MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 9, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 41, SB 372, 2/6/1999
Executive Action: SB 16, SB 243, SB 250, SB 348

HEARING ON HB 41

Sponsor: **REP. TONI HAEGNER, HD 90, HAVRE**

Proponents: **Chief Justice Jean Turnage**
Ward Shanahan, State Bar of Montana
Larry Fasbender, Department of Justice
Mary Phippen, Montana Association of Clerks of District Court

Pat Chenovick, Supreme Court Administrator
Christiana Schwitzer, MTLA
Nancy Sweeney, Lewis and Clark County Clerk of Court
Rod Throssell, Montana Magistrates Association

Opponents: **Jeffrey Koch, Montana Collectors Association**

Opening Statement by Sponsor:

REP. TONI HAEGNER, HD 90, HAVRE, introduced HB 41, which requests that the court surcharge imposed four years ago be extended for another four year period. The bill is extremely important to the continuation of automation and coordination of our court systems. The 1993 Legislature created a Judicial Unification and Funding Committee to study problems within the court system and make recommendations. She sponsored HB 176 which had a June 30, 1999 sunset provision. This bill asks for an extension to 2003. The automation effort has reach 55 of the 56 district courts. Approximately $1.5 million worth of hardware has been installed by 98 out of 115 judges of justice, city and municipal court. Training has been given to 415 users in the use of word processing and case management software. Courts have been able to become vital players in the justice system by integrating with the Department of Justice and the Department of Corrections. The Montana Judicial Case Management System is also being used to provide electronic information to the Child Support Enforcement Division for the central case registry which has been put in place by SB 374. Also, this automation has allowed tracking of multiple DUI offenses in courts of limited jurisdiction.

Continued funding of the judiciary's automation is critical to that branch's ability to provide courts with the tools necessary to perform their Constitutional and statutorial responsibilities. This is a court user fee and not a general fee imposed upon the general public. There is no impact on local governments, if the fee is continued.

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Proponents' Testimony:

Jean Turnage, Chief Justice of the Montana Supreme Court, urged favorable consideration of HB 41. At the hearing in the House, an individual who represented collection agencies/credit bureaus testified that he had to pay the surcharge out of his own pocket. **Chief Turnage** referred to §25-10-101, MCA, which states that in an action for the recovery of money, the plaintiff is to recover costs. This goes into the judgment and does not come from the

pocket of the individual collection agency. Also, §25-10-101, MCA, provides that the legal fees paid for filing and recording papers and certified copies necessary to be used in the action are recoverable.

The Statewide Judicial Automation System is dependent for its survival upon a continuation of the $5 surcharge provided for in Chapter 361, Laws of 1995. The bill simply reinstates a termination clause which continues the surcharge collection for four more years. The majority of these fees come from matters filed in courts of limited jurisdiction relative to minor offenses, misdemeanors, and traffic violations.

He presented his written testimony, **EXHIBIT(jus32a01).**

Ward Shanahan, State Bar of Montana, rose in support of HB 41. He questioned sun setting this fee before the Y2K bug bites. This system has allowed all the rural district courts to be unified into a standard electronic network. The geographical size of Montana requires this type of equipment. This system needs to be continued. It is important that the system be reviewed. He added that HB 339 allows for an interim study of the reapportionment of the judicial districts. This is a good place to review the costs of operating the court system.

Larry Fasbender, Department of Justice, reported that the criminal justice information system accesses information from regional, state and national levels. They perform approximately 27,000 criminal history checks annually. To do this manually would take four to five weeks to determine whether or not an individual has something on their record that would disqualify them from working with children. Recent changes in federal law will require them to allow nursing homes and others to directly access information. It is important that this project be continued so that this system can be upgraded. They are working on an MOU between the Department of Justice, the Judiciary, and the Governor's Office that would coordinate the efforts of all collection agencies so that all programs will be compatible.

Mary Phippen, Montana Association of Clerks of District Court, rose in support of HB 41. If the surcharge is not extended, another funding source will be needed in order to maintain current case management systems.

Pat Chenovick, Supreme Court Administrator, related that over the last three and a half years, tremendous strides have been made in all courts in Montana. The case management software has been installed in 55 of the 56 district courts. By February lst, it will be in the last remaining court in Missoula County. This

system has allowed statistical information to be uniform in all courts. Modifications have been made to collect sentencing data that can be used in the future by the legislature and judges to assess and analyze statutes for effectiveness and for efficiency in the courts.

Things that need to be done include features that allow for electronic evidence presentation. This is used in the federal court system and has reduced the length of trials from three weeks to five days. They would also like to take advantage of the world wide web for exchanging information by e-mail. It is also important for them to take advantage of CD rom technology to have court records information electronically available.

They have finally become able to become partners with the Department of Justice and the Department of Corrections in the integration of justice. The five FTE on the fiscal note are current staff members.

Christiana Schwitzer, MTLA, rose in support of HB 41. Without this bill, the courts would be unable to function with any degree of efficiency.

Nancy Sweeney, Lewis and Clark County Clerk of Court, relayed that they have used the system for ten years and were involved in the first pilot program. In general, the clerks of court are collectors of revenues for the state. Approximately 68% of their fees are transmitted to run various state programs. The user surcharge is one of the few fees they collect that directly benefits the counties.

Rod Throssell, Montana Magistrates Association, remarked that this technology has greatly assisted the judges in limited jurisdiction courts to do their work.

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Opponents' Testimony:

Jeffrey Koch, Montana Collectors Association, maintained that he is not against the program but he is against the method of funding. All Montana taxpayers benefit from this program. They benefit from tracking criminals and from a more streamlined court system. The only people paying for this system are the people using the court. Those involved with the civil side of the court system are receiving no benefit from the technology. All benefits have been on the criminal side.

This is a tax. There has not been an accounting for a total of $4 million that has been put into the plan. The sponsor testified that there has been $1.5 million worth of hardware installed. He questioned how much more is needed. This leaves $2.5 million for software and training. The Missoula courts are against using this program. The Cascade Clerk of Court has stated that she only uses the program when required to do so by the Supreme Court because her 12 year old software is superior.

Regarding the concerns for continuing this program in light of the Y2K bug makes him question the program. If this program is three and a half years old and Y2K was not taken into consideration, what are we paying for? Y2K is a problem from the '60s, not from 1995.

Civil filings are not faster because of this system. Civil filings and trials are not expedited in any way. This is a taxation by deception and should be funded by all taxpayers and not a select group.

Questions from Committee Members and Responses:

CHAIRMAN GROSFIELD asked for more information regarding the accompanying bill that was tabled in the House. **REP. HAEGNER** clarified that there were two accompanying bills intended to address CI-75. She added that the **Chief Justice** indicated that that was not necessary so both of the bills were tabled since they were duplicative and their purpose was only to address CI-75. These bills were HB 49 and HB 104.

CHAIRMAN GROSFIELD questioned the breakdown of fees regarding criminal and civil cases. **Mr. Chenovick** explained that the percentage is 80% criminal and 20% civil. Traffic offenses are criminal offenses and this is where the majority of the fees are raised.

CHAIRMAN GROSFIELD questioned the effect of only charging the fee in criminal cases. **Mr. Chenovick** responded that this would result in a 20% drop in revenue.

SEN. JABS questioned whether the program would ever be completed. **Mr. Chenovick** explained that the case management software is installed in all the district courts statewide. Cascade County only uses this on a limited basis. There are 115 courts of limited jurisdiction and 98 of these are automated. Technology will continue to change and they need to keep the software current.

SEN. BARTLETT asked what types of information would be captured on a civil case. **Mr. Chenovick** explained that any action which happens on any case goes into the system. This includes dates, judges assigned, attorneys, fees collected, judgments, dispositions, etc. They have also modified the system for sentencing information. Because this is time and date sensitive, they can estimate the days it would take a civil action to get through a particular court.

SEN. BARTLETT asked the impact on the program if 20% of the revenue were not available. **Mr. Chenovick** maintained that this would decrease their ability to move forward at the current pace. The FTE count is very important because they support 415 users statewide. This is about 80 users per staff member. On a national average, the normal number of users to a support person is approximately 40. Reducing FTE would impact their ability to respond to questions, maintenance and updating.

SEN. BARTLETT summarized that the brunt of the reduction would fall on the clerk of courts in terms of support and service provided by this program. **Mr. Chenovick** added that this would affect all courts.

CHAIRMAN GROSFIELD further questioned whether this reduction would cause reduction in staff or hardware and software. **Mr. Chenovick** explained that since they are at 80 users per FTE, they would not lay off FTE. User support is very important to the courts. They may have to slow down and decrease hardware replacement and installation as well as software updates.

CHAIRMAN GROSFIELD remarked that a surcharge on criminal cases would not be affected by Article VIII, Section 17, of the Montana Constitution. However, this charge would be different for civil cases. **Mr. Chenovick** explained that under his reading of CI-75, it addresses fines, fees and other charges in conviction of criminals, violations of law, or restitution. A violation of law can be contained in a civil matter.

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Mr. Shanahan remarked that the person who testified in opposition to the bill handles contract matters. This would not be covered by CI-75. Regarding the criminal versus civil surcharge, he remarked that he is a parent of two children who are in their 30s. He hasn't had anyone in the school system for a number of years but he continues to pay taxes for the support of the school system. The bulk of the business before the district courts is civil business. Having our disputes resolved through the mechanism of the courts is a privilege. The government is

directly involved with the criminal side. He is in favor of an ongoing review of the system. There is no justification for the civil side to believe they have been discriminated against in this situation.

{Tape : 1; Side : B; Approx. Time Counter : 9.50}
Closing by Sponsor:

REP. HAEGNER explained that HB 41 was introduced early in the process. Shortly after the passage of CI-75, everyone was in a panic regarding how to address legislation. They have since altered their action. When the bill was introduced, it was heard eight different times and was not particularly regarded as a tax. This system is extremely important to civil courts as well as criminal courts. It speeds up the time of action and writing of receipts. It saves litigation time.

Additional exhibit - Letter from **Gregory J. Petesch, Director of Legal Services,** regarding HB 41 - **EXHIBIT(jus32a02)** and additional written testimony, **EXHIBIT(jus32a03).**

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HEARING ON SB 372

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**
Mars Scott, Child and Family Law Section of the State Bar Association

Proponents: **Mary Phippen, Montana Association of Clerks of District Court**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, presented SB 372. Fundamental changes were made in the area of family law last session. The minor changes necessary reflect how competently this was addressed last session. Changes were made from custody to parenting. A new situation was created where attorneys were required to have their clients disclose information up front. The decision was made that if a parenting plan was established, it should stay in effect for awhile. If someone frequently contests a parenting plan simply to get back at the other side, the decision has been to charge a $120 fee for filing a contested parenting plan. The clerks of court have adopted a policy which states that unless there is a signed agreement, they have to assume that it is contested. He has brought back language that

the clerks of court do not agree with. If a petition to amend the parenting plan is filed and it ends up not being contested, the fees would be refunded. The clerks do not like to refund money since they do not refund money in any other cases, except on court orders. The Family Law Section of the State Bar Association met a few months ago to review the fundamental changes made last session.
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Proponents' Testimony:

Mars Scott, Child and Family Law Section of the State Bar Association, commented that he is the Chairman of the Legislative Subcommittee for Child and Family Law. They carefully monitored the changes made by the last legislature and polled all members around the state for their views. The changes seem to be achieving the goals of streamlining the procedures for resolving disputes in domestic relations cases and reducing the costs to the public.

Four bills were introduced last session. One bill provided for an automatic restraining order on property at the time that the summons was issued. The purpose was to put a freeze on all of the marital estate assets and to prevent the situation where someone could hide their assets or spend the money so that the ex-spouse would not receive an equitable share in the property. Another bill provided for a temporary family support option during the pendency of the case. This allowed the court to review the budget of the marital estate and to order who will be responsible for certain expenses. The parenting plan bill also passed last session. A bill has been introduced by **SEN. GRIMES** on this issue. They are happy to work with him but do believe that the current law is working very well. The last bill is the mandatory disclosure of assets and liabilities. When a divorce is filed, both parties have an affirmative duty to disclose this information as opposed to playing the guessing game.

Minor changes are made by SB 372. There is a concern that if a contested amendment is made to the parenting plan with a $120 fee and this is won by default, the $120 should be refunded. Section 40-4-105 contains a change. Instead of keeping social security numbers in a confidential source being a mandatory requirement, they would make this a permissive requirement. If someone wants their social security number kept confidential, they could request the court to do so. As practitioners, they are not sure whether placing a social security number into a confidential file is sufficient or whether every single document that was filed with the court that may contain a social security number must be placed in a confidential file.

The most striking change is made to §40-4-130, which addresses the summary dissolution proceedings. This would allow more people to take advantage of summary proceedings and thus not need to hire attorneys to help them with simple divorces. Under the old law to take advantage of summary proceedings, the couple could not have any children. The amendment would allow that you could have children and take advantage of the summary proceedings if you had an agreed upon parenting plan and your child and medical support orders had been determined either by a judge or administrative order.

Under Section 5, they have increased the unsecured obligation from $4,000 to $8,000. Under paragraph 6, they raised the fair market value of assets, excluding secured obligations, from $13,000 to $25,000.

Under the child support provision, they have changed (6)(a)(i) to support confidentiality requirements on a party's identity. There are some concerns on behalf of battered spouses and potential battered spouses that too much information was given out about them. The changes would be to only have a mailing address for purposes of service.

Another change occurs in §40-4-234(6). Currently there is a requirement that every parenting plan be sealed. Not all parenting plans need to be sealed. If one of parties wants the parenting plan sealed, they can do so. Sealing every parenting plan is a burden upon the clerks of court.

In §40-4-252, under the mandatory disclosure provisions, assets and liabilities must be disclosed to the other side within 60 days. They have been told that that is a very burdensome requirement. In many marriages, the partners know their assets. The parties may mutually agree to waive this provision in writing. The mandatory disclosure at the end is still required.

{Tape : 1; Side : B; Approx. Time Counter : 10.05}

Mary Phippen, Montana Association of Clerks of District Court, presented her written testimony, **EXHIBIT(jus32a04).**

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. HOLDEN asked for clarification of lines 1-6, on page 8.
SEN. HALLIGAN explained that this section was not changed last session. It addresses summary dissolution which allows an easy way to get divorced. Many clients do not need attorneys in this

matter. This bill would expand the provision for couples who have children but have an administrative order for health care, medical support, and child support. If their unsecured obligations are $8,000 instead of $4,000 and/or the secured obligations are $25,000, they are able to use this provision.

SEN. HOLDEN asked the procedure involved. **SEN. HALLIGAN** explained that courts have some forms that show how to file a pleading. It is necessary to comply with the requirements in the form. There is a $175 fee to file the petition. The court assumes that discovery has taken place and one or the other parties gets the dissolution. Many times both parties attend the uncontested hearing. A proposed final decree is drafted for the judge and the judge then signs the order.

SEN. HOLDEN questioned how often this is used. **SEN. HALLIGAN** believed this was used approximately 10% of the time. **Ms. Sweeney** explained that many people who come to their office would like to see justice prevail but have no method of bringing their matters before the court. They advise these people as to the procedures necessary to be followed but only give out a very few forms since they would be under the penalty of suit if they were giving out legal advice. The Attorney General has drafted a summary dissolution form. This allows joint petitioners to wait 20 days and then have their hearing in front of the judge. This includes the petition, a form to revoke the dissolution, and the final decree form.

SEN. GRIMES questioned whether, under the summary dissolution, it was necessary to have the petitioners go through the judicial or administrative process to have everything ironed out before they could get a summary dissolution. **Mr. Scott** explained that there is a variance provision within the child support guidelines that allows the parties to vary from the actual child support amount. The requirement provides that if you are going to vary from the guidelines, it is necessary that the guideline calculations be presented with the decree. In terms of a judicial order, they have found that some judges were running the child support calculations themselves. The Child Support Enforcement Division will run the calculations if a case file is opened.

SEN. BARTLETT stated that she has heard complaints regarding the disclosure of assets. Specifically, this involves the situation that the court accepts the valuation which the estranged spouse places on the assets that he or she is disclosing. She questioned whether there was a method for requiring an independent appraisal of assets if the value of the assets is disputed. **Mr. Scott** explained that the marketplace controls how the parties might proceed in a divorce action. If there is a

dispute on the valuation of an asset, the disparity in the dispute will generally determine whether someone wants to hire an appraiser. There is no requirement in law that valuation be determined by any method other than what the parties would assume their assets might be worth. There is case law from the Montana Supreme Court that states that parties themselves are expert witnesses when it comes to valuing their own property.

SEN. BARTLETT questioned whether the person who contests the valuation would need to hire an appraiser. She added that this person may not have the assets to hire an appraiser. **Mr. Scott** clarified that they did make a change during the last session to §40-4-110. The old law provided for the payment of attorneys fees to the other party, if the judge so decided, after the case was completed. Currently, the parties can go into court and apply for money up front to pay attorneys, experts, and other costs of the litigation while it is in progress. The policy reason was that generally in divorces one person has a lot of money and the other person does not have access to the funds.

SEN. JABS questioned the refunding of fees regarding the contested parenting plan where the party won by default. **SEN. HALLIGAN** explained that attorneys were filing the fees under protest. Only after the judge decides that perhaps it wasn't a contested amendment, an order is issued to have the fees refunded. Ordinarily, the funds are not currently being refunded when this is not a contested plan. This is not clear for the clerks of court. The attorneys do not know if this is contested until someone files a response.

SEN. BARTLETT asked for more information regarding the dilemma faced by clerks of court in regard to the confidentiality of social security numbers. She would be reluctant to have social securities numbers public information through the court systems.

Ms. Sweeney remarked that sealing the parenting plans has created a real problem in their office. Some clerks open two separate files. One file is confidential and the other is the public file. In her office, they seal the final parenting plans. The proposed parenting plans, which many times are identical to the final parenting plans, are not sealed. They keep information separate regarding the social security number, employment, and phone numbers. She has spoken at Bar Association Meetings explaining to attorneys that the child support information needs to be contained in the decree or otherwise, when anyone but the parties request that information, it is maintained in the confidential parenting plan which can only be released to the parents or the custodians of the children.

The problem could be addressed by maintaining some of that information as confidential. One small envelope isn't as great as the storage crisis they now face. They have increased by one-third the size of the files by keeping everything separate.

Amy Pyfer, Child Support Enforcement Division (CSED), remarked that the language added in subsection (6) last session follows federal law. It states that a social security number must be in the record regarding a dissolution, a support order, or a paternity action. This allows for privacy exceptions. There is a similar amendment in §40-4-204 which deals with the party's identity, residential and mailing addresses, telephone number, and social security number. The proposal is to strike residential and just state address for purposes of service and to delete telephone number and social security number. The language that went in last session states that the district court must require the parties to update the court with this information. It doesn't state where the information needs to be but it does state that the information needs to be provided. Currently this is provided on a case registry form that the parties complete and give to the clerk and the clerk loads this information onto their judicial case management system. It is electronically sent to their division and to Vital Statistics. As long as the information can be collected somehow, the CSED has no problem with sealing or confidentiality.

CHAIRMAN GROSFIELD asked about security with sealed documents. **Ms. Sweeney** stated that their court files are kept under key and combination in two different areas one being more secret than the other. This is kept locked over the evening hours. Their janitors need to come in on Thursdays at 4:00 to clean their area. This would vary from courthouse to courthouse. Most courthouses would have a locked, fireproof cabinet.

SEN. HALLIGAN requested that **Ms. Pyfer** explain why the judicial administrative order is needed for a summary dissolution. **Ms. Pyfer** explained that every paternity action needs to have a child support order. This order can be obtained from the district court or from the administrative agency. This section would provide the summary dissolution process to people with children. Many of the people who would be eligible for the summary dissolution process have already gone through the CSED system and would already have a support order established. While the parties could certainly agree on child support, they would not be able to finalize a divorce without an order of support. This could be adopted by the court by reference or a new order could be prepared.

{Tape : 2; Side : A; Approx. Time Counter : 10.40}

Closing by Sponsor:

SEN. HALLIGAN summarized that it was necessary to work with the clerks of court on the issue they have raised. In Missoula County, the $120 fee generated over $5,000 which goes to very important programs dealing with children. Regarding the social security issue, 60% to 75% of his clients wouldn't care whether their social security numbers were sealed. It would be an undue burden to require the clerks to seal every document with a social security number. He believed that leaving this to the request of the parties would address the issue. He added that it would be necessary to address the delayed effective date. The attorney general will need to generate new forms regarding the summary dissolution so the effective date will need to be July or October.

EXECUTIVE ACTION ON SB 348

Motion: SEN. BARTLETT moved that **SB 348 BE AMENDED - SB034801.avl, EXHIBIT(jus32a05).**

Discussion:

SEN. BARTLETT explained that the amendment would change the words "civil offense" to "municipal infraction" in one place and changing the word "offense" to "infraction" in another place. The term "offense" is generally considered a criminal terminology and this bill tries to decriminalize the criminal codes.

Vote: The motion carried unanimously - 9-0.

Motion/Vote: SEN. BARTLETT moved that **SB 348 DO PASS AS AMENDED. The motion carried unanimously - 9-0.**

{Tape : 2; Side : A; Approx. Time Counter : 10.45}

EXECUTIVE ACTION ON SB 16

SEN. GRIMES reported that the Y2K Subcommittee met three times and heard from a variety of individuals who are involved in Y2K issues. This included Disaster and Emergency Services, the National Guard, and various other agencies. The private sector was not very well represented. They agreed that there should be some level of immunity for the public sector. The simplest way to address this seemed to be use the gross negligence standard. He doesn't believe that other states have gone to that extent. If a sewage system for a municipality is down or a water system is down and damage occurs as a result, this could cause problems

for the municipalities if they were not provided some level of immunity.

The Subcommittee agreed to the amendments - SB001604.avl, **EXHIBIT(jus32a06)**. Since the last Subcommittee meeting, the Hospital Association has reminded him that some hospitals are government hospitals. This would create an unequal standard unless non-profit hospitals were included.

Regarding the private sector, the Subcommittee was not in agreement. It is his understanding that **SEN. HOLDEN** believes there should be some level of immunity. **SEN. GRIMES** added that they were given ample opportunity to attend the meetings. Some have told him that they are not interested in immunity because there is a negligence standard that they can live with. He added that his original idea was to have some damage limits and attorney fee limits. However, the result of that could limit Montana companies from actions against out-of-state companies.

They strongly recommend Section 1 of the amendments. This is almost a replacement bill. They are not completely in concurrence with Section 2.

SEN. HALLIGAN agreed that the private sector seemed to have no interest in immunity. The banking industry, in particular, opposed this legislation and wanted to be able to pursue litigation if they needed to as a method of protecting their own interests. The information they received involved problems with accounting software, health care software, and other financial software that had been sold to companies that were not Y2K compliant. Businesses are saying that they ought to be able to sue the people selling and installing this software. He questioned whether a new hearing was needed on the bill. The public immunity section does not have the same criteria as the proposed private sector criteria. The public sector doesn't need to show any due diligence whatsoever.

SEN. GRIMES added that the House has formed a Subcommittee on this issue. The Chairman, **REP. EWER**, stated that they were a little concerned about government immunity. There will probably be a very good hearing on this in the House.

SEN. HOLDEN insisted that the private sector did not know that they had a potential immunity bill because the title of the bill talked about government immunity but didn't state "private enterprise". The lobbyists told him they didn't know they were involved in the bill. After the Subcommittee had adjourned, the representatives from the Chamber of Commerce, the trial attorneys, and the defense attorneys stated that this is

something that should be addressed in 1999. The governor is agreeable to this bill and did not give out-of-state corporations and computer program manufacturers a way out of the problem. He remarked that a lot of prior notice is required before anyone is immune. There is a standard set with this legislation.

CHAIRMAN GROSFIELD questioned whether the sponsor, **SEN. KEENAN,** was in agreement with the amendments. **SEN. GRIMES** maintained that he attended their meetings and was in support of the amendments.

CHAIRMAN GROSFIELD asked for more clarification regarding non-profit entities. **John Flink, Montana Hospital Association,** explained that the issue they had raised is that there are 15 to 20 hospitals that are owned by county government or hospital districts who would fall under the immunity provided in Section 1 of the bill. The remaining hospitals are not-for-profit hospitals that are community owned with a private board of directors or owned by religious organizations. Originally, they had discussed the possibility of including in Section 1, reference to governmental entities and not-for-profit organizations as a way of treating all of the health care facilities the same. There are some serious issues that medical providers face that businesses don't face.

Dal Smilie, Department of Administration, stated that the reason they decided not to include not-for-profit organizations is because the language on page 2, (b), states that for a private business, if there is bodily injury, there is no immunity. The largest amount of liability would be bodily injury. He saw a problem with government hospitals receiving immunity and other non-profits not receiving the same immunity.

CHAIRMAN GROSFIELD asked **Ms. Lane** to address whether another hearing should be held on this bill. **Ms. Lane** didn't believe it was necessary to do so since this bill did not vary that much from the intent of the original bill as indicated by the title. She did not recall preparing a substitute bill in which a second hearing was required. The Subcommittee gave notice of its meetings and requested interested parties to attend.

SEN. JABS remarked that persons in hospitals may be connected to life support systems. He believed immunity was important.

SEN. GRIMES stated that the hospital industry was not considered in their discussions on public sector immunity because they overlooked the fact that public sector hospitals would now fall under the gross negligence standard.

SEN. JABS believed that private hospitals should be treated the same as government hospitals.

SEN. GRIMES stated that if the private hospitals were satisfied with protection under current law then maybe the public sector hospital should be as well.

SEN. BARTLETT suggested excluding (b) from the coverage provided for public sector hospitals. The rest should be left in because they would have an accounting function, etc.

Mr. Smilie remarked that Section l gives immunity for government except where there is gross negligence. Section 2 gives immunity for others including non-profits. However, in Section 2 the immunity does not include immunity where there is bodily injury. If (b) was removed, this would give immunity for bodily injury and that is not the intent. If non-profits were moved up to Section l and treated like government entities, the bodily injury provision would not apply to them. These leaves the problem with private versus public hospitals.

SEN. HOLDEN believed that (b) needed to stay in the legislation.

SEN. GRIMES proposed a conceptual amendment that would leave Section l intact and applicable to the public sector with the exception of public-sector medical care facilities. Those as well as the non-profits would be in Section 2. This provides some protection for the hospitals and they would all be treated the same.

{Tape : 2; Side : A; Approx. Time Counter : 11.10}

Mr. Flink remarked that public entities would be given immunity except in situations of gross negligence. Private organizations would be dealt with in the terms of the contract that any private entity might have with the vendor or manufacturer. If there is bodily injury, the hospital would not be entitled to any immunity or be entitled to resolving the dispute within the terms of the contract. It would then go back to the gross negligence standard that is in current law.

He would oppose the conceptional amendment because they need to be on the public side instead of the private side. A problem in a hospital could very likely result in bodily injury that is not the fault of anyone working in the hospital. It would be the fault of the manufacturer of the equipment. They have invested an enormous amount of money and energy in bringing their systems into compliance with Y2K.

SEN. GRIMES questioned whether the joint and several provision would apply to this situation. **Ms. Lane** stated that this bill would not affect joint and several liability except to the extent that Section 1 would say there is no liability.

SEN. GRIMES remarked that if all hospitals were placed under Section 2 and there was bodily injury, the negligence standard along with the joint and several provisions would apply.

Mr. Flink stated that they have lived under the negligence standard for some time. The other concern with the bill as introduced is that it exempted the manufacturers and the vendors. This really is a problem because GE makes CT scanners and GE is not a Montana company. There is no recourse. If they are given immunity, the liability resides with the facility.

SEN. GRIMES questioned whether the portion that applied to the manufacturers and software producers was still present in the bill. **Ms. Lane** affirmed that is was in Section 2. This would limit suits as long as there is not bodily injury against anyone who is not a government entity. It would limit them to contract damages. If there was bodily injury, the bill would not apply.

SEN. GRIMES suggested a conceptional amendment that would adopt Section 1 and exclude public sector owned hospitals. Section 2 would include public sector hospitals and non-profits. This would also delete from Section 2 paragraphs (d) and (e).

Mr. Smilie explained that the problem in the initial bill that **Mr. Flink** spoke to was that it appeared that the people in the stream of commerce who were making and selling computer equipment received immunity and other Montana business would not get immunity and would not be able to sue the people who made and sold the computer equipment. The amendments incorporated here, especially (c), include that the duty of care of the regular Montana business is to take a reasonable effort to detect the problem. For those making and selling the equipment, there is a stronger duty to take care, give notice, etc. If (d) and (e) were struck, this would place the people making and selling the equipment on the same footing.

SEN. BARTLETT suggested including public hospitals and private non-profit medical facilities in Section 1 and excluding the coverage of Section 1 for those specific entities from instances where there was bodily injury so that this would fall back to the negligence standard which **Mr. Flink** has indicated that they have lived under for some time. This would give them coverage for other kinds of failures that may not involve bodily injury and would put all hospitals on an equal footing.

Mr. Flink agreed and added that nursing homes may also be in the same situation.

SEN. DOHERTY maintained that he agreed with deleting (d) and (e).

SEN. GRIMES suggested segregating the amendments and voting on Section l with **SEN. BARTLETT'S** inclusion of the hospitals with exception of bodily injury. Section 2 would need further discussion.

CHAIRMAN Grosfield requested a written amendment for the Committee to review SB 16.

SEN. BARTLETT stated that the amendments addressed the failure or malfunction caused directly or indirectly by the failure of computer software or of any device containing a computer processor. She wanted to make sure that the terminology "device containing a computer processor" included embedded chips. She believed this would be the biggest problem for Y2K.

Mr. Smilie explained that the initial bill contained a definition section. He believed it would be safer to state "computer processor and embedded chips".

EXECUTIVE ACTION ON SB 243

Motion: **SEN. GRIMES** moved that **SB 243 DO PASS.**

Discussion:

SEN. HALLIGAN questioned whether SB 250 would repeal sections in this bill.

SEN. BARTLETT responded that it would repeal the Extended Jurisdiction Prosecution Act, which are the sections in part 16 and some additional sections. Section 16-02-0405 is amended by SB 243. The repealer repeals 16-01 through 16-07. She added that if SB 243 goes forward, she would request that the repealer be sent forward as well until it is known whether or not this bill will continue through the process. Her concern is the comment by **Greg Petesch** that since the court struck down the existing law in this area, the Legislative Services Division has continued to receive telephone calls from people who work in this area of law asking about the status of the Extended Jurisdiction Prosecution Act. Having those sections on the books is confusing when they have been nullified by a Supreme Court decision. In order not to have a problem with transmittal deadlines, it seems prudent to send the repealer along and have it in the House.

CHAIRMAN GROSFIELD questioned the situation if this Committee decided not to proceed with SB 243. **SEN. BARTLETT** stated that she would then move that the repealer do pass.

SEN. BARTLETT clarified that SB 243 attempts to address the flaws that the Supreme Court found in the current provisions of the Extended Jurisdiction Prosecution Act. She added that SB 250 was presented by the Code Commissioner to the Judiciary Committee because there is still confusion. The existing language has been struck down by the Court. The Court stated that although there is a severability clause in the Extended Jurisdiction Prosecution Act, certain sections of the Act were found unconstitutional but were so integral to the operation of the entire Act that they could not be severed and therefore the entire Act would be unconstitutional. The Act is Part 16 of Title 41, Chapter 5.

SEN. GRIMES asked what would happen to the offender currently in jail. **Ms. Lane** stated that Title 41, Chapter 5, is the Youth Court Act which states that juveniles should be treated separately from adults and given special provisions and extra help to try to avoid future problems. Part 16, the Extended Juvenile Jurisdiction Prosecution Act, states that there are certain juveniles that are really bad actors and they may not be treated properly in the Youth Court Act. It provides them two sentences or one sentence with two parts. They will receive a Youth Court sentence which is to their benefit but they will also receive an adult sentence to be held over their head. If they do not do right under the juvenile sentence, the juvenile sentence would be revoked and the adult sentence would be imposed and they would be treated like an adult. This would be to society's benefit, but not the youth's benefit. Part 16, the Juvenile Extended Jurisdiction Prosecution Act, has been declared invalid and void by the Montana Supreme Court which found it unconstitutional on equal protection grounds. There are also serious questions on due process grounds.

She was not sure how this would affect anyone currently under this sentence. It would be necessary to check with the county attorneys who prosecuted those cases. There were five combined cases on appeal to the Montana Supreme Court. Their sentences are in jeopardy.

The law is on the books but it is unenforceable and invalid as determined by the Supreme Court. Repealing it means it will be taken off the books and it would no longer exist as a law. The repeal will not have any effect that the Supreme Court decision has already had on current convictions. It will affect future convictions, because it can no longer be used.

SEN. GRIMES asked if SB 243 and SB 250 could be amended with a severability clause. **Ms. Lane** stated that this could not be done. She added that SB 243 attempts to amend statutes that have been declared unconstitutional and void. It would be up to the Montana Supreme Court to decide if the amendments were sufficient to revise those void statutes.

SEN. HALLIGAN explained that a county attorney will probably handle more direct filing to adult court rather than the youth court. Since the youth court provides better services, it is worth looking. He added that this could be unconstitutional.

SEN. BARTLETT stated that she is in support and agrees to the issue being addressed in SB 243. It makes common sense but it doesn't make constitutional sense. The Supreme Court decision is based on a combination of equal protection grounds and the rights of minors. This decision holds that the Extended Jurisdiction Prosecution Act violated equal protection and the rights of minors. The amendments in SB 243 are close to addressing some of the equal protection issues because it limits the total length of a sentence to no more than the adult sentence that an adult could be given for a crime of the same nature. The law that was struck down did not do so. It was possible for a juvenile to receive a longer sentence than an adult for the same crime. The court held that the Act could limit or eliminate a youth's physical liberty. It went on to state that a physical liberty is a fundamental right and requires a compelling state interest to infringe upon that right. The compelling state interest needs to be consistent with the part of Montana's Constitution which provides for the rights of minors. This states that minors have all the rights of adults unless specifically precluded by laws which enhance the protections of minors. The court further held that if the legislature seeks to carve exceptions to this guarantee it must not only show a compelling state interest but also that the exception is designed to enhance the rights of minors. The Court further held that in regard to the changes in the purpose section of the Youth Court Act, the purpose of the Youth Court Act had been protection of minors but the changes made this much closer to retribution.

She added that **Mr. Petesch** believed that it would be necessary to add crimes that could be committed by youths in the sections of the law that permit transfer to adult court.

SEN. HALLIGAN remarked that it would be necessary to deal with the purpose section to make it consistent with the constitutional language. The youth would be able to take advantage of services in the adult system to include the intensive supervision, pre-release, boot camps, alcohol and drug treatment, etc.

Vote: **The motion carried with SENATORS BARTLETT and DOHERTY voting no.**

EXECUTIVE ACTION ON SB 250

Motion: **SEN. BARTLETT** moved that **SB 250 DO PASS.**

Discussion:

SEN. BARTLETT commented that she has already given her rationale for this bill. She gave the Committee her word that if it appears that SB 243 is moving through the House without difficulty, she will ask the House Committee to table SB 250. She would hate to see SB 243 go down and need a 2/3rds vote to get SB 250 into the House.

Vote: **The motion carried with SEN. HOLDEN voting no.**

ADJOURNMENT

Adjournment: 12:00 P.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus32aad)