

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN BRUCE D. CRIPPEN**, on January 16, 1997, at 9:30 A.M., in Senate Judiciary Room.

#### 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  
Judy Keintz, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 46, 01/09/97  
SB 141, 01/09/97  
Executive Action: SB 141 - DO PASS  
SB 54 - DO PASS AS AMENDED  
SB 6, SB 48, SB 31

#### EXECUTIVE ACTION ON SB 6

**Discussion:** **CHAIRMAN CRIPPEN** stated there was a concern about a fiscal note on SB 6. He did not see where a fiscal note was needed.

**Valencia Lane** commented that someone questioned the language on page 2, at the top of the page, line 4, and felt that was new language going into law and that it would require a fiscal note. That is an editorial change and the same language is on line 2 at the top of page 2. The editors found that sentence too long and awkward and struck the language at the end of the sentence and put

it in on line 4 as a new sentence. **Lois Adams, Department of Corrections**, agreed that a fiscal note would not be required.

**EXECUTIVE ACTION ON SB 48**

**Amendments:** SB004802.avl, EXHIBIT 1

**Motion:** SEN. MIKE HALLIGAN MOVED TO AMEND SB 48.

**Discussion:** SEN. HALLIGAN explained the schools had a question as to exactly who ought to get the records and they were also concerned that confidentiality was maintained. The first amendment clarifies, for the school's perspective, that when files are going from district to district that there is a designated individual to maintain that confidentiality who will be working with the student. There was also a question regarding the mental illness definition in the bill.

**Vote:** The MOTION PASSED UNANIMOUSLY.

**Motion:** SEN. HALLIGAN MOVED SB 48 DO PASS AS AMENDED.

**Discussion:** SEN. RIC HOLDEN commented that he had concerns with the family participation aspect of the bill. He asked for clarification of line 18, page 29.

SEN. HALLIGAN explained that they wanted to make sure that multi-disciplinary teams assessed children at risk. If the families are not participating, the same problems usually occur when the child goes back into the home. The parents must participate.

SEN. HOLDEN asked who would pay for the costs involved.

SEN. HALLIGAN explained this quite often is covered by the parents insurance. The court can look at the financial resources of the parents. The court listens and is reasonable about making the parents participate in the payment of some of these services.

SEN. HOLDEN commented that he has first hand knowledge of youth getting into a counseling program which they were directed by the court to participate. Before long there was a \$7,000 counseling bill. The insurance paid half and they were left with a \$3,000 to \$4,000 bill. The middle income people, who have a certain amount of assets to protect, are caught up in this process.

SEN. HALLIGAN countered that they have tried it the other way and it hasn't worked. Now it is time to make sure that parents know they need to take more responsibility with their children from day one. They will have to pay the costs of the state helping our children.

SEN. WALTER MCNUTT commented that in counseling some issues may come out that could do a great deal of harm to a family structure. This section really concerns him.

**CHAIRMAN CRIPPEN** explained that the fiscal note which the committee had not seen yet, had a large impact.

**SEN. HALLIGAN** withdrew his motion until the committee had time to review the fiscal note.

**EXECUTIVE ACTION ON SB 31**

**Amendments:** SB003101.avl and SB003102.avl

**Discussion:** **Ms. Lane** explained there were two sets of amendments on SB 31. The longer set was presented to **SEN. HALLIGAN** by the Department of Corrections. **(EXHIBIT 2)** They substantially change the bill. **SEN. LOREN JENKINS** does not approve of these amendments. His amendment, sb003102 **(EXHIBIT 3)**, simply changes one word in his existing bill on second and subsequent offenses making it discretionary with the court and not mandatory.

**EXECUTIVE ACTION ON SB 54**

**Amendments:** Baker Amendment **(EXHIBIT 4)** and Doherty Amendment **(EXHIBIT 5)**

**Discussion:** **Beth Baker, Department of Justice**, commented that the amendments are alternatives. They are not both intended to be adopted. **SEN. STEVE DOHERTY** requested one set. Both amendments deal with wage loss benefits being capped at 26 weeks. The first amendment would make sure that the medical bills are not paid until all wage loss benefits had been paid unless expressly requested otherwise by the victim. The alternative amendments would simply keep the 26 week wage cap but only impose it if the victims total benefits exceed the \$25,000 maximum.

**Motion:** **SEN. SHARON ESTRADA** MOVED THE AMENDMENTS PRESENTED BY **BETH BAKER**.

**Discussion:** **SEN. DOHERTY** urged the committee to reject these amendments. This would reflect payments to a victim of crime. He believes that part of the powerlessness that a victim experiences could be helped by his amendment. There would still be a \$25,000 cap, but when those individuals are out of work for more than 26 weeks, they ought to have the option to decide how the benefits would be paid.

**SEN. ESTRADA** withdrew her motion.

Executive Session adjourned and the hearing scheduled for 10:00 a.m. began.)

{Tape: 1; Side: a; Approx. Time Count: 10:00 a.m.; Comments: .}

HEARING ON SB 46

Sponsor: SENATOR MIKE SPRAGUE, SD 6, BILLINGS

Proponents: --Brenda Nordlund, Department of Justice  
--Lois Adams, Department of Corrections  
--Mary Ellerd, Montana Juvenile Probation Officers  
Association  
--Marsha Wall, Counselor at Helena Middle School

Opponents: None

Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, presented SB 46 which is an act allowing seizure of a youth's drivers license who is deemed a delinquent. During the interim he was on the Subcommittee on Juvenile Justice. He kept hearing parents comment that they did not feel empowered to deal with these juveniles. The bill states that if a parent or a guardian of the youth reports the delinquent child, then the probation officer can seize or confiscate the license. These children have become immune to threats. They want they mobility which is provided by a drivers license. The idea is to prevent a problem and, hopefully, salvage the 80 to 90 percent of the children in this position and give consequence to their actions. They are very sensitive to impacting the child's driving record, insurance rates, etc. This is a call to attention.

Proponents' Testimony:

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Brenda Nordlund, Department of Justice, stated the Motor Vehicle Division of the Department of Justice has stood before committees like this before and said that they oppose drivers license sanctions where the sanction is not related to a driving offense. The drivers license is a very important tool for a variety of reasons. She presented an amendment for the Department of Justice, (EXHIBIT 6). The purpose of the amendment is to fulfill the sponsor's desire in not creating a record for the juvenile. They are proposing parallel amendments which would change the word "seizure" to "confiscate" which would be consistent with MIP language. The court has the ability to confiscate a license on a first offense. A confiscation does not show on Motor Vehicle Division computer records. It is an act which occurs between the individual who takes the license and the individual who holds the license. If that individual is later picked up by law enforcement and law enforcement does a driver check on the driver, he or she will show as a valid license holder. They also propose that the probation officer continue to send notice to the Department of the confiscation, but they would not enter the confiscation in the youth's driving record. The notice to the Department would enable them to put on their internal computer

screens to the driver exam stations throughout the state of Montana which read "Do not issue a duplicate license to this youth." The probation officer would need to notify them in the beginning of the confiscation and also when it is to be removed. With these amendments there will be minimal impact in terms of administration of this bill.

**Lois Adams, Department of Corrections**, rose in support of SB46. The Department understands and believes in prevention for these young offenders.

**Mary Ellerd, Montana Juvenile Probation Officers Association**, spoke in support of SB 46.

**Marsha Wall, Counselor at Helena Middle School**, spoke in support of SB 46. There is a lack of accountability by youth on probation. The public schools are seeing more and more children who are getting away with crimes and not making restitution to their victims.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

*{Tape: 1; Side: b; Approx. Time Count: 10:11; Comments: .}*

**SEN. LORENTS GROSFIELD** asked if this would be applied consistently?

**Ms. Ellerd** stated that the Department of Corrections had added language for consistency. Probation officers are employed by counties. They do have to comply with the Youth Court Act.

**SEN. GROSFIELD** expressed concern about the length of duration of probation. He felt that the probation officer would be put in a powerful position. He does not disagree with that. Would the probation officer have total discretion?

**Ms. Nordlund** felt that the Department would not be the developer of any guidelines. These guidelines may come from the Department of Corrections.

**Ms. Adams** stated the Youth Court Act revision which the Department has developed does have a 30 day limit on this. As far as consistency, they saw this as a tool which a juvenile probation officer could use.

**SEN. GROSFIELD** questioned where the 30-day language appeared?

**Ms. Adams** stated that would be in HB 138 which would be introduced by **REP. ROYAL JOHNSON**.

**SEN. GROSFIELD** asked if a juvenile could be charged for driving without a license under this bill.

**Ms. Adams** stated if they were picked up for a driving violation, the officer would not know if their license was revoked or suspended. The youth could be ticketed for not having a license in their possession and it would then be between the youth and the judge. If the youth tried to get a duplicate driver's license, the Department of Justice amendment would take care of that problem.

**SEN. GROSFIELD** questioned the incentive for the youth if the probation officer takes the license and the youth is able to drive anyway.

**Ms. Adams** stated the youths who have this happen to them will be in the early end of the system.

**SEN. SUE BARTLETT** asked what information the law enforcement officer, who stopped a youth without a license, would have available to him?

**Ms. Nordlund** explained there would be a charge of driving without a license. The officer would have no way of knowing that the drivers license had been confiscated. The intent of their amendment is to close a loophole which exists in current law and that is when there is a pocket suspension, the person whose license was confiscated can come in the next day and file an application for a duplicate license. There is no review of those applications.

**SEN. BARTLETT** asked if the city judge or JP who heard that traffic violation would know that there had been a pocket suspension? Would there be an escalation of penalties?

**Ms. Nordlund** commented the judge may or may not know of the confiscation just as a matter of courthouse gossip.

**SEN. BARTLETT** stated that she has dealt with expunging records and wonders if this would be a problem for the Department.

**Ms. Nordlund** stated that it was. They have a heightened sensitivity to the duty to expunge as a result of the Brandor decision which dealt with fourth offense DUIs. Anytime you create a record and then have a subsequent duty to obliterate that record, you have a difficult duty to fulfill. If the proper information is not provided, it can be difficult to expunge. They asked the sponsor to delete that language. Part of the reason not to create a record for the youth is because the impact is to every driver in that family who is under the same insurance policy.

**SEN. BARTLETT** asked the sponsor his thoughts on the limit of 30 days.

SEN. SPRAGUE commented the basic intent of the bill was to have a leverage on the youth who isn't taking his or her probation seriously. He does not know if 30 days is the right number. The salvageable value is in the beginning. They believe in putting all their energy in the beginning of the problem.

SEN. GROSFIELD asked what the authority of the probation officer would be if the youth refused to turn in his license.

Ms. Adams stated the probation officer could then take the youth before the judge who wrote the order, the judge could then do a little more.

Closing by Sponsor:

*{Tape: 1; Side: b; Approx. Time Count: 10:30; Comments: .}*

SEN. SPRAGUE closed by commenting that probation isn't working. The enforcement mechanism of probation is turned into a joke. There are more serious consequences if probation doesn't work. The parent needs to be enlisted in this process. The individuals at Pine Hills have told him that they wished someone would have had their undivided attention earlier. He asked how he would get their undivided attention. The comment he received was to take away their drivers license. That is their most sacred socializing tool.

HEARING ON SB 141

Sponsor: SEN. KEN MESAROS, SD 25, CASCADE

Proponents:       --Pat Graham, Director of Fish, Wildlife and Parks  
                      --Beth Baker, Department of Justice  
                      --Paul Johnson, Department of Justice

Opponents:       None

Opening Statement by Sponsor:

SEN. KEN MESAROS, SD 25, CASCADE, introduced SB 141. This bill is an act clarifying that penalty provisions in the Fish and Game Code are supplemental to but do not supersede criminal code. In State v. Gatts, the Montana Supreme Court decided on November 1, 1996 that a person committing a violation of a Fish and Game statute or rule could only be prosecuted for a Fish and Game violation and could not be prosecuted under a general criminal statute. The court found that the language used in the penalty section of the fish and game codes expressed the legislature's intent that the fish and game criminal penalties are the only sanctions which may be imposed on violators and that any charges under the general criminal statutes of Title 45 are precluded. This is in contrast to the general rule that a prosecutor can charge under either a specific statute or under the general criminal code if the alleged offense fits under both. For

example, a county attorney may charge a person with reckless driving or with manslaughter or even deliberate homicide. If the court makes the same decision for motor vehicle codes, then the result could arguably be that reckless driving is the only available charge no matter what the facts are. The problem with the decision is that the most flagrant abuses cannot be dealt with by prosecuting for more serious violations under the general criminal code. Wrongful conduct of a person engaged in commercial enterprises that the department regulates, such as game farms, fur farms, commercial fish ponds, etc., may never be addressed with anything more than a misdemeanor sanction. This would apply to conduct that would be a felony if done while engaged in any business activity. This bill clarifies that the fish and game statutes are not to be the only sanctions for crimes committed against the wildlife resources of the state and that more serious wrongdoing can be charged under the general criminal code. He received a letter from the attorney general addressed to Fish, Wildlife and Parks regarding this decision.

**Proponents' Testimony:**

**Pat Graham, Director of Fish, Wildlife and Parks,** presented his written testimony (EXHIBIT 7).

**Beth Baker, Department of Justice,** stated this bill will clarify the legislative intent.

**Paul Johnson, Department of Justice,** spoke in favor of the bill. He represented the State at the appellate level on the Gatts case. The court's reasoning in the case creates an unnecessary problem for criminal prosecutors in Montana. The Gatts decision clearly exceeded the scope of any offense defined in Title 87, the fish and game code. It did fall directly within an offense defined in the general criminal code, Title 45, Criminal Mischief. They were knowingly damaging or destroying public property, the black bears, without consent. That is what the prosecutor charged Mr. Gatts with. The Title 45 offense covered the whole range of Gatt's illegal conduct. Title 87 did not encompass all of his conduct. The Title 45 offense was constituted a felony because of the value of the black bears and provided a stiffer penalty. It has long been the law in Montana that when conduct violates more than one criminal statute, it is within the discretion of the prosecutor to make a determination about what charge to file. The Supreme Court found that Title 87 constituted a comprehensive body of law, however, they looked specifically at the general penalty provision in Title 87 and also at the specific statutes in Title 87 which could be applied piecemeal to this defendant's conduct and they concluded that since crimes defined in the general criminal code do not pertain specifically to fish and game then the legislature must have intended that Gatts could not be charged under Title 45. They then ruled that their finding of that legislative intent defeated the general and longstanding rule that the prosecutor has discretion of which charge to file when conduct violates more



than one criminal offense. There are statutes in Title 87 which require game farmers to file annual reports with the department listing certain specific information. Violation of that statute is a misdemeanor under Title 87. They prosecuted a game farmer who was stealing wild elk and filing false reports to cover that conduct. Filing false reports is tampering with public records. He pled guilty to the charge. Under Gatts he could not be prosecuted with felony tampering with public records because that offense falls within Title 45. Gatts creates a special group of people who are not subject to the general criminal law of the land. SB 141 simply clarifies that nothing in Title 87 limits prosecutorial discretion to prosecute conduct that is also defined as an offense in Title 45, including felonies. He provided the committee with a copy of the Gatts decision, **EXHIBIT 8**.

**Jim Bradford, Montana Bowhunters Association**, presented his written testimony in support of SB 141, **EXHIBIT 9**.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**SEN. HOLDEN** asked if a game warden would have any authority over someone he found smoking marijuana while he was checking someone's license?

**Beata Golda, Administrator of the Enforcement Division for Fish, Wildlife and Parks**, commented the present authority of a game warden is limited by statute. They have no jurisdiction in drug cases.

**SEN. AL BISHOP** posed the question if a hunter, without regard for another's safety, killed another person would the Gatts decision apply?

**Mr. Johnson** stated his understanding is that if a person is involved in conduct in any fish and game context that violates a fish and game statute, most of which are misdemeanors, and in the course of that conduct also violated a Title 45 felony crime, the prosecution would be limited in prosecuting the Title 45 crime.

**CHAIRMAN CRIPPEN** questioned why the fish and game aspect was not ignored and the prosecutor simply use the criminal section?

**Mr. Johnson** stated that Gatts throws a question over what authority a prosecutor has if the situation arises in a fish and game context and it is already covered by a fish and game offense.

**CHAIRMAN CRIPPEN** asked where it would show up if there was no citation issued?

**Mr. Johnson** stated the holding of the decision isn't based on whether or not any kind of fish and game offense was charged. The decision looks to the conduct of the charged person and analyzes the conduct of the charged person and then looks to the statutory scheme.

**CHAIRMAN CRIPPEN** commented that if he was killed while elk hunting out of season with his friend, then his friend would only be charged with hunting elk out of season.

**Mr. Johnson** stated that the decision leaves a lot of gray areas. Down the line there are going to be cases that test the illogic of this decision. This bill says there is no need for this gray area.

**Beth Baker** commented that this bill will close the door to this kind of argument. They want to preclude the defendant from raising Gatts as a bar to that prosecution.

**SEN. BARTLETT** commented that the last "Whereas" in the bill mentioned that the prosecution had the discretion to bring charges under either or both codes. Would that be double jeopardy?

**Mr. Johnson** answered that you cannot be charged for two criminal offenses for identical conduct. A person could engage in a string of criminal conduct, some of which would qualify for prosecution under Title 45 and others of which would qualify for prosecution under Title 87.

Closing by Sponsor:

*{Tape: 2; Side: b; Approx. Time Count: 11:00; Comments: .}*

**SEN. MESAROS** closed on SB 141.

EXECUTIVE ACTION ON SB141

Motion/Vote: **SEN. REINY JABS MOVED SB 141 DO PASS.** Motion passed unanimously.

EXECUTIVE ACTION ON SB54

Amendments: SB005402.av1 (**EXHIBIT 10**), Baker amendment (**EXHIBIT 4**), and Doherty Amendment (**EXHIBIT 5**)

Discussion:

*{Tape: 2; Side: b; Approx. Time Count: 11:08; Comments: .}*

**Ms. Lane** explained that at the hearing Beth Baker handed out amendments which she had prepared. She put them into correct technical form and they are numbered sb005402.av1. **SEN. DOHERTY** had questions regarding limits on the wage damages which could be received by a victim under the Victim Compensation Act. Beth Baker has worked with him and prepared amendments to address his

concerns. They were handed out this morning, (EXHIBIT 5). The Department of Justice has an alternative to that amendment (EXHIBIT 4). These are alternative amendments.

**Ms. Baker** stated they do not have a problem with **SEN. DOHERTY'S** amendment. They prepared an alternative as a back up.

**Motion:** **SEN. DOHERTY MOVED TO AMEND SB 54. (EXHIBIT 10)**

**Discussion:** **SEN. HOLDEN** had concern with the terms "international terrorism" - page 3, the last amendment.

**Ms. Baker** stated the amendment referred to an act of international terrorism as defined in 18 USC 2331. That is part of the Anti-terrorism and Effective Death Penalty Act of 1996 passed by the last congress and it defines international terrorism to say the term "international terrorism" means activities which (a) involve violent act or acts dangerous to human life that a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or any state, (b) appear to be intended: (1) to intimidate or coerce a civilian population, (2) to influence the policy of a government by intimidation or coercion or (3) to effect the conduct of a government by assassination or kidnapping and (c) occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locale in which their perpetrators operate or seek asylum.

**SEN. HOLDEN** asked if a person travelling to Egypt who was injured there, would be able to receive compensation under the victim's right legislation?

**Ms. Baker** acknowledged that would be true if the person was a resident of Montana.

**SEN. HOLDEN** was concerned about the difficulty of investigating terrorism outside our borders.

**Substitute Motion:** **SEN. HOLDEN MOVED TO STRIKE THE LAST AMENDMENT IN SB 54.**

**Discussion:** **SEN. DOHERTY** commented this bill is about providing some small means of making Montanans, who are the victims of crimes, whole. It does not matter whether the crime occurred in Great Falls, North Dakota, or Coutts, Alberta. The public policy of Montana ought to be a Montanan who is injured by a crime will be made whole notwithstanding where the crime occurred.

**SEN. GROSFIELD** inquired about federal compensation for victims of international terrorism which occurred outside the boundaries of the United States.

**Ms. Baker** stated that to her knowledge there is no federal compensation. Part of the Federal Anti-Terrorism Act was to make that a part of the state compensation programs so that victims of overseas terrorism would be compensated. They are instituting grant programs to help cover these costs. The Board of Crime Control is the entity in Montana that receives those funds. They will be allocated by the states. The grant funding comes from the federal government under the Victims of Crime Act to the state of Montana through the Board of Crime Control. The Board would then administer the grant funding.

**SEN. GROSFIELD** asked how the investigation of overseas terrorism would be handled?

**Ms. Baker** stated the person need not be charged with and convicted of a crime before the victim may be eligible to receive benefits. The Crime Victim's Program has access to investigative information collected during the investigation of the case.

**SEN. GROSFIELD** questioned which budget covered these costs?

**Ms. Baker** explained that other than the expenses of the hearing examiner, this would be part of the Crime Control Division's operating budget. The state will stand to lose some of the Victims of Crime Act eligibility for grant funding if this provision is not in our state law.

**SEN. DOHERTY** reiterated that his understanding regarding compensation is that we look at the victims, not at the perpetrators of the crime.

**SEN. HOLDEN** expressed concern with the cooperation received from other countries. Fraud can be a problem. We have an extended potential for larger payments due to international terrorism.

**SEN. DOHERTY** explained that the compensation would be limited to \$25,000 whether the crime occurs in or out of state. Fraud could be in-state as well as outside the state. He asked what precautions were taken for fraud?

**Mr. Kiser** stated they would work through the U.S. Attorney's Office. If they receive a claim for an event which occurred in France, they would have to submit dates, times and places. The Board would work through the U.S. Attorney's Office for verification.

**SEN. HOLDEN** commented on the need to establish guidelines as to what the state government's role is in our lives. Montanans have gone to countries which the U.S. Government has asked them not to go to. They have gone on their own.

**Vote:** The **SUBSTITUTE MOTION FAILED** on roll call vote. 7-3

**Vote:** The **MOTION TO AMEND SB 54 (sb005402.avl) CARRIED.**

**Motion:** SEN. DOHERTY MOVED THE AMENDMENT REQUESTED BY SENATOR DOHERTY, JANUARY 15. (EXHIBIT 5)

**Discussion:**

SEN. DOHERTY explained there is a cap on the payment to victims of crime. His amendment would provide that those payments go to the claimant to be used for whatever he chooses.

CHAIRMAN CRIPPEN asked Beth Baker to explain the difference between the alternate amendments.

Ms. Baker explained the amendment suggested by SEN. DOHERTY (EXHIBIT 5) would strike the 26 week cap on wage loss benefits and instead put in the provision of the law which allows for the payment of medical benefits that unless the claimant specifically requests, the medical benefits would not be paid until all of the wage loss claims had been paid. The victim would have the right to be fully compensated for wage loss before the medical benefits were paid unless the victim wanted the medical benefits paid first. The alternative amendment (EXHIBIT 4) would retain the 26 week cap but only in the event the full \$25,000 benefit limit is reached.

Mr. Kiser explained that the circumstance is that the medical is usually over \$25,000. They have reached that point on a number of claims. They have claimants who will never recover. They are placed into a confrontation with the medical providers versus the victim.

SEN. GROSFIELD summarized that SEN. DOHERTY'S amendment would use more of the crime victims compensation fund.

SEN. DOHERTY explained that if there was \$20,000 in wage loss and \$20,000 in medical bills, the victim would have the choice of first being compensated for his/her wage loss and then getting the other \$5,000 to use for medical bills. Under the Department of Justice amendment, they would only be compensated up to the 26 weeks and the remainder would go toward medical bills.

SEN. HOLDEN questioned how this was handled to date?

Mr. Kiser explained that at this time they have the victim decide. The problem is with the medical providers. They have no guidance with respect to statute to handle it this way.

CHAIRMAN CRIPPEN commented that this would not relieve the injured party of the obligation to pay their medical bills. This is a reimbursement aspect.

**Substitute Motion:** SEN. HOLDEN SUBSTITUTED A MOTION TO ADOPT THE AMENDMENTS PREPARED BY THE DEPARTMENT OF JUSTICE.

**Vote:** The substitute motion failed.

Vote: The motion by SEN. DOHERTY carried with SEN. HOLDEN and SEN. REINY JABS voting no.

Motion: SEN. ESTRADA MOVED SB 54 DO PASS AS AMENDED.

Discussion:

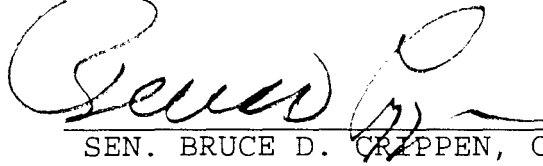
SEN. BARTLETT, referring to page 4, line 27, questioned the broad language under collateral source. What is the Department trying to achieve?

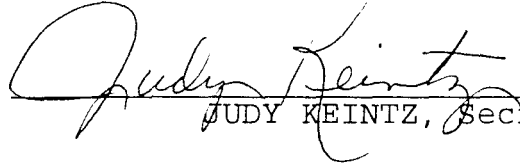
Ms. Baker stated the intent is that in the event the victim sues another person and is successful, the victim's program may recover if the victim receives a recovery from the offender or from a collateral source. The clear intent is to make sure the Crime Victim's Program can assert its subrogation interest if the victim successfully sues someone else over the very incident. The subrogation statute does not appear in this bill. It is fairly detailed concerning when the Victim's Program can recover when the victim sues. Mr. Hill, MTLA, suggested that statute be amended instead of the definition of collateral source.

Vote: The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 12:08 p.m.

  
SEN. BRUCE D. CRIPPEN, Chairman

  
JUDY KEINTZ, Secretary

BDC/JJK