

## **MINUTES**

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

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BRUCE D. CRIPPEN**, on February 17, 1997, at 8:00 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. 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 341, posted February 14  
Executive Action: SB 231, SB 247, SB 255, SB  
266, SB 291, SB 303, SB 314,  
SB 318, SB 321, SB 327, SB 341

#### **EXECUTIVE ACTION ON SB 266**

**Discussion:** **Roger McGlenn.** The interested parties met in the Insurance Department on Friday afternoon and tried to work toward a mutually acceptable position on this bill. They wanted to meet again today if you didn't take executive action. There was movement, but not total agreement yet. **Russell Hill.** My impression of the meeting was that the majority of folks there agreed basically that there were certain elements of the bill that everybody could accept. They need to determine how big a

problem Sections 1 and 2 are. **CHAIRMAN CRIPPEN.** I will give you until tomorrow then.

**EXECUTIVE ACTION ON SB 291**

**Discussion:** **CHAIRMAN BRUCE CRIPPEN.** I was considering asking Valencia Lane to propose an amendment to eliminate the laundry list if we could do it within the title, but I decided not to. The Texas bill says 'if you can show malicious actions toward a group' - it doesn't have race, color, creed and all that. It is a fairly new law and hasn't had any court cases yet (**EXHIBIT #1**).

**SEN. SHARON ESTRADA.** I would be willing to go along with this.

**SEN. SUE BARTLETT.** What did the law review say? **CHAIRMAN CRIPPEN.** Basically, they looked more to the constitutionality of the law.

**SEN. STEVE DOHERTY.** Under our statutes, the prosecutor can charge with that crime, if it's included. How would this work, because you couldn't really bring a charge. Is it a sentence enhancement? **CHAIRMAN CRIPPEN.** Yes, it would go up to the next level.

**SEN. DOHERTY.** Would you have a separate trial on whether or not your garden variety assault met certain criteria, and that would be a hate crime? **Valencia Lane.** It's all done in the punishment phase of the trial for the underlying offense.

**SEN. DOHERTY.** So, the underlying offense is still going to be assault and if directed at a particular group, then they get an extra crime tacked on their sentence.

**Valencia Lane.** The Texas law is about two or three sentences, and under it is sentence enhancement only. There is no underlying crime of malicious harassment. Some things that would be criminal and punishable under Montana statute, would not be so under the Texas statute. For example, burning a cross on your own lawn would not be a crime under the Texas approach, even though your next door neighbor might be black.

**SEN. BARTLETT** asked Valencia Lane to get copies of the Texas law for the Committee.

**VICE CHAIRMAN LORENTS GROSFIELD.** Someone did a study - the Montana Advisory Commission on Civil Rights. Their findings basically say that not a single hate crime has been reported in this state, which makes me think that the statute doesn't work the way it is now. I'm intrigued by this Texas approach.

If the things that a lot of the witnesses were complaining about were crimes of assault, and there are remedies under current law, if the Texas approach goes under current law, and if you can establish it was a hate crime, we will enhance the penalty. This

would have to be under our current law. I don't know if this report means no one has ever been charged under it, or if no one has ever been convicted under it.

**SEN. BARTLETT.** The finding on that particular subject matter attributed the problems to reporting systems and the voluntary nature of reporting. I think you will probably recall that in 1993 there was a bill to require reporting of hate crimes, but it was not passed. So, it appears to me to be more a concern about what kinds of reporting requirements or non-requirements, in this instance, and reporting systems are not present in Montana to capture this information. So, we just don't know.

**VICE CHAIRMAN GROSFIELD.** So are you, Valencia, or Mr. Kizer with the Board of Crime Control, aware of any activity in this area?

**SEN. DOHERTY.** Since we didn't pass that bill, there's no uniform way to report it. I know of three instances in Cascade County in the past six months - an attack on a black church, on a church that ministers to homosexuals, and an attack on a bi-racial couple. Local people said yes, this is a hate crime, but these crimes haven't been reported.

**VICE CHAIRMAN GROSFIELD.** Was it prosecuted and if so, as an assault? That would be interesting to know. **SEN. DOHERTY.** I don't know, but I will find out.

**Valencia Lane.** I think Texas has an approach where you have different levels of a crime, with criteria to determine each level and the corresponding penalties. If I were drafting these amendments, I would have to model this enhancement penalty similar to the one in the criminal procedure code right now - enhancement of sentence for use of weapons. It would not kick it into a higher crime, but would add additional years to a sentence for the underlying crime.

If you want to go to the Texas approach and do away with the laundry list, to me that means repeal of the existing statute. I want everyone to know what I would be doing.

**SEN. ESTRADA.** How hard is it to prosecute under our present law or under Texas law? How can you determine if someone is beating someone else up because of color or sexual orientation? **SEN.**

**DOHERTY.** You would have to look at the information, the situation. If I'm kicking someone and hurling racial epithets at a person, that would probably be indicative of malicious intimidation. We would have to talk to witnesses and look at circumstantial evidence and present it to a jury.

**SEN. ESTRADA.** In my opinion the majority of hate crimes in Montana are done by children against children and this bill won't stop hate, so I don't know what we're going to do here.

**VICE CHAIRMAN GROSFIELD.** In speaking of repealing existing statute, are you suggesting that you would include some of this

malicious intimidation language relating to civil human rights?

**Valencia Lane.** It would help to put that into the Texas approach. **VICE CHAIRMAN GROSFIELD.** So, essentially you are saying it would wipe out 45-5-221, but you could put a lot of this into your draft. **Valencia Lane.** The distinction is that in the Montana approach, if you do a hate crime for reasons of hate, that in itself is a crime. Under the Texas approach it is enough to enhance the sentence for the underlying crime, but it is not a crime in itself.

**SEN. DOHERTY.** The Texas law makes me a little nervous. **VICE CHAIRMAN GROSFIELD.** You make a good point. Is there a way to do this without repealing the current statute? **Valencia Lane.** I'd have to see what I could do. Then you'd have a penalty enhancement on top of that crime, but the whole purpose is to get rid of the laundry list. I can look at it in terms of trying to preserve the statute.

**SEN. BARTLETT.** It seems to me that **SEN. CRIPPEN's** interest in Texas law was in the way of removing the laundry list, rather than in terms of sentence enhancement. Can you work at it this way? **Valencia Lane.** I can attempt to do that, but I was under the impression that **SEN. CRIPPEN** wanted the sentence enhancement approach and not the other; however, I could be wrong.

**SEN. ESTRADA.** Is this going to create more litigation? **SEN. DOHERTY.** It's a criminal offense, but I don't see how it will affect civil claims. **SEN. AL BISHOP.** It's going to be a little difficult to prove. **VICE CHAIRMAN GROSFIELD.** That's why I like the sentence enhancement.

**Valencia Lane.** I'm under the impression that **SEN. BARTLETT** would like to see the Texas language inserted into the existing Montana statute, without losing much of the statute, but I'm hearing from you that you like the sentence enhancement approach. No further action was taken on SB 291 at this time.

#### EXECUTIVE ACTION ON SB 231

Motion: **SEN. ESTRADA MOVED SB 231 DO PASS.**

Substitute Motion: **VICE CHAIRMAN LORENTS GROSFIELD MADE A SUBSTITUTE MOTION TO TABLE SB 231.**

Discussion: **SEN. BARTLETT.** I am concerned with language on page 2, lines 3-4, and **SEN. EMERSON** said the Court doesn't always know when the Legislature makes some rules. We could send a formal request to the Court that they notify the Legislature whenever they adopt rules that would be subject to our action in the next two legislative sessions, just so that we know this has been done, or set up a process of formal notice to the Legislature. This would be my preference rather than **SEN. EMERSON's** approach.

**SEN. DOHERTY.** Could **CHAIRMAN CRIPPEN** write a letter to Chief Justice Turnage which the Committee would sign? **Valencia Lane.** When the Supreme Court adopts or amends rules they are sent to the Code Commissioner to be codified, so we may want to set up a procedure with the Code Commissioner for earlier notification to members of the Legislature.

**SEN. BARTLETT.** This should probably be to members of the Judiciary Committee of each House. **Valencia Lane.** I will send a letter to the Code Commissioner from the Committee and the Code Commission to the Chief Justice.

**SEN. BISHOP.** If this bill were to pass, I'd like to see **SEN. EMERSON's** next bill. I think this is one of those "first let's kill all the lawyer bills." **SEN. DOHERTY.** I agree.

**SEN. REINY JABS.** The opponents said the method exists to handle it now. **SEN. BISHOP.** This bill mingles powers rather than separating them.

**Vote:** VICE CHAIRMAN GROSFIELD'S MOTION TO TABLE CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. ESTRADA WHO VOTED NO.

#### EXECUTIVE ACTION ON SB 303

**Amendments:** sb30302.avl (EXHIBIT #2)

**Motion:** SEN. DOHERTY MOVED TO ADOPT THE AMENDMENTS.

**Discussion:** **Valencia Lane.** Amendments were submitted at the hearing, for Beth Baker by Brenda Nordlund, but Steve Browning, Mark Staples, and Beth Baker got together and agreed on this revised amendment. This takes out the penalty section and goes into the criminal section, amending them, and falls back to the standard section on drivers' licenses. Now, the inter-lock device would be an option.

The original amendment, sb30301.avl, refers to the section of law dealing with suspension of sentence

*{Tape: 1; Side: A; Approx. Time Count: #41.6; Comments: None.}*

**SEN. BARTLETT.** Do the amendments strike Section 8 on page 9? **Valencia Lane.** Yes. In amendment 10 on page 2, 61-5-208, MCA is a new section relating to suspension and revocation of drivers' licenses. Section 3(a) and (b) are the heart of these amendments.

**VICE CHAIRMAN GROSFIELD.** On page 4 of the amendments, the new Section 8 doesn't seem different from the original Section 8 in the bill. **SEN. DOHERTY.** It is optional if the Court makes those findings, but above 1.8, and reasonably available, the device would have to be put in.

{Tape: 1; Side: B; Approx. Time Count: 00; Comments: 8:45 a.m..}

SEN. JABS. Is the county to pay for this? SEN. DOHERTY. There are no funds provided for that.

Vote: SEN. DOHERTY'S MOTION TO AMENDMENT SB 303 CARRIED UNANIMOUSLY.

Discussion: SEN. HOLDEN. The fiscal note provides for local FTE and officers to check machines to see that they're working. I want to put a "contingency voidness clause" on the bill. SEN. BARTLETT. Aren't these clauses for bills that could reduce revenue?

CHAIRMAN CRIPPEN. This bill has not been flagged as needing a fiscal note. If it is, when it goes to the House, they can deal with it there. So, I don't know if this is appropriate.

Motion: SEN. ESTRADA MOVED TO TABLE SB 303.

Discussion: VICE CHAIRMAN GROSFIELD. The purpose of the bill is to prevent persons from coming before the Court with numerous DUIs. This does something different at the second offense. If we can prevent a third and fourth DUI, it could cut court and local government costs. Therefore, I oppose the motion.

SEN. ESTRADA. Does this address driving another vehicle? Valencia Lane. It addresses the device.

Vote: SEN. ESTRADA'S MOTION TO TABLE SB 303 CARRIED 5-4, WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS CRIPPEN, BARTLETT, DOHERTY, AND GROSFIELD WHO VOTED NO. SEN. HALLIGAN WAS NOT PRESENT AND DID NOT LEAVE A VOTE.

{Tape: 1; Side: B; Approx. Time Count: #11.4; Comments: None.}

#### HEARING ON SB 341

Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis

Proponents: Kate Cholewa, Montana Women's Lobby

Opponents: None

Opening Statement by Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis. This bill was requested by the Chief of Police in Plains and the Sheriff in Sanders County. It revises the penalty for felony assault. If the offender is a partner or family member of the victim, the offender is required to pay for and undergo counseling assessment. It also provides that a prior conviction of felony assault is a prior conviction for purposes of partner or family member assault, if the offender is a partner or family member of the victim (EXHIBITS #3, #4 and #5).

Proponents' Testimony: Kate Cholewa, Montana Women's Lobby. We support the bill as it makes good sense especially in undergoing counseling assessments.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. BARTLETT. What if the assessment does not recommend counseling? SEN. STANG. Then I don't see a reason to do so. If the Committee needs to amend this it's okay with me.

SEN. BARTLETT. I believe the records need to follow up with the individual doing the assessment.

SEN. ESTRADA. Would this include elder abuse? SEN. STANG. Some laws now cover this, if no weapon is used.

Closing by Sponsor: SEN. STANG provided a letter from the Family Violence Intervention Project, Tootie Welker, for the record (EXHIBIT #6), and thanked the Committee for a good hearing, asking the Committee to amend the bill as necessary.

#### EXECUTIVE ACTION ON SB 341

Motion/Vote: SEN. ESTRADA MOVED SB 341 DO PASS. THE MOTION CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON SB 255

Motion: SEN. ESTRADA MOVED SB 255 DO PASS.

Discussion: SEN. MIKE HALLIGAN. Is there a fiscal note?

Motion: SEN. HALLIGAN MADE A SUBSTITUTE MOTION TO TABLE SB 255.

Discussion: SEN. JABS. Isn't this kind of a theory? CHAIRMAN CRIPPEN. One point I heard the Department of Justice make was that, under Montana law, regarding grand juries, when filing a criminal charge in District Court, this is called in information, and it must show probable cause for the Judge to review and approve or reject it. I have no question that SEN. EMERSON is sincere, as are the proponents, but this is not the avenue. Maybe the Court could establish a commission to look into these things.

SEN. ESTRADA. I am a little concerned about frivolous complaints, but I hate to table the bill, and not all judges and lawyers are fair. These few cases per year need an outlet.

CHAIRMAN CRIPPEN. The allegations against the individuals in that book we were given were very strong, but we would have no assurance of any protection under the law at any time with this bill, and protection is the purpose of the courts. Even the

inspector general in this bill would be looking over his shoulder.

In leadership we've seen letter upon letter from people regarding what **SEN. EMERSON** has allegedly been done, and they demand that he be removed from the Education Committee. This protection to the sponsor of this bill is "under the color of law".

**THE COMMITTEE RECESSED AT 9:35 A.M. AND RECONVENED AT 9:45 A.M.**

*{Tape: 1; Side: B; Approx. Time Count: #32; Comments: 9:45 a.m.}*

**SEN. ESTRADA.** I understand this, but these people have no place to go. **SEN. BISHOP.** I heard that these people received due process, but didn't like the outcome.

**SEN. DOHERTY.** In some ways I agree with **SENATORS ESTRADA and EMERSON**, but the Attorney General in Montana can do nothing in instances where the city/county attorneys pick, as a matter of prosecutorial discretion, a plausible reason, rather than rocking the boat. I don't know what to do about this. I think with the individuals involved, **SEN. BISHOP** hit the nail on the head. I haven't seen this evidence alluded to by proponents from the Great Falls area.

*{Tape: 1; Side: B; Approx. Time Count: #39.4; Comments: None.}*

**VICE CHAIRMAN GROSFIELD.** I will support **SEN. HALLIGAN's** motion, but am making a comment for the record. The bill says the inspector general shall investigate the allegations of wrong doing, so we will have a runaway with the bill the way it is set up, and the fiscal note is woefully inadequate. Lines 14-15 on page 2 are improper in that the inspector general "may" summon a grand jury. I believe he would be tempted to do this to get too many cases out of his hair, and then if a judge refuses a case that judge could be subject to impeachment.

Then, the composition of the proposed committee is imbalanced, and it appears it could be a full time job for three legislators. On the back of the Fiscal Note there are 4 different problems noted, some of which are constitutional violations of separation of powers and are substantial. I believe **SEN. EMERSON** brought this in good faith, and perhaps some cases are relevant. For example, in Jordan, Montana, over the past interim, the same sort of frustration was expressed there. **SEN. ESTRADA.** I went to the Yellowstone County Detention Center to check on some of those people who were incarcerated there.

**Vote: SEN. HALLIGAN'S MOTION TO TABLE SB 255 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. ESTRADA WHO VOTED NO.**

*{Tape: 2; Side: A; Approx. Time Count: #5.8; Comments: None.}*



EXECUTIVE ACTION ON SB 314

Amendments: sb 31401.av1 (EXHIBIT #7)

Motion: SEN. ESTRADA MOVED SB 314 DO PASS.

Substitute Motion: SEN. BARTLETT MOVED TO AMEND SB 314 -  
sb31401.av1.

Discussion: SEN. BARTLETT. The amendment strikes "first judicial district" because of their workload. The only heavier civil caseload is the 13th Judicial District in Yellowstone County. Lewis and Clark County receives less for criminal caseloads because civil cases are so large, and so I would appreciate the Committee taking this out of the bill.

CHAIRMAN CRIPPEN. No one knows where to find non-resident corporations, and unfortunately this falls on Lewis and Clark county. There was a concern raised not to do this where the plaintiff lives, but to go to a neutral area. This bill just limits areas where a plaintiff can file such cases. Leo Berry. The plaintiffs bar objected to using a resident agent as it's place last session, so as a default it was placed with the 1st Judicial District, because the Secretary of State's office is here, and that's where corporations are registered.

CHAIRMAN CRIPPEN. Some courts have tossed out violations held there, and some haven't. I can see your concerns, however. This is new and we don't know how it's going to work.

SEN. JABS. If we adopt the amendment, would we have only two options? CHAIRMAN CRIPPEN. Corporations would still have three, but non-resident persons would only have 2. The 1st Judicial District is first.

SEN. BISHOP. Why not use Fergus County, since it's centrally located?

Vote: SEN. BARTLETT'S MOTION TO AMEND SB 314 FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS BISHOP, HALLIGAN, AND BARTLETT WHO VOTED AYE.

Discussion: SEN. HOLDEN. What is the possibility of an amendment to make this retroactive to the original legislation. CHAIRMAN CRIPPEN. We could get into a constitutional problem.

SEN. DOHERTY. Subsection (3) does not affect corporations, but only people, right? Only Subsection (2) affects corporations? Do we need to insert limited liability corporations, partnerships, etc., into Subsection (2)? CHAIRMAN CRIPPEN. How do you file actions against a limited liability corporation? SEN. DOHERTY. You pick the partner, but where do you go if partner A is a non-resident and partner B is a resident? CHAIRMAN CRIPPEN. You would probably pick the managing partner,

who would probably bring in all other partners. If you were a limited liability partner would it apply to Section 1? **Leo Berry**. We had discussed this prior to executive session, and my interpretation is both: Subsection (2) lines 27 for corporations, and limited liability partnerships are covered in Subsection (3). If partnerships were created out of state, either 2 or 3 would apply, as a partner is considered to be an individual.

*{Tape: 2; Side: A; Approx. Time Count: #25.0; Comments: None.}*

Where the general partner is located is the law that prevails. I'm not sure we can't have limited liability partnerships if we don't establish when they are not in the area of general partnerships (Subsection 3, of 122 -line 13). I believe the partners themselves would prevail.

**SEN. DOHERTY**. In Subsection (1), where does the plaintiff get to sue the partners of a limited liability partnership which is out of state? In 25-2-122, in this instance, where does a lawyer go to, Subsection (1) or Subsection (3) for guidance? **Valencia Lane**. It would be Subsection (3).

**SEN. HOLDEN**. We did have in Glendive, a car dealership with another dealership in Beech, North Dakota. If injured, where would I go? **Valencia Lane**. You would go to Subsection (1).

**SEN. DOHERTY**. We need to clear this up so bonehead attorneys can figure it out.

*{Tape: 2; Side: A; Approx. Time Count: #32.0; Comments: None.}*

**CHAIRMAN CRIPPEN**. If you have a limited liability partnership and none are residents of Montana, then you would go to 2-122; (a) would not apply, and (b) might apply if (3) didn't apply.

**SEN. DOHERTY**. What if there are multiple defendants and one is a resident and one is a non-resident corporation? **Page Dringman, Burlington Northern**. In the case of a resident corporation and a resident individual you could sue either where they reside or at the residence of either of the two defendants. So you could very well be outside the 1st Judicial District. In the case of a non-resident versus a resident corporation and versus a non-resident corporation, you could sue where the non-resident resides, or where the resident defendant resides. The defendant could use forum non conveniens to change venue.

**Motion/Vote: SEN. ESTRADA MOVED SB 314 DO PASS. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BARTLETT, BISHOP, DOHERTY, AND HALLIGAN WHO VOTED NO.**

*{Tape: 2; Side: B; Approx. Time Count: #00.; Comments: 10:20 a.m..}*

EXECUTIVE ACTION ON SB 318

Motion: SEN. DOHERTY MOVED SB 318 BE TABLED.

Discussion: SEN. MIKE HALLIGAN. I don't know if we will ever find middle ground on this, as we still can't get a statement into the parole evidence rule and Subsection (3) would seem to violate the Montana contract the way it is written.

CHAIRMAN CRIPPEN. I voted for this thing the last time, and will vote for it again. I would not go to a financial institution relying on anything oral. It would be nuts to do so. Are there transaction files they keep which could be subpoenaed? Have you ever looked at your file when you go to get a loan at a bank? Banks write everything down.

SEN. DOHERTY. This doesn't affect just bankers. It also affects lawyers regarding retainer fee agreements. What if I don't get my paperwork done at a certain time and you don't get your loan? Oral evidence would not be allowed.

SEN. ESTRADA. I believe a handshake in Montana should still be a good instrument.

Vote: SEN. HALLIGAN'S MOTION TO TABLE SB 318 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. CRIPPEN WHO VOTED NO.

EXECUTIVE ACTION ON SB 321

Amendments: sb032101.avl (EXHIBIT #8)

Motion: SEN. HALLIGAN MOVED TO ADOPT THE AMENDMENTS.

Discussion: SEN. HALLIGAN. We are now only talking about mobile home courts and mobile homes. Amendment 28 changes the fee to \$3 annually, as the fiscal note was underfunded. I don't care if it's attached to the Human Rights Commission or the Department of Labor, or elsewhere, but I want it to support itself. The nursing home ombudsman result has been fantastic, and the mobile home courts need some uniformity.

CHAIRMAN CRIPPEN. What if we eliminated Subsection (2), the Human Rights Commission, and placed it with the Department of Commerce?

Motion/Vote: SEN. HALLIGAN ADDED TO HIS MOTION TO AMEND TO STRIKE 'HUMAN RIGHTS COMMISSION' AND INSERT 'DEPARTMENT OF COMMERCE' FOR ADMINISTRATIVE PURPOSES ONLY, STRIKING THE SENTENCE IN LINES 6-9, AND AMENDING THE TITLE ACCORDINGLY. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HALLIGAN MOVED TO ADOPT THE FULL AMENDMENTS AND TO STRIKE LINES 26 AND 27 ON PAGE 3 FROM THE BILL, SO THE

MEDIATOR COULD BE FROM ANYWHERE. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO STRIKE "AN INCREASING NUMBER OF MONTANANS LIVE IN MOBILE HOME AND" ON PAGE 1, LINE 16, AND TO STRIKE "GROWING NUMBER OF" ON PAGE 1, LINE 18. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. HALLIGAN MOVED SB 321 DO PASS AS AMENDED.

Discussion: SEN. HOLDEN. How would we find a mediator? SEN. HALLIGAN. The government would hire one - bottom of page 2.

SEN. HOLDEN. What is the number of FTE? SEN. HALLIGAN. I wouldn't envision it would be more than three. We would pattern this after the nursing home ombudsman.

SEN. HOLDEN. We should require a revised fiscal note before this goes to the floor. SEN. HALLIGAN. I agree.

SEN. HOLDEN. When will these problems be taken care of? How will this Legislature resolve them? SEN. HALLIGAN. Many rules are valid, but some are onerous. Uniformity should be the mediator's goal. We could put a sunset on it for two years to give it a performance test.

*{Tape: 2; Side: B; Approx. Time Count: #22.7; Comments: None.}*

Motion: SEN. HOLDEN MOVED TO PUT A TWO-YEAR SUNSET PROVISION IN THE BILL.

CHAIRMAN CRIPPEN. I believe it would take at least four years.

Motion/Vote: SEN. HOLDEN REVISED HIS MOTION TO PUT A FOUR-YEAR SUNSET PROVISION IN THE BILL, TO JULY 1, 2001. THE MOTION CARRIED UNANIMOUSLY.

VICE CHAIRMAN GROSFIELD. I'm not sure I like the bill. Page 3, lines 10-12, gives very broad discretion, and not much in the way of specific guidelines. It seems to make sense to develop model rules in cooperation with mobile homes owners and park owners.

There's a lot of inconsistency in the rules among the 1100 mobile home parks now, and they're hard to understand and live by. I'd urge SEN. HALLIGAN to look at this before the bill goes through the entire process.

CHAIRMAN CRIPPEN. What is the "administrative purposes only"? VICE CHAIRMAN GROSFIELD. Payroll.

SEN. HALLIGAN. I received correspondence from the Department of Health that water safety was covered, and I would be glad to work on this.

SEN. HOLDEN. I can see both sides hounding the Governor on the appointment of a mediator.

{Tape: 2; Side: B; Approx. Time Count: #30.8; Comments: 10:50 a.m.}

Vote: SEN. HALLIGAN'S MOTION THAT SB 321 DO PASS AS AMENDED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS HOLDEN, ESTRADA, AND MCNUTT WHO VOTED NO. A Fiscal Note is to be requested before the Committee Report is signed.

EXECUTIVE ACTION ON SB 327

Amendments: sb32701.avl (EXHIBIT #9)

Motion: SEN. DOHERTY MOVED TO ADOPT THE AMENDMENTS.

Discussion: SEN. DOHERTY. I want to make it clear that this legislation is not trying to interfere with the 'get out the vote' effort. Right now, electioneering on election day is breaking the law and the Commissioner on Political Practice had to deal with this in the last election. We are primarily dealing with (2)(b). I don't believe this bill does anything to situations which are already against the law.

SEN. BISHOP. What if the caller said this if a Republican Headquarters call and we're calling to remind you to vote? SEN. DOHERTY. That would not be a problem. Our volunteers do not mention any candidates on election day.

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

Motion/Vote: SEN. DOHERTY MOVED SB 327 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS HOLDEN AND MCNUTT WHO VOTED NO.

EXECUTIVE ACTION ON SB 291

Discussion: Valencia Lane. I need clarification about the Texas approach. It provides for sentence enhancement for crimes of hate, but not the underlying crime of hate crimes. I thought the Committee wanted to keep the current malicious harassment and sentencing statute on the books in the drafting of amendments.

{Tape: 2; Side: B; Approx. Time Count: #40.9; Comments: None.}

CHAIRMAN CRIPPEN. What is the felony code right now for displaying gay and lesbian behavior? SEN. BISHOP. It is just deviant sexual conduct.

SEN. BARTLETT. But there is a court injunction saying this law is illegal. VICE CHAIRMAN GROSFIELD. This bill deals with a different subject, so I don't think its about filing an action

requiring proof of sexual orientation or Jewish orientation, etc, but this is about the acts of the perpetrator. **SEN. HOLDEN.** Current statute lists these groups.

**CHAIRMAN CRIPPEN.** I like sentence enhancement with underlying criminal statutes. **Valencia Lane.** Then I suggest we draft this similarly to the language for the use of weapons for a crime, as Montana doesn't have the criminal framework that Texas has.

What do we do with 45-5-221, MCA? **VICE CHAIRMAN GROSFIELD.** We had discussed this while you were out on Thursday. **Valencia Lane.** I would have to change the title, so sexual orientation would not appear in it, so it would be different. **CHAIRMAN CRIPPEN.** I am concerned about the title.

*{Tape: 3; Side: A; Approx. Time Count: #00.; Comments: None.}*

**Valencia Lane.** so we would amend 45-5-221 and take out the laundry list and put in the Texas language? **SEN. DOHERTY.** We could leave in the laundry list and say, "anything else motivated by..."

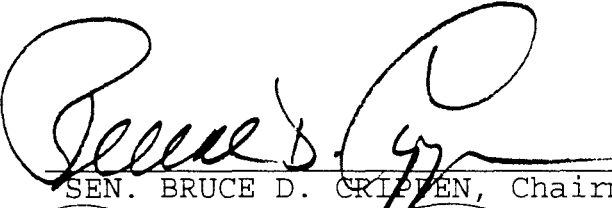
#### EXECUTIVE ACTION ON SB 247

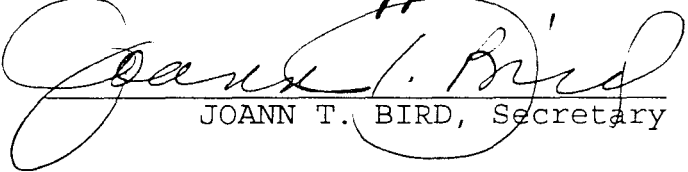
Discussion: **SEN. ESTRADA.** Have you discussed the bill with the sponsor? **CHAIRMAN CRIPPEN.** Yes. I told him the majority of the Committee felt he was using a criminal penalty to solve a civil problem.

**SEN. DOHERTY.** Les Graham said they weren't going to do anything with it. **CHAIRMAN CRIPPEN.** The Family Law bill could go into **SEN. THOMAS'** bill in an appropriate to study redistricting of judicial districts.

ADJOURNMENT

Adjournment: 11:14 a.m.

  
SEN. BRUCE D. CRIPPEN, Chairman

  
JOANN T. BIRD, Secretary

BDC/JTB