

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 13, 1997, at 10:00 a.m., in the Senate Judiciary Chambers, Room 325, of the State Capitol.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 54, SB 31,
posted January 6, 1997

Executive Action: None

HEARING ON SB 54

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte/Silver Bow.

Proponents: Gene Kiser, Administrator, Montana Board of Crime Control
Beth Baker, Department of Justice
John Connor, Prosecutor, Office of the Attorney General
Matthew Dale, Executive Director, Friendship Center, Helena.
Betty Waddell, Montana Association of Churches.

Kathy McGowan, Montana Sheriff's and Peace
Officers Association
Troy McGee, Helena Chief of Police, and Montana
Police Officers Association

Opponents: Russell Hill, Montana Trial Lawyers Association
Nancy Sweeney, Lewis and Clark County Clerk of
Court.

Opening Statement by Sponsor: SENATOR DEBBIE SHEA, SD 18,
Butte/Silver Bow. I am presenting SB 54 for the Montana Board of
Crime Control and the Department of Justice. The bill refines
details to meet the growing needs of crime victims in the areas
of forensic medical exams, clarification of disbursements, and
revises victims compensation by eliminating the 26-week period.
It also includes acts of terrorism.

Proponents' Testimony: Gene Kiser, Administrator, Montana Board
of Crime Control (20th year), read from prepared testimony
(EXHIBIT #1), and provided the Committee with copies of Services
and Programs for Montana's Victims of Crime (EXHIBIT #2).

{Tape: 1; Side: A; Approx. Time Count: #3.2; Comments: None.}

Beth Baker, Department of Justice, provided the Committee with a
fact sheet (EXHIBIT #3), and with amendments to the bill (EXHIBIT
#4).

{Tape: 1; Side: A; Approx. Time Count: #4.7; Comments: None.}

John Connor, Prosecutor, Office of the Attorney General. The
amendments pertain to Title 46, Chapters 5 and 24. In the
"mountain men" case, the Nichols' kidnapped Keri Swenson and
murdered Alan Goldstein). Items such as the gun, drawings, and
carvings from the case were held in the clerk of court's office
since before the trial. A hearing to dispose of these items was
scheduled December 9, 1996, but the Swenson family was not
notified so they could appear to voice their concerns or
objections. The amendments would correct this situation by
allowing people such as the Swensons to state their concerns
prior to these hearings.

Matthew Dale, Executive Director, Friendship Center, Helena. I
believe crime victims would benefit from the proposed changes,
especially those with lower incomes, who happen to be mostly
women. The greatest benefits will come in the order of
protection costs, and thorough medical exam costs. There is a
need to make reporting and processing of these crimes easier.

Betty Waddell, Montana Association of Churches. The Association
rejects all forms of hatred, violence, and it urges passage of SB
54.

Kathy McGowan, Montana Sheriff's and Peace Officers Association. The Association supports SB 54 and urges its passage.

Troy McGee, Helena Chief of Police, and Montana Police Officers Association. The Association supports SB 54 and urges its passage.

Opponents' Testimony: **Russell Hill, Montana Trial Lawyers Association (MTLA).** The Association wants more discussion on capping wage laws under restitution. We would like to see subrogation extended on page 3, lines 11-17 of the bill. Collateral source on page 4, line 27, is not a guarantee, so victims could end up with less than they want because of a lawsuit or, for example, a hotel with inadequate security. Otherwise, SB 54 appears to be a very good bill.

Nancy Sweeney, Lewis and Clark County Clerk of Court. (EXHIBIT #5). I ask the Committee remove elimination of fees from the bill, as it puts the counties under the gun to finance items such as orders of protection. Otherwise, SB 54 is a good bill. I am asking that litigants who can afford to pay fees do so.

Questions From Committee Members and Responses: **VICE CHAIRMAN LORENTS GROSFIELD** asked about international terrorism. Page 5, lines 9-10 exclude coverage in a state where a crime victim compensation program exists. What is the program is quite limited? **Beth Baker.** Current statute covers a Montanan in Montana or another state, if that state doesn't have a program. The bill adds international terrorism.

{Tape: 1; Side: A; Approx. Time Count: #20; Comments: None.}

Dara Smith, Program Officer, Crime Victims Compensation, Board of Crime Control. If another state runs out of funds, there are \$50 Million in federal funds available. The bill simply covers terrorism in another country.

SENATOR GROSFIELD. What about non-terrorism crime victims from Montana in another country? **Dara Smith.** They would be covered.

SENATOR STEVE DOHERTY. What is the injured crime victim is out of work for 52 weeks? **Beth Baker.** Right now, the limit to a victim is \$25,000 for medical, plus wage loss, but costs are often more than that now. This amendment gives guidance as to whether to pay wages lost first or medical bills first, as it is felt that providers should not be the only ones not compensated.

SENATOR DOHERTY. Russell Hill, MTLA, commented on subrogation. Assuming Workers' Compensation paid benefits, and a crime victim sought those funds, would Workers' Compensation seek reimbursement from the crime victims fund? Who gets first dibs on the money, as Section 53, Chapter 9, specifically provides the Crime Victim Compensation Program with the right of subrogation?

Beth Baker. When a victim recovers fully, then the Program is compensated. I am willing to amend this language so that the victim would be fully compensated first.

SENATOR SUE BARTLETT. Are recoveries from any third party payor limited to that amount? **Beth Baker.** Yes.

SENATOR BARTLETT. Mr. Dale, would you comment on Ms. Sweeney's statement to the Committee? **Matthew Dale.** What Nancy Sweeney said is correct. Simplicity is better with respect to orders of protection without fees. I believe the bill is a better way.

SENATOR DOHERTY. The medical lien statute requires anyone who gets money for an injury to pay off their medical costs first. Does a medical lien have priority? Are lost wages subject to the medical lien law? **Gene Kiser.** We presently leave it up to the victim to decide whether they want lost wages compensation ahead of paying off their medical costs. They overwhelmingly opt for lost wage compensation first. Recently, we had our first medical lien filed against the program.

SENATOR DOHERTY. I believe we will see more medical liens, so ought we to say the money ought to go to the victim first? There was no response.

CHAIRMAN CRIPPEN. I am asking that **SENATOR SHEA** work on these proposed amendments to keep the bill moving along. Can the Lewis and Clark County Clerk of Court give an estimate of the number of collection fees for now? **Nancy Sweeney.** I believe there will be an increase. It costs \$1 to open each file, plus related costs.

CHAIRMAN CRIPPEN. I am asking that you give your suggestions to **SENATOR SHEA.**

Closing by Sponsor: **SENATOR SHEA.** I ask that the Committee support SB 54.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None.}

HEARING ON SB 31

Sponsor: **SENATOR LOREN JENKINS, SD 45, Big Sandy.**

Opponents: **Arlette Randash, Eagle Forum.**
Sharon Hoy, Montana Catholic Conference.
Scott Crichton, ACLU of Montana.

Opening Statement by Sponsor: **SENATOR LOREN JENKINS, SD, 45, Big Sandy.** I received a letter from a sex offender last summer, concerning what he would like to see enacted into law (**EXHIBIT #6**). Gender, race, occupation, economics make no difference in sex offenders. No one is safe from sex offenders, from babies to the elderly. I don't know if it's a sickness, but is a most heinous crime.

Section 1 of the bill deals with first offenses against someone under age sixteen, with bodily injury, physical force, incest, and can require MPA treatment (depoprovera or its chemical equivalent).

Section 2 pertains to sexual assault against someone under sixteen, rape, incest, and second offenses. Chemical treatment, administered by the Department of Corrections is mandatory.

Section 3 pertains to voluntary treatment, administered by the Department, if the perpetrator is not sentenced to treatment. The offender must be fully informed of the effects of treatment.

If an offender violates a treatment order, he or she may be sentenced to not less than ten years or more than one-hundred years in prison.

The bill would become effective in October, 1997. California has passed this without the contempt of court provision.

Repeat offenders are as high as 70 percent. Studies in Denmark show that chemical treatment can drop repeat offenses to as low as 2.2 percent.

Proponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: #8.6; Comments: None.}

Opponents' Testimony: Arlette Randash, Eagle Forum. Read from prepared testimony (EXHIBIT #7). Eagle Forum supports SENATOR JENKINS' desire to protect children, but is against the method. MPA must be used as part of a comprehensive treatment program, and the offender must want to participate. We are concerned with the bioethical implications of the bill.

Forty-five percent of child sex abuse is perpetrated by children and teens, presenting the need for early identification and correction. There is a need for a carefully designed program in which chemicals may be, but are not arbitrarily required. I believe Montana would pay a high price in medical malpractice if this bill were to pass in its present form.

Is MPA a treatment or a punishment? I see a need for a signed, informed consent. The bill diverts resources from a science-driven program to a politically-driven program.

{Tape: 1; Side: B; Approx. Time Count: #18; Comments: None.}

Sharon Hoy, Montana Catholic Conference. Read from prepared testimony (EXHIBIT #8). Treatment is critical, but castration doesn't always stop offenders. It can give society a false sense of security.

Scott Crichton, ACLU of Montana. (EXHIBIT #9). This bill may violate Article Eight of the U.S. Constitution; therefore, I urge you to vote no.

Questions From Committee Members and Responses: SENATOR SHARON ESTRADA. After injections are stopped does the person return to normal? **SENATOR JENKINS.** Yes, but there are no U.S. tests in this area, beyond eight years.

SENATOR ESTRADA. What is the cost of the injections? **Sandy Heaton, Montana State Prison.** The cost is \$7000 per injection per prisoner per year, plus \$300 for the original exam, and \$50 per quarter for follow-up exams. This doesn't include the costs of probation and parole, related sex offender treatment.

SENATOR BARTLETT. What is the motivation for most sex offenders to accept treatment, considering the costs and the medical side-effects? **Sally Johnson, Administrator of Professional Services, Department of Corrections.** The effects of Depoprovera are temporary and must be repeated weekly by a license professional. Supervision and monitoring are required in mandatory offender treatment. Compliance is crucial, and should be voluntary to work best.

Depoprovera reduces sex drive, and does have side-effects. John Hopkins, the University of Colorado, and Texas have researched chemical treatment of sex offenders. They are succinct in their medical exclusions of diabetes, glaucoma, drug use, depression, anti-social personality disorder, cardiac and liver disease, migraine, and alcoholism.

Cost of the program is estimated to be more than \$101,000 in FY 1997, and about \$319,528 by FY 99..

Sandy Heaton, Director, Sex Offender Program, Montana State Prison. Chemical therapy is very appropriate for some offenders, but doesn't work for all of them. The primary motivators of offenders are anger, power and control.

If an offender decides to offend, he can do so while on Depoprovera. Injections are least effective with offenders who don't want to be on them.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: None.}

CHAIRMAN CRIPPEN. Is Depoprovera available now? **Sandy Heaton.** Yes. One private practitioner is using it on several offenders now.

SENATOR DOHERTY. If an individual opts for an alternative, will it affect the length of their sentence in any way? **SENATOR JENKINS.** Upon release an offender will still need sex therapy. This is quite often mandated by the courts.

SENATOR DOHERTY. Since a large number of offenders are kids, would this sentence reduction be available to them as well as to adults? **SENATOR JENKINS.** This is not covered in the bill. The bill only makes treatment mandatory for second offenses.

SENATOR DOHERTY. If this is a good idea for public policy, why are you only addressing victims under age sixteen? **SENATOR JENKINS.** Molesting laws apply to under sixteen. Second offense covers all offenders.

SENATOR ESTRADA. Can you give more Depoprovera, if the injections don't appear to be working? **Norma Jean Boles, Department of Corrections.** 400 mg are generally recommended. Some offenders have been given up to 600 mg per day in studies.

SENATOR ESTRADA. Do injections affect males and females identically? **Norma Jean Boles.** The dosage is much less for women.

Closing by Sponsor: **SENATOR JENKINS.** Depoprovera has been available since the 1960s, and has been used in other countries, as well as the U.S., experimentally. I believe there needs to be a punishment if an offender goes off treatment. Offenders also need therapy in prison, as well as after their release.

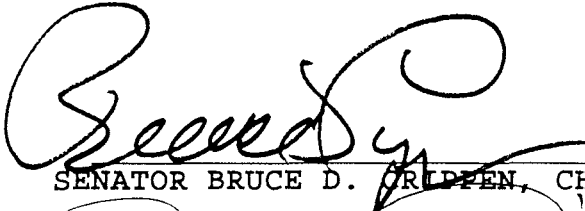
According to U.S. Attorney General, Janet Reno, repeat offenses against those age sixteen and under are about 75 percent. I have 6 grandchildren, the oldest of which is 9. I see a charge to make Montana safer, especially since offenders are picked up only about 1 out of 8 times.

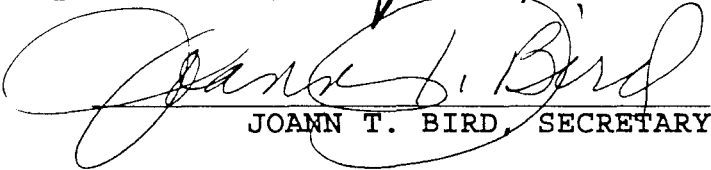
(EXHIBITS #10-18) informational data.

CHAIRMAN CRIPPEN. The Committee will go into executive session on SB 2 tomorrow.

ADJOURNMENT

Adjournment: 11:30 a.m.


SENATOR BRUCE D. CRISPIN, CHAIRMAN


JOANN T. BIRD, SECRETARY

BDC/jtb