

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 22, 1997, at 10:00 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)

Members Excused: Sen. Walter L. McNutt (R)

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 163, SB 167,
posted January 10, 1997
Executive Action: SB 167, SB 31

HEARING ON SB 167

Sponsor: SENATOR VIVIAN BROOKE, SD 33, Missoula.

Proponents: Angela Fultz, Office of the Secretary of State
John Connor, Department of Justice
Robert Throssell, Montana Association of Clerks and
Recorders
Kathy Sewell, Montana Coalition Against Domestic
Violence
Kate Cholewa, Montana Women's Lobby

Opponents: None

Opening Statement by Sponsor: SENATOR VIVIAN BROOKE, SD 33, Missoula. We did put in an exemption for law enforcement officers last session (language on page 1, lines 27-30 of the bill). SB 167 expands this provision to victims of crimes. I will reserve the right to close.

Proponents' Testimony: Angela Fultz, Office of the Secretary of State. I believe this bill will allow such people to participate more fully in voting and the legislative process. The bill lists what is acceptable and what is not for the counties.

John Connor, Department of Justice. The Department supports the bill for the public policy reasons already stated.

Robert Throssell, Montana Association of Clerks and Recorders. The peace office exemption has not been a problem in maintaining voter lists. We ask the Committee to give this bill a do pass recommendation.

Kathy Sewell, Montana Coalition Against Domestic Violence. We support the bill for the reasons previously stated.

Kate Cholewa, Montana Women's Lobby. We support SB 167.

Opponents' Testimony: None

Questions From Committee Members and Responses: SENATOR RIC HOLDEN. If you are registered to vote, is it correct that your name, but not your address, will appear on the voter register? SENATOR BROOKE. Yes.

SENATOR REINY JABS. Who makes the final decision as to whose name and/or address is on the register? SENATOR BROOKE. Several criteria are listed on page, 2, lines 1-12, subsection (6), (i), (ii), (b), (c), which must be met. This is a fairly high standard, requiring actual proof of the situation, after which the election officer is required to remove the address.

SENATOR MIKE HALLIGAN. Is there any federal election on voter files that would pre-empt Montana from implementing this? Angela Fultz. I will double check this and get back to you, but I don't think so.

Closing by Sponsor: SENATOR BROOKE. This also includes victims of domestic assault (page 4), where law enforcement has had to intervene. This is an issue of safety, and is one simple way to afford protection to victims.

HEARING ON SB 163

Sponsor: SENATOR CHRIS CHRISTIAENS, SD 23, Great Falls.

Proponents: Judge Nancy Luth, Great Falls.

Joshua Saunders, Amy Krogstad, Laura Martin, Nathan
Matelich, Joslin Swartz, John Semmens, Blessed
Trinity Catholic School, Great Falls
Bob Gilbert, Montana Magistrates Association

Opponents: Scott Crichton, Executive Director, American Civil
Liberties Union (ACLU)

Opening Statement by Sponsor: SENATOR CHRIS CHRISTIAENS, SD 23,
Great Falls. I have worked with fifth and eighth grade classes
from Blessed Trinity School and Great Falls City Court Judge,
Nancy Luth, who uses this in her court. The bill may need a
couple of amendments. In Section 4, line 18, following
"community", we may need to insert "at the discretion of the
Court" This might clear it up. In 46-12-201, MCA, we could add
"for entering pleas and sentencing". Some Counties might need to
purchase audio/visual equipment for this purpose.

Proponents' Testimony: Judge Nancy Luth, Great Falls. We have
several people brought from the jail to hear cases, and we
usually pronounce sentence right after taking the plea. If we go
to an audio/visual arraignment, the system could eliminate the
step of bringing the defendant from the jail to Court - thus
reducing four steps to three.

Joshua Saunders, Blessed Trinity Catholic School, Great Falls.
Joshua read from prepared testimony (EXHIBIT #1) A law passed
two years ago, allows audio/visual equipment in court. The bill
amends Title 46, MCA. Captain Redmond, of the Great Falls Police
told us that when officers are tied up in court there are fewer
of them on the streets to protect the public.

Amy Krogstad, Blessed Trinity Catholic School, Great Falls. SB
163 makes it non-mandatory to appear in court in misdemeanor
situations. The bill would help the safety of the judge, police
officers, and prisoners by averting the need to transport
prisoners to court. This would save time and money for the
Courts, and wouldn't cost the state, but rather the Counties.

{Tape: 1; Side: A; Approx. Time Count: 10:27 a.m.; Comments:
None.}

Laura Martin, Blessed Trinity Catholic School, Great Falls.
There are safety issues for police, prisoners, and judges. Judge
Luth was attacked with a sewing needle.

Nathan Matelich, Blessed Trinity Catholic School, Great Falls.
Some of my reasons for supporting this bill are the same as those
of Joshua Saunders. Some legislators may want to see prisoners
in the Courtroom because of the argument that lawyers will lose
money if this bill passes; however, prisoners still have the
right to legal representation.

Joslin Swartz, Blessed Trinity Catholic School, Great Falls. SB 163 will prevent contraband from being given to prisoners by family when they are brought to court. Right now, we must pay police to babysit prisoners at the Courthouse. SB 163 is a good bill to eliminate these problems.

John Semmens, Blessed Trinity Catholic School, Great Falls. In the past weeks we have been working with Judge Luth, Senator Chris Christiaens, and local law enforcement to draft this bill.

CHAIRMAN CRIPPEN complimented the students and the school on the presentation of their testimony.

Bob Gilbert, Montana Magistrates Association. We support the bill with the proposed amendment adding, "to include entering please and sentencing. The magistrates are concerned that the smaller courts in rural Montana would have to purchase audio/visual equipment that they cannot afford. The county attorneys support this bill with the above clarification.

Opponents' Testimony: **Scott Crichton, Executive Director, ACLU.** This concept is called telejustice. This might also be a diminution of the judicial system with regard to due process, i.e., the right to face one's accuser and having the judge look you in the eyes.

If the provisions in SB 163 are introduced and allowed, there will be substantial expansions in the future. When someone is sentenced, that results in deprivation of liberty. We need to keep this in mind, as it is inevitable that expansion will come, although it is a slippery slope when we take the process out of the people's hands. There is no provision for the defendant to say whether this is acceptable to him or her or not.

With all due respect, I ask the Committee to weigh the pluses and minuses in making this decision.

*{Tape: 1; Side: A; Approx. Time Count: #34.9, 10:40 a.m.;
Comments: None.}*

Informational Testimony: **John Connor, Montana County Attorneys Association.** The language concerning the prosecutor objecting was put into the bill because we ought to have the right to confront the defendant. It is not the intent of the bill to infringe upon the rights of defendants in any way. We would amend the bill to state "with the consent of the parties".

Questions From Committee Members and Responses: **SENATOR SHARON ESTRADA.** Have you spoken with the larger counties regarding the cost of equipment? **SENATOR CHRISTIAENS.** The largest counties already have this in place. Because this is discretionary, the smaller counties might not opt to use it.

SENATOR ESTRADA. Are you talking about VCR cameras? **Judge Luth.** They would also need live hook-ups, live communications. This is a very sophisticated system, and according to Judge Stewart in Billings, that equipment is in place.

VICE CHAIRMAN LORENTS GROSFIELD. I understand about having someone look them in the eye. In 10, MCA, is says audio/visual equipment must operate so that the defendant and the judge can see/hear each other simultaneously. So, I wonder why this is not sufficient? **Scott Chrichton.** Sometimes we learn more from being in the presence of a person versus a two-dimensional picture. When Ted Schwinden was Governor, he went to Montana State Prison and sat face-to-face with a prisoner, and then decided to commute the death sentence to a life sentence.

VICE CHAIRMAN GROSFIELD. That was a capital felony case. I believe the Legislature will probably get to the point of being able to hold statewide hearings in this manner.

SENATOR STEVE DOHERTY. If the language is changed to "at the option of the parties", would that preclude the purpose of the bill? **SENATOR CHRISTIAENS.** No.

SENATOR RIC HOLDEN. Have you drafted the amendments in the proper form? **Bob Gilbert.** No, but it wouldn't, take long. Another bill is being rewritten similarly now, and I would like to see the same for this bill.

{Tape: 1; Side: B; Approx. Time Count: 00, 10:45 a.m.; Comments: None.}

SENATOR MIKE HALLIGAN. Have you read any judicial literature on the impact of video sentencing? **Judge Luth.** I take Mr. Chrichton's concerns very seriously myself. A few in my court are confused, and I would want them to appear personally. In other cases where the defendants understand the system, audio/visual would be appropriate.

CHAIRMAN CRIPPEN. If this bill is amended to include "at the discretion of the parties", would you still object to the bill? **Scott Chrichton.** It would be a giant step toward a better bill. I would still be back when this is expanded later on. We're not opposed to technology, but we want to retain the core values associated with the rights of defendants, at the discretion of the Courts.

{Tape: 1; Side: B; Approx. Time Count: 10:55 a.m.; Comments: None.}

CHAIRMAN CRIPPEN. You heard the testimony. Put yourself in the defendant's place. Are you willing to waive your right to appear. **Amy Krogstad.** Yes, I am. I don't believe a camera or face-to-face would make a difference to me, but I would like the opportunity to make the decision.

SENATOR ESTRADA. Is being before a camera saying to the defendant, "this isn't too bad"? Might it lessen their fear of recommitting a crime? **John Semmens.** I believe the jail experience would already be scary enough.

SENATOR ESTRADA. I am absolutely impressed with the testimony and decorum of these children.

Closing by Sponsor: **SENATOR CHRISTIAENS.** This has been a good hearing. Remember, it is permissive, and the safety mechanisms are in place. I believe this is a good bill, as do the students who've had mock hearings in class and have involved in local, state, and federal law enforcement in their learning process.

EXECUTIVE ACTION ON SB 31

Amendments: **CHAIRMAN BRUCE CRIPPEN.** The **JENKINS** amendment would strike "shall" and insert "may" on page 1, line 15 (sb003102.avl). The Judge could order surgical or chemical castration. It would deal with the entire Section 502, and would give the defendant the right to voluntary submission. If the Judge doesn't order him to surgical treatment, it doesn't address chemical castration. (Department of Corrections amendments - sb003101.avl).

Motion/Vote: **SENATOR SHARON ESTRADA MADE A MOTION TO ADOPT SENATOR JENKINS' AMENDMENTS (sb003102.avl). THE MOTION CARRIED UNANIMOUSLY.**

Discussion: **VICE CHAIRMAN LORENTS GROSFIELD.** I want it in the record that this bill deals with chemical treatment, and not chemical castration, but rather surgical castration. Chemical treatment is not foolproof. It is only effective in some people, and only as long as it is taken.

Motion: **VICE CHAIRMAN GROSFIELD MADE A MOTION TO ADOPT THE DEPARTMENT OF CORRECTIONS AMENDMENTS (sb003101.avl).**

Discussion: **VICE CHAIRMAN GROSFIELD.** A couple of offenders said they want to do this. If that's what they want to do, I don't have a problem with treatment for them, but the offender must approve of the treatment.

Valencia Lane. The Department of Corrections amendment change the entire subsection, and totally negate **SENATOR JENKINS'** amendment. They make it discretionary, instead of mandatory, but there is no judicial discretion in the amendment.

CHAIRMAN CRIPPEN. **SENATOR JENKINS** has seen these amendments, and doesn't approve of them, but the decision is up to this committee.

{Tape: 1; Side: B; Approx. Time Count: #26.9, 11:16 a.m.;
Comments: None.}

SENATOR STEVE DOHERTY. Under subsections (f) and (g) on page 2 of these amendments, the Board of Pardons and Parole doesn't get involved at the time of sentencing, so we would be giving this authority to the Board of Pardons and Parole, as well as to the Judge. I believe this opens the potential of giving consent in hope of a lesser sentence which could be duress, and open up another whole can of worms. This could actually give prisoners the authority as to their sentence. Mechanically, I'm not sure this works.

SENATOR MIKE HALLIGAN. The amendments make the bill better, but **SENATOR DOHERTY** has a point, especially considering \$131 per week for treatment, and the paperwork involved. Most people can't afford this, so I believe we're not solving anything.

*{Tape: 1; Side: B; Approx. Time Count: #32.0, 11:20 a.m.;
Comments: None.}*

SENATOR ESTRADA. I would like to see the bill without the Department of Corrections amendments. In my opinion as a woman, grandmother, and mother, we need to have strong deterrents for sex offenders. Is there another way? I feel this is a gender situation because of the word 'castration'? I want to see this workable and taken to the Senate floor. **CHAIRMAN CRIPPEN.** It is not.

SENATOR RICK HOLDEN referred to page 1, line 25. Because of this language I would vote against **VICE CHAIRMAN GROSFIELD's** motion. **CHAIRMAN CRIPPEN.** With the amendments, it would still allow discretionary surgical castration or chemical treatment at the decision of the Judge. If the Judge doesn't use this discretion, the defendant can request it.

SENATOR ESTRADA. I am asking the attorneys on this committee, **CHAIRMAN CRIPPEN, SENATORS HALLIGAN, BISHOP, AND DOHERTY,** how many times a judge would say "that's it"? **SENATOR HALLIGAN.** Maybe one or two a year. **SENATOR DOHERTY.** I don't practice criminal law so I don't know.

CHAIRMAN CRIPPEN. The question is, do we want to take the discretionary aspect from the Judge, and have the defendant's discretionary aspect at all times?

VICE CHAIRMAN GROSFIELD. I am concerned about the cost, and who will pay it. If we maintain the cost with the understanding that this is not a "collar hit" on the Department, there may be some savings. Would that help **SENATOR HOLDEN's** concerns? **SENATOR HOLDEN.** Let's pass the bill out without **SENATOR JENKINS'** amendments and see where it goes.

SENATOR CRIPPEN. Do you want to strike "surgical" in Section 2? If the Department's amendments pass, it's voluntary no matter what. If not, then it is at the Judge's discretion.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT THE DEPARTMENT OF CORRECTION AMENDMENTS FAILED 5-5 IN A ROLL CALL VOTE.

Motion/Vote: SENATOR JABS MADE A MOTION to insert "chemical equivalent of" if it's in the Judge's discretion, and that it remain the same if the defendant volunteers. The **MOTION CARRIED** will all members voting aye, except SENATOR ESTRADA, who voted no.

Motion: SENATOR ESTRADA MADE A MOTION THAT SB 31 DO PASS AS AMENDED. THE MOTION CARRIED 7-3 IN A ROLL CALL VOTE.

Discussion: SENATOR DOHERTY. In my discussion with the Department of Corrections, I found there are individuals who have passed the screening process and want to get Depoprovera. Some are on it now, so why do we need this bill? What about the fact that they can go to the health food store and purchase hormones?

SENATOR ESTRADA. I perceive this bill as more than a hormone shot. I believe the bill sends a message to people with weird ideas. I know of an 87-year-old man who was raped by a young man while a resident of a convalescent center in my district. An eighteen month old baby was molested and no can determine the perpetrator.

SENATOR JABS. I believe the public wants something done.

*{Tape: 2; Side: A; Approx. Time Count: #13.9, 11:45 a.m.;
Comments: None.}*

SENATOR BARTLETT. My concern is the I believe the bill could give society a false sense of security. Actually, a perpetrator is driven by the need for power, control, and to humiliate the victim.

CHAIRMAN CRIPPEN. Depoprovera is a chemical treatment. My concern is whether a perpetrator would be more angry with such treatment, as they could not do sexual aggression, and that they may do even greater physical harm to a victim.

SENATOR ESTRADA. I believe this bill is a positive move.

VICE CHAIRMAN GROSFIELD. I move to reconsider our action on SENATOR JABS' amendment, as this is already in the bill. On line 23, the only way to get into surgical castration is with the defendant's okay.

SENATOR JABS WITHDREW HIS MOTION TO AMEND SB 31.

SENATOR HALLIGAN. Why weren't treatment professional present to testify? This troubles me. We need to call them.

Vote: SENATOR ESTRADA'S MOTION THAT SB 31 DO PASS AS AMENDED CARRIED 7-3 IN A ROLL CALL VOTE.

{Tape: 2; Side: A; Approx. Time Count: #23.0; Comments: None.}

EXECUTIVE ACTION ON SB 167

Motion: SENATOR HALLIGAN MADE A MOTION THAT SB 167 DO PASS.

Discussion: SENATOR HOLDEN. I know people want to be protected, but we keep adding more and more laws.

Vote: SENATOR HALLIGAN'S MOTION THAT SB 167 DO PASS CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 166

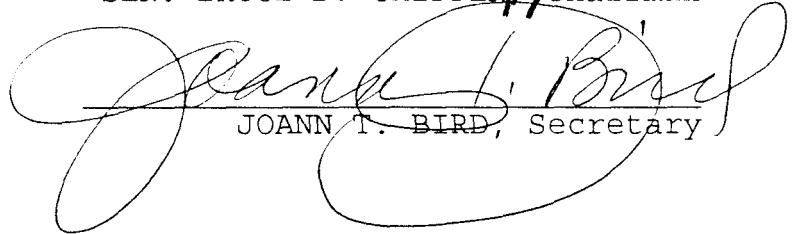
Amendments: VICE CHAIRMAN GROSFIELD. The proposed amendments get rid of Section 3, spanking, and all of the changes to the criminal mischief statute. It gives discretion for public notification that criminal mischief has happened. The amendments also try to clarify a position statement about parental rights to administer corporal punishment (page 5, lines 3 and 8).

No executive action was taken this date on SB 166 because of time constraints.

ADJOURNMENT

Adjournment: 12 noon


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB