

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 21, 1997, at 10:00 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 157, January 10, 1997
SB 166, January 10, 1997
Executive Action: SB 160 DO PASS AS AMENDED
SB 157 DO PASS

HEARING ON SB157

{Tape: 1; Side: a; Approx. Time Count: 10:03; Comments: .}

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Ellen Engstedt, Don't Gamble with the Future
Janna O'Connell, Student
Mick Robinson, representing Governor Racicot
Beth Baker, Department of Justice
Betty Waddell, Montana Association of Churches
Arlette Randash, Eagle Forum
Julie Ippolito, Citizens Against Gambling Expansion

**Laurie Koutnik, Executive Director of Christian
Coalition of Montana
Cory Laird, Montana Catholic Conference**

Opponents: **Brian Poppil
 Jared R. Harris, Student**

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, introduced SB 157. This bill is identical to SB 109 from last session. That bill passed out of this committee on an 8-3 vote. It passed the Senate. It passed out of the House Judiciary Committee on a 14-5 vote. It died on the floor of the House. This bill would give the legislature the ability to change the legal age for gambling. Although you have to be 21 years old to drink alcohol in Montana, you do not need to be 21 years old to gamble. As an 18 year old, you can gamble as much as you want. Seventy percent of our high school seniors are 18 years old. From a technical perspective the legislature cannot simply change the age. Our Constitution provides that a person is an adult at 18 years of age for all purposes with the exception of purchasing, consuming or possessing alcohol beverages. Our Constitution does not state that the drinking age is 21. Instead, it states that the legislature can establish the legal age for drinking. We have chosen 21. It seems logical to make that the same for gambling. The only places which can have gambling licenses are those that already have liquor licenses. If this bill should pass, it would go on the ballot. If it passes a vote of the people, the next session of the legislature could then change the age to coincide with the drinking age of 21.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:07; Comments: .}

Ellen Engstedt, Don't Gamble with the Future, presented her written testimony in favor of SB 157, **EXHIBIT 1**.

Janna O'Connell, Student, spoke in favor of SB 157. She read a letter which she wrote which was published in the Independent Record. "As a student in high school where many of my friends are now beginning to turn 18, I want to express my concern with the growing rate of teenage gambling. I really appreciated the past articles related to gambling which have been printed in the paper. I think they all contain valuable information on the seriousness and dangers of gambling. Not just for experienced gamblers, but for those who are just starting to experiment as well. I learned long before I was 18 that gambling is an addiction and it affects everyone around you. Someone very close to me is now a recovering, compulsive gambler. Recovery did not come quickly and certainly not easily. I believe it will take better education of the young adults, who are not quite sure what they could be getting themselves into when they drop their first quarter into a machine. I think the recent articles have been a step in the right direction

to making people aware of this addiction." I also think that this bill is a step in the right direction to make teens realize that gambling needs to be taken seriously and isn't all the silver and gold they think it is. Handout - **EXHIBIT 2**.

Mick Robinson, Director, Department of Revenue, representing Governor Racicot, spoke in favor of SB 157. He referred to the Louisiana study which was covered in the September issue of Newsweek. It indicated that the compulsive gambling rate of the group from 18 to 21 was triple that of the rate of adults. There is a significant link between video games and video poker.

Beth Baker, Department of Justice, stated the Department oversees the regulation of gambling in Montana and they are aware of the enforcement problems which are caused by having kids legally in a bar for one purpose and not for another purpose. There is growing concern, nationwide, about the susceptibility of young adults to gambling addiction problems. This bill would simply allow the legislature and the people of Montana the flexibility to review all of that evidence to determine an appropriate age for gambling.

Betty Waddell, Montana Association of Churches, urged the committee to pass SB 157. In 1992, Dr. Rachel Volberg of Gemini Research of Albany, New York, studied gambling in Montana. She stated that respondents who become nervous about their wagering, as well as those who scored as problem or probable pathological gamblers, were more likely than other respondents to have started gambling before reaching 14 years of age. Respondents who scored as problem or probable pathological gamblers were also more likely to presently be under 30 years of age. Together this data suggest that the period of time between starting to gamble and experiencing gambling related problems is shorter for problem and probable pathological gamblers in Montana than it is for pathological gamblers entering professional treatment programs in the northeastern part of the United States. Volberg concluded that lifetime problem and probable pathological gamblers in Montana are significantly more likely to be under the age of 30 than the general population. Last fall she met with a group of concerned citizens in Harlowton, Montana. They were concerned because students were having their lunches in the bar and gambling during the lunch hour. The Montana Association of Churches believes young people should enjoy special protection to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and with freedom and dignity.

Arlette Randash, Eagle Forum, presented her written testimony, **EXHIBIT 3**.

Julie Ippolito, Citizens Against Gambling Expansion, presented her written testimony in support of SB 157, **EXHIBIT 4**.

Laurie Koutnik, Executive Director of Christian Coalition of Montana, rose in support of SB 157. According to experts we know an estimated 5 to 10 million people are affected with serious

gambling problems. Along with that are the social pathologies which are sometimes overlooked: divorce, bankruptcy, theft, job loss, skipping school, child abuse, neglect, attempted suicide, and other destructive behaviors run high on the list. These are the tradeoffs which state government makes when we legalize gambling and become dependent upon it for revenue. Are these destructive behaviors what we desire to impart to our children? Most 18 year olds are still residing at home and a high percentage are still enrolled in our local high schools. With our current age of 18 year olds to gamble and the link with liquor establishments, we are encouraging children to be involved in behaviors which are not in their best interests. These are the same kids that you and I spent our hard earned tax dollars on to encourage them through self-esteem programs, such as DARE, to resist alcohol and drugs. In an effort to help them chose healthy lifestyles, we felt we should invest this time and this money. By legalizing gambling, we now have to invest additional dollars to provide treatment and counseling for many of these same youths who have become addicts. Let's be consistent in prevention rather than addressing treatment. By putting this to the vote of the people and allowing them to speak, the people will then have a say in this matter.

Cory Laird, Montana Catholic Conference, rose in support of SB 157.

Opponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:28; Comments: .}

Brian Poppil rose in opposition to this bill. In this state, 18 years of age is majority. They have all the adult rights, with the notable exception of drinking. Gambling may be dangerous to young adults, but they are allowed to drive at 14 1/2. They are allowed to sign contracts and go into business on their own. He has been investing in the stock market since age 12. If that is not gambling, he doesn't know what is. This restricts rights to certain groups of adults. If evidence about middle-aged people was an issue, would we ban gambling between the ages of 30 and 35? If you wanted to be consistent, you would have to do that. Middle aged and elderly people are the ones who have the most problem with gaming. A quick trip to Las Vegas will confirm that. If you want to outlaw gambling, make it consistent. Prohibitions do not work. The only proof you need to learn that that has not worked with alcohol, is to travel around any college campus in the country on a Friday or Saturday night. If you think gambling laws will be any different, all I have to say is, want to bet?

Jared R. Harris, Student, presented his written testimony opposing SB 157, **EXHIBIT 5**.

Informational Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 10:36; Comments: .}

SEN. STEVE DOHERTY asked SEN. GROSFIELD to address the opponents arguments regarding allowing 18 years olds to contract, serve on juries, and go into the armed forces.

SEN. GROSFIELD explained that this is dealing with a different area. We have a constitutional obligation as citizens to vote. We have a constitutional obligation to serve on juries. Gambling and liquor consumption are recreational activities. As public policy makers, we need to look at the effects of a variety of activities and legislate accordingly. We regulate activities of citizens.

SEN. DOHERTY asked what age he would like to set for gambling?

SEN. GROSFIELD stated his intention was to change the age to 21. The Department of Justice made the point that people can be in a bar or tavern legally for one purpose and illegally for another purpose. The tavern owners are not opposed to this bill. It is a logistical problem for them.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 10:39; Comments: .}

SEN. GROSFIELD commented that the constitutionality aspect came up last session as well. That was the only opposition to this bill. It is appropriate for the legislature to regulate activities which have been demonstrated to have negative effects on citizens. He commented on the fact that gambling addictions for youth are three times that of adults. A Time magazine article stated that after surveying 2700 high school students in four states, a psychologist concluded that students are two and half times as likely as adults to become problem gamblers. A sociologist at St. John's University in New York found eight times as many gambling addicts among college students as among adults. There are approximately 8 million compulsive gamblers in the United States of which 1 million are teenagers. Gambling in Montana is taxed. Two thirds of that tax goes to local governments. In some of our communities local governments depend on this for their budget. What is really disturbing to him and does not make him proud as a father, a citizen, and an elected public policy maker, is that Montana local governments get a portion of their budget revenue from the gambling losses of teenagers. That just is not good public policy.

HEARING ON SB 166

Sponsor: SEN. JIM BURNETT, SD 12, LUTHER

Proponents: None

Opponents: Russ Hill, Montana Trial Lawyers Association
Ann Gilkey, Public Health and Human Services
Mary Ellerd, Montana Probation Officers Assoc.
Scott Crichton, ACLU

Kate Cholewa, Montana Women's Lobby
Bob Gilbert, Montana Magistrate's Association

Opening Statement by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:43; Comments: .}

SEN. JIM BURNETT, SD 12, LUTHER, presented SB 166. His motivation for this bill was the vandalism and criminal mischief in his area. The first amendment to the law is on page 2. The real text of the amendment is upon finding of guilt of criminal mischief involving an act of vandalism, the jury or judge shall decide whether a public spanking on the bare buttocks will occur and the number of strokes involved. He had a number of phone calls regarding the boy who was spanked in Singapore. After talking with the young person who was convicted of vandalism and sentenced to seven strokes by the cane, the State Department reduced it to five strokes. The young man said it hurt him for several days but it also taught him a lesson. Criminal mischief provisions are not adequate. The threat is the deterrent here. When someone is speeding and gets caught, they pay the consequences. In this case, when a person was convicted, he would be subject to a public spanking. The part of the bill which is most important is on page 5, which states the term (physical injury) does not include spanking of a child by a parent for disciplinary or behavior modification purposes. He wants parents to realize that spanking for modification of behavior is not cruel and unusual. The letter he provided the committee is only one of many he has received, **EXHIBIT 6**.

Proponents' Testimony: None

Opponents' Testimony:

{Tape: 1; Side: b; Approx. Time Count: 10:51; Comments: .}

Russ Hill, Montana Trial Lawyers Association, addressed the portion of the bill which dealt with public spanking. The definition of criminal mischief involving an act of vandalism is essentially stealing, destroying, or damaging public property. The bill only applies to a person twelve years of age or older. Under law, a corporation is also a person. What MTLA objects to is the failure in the bill to address penalties when corporations get involved in the same kinds of damage to public property. Corporations do not have bare buttocks. MTLA hates to see the legislature insist on personal responsibility and dismiss corporate responsibility and would suggest an amendment requiring corporate officers drop their drawers just like the rest of us.

Ann Gilkey, Public Health and Human Services, commented the agency opposes the substance of this bill and is concerned specifically with Section 2 which excludes spanking from the definitions of child physical and child sexual abuse without any limitations. This confuses existing law and is not necessary.

Spanking is legal in Montana. Causing physical injury to a child, however, may be abusive and that child may need protection. Existing law defines injuries which indicate that the parent has used excessive force and has physically harmed that child. Without limits on the resulting injury when a parent spansks a child, we are opening the door to excessive and abusive discipline with no protection for that child. Children in Montana have died from injuries resulting from what began as disciplinary spanking to modify a behavior.

Mary Ellerd, Montana Probation Officers Association, commented they appreciate **SEN. BURNETT'S** concern with vandalism as a growing problem. They feel this is a backward looking approach to the problem of vandalism. Public censure can be a valid deterrent for vandalism.

Scott Crichton, ACLU, spoke in opposition to the bill. This bill is cruel and unusual. The acts for which such punishment could be authorized would be under (C) hanging, suspending, hoisting, affixing, or displaying on or from public or private property any flag, banner, bunting or standard bearing a word, slogan, caricature, drawing, mark, or symbol. This flies in the face of First Amendment rights for young people.

Kate Cholewa, Montana Women's Lobby, objected to the entire substance of this bill. With the three days of advertising the spanking, the people who would be drawn out of the woodwork to see a child spanked are people better off staying in the woodwork.

Bob Gilbert, Montana Magistrate's Association, had a concern with page 2, line 22 which talked about affixing, posting or displaying on public or private property any poster, placard, advertisement, bill, notice, paper, or other document. Property includes your house or your automobile. As you campaign for public office and leave bills on the windshield of cars, that would be vandalism.

Informational Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10:59; Comments: .}

SEN. GROSFIELD asked if any statute specifically allowed spanking of children?

Ms. Gilkey explained the law does not specifically say that it is prohibited or allowed behavior. The law defines child abuse. To become abusive there has to be physical injuries. HB 189 will clarify that definition to a higher standard. You can spank, but if you inflict physical injury, it may result in agency intervention if they felt a need to protect the child.

SEN. GROSFIELD stated there is a certain concern by parents. He asked **Ms. Gilkey** to expand on this issue.

Ms. Gilkey explained this is a difficult area and the agency is trying to provide a definition to the public so that parents will know what excessive force means. The definition is tied to the injury that the child sustains instead of the activity of the parent. If the injury indicates that the child is at risk of being continually harmed or killed, the state may intervene to protect that child.

SEN. RIC HOLDEN asked **Ms. Cholewa** for their position on spanking.

Ms. Cholewa stated they have run anti-violence projects. This bill does not address parents spanking their children. It addresses a sheriff or a sheriff's designee publicly spanking a child.

SEN. HOLDEN asked **Ms. Gilkey** if there was a definition of spanking in the law?

Ms. Gilkey stated there was not.

SEN. HOLDEN commented that a parent who had spanked her child in the store was reported for child abuse. He asked what the department's position would be in this case?

Ms. Gilkey stated if they received a call they are mandated to check out the problem. Someone would talk to mother and the witness and then look at the child. The department would only become involved if the level of punishment inflicted on the child caused a physical injury that would indicate that child was at risk.

SEN. HOLDEN asked if a red mark on the bottom of a child signified child abuse?

Ms. Gilkey stated that the existing law stated that permanent or temporary disfigurement could be construed to be a red mark. HB 189 would make it clear that there would have to be more substantial injury than that. A red mark would not be deemed abusive unless they received a call at noon and they visited the family at 8:00 p.m. and there was still a red mark in the definition of a hand. This may indicate excessive force was used. They are trying to clarify the definition so there would need to be the soft tissue swelling, bruising, or bleeding.

SEN. REINY JABS commented that when he was growing up if someone got a spanking at school they would get another one at home. Now if a child is spanked at school the parents sue the school. He asked if the sponsor thought the public would accept a spanking on a bare buttocks?

SEN. BURNETT explained that in Singapore there is no graffiti. You can leave your car unlocked and no one will bother it. Penalties which hurt need to be established. When he was in school, his principal weighed over 200 pounds. He used a paddle. In raising his own family, his children could expect a spanking if they got out of line. Any parent should have that right. After this bill was exposed to the press, it was printed in the Missoulian. Two talk shows called him. He has heard from 30 talk shows across the nation. If spanking is put in the statute and the judge has the right to decree it, the threat is there. A law is passed to correct something. It's possible that no judge will ever do it.

SEN. MIKE HALLIGAN was concerned with page 6 of the bill wherein criminal mischief, i.e., writing God Bless America on the side of a barn, was equated with rape, deliberate homicide, mitigated deliberate homicide. Why would you want a youth tried in adult court for a simple vandalism act?

SEN. BURNETT answered if you harm someone's property, that is wrong.

SEN. HALLIGAN felt that restitution or some type of skill development by that child would better serve that child.

SEN. BURNETT commented that a youth raking leaves or picking up litter along the highway is not embarrassing where a spanking would be.

SEN. HALLIGAN continued that it could be construed as a badge of honor to get the spanking. Would the kids be laughing at us for passing a bill like this?

SEN. BURNETT felt the courts were much too lenient regarding criminal mischief. His main interest is allowing the parents the right to lick their offspring.

SEN. ESTRADA stated that in her opinion the federal and state governments should stay out of the homes of the families. She understands the intention of the bill. Eleven, twelve and thirteen year olds are making fools of us. We have thirteen and fourteen year olds shooting each other and adults. Something needs to be done in this age bracket. She asked if the department would consider working with the bill and make it a little more palatable to send a statement to the young people and their parents.

Ms. Gilkey commented that there are several Youth Court Act bills introduced this session to try to address some of these problems. If I hit an adult and caused an injury, it would be a crime. An injury to a child in the home involves the state's interest. They want to protect the child from being beaten excessively or killed. They would be willing to work with the committee on an amendment.

SEN. SHARON ESTRADA asked the sponsor if he would be willing to work with amendments? He responded that he would.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 11:26; Comments: .}

SEN. BURNETT stated that he doesn't expect that a public spanking will be allowed, but if it is in the statute it would be a threat. He is after a deterrent.

EXECUTIVE ACTION ON SB 160

Amendments: sb016001.agp EXHIBIT 7

Discussion: SEN. SUE BARTLETT explained that the clerks of district court were interested in making sure that any proceeding under this bill which went forward under a sealed record basis, be designated as being on that basis from the very outset. The first part of the amendment would require that the determination on whether the name change petition is to be conducted on a sealed record basis or not, must be made prior to the hearing on the petition itself. The papers and records are to be a permanent record but withheld from inspection. A person other than the petitioner may not have access to the records without showing good cause and getting an order from the judge. By allowing the petitioner to be an exception in terms of having access to the records, they believe it would be possible for the petitioner to obtain certified copies of the name change as needed for such issues as social security.

Motion: SEN. BARTLETT MOVED TO AMEND SB 160.

Discussion: SEN. HOLDEN asked about the practical procedure. If a business wants to track down a debtor, how would that be accomplished?

SEN. HALLIGAN commented that most businesses rely on the information the court puts out identifying persons selling property, in bankruptcy, going through name changes, etc. The new name would not be reported. The indication that a new name was applied for would be a public record. Changing your name does not remove your debt.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion: SEN. BARTLETT MOVED SB 160 DO PASS AS AMENDED.

Discussion: SEN. GROSFIELD had concerns regarding the possibility that a person seeking a sealed record may also have other problems. They could be a felon in another jurisdiction or may have substantial debt. There should be a background check by law enforcement before the sealed record is allowed.

SEN. BARTLETT explained that they are trying to provide a very limited exception to the publicity attendant upon a name change conducted under the existing statutes. The person cannot proceed on a sealed record basis automatically. They need to persuade the judge by showing probable cause that their safety is at risk if it is made public before this becomes a sealed record. Judges are aware of the concerns you have expressed and would probe and make requirements for the individual to address those issues.

SEN. MCNUTT asked if the judge would ordinarily research indebtedness, criminal activity, etc.?

SEN. HALLIGAN felt the court would look at the abusive situation facts but unless there was an affidavit requirement, the judge would not ordinarily investigate further because they do not have time to do so.

SEN. BISHOP believed this to be a good bill. It has such limited application. There are thousands of people using an alias. They have not legally changed their name.

SEN. BARTLETT asked **SEN. HALLIGAN** if he thought a judge conducting a closed hearing on whether the petitioner's safety was at risk would be unconcerned about debts and background knowing that if the judge makes the decision that the safety is at risk, it will be on a sealed record basis and the usual safeguard of publication will not be present.

SEN. HALLIGAN felt that unless the court was told that they needed to make a finding on another area, they will only focus on the safety.

SEN. HOLDEN stated that the person who is harassing the individual has an idea of the individual's relatives, friends, customs, etc. Is changing a name really going to help or is this just opening up other problems with this bill?

SEN. BARTLETT felt that an abused individual would have done everything possible including moving, eliminating contacts with former employers or friends, cut all ties in an effort to escape the abuse before reaching the point where a name change is the last thing left to help provide anonymity to avoid further abuse.

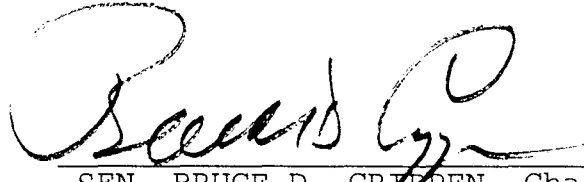
Vote: The **MOTION PASSED** with **SEN. GROSFIELD** voting no.

EXECUTIVE ACTION ON SB 157

Motion/Vote: **SEN. HOLDEN MOVED SB 157 DO PASS.** The **MOTION PASSED** with **SEN. DOHERTY** voting no.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:05 p.m.

A large, stylized handwritten signature in black ink, likely belonging to Sen. Bruce D. Crippen.

SEN. BRUCE D. CRIPPEN, Chairman

A handwritten signature in black ink, likely belonging to Judy Keintz.

JUDY KEINTZ, Secretary

BDC/JJK