

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN LORENTS GROSFIELD**, on January 20, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (325) of the State Capitol, Helena, Montana.

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 159, SB 160, SB 161,
posted January 10, 1997

Executive Action: SB 106, SB 143, SB 158,
SB 160, SB 161

NOTE: Equipment malfunctioned, and there is no tape recording for this meeting.

HEARING ON SB 158

Sponsor: SENATOR SHARON ESTRADA, SD 7, Billings.

Proponents: Bob Gilbert, Montana Magistrates Association.

Opponents: None

Opening Statement by Sponsor: SENATOR SHARON ESTRADA, SD 7, Billings. This bill was requested by the Code Commissioner, and clarifies oath of office issues for Justices of the Peace, amending 3-10-231, MCA.

Proponents' Testimony: Bob Gilbert, Montana Magistrates Association. The Association stands in support of SB 158.

Opponents' Testimony: None

Questions From Committee Members and Responses: VICE CHAIRMAN LORENTS GROSFIELD. How would you determine when someone's name on the list was no longer valid? SENATOR ESTRADA. The bill is a bit more complicated than it looks. Code Commissioner, Greg Petesch. If a Justice of the Peace is not available, the Clerk of the Court can provide a qualified list to sheriffs and peace officers. This provides for a clear procedure for valid law enforcement proceedings.

Closing by Sponsor: SENATOR ESTRADA provided the Committee with a summary also containing amendments drafted by staff attorney, Valencia Lane (EXHIBIT #1, #2).

HEARING ON SB 160

Sponsor: SENATOR SUE BARTLETT, SD 27, Helena.

Proponents: None

Opponents: None

Opening Statement by Sponsor: SENATOR SUE BARTLETT, SD 27, Helena. SB 160 is also a Code Commissioner bill. It arose from a letter sent to the Montana Supreme Court, and forward by Chief Justice Turnage to the Code Commissioner (EXHIBIT #3).

The bill is directed at the legal process of name changes, especially those seeking to change their name for protection from harassment. It allows the change to remain private and not be published, as is done now. It also allows the Court the discretion to seal a record. I believe it is a straightforward bill.

Questions From Committee Members and Responses: VICE CHAIRMAN GROSFIELD. Will there be unintended consequences? Does sealed mean the entire world, or that law enforcement and judges can get at this information? Are we doing something here we're not meaning to do? SENATOR BARTLETT. At the time a petition is made to the Court, it would go forth under a sealed record basis, and the Court would determine if the person is at risk. Once a court record is seal, it can only be opened through another court order. Sheila Bronchorse, Clerk of the District Court, Dillon. I now see some things I didn't earlier. We wondered how it would affect a birth certificate.

SENATOR RIC HOLDEN. How would a name change affect debts owed?
SENATOR BARTLETT. I believe this could be addressed at the hearing with regard to proceeding on a sealed-record basis.

SENATOR HOLDEN. If a crime victim changes their name, how would that person then receive notices from the Board of Crime Control?
SENATOR BARTLETT. I believe such a person would easily forego victim's compensation if he or she were desperate enough to go through a name change.

SENATOR HALLIGAN. The person would do a separate motion? I don't believe they could do it in the petition. It would be less expensive to attach an affidavit to the petition. **SENATOR BARTLETT.** I will get this information to the Code Commissioner.

SENATOR HOLDEN. How would a name change affect social security retirement? **SENATOR BARTLETT.** I will check that out, as well.

Closing by Sponsor: **SENATOR BARTLETT** thanked the Committee, and said she would get answers to their questions prior to executive action on the bill.

HEARING ON SB 161

Sponsor: **SENATOR SUE BARTLETT, SD 27, Helena.**

Proponents: **Jim Smith, Montana Sheriffs and Peace Officers Association**

Opponents: None

Opening Statement by Sponsor: **SENATOR SUE BARTLETT, SD 27, Helena.** In the 1995 Legislature, a debate arose concerning the use of the term "chief law enforcement officer". It was first used in conjunction with the Brady bill at the federal level. In the 1995 term, legislation was passed having to do with pawn brokers or dealers. The different terminology is preferred among Montana law enforcement, and would replace "chief law enforcement officer" with "police chief" (city), or "sheriff" (county).

Proponents' Testimony: **Jim Smith, Montana Sheriffs and Peace Officers Association.** The passage of SB 246 in 1995 did cause some confusion among law officers. Mr. Smith read statements from two law enforcement communities with regard to responsibilities and concurrent jurisdictions already adequately described in Montana law (**EXHIBIT #4**).

Questions From Committee Members and Responses: None

Closing by Sponsor: **SENATOR BARTLETT** made no closing comments.

CHAIRMAN CRIPPEN reassumed the chair for executive session. He explained the responsibility of the Committee to point out proper procedure to others on the Committee and to those testifying. He

also asked the Committee members to be prepared to speak on these bills on the Senate floor.

EXECUTIVE ACTION ON SB 161

Amendments: None

Motion/Vote: SENATOR BARTLETT MADE A MOTION THAT SB 161 DO PASS. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 158

Amendments: (SEE EXHIBIT #2). Offered by SENATOR ESTRADA and prepared by Valencia Lane.

Motion/Vote: SENATOR HALLIGAN made a motion to strike the remainder of the sentence following "officers" and insert ".", on page 1, line 28. The motion carried unanimously.

Motion: SENATOR ESTRADA made a motion to approve the amendments drafted by Valencia Lane.

Discussion: Valencia Lane. The title was a little short in saying what the bill does, so I changed it to simply make it more clear.

SENATOR HALLIGAN. In your research, did you come across a time period that the oath of office is good for? Valencia Lane. This qualification for Justice of the Peace substitute is usually for a specific period of time. SENATOR HALLIGAN. We may want to give some guidance there. Valencia Lane suggested inserting "current" on page 1, lines 27-28, prior to "list".

SENATOR ESTRADA included the suggestion made by Valencia Lane in her motion.

Vote: SENATOR ESTRADA'S MOTION TO ADOPT THE AMENDMENTS TO SB 158 CARRIED UNANIMOUSLY.

VICE CHAIRMAN GROSFIELD. The "current list" language first with what SENATOR HALLIGAN is talking about. SENATOR ESTRADA. I agree with SENATOR HALLIGAN that clarification is needed.

SENATOR BARTLETT. The Justice of the Peace must create a list of substitute Justice's of the Peace within thirty days of election, so it would appear the list would be good for the term of that Justice of the Peace; however, the Committee may wish to make the list for a shorter period of time.

SENATOR BARTLETT. The list is to be filed in the office of the Clerk and Recorder, but the most logical place would seem to be the Clerk of the District Court. Could the Clerk and Recorder send a certified copy to the Clerk of the District Court? This may work more efficiently.

SENATOR HALLIGAN. That is a good point, as there is a lot of turnover in attorneys trying to help out with the Justices of the Peace.

Motion/Vote: **SENATOR ESTRADA MADE A MOTION THAT SB 158 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 143

Motion: **SENATOR HOLDEN MADE A MOTION THAT SB 143 DO NOT PASS.**

Discussion: **SENATOR HALLIGAN.** Is there any interest in tabling this bill and giving **SENATOR TOEWS** an opportunity to correct the problems in the bill? This is a problem in Montana.

SENATOR ESTRADA. Some ranchers are unhappy about the bill.

SENATOR HOLDEN. I do believe we need some legislation of this type, but we need more time to iron out the problems in the bill.

CHAIRMAN CRIPPEN. I can sympathize with the situation. There is remedy of law now, if the land is used for agricultural purposes. So, if its being used for a home or other use, there's still a problem. I don't mind tabling the bill, but I see problems the way it's drafted now. Banks will loan on these lands based on other assets of the applicant, so I'm not all that sympathetic with the bill.

SENATOR JABS. What about prescriptive easements?

Substitute Motion/Vote: **SENATOR JABS MADE A SUBSTITUTE MOTION TO TABLE SB 143. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 31

Discussion: **SENATOR HALLIGAN.** What if we don't pass this bill, and the House passes their bill with "voluntary" language?

CHAIRMAN CRIPPEN. I am aiming at having the Committee read the Department of Corrections amendments, and taking Executive Action on Wednesday, January 22, 1997.

EXECUTIVE ACTION ON SB 106

Amendments: Department of Justice, sb0106.avl (**EXHIBIT #5**)

Brenda Nordlund, Department of Justice, drafter of the amendments. Amendment #2 is necessary, as we need to strike the subparagraph reference. It is much easier that way. Amendments #3, 4, and 5 are technical and are all related. They change language in terms of conditions as to when testing can be required. Amendments #6 and 7 are needed to modify officer. Amendment #9 describes information to be provided to the Department of Justice prior to suspension of a license. Amendment #11 parallels the amendment to 61-8-403, MCA, and

reflects three conditions proposed in the prior amendment, as well as limits of presentation in court on page 3, sub (iv).

Discussion: VICE CHAIRMAN GROSFIELD. I would like to see one or two tests, and not three or four or sixteen tests. I would propose to strike language for testing "if breath test is .10 or greater, and could be also followed by blood test for drugs".

Brenda Nordlund. The breath test would be the first test, and the blood test would be the second test.

VICE CHAIRMAN GROSFIELD. The language says one or more. I am concerned about an officer being frustrated with someone and administering more tests than necessary.

Brenda Nordlund. Amendment #14 states that the right to obtain an independent test, should not be unreasonably impeded by law enforcement officers, but it is not the officer's duty to obtain exculpatory evidence. The individual could get the assistance of someone else, generally via written release, to stop any civil liability any officer may have.

It could be argued that the officer acted unreasonably if they had no other means to get to a hospital, etc., but it is not the responsibility of the State to provide this type of assistance.

CHAIRMAN CRIPPEN. We are talking about refusing to take a blood test. **Brenda Nordlund.** Then the officer may very well want to transport the individual to preserve evidence through a facility for independent testing.

CHAIRMAN CRIPPEN. So the door could be left open for the officer to transport an individual who has no other means of obtaining independent testing. **Brenda Nordlund.** I would want to clarify that the officer had "no duty".

Motion: SENATOR HALLIGAN MADE A MOTION TO ADOPT THE AMENDMENTS PROPOSED BY THE DEPARTMENT OF JUSTICE.

Discussion: SENATOR HOLDEN. On page 1, part 2, line 19, is current law being changed here? **Brenda Nordlund.** This is merely an internal reference problem. In 61-5-212, MCA there is a reference to 61-8-402.5, MCA. Subsection 5 is no longer accurate.

SENATOR HOLDEN. Has there been any hardship to families with one vehicle since this legislation was enacted? **Brenda Nordlund.** Not to my knowledge.

Substitute Motion: VICE CHAIRMAN GROSFIELD MADE A SUBSTITUTE MOTION to segregate amendment #14, and on line 3, following "officer" and insert "may".

SENATOR HALLIGAN WITHDREW HIS MOTION TO ADOPT THE DEPARTMENT'S AMENDMENTS IN THEIR ENTIRETY.

Motion/Vote: SENATOR GROSFIELD CHANGED HIS MOTION TO ADOPT AMENDMENT #14 WITH THE CHANGES HE PROPOSED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATOR JABS, WHO VOTED NO.

Motion/Vote: SENATOR HALLIGAN MADE A MOTION TO ADOPT AMENDMENTS #1-13 AND #15, ALONG WITH THE APPROVED CHANGES TO AMENDMENT #14. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE, EXCEPT SENATOR ESTRADA WHO VOTED NO.

Discussion: SENATOR DOHERTY. I had a problem with PBT being supported in 1995, as Mr. Lively said portable or preliminary brass tester (PBT) was to be used for probable cause only, and this was part of the findings of Judge McKittrick. It was built for probable cause function. How many are and are not using it as such? Both five percent and ten percent was used in testimony with regard to variance.

This matter is currently on appeal with the Montana Supreme Court. We just did this in 1995, and adopted administrative rules. So, I want to know why the Department of Justice wants this change now. **Brenda Nordlund.** I believe the 1995 language in 61-8-409(2), MCA, was ambiguous. "May" is permissive, but the Court read it as restricting. The reference was in the regulation prior to adoption of PBTs and was also to apply to horizontal gaze nystagmus (HGN). When the Great Falls cases began to percolate up, then we saw the problem with non-evidential. The Court doesn't segregate evidence in terms of probable cause, re: the case of Chief. In 61-8-409, MCA, (City v. Strizich), the Department needs to pick its fights carefully, and is, thus, seeking clarification from the Legislature with regard to DUI trials.

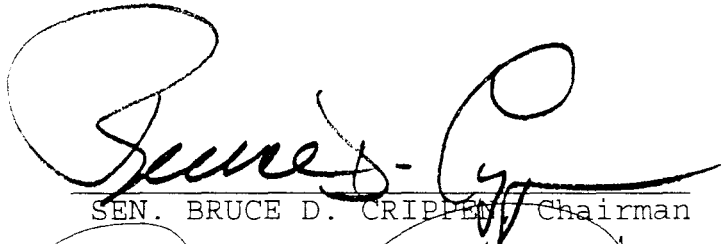
SENATOR DOHERTY. It came out in Chief that other states don't use PBT. This is a policy decision for the community. There are wide variations in reliability of tests. This is one tool, and in our society, if it's a machine, we tend to believe it. This would make my job easier, if I wanted to prosecute DUIs, but in terms of allowing the State to amass evidence against an individual, in terms of what the Department of Justice wants, I don't know if this is proper.


(EXHIBITS #6, #7, #8, #9)

Motion/Vote: SENATOR HALLIGAN MADE A MOTION THAT SB 106 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS ESTRADA and DOHERTY, WHO VOTED NO.

ADJOURNMENT

Adjournment: 11:38 a.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB