MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. RIC HOLDEN, ACTING CHAIRMAN**, on March 18, 1997, at 9:00 a.m., in Senate Judiciary - 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 540	3/4/97
	HB 495	3/4/97
	HB 426	3/4/97
	HB 276	3/4/97
Executive Action:	HB 495, HB 540, HB 276	
	HB 299, HB 303, HB 323	

HEARING ON HB 540

Sponsor: REP. SCOTT ORR, HD 82, Libby

Proponents: Earl Peace, Bozeman
Beth Baker, Department of Justice
Jim Oberhofer, Montana Board of Crime Control
Mary Fay, Bureau Chief for Probation and Parole Office for the State of Montana
REP. NORM MILLS, HD 19, Billings
John Connor, Department of Justice

Opponents: None

Opening Statement by Sponsor:

REP. SCOTT ORR, HD 82, Libby, introduced HB 540. Current law provides for restitution. This bill provides a few changes. The first change is in section 2, page 6, where we make sure the restitution is paid. They struck the language stating that the offender remains under state supervision until their restitution is paid because of the cost of probation. The second change is in subsection (2) where the court "shall" require the offender to pay the cost of supervision, if the judge determines the offender is able to pay. It doesn't change the current rate of supervision, which is 10%. Subsection (3) states that the offender must be given credit against restitution due at the rate of hours of community service times the state minimum wage. Subsection (5) preserves assets early on in a proceeding. If the prosecution anticipates getting a restitution order, this will preserve the assets. The last change is on page 9 where the payments are prioritized.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:05; Comments: .}

Earl Peace, Bozeman, commented that it seemed ridiculous to write off the restitution simply because the time of the sentence had been completed if the offender had not paid in full. A number of offenders plan for this. They aggressively try to drag out their payments to go beyond that date. Some chose not to parole from prison, in part, as a way of not paying restitution. He visited with a young man who has $3500 left to pay. He will finish his sentence in less than five months. He is 20 years old and has spend most of the last three years incarcerated. He has no job skills. It is ridiculous for him not to pay restitution, simply because time ran out. Full restitution is a positive, restorative action. There is a provision in current law to waive restitution when there is a good reason to do so. He voluntarily mentors several individuals who have served prison or jail time. He works closely with probation and parole in Bozeman. He assists ex-offenders to become honorable and productive citizens. He can only help those who want to change. Restorative programs are necessary to help individuals know that they have corrected the wrongs which they have committed. If they do not feel that they have made corrections for their past actions, it is hard to gain restorative participation from them. Writing off part of the sentence contributes to the problem. This encourages their wayward ways. The offenders are laughing at the system while the victims cry. Under HB 540 offenders would finish their time but continue to be responsible until the debt is paid in full. Today the victim must accept the loss or initiate civil action. The responsibility is shifted back to the victim.

Beth Baker, Department of Justice, rose in support of HB 540 because it promotes full restitution to victims of crime. This bill builds on the foundation started with HB 96 in 1995. This will not increase a person's sentence. The sentence will still expire but the restitution obligation continues. Under existing law an order to pay restitution is considered to be a judgment in favor of the state and may be enforced in the same manner as other civil judgments. The 1995 legislation clarified that that action may be taken civilly at any time during the offender's lifetime. If there is a default in restitution at any time, it could be pursued civilly and that would still be the remedy under HB 540.

Jim Oberhofer, Montana Board of Crime Control, rose in support of HB 540.

Mary Fay, Bureau Chief for Probation and Parole Office for the State of Montana, encouraged support of HB 540. Restitution is a very important part of the justice system and this is a correct remedy.

REP. NORM MILLS, HD 19, Billings, stated that he recently visited with a gentleman who was released from a prison in Wyoming a few months ago and has moved to Billings. His comments were that the best thing you can do with prisoners is to make them pay the full restitution and do not give them any credit for time served in prison. He spent three years in the Wyoming prison and the prisoners there played games to get out, which hampered their rehabilitation by their plans to beat the state out of money and the victims out of restitution.

John Connor, Department of Justice, rose in support of HB 540. He stated that this bill would not force people into a punitive situation who are unable to pay restitution. It simply recognizes various approaches which can be taken to make them pay when they have the ability to do so but refuse to pay restitution. An important aspect in that regard is the amendment in section 2 which changes the provisions to allow for community service while someone is unable to pay and then allows them to go back to paying the restitution if they are financially able to do so. This bill closes the loopholes which allow an offender an out if he or she is unwilling to pay restitution and has the means to do so. The amendments were added in the House to make it consistent with SB 54 with respect to the way restitution would be distributed. This bill passed the House by 100 - 0 on both second and third reading and is consistent with SB 54.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:16; Comments: .}

SEN. LORENTS GROSFIELD asked for an explanation of the plan to give credit for community service at the minimum wage.

Mr. Oberhofer explained that the Board of Crime Control would be notified by the courts of monetary amounts which come back to the victim's program which will be credited against the victim's program and go back into the General Fund. The funds which do not allow the probation and parole officers to continue to work with the individual may not directly affect the crime victim's program other than giving the victim the satisfaction that there was restitution made in their behalf through the individual programs. They would make the initial payment to the victim well in advance of any settlement. They would be paying the medical bills when the claim would be approved. It could be months or years later before the money comes into the restitution program.

SEN. GROSFIELD, referring to current law on page 9 of the bill regarding 50% going to crime victims, asked if there was any talk in the House about increasing the amount?

REP. ORR stated they did not get into that part of the current law.

Ms. Baker explained that language came from the Uniform Victims' of Crime Act. She stated that many victims are never fully compensated for all the restitution due them because the offenders don't have sufficient funds. This schedule allows the more important court costs to be paid at the same time that restitution is being paid. The Victims' Compensation Program will have compensated the victim for up to $25,000 of eligible losses for medical bills and wages.

Closing by Sponsor:

REP. ORR felt this bill strengthened the restitution law. Restitution is a monthly reminder to the offender that he has done something wrong and that he is attempting to do something to make it right. That is good for the perpetrator as well as the victim. This passed unanimously in the House.

EXHIBIT 1 - Russell Fagg, District Court Judge

HEARING ON HB 495

Sponsor: REP. NORM MILLS, HD 19, Billings

Proponents: John Scotts, Montana Association of Realtors
Tom Llewlyn, Montana Association of Realtors
Mark Macek, Montana Association of Realtors
Verner Bertelsen, Montana Senior Citizens
Cory Coty, Missoula County Association of Realtors

Opponents: None

{Tape: 1; Side: a; Approx. Time Count: 9:22; Comments: .}

Opening Statement by Sponsor:

REP. NORM MILLS, HD 19, Billings, introduced HB 495. Lines 23 and 24 are the changes in current law. Last year the federal government made changes which have to do with building and services for senior citizens. The old law stated there needed to be significant facilities and services to meet the physical or social needs of elder persons. That was deleted in 1996. This makes it easier to qualify housing for certification as senior citizens housing. It changes the monetary damage which can be assessed if there is damage to senior citizen housing. They will not be forced to pay monetary damage if they relied on a statement by the housing unit that they conformed to federal law. This does not violate the Constitution of Montana and it does not discriminate against children. The requirement for federal housing is that at least one person in a family be 55 years old or older. It does not say that children or a younger wife may not live there.

Proponents' Testimony:

John Scotts, Montana Association of Realtors, commented that in the Constitution there is no discrimination prohibition on the basis of age. Over the years they have tied their senior housing laws to the federal law. He referred to his handout, **EXHIBIT 2.** The 1988 Federal Law (c)(i) states that significant facilities and services specifically designed to meet the physical or social service needs of older persons (for persons between the ages of 55 and 62) or if the provisions of such facilities and services is not practicable that such housing is necessary to provide important housing opportunities for older Americans. The provisions under the old law as far as requirements for housing for people between 55 and 62, remain in place, as do all the regulations. If an individual chooses to move into a facility in which over 80% of the units one person must be most over 55, they rely on the facility's written statement that it meets that requirement. If that is not the case, the facility can be found in violation of the law but the individual who relied on their statement cannot be found in violation.

Tom Llewlyn, Montana Association of Realtors, stated that as our society grows older we need to make sure we can provide the type of housing our citizens want.

Mark Macek, Montana Association of Realtors, stated this part of our industry is becoming larger because of the changing demographics toward more need for elderly care housing.

Verner Bertelsen, Montana Senior Citizens, rose in support of HB 495.

Cory Coty, Missoula County Association of Realtors, stated that private financing is essential for any housing in Montana. Differences in state and federal law often complicate or prevent the construction of housing.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MILLS closed by saying that this bill will keep senior housing available in Montana with the needed private and federal funds.

EXECUTIVE ACTION ON HB 495

MOTION/VOTE: **SEN. AL BISHOP MOVED HB 495 BE CONCURRED IN.** THE **MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 540

{Tape: 1; Side: B; Approx. Time Count: 9:51; Comments: .}

Motion: **SEN. ESTRADA MOVED HB 540 BE CONCURRED IN.**

Discussion:

SEN. GROSFIELD, referring to the last page of the bill, line 7, asked if that meant the victim would be able to receive more than the $25,000 limitation on the crime victims' fund. He also questioned if line 14 would apply for restitution in excess of $25,000?

Mr. Connor stated there was no restriction in the law as to what can be paid to the victim of a crime. The $25,000 is only the extent to which the Crime Victims' Compensation Program can pay.

SEN. GROSFIELD stated that in the case where $35,000 was owed, the fund might pay $25,000 and, under this bill, we might try to get the other $10,000 immediately from the defendant. The defendant would then be still stuck with paying the $25,000 to the fund.

Mr. Connor stated the effect and intent is to make the Crime Victim's Program whole again so there is money available for the next victim.

Ms. Baker stated that the Crime Victims' Compensation Program only compensates for personal injury, lost wages, funeral costs, and death benefits. It does not compensate for the victim's other losses, especially property damage. In the event of a $35,000 loss, the defendant is obligated to pay $35,000 but the victim may only be eligible for $15,000 from the Crime Victim's

Program. The offender remains on the hook until the full amount of restitution is paid. The victim would be fully compensated first. Next, to the extent the Victims' Comp Program has paid benefits, further restitution would reimburse the Program. It is the obligation of the offender to pay the full amount of restitution which is ordered by the court regardless of whether other sources have helped compensate the victim in the meantime.

SEN. BARTLETT commented that if the fund balance for the Crime Victims' Compensation account is more than a half million dollars on March 31 of any one year, the excess above half a million must be deposited in the General Fund. She questioned if that has ever occurred?

Ms. Baker stated that because of last session's de-earmarking bill, almost all of that fund balance was transferred to the General Fund.

SEN. DOHERTY, referring to page 7, section 3, stated that we are allowing prosecution to petition the court for an injunction to preserve assets which may be used to satisfy an anticipated restitution order. He knows that in the civil sphere that is a very rare and extraordinary remedy. In a criminal proceeding where no one is found guilty, he thought it would be extremely difficult to freeze those assets in anticipation of a restitution order.

Ms. Baker stated that he should not assume that this would happen before anyone is found guilty. There is usually a fairly lengthy period of time between the time of conviction and sentencing. Based on last session's amendment to the law that allows an offender's assets to be used to satisfy restitution, the bill is intended to make sure the assets are still available.

Vote: The **MOTION CARRIED UNANIMOUSLY.**

HEARING ON HB 426

{Tape: 1; Side: B; Approx. Time Count: 10:05; Comments: .}

Sponsor: **REP. DEB KOTTEL, HD 45, Great Falls**

Proponents: **Justice Jim Nelson, Commissioner-National Conference on Uniform State Laws**
Beth O'Halloran, State Auditor's Office
John Cadby, Montana Bankers Association

Opponents: **None**

Opening Statement by Sponsor:

REP. DEB KOTTEL, HD 45, Great Falls, stated this bill covered two sections of the code both in title 30, chapter 5 and 8. Chapter 5 is the UCC article section having to do with letters of credit.

Letters of credit are used to obtain payment as a backup to other types of credit extension. They are important in international trade. Prior ambiguities in the law, particularly in terms of the concept of fraud have been clarified. Damages for dishonored or repudiated letters of credit are limited to the amounts of the document plus incidental damages. Article 5 continues to provide rules which can be waived or modified. The second part of the bill covers Chapter 8, Title 30 of our code. This deals with the transfer of investment securities, primarily stocks and bonds. The bill establishes clear legal rules for modern security holding practices. She commented on her handouts, **EXHIBIT 3.**

Proponents' Testimony:

Justice Jim Nelson, Commissioner to the National Conference on Uniform State Laws, commented that citizens of one state are constantly travelling and move their residence and the confusion of laws among states may present a deterrent to the free flow of goods, credit and services. Sections 6 through 21 of the bill contain revisions to Article 5, and sections 22 through 77 contain revisions to Article 8. UCC Article 5 was originally enacted by the Montana Legislature in 1963 and amended in 1983. Letters of credit are used to obtain payment as a backup to other sorts of credit extension. Presently 14 states plus the District of Columbia have adopted these revisions. Presently letters of credit involve a $200 billion per year industry in the United States. Half of all exports outside the United States are financed through letters of credit. Since the 1950s practices and technologies employed with letters of credit have changed substantially. Litigation has also increased. The National Conference believes that the revisions to Article 5 are a significant improvement and will lessen litigation, clarify matters which have been disputed and encourage sound practices promoting international trade and domestic uniformity.

The parties involved in a letter of credit include an issuer, which is commonly but not necessarily, a bank or financial institution, an applicant, who is a customer of that bank and a beneficiary, who is the party with whom the applicant is doing business and who wants assurance that he or she will be paid. There may also be a confirmor, which is another financial institution or individual obligated to pay on the letter when the appropriate document is presented by the beneficiary and an advisor, who is a third-party facilitator of the transaction. These types of parties were not covered in the existing Article 5. The revised Article 5 makes important accommodations for the age of electronic communications.

Article 8 was adopted in 1963. HB 426 will update Article 8 to provide a modern legal structure for a recently developed system of holding securities through securities intermediaries. Investments securities are normally held in security accounts by broker-dealers. Broker-dealers in turn have securities held for them in accounts with depository companies. The revisions would

establish customer specific rights in their security accounts against their broker-dealers, enable customers of broker-dealers to obtain credit that is secured by their securities account, make it easier for broker-dealers to obtain secured credit on their accounts and helps avoid any meltdowns because a broker-dealer cannot obtain credit when the market crashes. This gives creditors better control over collateral that includes securities accounts, assures smoother function of the securities markets over the long term, reduces the prospect of litigation over customer relationships and assures the transfer rules for security will remain state law rather than federal regulation. Stock and bonds are the most well known types of investment securities. Investment securities also include mutual fund shares, limited partnership shares and any medium which permits investment in an enterprise or financial participation in a business.

This also involves uncertificated securities through automation and electronic transfer systems which allow issuers of securities the option of issuing securities without certificates with the transfers being simply registered on the book of the issuer. A system of depository institutions instituted for the purpose of holding stock certificates has been developed. The Depository Trust Corporation of New York holds most of the certificates representing shares in major corporations in the United States. Brokerages hold ownership positions in the stocks held by the DTC but do not ever withdraw their certificates. Each brokerage has a security account with the DTC and in turn brokerages set up securities accounts for their customers in which the customers hold ownership interests in the securities held by the brokerages or in their nominee's names on the books of the DTC. The advantage of this two-tiered indirect system is that investors are served in a timely fashion and accurate, fast, electronic systems actually transfer interests in securities between investors and brokers and between brokers and the DTC. This does not sufficiently clarify property rights for investors, brokers and other financial intermediaries in the indirect holding system. Rights are uncertain and the revision to Article 8 assures that investment securities can be safely used as collateral for obtaining credit. The primary innovation in revised Article 8 is the concept of a security entitlement, which is a property right that a person obtains in the contents of a security account with a security intermediary. **EXHIBIT 4**

Beth O'Halloran, State Auditor's Office, rose in support of HB 426.

John Cadby, Montana Bankers Association, stated the revisions were necessary in the area of dealing with international commerce. The revisions proposed would create a uniform and simplified process.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 10:29; Comments: .}

SEN. GROSFIELD asked specifically how electronic media was safeguarded?

Justice Nelson explained he would prepare a list for the committee. **EXHIBIT 5**

SEN. HALLIGAN asked if this bill had any conflict with SB 382?

John Cadby stated they would research the bills to determine any inconsistencies.

Closing by Sponsor:

REP. KOTTEL stated that page 17, line 2, redefines the word "communicate" which means to transmit information by any mechanism agreed upon by the parties transmitting and receiving the information. This would allow the electronic transmission of funds in and out of the banks. She felt this bill differed from SB 382 in that it attempted to redefine the holding companies' rules. With the use of electronic media, there are no actual stock certificates other than those in holding companies. Can you have stock certificates as securities when they are not in possession of the security dealer? The common practice outstripped the old code. Article 8 establishes customer specific rights in their security accounts, it makes it easier for the broker-dealers to obtain secured credit on the account because the stock is now in the security depositories, and it makes it easier and less risky for people to invest through broker-dealers. **EXHIBIT 6 - Handout National Conference of Commissioners of Uniform State Laws.**

{Tape: 2; Side: a; Approx. Time Count: 10:33; Comments: .}

HEARING ON HB 276

Sponsor: **REP. DEB KOTTEL, HD 45, Great Falls**

Proponents: **Lynette Lee**

Opponents: **Amy Pyfer, Child Support Enforcement Division**

Opening Statement by Sponsor:

REP. DEB KOTTEL, HD 45, Great Falls, introduced HB 276. Montana law states that it is presumed to be in the best interest of a child to legally determine and establish paternity. Governor Racicot, in a recent speech, commented that government at all levels can play an important leadership role in pointing the way and encouraging positive behavior. He also commented that young men of Montana are responsible for their actions. Just as each

young woman is. You should expect to be held accountable for your actions. If you are man enough to bring a child into this world, you better be man enough to help care for, raise and love that child. It is not always clear to a male, when that person has a child. A woman who applies for AFDC, as part of the requirements, must disclose the possible father of that child. She sometimes names two or three possible fathers. It is then up to the Department to establish paternity. The problem is in the case where there is more than one man named, the Department only notifies the most likely person after an investigation. The other men named are not notified. The Department has their names in the record. This bill says that if the Department has information from a woman that the possible father might be one of three people, the Department should notify all of the men that they have been named as possible fathers. These men can then pursue their rights to the child. The constituent she is representing found out seven years after the Department had information regarding paternity. This man went on with his life. He married, chose to have two children, and bought a house to the end of his financial ability to make a better life for his family. Seven years later the Department notified him that he might have a child. He would have paid child support had he known. The child without the father loses. Taxpayers lose because they were paying welfare. The new wife and children lose.

Proponents' Testimony:

Lynette Lee spoke in support of HB 276. She presented a handout, **EXHIBIT 7.** In July of 1989, her husband's then pregnant ex-girlfriend applied for and received AFDC. She told him her husband was not the father. They got married. He left the Air Force at a 50% cut in pay to stay in Montana. They bought a home and had two children. When the blood test came back positive the Department told them they did not care how much their house payment was, etc. The Department did not pursue its claim against her husband for seven years partially because the mother is Native American. The main reason they did not pursue her husband is because the mother did not cooperate. Her husband wanted to support his child. That child missed out because the mother didn't want him around and the state did not bother to notify him. HB 276 would allow fathers to be notified as soon as their name is given to the Child Support Enforcement Division. Good, honest men who want to support their children will have that chance. The Supreme Court has stated that the purpose of the Child Support Enforcement Act is to provide a more effective and efficient way to guarantee the support of dependent children. It is impossible to stand up for your responsibilities if you do not even know they exist.

Opponents' Testimony:

{Tape: 2; Side: a; Approx. Time Count: 10:50; Comments: .}

Amy Pyfer, Child Support Enforcement Division, stated that as initially drafted, the CSED did not oppose this bill. They are not opposed to a requirement that they notify alleged fathers when they get the information. They have a problem with the bill as amended in the House Judiciary Committee. She stated that in the House Judiciary Committee hearing Mr. Lee testified that the mother did tell him that he might be a father, but later said he wasn't the father. They can give additional notification to the alleged father, but they know they engaged in some act to begin with. The Division is not the only source of that information. This bill amends a section of the administrative paternity establishment process. The first part of the bill tells when the Department should notify an alleged father of a claim that he may be the father and the second part of the bill tells how the Department should notify an alleged father of the claim. She explained her amendments, **EXHIBIT 8 and 9,** which would strike the language which the House Judiciary Committee inserted. As amended the bill requires the CSED to engage in rulemaking to determine whether a claim is reasonable before they notify an alleged father that he might be the father. They would like the claim to be written naming the person as the father. They receive written claims in many forms. The welfare referral form has a written claim of who is an alleged father. The other possibility would be a sworn statement from the mother alleging the man is the father. The intent is to get some quick notification to alleged fathers. The bill as amended states that once they receive the claim, they have to notify the alleged father of the claim. It goes on to state that the notification must be oral and must be given to the alleged father in a manner that minimizes the chance of another person gaining knowledge of the notice or its contents. The oral notice takes a lot of time. If they sent a letter, other people could open the mail. The person receiving the oral notice would have a lot of questions and this will take some time away from the caseworker. They prefer a form letter which would explain that this is simply a notification, not a beginning of a paternity action. Their amendment would delete the oral notification requirement and simply have the Department notify the alleged father of the existence of a claim. **REP. KOTTEL** suggested the amendment to state that the Department would notify the alleged father in a manner that places the demands of individual privacy above the merits of public disclosure.

Questions From Committee Members and Responses:

{Tape: 2; Side: a; Approx. Time Count: 11:09; Comments: .}

SEN. GROSFIELD questioned if the language of the bill would provide a timely notification?

REP. KOTTEL stated she liked the original bill. **REP. MOLNAR** and **REP. MCGEE** did not like the bill because they felt that the Department would have to notify people who had no chance of being the father. Someone could name Prince Charles or Mick Jagger.

She did not feel that was a reason to amend the bill. She would like to see the amendment removed. If that happened, the bill would not pass the House. The amendment that the notice be given orally was a concern of **REP. MOLNAR** because he felt his life would be disrupted if he was told he may have a child. He stated that his wife always opened his mail. His amendment stated that the notification must be oral. The amendment in front of the committee would remove the wording "must be oral" and replaces it with the wording "places the demands of individual privacy above the merits of public disclosure." This would allow the Department to send a letter "restricted mail" which would need to be picked up by the person it was addressed to.

SEN. ESTRADA stated she knew of a case which took ten years. The father has now turned 50 and is as close as he could be with the child. This is his only child. Why not strip all the amendments?

Ms. Pyfer stated the amendments in this committee would strip the House amendments. They wanted the word "written" added in referring to claims.

Closing by Sponsor:

REP. KOTTEL asked the committee to adopt the first amendment which removes "whether or not the claim is reasonable" but leaves in the "written claim" wording. Men should have the same opportunity as women to cooperate and further their cases. The interest of the state loses. Present policy fails to attempt to collect child support for years forcing Montana taxpayers to shell out thousands of dollars in public assistance. Montana taxpayers lose. Fatherless children lose. Present policy denies fathers, who have no idea that an ex-partner of theirs was ever pregnant, knowledge that they could be fathers. Fathers lose.

EXECUTIVE ACTION ON HB 276

{Tape: 2; Side: b; Approx. Time Count: 11:17; Comments: .}

Amendments: HB027601.agp - **EXHIBIT 10**

Motion: **SEN. BARTLETT MOVED TO AMEND HB 276.**

Discussion:

SEN. GROSFIELD asked if the notification would be private?

SEN. BARTLETT stated this would not prohibit oral notification, it simply no longer requires it. The Department could send this certified mail limited to the individual to whom it is addressed.

SEN. GROSFIELD felt that without opening the letter, the wife may be curious about the letter.

SEN. BARTLETT stated that the wife would not know that the letter was from the CSED. They could use plain envelopes and stamp a P. O. box for the return address. The man could indicate that it must be something related to their work or business.

SEN. GROSFIELD was concerned about the harassment value.

SEN. BARTLETT stated that in her opinion if the potential for a notification will create that big a problem within your family, that must mean there has been behavior that would lead your wife to believe that there might be some justice to the claim. If the men involved did not go astray, there would not be a concern.

Vote: The **MOTION CARRIED** with **SEN. GROSFIELD** voting no.

Amendments: **EXHIBIT 8, Amendment to HB 276 proposed by CSED**

Motion: **SEN. BARTLETT MOVED TO AMEND HB 276.**

Discussion:

SEN. BARTLETT explained this would strike language related to the Department being required to adopt rules. **EXHIBIT 8,** amendment 1.

Vote: The **MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. GROSFIELD MOVED TO FURTHER AMEND HB 276.**

Discussion:

SEN. GROSFIELD explained this would be amendment no. 2, **EXHIBIT 9.**
SEN. HOLDEN asked **Ms. Pyfer** their idea of a sworn statement.

Ms. Pyfer stated that the applications they receive for services, the welfare and foster care referrals, are not sworn statements. One possibility would be to change those forms and use those applications. They have a paternity affidavit as well. That affidavit does not go out to everybody until they determine they can go forward with the case. They could also design a new form.

SEN. GROSFIELD simply wanted the wording to read "notarized". He suggested using notarized instead of sworn.

SEN. HALLIGAN felt there should be a sworn statement so people would not be making false statements to public agencies.

REP. KOTTEL stated it would be difficult to have notaries available at all places where the woman would make a written claim. They added the word written so the woman would know that if she made a false allegation, the person could came back to that written claim. A sworn affidavit may cause the woman to

reconsider stating who the possible partners are because they are being asked to swear absolutely to the names of the partners.

Substitute Motion: **SEN. GROSFIELD MOVED HB 276 BE FURTHER AMENDED. ON PAGE 2, LINE 9, FOLLOWING RECEIVES A, THE WORD NOTARIZED IS INSERTED.**

Discussion:

Ms. Pyfer commented that these cases come to them as paternity cases. They already have a paternity affidavit, which is their main fact gathering document to proceed with the paternity case. **Ms. Lee** has a problem with that because they did not get to the stage of a paternity affidavit in her husband's case soon enough. They could create a different affidavit and send it out when they get a referral. It would state that the person may be a possible father of the child. She has concerns about notarization. There may be some federal requirements which would prohibit them from requiring a notary for someone to apply for their services.

SEN. BARTLETT felt that there are a lot of small towns where it is difficult to find a notary.

Vote: The **MOTION FAILED** on oral vote with **SEN. GROSFIELD** voting yes.

Motion: **SEN. DOHERTY MOVED HB 276 BE CONCURRED IN AS AMENDED.**

Vote: The **MOTION CARRIED** on oral vote.

EXECUTIVE ACTION ON HB 299

{Tape: 3; Side: a; Approx. Time Count: 11:38; Comments: .}

Motion: **SEN. CRIPPEN MOVED HB 299 BE TABLED.**

Discussion:

SEN. CRIPPEN explained that it would only take seven votes to prevent this bill from passing.

Vote: The **MOTION CARRIED** with **SEN. ESTRADA** and **SEN. BISHOP** voting no.

EXECUTIVE ACTION ON HB 303

Motion: **SEN. CRIPPEN MOVED HB 303 BE TABLED.**

Discussion:

SEN. CRIPPEN explained that HB 303 is predicated on the fact that HB 299 would pass. This does not have a coordination clause. There is a severability clause. His concern is that HB 303 would not pass constitutional muster. He believes getting rid of the fee waiver would be a big mistake. This would cause the loss of

at least $100,000 of federal money from Pell Grants, etc. He doesn't like the idea of preferential treatment for anyone.

SEN. HOLDEN, referring to page 3, lines 12 and 13, which talked about fee waivers, commented it was his understanding that the fee waivers would be available for persons in need but not particularly based on skin color.

SEN. CRIPPEN did not know if that was the original intent. From the testimony he heard, when the portion on lines 10 and 11 were struck out, they created some concern that the result would be that some of the students in the tribes would not be able to obtain fee waivers.

SEN. GROSFIELD didn't feel that it talked about need at all. It states that the regents may waive tuition and fees for persons who have been residents for one year and it is totally at the discretion of the regents. He agrees with the motion to table the bill. We need a constitutional change before this bill is appropriately before us.

SEN. HALLIGAN stated that affirmative action has been a huge red flag for white males in the last few years. He was excluded from law school for three years in a row because of the affirmative action at the University of Montana. They needed to get the classes up to where they ought to be for minorities and women. This levels the playing field.

SEN. HOLDEN stated that we cannot continue discrimination based on skin color, sex, age, etc. He is a minority. He represents 2% of the American population involved in farming.

Vote: The **MOTION CARRIED** with **SEN. ESTRADA, SEN. BISHOP** and **SEN. HOLDEN** voting no.

EXECUTIVE ACTION ON HB 323

{Tape: 3; Side: a; Approx. Time Count: 11:50; Comments: .}

Amendments: hbo32301.ajm - **EXHIBIT 11**

Motion: **SEN. ESTRADA MOVED HB 323 BE CONCURRED IN.**

Substitute Motion: **SEN. HALLIGAN MOVED TO AMEND HB 323.**

Discussion:

SEN. HALLIGAN stated there ought to be something in the code dealing with domestic partnerships and a process for establishing and terminating the same. Contracts are usually filed with the Secretary of State. He felt that would be a neutral place to adopt rules dealing with the domestic partnership under the contract issue. When people live together, they need something which allows for the separation of their property.

SEN. GROSFIELD opposed the amendment. He believes there are common law marriages, 40-1-403 states that common law marriages are not invalidated by this chapter. Section 40-1-404 talks about putative spouse which is a spouse not recognized under our marriage statutes. In that statute it specially states that rights acquired by the putative spouse - the courts shall apportion property, maintenance and support rights among the claimants as appropriate, etc.

Vote: The **MOTION FAILED** on oral vote.

Motion: **SEN. DOHERTY MOVED TO AMEND HB 323 - EXHIBIT 12.**

Discussion:

SEN. DOHERTY stated there was testimony from the Unitarians, Congregation Folks and the Quakers that they as a religious practice recognize these unions. This amendment states that the state has a license. Religious organizations have their own ceremonies and ideas. Nothing in the act dictates any religious practices whatsoever.

SEN. ESTRADA stated that this amendment stated that two people of the same sex would be able to get married in the state of Montana if they became a Quaker.

SEN. DOHERTY stated the state of Montana would not be able to give them a marriage license. The amendment states that if a religious practice recognizes that union, the state would not mess with the religious practice.

SEN. BARTLETT stated there are two distinct dimensions to most marriages. One is a civil dimension. The state has an interest in marriage in relation to property rights and responsibility for children, etc. For most of us, there is a religious dimension to marriage as well. The amendment states that the state has no business interfering with those religious beliefs and that nothing in the statute being considered should be interpreted to be an establishment of religious principle by the state.

SEN. MCNUTT felt that was already given in the Constitution and that it need not be put in every law.

SEN. DOHERTY answered that the bill states that the state shall not recognize a marriage. One can say that the Constitutional provisions are inherently in every law we pass. The bill as it currently stands would give the state the authority to tell a church that what they are doing is not valid.

SEN. CRIPPEN did not agree. He felt this simply made the statement that the state will not recognize that marriage as a legal marriage under the state law.

SEN. GROSFIELD commented that Section 1 (a) spoke to bigamy, 1(b) and (c) spoke about incest. The amendment could go to those issues as well.

SEN. DOHERTY wanted his amendment to apply to the new added language only. He felt the bill adopted one facet of religion as opposed to others. Without this language, it makes the act suspect. This bill crosses the line. It says to some people of some religious beliefs that what you do is acceptable and okay. It says to other people with other religious beliefs, that it is not.

Vote: The **MOTION FAILED** on oral vote.

SEN. HALLIGAN stated the law is that a marriage is a personal relationship between a man and a woman arising out of a civil contract. That is the law in marriages in Montana. Same sex marriages are prohibited now. This bill is not necessary. The law is clear and should not be disregarded.

SEN. CRIPPEN stated that when the state of Hawaii did what it did, it might require Montana to recognize those marriages which would be appropriate in that jurisdiction.

Vote: The **MOTION THAT HB 323 BE CONCURRED IN CARRIED** with **SEN. HALLIGAN, SEN. BARTLETT** and **SEN. DOHERTY** voting no.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:10 a.m.

Sen. Ric Holden

SEN. RIC HOLDEN, Acting Chairman

Judy J. Keintz

JUDY KEINTZ, Secretary

RH/JJK