

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 19, 1997,
at 9:00 a.m., in the Senate Judiciary Chambers 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 159, HB 203, HB 231,
scheduled March 4, 1997
Executive Action: HB 68, HB 159, HB 426, HB 231

HEARING ON HB 231

Sponsor: REP. BEVERLY BARNHART, HD 29, Bozeman

Proponents: Kerry Newcomer, Domestic Relations Subcommittee of
the Montana State Bar
Corbin Howard, Billings attorney
Kyle Cunningham, Domestic Relations Subcommittee
of the Montana State Bar
Jennifer Bordy, Bozeman attorney, and Montana
Trial Lawyers
Tim Kuntz, Montana Trial Lawyers Association
Vern Anvick, Miles City

Rob Tameler, Missoula attorney
Hank Hudson, Administrator, Child Support
Enforcement Division, Department of Public
Health and Human Services
Mary Alice Cook, Advocate for Children and
Families

Opponents: Russell LaVigne, People's Law Center for Montana
Low Income Coalition, and Montana Welfare
Action Coalition
John Wolov, Helena attorney

Opening Statement by Sponsor: REP. BEVERLY BARNHART, HD 29,
Bozeman. This is a long bill and is very important for children
of divorce. We have changed the word "custody" to focus on a
"parenting plan." The Domestic Relations Subcommittee of the
Montana State Bar worked with others on this bill.

Proponents' Testimony: Kerry Newcomer, Domestic Relations
Subcommittee of the Montana State Bar. This represents most of
our work. Senate Bills 32 and 33 were also part of this
statewide effort, which included psychiatrists, divorced persons,
and the Courts.

Corbin Howard, Billings attorney. I have been in private
practice since 1981, and am in family law practice. The bill
addresses education, mediation, determination, and psychological
evaluation. One purpose of the bill is to remove adversarial
terminology. The bill will also organize the Courts to look into
child support issues and to ascertain facts. It provides for a
court-sanctioned education program. We have such a program in
Billings which has been very helpful.

The Court has the ability to order parties in mediation in this
bill. It also would have authority to order psychological
evaluations, and we hope this would need to be done only rarely.
Current law has been very uncertain even in interpretations in
1994 and 1996. In the Syverson case Justice Nelson specifically
asked that the Legislature look at this section of law and clean
it up, and to consider most the welfare of children because the
divorce process can be very painful and conflict can continue for
years.

I believe this bill advances the best interests of children, and
it is endorsed by the Montana State Bar. A clinical psychologist
in Missoula, Sarah M. Baxter, Ph.D., has sent a letter to the
Committee in support of this legislation (EXHIBIT #1).

Kyle Cunningham, Missoula attorney, and Domestic Relations
Subcommittee of the Montana State Bar. I will try to answer some
of the questions asked in the House. This bill is not intended
to make divorce easier. We only tried to make it easier on the
children. The bill requires moms and dads to look at their
children very early in the divorce process, and as an on-going

concern. We hope this will help them see what they're putting their family through. In large towns it is easy for the parties to get away from each other, but this is not so in small towns.

Jennifer Bordy, Bozeman attorney, and member of the Montana Trial Lawyers Association. I believe there needs to be less litigation in the area of family law. A lot of cases are about the sole custody issue. I represent more men than women in my practice.

I believe a few amendments should be made. In Section 16, parties should be able to get rid of child support in a case of temporary order. In Section 20, (1)(6), it is important to put in the divisions of parental responsibility. In Section 22 (2), we need to increase the length of notice when the custodial parent intends to change residence, as the Courts need more time.

I am against the fee of \$120 for amending the parenting plan, as teens tend to go back and forth between their parents. I believe the language concerning threat of physical abuse during the initial period should be removed, so that all ties with the other parent are not severed. I believe the bill does address important issues.

Tim Kuntz, Montana Trial Lawyers Association. I am also a divorced parent and support this legislation.

Vern Anvick, Miles City (EXHIBIT #2). I am an unmarried parent with a child, Ashley. In our case there were 50 denials in 20 months, and the mother's family essentially assumed ownership of our child. I was poorly represented in the trial. The mother frustrated my attempts to bond with my daughter, even though I have paid support since the very beginning.

I am concerned because even with all my efforts in the past two years and the obvious bond with my child and my being a viable part of her life, Ashley's mother has not ever had a bond with her father, and my father died when I was two years old, so I never knew him. I have offered to go to a child psychologist with my child and her mother.

I believe in-home studies should be conducted by the same person on both parties, and that the visits should be unannounced. If both parents want custody and are fit parents, I don't believe sole custody should be awarded. The judge went against the state's wishes, and my wishes in awarding sole custody to Ashley's mother.

{Tape: 1; Side: A; Approx. Time Count: #30.5; Comments: None}

Rob Tameler, Missoula attorney. The child is the important aspect, and is the one caught in the middle. This bill would help to eliminate this problem. With SB 16, SB 32, and SB 33, the Courts have gone a long way in making people think when

considering divorce, and I believe this bill falls in line with that. I hope you will pass this bill.

Hank Hudson, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services (CSED). It is not uncommon for us to be pulled into a divorce and the law then requires investigations. The important point is that the pain and damage being done to children of divorce will only be exacerbated by a child custody investigation. I believe this will reduce these kinds of accusations against each other by parents. We also handle child mental health, and believe this bill will help in this area, as well.

Mary Alice Cook, Advocate for Children and Families. I strongly support this bill.

Opponents' Testimony: Russell LaVigne, People's Law Center for Montana Low Income Coalition, and Montana Welfare Action Coalition (EXHIBIT #3). We only oppose one section of this bill. Low income people have a difficult time gaining access to the Courts, but we strongly opposed the amendment of the parenting plan modification section on page 24, Section 23, line 4. Section (c) is important, but was taken out of consideration as an abuser can continue abuse via this threshold modification.

{Tape: 1; Side: A; Approx. Time Count: #39.8; Comments: None}

We had an idea for a threshold hearing or mandatory filing of a bond to make it a serious situation, and not just harassment. When the Child Support Enforcement Division contacts the non-custodial parent, it usually results in a petition for modification.

John Wolov, Helena attorney. If the Committee thinks the stability of the child is important then they need to say so. Secondly, relocation would now definitely trigger a reevaluation.

{Tape: 1; Side: B; Approx. Time Count: #00.; Comments: 9:50 a.m.}

Third, the bill makes entry into the Court system simple, and the only words holding back entry are "change of circumstances". If a change is even slight, a parent could get back into court. So, what is better may really be an issue of who can pay a professional. In the House, the thought behind the bill now is that Section 20 is not permissive. Also, the strong presumption for sharing custody is now just one of many factors, so you may want to reemphasize this. There is a technical error in the first part of Section 20 where there are too many "ands", which your staff may want to correct.

I urge you to go to the reconciliation provisions in the Code and have them apply as mandatory in every county of Montana. I support the idea of a parenting plan.

Questions From Committee Members and Responses: SEN. MIKE

HALLIGAN. I would like you to comment on the items brought up in testimony, including Jennifer Bordy's comments. **Corbin Howard.** I believe the order might cause considerable confusion and would be a problem particularly if welfare benefits were extended to a party during the process. **Kerry Newcomer.** That is a CSED addition and won't affect our overall plan. I would tend to agree with Ms. Bordy here, although it creates a management problem for CSED. Concerning increased time notice for relocation, if additional time is needed, parents need to know the rules. I have practiced family law for the past 16 years, and most people want to know what the result is going to be if they do a certain thing. If you want to expand the time, that is fine, but I didn't want to exclude potential employment if this can't be done within a given period of time.

SEN. HALLIGAN. What about the comments on Section 20, Subsection (1)(b) to add greater flexibility to the parenting plan? **Corbin Howard.** I believe the bill is very flexible in its current form, and encourages people to be more specific if they wish, but those provisions are optional.

SEN. HALLIGAN. Would you address taking out the serious endangerment language, and mandatory conciliation and modification of procedure? **Corbin Howard.** Current law allows modification of child custody if things change with parents. If a parent changes residence from Glendive to Beech, this indicates the Court needs to talk about what's best for the child. If they move from Glendive to Libby, we would have to prove serious endangerment, and this hasn't worked very well. Serious endangerment only applies in a few cases, and the rules keep changing (cases decided in 1994 and on January 3, 1997).

Serious endangerment is a worn-out term and can be used under existing law to cut off parental contact with a child. But the Montana Supreme Court just allowed such a parent to have custodial rights more than half the time. The rebuttal presumption of the primary resident parent problem is that a divorced mom with kids probably won't be at home, but out working at a job. So why have this, as it can be taken advantage of by a parent.

The level of fee we chose is to be used for education and evaluations in district court. Mandatory conciliation is allowed by existing law, but is not used much. It's more work than judges can handle now.

{Tape: 1; Side: B; Approx. Time Count: #21.3; Comments: None}

SEN. SHARON ESTRADA. How much input did DPHHS have in putting this together? **Hank Hudson.** We didn't have a substantial role, but basically kept informed of interests in this issue.

SEN. ESTRADA. Do we have in statute similar language to Sections 19 and 20 of the bill? **Corbin Howard.** No. The closest would be the statute on the best interest of the child.

SEN. ESTRADA. I am concerned with the language on line 10, page 20. Do we really need a law to tell us how to deal with children? I realize divorce is traumatic. **Corbin Howard.** The provisions in Section 20 are optional. The purpose we're after is to direct clients to be concerned about what's good for their child. Some parents would already do this, but some need the motivation of this bill. **SEN. ESTRADA.** If they put together a parenting plan and violate it, would they be breaking the law? **Corbin Howard.** They would be violating the provisions.

Closing by Sponsor: **REP. BARNHART.** In this legislation, we are looking at the best interest of the child. This bill is personal to me, as I was divorced 15 years ago. I believe the tools in this bill would save a lot of problems, and that things would be different for children of divorce.

I ask that **SEN. HALLIGAN** carry this bill on the floor.

{Tape: 1; Side: B; Approx. Time Count: #31.5; Comments: 10:20 a.m.}

HEARING ON HB 159

Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman**

Proponents: **Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS)**
Mary Alice Cook, Independent Advocate for Children and Families

Opponents: **None**

Opening Statement by Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman.** This is a small, but important bill for DPHHS. It allows them, in cases where day care is not licensed or is inadequate, to address a couple of courts for help.

Proponents' Testimony: **Hank Hudson, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services.** This was originally contained in two bills, which were tabled. This one was taken off the table, as it is less controversial. We want to be able to pursue these issues in more than just district court.

Mary Alice Cook, Independent Advocate for Children and Families. I support this legislation.

Opponents' Testimony: **None**

Questions From Committee Members and Responses: None

Closing by Sponsor: REP. BARNHART. I ask that the Committee appoint someone to carry this bill. This legislation was supported by the Joint Study Commission on Children and Families.

EXECUTIVE ACTION ON HB 159

Motion/Vote: SEN. STEVE DOHERTY MOVED HB 159 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 1; Side: B; Approx. Time Count: #38.3; Comments: 10:27 a.m.}

HEARING ON HB 203

Sponsor: REP. ROYAL JOHNSON, HD 10, Billings

Proponents: Jean Whittinghill, Court Assessment Program, and Study Coordinator
Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS)
Jeff Sherlock, District Judge, Helena
SEN. MIGNON WATERMAN, SD 26, Helena
Robert Torres, President, Montana Chapter, National Association of Social Workers
Mary Alice Cook, Independent Advocate for Children and Families and volunteer teacher, Montana Youth Home, Helena
Karen Sedlock, Citizens Review Board, Montana Supreme Court
Jennifer Bordy, Attorney, Bozeman
Allen Cranford, Christian Scientist Churches in Montana

Opponents: Pam Bricker

Opening Statement by Sponsor: REP. ROYAL JOHNSON, HD 10, Billings. This bill is the result of a lot of study by the Court Assessment Program via a \$300,000 grant for a four year study of what's happening in the Courts now, and what they would like to see happen. I served on this study with lawyers, judges and citizens. We have changed the bill substantially to coordinate it with DPHHS and Department of Corrections regulations.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: 10:30 a.m.}

I believe this is the best effort to date on how we are dealing with youth detention and adult prisoners and coordination of these things. If you haven't read the bill, I'd ask that you do so, as it's very complicated and applied to coming years.

Proponents' Testimony: Jean Whittinghill, Court Assessment Program, and Study Coordinator. In 1994 the Montana Supreme Court Administration received this four-year federal grant to study how we're handling child abuse/neglect cases, and how to do this better, if necessary. So, during the past two years we have evaluated the system, including federal law and Indian child welfare (which makes up about 40 percent of Montana cases). Lincoln, Hill, Cascade and Lewis and Clark Counties were sites of in-depth studies.

Everyone on the study commission was in agreement with this legislation. The amendments are largely organizational and we worked with the Select Committee on Corrections on these. We inserted a 90-day time-line and made provision for one extension in the child abuse/neglect statute, as currently there are none. This way kids will not be stuck in "foster care limbo" awaiting a permanent plan hearing at 12 months.

{Tape: 2; Side: A; Approx. Time Count: #8.5; Comments: 10:37 a.m.}

Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS). I was a member of the Study Commission, and stand in support of the bill.

Jeff Sherlock, District Judge, Helena. We are pleased with the time-lines in the bill, as usually a small child is involved and can form other attachments, which are sometimes not healthy.

SEN. MIGNON WATERMAN, SD 26, Helena. I also served on the Court Assessment Commission, and the Families for Kids Advisory Board. Two years ago we discovered there were 400 kids in state custody for more than 2 years at a time, and about 600 kids were there for much too long. I believe the time-liens in this bill address this problem. Time is an eternity for a three-year-old. Studies show that if a child is in custody for more than 18 months, in all probability they will never return home. This legislation could give kids some permanency in their lives.

Robert Torres, President, Montana Chapter, National Association of Social Workers. We stand in strong support of the bill and urge its passage.

Mary Alice Cook, Independent Advocate for Children and Families and volunteer teacher, Montana Youth Home, Helena. These kids have great problems, and I strongly support this bill.

Karen Sedlock, Citizens Review Board, Montana Supreme Court. Many times we end up reviewing these cases. We strongly support this bill.

Jennifer Bordy, Attorney, Bozeman. I was also a licensed foster parent from 1988-1996. I am please with the Section pertaining

to the Citizens Review Board. I believe the burden of proof in Section 8 should be "beyond a reasonable doubt." In Section 13, we must make a change, as it's worded now it also covers statutory rape. This should not apply in cases such as where a 21-year-old and a 15-year-old want to raise their child together.

{Tape: 2; Side: A; Approx. Time Count: #17; Comments: None.}

Allen Cranford, Christian Scientist Churches in Montana. I am asking that you consider an amendment to restore the practices of our religion on page 2 (**EXHIBITS #4 and #5**). HB 129 contains this same subsection. This amendment would cost the state about \$122,000 in lost federal money.

Californians successfully sued to stop the removal of spiritual healing language in their law. Montana's congressional delegation believes parents and Montana should make their own decision on this issue.

Opponents' Testimony: Pam Bricker. In one family with a child who has a brain malfunction there were specific needs. The child cried abuse, and it resulted in the child being away from the family for 19 months. This child was drugged beyond the ability to function while in foster care. Psychologists said the parents and siblings were the ones in danger. The child has now been returned to the family, but DPHHS has not been to visit them.

These situations are more common than you may think. People tend to avoid DPHHS as much as possible in these situations. My own child was violent at times and was removed from my home while I was out of town at a conference. We were allowed no contact for a year, and I believe this was very damaging.

Questions From Committee Members and Responses: VICE CHAIRMAN LORENTS GROSFIELD. We had a special family appeals court bill which we talked about turning into a study of these court system. Would it be better to have a specialized court to deal with these issues? **Jean Whittinghill.** We talked about creating a family court system at the District Court level, and I believe there was a split consensus. We dropped the idea because the money was not available, but we are evaluating the role of special masters or magistrates. We could be a part of such, but could not take charge of it.

SEN. HALLIGAN. Would you address Mr. Cranford's amendment? **REP.**

ROYAL JOHNSON. I believe he's done a good job with his amendment, but there was not enough clarity to make the Select Committee on Corrections add this to the law. I would leave this more in your hands, as I have no personal objections to it. **Anne Gilkey, DPHHS.** This amendment to the bottom of page 2 and the top of page 3 of the bill was before the Senate Public Health Committee in 1993, and this language is a compromise from that debate.

{Tape: 2; Side: A; Approx. Time Count: #37.1; Comments: 11:06 a.m.}

Section 2 (3)(b) would allow the agency to go in and intervene to save a child's life, if necessary. I'm not aware of this ever being used in Montana, but our law is exactly in line with what federal law is now.

VICE CHAIRMAN GROSFIELD. Page 4, line 3 doesn't say "life threatening". It says "substantial or imminent risk of harm". **Anne Gilkey.** You could strike "or" and we would not object.

SEN. REINY JABS. Was this amended by the Select Committee on Corrections or the House Judiciary Committee? **REP. ROYAL JOHNSON.** This was introduced in the Select Committee on Corrections, and some amendments were put on after the Committee invited other to give input. We tried to include parents and ordinary citizens in this, as there are problems in timing and handling of these cases. It's a compromise bill.

SEN. BRUCE CRIPPEN. If we adopt the Christian Scientist amendments to (3)(a)b and leave (3)(b) the same, would you object? **Anne Gilkey.** I'm not sure, but I don't think so.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: 11:14 a.m.}

SEN. CRIPPEN. You hear my question to Ms. Gilkey. Would you object to this proposal? **Allen Cranford.** We wanted the bill to consider two methods of care available and not make one substandard or secondary class.

SEN. CRIPPEN. Other religions practice non-medical health care, and this language could probably open the door to those kinds of folks. **Allen Cranford.** I hoped to just restore it to the language of pre-1993.

SEN. CRIPPEN. If the Department has this authority now even with tradition medicine, they'd have the authority in these alternative instances, as well. So, I would like to look at your amendments the way I've suggested.

Closing by Sponsor: REP. JOHNSON. I am asking the Committee to look carefully at the bill, and make any necessary changes. I tried to make parents primary and included from the beginning of the process.

{Tape: 2; Side: B; Approx. Time Count: #7.5; Comments: 11:20 a.m.}

EXECUTIVE ACTION ON HB 426

Discussion: VICE CHAIRMAN GROSFIELD. We have received information from the Montana Bankers Association in response to our questions (**EXHIBIT #6**). I have a little concern with

accepted banking practices, as computer and fax records can be tampered with more easily than hand-written documents. Technology is not well-defined yet as to how they will be secured. So, I feel the need to be a bit cautious. **ACTING CHAIRMAN WALTER MCNUTT.** Securities have been done electronically for years, so I don't see a problem with this.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO STRIKE "5" ON PAGE 67, LINE 26 AND INSERT "8". THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. RIC HOLDEN MOVED HB 426 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

SEN. HALLIGAN will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 231

Discussion: SEN. ESTRADA. I am having difficulty with Sections 19 and 20 of this bill, and am asking for some time to speak with Judge Larson on this. Maybe I don't understand, or am too cautious. It looks like we're making the State of Montana a parent.

EXECUTIVE ACTION ON 68

Motion: SEN. HOLDEN MOVED HB 68 BE CONCURRED IN AS PREVIOUSLY AMENDED.

Amendments: SEN. SUE BARTLETT. I asked Valencia Lane to draft the amendments hb06805.av1 to add "serious bodily injury or death resulting from negligence", and this is incorporated on page 2, line 5 of the new gray bill attached to these amendments (EXHIBITS #7 and #8).

Motion/Vote: SEN. BARTLETT MADE A SUBSTITUTE MOTION TO ADOPT ONLY #7 OF THE AMENDMENTS IN sb06805.av1. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. HOLDEN WHO VOTED NO.

Discussion: SEN. HOLDEN. I believe we did a good job on the bill as amended now, so I withstand SEN. BARTLETT's amendment.

SEN. DOHERTY. The Department of Corrections said they don't want to mess with inconsequential problems, and I believe this amendment meets their wishes and our need to represent the State.

VICE CHAIRMAN GROSFIELD. The Department had earlier offered an amendment very similar to this, and it seems this approach is a middle ground. If there is a death that is something that, as a matter of public policy, we need to be concerned with. I don't believe this small change will hurt the bill that much, so I would go along with the amendment.

Motion/Vote: SEN. HOLDEN MOVED HB 68 BE CONCURRED IN AS AMENDED.
THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN.
DOHERTY WHO VOTED NO.

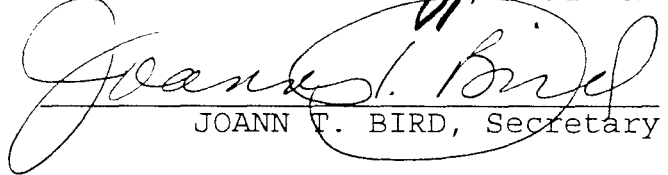
SEN. CRIPPEN advised the Committee that they would look at
proposed amendments to HB 203 before taking executive action on
the bill.

ADJOURNMENT

Adjournment: 11:42 a.m.

A large, stylized handwritten signature in black ink, likely belonging to Sen. Bruce D. Crippen, positioned above his printed name.

SEN. BRUCE D. CRIPPEN, Chairman

A large, stylized handwritten signature in black ink, likely belonging to Joann T. Bird, positioned above her printed name.

JOANN T. BIRD, Secretary

BDC/JTB