

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 20, 1997, at 10:00 A.M., in Senate Judiciary Room, Room 325.

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: HB 321, 2/17
HB 215, 2/17
SB 374, 2/17
HB 239, 2/17

Executive Action: SB 96, HB 215, HB 321, HB 239

EXECUTIVE ACTION ON SB 96

Motion: SEN. LORENTS GROSFIELD MOVED SB 96 BE TAKEN OFF THE TABLE.

Discussion: SEN. GROSFIELD commented that a number of people who are interested in the issue have come forth and indicated that a voluntary system would be acceptable to them. They have worked on amendments. He explained that a letter had been provided to the committee. **EXHIBIT 1** The Attorney General sent this letter to people in and out of the industry which outlined a voluntary approach.

Motion/Vote: The MOTION FAILED with SEN. SHARON ESTRADA, STEVE DOHERTY, AL BISHOP, REINY JABS and RIC HOLDEN voting no.

HEARING ON SB 374

Sponsor: SEN. DON HARGROVE, SD 16, Bozeman

Proponents: Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services,
Hank Hudson, Child and Family Services Division, Dept. of Public Health and Human Services
Maurine Shaunessey, citizen

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 8:37; Comments: .}

SEN. DON HARGROVE, SD 16, Bozeman, introduced SB 374. This bill includes federal mandates. The hammer can be our entire AFDC of approximately \$40 million. This bill would be twice as long if Montana had not taken a pro-active stance and already implemented many of the federal requirements. The Department has tried to trim the bill. This is the "deadbeat dad" bill. This completes setting up a database to make sure people face their responsibilities. The aid to family with dependent children has been changed by the federal government. It is now called Temporary Assistance for Needy Families. This bill will require registering people when they get a job. The state will be able to garnish retirement wages as well as regular wages. Professional and recreational licenses are included. The fiscal note gives you a good idea of the program.

Proponents' Testimony:

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

Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services, presented her written testimony on SB 374. EXHIBIT 2

{Tape: 1; Side: b; Approx. Time Count: 9:24; Comments: .}

Hank Hudson, Child and Family Services Division, Department of Public Health and Human Services, commented that the success of welfare reform in Montana is contingent on Child Support Enforcement.

Maurine Shaunessey, citizen, stated she has two boys who are 13 and 15. She has raised them herself for the last 13 years. Although there is a court order saying their father should pay child support, they are still not getting support from their

father. He has worked in other states. He gets into and out of a job faster than they can track him down. He makes good money. She wanted to address the new hire section of the bill. She is self-employed, small business owner. She occasionally has employees. For any employee, she fills out a W-4 and other paperwork on a regular basis. Filling out one more form to report each new employee within 20 days of hiring them will help a lot of children in the state. **EXHIBIT 3**

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 9:28; Comments: .}

SEN. MIKE HALLIGAN asked **Ms. Wellbank** to explain the IV-D cases.

Ms. Wellbank explained that IV-D is the title of the Social Security Act which sets forth the funding and authorization for their program. They are required to handle all cases where there is an AFDC, or now TANF, recipient. Everyone on welfare where the ex-spouse or parent is out of the home is automatically referred to them. The parent should pay support before the state gives welfare payments. The other cases in the IV-D program are people who are not on AFDC and who apply for their services. They have 44,000 cases in Montana and over half are not on AFDC. There are a lot of people who are non-IV-D. This bill will require district courts, when they issue court orders, to have certain language saying that if this is subject to income withholding, all the payments need to go through the Child Support Enforcement Division. The non-IV-D cases are also affected when the district court or the Division issues an order, a brief summary of that order must be filed with the Division.

SEN. HALLIGAN asked **Ms. Wellbank** who would enforce the penalty on the new hire issue?

Ms. Wellbank stated they would have an administrative hearing. If the employer is not withholding as ordered, they can currently hold an administrative hearing and find the employer in contempt. This would extend to the new hire responsibility.

SEN. HALLIGAN asked **Ms. Wellbank** how Section 1 would work relating to financial institutions?

Ms. Wellbank stated that right now the Division has the authority to issue writs and liens against assets. When they identify a bank account, they tell the bank what needs to be withheld and sent to them. This bill would be more proactive. If they have a case and a parent is delinquent, they will have created a listing of the delinquencies, the listing will be sent to a bank for a data match. The bank will run the listing and inform the Division. They are not allowed to mention this to the obligated parent. They will then send the bank a writ to collect the

money. The information is handled confidentially and the bank is protected from liability by sharing their information with the Division. The bank lobbyists felt the smaller banks would not have the capability of running the Division's data match against theirs due to the size of the Division's data match. The lobbyists suggested that they allow the bank to be able to send their records to the Division and have them run the data match.

SEN. HALLIGAN stated that sections 13 through 17 indicated that they would be going after retirements. What else would they be going after?

Ms. Wellbank stated that under current law, if they are on welfare, they cannot enforce the support order. If the delinquent party is receiving workers' compensation, unemployment, Social Security disability, or Veteran's benefits, they can collect that money. This bill expands to include both public and private retirement benefits.

SEN. HALLIGAN asked her to describe the process where the child had out-of-home placement.

Ms. Wellbank stated they have a provision in current law where the Division follows the child. If a parent is paying a support order and the child goes to a grandparent, without modifying the order, the Division has the same authority. SB 110 will allow them to establish an order in IV-E cases.

SEN. GROSFIELD asked if the federal requirements in the bill were minimum requirements or if they had added language to them?

Ms. Wellbank clarified that the Division's provisions were minimal. The only controversial Division introduced section is the requirement for Social Security numbers on hunting licenses. They worked with Fish, Wildlife and Parks and both parties felt this would work quite well. Employer reporting is very sensitive. They have strictly adhered to the provisions in the federal law. There are mandatory requirements for the employer to report which include the Social Security number, name, address, and all W-4 information. They also have a provision which states that the employer may report medical insurance.

SEN. GROSFIELD asked if the 20 day requirement was in federal law.

Ms. Wellbank confirmed that it was.

SEN. GROSFIELD stated that there was liability on the employer's part regarding withholding orders from other states.

Ms. Wellbank stated that in 1993 they did not put that into the bill. They prefer having the states send the order to the Division and have the Division collect under a Montana order.

They will notify employers that they have hired an employer representative to deal with these types of issues.

SEN. GROSFIELD asked how much federal money the state would be losing if we did not comply with these federal mandates?

Ms. Wellbank stated the letter she received from the federal Department of Health and Human Services, **EXHIBIT 4**, explained that when a state failed to comply, its plan would be subject to disapproval by the Office of Child Support Enforcement. There would then be no authority to expend federal funds under Title IV-D of the Act for the operation of the state's Child Support Enforcement Program. For them that would mean \$12 million over the biennium. If a state IV-D plan is disapproved, this will result in immediate suspension of all federal payments for the Child Support Enforcement Program and they will be continued to be withheld until the state IV-D Plan can be approved by OCSC. In order to be eligible for a block grant for temporary assistance for needy families, a certain section of the act requires the state to certify that it will operate a child support enforcement program under the state plan approved in IV-D, therefore TANIF funding would also be jeopardized if the state failed to enact the required child support legislation on a timely basis. They can apply for an exemption from the law, but the criteria is very strict. If you already have a law which is similar and works well, you can submit a plea. The only area which might work for this would be the direct withholding. Montana has a very good administrative process which already works.

SEN. GROSFIELD suggested this bill be declared a revenue bill.

CHAIRMAN CRIPPEN stated they would look into that possibility.

SEN. DOHERTY asked **Ms. Wellbank** to provide the committee with the sections which are required by the federal act and the sections which would not be required by the federal act. He also asked if this bill would help child support with self-employed individuals.

Ms. Wellbank felt that the bank, utility, and recreational license suspension interfacing would be the key areas.

SEN. DOHERTY questioned the wording "any other entities maintaining customer databases." He doesn't know any business which doesn't maintain a customer database.

Ms. Wellbank stated they would not be required to submit their databases. The Division would submit their database to the business.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 9:52; Comments: .}

SEN. HARGROVE stated most of this bill is already in place. This deals with getting tough on welfare. We need to force the system to work.

HEARING ON HB 239

Sponsor: REP. JOE TROPILA, HD 47, Great Falls

Proponents: None

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 9:58; Comments: .}

REP. JOE TROPILA, HD 47, Great Falls, introduced HB 239 by request of the Secretary of State. This bill is a housekeeping matter. The only thing it adds is not allowing a notary to notarize his own signature. This is a common practice and has never been in statute.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. TROPILA closed on HB 239. He asked SEN. DOHERTY to carry the bill in the Senate if it was passed out of committee.

EXECUTIVE ACTION ON

Motion/Vote: SEN. GROSFIELD MOVED HB 239 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HB 321

Sponsor: REP. LINDA MCCULLOCH, HD 70, Missoula

Proponents: Scott Resevett, Valley Process Service
Dean Crow, Valley Process Service
Earl Rowe

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 10:04; Comments: .}

REP. LINDA MCCULLOCH, HD 70, Missoula, introduced HB 321 which is an act making it an offense to obstruct a person serving process.

This protects a variety of people who serve process and provides a responsibility to those person who need to have process served. Section 1 explains who serves process, defines a process server as a public servant and describes punishment.

Proponents' Testimony:

Scott Resevett, Valley Process Service, stated that sheriffs' departments are too busy to handle most process serving. They do not have uniforms or badges. They would like a little protection.

Dean Crow, Valley Process Service, rose in support of HB 321.

Earl Rowe rose in support of HB 321.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MCCULOCK closed on HB 321.

EXECUTIVE ACTION ON HB 321

Motion/Vote: SEN. ESTRADA MOVED HB 321 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SB 215

Sponsor: REP. SCOTT ORR, HD 82, Libby

Proponents: Bill Fleiner, Undersheriff, Lewis and Clark Co.
Ralph DeKunso, Lewis and Clark Search and Rescue
Mike Batista, Department of Justice

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Count: 10:08; Comments: .}

REP. SCOTT ORR, HD 82, Libby, introduced SB 215. This bill extends the protection afforded police dogs to include search and rescue dogs.

Proponents' Testimony:

Bill Fleiner, Undersheriff, Lewis and Clark County, explained that in criminal related activities most often a search and rescue dog may be the only dog available to the sheriff. The dog is always out first. He conducts the search and is a fair

distance ahead of the handler. The element of surprise is with the aggressor and that puts the dog at great risk.

Ralph DeKunso, Lewis and Clark Search and Rescue, stated they are volunteers who purchase, train and maintain their dogs at their own expense. They operate under the sheriff or peace officer. Their dogs can find drowning victims and folks who are buried in avalanches.

Mike Batista, Department of Justice, commented that this bill would also cover the arson dog in the State Fire Marshall's Office. This dog detects accelerants at fire scenes. Last year the dog worked 70 fires, half of them were arson cases. The dog may be harmed by a suspect.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. ORR closed on HB 215.

EXECUTIVE ACTION ON SB 215

MOTION/VOTE: SEN. ESTRADA MOVED TO CONCUR IN HB 215. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 374

Discussion: SEN. DOHERTY stated that doctors and lawyers would have difficulty giving out information.

Amy Pyfer, Legal Counsel for Child Support Enforcement Division, explained that the automated data matches only applied to financial institutions. Section 44 amends 40-5-206 and under existing law that would include state, local, and county governments having to provide information. Federal law included the language "other entities maintaining customer databases." Section 44 would allow them to ask for the information.

SEN. DOHERTY asked how the new hire would work regarding temporary employees?

Ms. Wellbank explained the employer would be the temporary personnel service. The employer who fills out a W-4 is required to meet the new hire reporting.

SEN. DOHERTY asked how this related to tribal courts?

Ms. Wellbank stated the bill does not impact that area. They can currently enforce tribal orders as long as the assets are off the reservation.

SEN. HOLDEN, referring to page 27, asked what the legal custody language encompassed?

Ms. Wellbank explained that this allows child support to follow the child.

SEN. HOLDEN, referred to page 61, line 16, and asked for explanation of same.

Ms. Wellbank stated this would clarify that there could not be a paternity trial on blood testing cases. The federal act states this must be enacted even if it requires a constitutional change. Paternity and DNA is so acceptable that they do not want people to sway the jury by non-related matters such as how many people the woman had sexual relations with.

SEN. HOLDEN asked **Ms. Wellbank** to explain what they want to accomplish with recreational licenses?

Ms. Wellbank explained that they would have the authority to suspend the licenses which would go into a drawing. A biologist counts the herds to determine how many licenses can be issued and then there is a drawing. A license suspended after the drawing would mean that one less Montanan would have access to the drawing. These people will be identified one year in advance. If the delinquent parent had not made some arrangements to become current, his ability to enter into the drawing would be suspended.

{Tape: 2; Side: b; Approx. Time Count: 10:30; Comments: .}

SEN. HOLDEN asked for clarification of line 18, page 106 regarding social security numbers?

Ms. Wellbank stated this is the one controversial area which is not a mandatory requirement. They want social security numbers on applications for fishing and hunting licenses. This makes it easier for them to trace these people. They already request the drivers license which in most cases is a social security number.

SEN. GROSFIELD asked how the new hire would cover part-time help?

Ms. Wellbank clarified that anyone who is required to fill out a W-4 also meets this requirement.

SEN. HALLIGAN felt the new hire information might be handled on a 30 day basis to conform with other reporting deadlines.

Ms. Wellbank stated the 20-day requirement is spelled out in federal law.

SEN. HALLIGAN asked who paid for paternity tests if the alleged father is indigent?

Ms. Wellbank stated that the Department would pay. If there is a 95% possibility of paternity and the district court orders a second paternity test, it says he has to pay in advance for that test. This is about \$300.

SEN. HALLIGAN asked who would be getting immunity?

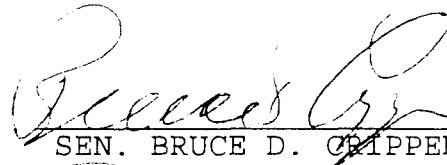
Ms. Pyfer explained there is immunity for everyone reporting information. This section deals with state government agency immunity. A two-thirds vote is necessary to provide government agencies immunity. There would still be immunity for everyone else.

SEN. GROSFIELD asked if there are other administrative proceedings where we say that an administrative order is as good as a district court order.

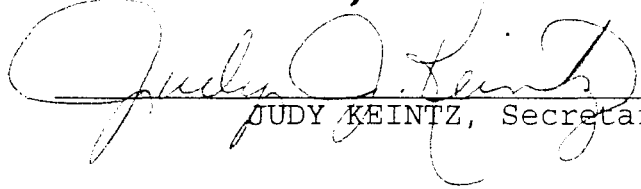
Ms. Wellbank believes the Department of Labor's orders are final.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:50 a.m.



SEN. BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary

BDC/JJK