

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BRUCE D. CRIPPEN**, on January 31, 1997, at 10:00 a.m., in the Senate Judiciary Chambers (Room 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. Reiny Jabs (R)  
Sen. Walter L. McNutt (R)

**Members Excused:** Sen. Ric Holden (R)

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division  
Judy Keintz, Committee Secretary  
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: HB 29, January 22, 1997  
HB 218, January 23, 1997  
HB 141, January 22, 1997

Executive Action: SB 168, HB 218, HB 141  
Senator Holden left votes

#### **HEARING ON HB 218**

**Sponsor:** REPRESENTATIVE BOB CLARK, HD 8, Ryegate

**Proponents:** Gary Marbut, Montana Shooting Sports Association and Western Montana Fish and Game Association, Missoula.

**Opponents:** None

Opening Statement by Sponsor: REPRESENTATIVE BOB CLARK, HD 8, Ryegate. This is a short bill. It strikes "of 1990" from current law pertaining to the Federal Gun-Free School Zones Act. The U.S. Supreme Court found this Act unconstitutional, and Congress passed another act in 1996, but that will probably be declared unconstitutional, as well. If we strike the date, that will handle the situation

Proponents' Testimony: Gary Marbut, Montana Shooting Sports Association and Western Montana Fish and Game Association, Missoula. We oppose the Gun-Free School Zones Act, as it doesn't make sense in Montana. The problem is that many people inadvertently violate this law daily in Montana. We do need to update this language to make it current, however, and to meet future acts.

Questions From Committee Members and Responses: None

Closing by Sponsor: SENATOR CLARK made no closing comments.

#### HEARING ON HB 29

Sponsor: REPRESENTATIVE JOHN BOHLINGER, HD 14, Billings

Proponents: John Connor, Attorney General's Office and Department of Justice

Jim Kembel, City of Billings

Lance Melton, Montana School Boards Association

Loren Frazier, School Administrations of Montana

Terry Minnow, Montana Federation of Teachers and Montana Education Association

Mary Alice Cook, Advocate for Children and Families

Gene Kizer, Administrator, Montana Board of Crime Control

Betty Waddell, Montana Shooting Sports Association

Opponents:

Gary Marbut, Montana Shooting Sports Association and Western Montana Fish and Game Association

Steve White, Bozeman, Montana Coalition of Home Educators

Opening Statement by Sponsor: REPRESENTATIVE JOHN BOHLINGER, HD 14, Billings. I want to state that Dave Ward, Billings Chief of Police and Dennis Paxinos, Yellowstone County Attorney support this legislation. In the past, I presented legislation to prevent students from carrying weapons in school, but it was killed in Judiciary Committee.

The problem of weapons in school is statewide. The publication For Our children's Sake, is a call to community action against violence. In the past biennium, forums were held in Missoula, Butte, Great Falls, Billings, and Glendive which were well-

attended. A great deal of concern was expressed concerning violence and youths at these forums, but the problem extends beyond guns to knives, throwing stars, numb-chucks, and so on.

Section 1, line 15 states that persons may not bring a weapon into a K-12 building. Line 19 involves parents who knowingly permit this. Line 23 exempts law enforcement personnel. Lines 26-28 state penalty provisions. Page 1, line 30 and page 2, lines 2-6 state what will happen to the weapon. Page two, lines 5-7 provides a definition of weapon.

I ask how Americans can feel threatened by this legislation. SB 29 provided specific language required by the Attorney General's Office and the County Attorney's Offices. This legislation is about protecting the public, students, and teachers.

**(EXHIBIT #1):** Response of John Connor, Attorney General's Office to a fax from the Gun Owners of America.

**(EXHIBIT #2):** Letter from Lance Melton, Montana School Boards Association.

*Tape: 1; Side: A; Counter: #12.6; Comments: 10:15 a.m.*

**Proponents' Testimony:** John Connor, Attorney General's Office and Department of Justice. When children bring weapons to school, this is handled through youth court. The bill allows youth court to get control of such kids, and allows misdemeanor punishment for those who knowingly permit the weapon in school.

The bill has been narrowed to cover concerns expressed in the House. I encourage the Committee to pass this bill.

**Jim Kembel, City of Billings.** I appreciate **REPRESENTATIVE BOHLINGER's** efforts.

**Lance Melton, Montana School Boards Association.** This legislation will help school administration. Page 1, lines 23-24 provide common-sense exceptions. I urge the committee to concur on this bill.

**Loren Frazier, School Administrations of Montana.** The School Administrators support this bill and its message to the public that schools are being made safe. Children are Montana's most precious resource.

**Terry Minnow, Montana Federation of Teachers and Montana Education Association.** We need safe, orderly places for children to learn. This bill is a tool to address increasing problems of violence in schools.

**Mary Alice Cook, Advocate for Children and Families.** I am also a retired high school teacher and volunteer teacher at Montana Youth Homes.

**Gene Kizer, Administrator, Montana Board of Crime Control.** The Board and the Helena Police Chief also support this bill.

**Betty Waddell, Montana Association of Churches.** 10.8 percent of Montana students carried a weapon on school grounds within 30 days of this survey. Violence is the leading cause of death in children, ages 5-14. (EXHIBIT #3).

**Opponents' Testimony:**

**Gary Marbut, Montana Shooting Sports Association (MSSA), and Western Montana Fish and Game Association.** We give full credit to the proponents of this bill, as we cherish child safety. MSSA is extremely involved with weapon safety and education. Three years ago a child in Butte was shot and killed by another child. My eight-year-old attends second grade in Butte.

*Tape: 1; Side: A; Counter: #22; Comments: 10:20 a.m.*

We have several problems with the bill. 5-20-282, MCA was passed in 1995, expelling a child who brings a gun to school for a period of one year, but if a child brings a concealed weapon to school he or she has broken that law. 45-8-351, MCA gives cities authority to create ordinances for weapons in public buildings, so I believe we already have enough tools to deal with kids bringing firearms to school. Prosecutors need to read and enforce current law.

It is hard to draft this legislation in a way so as to not cause problems. What about private schools and home schools, cooks in schools with knives longer than 4", coaches using starter guns at track meets, touchdown cannons at football games?

This bill has the potential to create as many problems as it solves. It also has the possibility of criminalizing parents because of the actions of their children.

The Montana Supreme Court has said a steady nibbling around the edges of the Constitution is the biggest risk to our constitutional rights. For example, a teacher could obtain a concealed weapon permit for protection from a violent spouse, but would have to leave the weapon at home. What if the spouse comes to school and shoots her?

Washington, D.C. has lots of gun control, and lots of crime. Montana has much less crime, and much less gun control. I don't believe another state law is necessary, and the Legislature is not ready to begin punishing parents (EXHIBIT #4).

*Tape: 1; Side: A; Counter: #31; Comments: 10:35 a.m.*

**Steve White, Bozeman, Montana Coalition of Home Educators.** I am concerned that zealous neighbors could cause home schoolers a

problem, and ask that the Committee insert "public" before "schools" in the bill.

**Questions From Committee Members and Responses: VICE CHAIRMAN**

**GROSFIELD.** We're home schoolers. If we have a K-8 school, does this bill apply? **REPRESENTATIVE BOHLINGER.** Language in the title (lines 5 and 15), talks about K-12 school buildings, and are commonly thought of a public property.

*Tape: 1; Side: A; Counter: #33; Comments: 10:37 a.m.*

**SENATOR ESTRADA.** I represent a lot of home-schoolers. With reference to page 1, line 26 of the bill, if parents don't know a child has taken a gun to school, would they be prosecuted? **John Connor.** Penalizes in the bill don't apply to prosecution in criminal court. I would not prosecute a parent in this instance. It is incumbent upon the State to prove the person acted purposefully or knowingly.

*Tape: 1; Side: A; Counter: #37; Comments: 10:40 a.m.*

**SENATOR ESTRADA.** I will support this bill, but am curious if this is aimed at weapons other than guns? **John Connor.** From the prosecution perspective, it's designed to cover all types of weapons. I disagree with Gary Marbut that current statutes are enough to address this situation, and that's why we support this bill.

**SENATOR DOHERTY.** I want to cover all the age groups in schools. Is there any appropriate term to cover all ages? **Lance Melton.** There are elementary districts, high school districts, and K-12 districts, and so language could cover schools in a number of ways.

*Tape: 1; Side: A; Counter: #40; Comments: 10:45 a.m.*

**SENATOR DOHERTY.** If we made the bill apply only to public schools, how would we take care of private/parochial schools? **REPRESENTATIVE BOHLINGER.** I had my six children in Catholic schools which were governed by a firm set of well-defined rules with solutions to anticipated problems - one being expulsion. I believe the private school system doesn't have a problem with weapons in schools. With home schoolers, I don't understand the risk.

*Tape: 1; Side: B; Counter: #00; Comments: None*

**CHAIRMAN CRIPPEN.** What is the definition of a firearm in the code? We have ROTC classes in high schools and these classes may use rifles. Are these classed as firearms in this bill? **John Connor.** I can't cite the definition in the code, but could look it up for the Committee in 45, Chapter 8, part 3.

**CHAIRMAN CRIPPEN.** Assuming a firearm is operational or plugged, how would you deal with these differences? There was some concern on the part of the House that the language for educational purposes was too limiting. We could say "including, but not limited to"? **John Connor.** Yes.

**CHAIRMAN CRIPPEN.** What about situations where people must leave weapons locked in their car? Are such teachers liable? **John Connor.** It is against the law to bring a concealed weapon into a public building now. If someone is that threatened, they need to call the police.

**CHAIRMAN CRIPPEN.** Referred to page 1, lines 19-21. What is a student wants to go hunting after school, and drives that vehicle to school with a gun in it, but someone breaks in, steals the weapon, and goes into a school building and commits a crime there? Are you going to look at this parent and allow some type of connection to this crime? **John Connor.** I would not prosecute that person, unless I were convinced beyond a reasonable doubt that the parent permitted such behavior.

**SENATOR CRIPPEN.** In a case in Billings, the court extended liability to a man in a civil case, saying he was negligent in leaving a gun in his pickup which was subsequently stolen. What if this happens in a criminal case? What if subsection (2) were eliminated? **John Connor.** It would not allow the prosecution of a parent involved.

**Closing by Sponsor:** **REPRESENTATIVE BOHLINGER.** I ask that the Committee focus on the intent of the bill, as the focus seems only to be on guns, and kids do use other weapons. Gary Marbut remarked that there is enough legislation to make public buildings safe now. HB 29 covers all weapons, and John Connor said the prosecution needs this. School administrators and police chiefs believe we need it, as well.

I hope the Committee's review will prove that home schoolers are not involved in this legislation. On page 1, line 23, the trustees may grant permission for ROTC weapons on school grounds.

**Tape: 1; Side: B; Counter: #15.7; Comments: 11:07 a.m.**

I ask that the Committee consider an alternative to incarceration with regard to parental responsibility on page 1, line 28.

My intent is to protect students and teachers. I hope the Committee will focus on comments by the Office of the Attorney General, Loren Frazier, and Lance Melton that a "youth court act will be able to get control of this problem because of this legislation". I ask that you concur in this bill.

HEARING ON HB 141

Sponsor: REPRESENTATIVE BOB KEENAN, HD 75, Big Fork

Proponents: Patrick Chenovick, Clerk of the Court  
John Northey, Office of the Legislative Auditor

Opponents: None

Opening Statement by Sponsor: REPRESENTATIVE BOB KEENAN, HD 75, Big Fork. This is a Legislative Audit Committee bill. The legislation, enacted in 1895 is no longer applicable concerning the public and distribution of Supreme Court decisions via contracts, as this information is now available electronically. The quarterly reports are now done on SBAS, the Statewide Budgeting and Accounting System.

Proponents' Testimony: Patrick Chenovick, Clerk of the Court, stated his support of the bill.

John Northey, Office of the Legislative Auditor. HB 141 is housekeeping in nature. I will be present to answer questions.

Opponents' Testimony: None

Questions From Committee Members and Responses: SENATOR DOHERTY. Why are you not going to give the Attorney General a number of copies? John Northey. I can't answer, other than the fact that the Supreme Court hasn't made these distribution for years, as they interpret "may" as discretionary.

Closing by Sponsor: REPRESENTATIVE KEENAN made no closing comments. SENATOR JABS will carry HB 141.

EXECUTIVE ACTION ON HB 218

Motion/Vote: SENATOR HALLIGAN MADE A MOTION THAT HB 218 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SENATOR COLE is to carry the bill.

EXECUTIVE ACTION ON HB 141

Amendments: hb016801.av1

Motion/Vote: SENATOR BARTLETT MADE A MOTION THAT HB 141 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SENATOR JABS is to carry the bill.

CHAIRMAN CRIPPEN announced that hearings would be at 9:00 a.m. next week.

EXECUTIVE ACTION ON SB 168

Amendments: 016801.avl (EXHIBIT #5)

Discussion: SENATOR HALLIGAN asked about the definition of K-12 schools. Valencia Lane. That was concerning the definition of firearms. Also, school districts near federal reservations are exempt under this bill.

CHAIRMAN CRIPPEN. We may also want to reinsert language stricken by the House and clarify it.

SENATOR ESTRADA. Do we need an amendment with the definition of home school? VICE CHAIRMAN GROSFIELD. Yes. We will ask Valencia Lane to draft that. SENATOR DOHERTY. If we work on the definition of public school, that would automatically exclude home schools. We do this in Education Committee frequently. Home schools get to do pretty much whatever they want to do.

CHAIRMAN CRIPPEN. The Committee may want to look at private schools, but not home schools. I believe this is a big loophole.

Motion: SENATOR DOHERTY MADE A MOTION TO ADOPT AMENDMENTS sb016801.avl.

Discussion: We are not looking at incidental, small amounts of damage - that is my attempt here. I believe the Committee knows what we're trying to do here. It must be both an "unlawful and violent" act.

*Tape: 1; Side: B; Counter: #32.5; Comments: 11:24 a.m.*

John Connor. I thought of suggesting language from the criminal mischief statute, with pecuniary cost exceeding \$500, as a means of identifying those kinds of crimes.

CHAIRMAN CRIPPEN. Running a car into a building is different from putting blood on it, especially in relation to criminal penalty. I believe "violent" is subjective enough, and that a foolish act is different. I sort of like the amendment.

Vote: SENATOR DOHERTY'S MOTION TO ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY.

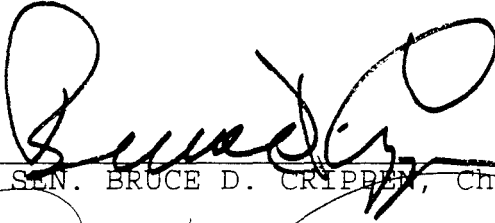
Motion/Vote: SENATOR DOHERTY MADE A MOTION THAT SB 168 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS HOLDEN, GROSFIELD AND ESTRADA WHO VOTED NO.

Discussion: Valencia Lane. I have done the Department of Corrections amendments on SB 109. There are no amendments on SB 96 or SB 212. CHAIRMAN CRIPPEN encouraged committee members to discuss any amendments with Valencia Lane before Monday.

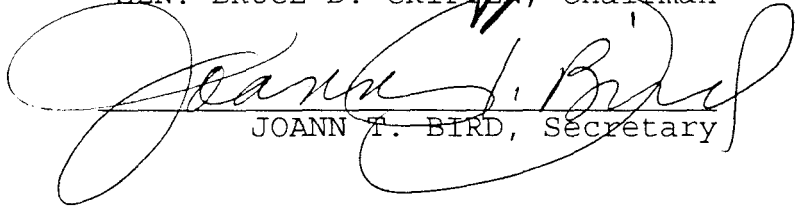


ADJOURNMENT

Adjournment: 11:47 a.m.



SEN. BRUCE D. CRIPPEN, Chairman



JOANN T. BIRD, Secretary

BDC/JTB