

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 15, 1995,
at 8:00 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: Senator Estrada.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 55, HB 65, HB 366, HB 186, HB 322
Executive Action: HB 55, HB 65, HB 322
Discussion only: HB 547, HB 256,
HB 345, HB 186, HB 366, HB 74

HEARING ON HB 322

Opening Statement by Sponsor:

REPRESENTATIVE CHASE HIBBARD, House District 54, Helena, introduced HB 322, which he said was an important piece of legislation for the Montana Innkeepers' Association. They had discussed this at a recent convention and determined a need for legislation. He said it was a variation of a model passed in Idaho and Minnesota in 1993, and four others. Hotels and motels are held to a very high standard when it comes to how they may treat guests. Unfortunately, sometimes they are confronted with

the problem of how they have to deal with problem guests, and specifically, evicting problem guests. This bill addresses that issue and also clarifies guidelines for the public to understand their rights in those regards. The House Judiciary Committee made some changes to the bill, addressing the issue of renting rooms to minors. Due to some perceived Constitutional problems, the Section in the bill dealing with minors was amended out. He offered an amendment that did not restore the part taken out by the committee, but would clarify that when motel/hotel property is willfully damaged by a minor, the minor's parents and/or guardian is responsible for repairing the facility. Section 1 in the bill establishes guidelines and reasonable standards for eviction having to do with such things as paying the bill, evicting the guest if the guest is drunk, disorderly, has unlawfully possessed firearms, has an explosive, toxic or hazardous substance that is unlawful to possess, destroys, defaces, damages or otherwise harms the hotel property, or overloads the room. Section 2 would clarify the innkeepers' responsibilities in stating that the innkeeper may not be required to provide accommodations for basically the same list of things. The old Section 3 of the bill has been amended out in the House. The new Section 3 states that a liquor license for a property may not be suspended or revoked because of unlawful consumption of alcohol by a guest or occupant. New Section 4 is proposed by an amendment (**EXHIBIT 1**) which states, if a minor willfully defaces or damages hotel/motel property, the parent is responsible for costs of repair or replacement.

Proponents' Testimony:

Stuart Doggett, representing the Montana Innkeepers' Association, spoke in favor of HB 322. Montana does not have a state law that sets out guidelines to help innkeepers in handling problem guests. For example, guests who may damage a room, underage drinkers or activities surrounding illegal drug use. At this time, the members do not report a high volume of problem situations, but as the state's #2 industry grows, they wanted to take a lead in establishing a fair-minded law to outline standards for evicting guests. The intent of the measure is not to enact a law that works to create scenarios for random evictions. What would be the point, he asked? Innkeepers, like all businesses, want to create opportunities for guests to spend their money. Evicting the customers for minor indiscretions is simply bad business. Instead, the bill was aimed at situations involving obnoxious patrons. This bill would also deal with the subject of renting rooms to minors. They supported the amendments proposed by the sponsor. His organization felt HB 322 was a logical bill that could work to assist the industry in creating policies in handling problem guests and allow the members the opportunity to continue to provide quality service for their patrons.

Greg Bryan, a hotelier from Whitefish, encouraged support of HB 322. This bill would assist hotel/motel operators to define

their rights in dealing with unruly and vandalistic behavior in their places of business. It would also help in their ability to collect or prosecute which could be limited by age and financial resources. They were also concerned about illegal activities in their premises such as drugs, stolen goods or underage drinking. This bill would increase their ability to reduce those circumstances. If the minor is found drunk in one of their rooms from alcohol gained from an outside source, they would be very concerned about the impacts to their on-premises liquor licenses. It makes sense for a hotelier to be able to evict a guest who refuses to pay, or behaves in a damaging or dangerous manner. Those rights should be defined for both the guest and the operator's guidance. He encouraged support of the bill. He said the State of Utah had recently considered this legislation.

Russell Hill, represented the Montana Trial Lawyers Association, said they did not oppose the bill, but he wanted to point out a circumstance that might arise. The bill basically did two things about alcohol: 1) it allows an innkeeper to evict a guest if they are under the influence of alcohol, and 2) it extends the dram shot laws that have to do with serving guests. Those are two different standards, he said, whether the person is under the influence of alcohol or visibly intoxicated. This bill would also extend to lawful activity in your home, he said. A person could drink until they were under the influence, there is nothing illegal about that. This bill would allow an innkeeper to evict someone who has gotten drunk in their room. Basically, it could create a dangerous situation. MTLA did not have a problem with Section 4, with serving someone who is visibly intoxicated, because if an innkeeper evicts someone they served, they are going to be liable. The two standards are inconsistent on judging whether someone is under the influence vs. visibly intoxicated.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR LINDA NELSON asked **Mr. Bryan** to discuss **Mr. Hill's** concerns about someone drinking in their room. How would they go about evicting them at that time? **Mr. Bryan** asked why they would evict someone who is in a room and not creating a problem? It would create legal hassles for the innkeeper, create a scene and ruin a future customer. Unless there was a problem where other guests were disturbed, or damages to the room were being done, it would make no sense to evict that customer. **SENATOR NELSON** addressed the reply to **Mr. Hill**. She also asked about the liability of the innkeepers if the person drank in their room, then went out and became involved in an accident. **Mr. Hill** said that MTLA does not oppose the bill. If the innkeeper served alcohol to someone, even if they were not visibly intoxicated, it

is not illegal. But, if they evict that person, even if they were not visibly intoxicated, but being rowdy in the room, and under the influence of alcohol, they become liable. There would be liability any time they evict a guest, he said. He said there would also be liability if the innkeeper knew the person was intoxicated and was disturbing other guests by being rowdy, causing eviction. They would become liable for putting the drunk person out on the highways. **SENATOR RIC HOLDEN** asked the sponsor about the amendment. He said there was a code on the books that limits the liability for the parents of minors to \$2,500 for damages. The amendment did not coincide with the statute, he said. It was open-ended. **REPRESENTATIVE HIBBARD** was unsure. He wasn't aware of the code. **SENATOR STEVE DOHERTY** said the bill seemed to be infringing on an annual spring rite at state basketball tournaments. **Mr. Bryan** said they welcomed the basketball fans. Currently, most of their ability to handle unruly guests would be handled under the landlord/tenant situation. Currently on an overnight situation they were very restricted, although situations arose where evictions were made for a variety of things. Sporting events were a great source of income, he said, and they welcome them. They also would like to collect for damages incurred. He said they did not seek to evict lightly, they sought to evict legally. He said in response to the earlier conversation, if the customer was drunk, they would not in good conscience evict them. They would have them arrested and placed under custody. **SENATOR REINY JABS** asked **Mr. Doggett** if a chaperon would be liable if they were with a group of kids? **Mr. Doggett** said he would not think so. The reference was to a parent or a guardian. He was aware of the \$2,500 damage limit. Their point was, being aware of that, in public accommodations they might often have damage exceeding that figure. They would have to bear the actual cost. Their intent was that the parent or guardian was liable for that amount. **Mr. Bryan** further explained that a group booking responsibility is placed upon the group leader by contract. When a customer signs into a motel room, they sign a registration card and accept responsibility and liability for that. Should a chaperon sign into the room for the minor, yes, in their opinion, they would be accepting responsibility for that. Otherwise they wouldn't have a contract. **SENATOR MIKE HALLIGAN** said there might be a conflict, if the contract says the chaperon is responsible, and the law says the parent/guardian is responsible. There would be two responsible parties. He said with comparative negligence, someone may be able to point the finger at both of them. He asked about Subsection A, (2), if there was an attempt to tie the drinking in the room with disorderly conduct? **Mr. Bryan** said they were trying to clarify in law their ability to collect for damages. If it was in a common area vs. a room, two different situations would take place. They were concerned with a customer who had checked into their room, then created a disturbance, damaged property and was disorderly because of alcohol, or any reason. **SENATOR HALLIGAN** said it read that they had the ability to evict a drinking person just because they did not like him, even though the customer did not cause a disturbance. **Mr. Bryan**

said it would be their intent to take Paragraph A and B together. **CHAIRMAN BRUCE CRIPPEN** said he saw the same problem. A person could cause a disturbance and not be intoxicated as well. Section A by itself would give cause to evict guests for drinking in the hotel's bar, or drinking in their room. **Mr. Bryan** said they would not do that. **CHAIRMAN CRIPPEN** said that wasn't the point. The bill would give the ability to do that and someone may do that. He said they did not write laws to say, "well, why would anybody do that?" He wanted the bill to pass muster. **Mr. Bryan** said they would be glad to add language to Paragraph A to tie unruly behavior to alcohol consumption. **CHAIRMAN CRIPPEN** asked the sponsor for the definition of an, "unlawfully possessed firearm." **REPRESENTATIVE HIBBARD** said the issue was discussed in the House committee as well. There were questions about a hunting rifle and it was determined not to be a problem. He referred the question to **Mr. Bryan**. The intent is not to evict someone who is there with a lawfully possessed handgun that is registered, or a legal weapon like a hunting rifle. They were concerned with stolen weapons, a gang situation, a weapon that is not lawful to possess (like an Uzi), or an automatic weapon that should not be there. They were worried about situations that would affect their staff and other people. He said it was a compromise. **CHAIRMAN CRIPPEN** asked about the allowable occupancy. Did that mean when they go to bed at night? **Mr. Bryan** said each room had a stated occupancy limit of not more than four people. If there was a situation when 8 or 9 or 10 people, for instance, the line would address that issue. **CHAIRMAN CRIPPEN** asked if it was their intention to go beyond the \$2,500 parental responsibility for damages? **REPRESENTATIVE HIBBARD** said he did not think so. If there was already a statute somewhere that limited liability, this would not intend to go beyond existing law. **CHAIRMAN CRIPPEN** said maybe they could reference that particular section. The sponsor said that would not be a problem. **CHAIRMAN CRIPPEN** asked about the proof of damage and how it would be determined. He said they may have to go to JP court to show it. **Mr. Bryan** explained it was done both ways. They go to the individual who signed in and assumed responsibility for the room and hold them accountable for the damages. They present the costs for repair. The customer begins to pay, or the innkeeper would begin proceedings. They were trying to include minors in this new section, so there would be some responsibility. He said they would like to have it higher than the \$2,500 limit, but could work with it. **CHAIRMAN CRIPPEN** said there was a concern because **Mr. Doggett** had said they would go over the limit. **Mr. Bryan** said they would start out with the \$2,500. Currently they had minimal coverage. **SENATOR NELSON** asked how they would handle a "unlawfully possessed weapon" differently under this law than they ordinarily did. **Mr. Bryan** said currently they did a number of things. Most of it is bluff, he said. This measure would give clarification to the customer and the innkeepers as well, to say they could deal with an unlawfully possessed weapon. If the housekeeper would discover a weapon, it would immediately be reported to management. They would make a decision by observation as to whether it would be a legally possessed weapon.

If they considered it a dangerous situation, they would contact a law official for guidance. **SENATOR NELSON** asked how it differed. **Mr. Bryan** said it would give them some back-up for what they needed to take care of.

Closing by Sponsor:

REPRESENTATIVE HIBBARD closed on HB 322. He stated it would be fine if the committee would like to consider an amendment on Page 1 regarding the concern raised about the combination of being drunk and acting in a disorderly fashion. The bill was patterned after a national model. It had been adopted in eight other states. It gives the growing accommodations industry guidelines and standards for dealing with unfortunate, but real problems they encounter. The perceived Constitutional problems with the bill were amended out in the House Judiciary Committee. He felt the proposed amendment was reasonable. He asked for favorable consideration. He stated that **SENATOR HALLIGAN** had been kind enough to carry the bill to the Senate if it should be approved.

HEARING ON HB 65

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE McKEE, House District 60, Hamilton and Corvallis, sponsored HB 65. She said the bill had been amended by the House. The bill was requested by the Governor's Human Service Interagency Task Force on Developmental Disabilities and supported by the Governor's Office, SRS and DCHS. The part that had been amended out dealt with the closure of the Eastmont facility in Glendive. They were not asking that be re-instated. They had accepted the House decision that it was not the time to deal with that issue. The bill would revise the laws governing the commitment of individuals to institutional programs who are determined to be seriously, developmentally disabled. These changes would clarify language and definitions in the statute, improve the commitment process, and eliminate current sunset provisions dealing with the definition of seriously, developmentally disabled individuals currently in the law. Passage of HB 65 would ensure the important changes would be made and also would prevent the definition of seriously, developmentally disabled from sunseting back to the old definition which is outdated and inappropriate.

Proponents' Testimony:

Bob Anderson, Administrator, Special Services Division, Department of Corrections and Human Services, supported HB 65 as amended by the House. The bill is a basic clean-up of the statutes currently dealing with commitments of the developmentally disabled to institutional programs. It would clarify the language, getting rid of a lot of duplications. The current law had a sunset provision that would take effect July 1. It would change the definition of developmentally disabled

reverting back to a prior-1991 definition which is totally outdated. He claimed that they needed the definition as it was. The definition of developmentally disabled people pertains to those who are committable to an institution. The definition deals with people who need total or near-total care or have major behaviors that cannot be safely or effectively served in community programs. He encouraged support of the bill as amended.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HOLDEN questioned **Bob Anderson** about the fiscal note change. **Mr. Anderson** said there was no fiscal impact whatsoever. The prior note dealt with the Eastmont issue which was amended out. The Senator asked for an updated fiscal note to take to the Senate floor. **SENATOR HALLIGAN** asked about the definition of licensed, professional psychiatrist on Page 3, Line 4. Did they intend that a masters' degree would be required in the daily work in the upper level mid-management. Was the definition accepted by the DD community? **Cary Lund, SRS**, stated they had representatives of providers participating in the Governors' Task Force. The definition, "developmental disabilities professional," will only apply in the commitment process, and would not affect the community service system. He said they had reconfigured what the professional is about. The role tightened in 1991 in the changes in the commitment law because there were very inappropriate commitments coming out of some district courts in the hinterlands of the state. They were using just GP's to make the professional judgements. In this bill, the name would be changed to a more appropriate title without adding too much more criteria than there is now. There was a limited pool currently and this would not limit it much more, he said.

SENATOR HALLIGAN asked how this bill would change the law with respect to a re-commitment back to an institution. **Mr. Lund** said the standard for commitment was not changed in the bill. **SENATOR HALLIGAN** asked what the standard was for involuntary commitment relating to re-commitment. **Mr. Lund** stated that the definition was seriously developmentally disabled as stated on Page 5. The person has to be found to have developmental disability and is impaired in terms of cognitive functioning. The old definition did not address cognitive functioning. He read item (c), "has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care, and who, because of those behaviors or deficits, cannot be safely and effectively habilitated at community-based services." He said the professional person has to make a judgement and they go to the county attorney who files a petition. A screening team, housed at SRS, including consumers and personnel from SRS, looks at the person in terms of the definition before the court can consider the person for

commitment. By bringing the process into the committee, they can identify resources within the community and the group would be able to do a threshold screen to place the person in the appropriate place. **SENATOR HALLIGAN** said their board in Missoula was concerned about procedural rights of any of the consumers without the cognitive functions if they do not have a family member or guardian to represent their best interests. **Mr. Lund** replied that most people were responsible for their own well-being and few are in guardianship. Most can consent for themselves. The Missoula corporation participates in the IP (individual planning) team which can work with the county attorney or the Montana Advocacy Program and look for an advocate or guardian if there is a serious question of ability to consent. The judge would make the determination too, about the commitment law. It was intended to provide balance behind the committed person. **SENATOR HALLIGAN** said he did not have a problem with it. He stated that they had the very severely disabled in their residential care and it has been a concern that the individual might consent to a waiver of rights. He did not think they could do that. He was unaware of the layers of protection and support to make sure that they are in the best setting possible. **Mr. Lund** said there was a set of rights encompassed in the law. **SENATOR LARRY BAER** asked **Mr. Anderson** about the fiscal note item of \$1.3 million in the budget for the biennium. He asked if the amendments negated that figure? **Mr. Anderson** said the bill initially included a proposal to close Eastmont effective January 1, 1997. The fiscal note contains all the information regarding that issue. That part of the bill had been amended out and they were no longer recommending the closure, so the fiscal impact would be zero. It would only apply with the closure of Eastmont.

Closing by Sponsor:

REPRESENTATIVE McKEE reaffirmed that the fiscal note had been eliminated with the Eastmont amendment. There will be no fiscal impact with the bill. It would only enhance the current commitment statute for the seriously developmentally disabled and eliminates the current sunset provisions in the law. She said **SENATOR HOLDEN** had agreed to carry the bill onto the Senate floor if it should be approved.

SENATOR AL BISHOP ASSUMED THE CHAIR.

HEARING ON HB 186

Opening Statement by Sponsor:

REPRESENTATIVE BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 186. She asked the committee to also be cognizant of HB 366 which implements the things that are presented in HB 186 in the adult protection side of the statutes. This bill would clean up and bring the statutes for child protection up to date. She directed their attention to the amendments on Pages 11 and 12 which are the substantial amendments in the bill. They

deal with to whom the confidential records may be disclosed. They also give limited liability to the providers for protection and care of children. Many providers are interested in seeing that these provisions are put into law.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, reasserted that the bill was a general clean-up bill, but also had technical amendments that they believe will help the department carry out its mandate to help children at risk of being abused and neglected. It will also help others who provide service to better assist the state in their goal of protecting children. While all of the provisions in the bill are important, of major concern to the department and other providers is the provision that authorizes the agency to share limited information with employers or volunteer organizations regarding prospective employees or volunteers who will have unsupervised contact with children. The department has information that would help to protect children from abuse. The agency needs the authority to share that information with other employers before another child is abused needlessly. Another provision would clarify that a person authorized to investigate alleged child abuse and neglect has a limited immunity from liability. Anyone providing or using the information related to employment will have this immunity and employers might seek relevant information prior to hiring staff or soliciting volunteers that pose a risk to children. The bill would also expand the present limitations regarding confidentiality and to whom the department may release information. They wished to release to people with a need to know, but it had been expanded to include the guardian *ad litem*, foster and adoptive parents, an alleged perpetrator, a bona fide researcher, and with limitations, the media and members of the Youth Placement Committee. These were in response to concerns raised by citizens of the state as well as the federal government asking them to expand the confidentiality provisions. In the House there were amendments made which might require a bit of revision. On Page 9, Section 8, Line 30, the House deleted an advocate or guardian *ad litem* in the mandatory reporting section. The advocate was deleted because of controversy with the Montana Advocacy Program. They did not want to be mandatory reporters. Their department intended that, "advocate" would include volunteers and the court-appointed special advocates. She asked the committee to consider an amendment for those advocates and not the Advocacy Program by inserting, "or court-appointed advocate who is authorized to investigate." Another amendment of concern to her was on Page 11, Section 9, Line 4 and 5. The House did not want the department to release information about a prospective employee based on an anonymous referral. That was not the intent of the language, but in an attempt to clarify that the referral made by a mandatory reporter or anyone that is corroborated or substantiated by the department is fine with them. She was concerned that it would be interpreted to mean that someone other than the department has to corroborate the

referral. Her suggested change was to leave the intent of the House amendment, but to clarify it and avoid interpretation problems. She suggested changing Line 4 by deleting "by independent corroboration," and also the same on Line 5.

Russell Hill, representing the Montana Trial Lawyers Association, said he had not intended to speak, but the sponsor had asked him to speak to Section 9 of the bill Page 10 and 11, relating their position. He said they had generally opposed this bill because of the way the Sections were drafted. The House had made some of the amendments. Their concern was that it made no sense for the legislature to impose duties on people to investigate and protect children and then immunize them from any accountability if they completely ignore it or do it incorrectly. The amendments on Subsection 1 were good. On Subsection 2, he agreed that it may be a cumbersome way to phrase the Subsection because it would be clearly raising the consequences of this information. People can fire a current employee, or refuse to hire someone on information acquired from the department. If the consequences were raised, the guarantees should also be raised. The need to substantiate the information is important and it was the House's concern that it be substantiated outside the department. On Lines 4 and 5 of Page 11, he said the language drafted now would impose on a third person, like an employer or someone who gets information from the department, to somehow know whether that information has been substantiated or independently corroborated. It would be easy for the department to know, but it would be different for the employer to fire someone or refuse to hire someone to prove that the verification is accurate.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN said he was trying to understand Subsection 2 on Page 11. If a nurse saw marks on a child, calls the department and they come out and see the marks on the child. That is not an independent corroboration right now under the language of the bill. The cops come out and see the marks on the child. That is an independent corroboration of the abuse. How does that connect with the refusal to hire or discharge? What was the House doing there, he asked? **Ms. Gilkey** said she tended to disagree with **Mr. Hill's** interpretation of what the House was intending to do. Her understanding from the House discussion in House Judiciary, was the concern about an anonymous referral coming into the department and based on the unsubstantiated information, it would be released to others. The intent from the department's perspective was to share information on substantiated abuse or neglect that would indicate that the person they were about to hire was going to be a volunteer for Big Brothers or others, may pose a serious risk to children. They would not share uncorroborated information, they would have done their

investigation. They would not necessarily have to have a third party verify that the child was bruised. She said the House was trying to ensure against anonymous referrals being used to discharge employees, by putting the language, "substantiated by the department." She said the agency does have corroboration from anonymous referral, but it is internal within the department. They would never substantiate based solely on an anonymous referral. They could not. **SENATOR HALLIGAN** asked if normal non-profits, such as Big Brothers and Sisters, normally contact the DFS in various communities to ask if individuals have complaints against them for child abuse and other reasons? **Ms. Gilkey** talked about the Oprah Winfrey bill, or the child protection act. There was a lot of discussion prior to the session about whether or not they would introduce a bill to implement that act into Montana. Big Brothers and Sisters, 4-H, Boy Scouts, everyone came to the meetings to decide. They do background checks in Big Brothers and Sister as well as they can. The others really don't and were opposed to the Child Protection Act because of the possible financial implications to their volunteers. This was the department's way of addressing that concern about being able to share information without the fingerprint cards and all the rigmarole the federal act would have required. All the programs want the protection, she said. The department has in their files very relevant information to help them protect children, but currently they were unable to share it. This bill would give that opportunity. **SENATOR HALLIGAN** stated that he did not believe they should give that information to anyone. Did they do that in other states? **Ms. Gilkey** said many times people who pose great risks to children are not prosecuted or convicted, so the DFS would be the only ones to have that information. If they know people have abused or molested others sexually, but haven't been charged criminally, they hate to let them be employed or volunteer for Big Brothers and Sisters knowing full well that they pose a high risk to the children. That's why it is important to have the information substantiated. They also had rule-making authority and could specify the type of information and how it would be given out.

Closing by Sponsor:

REPRESENTATIVE KASTEN said people had worked hard for years to provide information to child protection providers. Of the perpetrators, she said, many hold low-paying jobs and the same people are circulating through the system. Maybe they are looking for a better job, but sometimes they have been asked to leave a position. The department might have fast and hard evidence that these people are moving because of child molestation, for instance. They should be able to share with the people that are working to protect these children. Of the people who opposed the bill in the House, they asked why would they just say, "anyone," and if it could be clarified. When they tried to clarify, the amendment was rejected. She did not disagree with **Mr. Hill** that it should not have been in there, but she asked the committee to look carefully at the amendment. She also agreed

with Ms. Gilkey in response to the language. **REPRESENTATIVE KASTEN** said it was a good bill, and it was a necessary bill. If the bill would pass, she asked **SENATOR CHRISTIAENS** to carry the bill to the Senate floor.

HEARING ON HB 366

Opening Statement by Sponsor:

BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 366. She said it was originally brought in an effort to bring the advocacy people and the department people together in some of the disputes they were having. Since that wasn't possible, the House had seen fit to strip all of the amendments that deal with the advocacy group out and merely left the coordinating statutes in HB 186 to be coordinated with the adult protection that the statute in HB 366 addresses.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, said HB 366 is also a general clean-up bill related to adult protective services. It would change the reference to developmentally disabled person to a person with developmental disabilities. She said the SRS were also trying to change it to the correct definition. It would consolidate redundant laws and repeal unnecessary laws, it would coordinate it with the same amendments they were trying to get in HB 186 and make it consistent with the child protective service statutes. It does the same regarding the release of information of a potentially harmful person working around the elderly or the developmentally disabled. It was at the request of the providers that the bill was proposed. She urged support of HB 366.

Opponents' Testimony:

None.

Informational Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, called the committee's attention to Page 9, Section 6, having to do with the immunity from civil and criminal liabilities. This is essentially a mirror image of the Section they saw in HB 186. In the House, they did not stand in opposition because of the practical reality. The amendments made in the House had not been made here, he said. This would not require the independent substantiation or the other provisions.

Questions From Committee Members and Responses:

SENATOR HALLIGAN said he wanted to make sure the language was as tight as possible on the language on confidentiality that was

opened up to the person carrying out background screening, or employment, or volunteer-related screening. He thought there might be some mischief here in respect to verification to the questioner. In bitter divorce cases, for instance, the people might ask a friend to get information for a contrived background check on the spouse. He asked if there was a way their department could request the requesting party ask for the information in person. **Ms. Gilkey** said the concern is legitimate. They struggled to make it as tight as possible and still allow the necessary sharing of information. Custody disputes are a problem in that they have to investigate all referrals, but it did not mean they would substantiate it. Even if they had substantiated abuse, it might not mean they would pose a risk to children in an employment situation they were getting into. That would be the criteria. They would not pass the custody information along regardless of who calls. Internally they have a system whereby if they substantiate abuse or neglect by a person, that person is notified with a right to review the substantiation and get the record amended. They were trying to build all the safeguards into the system with the recognition that not everyone would go to court and be charged criminally. **SENATOR HALLIGAN** asked the sponsor if she thought adding something about someone showing up in person, saying they represented some agency would be appropriate? He thought it was a pretty wide gap in the confidentiality law. **REPRESENTATIVE KASTEN** replied that if an agency in Plentywood requested the information, it would be difficult to come to Helena. Perhaps it could say, "in writing."

Closing by Sponsor:

REPRESENTATIVE KASTEN closed without further comment.

HEARING ON HB 55

Opening Statement by Sponsor:

REPRESENTATIVE JOHN BOHLINGER, House District 14, the Northeast side of the old part of Billings, sponsored HB 55 at the request of the Department of Social and Rehabilitation Services and the Child Support Enforcement Division. HB 55 is an act to revise the child support income deduction laws for the State of Montana to bring them into compliance with the federal laws. Child support enforcement programs are authorized under Title 4D of the federal Social Security Act and are state-administered. State programs must conform with federal regulations. The purpose of this bill is to bring the state program into compliance with the federal program. Under present Montana law, income withholding orders may be issued by two entities: the courts, and by the Child Support Enforcement Division. Federal law governing the State Federal Child Enforcement Program sets out certain requirements for state income withholding laws. The state's failure to conform its statutes to these requirements may result in the failure of the state's 4D plan which in turn, could result

in the loss of funding to the state's Child Support Enforcement Program and our Montana welfare programs. Enactment of HB 55 will provide for more consistency between the withholding provisions of the courts and the Child Support Enforcement Division by providing both obligors and employers a more uniform method of obtaining and complying with the income withholding orders. The failure of our state to approve of HB 55 could result in the loss of \$26 million in AFDC payments and an additional \$5 million in funds that help run the Child Support Enforcement Division. Section 1 described the duties of the employer upon the receipt of an income withholding order. Section 2 protects the rights of an obligor by providing that an employer may not discharge, discipline, or refuse to hire an obligor because the person has a child support order. Section 3 establishes civil liability for an employer who fails to comply with a wage deduction order. Section 4 amends Sections 40-5-308 of the Montana Codes in that it sets out the requirements of an order.

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Division and the Department of Social and Rehabilitation Services said the bill was simple and straightforward and would meet only a minimum of federal requirements of conformity with the federal law. Basically, the provisions of the law had been in effect since 1985. There is just two types of income withholding. One type is done by the Child Enforcement Support Division where they send orders to withhold income to employers. The second type is done by the courts. This bill would bring the court's provisions for income withholding consistent with what the division is doing now. The bill was amended in the House in Section 2. It talked about the right of an obligor, that an employer may not refuse to hire or discharge a person. The House amended the penalty to \$100 and it was acceptable to the department.

Questions From Committee Members and Responses:

SENATOR JABS asked **Ms. Wellbank** if she had said the Division could order withholdings? **Ms. Wellbank** said yes, 42 per cent of the child support they collect was through an order to the employers to withhold a certain portion of the obligor's income. The courts also do that, but do not have the specific information of how it should be done to meet the federal requirements, which this bill would correct. **SENATOR JABS** said the bill would correspond with the federal order then. **Ms. Wellbank** replied, "yes." **SENATOR CRIPPEN** asked when 42-USC-666 was enacted into law?

Amy Pheifer, DFS, said she did not have the exact date, but that it was the "guts" of the program and had been in existence since the mid-70's. The federal government continually adds new laws. This new provision was added in 1987 or 1988. They were to have them by January 1, 1994. They were behind, she said. **SENATOR CRIPPEN** asked if they had been in violation for several years?

Ms. Pfeifer replied it had been a little over a year. **SENATOR CRIPPEN** asked if there were other requirements that were coming forthwith to be enacted by January 1, 1996 they should be aware of. **Ms. Pfeifer** said there were none she could think of. They did have a deadline for a federally certified computer system by October 1, 1995. She said rules often come months and years behind the effective dates of acts. **SENATOR CRIPPEN** asked if the bill did not pass, would they lose \$26 million in AFDC money and \$5-6 million in other money? **Mary Ann Wellbank** said the reason they did not realize they were out of compliance is because their income withholding is bifurcated. The courts handle one part and the child support division handles the other. They brought the child support part into compliance and didn't know this other part was hanging out there. The feds were calling monthly and asking the progress of the bill. They could pull the whole program in addition to the 71 per cent of federal funding to the state AFDC program.

Closing by Sponsor:

REPRESENTATIVE BOHLINGER commented that if the bill were not enacted, the state would stand to lose some \$26 million that provides aid to families with dependent children could be in jeopardy. The bill would be a vehicle for letting them regain federal compliance. He urged concurrence.

CHAIRMAN CRIPPEN RE-ASSUMED THE CHAIR.

EXECUTIVE ACTION ON HB 55

Motion: **SENATOR NELSON MOVED THAT HB 55 BE CONCURRED IN.**

Discussion: **SENATOR JABS** stated that he hated federal mandates, but could see no choice. **CHAIRMAN CRIPPEN** said it was our money/not our money, but they had to conform to the methodology to which they deem the best way to have it administered.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR NELSON** agreed to carry the bill to the Senate.

EXECUTIVE ACTION ON HB 547

Discussion: **CHAIRMAN CRIPPEN** said this bill had been amended previously in the committee to add a retroactive applicability provision and some added some language from the Department of Justice. They passed it out. In the meantime, the sponsor, **REPRESENTATIVE CLARK** said he had not seen the amendments. He indicated that the amendments were O.K., but wanted the bill to strike the list of offenses. He gave **SENATOR BAER** the amendment to present. He needed a motion to reconsider the action.

Motion/Vote: **SENATOR HOLDEN MOVED THAT THEY RECONSIDER THEIR ACTIONS IN RECOMMENDING THAT HB 547 BE CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: It was determined that **SENATOR BAER** and **Valencia Lane** would work on the amendments for presentation the following day.

EXECUTIVE ACTION ON HB 256 and HB 345

Discussion: **CHAIRMAN CRIPPEN** said the DUI bills needed to be coordinated to SB 316 and SB 33. In speaking with **CHAIRMAN CLARK** of the House Judiciary Committee, they had agreed to each send three members to a Sub-committee along with **Valencia Lane** to resolve the conflicts, if possible. The chairman named **SENATOR BISHOP**, **SENATOR HALLIGAN** AND **SENATOR JABS** to the committee. **SENATOR HALLIGAN** asked for the sentiment of the committee on requiring that the surcharge from the DUI fines go to the Jaws of Life equipment only, even for communities that have already purchased them? In the past, the money had gone to DUI Task Forces. He did not see a need for them to mandate where the money should go, but if there was no opposition, he would not propose it. **SENATOR HOLDEN** said it was a good point. **CHAIRMAN CRIPPEN** said the House group might have a different opinion. He would rely on the decision of the committee, he said. He hoped for an early resolution from the Sub-committee.

{Tape: 2; Side: A; Approx. Counter: 00}

EXECUTIVE ACTION ON HB 65

Motion/Vote: **SENATOR HOLDEN** MOVED THAT HB 65 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on an oral vote. **SENATOR HOLDEN** was assigned the bill to carry to the Senate floor.

EXECUTIVE ACTION ON HB 186 and HB 366

Discussion: **SENATOR HALLIGAN** said the only suggested amendments were on Page 7 of HB 366. He and **Ms. Lane** would work on amendments to provide a way for requestors of information to put that request in writing or appearing in person. He thought it could be written in the (iii) Section of Page 7. In HB 186, the sponsor had agreed to an amendment to the, "take out or substantiated by," language. It was agreed to work on these bills the following day.

EXECUTIVE ACTION ON HB 322

Motion: **SENATOR HALLIGAN** MOVED TO AMEND HB 322 ON PAGE 1, LINE 19, AS SHOWN IN (EXHIBIT 2 - #3).

Discussion: **CHAIRMAN CRIPPEN** asked what would constitute, "not in compliance with state liquor laws?" **Valencia Lane** said underage drinking would be considered on instance, or a false ID.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

Discussion: CHAIRMAN CRIPPEN asked the committee to deal with an amendment offered by the sponsor, REPRESENTATIVE HIBBARD. SENATOR HALLIGAN said it should be consistent with current law. The current limits for damage by minors were \$2,500. He did not think it should be made open-ended. CHAIRMAN CRIPPEN said in codifying this in Title 27, it would go through the procedural aspect of the new Section 4. Valencia Lane stated that it did not seem to fit over in Title 70 where the rest of the bill was being codified. She suggested it go into Title 27 with other existing liability sections. After it had been brought to her attention there was section dealing with damage to property, she suggested it go in to a new Section 4, codify it with the rest of the bill in Title 70, but amend the new Section 4 to reference specifically the two Sections on parents' liability for minors' destruction to property, as shown in (EXHIBIT 2 - # 4), incorporating this language with that of Mr. Bryan.

Motion/Vote: SENATOR HALLIGAN MOVED THE AMENDMENT AS SHOWN IN (EXHIBIT 2 - #4). The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion: SENATOR HALLIGAN MOVED THAT HB 322 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

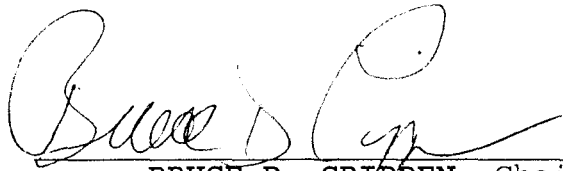
EXECUTIVE ACTION ON HB 74

Discussion: CHAIRMAN CRIPPEN stated that Gordon Morris of MAKO had asked for a review of HB 74, which had been tabled. Mr. Morris referred to amendments offered by SENATOR DOHERTY (EXHIBIT 3). He said the one difference would be determination by the court. The assessment would be against the party requesting the jury. What they had heard in the testimony was that the assessment would be against either party, plaintiff or defendant in regard to a determination by a jury that the case was frivolous. He said it would be a substantive difference. He deferred to the recommendations of the committee. Mr. Morris said it was not a financial measure, but a reasonable measure from the standpoint of wanting to rid the court and the taxpayers of a burden for the continuation of what the counties saw as an increasing number of frivolous lawsuits brought before the courts. He urged passage. SENATOR HOLDEN asked Jacqueline Lenmark, representing the American Insurance Association, for a comment. Mr. Lenmark said the amendments by SENATOR DOHERTY went a long way toward addressing their concerns, but they would still have to oppose the HB 74 under any circumstances. She reminded the committee that the State Constitution says that the right to a jury trial shall remain inviolate. To impose the cost of a jury on either party is in contraction to that provision of the Constitution. The other thing she would fear for her clients and other interested parties is the thought that it would take the courts one step further toward using the litigation process as a


club and not as keeping the courts as a forum for conflict resolution. They could all recite lawsuits to the committee, of which they would not be informed of the full facts, that would sound, "stupid." She said in a cause of action or a matter that is disputed, the courts need to be open to resolution. There are many safeguards not to prevent frivolous suits. She said the bill was poor public policy. It was decided that the bill would be further discussed the following business day. .

Adjournment

Adjournment: CHAIRMAN BRUCE CRIPPEN adjourned the hearing at
10:20 A.M.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf

DATE 3-15-95

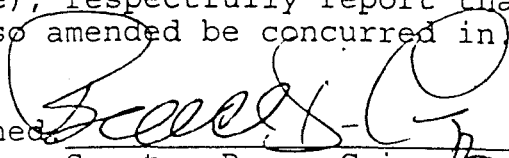
SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 322 (third reading copy -- blue), respectfully report that HB 322 be amended as follows and as so amended be concurred in

Signed 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Strike: "AND"

2. Title, line 7.

Following: "MCA"

Insert: "; AND ESTABLISHING PARENTS' OR GUARDIANS' LIABILITY FOR MINORS' DAMAGE TO PUBLIC ACCOMMODATIONS"

3. Page 1, line 19.

Following: "substance"

Insert: "and acts in a disorderly fashion so as to disturb the peace of other guests"

4. Page 3, line 30.

Insert: "NEW SECTION. Section 4. Liability of parent or guardian for minor's damage to public accommodation. If a minor willfully defaces or damages hotel property, the parent or guardian of the minor is liable for the cost of repair or replacement as provided in 40-6-237 and 40-6-238."

Renumber: subsequent section

5. Page 4, line 1.


Page 4, line 3.


Following: "THROUGH"

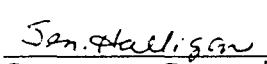
Strike: "3"

Insert: "4"

-END-

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

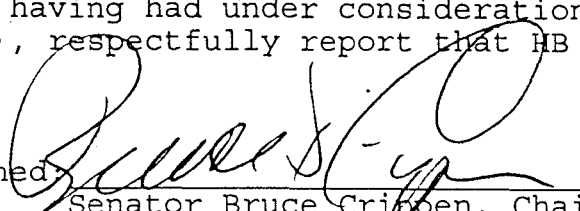
601407SC.SRF

SENATE STANDING COMMITTEE REPORT

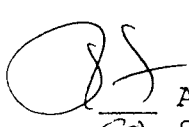
Page 1 of 1
March 15, 1995


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 55 (third reading copy -- blue), respectfully report that HB 55 be concurred in.

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.

 Sec. of Senate

Sen. Nelson

Senator Carrying Bill

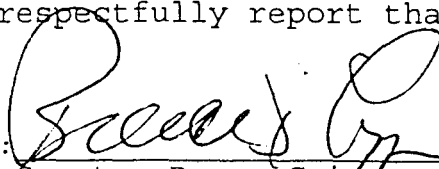
601209SC.SRF


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 65 (third reading copy -- blue), respectfully report that HB 65 be concurred in.

Signed: 
Senator Bruce Crippen, Chair

 Amd. Coord.
Sec. of Senate

Sen. Holden
Senator Carrying Bill

601212SC.SRF

Amendments to House Bill No. 322
Third Reading Copy (blue)

Requested by Rep. Hibbard
For the Committee on Judiciary

Prepared by Valencia Lane
March 14, 1995

1. Title, line 5.

Strike: "AND"

2. Title, line 7.

Following: "MCA"

Insert: "; AND ESTABLISHING PARENTS' LIABILITY FOR MINORS' DAMAGE
TO PUBLIC ACCOMMODATIONS"

3. Page 3, line 30.

Insert: "NEW SECTION. Section 4. Liability of parent for
minor's damage to public accommodation. If a minor
willfully defaces or damages hotel or motel property, the
parent or guardian of the minor is liable for the cost of
repair or replacement upon:

(1) complaint of the facility manager, owner, or
trustee; and

(2) proof of damage."

Renumber: subsequent section

4. Page 4, line 1.

Following: "instruction."

Insert: "(1)"

5. Page 4, line 4.

Insert: "(2) [Section 4] is intended to be codified as an
integral part of Title 27, chapter 1, part 7, and the
provisions of Title 27 apply to [section 4]."

SENATE STANDING COMMITTEE REPORT NO. HB 322

Page 1 of 1
March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 322 (third reading copy -- blue), respectfully report that HB 322 be amended as follows and as so amended be concurred in.

Signed 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Strike: "AND"

2. Title, line 7.

Following: "MCA"

Insert: "; AND ESTABLISHING PARENTS' OR GUARDIANS' LIABILITY FOR MINORS' DAMAGE TO PUBLIC ACCOMMODATIONS"

3. Page 1, line 19.

Following: "substance"

Insert: "and acts in a disorderly fashion so as to disturb the peace of other guests"

4. Page 3, line 30.

Insert: "NEW SECTION. Section 4. Liability of parent or guardian for minor's damage to public accommodation. If a minor willfully defaces or damages hotel property, the parent or guardian of the minor is liable for the cost of repair or replacement as provided in 40-6-237 and 40-6-238."

Renumber: subsequent section

5. Page 4, line 1.

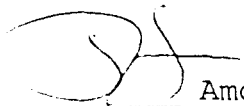
Page 4, line 3.

Following: "THROUGH"

Strike: "3"

Insert: "4"

-END-

 Amd. Coord.

80 Sec. of Senate

Sen. Halligan
Senator Carrying Bill

601407SC.SRF

Amendments to House Bill No. 74
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 14, 1995

1. Title, lines 6 and 7.
Following: "COURT" on line 6
Strike: remainder of line 6 through first "THEY" on line 7
2. Title, line 7.
Following: "MAY"
Strike: "IMPOSE ECONOMIC SANCTIONS"
Insert: "ASSESS THE REASONABLE PUBLIC EXPENSES OF IMPANELING THE JURY"
Following: "IF"
Strike: "THEY DETERMINE"
Insert: "IT DETERMINES"
Following: "CASE"
Insert: "OF THE PARTY REQUESTING THE JURY"
3. Page 1, lines 22 and 23.
Following: "party" on line 22
Strike: remainder of line 22 through "DETERMINE" on line 23
Insert: "may assess against the party requesting a jury the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and other costs that may have been incurred by the court if the court determines that"
4. Page 1, line 23.
Following: "THE"
Insert: "party's"
Following: "CASE"
Strike: "TO BE"
Insert: "is"

DATE 3-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 55, HB 65, HB 366, HB 186, HB 322

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Mary Ann Wellbank	SRS- CSED	HB 55		
Robert T Anderson	DCHS	HB 65	L	
Andrie Larose	Montana Advocacy Program	HB 65	✓	
Kate Cholewa	MT Women Lobby	HB 55	X	
Greg Bryan	MIKA	HB 322	X	
Stuart J. Duggitt	MIKA	HB 322	X	
Dick Van Housen	SRS - DDD	HB 366	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY