AFDC	Aid to Families with Dependent Children. Public assistance paid to a custodial party on behalf of children who are deprived of one or both of their parents by death, disability, or a continued absence from the home by a parent including desertion and incarceration.
Amended Birth Certificate	The document that results from adding the father's name to a birth certificate at the request of <u>either</u> parent.
Applicant	The custodial party who requests the services of CSED to determine paternity, establish an order for support, or enforcement of an order for support.
Assignment of Rights	The procedure/document by which a recipient of public assistance or an applicant of NAFDC services agrees to turn over to the State any right to support paid on behalf of such recipient/applicant or their dependent children.
Caretaker/ Custodial Party/ Guardian	A parent, relative, or guardian who maintains care and control of the dependent children of a NAFDC household or whose needs are included with the children's in an AFDC payment or Medicaid benefits.
Certificate of Service/ Sheriff's Return	A signed document by which the person who served process, delivered documents in person, upon a party to the case which affirms that the service was performed.
Certified Birth Record	A document obtained from the state agency responsible for maintaining vital statistics of birth and death records. The record contains birth information for the child, mother's name, and father's name if paternity has been acknowledged. The document bears the signature of an agency official and seal of certification as to the facts.

Certify	To declare, under oath, the accuracy of facts by a signed, written statement.
Child	Any person under 18 years of age who is not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States, any person under 19 years of age and still in high school or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday. [MCA 40-5-201 (2)(a)]
Circumstantial Evidence	Evidence directed to the surrounding events, whereby which existence of the principal fact in an issue may be inferred by logical reasoning.
Cite	A statute, ordinance, or judicial opinion identified by section, volume, or page numbers, and code of the source.
Code	A collection of federal or state laws published in one or more volumes.
Collateral Facts	Facts outside of or not directly connected with the principal matter in dispute.
Continuance	The postponement of a hearing to a different day.
Cooperation	An applicant's observance of the conditions of application or service by any State agency.
Cross-examination	The questioning of a witness by the opposing party for the purpose of testing the truth of the testimony.
CSED	<u>Child Support Enforcement Division</u>
Default	The failure of a party to a case to respond to legal process within the time-period prescribed by law for that response.
Dependent Child	Child under the age of emancipation or receiving assistance ia AFDC.
Discovery	The disclosure of facts, documents, witnesses or other information in the possession of one parties in an adversarial action to the other party prior to formal hearings procedures.
Due Process of Law	The observance of legal rules and procedures to protect the rights of all parties to a legal action.
Emancipation	To release from parental care and responsibility ia reaching the legal age of emancipation in a state, marriage, entry to military service, death, or by court order.
Et Al	Latin abbreviation for "and others".

Et Seq.	Latin abbreviation for "and the following".
Ex Parte	Something that is done for the benefit of one party only and improperly excluding others to the same action.
Exhibit	A document or article of fact, marked for identification, submitted to the court or to the hearings officer to support the argument of a party to a legal action.
(Title) I-A	of the Social Security Act covering public assistance programs under Federal Law.
(Title) I-D	of the Social Security Act covering support enforcement programs under Federal Law.
Grant Amount	The amount of public assistance paid to an AFDC family in a given month.
Guardian Ad Litem	A guardian appointed by a court to protect the legal interests of a minor or otherwise incapacitated person.
Hearings Officer Administrative Law Judge	An impartial person authorized by the agency to hear evidence and render decisions regarding proper application of policy and procedure.
Inadmissable	A term to describe evidence or testimony that cannot be considered by a judge or hearings officer under established legal procedures.
Incarceration	Imprisonment; not including County Jails.
Informational Birth Record	An uncertified document containing birth information for a child. Sometimes this is a document issued by the hospital "suitable for framing" and other times this is a copy of the documents submitted by the hospital to the Bureau of Vital Statistics. This is not a legal document, but does provide valuable information regarding the birth records of a child.
Informed Consent	An administrative document signed by an alleged father by which he acknowledges that he is signing an Admission of Paternity fully aware of additional possible fathers.
Initiating State	The state in which the custodial party resides when the alleged father resides in another and interstate actions are required.
Interrogatories	A set or series of written questions to assist in discovery prior to a hearing.
Judgment	The official decision of findings of a court; a decree.

Judicial Review	Appeal to a court of higher authority for the review of the judgment of an administrative agency.
Jurisdiction	The determination by law prescribing the class of cases which may be heard by a legal entity including a specific geographical area and the parties which may be included in an action.
Legal Father	A man who is recognized by law as the parent of a child.
MCA	Montana Code Annotated, Montana laws. Title 40 and Title 41 specifically govern the actions of CSED and define its authority.
Medicaid	Medical benefits related to AFDC benefits or to NAFDC persons who are eligible.
Motion	An application to a judge or hearings officer for an order or ruling.
Non-AFDC/NAFDC	I-D cases in which the custodial party is not a recipient of public assistance.
Notarize	The administration of an oath to a person, a Notary Public, who then attests and certifies by his or her signature and official seal on the document that the person who signed the document was the person named on the document.
Objection	The act of a party who disagrees to something or proceeding in the course of a hearing.
Opening Statement	The statement made as an overview at the beginning of a hearing setting forth the purpose and the facts to be covered.
Order	The decision rendered in writing by the judge or hearings officer.
Paternity	Fatherhood.
Paternity Affidavit	An administrative document, completed by the custodial party, containing declarations and statements regarding the circumstances of conception and the relationship as it existed between the biological parents of the child. This document is completed voluntarily, signed and sworn-to before a notary.
Personal Service	Delivery of a notice of document to a named party to an action by handing it to him/her in person.
Precedent	An judgment or decision that serves as an example or authority for an identical or similar case or question of law.

Stay	An order by the court to stop a legal proceeding.
Stipulation	An agreement between parties, done in writing, to validate agreement upon facts.
Subject Matter Jurisdiction	Jurisdiction to proceed with actions against a specific class of case. (example: Native Americans)
Subpoena	The legal process to order cooperation of a witness to appear.
Subpoena Duces Tecum	The legal process to order presentation of documents.
Substitute Birth	The document requested, by a submitting a Certificate Paternity Consent Order, when scientific evidence and/or an administrative or court order requires the information on the birth certificate be changed.
SYSTEM/SEARCHS	The CSED computerized record keeping system.
TEAMS	The computerized record keeping system used by the I-A/welfare agency.
Wavler	The intentional and voluntary relinquishment of a known legal right.

EXHIBIT 2  
DATE 1-11-95  
SB 36

Pre-hearing Conference	A telephone conference call including the Hearings office, the CSED, and the alleged father to inform the alleged father of his rights and the format of the hearing; to obtain a list of necessary witnesses; set deadlines for discovery and submitting of exhibits; and, to set a hearing date.
Probable/ Reasonable Cause	Facts exist which would induce a reasonable person to believe that an event did occur as alleged.
Pro Se	A person legal representation of his own interests in a hearing without benefit of a lawyer by his/her own choosing.
Presumed Father	A man who was married to the mother at the time the child was born or who meets criteria of presumption as defined under the law. MCA 40-6-105.
Publication/ Decree by Publication	Service has been accomplished by printing of the notification of a legal action in a local newspaper in the area of last known address of the alleged or presumed father. Does not establish paternity.
Rebut	New evidence can be introduced to contradict prior facts or evidence.
Recipient	The person receiving public assistance.
Redirect	The re-questioning of a witness.
Regulation	The rules of an administrative agency.
Release	The relinquishment of a right.
Relevance	A determination that evidence or testimony bears a direct relationship to an issue and proves a fact.
Reporter	A publication that contains judicial opinions.
Responding State	The state in which the alleged father resides if different from that in which the custodial party lies in an interstate action.
Security Copy	A copy of a letter or official document retained in the case-file and stamped as a "copy". Such documents are used as exhibits in administrative hearings and in District Court by way of a Subpoena Duces Tecum.
Statutes	Formal written law found in code books.
Statute of Limitations	Under the law, sets the period of time within which a legal action can take place.

SENATE JUDICIARY COMMITTEE  
SUBJECT NO. 3  
DATE 11/11/95  
BILL NO. 69

## TESTIMONY IN SUPPORT OF SENATE BILL 69

Senate Judiciary Committee  
1/11/95

*Presented by:*

**ROGER A. HAGAN**

**Officer/Enlisted Associations of the Montana National Guard**

Mr. Chairman, members of the committee, for the record my name is MSGT Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of Senate Bill Number 69, a bill to adopt by reference The Uniform Code of Military Justice (UCMJ), as reflected in the Federal laws and regulations of the Armed Forces of the United States.

As members of the United States Army and Air Force, during our basic training active duty tour, we are schooled on the requirements and responsibilities of members of the Armed Forces with respect to the UCMJ. It is reasonable, then, to assume that similar requirements and responsibilities are conferred upon us when we return to our home state as members of the Montana National Guard.

To adopt the Federal UCMJ as our governing document for the Montana Militia is the most reasonable and prudent course of action. This bill merely adopts the most current Federal UCMJ on the effective date of this act. Additionally, it provides for the administration of military justice by outlining assignment of trial counsel and appeal procedures.

Our Associations urge the adoption of this legislation. Thank you for your favorable consideration and I remain available for questions.

Amendments to Senate Bill No. 36 BILL NO. 36  
First Reading Copy (white)Requested by Senator Bishop  
For the Committee on JudiciaryPrepared by Valencia Lane  
(at request of SRS)  
January 11, 19951. Title, line 6.  
Strike: "AND"2. Title, line 8.  
Following: "MCA"  
Insert: "; AND PROVIDING AN EFFECTIVE DATE"3. Page 7, line 22.  
Following: "he"  
Strike: "the person has acknowledged"  
Insert: "the child's mother and the child's alleged father have  
acknowledged the alleged father's"4. Page 8, line 3.  
Following: "he"  
Strike: "the person acknowledges"  
Insert: "the child's mother and the child's alleged father  
acknowledge the alleged father's"5. Page 11, line 1.  
Strike: "parentage"  
Insert: "paternity"6. Page 11, line 3.  
Strike: "parentage"  
Insert: "paternity"7. Page 11, line 12.  
Insert: "NEW SECTION. Section 12. {standard} Effective date.  
[This act] is effective July 1, 1995."



DATE 1/11/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 36  
SB 69

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Chip Erdmann	MT Air Nat Guard	SB 69	X AS AMENDED	
GARY HINDOEN	MT ANG	SB 69	AS X AMENDED	
JAMES TAFLAN	MT ANG	SB 69	X AMEND.	
MIKE MCCOY	MT ANG	SB 69	AMEND.	
Mary Ann Nellbank	SRS - CSED	SB 36	✓	
ROGER A HAGAN	NATIONAL GUARD ENLISTED/OFFICER ASS.	SB 69	✓ as amended	
Lennie Kutzek	Christian Coalition of MT	SB 36	✓	
Kate Cholewa	MT Womens Lobby	SB 36	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY