MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN AL BISHOP**, on March 20, 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: None.

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 444, HB 491, HB 340, HJR 27
Executive Action:	HB 444, HB 340, HB 323, HB 547, HB 332, HB 160, HB 160 (Minority Report) HB 491 - discussion

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 491

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, House District 42, Missoula, sponsored HB 491, which he said was a short and simple bill. He said it was presented in the House Judiciary Committee without either proponents or opponents. The bill would clarify that the sheriff is the chief law enforcement officer of the county. Under some federal laws proposed, they refer to the, "chief law enforcement officer." This is complicated by the fact that there

are a variety of city/county governments. He said it was a matter of common sense and a little clarification of the law. There was some concern that the language in the bill would cause some conflict between city and county personnel, particularly in a merger. That is not what they were trying to do, he said. He thought the law enforcement would all be one in that situation, and the bill would apply to the overall structure.

Proponents' Testimony:

None.

Opponents' Testimony:

W. James Kembel, representing the City of Billings, apologized to the sponsor for their late objections. The City of Billings had some concern that it would cause problems between the city and county law enforcement personnel, especially in a merger situation if the city person was designated as the law enforcement person for that county. He was willing to work with **REPRESENTATIVE BRAINARD** and the staff on the bill.

Jerry Williams represented the Montana Police Protective Association. He said his organization opposed HB 491 because of potential problems. The intent of the legislation was unclear, setting the stage for local jurisdictional battles between sheriff and police departments as well as other law enforcement agencies. They saw no need for the legislation. They had no problems.

Questions From Committee Members and Responses:

SENATOR REINY JABS asked **Mr. Williams** how it worked at present, if there was a "boss" of the county. **Mr. Williams** said in the counties, the sheriff was the chief law enforcement officer. In the cities, the chief of police was the chief law enforcement officer. Their concern was that in a city/county situation, if a problem should occur, the sheriff might use this description in legislation to take charge of any or all investigations, telling the chief of police what to do. It would set up a jurisdictional battle which would only hamper investigations. **SENATOR LINDA NELSON** asked the sponsor if he had a personal reason for bringing this bill, or had seen a particular problem in his county. **REPRESENTATIVE BRAINARD** said in one situation in Ravalli County, regarding the Brady bill. In Ravalli County, the county sheriff is dealing with the Brady bill. However, in adjoining Missoula County, the county attorney has declared himself to be the chief law enforcement officer of the county. In all reality, he is the prosecutor and not really a law enforcement officer. He said they tried to get the language set up so that it coincides with the responsibilities that are normally ascribed to the county sheriff in regard to normal structure of government. He had assumed that the county is the area the sheriff normally serves outside of a municipalities' boundaries. **SENATOR NELSON** asked if

there was nothing in the law to address this problem. She asked if they had tried to solve it locally? The sponsor said the bill would be a clarifier. In the House, they had several bills that came in regarding federal appropriations to education. They required that they pass a bill in the House with similar or exact language to existing federal code. The federal government had chosen the term, "chief law enforcement officer." He said he would be willing to accept a friendly amendment from the cities. **SENATOR LARRY BAER** asked **REPRESENTATIVE BRAINARD** about the apprehension on the part of the cities and wanted to know if he would modify the bill to say the sheriff was the chief law enforcement officer of the county, and the chief of police was the chief law enforcement officer of the city in their respective capacities. The sponsor agreed, saying there might be corresponding language to address the duties of the chief of police. **SENATOR SHARON ESTRADA** asked **Mr. Kembel** his opinion on the suggestion for an amendment. **Mr. Kembel** said he would be glad to run it by his employers to see if it would satisfy their concerns. He said one possibility would be to limit the scope to the county attorney and sheriff's offices. **CHAIRMAN AL BISHOP** asked the principals to work together and get back to the committee as soon as possible. **SENATOR STEVE DOHERTY** asked how this bill would work in the Butte/Silverbow form of unified government. **Mr. Williams** said they were a unified government. At present, they had an elected sheriff with a police department serving the entire county. In Anaconda, they had elected police chief with a police department, and they have no sheriff. He did not know what the effect of the bill would be on those systems. **SENATOR JABS** asked about Line 12, the duties prescribed by law. **REPRESENTATIVE BRAINARD** said the list of duties were existing law. He said it did not have much to do with his bill except they may be some of the duties to come down from the federal government.

Closing by Sponsor:

REPRESENTATIVE BRAINARD said **Mr. Williams** hit on a pertinent subject. Under the normal system where the sheriff as part of the regular county government and there is a municipality, or even more than one municipality, the sheriff is the one elected law enforcement officer in the county now. Consequently, he receives a lot of public respect and confidence. In the case where there were overlapping jurisdictions, he thought they could work out an amendment to take care of the concerns.

HEARING ON HB 340

Opening Statement by Sponsor:

REPRESENTATIVE THOMAS E. NELSON, House District 11, Billings Heights, introduced HB 340, which he preferred to call the, "Kandas" bill. Some bills pick up the name of the sponsor, but he preferred it to refer to the Kandas family, for whom the bill was brought. The bill was introduced to solve a specific problem

and to close a loophole in the law. He read and presented a letter **(EXHIBIT 1) from Billings attorneys, Peterson and Schofield,** outlining the problem and proposed adoption. The bill had been amended, the sponsor said, on Page 1, Line 18, 19 and 20. The reason it was done is to show that sexual assault on **ANY** child, not just family members, would affect the adoption requirements.

Proponents' Testimony:

Sandy Kandas, Billings, represented her husband, Mike and herself. She said her ex-husband, John McPherson, is currently serving a 20-year term in the State Prison for sexual assault. He was convicted of four counts of sexual assault, two on her own children, and two on neighbor children. They had been married for 2 1/2 years when the abuse occurred. She explained two of her three children were adopted by John McPherson because her first husband did not want them, giving them up. Mr. McPherson agreed to adopt them. Then he began molesting the two daughters, who were ages 5 and 6 at the time. About six months later she learned of the abuse from the neighbor, whose two daughters were also involved. After he went to prison, they divorced. She worked to support the children without outside aid. Mr. McPherson sent $25 a month in child support. Almost four years ago she had married John Kandas and no longer had to work, staying home with the children. She said he had provided financial support as well as attending activities of the children. She said the children were teens now, 15, 14 and 12. She reported that Mr. Kandas had been attempting to adopt them for two years, but the ex-husband refused consent. The children had no desire to see him. She was angry about the loophole in the law that allowed a person like Mr. McPherson to retain parental rights. He had filed a brief with the courts to sue for visitation rights after the prison sentence. Since there was no abuse to the son, who was three at the time of the other abuse, the parental rights should not be terminated for that child. She said the son was forced to be a spectator of the abuse, however. The children did not wish to see him. **Mrs. Kandas** said one of the girls had received a letter from Mr. McPherson which was sexually objectionable. Their hands were tied because a pedophile refused to relinquish parental rights, she said. She related that Mr. McPherson had even been able to write to the schools about the children, who also had to legally release information. She was concerned about him walking into the school, demanding the children's release into his custody. As a biological mother, she felt his rights were superseding hers. She was also worried about the custody of the children in the event of her death. She presented a letter from **Sandy Burns, M.A., M.C., Billings, Psychotherapist,** who specializes in sexual abuse cases. **(EXHIBIT 2).** She had treated her daughters. **Ms. Kandas** said the law needed to be changed. She urged their favorable recommendation.

Sharon Bakerson, representing the Majority Against Child Molestation (MACeM), said their members included victims, parents and guardians of victims and interested citizens who thanked the sponsor for introducing this legislation. She said many victims who, starting to heal, and establishing a healthy relationship with a step-parent, have faced major stumbling blocks in their healing. This bill would allow the innocent victims a chance for a normal family life. It would help them close the door on many fears, and help them become whole again. He urged a Do Pass.

Hank Hudson, Director, Department of Family Services, said they were aware of this issue with this family. They had looked into remedies and came to same conclusion that a change in the law would be required. They supported the bill. They viewed it as a way to reduce the amount of trauma that children are subjected to in these situations and also a way to allow people to move on in difficult situations and get on with their lives with some sense of insurance and permanence.

Mary Alice Cook, represented the Advocates for Montana's Children. She said her organization supported HB 340.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT asked to have an amendment passed out which she had shared with the sponsor and asked him to have the Kandas' review. **(EXHIBIT 3).** She said she was not interested in upsetting the progress of the bill as it was written through the process. She asked the sponsor his opinion of the amendment, which she said included the potential for judges to terminate parental rights when the biological father of the child is convicted of sexual intercourse without consent and the child is the result of that crime. **REPRESENTATIVE NELSON** said they consider it a friendly amendment. **SENATOR BARTLETT** questioned the immediate effective date in regard to **Ms. Kandas'** ex-husband being released from prison in the next year. The sponsor said he would certainly think it was appropriate to add an immediate effective date as **SENATOR BARTLETT** had suggested. He said perhaps they could get on with their lives, re-institute adoption proceedings, and get the attorney fees behind them. **SENATOR NELSON** asked about the change from a capital A. to a small a. **REPRESENTATIVE NELSON** asked **Mr. Hudson** to explain. He said the amendments were not at the request of the department, but he understood that the House committee wanted to extend this not only to sexual assault. They wanted to say that anyone who commits a crime against any children loses the right to consent to the adoption of a child. The sponsor explained it was also put into the bill so that the son could be adopted as well, even though he was not involved in the molestation. **SENATOR DOHERTY** asked if they had instituted proceedings to terminate Mr. McPherson's parental rights? **Ms.**

Kandas said they had. He would not give consent, so they had tried two times unsuccessfully. **SENATOR DOHERTY** said the man was certainly abusing the system, and the committee might want to consider a retroactive applicability section to the bill.

Closing by Sponsor:

REPRESENTATIVE NELSON closed on HB 340. If the committee would care to put a retroactive applicability on the bill, it would be appreciated by the family, he said. He urged a favorable consideration.

CHAIRMAN BRUCE D. CRIPPEN ASSUMED THE CHAIR.

HEARING ON HJR 27

Opening Statement by Sponsor:

REPRESENTATIVE MATT McCANN, House District 92, Harlem, sponsored HJR 27 for the purpose of urging Congress to provide Constitutional status to the item veto. The item veto is to allow the President to make selective cuts instead of killing an entire bill because he does not appreciate the riders.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARTLETT said she had no trouble with a line item veto, which was available to the Governor of Montana and worked well. She was curious about the language on Line 9 relating to enhanced recision authority. Recision to her was something altogether different from an item veto, so she asked for clarification. **REPRESENTATIVE McCANN** stated that the intent was to urge Constitutional status of the item veto so that it would override enhanced recision, which could be overturned the following Congress. He said it would make it less likely to be messed with in the future. **SENATOR RIC HOLDEN** asked the sponsor about the political nature of the bill, since three Democrats signed on the bill. The sponsor stated that he was kind of a "tricky Democrat," and any person had the prerogative of signing the bill. He did not think it was a politically exclusive issue.

Closing by Sponsor:

REPRESENTATIVE McCANN stated that the item veto would be major reform of the federal spending process and favored by the

American people, as well as the people of Montana. He said he was proud to send this resolution to Congress.

HEARING ON HB 444

Opening Statement by Sponsor:

REPRESENTATIVE HAL HARPER, House District 52, Helena, sponsored HB 444 said it, like HB 340, was a loophole closer. It had been brought because of a real life situation and the court has said the law must be changed. The purpose of the bill is to protect children, and protect the rights of parents, he said. The bill draft request came from a man whose ex-wife was granted custody of their daughter. The ex-wife then married a man who had been convicted of a crime of sexual abuse of children. The victim was a young girl of the same approximate age of the daughter. Under current law, Line 30, if the custodial parent had committed any of the crimes in Subsection (6) (c), the man could have petitioned the court and had both visitation and custody modification proceedings started. But since the person that perpetrated the crime is NOT the wife, but the new husband, the law did not apply. HB 444 broadens that definition to say anyone living in that household with the child endangers the welfare of the child, not just the husband, nor just the wife. The sponsor said that friendly amendments were made in the House. When the bill was drafted, it referred to rebuttable presumptions starting at the bottom of Page 1. The language was stricken, the ideas grouped together and placed into Line (f), Section 1. He preferred that the language be reinstated. He felt they were important. In the middle of Page 3, and toward Page 5, the Committee of the Whole modified a committee amendment to include deviate sexual conduct with an animal. That amendment met his approval. He said an amendment would be offered by **SENATOR BARTLETT. (EXHIBIT 4).** The amendment would deal with custodial interference, or a person that takes a child away contrary to the custody/visitation agreement.

Proponents' Testimony:

Sharon Bakerson, member of MACeM, (Majority Against Child Molestation), stated that the organization agreed with HB 444. Page 4, Line 22, referred to the speed with which these issues may be handled. It is still not in the best interest of the children, she said. There are children living in dangerous custodial homes where step-parents have been convicted of sexual abuse of children. Sometimes it has been a year or more, while the other parents is trying to legally remove the child. In this particular case, the people have moved to California and the father has no idea where the daughter is. This measure would strengthen the laws of the books and perhaps move the process along faster. Criminals are given the right to a speedy trial, she said, and children should also be given the right to a speedy hearing to protect them and place them into a safe homes. She urged support.

Clause Sitte, Deputy Director, Montana Legal Services, said they represented low-income people in Montana. HB 444 may reduce some of the backlogs in the court system. 25 per cent of their cases were family law cases. He asked the committee to imagine themselves as a parent/caregiver when the absent parent who had had little contact and provided no support, gained custody of the child after facing court sanctions for non-support. Add to the stress that the absent parent was located in another state. He said the people would be forced to get an attorney in the other state, even though the absent parent does not have a leg to stand on. He told the committee that they see this situation often, where the absent parent uses child custody as a way of battling back against support cases. HB 444 creates several rebuttable presumptions while it would eliminate, or at least, reduce these kinds of problems. Subsection 3 contains two presumptions: 1) that the primary caretaker ought to stay as the primary caretaker, and 2) if the child custody case if brought after a child support case, it is presumed to be vexatious. Subsection 4 as presented in the House added two more further elements: failure to pay birth costs, and the failure to pay child support are presumed to be not in the child's best interest. The presumptions are intended to be rebuttable presumptions which means that if contrary evidence is presented, the court does not have to assume the presumption. They could ignore it. The presumptions as presented in Sections 3 and 4 meets the criteria and are the obvious. Child custody experts say that children do best in situations where they have stability and custodial continuity.
On behalf of the many parents who provide consistent, regular, day-to-day care for their children with little or no help from the other parent, he asked support for HB 444.

Mary Alice Clark, represented the Advocates for Montana's Children, in saying they strongly support HB 444 as presented by the sponsor.

Rob and Renae Mahr, Dillon, submitted a letter in favor of HB 444. **(EXHIBIT 5)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked the basis for taking the language out on Page 1 in the House committee. The sponsor said **REPRESENTATIVE BRAD MOLNAR** was reactive and further amended Page 3, which had originally referenced deviate conduct, period. The other amendments were made because the members felt the bill was tipping the burden away from the father, or tying the father's hands. He did not understand it. There was concern about the father providing the support through the primary family care, and that child support not counting. **SENATOR HALLIGAN** asked **Mr. Sitte** how the existing joint custody presumption played with the

level of presumptions seen in this bill? **Mr. Sitte** said they were rebuttable presumptions that played together very well. The court would assume joint custody is in the best interest of the child, unless best interest is not in the interest of the child. Then it looks to see if the best interest test is met. If one of the rebuttable presumptions is the person has failed to pay child support or birth costs, that presumption is rebutted, and the court need not consider joint custody. But, it does put an equal burden on both parents to support that child. **SENATOR DOHERTY** asked if the sponsor would like the rebuttable presumptions back into the bill. The sponsor replied that he would, if it would suit the committee's wishes. **CHAIRMAN CRIPPEN** said they probably struck Subsection 4 since (F) on Page 1 deals with Subsection 4. He did not understand why they struck Subsection 3B. **REPRESENTATIVE HARPER** said they just made an overly broad amendment and thought they had accomplished their purposes. He did not think it covered it at all.

Closing by Sponsor:

REPRESENTATIVE HARPER said he had no Senate sponsor and asked, if the committee would look favorably on the bill, they would provide one. He said he was also sensitive to the effective date of October 1, 1995. He said the case was on-going.

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EXECUTIVE ACTION ON HB 444

Motion: **SENATOR BARTLETT MOVED THE AMENDMENTS AS SHOWN IN (EXHIBIT 4).**

Discussion: **CHAIRMAN CRIPPEN** asked if she would like to insert an immediate effective date. She said she had no objections. **CHAIRMAN CRIPPEN** said that the **CHAIR WOULD RULE THAT AMENDMENTS HB044401.AVL TO HB 444 SHALL ALSO INCLUDE A THIRD AMENDMENT TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE. SENATOR BARTLETT** explained her amendments said the request came from **REPRESENTATIVE WYATT AND SENATOR FORRESTER** because of constituent concerns of non-custodial parents taking children under visitation privileges, then consistently and persistently refusing to return the children to the custodial parent at the time agreed upon for their return. Although the Section on Custodial Interference says that they commit the offense if they kept the children too long, but there is no penalty, whether it is the first or the hundredth offense. This amendment, she said, says they could do that one time, but if this is a persistent pattern and they continue to keep the children beyond the visitation provisions of the custodial arrangement, they would be charged with custodial interference. It was modeled on similar language in a section of the code regarding returning the child. She urged approval of the amendment. The bill's sponsor had agreed with the amendment. She said the amendment would amend

the title as well. **SENATOR HALLIGAN** said there were two years to challenge the title problem. **Valencia Lane** said the purpose of the title was to give notice to interested parties, the public and legislators. When amending the title and stretching the contents of the bill, particularly late in the game, she thought there could be a title problem. She said it could be challenged for defective title only for two years after the effective date. **SENATOR BARTLETT** said **REPRESENTATIVE WYATT,** in pursuing this topic, went to the Child Support Enforcement Division to see if any of their bills might incorporate this provision. Theirs did not and they felt HB 444 came as close as any. **CHAIRMAN CRIPPEN** asked if it would be appropriate to have a severability clause. **Ms. Lane** said they could certainly put that in, and if the court wants to save parts of the bill, they could use that severability clause. There would be no guarantee that they would not strike down the entire bill, but she felt it would help.

Vote: On **SENATOR BARTLETT'S MOTION TO AMEND HB 444 AND TO ADD AN IMMEDIATE EFFECTIVE DATE,** the **MOTION CARRIED** on an oral vote with **SENATOR HALLIGAN** voting no.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 444 BY THE ADOPTION OF A SEVERABILITY CLAUSE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **CHAIRMAN CRIPPEN** asked the committee's feeling on the stricken presumptions in the bill. He asked if by putting some of that information in another place in the bill, would it take it out of the role of a rebuttable presumption? If so, the House amendments would strengthen the portion of the bill.

Motion: **SENATOR DOHERTY MOVED TO RE-INSERT 3 (a) and (b).**

Discussion: **SENATOR HALLIGAN** thought there was a fine line. The consideration of a relevant factor was less of a look at the issue than a presumption obviously was and the amendment hadn't taken care of it. He felt that the House committee could put it with the considerations but it certainly had greater weight as it was drafted as a rebuttable presumption. Their amendment tempered that, he said. **SENATOR DOHERTY** said that in that fine line the committee had weakened the bill as far as failure to pay birth-related costs or child support.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion: **SENATOR DOHERTY MADE A MOTION TO STRIKE THE NEW SUBSECTION A., AND INSERT 4 (A) AND 4 (B).**

Discussion: **SENATOR DOHERTY** explained that the court, considering all relevant factors, is advised to think about the following things. Making rebuttable presumptions would be their policy and determination that if birth-related costs and child support are not paid, that would not be in the best interest of the child. As a matter of policy, the legislature would be

saying their bottom line is the consideration of those factors, and a very good explanation would be required in non-payment cases. **CHAIRMAN CRIPPEN** explained the motion as follows: the amendment would strike Lines 21 and 22 of Page 1, Subsection (f), further, on Page 2, Lines 5-9, re-insert Subsection 4. **SENATOR BARTLETT** said, "rebuttable presumption," meant going into a case with a fact being presumed, but someone with a good argument about why they did not pay can overcome that presumption and have the determination made in their favor. **SENATOR BAER** said it depended on how strong they wanted to make it. It is the duty of the court to consider all relevant factors. It would be a lesser standard of proof than rebuttable presumption which was included in the stricken statement they were seeking to reinstate.

Vote: The **MOTION CARRIED** on an oral vote, with **SENATOR HOLDEN** voting no.

Motion: **SENATOR HALLIGAN MOVED THAT HB 444 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR DOHERTY** offered to carry the bill onto the Senate floor.

EXECUTIVE ACTION ON HB 340

Motion: **SENATOR BARTLETT MOVED THAT HB 340 BE AMENDED BY AN IMMEDIATE EFFECTIVE DATE TO BE INCLUDED IN HB34001.AGP AS SHOWN IN (EXHIBIT 3).**

Discussion: **SENATOR HALLIGAN** expressed his concern about the title. He thought it was a good amendment, but should be in a separate bill. It could be challenged within the next two years. He would have to vote against it on those grounds, he said. **SENATOR BARTLETT** pointed out that **Greg Petesch** felt the title could be stretched to accommodate these amendments. **CHAIRMAN CRIPPEN** asked why it would be codified in Title 41. **Valencia Lane** said the Title encompassed the abuse and neglect sections. **Valencia Lane** said she believed there was a title problem. If it were the first hearing on the first committee, she would not have the reservations, but at that late date, it would be stretching the bill somewhat. She said to address that problem, they could put in a severability clause.

Motion: **IN A SUBSTITUTE MOTION, SENATOR HALLIGAN MOVED TO SEGREGATE THE IMMEDIATE EFFECTIVE DATE TO AMEND HB 340.** The **MOTION CARRIED** on an oral vote.

Discussion: Reverting back to the original motion of amendment items # 1 and # 2, **SENATOR ESTRADA** asked how important the amendment was to **SENATOR BARTLETT** and if it would jeopardize the bill. She replied that she had been asked to work on the issue over 18 months prior to the session. She didn't feel it warranted a separate bill so she had asked the legislative council to watch for a similar topic. She did not think it would

jeopardize the bill in the legislative process, but expressed some doubt about the title problem. She thought it could be rectified by the severability clause. **CHAIRMAN CRIPPEN** stated that the record should show that it was the intent of the committee that the bill as originally presented to them, along with the immediate effective date should not be challenged. And further, their concerns about a title problem, if there is one, was recognized and they further instructed the severability clause to give a reviewing judge the flexibility of relying on the clause should they find a problem with the title. **SENATOR BARTLETT** agreed. She had consulted **Greg Petesch** and he did not think there would be a problem. She had also approached **REPRESENTATIVE NELSON** and made clear to him that she wanted in no way to jeopardize the thrust of the bill.

Motion/Vote: **ON THE MOTION BY SENATOR BARTLETT TO AMEND HB 340 BY THE ADDITION OF ITEMS # 1 AND # 1, IN ADDITION TO THE SEVERABILITY CLAUSE,** the **MOTION CARRIED** on a roll call vote of 7-4.

Discussion: **SENATOR DOHERTY** said he wanted to consider a retroactive applicability date. When asked to explain, he said the argument could be made against a retroactive applicability by the individual who became the parent of the children when he adopted them. His argument would be that he was the parent, and they changed the law in the middle and it should only apply to every case arising after the date of the act. He expressed concern that it would not help the Kandas family. The discussion had convinced him to accept an immediate date. **SENATOR HALLIGAN** asked why they had listed only certain offenses. He said they would be back in two years with someone who had fallen through the loophole. He said the crime of rape was not even included in the list, which was certainly more heinous than others listed. **Valencia Lane** said Title 45, Chapter 5, Part 5, on sexual crimes, included: sexual assault, which this bill would add; 503, intercourse without consent; 504, indecent exposure; 505, deviate sexual conduct; 507, incest. She did not know why sexual intercourse without consent and possibly incest were not in the laundry list. **SENATOR DOHERTY** said the concern was absolutely correct and it demonstrated the danger of laundry lists.

Motion/Vote: **SENATOR HALLIGAN MOVED TO INCLUDE FROM TITLE 45, CHAPTER 5: 503 - SEXUAL INTERCOURSE WITHOUT CONSENT, 507 - INCEST, AND 627 - RITUAL ABUSE OF CHILDREN, TO FURTHER AMEND HB 340 IN SECTION 1, SUBSECTION 1, (i).** The **MOTION CARRIED UNANIMOUSLY** by an oral vote.

Motion/Vote: **SENATOR NELSON MOVED THAT HB 340 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. Either **SENATOR MIKE SPRAGUE** or **SENATOR BARTLETT** will carry the bill to the Senate.

EXECUTIVE ACTION ON HB 323

Motion: **SENATOR BAER MOVED THAT HB 323 BE RECOMMENDED CONCURRED IN.**

Discussion: **SENATOR BAER** stated that if HB 232 would pass the Governor's office, this bill would be redundant. **SENATOR BISHOP** asked if this bill was brought in light of the Brady bill. **SENATOR BAER** replied that it was, but the bill would not contravene the Brady bill in any way. It would exempt the people who have a concealed weapon from being subject to the five-day waiting period required by the Brady bill. But the bill would be satisfied entirely because the check-out requirements under a concealed weapon permit are far more stringent and broader than those required by the Brady bill, so it would not be offended.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR BAER** offered to carry the bill.

EXECUTIVE ACTION ON HB 547

Discussion: **Valencia Lane** explained that the committee had already adopted one set of amendments previously **(EXHIBIT 6)**, and another set was presented by **SENATOR BAER (EXHIBIT 7)**. **SENATOR BAER** said these amendments were submitted by the sponsor. There were dangers to having a laundry list of crimes, he said. On Page 2, Line 9, item (m), they list the Section which would require that any person that committed a felony with the use of a firearm would be banned for life under the direction of the bill.

Motion: **SENATOR BAER MOVED THAT THE HB 547 BE FURTHER AMENDED BY INCLUDING THE 7 AMENDMENTS AS CONTAINED IN HB054703.AVL (EXHIBIT 7).**

Discussion: **Beth Baker, representing the Department of Justice,** clarified that originally the bill came out of the recommendations of the Brady law at the request of the Attorney General's Office. That working group suggested that all convicted violent felons be prohibited from possessing firearms. This is a policy judgement for the legislature to make, she said, and stated their department was not going to take a position on the amendments. The amendment would narrow the class of offenders who would be prohibited from possessing firearms and only apply to those who had been previously sentenced. It would not apply to the people convicted of the list of offenses now specified in Section 2, but had not been sentenced for using a firearm. It would not cover a person who had committed rape, for example. She thought the public ought to understand that. **SENATOR BAER** said he would not be adverse to incorporating anyone who committed a dangerous felony, but he felt that was not what the sponsor of the bill had intended. He said under federal law

a person would not be allowed to own a firearm if convicted of a felony, not necessarily even a dangerous felony, and it would prevent them from lawfully purchasing a firearm. He did not see much of a conflict. **CHAIRMAN CRIPPEN** asked what 46-18-221 was. **Beth Baker** stated that it was an enhanced penalty that may be used if the sentencing court makes a finding that a person used a dangerous weapon. In answer to whether this would satisfy her concerns, she said it would still apply to a smaller class of violent offenders than if the amendment were not adopted. The bill would apply to all those offenses whether they were committed with a dangerous weapon or not. There were two reasons the amendments were narrowing the group of offenders: 1) this section, 46-18-221 only applies where the person did use a dangerous weapon, and 2) it only applies when the person is sentenced under that provision. Often, in a plea bargaining situation, they will agree that they won't get an additional sentence so they can get them to plea bargain another offense. She didn't know how much difference it would make, she just thought they should understand. **SENATOR BAER** said he took no position, but thought the intent of the sponsor should be given preference over the Department of Justice. **CHAIRMAN CRIPPEN** expressed concern over the exclusion of some crimes, such a aggravated assault, because of the exclusion in the amendments. He suggested passing the amendments and notifying the House of the concerns. **SENATOR DOHERTY** said they should also listen to the policy judgements of the department, and also should decide whether to narrow or expand the ability to prohibit convinced felons of owning a firearm. He felt any convicted felon gave up a lot of rights in committing a crime, one of which should be the right to own a firearm. He did not want to narrow the scope of the bill. **CHAIRMAN CRIPPEN** said they could agree on Item # 1 of the amendments.

Motion/Vote: **IN A SUBSTITUTE MOTION, SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEM # 1 OF HB054703.AVL.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEMS 2-7 OF THE AFOREMENTIONED DOCUMENT.** The **MOTION FAILED** on an oral vote.

Discussion: **Beth Baker** explain that because they did not pass amendment item # 2, amendment # 1 would remove some language on Lines 25 and 26. They would have to strike, "following offenses," on Line 25, and "if a person knowingly. .," **CHAIRMAN CRIPPEN** stated that they would have to further amend the bill to strike the identical language on Line 25 and 26.

Motion/Vote: **SENATOR BAER MOVED THE AMENDMENT AS STATED BY THE CHAIRMAN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR BAER MOVED THAT HB 547 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED** on an oral vote with

SENATOR BARTLETT voting no. **SENATOR BAER** had agreed to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 160

Motion: **SENATOR HOLDEN MOVED TO AMEND HB 160 AS CONTAINED IN HB016001.AVL (EXHIBIT 8) FOR THE PURPOSES OF DISCUSSION.**

Discussion: **SENATOR HOLDEN** explained that he thought the bill was good with the exception of prosecuting the FBI agents and federal marshals. He didn't think the state would stand much of a change in those actions. He did believe that the phone call should be made to the local sheriff unless it was to investigate their (sheriff's) office. Another part of the amendments had to do with the written notice. He thought the notice could be by phone or written. On Page 2, Line 14, where the bill referred to notice, he thought they could strike the word, "written," and insert, "give notice." That was it would not tie the hands of federal employees to make a written notice when it may be a snap decision to go into a drug transaction, for example. **CHAIRMAN CRIPPEN** summarized the amendments as to two items: 1) striking the requirement that there be written notice, and 2) giving the option of the 24-hours' notice to either written or oral. **SENATOR HOLDEN** said the phone system may provide documentation of the notice by phone. He discussed the amendments by **Gary Marbut**, which were also presented to the committee. **(EXHIBIT 9).** **SENATOR BAER** stated that some atrocities had been committed by regulatory agencies, but that 95 per cent are probably forthright, law-abiding agencies. But, he said, in some incidences, the Constitution was trampled. When that takes place without the proper legal provisions allowing them search and seizure, these and the subsequent behaviors are criminal acts. He said the federal agents should be prosecuted for criminal acts when they act without authority and without Constitutional backing because they are acting outside the scope of the Constitutional provisions whether they are federal employees or not. **SENATOR HOLDEN** asked if, before a FBI agent can bust the door down to a house to check for drugs, did he have to have a search warrant from a federal judge? **CHAIRMAN CRIPPEN** said yes, unless there is exigent circumstances, or strong probable cause that a person would have committed a federal crime and would be in danger of fleeing. **SENATOR HOLDEN** asked if a search warrant was necessary, wouldn't it be common sense that the federal law would supersede any state statute that might pass? **CHAIRMAN CRIPPEN** said if the FBI agent should willfully and maliciously act outside the course of the scope of his jurisdiction, they would be subject to federal penalties and maybe even state penalties. This bill deals with notice, he said, so if they did not give notice, they would be subject to penalties. He was concerned that the crime itself would be not be definable. He did not think it could be proven. **SENATOR HALLIGAN** said he did not know how they would then attach a civil right to the failure to provide a procedural safeguard notice or what the damages

would be if someone were shot, killed or injured. **SENATOR BAER** said he thought the mentality behind the bill was if they were to give notice to the sheriff, some of the incidents could have been avoided. Perhaps he would know the people involved and be able to intervene and avoid the violent activity. If they would not give notice and grievous bodily harm or property damage results, and it would be found the warrant was not property served, and the property was left in shambles, did they not think there should be a cause of action against them? **CHAIRMAN CRIPPEN** asked if the bill would provide that the sheriff would have to be on the scene? Several people answered no. He asked about a situation where the sheriff was notified, but was told not to be in attendance, then the federal troops invaded the wrong farmhouse. He said those federal agents would be subject to civil and criminal sanctions of some kind, wouldn't they? **SENATOR BAER** said they had escaped those penalties thus far and the bill would provide for more responsibility on their part to avoid these situations. **SENATOR ESTRADA** stated that the bill without the amendments, would give the "little guy" a better chance to protect themselves in court. She questioned the necessary warrants by federal officers, and that sometimes they were not required. **CHAIRMAN CRIPPEN** said the warrant didn't mean anything. It would only give them a cloak of authority to enter and to seize. She thought any federal agency already had a cloak of authority to do just about whatever they wanted to, and get away with it. She could not support the amendments. **SENATOR BAER** related a situation where a female federal agent had stomped a kitten to death before a suspect family. He said this bill would reduce those sorts of inflammatory actions. **CHAIRMAN CRIPPEN** stated that it would be correct with the notice provisions, but Section 3 would not help those situations. He said that agent would be charged under a different section of the law. **SENATOR NELSON** reminded the group that **REPRESENTATIVE ELLIOT** had checked with some of the sheriffs in the state. They felt they already had the cooperation of the federal agents. **SENATOR HOLDEN** said that while they were somewhat aggressive toward federal agents, they did certainly need them in rural counties where law officials did not want to confront a "bunch of druggers." They just drove by the house in his district, he said, because of old family networks and other reasons. **CHAIRMAN CRIPPEN** noted his interest in providing a strong message about the notice provisions. **SENATOR ESTRADA** asked if most of the federal agents were from Montana? **CHAIRMAN CRIPPEN** said that **Attorney General Matteucci** said most of them were from Montana. **SENATOR BAER,** in answer to **SENATOR HOLDEN'S** statement, said there was nothing in the bill that would curtail the proper procedures taken by federal law enforcement officers other than the fact they would require notice be given to the sheriff to avoid unnecessary confrontations that may result in violence. They were not asking them to toe the line in any other way. **CHAIRMAN CRIPPEN** said the bill would do that, even without the amendments. In Section 3, it would not do that. He wondered what authority the state could have over federal agents, or if it was a state supremacy clause. **SENATOR HALLIGAN** said if they were acting

under federal authority, the state would have no authority to intercede. He said there was a huge difference between an IRS agent and a regular law enforcement officer conducting a routine investigation. He was concerned that it would aid people who do commit conspiracies and crimes by handing them an appealable issue of proper notification. He had a problem with Section 4. **SENATOR DOHERTY** stated that the passage of the bill will ensure lawsuits the first time there was a failure to notify. It will be challenged on its face, as well, as a conflict between the supremacy clause and the 10th amendment. He questioned if it was worth the state's money. He spoke of his concern about Subsection A. in Section 2. He said now the tribes were begging for more federal assistance because of high crime rates. If they pass the bill, he thought they would further muddy the already muddy waters with jurisdiction on Indian reservations.

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

SENATOR BAER said if they did not provide a deterrent, then no one was going to abide by the law. There was a very serious mentality out there, he said. When they heard the U.S. Marshall's testimony in the hearing, he thought it was a "them vs. us," mentality if he ever saw one. Other law enforcement offers apologized for the marshall's behavior after the hearing. He maintained that all the bill was trying to do was alleviate tensions by creating a mere notice and providing for penalties if they don't give that notice. If they don't give notice and it results in loss of life or property, it enhances the illegalality and makes them more prosecutable, which they should be. He stated that the bill is a mild request by the people of Montana. If the federal officials are offended by it, then he thought they had a problem. He said they work for us, and are supposed to work with us. He said talk of Indian reservations was only a red herring and had no place in the discussion.

Motion: **ON SENATOR HOLDEN'S MOTION TO AMEND HB 160 BY ITEMS # 1 AND #8 WHICH DEALT WITH THE ELIMINATION OF THE REMEDY PROVISION.** The **MOTION CARRIED** 9-2 by a roll call vote.

Discussion: **CHAIRMAN CRIPPEN** had asked **Valencia Lane** to examine and correlate amendments # 2 and # 7 of **SENATOR HOLDEN'S** amendments and **Mr. Marbut's** amendments 2-7. **SENATOR HALLIGAN** objected. He asked for a vote up or down on the first set of amendments. **Valencia Lane** said the # 9 and # 10 of the **Marbut** amendments had been rendered moot by the passage of # 8 on **SENATOR HOLDEN'S.** She said they amend the two amendments in the bill stricken by the amendments just adopted. She said they could cross off # 9 and # 10. She said they could circle # 3 and # 4 because they are separate. The rest of them, # 1, # 2, # 5, # 6, # 7 and # 8 all deal with the question of written notice. She said they had to choose between **SENATOR HOLDEN'S** amendments or **Marbut's** amendments because they deal with the same issue. **SENATOR HOLDEN'S** amendments just simply strike the word, "written," and take out appropriate language wherever it occurs

in the bill. It would require 24-hours' notice, period. **Mr. Marbut's** amendments deal with the same issue, but instead of striking, "written," they leave 24-hours written and insert, "telephonic or facsimile."

Motion: **SENATOR HOLDEN MOVED TO FURTHER AMEND HB 160 BY ADOPTING THE AMENDMENTS HB016001.AVL, # 2-7.**

Discussion: **SENATOR NELSON** stated that the **HOLDEN** amendments were cleaner than the **Marbut** ones being considered, although doing about the same thing. She said if the federal agents would have to go in on a situation, they may have to be somewhat secretive about it. She even objected to the 24 hours because she felt there were no secrets. Once told, it is no longer quiet, and they do sometimes rely on these people. She questioned the legislation of courtesy for cooperation. She said she did wish to send a strong message, but was hesitant to tie their hands. **SENATOR BAER** said he supported **Mr. Marbut's** amendments because if they took out, "written," they could claim they sent a notice by smoke signal. This amendment would allow oral, written or facsimile notification.

Vote: The **MOTION CARRIED** on an oral vote with **SENATORS ESTRADA, BAER AND LORENTS GROSFIELD** voting no.

Discussion: **SENATOR HOLDEN** presented a handout. **(EXHIBIT 10)** He had spoken with **Mr. John Connor** about the coordination clause in their rules procedure.

Motion: **SENATOR HOLDEN MOVED THAT THEY ADOPT THE COORDINATION PROCEDURAL RULES UNDER 23-2-204 FOR THE PURPOSE OF DISCUSSION.**

Discussion: **SENATOR HOLDEN** said that originally **Mr. Connor** had thought it would not be appropriate, then decided it could be put into statute. **Ms. Lane** pointed out that rules adopted under MAPA, the force and effect of the law, unless they are returned by a court, are redundant. **CHAIRMAN CRIPPEN** said it wouldn't hurt anything, though. Perhaps it would add to the message. **SENATOR BAER** replied that it is only saying that they must make a good faith effort. This bill is saying a good faith effort is not enough and they must notify the sheriff. Administrative rules are always subservient to conflicting statutory law. He did not like administrative rules anyway, he said. **SENATOR HALLIGAN** asked if it was intended to strike the section dealing with notice? **SENATOR HOLDEN** said they could put this Section in where they took Section 3 out. **SENATOR HALLIGAN** said they already had a 24-hour notice provision. **SENATOR HOLDEN** said it could be another clarification section perhaps. **CHAIRMAN CRIPPEN** asked if there was a problem with conflicting sections? **Ms. Lane** stated that even in the rule as drafted, which would become the statute as drafted, the state is telling a federal agency what to do. There might be some problem with that.

Motion: **SENATOR HOLDEN REQUESTED THAT HIS MOTION BE WITHDRAWN.**

Motion: **SENATOR HALLIGAN MOVED TO STRIKE THE 24-HOUR REQUIREMENT.**

Discussion: **SENATOR HALLIGAN** stated that state and federal law enforcement agents, in dealing with each other as brethren should be able to deal with each other in their coordinations in a reasonable time.

This executive session was interrupted at the direction of the Chairman to hear some people brought in at their request on HB 491.

EXECUTIVE ACTION ON HB 491

Discussion: **Jim Kembel, representing the City of Billings,** said they had worked on amendments with **Jerry Williams of the Police Protective Association**, and **Alec Hansen from the League of Cities and Towns, Police Chief Bill Ware from the Montana Police Chiefs Association** and also **Troy McGee from the Montana Police Association.** He stated that a representative from the Attorney General's Office had assisted with the wording. They had checked with the sponsor who agreed with the amendment, but who had asked for **SENATOR BAER'S** approval. He assured **SENATOR ESTRADA** that **Billings Police Chief Ward** was in agreement. They had amended the title to say, " An act clarifying the law enforcement responsibility of the Sheriff's and Chiefs of Police amending Section 7-32-2121 and 7-32-4105 MCA, and providing for an immediate effective date." Then, at the bottom of the bill in the current Section 2 on the effective date, which would become Section 3. The new Section 2 is taken from Section 7-32-405, which is the duties of the Chief of Police. The first part, Subsection 1 will read, "the Chief of Police is the chief law enforcement officer of a city or a town. It is the duty of the Chief of Police. . . ." **Valencia Lane** said that Title 7, Chapter 32 is all law enforcement for local government. Chapter 21 is sheriff's and Chapter 41 is municipalities and their duties. They were suggesting to amend 7-32-4105 which currently relates to the duties of the Chief of Police. They would make a similar amendment in that Section on Page 1, Lines 11 and 12 with reference to the chief law enforcement officer. She did not know if it answered the concerns raised on Page 1, Lines 11 and 12 that said the Sheriff is the chief law enforcement officer of the County. She thought they may need to say, "except in incorporated cities or towns." **Mr. Kembel** said it was discussed with the member of the AG's office who did not seem to have a problem with the wording. **Ms. Lane** said they still have the bald-faced assertion on the front page of the bill that the sheriff was the chief law enforcement official of the county, period. Even if it included the police chief, there may be some implied conflict or contradictions that you could address by saying, "except in. . ." **Mr. Kembel** said he had no problem with that. **Ms. Lane** explained the title would be amended so that it reads, "An act clarifying the law enforcement responsibilities of

Sheriffs and Chiefs of Police," and a reference to 41-32-4101 would have to be amended in. That would be amendment # 1, amending the title. Amendment # 2 would be: Page 1, Line 11, after duties of the sheriff, strike (b), and insert, "except in an incorporated city or town, the sheriff is the chief law enforcement officer of the county." Amendment # 3 would be: add 7-32-4105 to the bill and amend it to say, "the chief of police is the chief law enforcement officer of the city or town," instead of "the duties of a chief of police. . ." **SENATOR BISHOP** asked if any consideration was given to the consolidated cities and towns? **Mr. Kembel** said in Anaconda they have a Chief of Police that is elected by charter. In Butte/Silverbow they have a Sheriff that is elected by charter. So there is only one law enforcement officer in either district. **SENATOR NELSON** said there were small towns that had no other law enforcement officer than the sheriff. **CHAIRMAN CRIPPEN** said it would be provided for in that section. **SENATOR JABS** asked if they needed the bill then? **SENATOR BISHOP** said the problem was that some federal laws refer to the chief law enforcement officer of a county. **Ms. Lane** said she was uncomfortable with the bill. The chairman suggested the bill be discussed further on the following day.

EXECUTIVE ACTION ON HB 160

Motion: **SENATOR HALLIGAN REPEATED HIS MOTION TO STRIKE THE 24-HOUR REQUIREMENT.**

Discussion: He said he believed this provision would neither help nor hurt. Extremely sensitive information, once given, would no longer be secret. Reasonable notice would be whatever the professionals think it is, he said. The only other way to do that would be to adopt the administrative rule. **SENATOR JABS** said 24 hours was too long. In some cases, the needed element of surprise would be lost. **SENATOR HOLDEN** asked **SENATOR HALLIGAN** if they were going to insert, "reasonable?" **SENATOR HALLIGAN** said no, it was not a litigatable issue. **SENATOR ESTRADA** said the bill was before them because the people of the state and nation had fear of the "feds". She did not blame them because of past mistakes of wrong addresses, etc. She asked why the 100 people in the House didn't trash this bill and the lawyers on this committee did? **SENATOR BAER** said the substantive integrity and the virtuous intent of the bill had already been trashed by **SENATOR HOLDEN'S** amendments. He had intended to carry the bill, but thought **SENATOR HOLDEN** should shoulder the responsibility now. **CHAIRMAN CRIPPEN** disagreed, saying a bill, once given to the committee, belonged to that committee and anyone on the committee would be allowed to amend it.

Motion: **SENATOR NELSON, IN A SUBSTITUTE MOTION, MOVED A COMPROMISE PROVISION OF 12 HOURS.**

Discussion: **SENATOR JABS** thought it would severely hamstring law enforcement. **CHAIRMAN CRIPPEN** said exceptions were listed on Page 25 dealing with that subject.

Motion: **SENATOR NELSON, WITHDREW HER MOTION.**

Discussion: In closing on the original motion, **SENATOR HALLIGAN** said that **REPRESENTATIVE HARPER'S** bill was drastically changed in the House by **REPRESENTATIVE MOLNAR.** He said it was not an abusive process that bills get changed in the process. He said the imposition of their perspective on the process was healthy.

Vote: The **MOTION CARRIED** on an oral vote with **SENATORS BAER AND ESTRADA** voting no.

Discussion: **SENATOR DOHERTY** stated that in looking at the exceptions, it did not appear to be an exception that they could waive the notice if the federal agent believes that the individual who was the subject of an investigation was about to flee. It also did not say anything about waiving the notice if they arm a bazooka. It did refer to exigent circumstances which might require swift action. **CHAIRMAN CRIPPEN** read about "witnesses." **SENATOR DOHERTY** asked what if they did not witness it? What if they believed that the individual had a stash of dangerous drugs and somehow are acting nervous, filled the car with gas and look like they are leaving? **CHAIRMAN CRIPPEN** asked why they couldn't amend (b) to specify a federal employee witnessing the commission or has reasonable cause to assume a crime would require immediate arrest. **SENATOR DOHERTY** said he considered it an obstruction of legitimate law enforcement activities which may come about because of an activist bill. **SENATOR ESTRADA** said the agent could just come up and slam them on the ground like they do now. She maintained they were not accountable now. **SENATOR DOHERTY** said he believed law enforcement officials were accountable. He said prosecuting attorneys were accountable. If they have rogue cops in Montana, or rogue federal agents, he said they should be prosecuted to the fullest extent of the law. This bill, even with the amendments, in talking to the notice given, will create opportunities for obstructing justice. He doubted if there was a way to deal with all the possible circumstances.

Motion: **SENATOR HOLDEN MOVED THAT HB 160 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR BARTLETT** said, in contrast to **SENATOR ESTRADA'S** experiences, her constituents were not speaking to her about fear of federal agents. Even if the federal agents gave notice to a sheriff and gave the address, then made a mistake, the sheriff is not always in a position to prevent that from happening. She got no sense of protection that they would be precluding those types of errors by agents. Even with the amendments, the bill seemed unconstitutional on its face because it tries to assert state authority over the actions of federal

employees. This would be patently unconstitutional, she said. **SENATOR DOHERTY** said the bill was supposed to be a message bill. He said the message should be very clear. The prosecutors he knew and the federal agents he knew were as cognizant of constitutional rights as he was. They had to be, to get convictions to stick. The message the bill sends further than encouraging law enforcement division to talk to each other is: it is O.K. to mistrust government. It is O.K. to mistrust law enforcement. It might be acceptable in our society to defy a court order or a subpoena. He said it was not acceptable conduct in our society. When they talk about federal agents as, "storm troopers," he had real problems. When they talked about civil uprisings, he had problems if people believed the laws were being enforced unfairly or if folks thought they had been singled out for prosecution for political or religious beliefs. Then, he said, let's have at it in our legal system. But, these confrontations come because someone is defying authority. There was a proper place to do that in our system. It is often said that, "patriotism is the last refuge of a scoundrel." He said he did not want defiance of authority in Montana to become that last refuge. He asked to vote the bill down. **SENATOR BAER** said he refused to be accused of being inebriated with the exuberance of his own verbosity. So, he said if the bill would have been a sensible mitigation of the potential for disastrous mishaps in the future, it would have prevented a buffer for those potential situations in light of what has happened in the past. Now they would leave the situation as it is and do nothing, he said. **SENATOR GROSFIELD** recalled the testimony of **Attorney General Matteucci.** He agreed that the purpose was a strong message as they had other 10th amendment bills regarding states' rights. But the U.S. Attorney had talked about it already, she had said. The chairman had suggested written direction to the various agencies. He said it was a good idea. This bill, particularly in Section 4, was unconstitutional. In Section 2, it is probably unconstitutional. He had a hard time voting for any bill that he felt was unconstitutional.

Motion: **SENATOR GROSFIELD MADE A SUBSTITUTE MOTION THAT HB 160 BE RECOMMENDED BE NOT CONCURRED IN AS AMENDED.**

Discussion: **CHAIRMAN CRIPPEN** commented further on the bill. He asserted that even those folks who are known tax protesters have the right to due to process. Without that right, there would be no freedom of choice, and certainly the legislature would not be making those choices. While he felt they had stripped the bill of its salient parts, he felt it would send a message, particularly with the agencies who were represented at the hearing. He said a minority motion would be appropriate.

Vote: The **MOTION CARRIED** on a roll call vote.

Discussion: **SENATOR HOLDEN** elected to carry the minority report.

EXECUTIVE ACTION ON HB 332

Motion: **SENATOR ESTRADA MOVED THAT HB 332 BE RECOMMENDED CONCURRED IN.** The **MOTION CARRIED** on an oral vote, with **CHAIRMAN CRIPPEN, SENATOR GROSFIELD AND SENATOR DOHERTY** voting no.

ADJOURNMENT

Adjournment: **CHAIRMAN CRIPPEN** adjourned the meeting at 11:54 A.M.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-20-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

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SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 444 (third reading copy -- blue), respectfully report that HB 444 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, ~~Chair~~

That such amendments read:

1. Title, lines 4 and 5.
Following: "~~PRESUMPTIONS~~" on line 4
Strike: remainder of line 4 through "CONSIDER" on line 5
Insert: "REBUTTABLE PRESUMPTIONS"

2. Title, line 8.
Following: "CRIME;"
Strike: "AND"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, lines 21 and 22.
Strike: subsection (f) in its entirety
Renumber: subsequent subsections

4. Page 2, line 10.
Following: line 9
Insert: "(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support."

Amd. Coord. _____
Sec. of Senate

Senator Carrying Bill

641503SC.SPV

5. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so, the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent ~~where~~ when the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and ~~he~~ takes, entices, or withholds the child from the other ~~where~~ when the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arrest."

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 340 (third reading copy -- blue), respectfully report that HB 340 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.
Following: "CHILD"
Insert: ", SEXUAL INTERCOURSE WITHOUT CONSENT INVOLVING A CHILD, INCEST INVOLVING A CHILD, AND RITUAL ABUSE OF A MINOR"

2. Title, line 9.
Strike: "AND"
Insert: "PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES;"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 19.
Following: "45-5-502;"
Insert: "sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;"

4. Page 1, line 20.
Strike: "or"

5. Page 1, line 21.
Following: "45-5-625"
Insert: "; or ritual abuse of a minor, as provided in 45-5-627"

6. Page 2, line 17.
Insert: "
NEW SECTION. **Section 2. Termination of parental rights -- felony involving sexual intercourse.** If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

Amd. Coord. _____ Sen. BARTLETT
Sec. of Senate Senator Carrying Bill

651059SC.SRF

NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].

NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

March 21, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 323 (third reading copy -- blue), respectfully report that HB 323 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Baer
Senator Carrying Bill

651127SC.SRF

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 547 (third reading copy -- blue), respectfully report that HB 547 be amended as follows and as so amended be concurred in.

Signed: Bruce Crippen
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.
Following: "CRIMINALS;"
Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.
Following: "society."
Insert: "If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section."

3. Page 1, line 23.
Following: second "person"
Insert: "purposely or knowingly purchases or possesses a firearm after the person"

4. Page 1, lines 25 and 26.
Following: "offenses" on line 25
Strike: remainder of line 25 through "firearm" on line 26

5. Page 3, line 27.
Following: "**Applicability**"
Insert: "-- retroactive applicability"

6. Page 3, line 30.
Insert: "(3) [Section 1] applies retroactively, within the meaning of 1-2-109."

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

641412SC.SRF

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 160 (third reading copy -- blue), respectfully report that HB 160 be amended as follows and as so amended be not concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "GIVING"
Strike: "AT LEAST 24 HOURS' WRITTEN"

3. Page 2, line 14.
Following: "GIVE"
Strike: "AT LEAST 24 HOURS' WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

-END-

Amd. Coord. _____ Sen Crippen
Sec. of Senate Senator Carrying Bill

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:

We, a minority of your committee on Judiciary, having had under consideration HB 160 (third reading copy -- blue), respectfully report that HB 160 be amended as follows and as so amended be concurred in.

Signed: Ric Holden
Senator Ric Holden

Signed: _____
Senator Larry Baer

Signed: Al Bishop
Senator Al Bishop

Signed: _____
Senator Sharon Estrada

Signed: Jerry Jabs
Senator Reiny Jabs

That such amendments read:

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "GIVING"
Strike: "AT LEAST 24 HOURS' WRITTEN"

3. Page 2, line 14.
Following: "GIVE"
Strike: "AT LEAST 24 HOURS' WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

Amd. Coord.
Sec. of Senate

Sen. Holden
Senator Carrying Bill

641353SC.SRF

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

March 21, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 332 (third reading copy -- blue), respectfully report that HB 332 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

_____
Senator Carrying Bill

651129SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 340 NUMBER 1

MOTION: Bartlett amendment

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON		✓
	7	4

SEN:1995
wp:rlclvote.man

carried

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 160 NUMBER 2

MOTION: Amend - Senator Holden #148

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

SEN:1995
wp:rlclvote.man

9 2

carried

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 160 NUMBER 3

MOTION:

Grosfield - BNCIAA

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

SEN:1995
wp:rlclvote.man

6 5

passed

(43)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-20-95
SEN. NO. HB 340

PETERSON and SCHOFIELD

ATTORNEYS AT LAW KENNETH D. PETERSON DANE C. SCHOFIELD • KEITH A. CHRISTIE

2906 3RD AVENUE NORTH • PARK ONE COMPLEX • BILLINGS, MONTANA 59101 • PH: (406) 252-6679 • FAX: (406) 252-4919

4 January 1995

HB 340

SENT VIA FAX MACHINE

Honorable Representative Tom Nelson
Helena, Montana

In Re: Change in Legislation

Dear Representative Nelson:

Our firm represents two of your constituents, Mike and Sandee Kandas. Mike indicated that he recently talked with you on the phone regarding proposing an amendment to existing statute to correct a loophole that he discovered the hard way. This has to do with the adoption laws and the requirements of consent for a natural parent who has been convicted of sexual assault on the children. The specific section is *MCA §40-8-111.* I am FAXing you a copy of that section for your information. The portion of the code which we are concerned about is contained in *(a)(i).* That particular paragraph indicates consent for adoption by a natural parent is not necessary if that parent has been adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in *45-5-201*; endangering the welfare of children, concerning the child, as provided in *45-5-622*; or sexual abuse of children, toward the child, as provided in *45-5-625.* We wish to add another criminal section to the existing statute.

The natural father of Mike's step-children was convicted of sexual assault under *MCA §45-5-502,* which holds that a person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault. Unfortunately, *45-5-502,* is not included within the subsections of *MCA §40-8-111.* It is very obvious that the crime that the natural father committed in this case was, in fact, worse than the crimes listed in *40-8-111,* but for whatever reason, that particular sexual assault section was not included. This created a loophole and the District Court Judge in Yellowstone County felt that his hands were tied. He indicated that since the legislature had specified which statutes did not require the consent of a natural father regarding sexual crimes against children, and because they had not specifically listed *45-5-502,* that the natural father's consent would have to be given to allow an adoption. The Court felt that this was a terrible position to be put in, but in the Judge's Order, he set forth that he did not view himself as a legislator and indicated that we should bring this to

someone's attention to close this loophole for the future. In this particular case, the natural father was charged by the County Attorney without any knowledge that the section that he was charging the father under would later affect an attempted adoption.

Both Mike and Sandee Kandas are willing to come to Helena and testify in support of this Bill if necessary. Likewise, I would be happy to send to you (with Mike and Sandee's permission) briefs that were written by both attorneys on this issue and a copy of the Court's Order.

If you have any questions, please give me a call. Thank you.

Very truly yours,

PETERSON and SCHOFIELD

Dane C. Schofield

Dane C. Schofield

DCS/ggg
cc: Mike and Sandee Kandas
e:ltr\kandas.nel

EXHIBIT 1
DATE 3-20-95
HB 340

(b) the investigation or home study required by 40-8-115 has been performed; and

(c) the parent has received counseling in accordance with 40-8-116.

(9) If the court finds that all requirements for adoptive placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents or it may issue a final decree if a petition for adoption has been filed under 40-8-121. The prospective adoptive parents shall file their petition to adopt within 30 days of the order.

(10) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child, including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121.

(11) The court shall send a copy of the final determination made by the court under this section to the central office of the department.

History: En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 277, L. 1987; amd. Sec. 3, Ch. 18, L. 1989; amd. Sec. 1, Ch. 539, L. 1989; amd. Sec. 3, Ch. 683, L. 1991; amd. Sec. 1, Ch. 684, L. 1991.

40-8-110. Adoption services account. There is an adoption services account in the special revenue fund. The fees collected by the department of family services under 40-8-109 must be deposited into this account and may be used by the department for adoption service.

History: En. Sec. 2, Ch. 539, L. 1989.

Cross-References

State treasury fund structure, 17-2-102.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guar-

SANDI BURNS, M.A., M.C.
PSYCHOTHERAPIST
2912 Laredo Place
Billings, Montana 59102-0111
(406) 655-9722

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-20-95
BILL NO. HB 340

January 27, 1995

Re: McPherson-Kandas children
Adoption laws

To Whom it may concern:

I have seen two children for treatment who were adopted by John McPherson while married to the children's mother. Mr. McPherson is currently in Montana State Prison and charged with "sexual assault" of two of his children and several other neighbor children.

The children's mother is now remarried and wants to have her three children adopted by her current husband. However, due to the wording of the law, they are not able to do this. I understand the wording of the law states "sexual abuse" and Mr. McPherson was charged with "sexual assault."

Although I am not an attorney, I have been treating victims of sexual abuse since 1978, seeing well over 5000. If, a perpetrator was ever charged for the sexual abuse of children in the state of Montana, they were either charged with "Sexual Assault" or "Sexual Intercourse without consent." These have been the "criminal" charges or felonies. However, very few are charged in civil court with "sexual child abuse." Thus, it appears as a wording in the law, as I understand it from Mrs. Kandas.

I have seen all three of Mrs. Kandas children after the sexual abuses or "assaults" by Mr. John McPherson. The children are no longer involved with him and are saying they desire to be adopted by Mr. Kandas who they currently see as their father.

Sincerely,

Sandi Burns

Sandi Burns

Amendments to House Bill No. 340
Third Reading Copy

Requested by Senator Bartlett
For the Committee on

Prepared by Greg Petesch
March 18, 1995

1. Title, line 9.
Following: line 8
Insert: "PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES;"

2. Page 2, line 17.
Insert: "

NEW SECTION. **Section 2. Termination of parental rights -- felony involving sexual intercourse.** If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

NEW SECTION. **Section 3. {standard} Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].
"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-20-95
BILL NO. HB 444

Amendments to House Bill No. 444
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, line 8.
Following: "CRIME;"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"

2. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arrest.""

{*Internal References to 45-5-304: None.*}

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-20-95
BILL NO. HB 444

MEMO TO: Senate Juditiary Committee

FROM: Rob and Renae Mahr

DATE: March 8, 1995

SUBJECT: House Bill 444, further protecting the children in custody

As you can see by House Bill 444, a very important aspect is left out of the modification and visitation statutes. If the person convicted of any of the crimes listed in the subsections is any other than the parent, the kids are left with no protection.

These laws should include any other person (not only adults, but ANY criminal defined in the subsections of any age) in contact with the child or children. Step-parents, relatives, live-in boy- or girl-friends, and caregivers convicted of these crimes need to be held as responsible as the parents. The simple changing of these two statutes to include all parties involved in the day to day lives of children will immediately protect children without a total revamping of the system.

We are personally involved in this because Rob's ex-wife married a sex offender just days after she was awarded custody of their four year old daughter. The information of the new step-father's sexual deviance and other theraputic needs was kept from us. We were unaware of his problems until almost a year after their marriage. Now, it will be another year before this gets in front of a judge. Some allowance must be made to protect the children who are so vulnerable and precious. This bill will require the judges to hear the cases in which time is such an important element.

We would be happy to talk to anyone who has questions about this bill. It will probably be too late for us as the Judge has already allowed Rob's ex-wife and her sex-offender husband a year of free reign before our hearing date. If these laws are changed, we hope it will include any case in front of a judge at the time it is passed.

Sincerely,

Rob and Renae Mahr

Rob and Renae Mahr
202 Legget
Dillon, MT 59725
(406)683-4733
OR
3716 Wylie Drive
Helena, MT 59601
(406)227-8059

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 3-20-95
BILL NO. HB 547

already adopted by Jud Comm

Amendments to House Bill No. 547
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1995

1. Title, line 5.
Following: "CRIMINALS;"
Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.
Following: "society."
Insert: "If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section."

3. Page 3, line 27.
Following: "**Applicability**"
Insert: "-- retroactive applicability"

4. Page 3, line 30.
Insert: "(3) [Section 1] applies retroactively, within the meaning of 1-2-109."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3-20-95
BILL NO. HB 547

Amendments to House Bill No. 547
Third Reading Copy (blue)

Requested by Senator Baer
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

1. Page 1, line 23.
Following: second "person"
Insert: "purposely or knowingly purchases or possesses a firearm after the person"

2. Page 1, line 24 through page 2, line 9.
Following: first "convicted of" on line 24
Strike: remainder of line 24 through "(m)" on page 2, line 9
Insert: ": (a)"
Renumber: subsequent subsection

3. Page 2, line 9.
Following: "felony"
Strike: "not specifically listed in this subsection (1)"

4. Page 2, line 12.
Strike: "specifically listed in this subsection (1)"
Insert: "that when committed in Montana is subject to an additional sentence under 46-18-221"

5. Page 2, line 17.
Strike: "listed"
Insert: "referred to"

6. Page 3, line 4.
Strike: "listed"
Insert: "referred to"

7. Page 3, line 28.
Strike: "listed"
Insert: "referred to"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3-20-95
BILL NO. HB 160

Amendments to House Bill No. 160
Third Reading Copy (blue)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
March 17, 1995

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "HOURS'"
Strike: "WRITTEN"

3. Page 2, line 14.
Following: "HOURS'"
Strike: "WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

Amendments to House Bill 160
House Third Reading Copy
March 18, 1995

Prepared by Gary S. Marbut, MSSA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 3-20-95
BILL NO. HB 160

1. On Page 1, line 23.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

2. On Page 2, line 14.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

3. On Page 2, line 17.
Following: "TAKE"
Insert: "any action he deems"

4. Page 2, line 17.
Following: "APPROPRIATE"
Strike: "ACTION"

5. Page 2, line 19.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

6. Page 2, line 27.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

7. Page 2, line 27.
Following: "NOTICE"
Strike: "may be in letter form, either typed or handwritten, but"

8. Page 2, line 28.
Following: "ACKNOWLEDGED"
Strike: "with the original signature of"
Insert: "and logged in department records by"

9. Page 3, line 6.
Following: "ANY"
Strike: "CRIME ARISING FROM"
Insert: "applicable criminal offenses in Title 45 associated with"

10. Page 3, line 6.
Following: "CONDUCT."
Strike: all of the following sentence.

End of amendments

Effects of Amendments to HB 160

Amendments 1, 2, 5, 6, 7, 8, allow the notification specified in HB 160 to be accomplished with a fax or a phone call, as suggested by Senator Holden during the Senate Judiciary Committee hearing.

Amendments 3 and 4 clarify that it is up to the judgment of the Attorney General what he may do to protect the rights of the people of the county. He may do whatever he chooses to do. This is to satisfy the expressed concerns of Mr. John Connor who testified during hearing that HB 160 was unclear about what the Attorney General is supposed to do to protect the people of the county. The clear answer, with these amendments, is that it is whatever the AG wants to do. He is given broad discretion.

Amendments 9 and 10 address further concerns expressed by Mr. Connor. During opponents testimony, Mr Connor testified that no criminal acts or penalties were specified, and that for this reason HB 160 was unacceptably vague. These amendments would clarify that there could be prosecutions for any violations of existing Montana criminal code that might be committed (such as assault or intimidation, for example) as a part of violating the provisions of HB 160. These criminal laws have been on the books for a long time, and are thoroughly fleshed out with proper language, historical precedent, and case law.

Together, these amendments would seem to remove many of the objections and concerns expressed by opponents. With these amendments, HB 160 would only formalize what is currently considered to be "best management practice" for law enforcement. Opponents testified that notification of sheriffs of federal enforcement activity within the sheriff's jurisdiction is current practice with hardly any exceptions, and is currently required by the ARM. Therefore, the amended version of HB 160 should only apply to those rare exceptions (according to HB 160 opponents) where federal activities do not conform to federal standards of practice and the exitsting ARM.

(b) When an investigation is performed by a state agency at the request and under the direction of a federal law enforcement agency, the responsibility for and decision regarding notification to other authorities shall be made by the federal agent in charge of the investigation. When joint federal and state investigations are conducted, the liaison officer for the state agency will request in writing that the federal agency notify local law enforcement officials that the investigation is in progress, and document the response to this notification.

(c) When the subject of the investigation is the chief law enforcement officer of the agency or public official and a request for investigative assistance has been received pursuant to section 44-2-115(1), MCA, the notification procedure described in ARM 23.2.203 will apply. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.203 INTERNAL INVESTIGATION (1) For a state agency to initiate an internal investigation of another law enforcement agency or public official pursuant to section 44-2-115, MCA, the following procedures must be followed:

(a) A written request must be received and approved by the attorney general or a designated representative. The request must be from a chief of police, sheriff or county attorney within the jurisdiction where the alleged offense(s) occurred.

(b) The request must describe the reasonable facts that led the official to believe a criminal offense has been or is being committed.

(c) The request must name a local representative to serve as the liaison officer.

(2) The agent shall contact only the liaison officer designated in the request from the law enforcement official.

(3) If the investigation concerns the supervisor of a law enforcement agency or the county attorney, it will be the responsibility of the attorney general or his designated representative to contact the affected officer when the investigation is completed, and summarize the action the state agency intends to take based on the investigation. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.204 COORDINATION (1) Local, state, and federal law enforcement agencies will make every good faith effort to notify the appropriate law enforcement agencies concerning active investigations.

(2) Notification to the appropriate law enforcement agencies is intended to avoid duplication of effort and to ensure maximum coordination among various law enforcement agencies in the state of Montana. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.205 COMPLAINT REVIEW (1) Whenever a law enforcement agency concludes that a state agency has actively conducted an investigation within their jurisdiction without proper notification, a written complaint may be forwarded to the attorney general for referral to the law enforcement advisory council. Whenever a complaint is received, the attorney general or a designated representative will request a written response from the agency involved in the complaint. The law enforcement advisory council will review the response, determine if the action constituted a violation of investigative protocol, and advise the attorney general.

(2) If the advisory council determines there has been a violation of investigative protocol, the attorney general or a designated representative shall act to ensure future compliance with the administrative rules. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

DATE 3-20-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HJR 27, HB 444, HB 491, HB 340

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
W James Kembel	City of Billings	HB491		X
Michael Kandas	Self	HB340	✓	
Sandee Kandas	Self	HB340	✓	
Jerry Williams	Montana Police Protective Assn.	HB491		X
Sharon L Bakersen	Macem	HB340	X	
Sharon L Bakersen	MACoM	HB444	X	
MARY ALICE COOK	ADV. FOR MTs CHILDREN	HB 340 HB 444	✓	
Klaus Sitte	Mont. Legal Services Assn	HB444	✓	
Jim Obenhofer	MT Chiefs of Police	HB491		X
Lorna Frank	MT Farm Bureau	HJ27	✓	
Troy McGee	Mont Police Assoc	491		X
William J Ware	ME Asso of Chiefs of Police MACOP - Chiefs	491		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10