

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRWOMAN SHARON ESTRADA, on March 12, 1997, at 9:00 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)
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: HB 251, posted February 24
HB 401, HB 411, posted March 4
Executive Action: HB 251, HB 401, HB 411

HEARING ON HB 251

Sponsor: REP. DON HOLLAND, HD 7, Forsyth

Proponents: Gordon Morris, Montana Association of Counties
(MACO)
Russell Hill, Montana Trial Lawyers Association
(MTLA)

Opponents: None

Opening Statement by Sponsor: REP. DON HOLLAND, HD 7, Forsyth
(EXHIBIT #1). This legislation was killed on third reading in

the Senate last session. It doesn't remove access to a jury trial, and is a taxpayer-friendly bill. Section 3-14-201, MCA, is already in civil action in courts not of record. The bill passed out of the House on a vote of 99-0.

Proponents' Testimony: Gordon Morris, Montana Association of Counties (MACO). We hope this will cut down on the number of frivolous cases being filed.

Russell Hill, Montana Trial Lawyers Association (MTLA). The amendment is good, and we have no problem with the bill, but I want it entered into the record that the language on line 22 applies to both parties.

Opponents' Testimony: None

Questions From Committee Members and Responses: VICE CHAIRMAN LORENTS GROSFIELD. I'm confused about the fully informed jury in the amendment. Russell Hill. The fully informed jury you're thinking of is completely different.

VICE CHAIRMAN GROSFIELD. I'm trying to understand how the Court might find, if the jury didn't, and vice versa. Russell Hill. We had concerns about that, too.

{Tape: 1; Side: A; Approx. Time Count: #11.5; Comments: None}

SEN. AL BISHOP. Can a judge sanction a party to the action? Russell Hill. I believe that's right. When something is frivolous, the courts have handed both sides tens of thousands of dollars in sanctions. The lawyers on the Committee know better whether that's against the attorney or against the party.

SEN. BISHOP. I know a judge in Rosebud County sanctioned the Yellowstone County Attorney for about \$16,000 in attorney's fees for the other side. So, I'm wondering how the plaintiff or the defendant would know whether or not it's a good cause of action or whether it's frivolous.

SEN. SUE BARTLETT. Will this cover child custody and support cases brought simply to harass the other spouse? REP. HOLLAND. Not being an attorney, I'd assume it would be included if it's in a court of record.

Closing by Sponsor: REP. HOLLAND. I'm asking that SEN. REINY JABS carry the bill, and I thank the Committee for a good hearing and would appreciate your support.

HEARING ON HB 401

Sponsor: REP. JOE BARNETT, HD 32, Belgrade

Proponents: Scott Restvedt, Valley Bail Bonds, Belgrade
Mary Jo Fox, Governor's Office

Morrie Anderson, Anderson Bonding Company, Great Falls
Red Jorgenson, Anderson Bonding Company, Great Falls
Earl Roe, Missoula bondsman
Kelly Reisbeck, Big Sky Bail Bonds, Helena
Dean Crow, Valley Bail Bonds, Belgrade
Steve Warmoth, American Bail Bonding
Beth Baker, Department of Justice, for John Conner

Opponents: Bob Gilbert, Montana Magistrates Association

Opening Statement by Sponsor: REP. JOE BARNETT, HD 32, Belgrade.
I carried this bill to the Governors desk last session where it was vetoed. The bill had been before the Senate Business and Industry Committee, and not Senate Judiciary.

On page 2, line 16, the bill exempts bondspeople from continuing education classes, as no courses exist pertaining to them. On page 2, line 29, the time frame is changed from "30" to "90" days for forfeiture of a bond. On page 3, lines 4-6, the Department of Justice wants to amend "must" to "may" concerning bail bond exoneration. I resist this because judges' interpretations aren't uniform across Montana. On page 2, lines 21-22, and 30, we juggled "may" "shall" language. The Governor supports the bill as it is now. I will reserve the right to close.

Proponents' Testimony: Scott Restvedt, Valley Bail Bonds, Belgrade. The classes we are now required to attend are costly and don't help us. The Magistrates Association is not happy with extending the time from 30 to 90 days for us to apprehend a bail skip. If we can apprehend on day 79, then justice is ultimately served. One part of the law now says 30 days, and one part says 90 days, but the judges are interpreting it as 30 days. If we fail to apprehend the skip in 90 days, we'll gladly pay the money we pledged. The bill also addresses people incarcerated in foreign countries. We babysit about 6000 people at a cost of about \$61 per day.

Mary Jo Fox, Governor's Office. We support the bill as it is amended now, and appreciate the cooperative efforts and progress made in working together on this bill.

{Tape: 1; Side: A; Approx. Time Count: #25.0; Comments: None.}

Morrie Anderson, Anderson Bonding Company, Great Falls. I would ask your support of this legislation.

Red Jorgenson, Anderson Bonding Company, Great Falls, stated his support of the bill.

Earl Roe, Missoula bondsman, stated his support of the bill.

Kelly Reisbeck, Big Sky Bail Bonds, Helena. We do need additional days to track people down who skip.

{Tape: 1; Side: A; Approx. Time Count: #26.5; Comments: None.}

Dean Crow, Valley Bail Bonds, Belgrade, stated his support of the bill.

Steve Warmoth, American Bail Bonding. I have been in business since 1985. We do need 90 days to track these people down.

Beth Baker, Department of Justice, for John Conner. We appreciate the effort that has gone into the bill. We are suggesting you change "must" to "may" on page 3, line 4, however. If you look on line 5, it says "foreign jurisdiction". When a defendant fails to appear, a warrant is issued on the State network and with the National Crime Information Center. So, if they are arrested elsewhere, they usually know about the warrant, but the defendant is sometimes released, as we can't extradite or for other reasons. So, this doesn't mean the defendant will return and appear in Montana. Under the law, forfeiture of bail is allowed to be used for restitution of victims. I have submitted this amendment to **Valencia Lane**.

Opponents' Testimony: Bob Gilbert, Montana Magistrates

Association. We support all of the bill except Page 29, line 29. We believe that language is a little misleading, as in the first 30 days they don't have to produce the defendant; they only have to appear and give a satisfactory reason why the defendant is not there. Then they are allowed 60 more days to produce the defendant. We believe this puts an additional burden on the Court. These bondsmen know the risks they take in this business. The rest of the bill is good; however, they did neglect to speak with the Montana Magistrates on this.

Questions From Committee Members and Responses: SEN. BARTLETT.

What are acceptable excuses to a judge? **Bob Gilbert.** I am not involved in that process, but assume if the excuse were "reasonable" that would work.

SEN. JABS. Do you know what excuses are acceptable? **Morrie Anderson.** There is no excuse that is acceptable other than that we can't locate the person, unless they are in the hospital or similar circumstance.

{Tape: 1; Side: A; Approx. Time Count: #36.5; Comments: None}

SEN. RIC HOLDEN. Did the Governor agree with changing "must" on page 3, line 4? **Susan Fox.** Yes.

SEN. HOLDEN. I'm not familiar with the bail bond business and wondered if you have authority to use force to return people to court? **Scott Restvedt.** Federal law says we can go anywhere in the U.S. without a warrant and bring these people back.

SEN. HOLDEN. Can you use a weapon? **Scott Restvedt.** Yes, federal law allows this.

Closing by Sponsor: REP. BARNETT. I want to thank the Committee for their good questions, and ask that you resist the amendment. Some judges even have hard feelings toward bondsmen. I believe bondsmen are performing a service for the people of Montana. I have asked **SEN. HARGROVE** to carry the bill.

HEARING ON HB 411

Sponsor: REP. CHRIS AHNER, HD 51, Helena

Proponents: Cathy Reagor, Registered Nurse, Department of Public Health and Human Services (DPHHS) and mother, Helena

Opponents: None

Opening Statement by Sponsor: REP. CHRIS AHNER, HD 51, Helena. This bill is not making it a crime to get a tattoo, but makes it a crime for someone to tattoo a minor without parental consent. Health problems include allergy, hepatitis, and AIDS. The industry favors this bill because it protects them, as well.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 9:47 a.m.}

Proponents' Testimony: Cathy Reagor, Registered Nurse, Helena, and Department of Public Health and Human Services (DPHHS) (EXHIBIT #1a), but appearing as a mother today. There is an extreme amount of information about tattoos now in the media, sports, etc, and this especially affects teens. My daughter obtained seven tattoos during the summer which were hidden under her clothing. She said getting a tattoo gave her a high.

As a nurse, I can't even dress a wound without parental consent, yet a tattoo artist can mar my under-age child and expose her to infectious diseases without my consent. This makes me very angry. I would have wanted to inspect the needle, and the ink and watch that no drugs were inserted under her skin.

I've heard reports that tattooists may not have enough needles when a number of clients show up at once, and that they may reuse needles rather than ask some of the clients to return at another time.

I am concerned about the future of my daughter because of these scarring tattoos. When I went to DPHHS about regulating this, they wouldn't touch it, and said they'd leave it up to the counties. There are 15 advertised tattoo parlors in Montana.

The cost of removing a tattoo is very expensive as well as painful. A friend has spent over \$10,000 on removal, and her insurance does not cover it.

Seven other states have passed this legislation, and more states are considering it right now. Children are a protected class because they don't have wisdom in many decision-making processes, and are very impressionable.

The section of law this bill would be applied to 45-5-623, MCA, also covers selling explosives and giving drugs to minors. I believe this bill is much needed. We had no opponents in the House hearing.

Beta Lovitt, Montana Medical Association, and self, as a mother of four and grandmother of two. Last session the first step to regulate tattoo parlors was taken. This bill goes a long way to stop tattooing of minors. Physicians are always concerned about illness from tattoos.

On the TODAY SHOW this morning, Katie Kurich said there was no way she'd get a tattoo, but her partner said he would if he came up with the right idea for one.

Kathy Martin, DPHHS, Food and Consumer Safety Program. The Program is charged with regulation of tattoo parlors, and we support this bill. We are the Communicable Disease Prevent Bureau, and urge you to pass this bill out of committee.

Lois Flesch. I received tattoos as an adult, and am now in the processing of removing them, as I very much regret getting them. I am ashamed to have them seen in public, and have been discriminated against in jobs. My son is also embarrassed about my tattoos.

I go to Richland, Washington for laser treatments, and it's very painful and burns. My last treatment took about four hours and it costs about \$1000 per session. After a treatment, I must apply ice and aloe vera gel. The burn swells and oozes, and I must apply antibiotic ointment. It takes one to three months for the first layer of skin to heal, then the process is repeated again, until all of the ink is removed.

I believe parental consent will be a beneficial deterrent to some youths.

Opponents' Testimony: None

Questions from Committee Members and Responses: SEN. HOLDEN. I have voted for legislation to restrict what minors can do. What would be your quick response to this on a campaign doorstep?

Cathy Reagor. Right now we have no recourse as parents, and a child must live with a tattoo for life. I look at it as children are a protected class, and that they need to be.

Closing by Sponsor: REP. AHNER. I have letters from Mitzie Schwab and two dermatologists (EXHIBITS #2, #3, #4, #5, #6, and #7). I am amenable to anyone who wants to carry this bill.

THE COMMITTEE RECESSED AT 10:15 A.M. AND RECONVENED AT 10:30 A.M.

{Tape: 1; Side: B; Approx. Time Count: #30.6; Comments: None}

EXECUTIVE ACTION ON HB 411

Motion/Vote: SEN. MIKE HALLIGAN MOVED HB 411 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 401

Amendments: Department of Justice, hb040101.avl (EXHIBIT 8)

Motion: SEN. SUE BARTLETT MOVED HB 401 BE CONCURRED IN.

Motion: SEN. HALLIGAN MADE A SUBSTITUTE MOTION TO ADOPT THE
DEPARTMENT OF JUSTICE AMENDMENTS.

Discussion: SEN. HOLDEN. I would resist the amendments, as the Governor approved of the bill prior to this hearing. SEN. HALLIGAN. I am asking the Attorney General's Office to comment. Mary Jo Fox and I went to see the Governor following this hearing. He said the bill would be better with the amendment, but he wouldn't veto it if the amendment were added. REP. BARNETT was apprised of this, and was disappointed. There is a problem when skips are incarcerated in other states. There is more incentive for the bail bondsmen to retrieve the person, where there wouldn't be with automatic exoneration.

SEN. WALTER MCNUTT. I would resist the amendment. SEN. HALLIGAN. If we are talking about staying tough with criminals, this is a good amendment.

{Tape: 1; Side: B; Approx. Time Count: #37.2; Comments: 10:40 a.m.}

SEN. JABS. Maybe we would say they must give the money back upon death or incarceration of the defendant. Beth Baker. SEN. JABS has a good suggestion. Conceptually, we have no problem with it.

Substitute Motion: SEN. HALLIGAN WITHDREW HIS PRIOR MOTION AND MOVED TO ADOPT THE LANGUAGE PROPOSED BY SEN. JABS.

Discussion: SEN. HALLIGAN. Will you address the proposed amendment? Scott Restvedt. If we have a guy out in Utah, and have 30 days to get him or pay the judge \$1000, then I've lost \$1000. If he's in jail for 15 days, that is no problem. If Montana wants them bad enough, the State can extradite them from an out-of-state jail. Beth Baker. I don't believe exoneration should be mandatory.

SEN. HALLIGAN WITHDREW HIS MOTION TO ADOPT THE LANGUAGE PROPOSED BY SEN. JABS.

SEN. BARTLETT WITHDREW HER MOTION THAT HB 401 BE CONCURRED IN.

No further action was taken on HB 401 at this time.

EXECUTIVE ACTION ON HB 251

Motion: SEN. JABS MOVED HB 251 BE CONCURRED IN.

Discussion: SEN. BARTLETT. I missed the beginning testimony on this bill and wondered why you are cutting "and such other costs...incurred by the court"? Does this come into play at all in relation to child custody and support cases? **Valencia Lane.** I don't know why not, as it applies to all civil cases, and these are civil cases.

Vote: SEN. JABS' MOTION THAT HB 251 BE CONCURRED IN CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 68

Motion: SEN. HOLDEN MOVED HB 68 BE CONCURRED IN.

Discussion: VICE CHAIRMAN GROSFIELD. The motion to pass the bill yesterday failed 4-6. Then a motion to table the bill failed 5-5, and David Ohler was to come up with an amendment to address the concerns of the Committee, so we ought to give him time to discuss them.

SEN. HOLDEN WITHDREW HIS MOTION. No further action was taken on HB 68 at this time.

{Tape: 2; Side: A; Approx. Time Count: #11.2; Comments: None}

EXECUTIVE ACTION ON HB 44

Amendments: hb004402.avl (EXHIBIT #9)

Motion: SEN. BARTLETT MOVED TO ADOPT THE AMENDMENTS - hb004402.avl.

Discussion: SEN. BARTLETT. Any money forfeited over \$200 should go first to the victim, in all of Subsection (2) in the amendments. Both HB 540 and SB 54 have been or will be amended to read this same way.

SEN. JABS. What about insurance compensation in subsection (iv)?
SEN. BARTLETT. Neither insurance companies nor victims should bear that loss if the inmate can come up with the money.

VICE CHAIRMAN GROSFIELD. We discussed this some yesterday, but no one with an insurance background was around to answer questions. In the case of a victim with medical expenses as a result of a criminal act, does the DUI driver's insurance cover it or not? SEN. HOLDEN. It would.

SEN. JABS. If it's a legitimate claim, it's done. I'd like to take (iv) out of the bill.

SEN. HOLDEN. **SEN. BARTLETT** is exactly right. If the insurance company can't recoup, loss rates begin to go up. If we can recoup from the inmate, it will keep insurance premiums down.

SEN. JABS. Is that punitive damages? **SEN. HOLDEN.** The term is pecuniary loss, as insurance companies don't pay punitive damages.

ACTING CHAIRWOMAN ESTRADA. I will be carrying this bill on the floor, and will reject any amendments.

{Tape: 2; Side: A; Approx. Time Count: #24.6; Comments: None}

SEN. BARTLETT. The Department didn't object to making this clear in the bill, and I believe we should put the victim first. **Lois Adams, Department of Corrections.** That is correct, but the problem I see is with the administrative parts regarding subrogation. My sense if we say the money first goes to the victim, and that any money left over goes to the Department, I'm not sure this is the right place for it. I would be happy to have victim restitution first and keep the remainder.

VICE CHAIRMAN GROSFIELD. Subsection (iii) gives the Department pretty much blanket rule-making authority. **SEN. BARTLETT.** The bill, as written, gives unrestrained discretion in determining when remaining funds will be forfeited, and the amendment says "discretion".

VICE CHAIRMAN GROSFIELD. Line 21 says "may", and that gives me great concern.

Vote: **SEN. BARTLETT'S MOTION TO ADOPT THE AMENDMENTS**
hb004402.avl CARRIED 6-3 IN A ROLL CALL VOTE.

{Tape: 2; Side: A; Approx. Time Count: #30.6; Comments: None}

CHAIRMAN CRIPPEN. The language in **SEN. DOHERTY's** amendment hb04403.avl (**EXHIBIT #10**) is fairly broad and extends beyond the title of the bill. Are we being redundant? Should we tighten it up to deal with just accounts? **Valencia Lane.** You are correct, and I believe something is probably in the law already and, in that sense, it may be redundant.

CHAIRMAN CRIPPEN. I sympathize with what **SEN. DOHERTY** is trying to do, but am willing to leave it up to the Department. We don't want to create conflict between Montana and Texas law. Then, too, we don't have private prisons in Montana now.

Amendments: hb004401.avl

Motion: **CHAIRMAN CRIPPEN MOVED TO ADOPT AMENDMENTS hb004401.avl.**

Substitute Motion: VICE CHAIRMAN GROSFIELD MADE A SUBSTITUTE MOTION TO CHANGE \$3.00 TO \$1.60.

Discussion: VICE CHAIRMAN GROSFIELD. The fiscal note shows this amount would raise \$51,000. The Department has the money to make up this biennium, so I'm putting some of this on the prisoners. It goes against my grain to take Departmental costs out of prisoners making \$1.10 per day. I picked \$1.60 as it comes out to \$27,460.

{Tape: 2; Side: A; Approx. Time Count: #37; Comments: None}

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO CHANGE \$3.00 TO \$1.60 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS AND ESTRADA WHO VOTED NO.

SEN. DOHERTY present AT 11:23 a.m.

Discussion: VICE CHAIRMAN GROSFIELD. How does the \$200 threshold work? Do prisoners buy through a canteen or a catalog? Lois Adams. They can get them from outside, but not through the canteen.

VICE CHAIRMAN GROSFIELD. Why is the figure \$200 and not \$300? Lois Adams. There is a dollar limit on the amount of property an inmate may have that is separate from the prison accounting system. If and item is used, it can be checked and resold via the inmate welfare system.

Motion: SEN. JABS MOVED HB 44 BE CONCURRED IN AS AMENDED.

Substitute Motion: VICE CHAIRMAN GROSFIELD MADE A SUBSTITUTE MOTION TO TABLE HB 44.

Discussion: VICE CHAIRMAN GROSFIELD. One or two sentences remain in the bill as introduced. It has been radically amended in the House and in the Senate. There seems to be a real constitutional problem, as there is no retroactive applicability, yet you are retroactively charging prisoners. I understand there is a problem with contraband, etc. I am more disturbed by the hearing on this bill than any other bill all session.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: 11:26 a.m.}

SEN. ESTRADA. This is a Department of Corrections bill to eliminate contraband in prison.

Vote: SEN. GROSFIELD'S MOTION TO TABLE HB 44 FAILED 5-5 IN A ROLL CALL VOTE.

SEN. HALLIGAN asked for a re-vote and the vote remained 5-5. No further action was taken on HB 44 this date.

EXECUTIVE ACTION ON HB 401

Amendments: **Beth Baker.** The Department of Justice proposes striking the remainder of the sentence in the last subsection on page 3, and inserting "for the period exceeding the time limit provided by Subsection (3)".

Discussion: **Susan Fox.** The Governor won't veto the bill if it is left as is, and would accept the one Department of Justice amendment to improve the bill. I can't comment on further changes, however.

{Tape: 2; Side: b; Approx. Time Count: #8.8; Comments: None}

Motion/Vote: SEN. HALLIGAN MOVED TO ADOPT THE DEPARTMENT OF JUSTICE AMENDMENT ON THE CONDITION THAT THE SPONSOR COULD OBJECT TO IT IN THE HOUSE AND THEY COULD WORK ON IT FURTHER, IF NECESSARY. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS CRIPPEN, ESTRADA, AND JABS WHO VOTED NO.

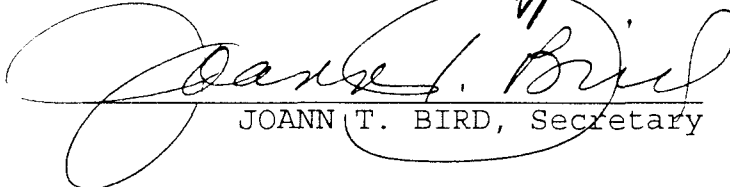
Motion/Vote: SEN. HALLIGAN MOVED HB 401 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:37 a.m.



SEN. BRUCE D. CRIPPEN, Chairman



JOANN T. BIRD, Secretary

BDC/JTB