MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 15, 2001 at 10:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, 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: SB 40, SB 177, 1/21/2001

HEARING ON SB 40

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS**

Proponents: **Mike Ferriter, Administrator of Community Corrections Division of the Department of Corrections**
Connie Perrin, Department of Corrections

Opponents: **None**

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS opened on SB 40 and passed out an informational sheet, **EXHIBIT(jus11a01)**. Montana, along with other states was a member of the interstate compact that dealt with moving inmates from one state to the other. The current law was about 60 years old with no changes since it was instituted. It was imperative to make changes now because of the large number of convicted adult offenders authorized to be in states other than those in which they were sentenced. **SEN. CHRISTIAENS** attended a meeting in which the states came together to discuss the problems with inmates, without proper supervision, moving from one state to the other. Montana was an exporter state, so this compact was an excellent tool. Problems would occur if the interstate compact rules were not followed. In a case involving an alleged child murderer in Massachusetts coming to Great Falls, the interstate compact was not in place. If it would have been, that individual would have had his information sent to the state's probation and parole, and he would have been under strict supervision. We're trying to prevent that kind of case. Interstate compact bills needed to be approved exactly as they were presented without amendments and changes because 35 states needed to enact them in order for them to become law; all the states needed to work under the same rule.

Proponents' Testimony:

Mike Ferriter, Administrator of Community Corrections Division of the Department of Corrections, spoke in favor of SB 40. He submitted his testimony, **EXHIBIT(jus11a02)**.

Connie Perrin, Department of Corrections, spoke in favor of SB 40 and submitted her testimony, **EXHIBIT(jus11a03)**.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked whether the meetings were open to the public and what kind of notice was given. **Mike Ferriter, Administrator of Community Corrections Division of the Department of Corrections**, said the new compact called for a local organization made up of three or four people that would overview/ review the Interstate Compact transfers. On the national level, there would be a representative from each state plus a group of other non-direct members, attorneys and judges, that would be involved on a national level. The legislation did talk about open meetings. There was one clause stating the necessity to close a meeting in the event a state was in non-compliance, and therefore jeopardizing confidentiality issues. In general, it would be an open process.

SEN. HALLIGAN followed up with a question relating to sex offenders, level 1,2, and 3 offenders, and how the central tracking was updated. **Mr. Ferriter** replied that before any offender, whether a sex offender or any other felony offender, could transfer into the state, guidelines must be met. The offender must be, or have a family member who was, a resident of the state; or have a reason to be here, i.e.: employment or education. Then probation/parole officers had the opportunity to investigate and approve or deny that referral. Other states used the same process if Montana sent an offender there. If a sex offender would be transferred from another state, the department would put into play those notifications, prior to acceptance.

SEN. JERRY O'NEIL referred to page 10, line 14 regarding withdrawing state's responsibility for all expenses. For example, he asked if the commission would utilize an airline to move the prisoners from one state to another, and it would cost the state so much money, but the state withdrew, would the state still be liable for the transportation costs projected for the future? **SEN. CHRISTIAENS** replied that inmates incurred the costs of returning to their home state. He said the question could possibly be true, however, the example given would not happen. **SEN. CHRISTIAENS** emphasized that it was important to remember that Montana was an exporter of inmates, rather than an importer: the state benefitted financially with the Interstate Compact. Safety factors were important to keep in mind. If a level 3 sex offender in Massachusetts would be coming to Montana without the Interstate Compact, no assurances existed regarding the right kind of supervision if and when the offender would enter the state. With an Interstate Compact in place, the state would have control over the kind of supervision that would be required with

that inmate, but assurances would also exist that when a Montana offender went to another state, they would receive the supervision that the Department of Corrections would want to see for them in that state. Some states' probation and parole officers had large numbers of offenders under their supervision and the offender received little or no supervision. With the Interstate Compact, all states could be assured that the level of supervision existed.

SEN. DUANE GRIMES asked if the national group that enacted the rules would restrict Montana's ability to export offenders, or the reverse. Would Montana have to abide by any requirements that would be onerous because of the national level rule-making authority? **Mr. Ferriter** clarified some terminology. Two different kinds of Compacts exist in Corrections: 1) this bill was for those offenders who were not currently incarcerated, but adult offenders on probation and parole. 2) The MT State Prison dealt with another type of Compact that transferred a prisoner from one prison to another. The bill dealt with those offenders who are already on the street on probation and parole supervision. Transportation costs were the offenders' responsibility. Generally an offender was put on Interstate Compact because as they passed through the state, they committed a crime and ended up in the MT State Prison. After release, the offender chose to return to his/her home state and the state of Montana was happy to do that. It was the same if a Montana resident violated a law in another state, was put in prison there, then wanted to return to Montana after the sentence had been served. The department of Corrections had been operating in that fashion for years, under an Association where the states tried in good faith to abide by the rules and regulations that the Association developed. However, enforcement was not always available. The Commission that would be created with this bill, would be the enforcer if a state would not cooperate with the rules. This commission allowed for representation to have the states concerns brought forth.

{Tape : 1; Side : B; begin}

CHAIRMAN LORENTS GROSFIELD had a question on the fiscal note because it didn't give any information. The fact sheet from the department talked about dues, and **Mr. Ferriter** talked about current fees paid to the Association. Other costs could be incurred by the department, the Judiciary, and local government. The fiscal note gave no indication as to major or minor costs. He asked what this would cost. **Mr. Ferriter** replied that there was confusion on part 2 of the fiscal note. He interpreted that the Commission would send one member annually, such as someone who oversaw the day-to-day operation. The attorney or Judicial

member was an at-large member that may or may not be selected from the state to attend. If that person would be selected, the travel fees would be part of the Association. That section needed to be clarified. The dues were an estimate based on the number of offenders. That was actual cost and the department made the decision to absorb that within its existing budget. A few ways to do that: 1) absorb within probation and parole budget. 2) a statute allowed the department to collect supervision fees from offenders currently on the case load. The state collected about $200,000 annually in supervision fees. Paying the dues would be an appropriate method of spending those fees.

CHAIRMAN GROSFIELD clarified that the new cost to state government would be about $18,000. **Mr. Ferriter** replied that was correct and said if the state hosted the annual meeting, it would cost an additional $1,000. The costs to the state would be one annual trip and the dues for participation.

SEN. WALT McNUTT asked why the Judiciary costs in section 3 of the fiscal note would be increased. **Mr. Ferriter** said that he didn't understand that. He responded that the department would continue as usual, with the same number of staff, with the exception of having this new Commission to turn to.

Closing by Sponsor:

SEN. CHRISTIAENS closed on SB 40 by saying that the fiscal note was not clear. Most of the costs would be absorbed within the Department of Corrections' budget. He said he would make sure that the subcommittee would adequately address this budget issue when it passed through that committee. He believed that adequate supervision of offenders was needed in Montana as they moved across state lines. **EXHIBIT(jus11a04)**

HEARING ON SB 177

Sponsor: **SEN. JACK WELLS, SD 14, BOZEMAN**

Proponents: **Rep. Darrel Adams, representing himself**
Harris Himes, representing self
Julie Millam, Christian Coalition
Steve White, Coalition of Home Educators
Don Bergstrom, representing himself
Barbara LaRue, parent
Amy Orser, representing herself
Karen Pfaehler, parent
Jennifer Coleman, parent

Dallas Erickson, parent and grandparent
Jody Wardell, representing himself
Mike Fellows, MT Libertarian Party
Bonnie Lawson, parent

Opponents: **Lance Melton, Executive Director of Montana School Board Association**
Jeff Weldon, Legal Council for O.P.I.
Loran Frazier, School Administrator of MT
Erik Feaver, MEA-MFT
Jacqueline Lenmark, MT Coalition for Privacy and Free Expression
Daniel Casey, MT Human Rights Network
Steven Ertelt, Director of Montana Right to Life
Rebecca Moog, MT Women's Lobby
Beth Brenneman, legal director of ACLU of Montana

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, BOZEMAN, opened on SB 177 by commenting that the bill recognized the rights of parents in dealing with their children's upbringing. He pointed out that he overlooked an important word in the title and he had already asked for an amendment. He would change the first line from "declaring the right," to "recognizing the right" of parents because it was a God-given right and not something the state should declare, but should recognize. Montana Code 40-4-227 stated the policy of the state was to recognize the Constitutionally protected rights of parents. Therefore, there was a slight reference to parents rights already in the Montana Code. This bill however, added some points that were important and should be recognized by the state. He referred to the Whereas section of the bill, that the Supreme Court had recognized the rights of parents as far back as 1923 and 1925. In those years, important cases came before the national Supreme Court, and those hearings dealt with the rights of parents to control and direct the upbringing of their children. SB 177 was somewhat based on the findings in those types of cases. He pointed out that the Montana Code Index under rights provided about 130 different kinds of rights. The rights of parents, however, was only mentioned in one spot and it was very brief relating rights of parents to their children. He felt that indicated a lack and the rights needed to be covered more. He said section 2 was the heart of the bill, stating the fundamental rights of parents. Then section 3 had a prohibition statement, which caused opposition to the bill. He argued it wasn't as prohibitive as it sounded, but merely put into statute that governmental agencies or officers of the government should not usurp the rights of parents in their daily activities relating to their children. He acknowledged the presence of both

proponents and opponents to the bill. He mentioned in the past, opponents had regarded the bill as a "sue your teacher" bill, but he assured the committee that it would not result in a surge of lawsuits, because Montanans were not sitting around waiting for something to enable them to sue the school. Proponents simply wanted these rights to be recognized in statute.

Proponents' Testimony:

REP. DARREL ADAMS, HD 84, representing himself, thought that this bill really shouldn't have to be brought forward, it should be assumed that parents had the right to bring up their own children. However, as government became more intrusive and oppressive into people's lives, it had become necessary.

Harris Himes, representing self, agreed with **REP. ADAMS** that it was a sad thing that this type of bill had to be brought forward. He restated that it was a God-given responsibility in addition to simply a God-given ability to raise your own children. He referenced a recent Supreme Court case: Ginsburg vs. New York, 390 US 629 (1968), page 639. "Constitutional interpretation has consistently recognized that the parents claim to authority in their own household to direct the rearing of their children is basic in the structure of our society. It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, who's primary function and freedom include preparation for obligations the state can neither supply nor hinder." sited from case of Prince vs. Massachusetts. "The Legislature could properly conclude that parents and others, teachers for example, that have a primary responsibility for children's wellbeing are entitled to the support of laws designed to aid discharge of that responsibility." He looked at the word nurture, which indicated loving the children, something that he felt had escaped notice these days. Family values were talked about as the right and responsibility of parents, he said, and it was a sad commentary that in this day of latch-key kids, these things had been forgotten. He wished to make a few suggestions to the bill: 2a directing "and/or" providing for the education of their children. 2d directing "and/or" providing for the religious teaching of the children. Also insert "unreasonably" to the clause regarding healthcare decisions ("making health care decisions that will 'unreasonably' endanger the lives of their children and result in serious physical injury.") This would take into account such things as anaesthesia, which was always potentially life threatening.

Julie Millam, Christian Coalition, provided her supportive testimony, **EXHIBIT(jus11a07)**.

Steve White, Coalition of Home Educators, provided his supportive testimony, **EXHIBIT(jus11a05).**

Don Bergstrom, representing himself, said it was a sad day when the Legislature had to acknowledge or recognize the rights of parents to train their own children, let alone that there would be opposition to it. He hadn't considered the idea of lawsuits, but he felt schools had a monetary concern in being sued that could cut both ways. He felt that no one had a greater interest in the child than the parents. He argued that placing a child with the state rather than the parent had never worked. He sensed a trend to put a cloud of doubt over the ability, character, and choices made by parents, but felt that was negated because of the parents' fundamental rights to care for their children. Parents were always the best equipped to raise their children. Regarding the bill, he said school boards were always encouraging input and the active participation of the parents, yet at the same time, they resisted home-schooling or private school options, which seemed to him contradictory. The parents knew best where to place their children for the best education. He also pointed out the statement regarding making medical decisions for their children. When parents took their child for an emergency, it was always referred back to the family physician because that doctor was the most familiar with that child's case. He argued, who was more familiar to the case then the parent? He said that right should be a fundamental given. He said discipline problems almost always ended up going to the military and he didn't know of a drill sergeant who asked the kids if they would like to get up and go on a mile hike; the discipline was a fundamental right that brought the bond together and made children productive. Certainly the parents were the most qualified for that. Then he referred to "the directing or providing for the religious teaching of the child" as the most fundamental right, as far as he could tell. He didn't believe that there was a vacuum as far as morality was concerned. He felt rights, particularly pertaining to abortion, of parents were trampled on frequently by public schools systems, and to stand against being notified for very grave procedures being done was telling the parent that they had the ability to have children, but were not to be trusted with their welfare, well-being, and the life-changing decisions they made.

{Tape : 2; Side : A; Comments : Tape changed at beginning of Bergstrom's testimony.}

Barbara LaRue, parent, tracked this bill the last three Legislative Sessions and as a parent, she hoped SB 177 would be passed into law. She could not represent parents in Montana, but when she spoke to other parents, she found many who felt a need

for the bill. She wished to thank **SEN. WELLS** for his diligence in representing the people who wanted this put into law.

Amy Orser, representing herself, felt that it was peculiar that such legislation was needed, but after personally experiencing how rights were usurped by the school district, she understood the need. She relayed a story about her 6th grade daughter's reactions to a sex ed class that she was unaware would occur because the district did not notify or ask permission. She removed her child from that school and placed her in private school.

Karen Pfaehler, parent, provided her testimony, **EXHIBIT(jus11a06).**

Jennifer Coleman, parent, provided her testimony, **EXHIBIT(jus11a08).**

Dallas Erickson, parent and grandparent, provided his testimony, **EXHIBIT(jus11a12).**

Jody Wardell, representing herself, asked if the committee was aware that in the state of Montana, the work that Anne Sullivan did with Helen Keller was child abuse. Doctors, school teachers, therapists, could be charged with a felony for failure to report that same kind of abuse. She was very troubled by what she saw in the state, by DPHHS and by many social workers in the system. She had seen first-hand social workers and teachers usurp parents' rights. She felt they worked in groups of consensus, in which everyone was supposed to have a say, but that was not the case. The strongest individual in the group got final say in the decision making process. This bill would take back some of the abuse of power that had been happening under state law.

Mike Fellows, MT Libertarian Party, provided his testimony, **EXHIBIT(jus11a09).**

Bonnie Lawson, parent, felt that parents must have the ultimate responsibility for their children. She cherished the privilege of directing her 12-year old daughter's general and religious education, and making her healthcare decisions.

Opponents' Testimony:

Lance Melton, Executive Director of Montana School Boards Association, provided his testimony regarding concerns he had with some technical aspects of the bill, **EXHIBIT(jus11a10).**

Jeff Weldon, Legal Council for O.P.I., said that one of the greatest challenges was to raise a child, but that no one did it alone; it was done with spouses, family, friends, church, and with the society in which we lived. As a member of society, children were protected under Constitutional laws from other people, perhaps even the parent. SB 177 attempted to usurp the Constitutional Rights of the child under current Montana law. It stated that the rights of person's under the age of 18 should include, but were not limited to the fundamental rights listed in the Bill of Rights, unless it was specifically precluded by laws which enhanced the protection of such persons. He felt SB 177 did not fall within that exception. The rights afforded under the Bill of Rights included: individual dignity and due process under the law. He wondered how those rights would conflict with SB 177. Another right was a quality education, guaranteed to each person of the state. He offered that SB 177 conflicted with that. He countered the statement that the bill was not a 'sue the school or teacher' bill, suggesting that SB 177 gave a cause of action if parents concluded a school board merely interfered with the parent's right to direct. The consequences would be severe. By passing this bill, the school boards would endure more pressures than they already did.

Loran Frazier, School Administrator of Montana, agreed with the proponents that the bill was unnecessary. He felt that present laws already governed parents' rights and this bill would interfere with the laws already in existence. Currently, the school board had control of the curriculum. SB 177 gave that control to the parents allowing them perhaps to set their own school calendar and graduation requirements. That presented a concern. He cited the proponents saying it wouldn't cause lawsuits. However, he asked what the parents would do when they deemed their rights were violated; either for values or religious purposes. SB 177 allowed them to circumvent grievance procedures at schools and go directly to court. He felt the bill was purposely open and vague to let the courts decide what it meant. For example, he asked what was reasonable: corporal punishment. History proved that most child abusers felt they were justified in their actions, so to them it was reasonable. Most times, corporal punishment was administered when someone was angry, not reasonable. If this law was passed, who would report child abuse cases? Currently, it was mandated for teachers, administrators, social workers, and counselors to report child abuse. Would reporting constitute interference with parental rights and would it open them to lawsuits? He felt it would. Consequently, not as many child abuse cases would be reported. Between 1984 and 1994, 3 million child abuse cases were reported. Every day, 5 children died from child abuse. Child advocates could not be in support of this bill. He said that **SEN. WELLS** had stated at other times that this bill was for good parents. Unfortunately, every

child was not born to good parents. He felt the Supreme Court had already said that "reasonable" did not fit the laws, example was the speed law, "reasonable and prudent". He suggested the committee look at the broad language. He cited his research of this type of bill across the states and said it had been referred to as a "lawyers full employment act".

Erik Feaver, MEA-MFT, said the teachers he represented did the best they could every day and they didn't feel they were doing it in a way to interfere with parents. He said that the Legislature basically dictated what teachers did in the classroom, and the teachers were following the policies/laws of their employers elected by the people of the state. Even the Board of Public Education chair was appointed by the elected Governor to make the rules for the teachers. He felt that SB 177 invited parents to intimidate and harass local and state school officials, in particular teachers. He believed SB 177 would narrow the curriculum and the standards for measuring performance in the classrooms in an effort to purge instruction of any controversial topic that could offend anyone. If carried far enough, it would bring home schools into public school. He cited statute regarding responsibilities and rights of parent who home schooled, **EXHIBIT(jus11a11).** He noted that parents were free to choose home school any time, and MEA-MFT would honor that right because it was their parental right to choose. However, public schools took all children and instructed them according to the laws of the land in the best way possible. SB 177 inhibited their ability to do that.

Jacqueline Lenmark, MT Coalition for Privacy and Free Expression, said the coalition opposed the bill and supported the testimony of the various educators who preceded her. She felt this bill was premised on a misunderstanding: that every parent was a very good parent and also that parent parented in isolation. She said that was not the case. As a lawyer appointed to serve as a guardian ad lietem, in dissolution cases and custody cases where two good parents had fundamental disagreements about what was best for their child, those cases were contentious, bitter, and harmful for the children. By the time a lawyer was appointed, the parents couldn't speak to one another, or take any cooperative action in the best interests of their children. She said this legislation would exacerbate that type of case. She disagreed with the proponents who said it would not bring on lawsuits. She foresaw a lot of litigation in the family law arena. She corrected the idea that the bill would increase a lawyers income. The people who served as guardian ad lietem in Montana, whether lawyers or citizens, did so without compensation. She felt it was poor public policy. The intent was clear for parents to exercise their best judgement in favor of the best interests of their children. However, while the fundamental rights of one parent

would be protected, other parents would have their fundamental rights diminished or deprived.

Daniel Casey, MT Human Rights Network, pointed out that the network was a group of local organizations that strove to promote human rights and human rights awareness across the state through community education and legislative efforts. He framed the discussion in terms of human rights. Three main texts were used to look at issues: 1) U.S. Constitution 2) Montana State Constitution 3) Universal Declaration of Human Rights adopted by the United Nations close to its inception in 1948. The word "directing" from the bill caused alarm. According to the Universal Declaration of Human Rights, it recognized that parents had a prior right to choose the kind of education given to their children. In contemporary terms included public, private, or home school. The Declaration also said education should be directed to the full development of the human personality. It also said everyone had the right to freedom of opinion and expression, including the right to hold opinions without interference, and to seek, receive, and impart information and ideas through any media and regardless of frontiers. Therefore the words directing and without interference were troublesome because directing was very broad and could set a dangerous precedent and could allow parents to interfere with public education.

Steven Ertelt, Director of Montana Right to Life, had concern he wanted on record regarding Section 2b "making health care considerations for their children". On the federal level, it had been interpreted to include the right of parents to make abortion decisions for their children. Montana Right to Life was apposed to coercive or forced abortion. They didn't think parents should put that on children. He suggested new language.

Rebecca Moog, MT Women's Lobby, as a parent of two children, reported she had good and bad experiences with the public school system, but that there were already systems in place to protect people's rights.

Beth Brenneman, legal director of ACLU of Montana, said they opposed this legislation because it legislated the manner in which courts balanced parental rights with other important interests, including other fundamental rights. By seeking to change the determinations that the courts made in those areas, it violated the separation of power of the three branches of government guaranteed by the U.S. Constitution. SB 177 would not hold up to judicial scrutiny, would be enjoined, and struck down.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN pointed out the language in the bill regarding the upbringing of children was a fundamental right. He clarified that **Mr. Feaver** believed in that fundamental right. **Erik Feaver, MEA-MFT,** replied that it was the right of parents in Montana, under Montana law, to choose alternatives to public education and one of those would be home school. He did not say it was a fundamental right of parents to bring up their child.

SEN. HOLDEN then stated it was the belief of the MEA that it was not a fundamental right of parents in the upbringing of their children. **Mr. Feaver** said the issue of fundamental versus a right was for the lawyers to decide. He felt they articulated the concern about raising the right of parents in upbringing their children to a fundamental basis was Constitutionally much more significant than simply saying it was a parental right.

SEN. HOLDEN was interested in what the teacher unions had to say because his father was a teacher and that gave him insights into what the union was pushing from his fathers' perspective, as opposed to the general public's perception. He pointed out **Mr. Feaver's** statement, that "SB 177 gets in our way", and asked what he was trying to do. **Mr. Feaver** said that MEA-MFT was not pushing anything and "our way" was the law of the state, the standards adopted by the Board of Public Education, and the policies adopted by Boards of Trustees. He said they were required by law, standards, and policy to deliver a quality product to the school children of the state. The organization believed that SB 177 certainly did stand in the way of delivering on the directions they received from the people's representatives.

SEN. HOLDEN followed up saying that helped because elected representatives and those who served on the school boards defined what "your way" was. He questioned if **Mr. Feaver** would be in agreement with the bill if it passed, because it would become "our way". **Mr. Feaver** said it was an axiom in his work, as a leader of the organized union membership, "never to be insubordinate to the law".

SEN. JERRY O'NEIL used **Ms. Lenmark's** remarks regarding the effect the bill had on the guardian ed litem, or the courts power to decide custody to ask his question: would the bill preclude the court from considering each parent's differing approaches to raising a child? **SEN. WELLS** said that he didn't think the bill would prohibit that. He said the arguments, about the differences of parents, had been used in the past in opposition. He acknowledged there would be differences, and if a person was going to divorce court, it would be a big issue. He didn't suggest the bill would help that, but it wouldn't cause it any more either.

SEN. DUANE GRIMES asked how the bill would interact with the best interests of a child in a divorce situation, under the divorce statutes. **SEN. WELLS** said he hadn't conceived of all of the ramifications regarding bad parents, or families that had fallen apart from a multitude of reasons. He hadn't tried to conceive a bill that would try to cover all the possible situations that could occur.

SEN. GRIMES asked if a coordinating clause to make the two parts of the statute coincide, would be acceptable. **SEN. WELLS** said he wouldn't object to the committee improving the bill to provide provisions to facilitate settlement between disagreeing parents and improve conditions for the children of that particular family.

SEN. MIKE HALLIGAN referred to Montana Code 40-4-227, and asked how **SEN. WELLS** disagreed with that language. **SEN. WELLS** said he didn't disagree with it, but felt it didn't go far enough or have enough specifics in it to provide parents the assurance that if they had a particular complaint; that a particular agency had usurped their rights in some way, they didn't know how to approach that because the statute spoke in general terms of their Constitutionally protected rights.

SEN. HALLIGAN noted a strong part of **Ms. Coleman's** testimony had been about religious liberty. He wanted to know how she felt that was infringed upon because someone didn't allow her to assert her fundamental right of parenting. **Jennifer Coleman, parent**, restated she said the legislature needed to protect the parents' right to religious liberty and instruct that liberty thereof. She didn't say her rights had been infringed upon, but it was important to have legislation that would protect a parents' right.

SEN. HALLIGAN said the Bill of Rights contained religious liberty already and that legislation was made to address specific problems. So, he wanted to know of any specific instances where this had been a problem. **Ms. Coleman** said it was one of four points she mentioned, based on the bill. She couldn't say her free exercise had been infringed, her children were in private school, and it was her right to do that. However, currently in the public school system, there was a restriction on the free exercise of religion, such as prayer.

SEN. HALLIGAN commented that she was worried about the prayer issue. **Ms. Coleman** said that was her instincts.

SEN. HALLIGAN asked if her children would be in public school if she could direct more of the curriculum, and if this bill would

help her do that. **Ms. Coleman** clarified if he was asking if the bill would help her put her children in public school.

SEN. HALLIGAN restated the bill granted her to direct more of the schooling, perhaps even more than a fundamental right. **Ms. Coleman** asked the purpose of his question.

SEN. HALLIGAN replied that her children were in private school now, but would the ability to direct their public education better allow her to go back to public school and ask them to do something different because she had this fundamental right as provided by the bill. He asked if she would want to do that? **Ms. Coleman** responded by saying she didn't think it would directly change the right she had to vote for school board members who were in charge of curriculum in schools, or would silence her voice and opinions at school board meetings or other meetings regarding health care and sexuality. She thought it was important to have in place a bill that protected those rights specifically in writing.

SEN. HALLIGAN asked if another proponent could speak to having their home school rights violated and how this bill would affect that. **Steve White, Montana Coalition of Home Schools**, said he had not had any personal problems with home schooling, but as a principle contact for home schooling, he had a number of phone calls in the past year regarding problems with public schools. He relayed the fact that courses were being dictated that were contrary to the parents consciences. He felt there was suspicion on the parents part regarding some of the things being taught. In this legislative session, two bills would mandate K-12 sex education in public schools that went above school board administration decisions. If bills like that continued, then more people would opt for private and home schools. Therefore, there had been problems, i.e.: a father who home schooled in Troy called because social workers were at his home demanding to evaluate his children to make sure they were receiving proper reading instruction. The children were sent to public school against his wishes because of that investigation. He had no way to object to that decision. He felt there was a problem in Montana, but parents typically had a desire to do what they could within the parameters of the law, but that they didn't have a say as parents should.

SEN. HALLIGAN replied his 7th grade child came home with information that the school would be teaching sex ed to that class. It notified what would be taught and that the parent could speak to the teacher or administrator about those issues, and the parent could chose to keep the child out of those particular classes. He asked if **Mr. White** was aware of those

types of balancing actions the public schools made in order to protect the fundamental rights of parents. **Mr. White** said he was aware, but that some school districts had such a policy and other schools did not. He didn't see this bill as a free-for-all, nor a way for lawyers to make money. He didn't hear one single example by the proponents that it would be "open season" on the schools. However, some parents felt they were going against the grain. They didn't want to home school, or private school, but some public schools had made determinations that they would do it their way and parents simply had to accept it.

Barbara LaRue, parent, also wanted to respond and asked if **SEN. HALLIGAN** was asking for examples of infringements on people's rights by the public school system. She relayed that her 3rd grade child brought home an assignment that portrayed one side of an issue. When she asked about the opposing side, her child got mad and said the teacher was right. **Ms. LaRue** called for a conference with the teacher. The principal also attended that meeting because the teacher was new. Throughout the year, she confronted the teacher again on different issues, and each time the principal would not allow one-on-one meetings with the teacher only. At the end of the year, **Ms. LaRue** sent a letter addressed specifically to the teacher regarding some strengths as well as suggesting how she could do her job better. Instead of receiving acknowledgment of the letter from the teacher, the principal responded in a four page letter. Because of that experience, she had home schooled her child for the past five years. As a freshman, her child again attended public school.

CHAIRMAN LORENTS GROSFIELD commented that he had been on the judiciary committee for the past 10 years and he wasn't an attorney, but one of the things he had learned was that words made a difference. He also learned that it was important to make bills specific to avoid unintended consequences that the Legislature did not intend when making the policy. Therefore, he was concerned with the wording on page 1, line 22, "directing". He suggested that the wording could allow one parent to direct the school one way and another parent in another way. He felt that could turn into a lawsuit and that it did work that way. He was nervous about the bill because it was broad and it gave all parents the fundamental right to direct their children's education. He said that was unworkable for a classroom of 26 children with 26 different sets of parents with differing opinions. He felt it left it open for the Supreme Court to set the law, partaking in 'judicial activism', which in many instances, not just education, made people wary. He asked **Mr. White** to respond to the fact that this provided a <u>fundamental</u> right for parents to approach the teacher and/or administration, and how that would work. **Mr. White** acknowledged that the issue of

language had to be dealt with and maybe that was why a Supreme Court existed, but for parents that were so desirous to choose every single textbook, or wanted to micro-manage all the child's classes, then that parent would be a home school parent. He referred to a Michigan law with similar language and he never saw any examples of schools having parents who wanted to dissect the decisions of the school board, principal, and the teachers. He appreciated **CHAIRMAN GROSFIELD's** concerns, but there were tragic situations occurring where parents felt helpless in terms of disrespect they had received from the school board, teacher, or principal. As a leader in the home school arena in the state, he had spent time talking people out of home schooling because of knee-jerk reactions. However, this language would cause the school system to think about the least common denominator and how they could present educational program, deliver services, that could be acceptable to all the parents in the district. He acknowledged that everyone wouldn't be satisfied, but he could not fathom parents spending a lot of money to fight this thing because he hadn't heard of any cases or heard any examples.

Closing by Sponsor:

SEN. WELLS closed on SB 177 by addressing that no court cases had ever established that this was not a basic fundamental right of parents. He agreed with the recommended amendments to put in "and/or" in some statements and about making "unreasonable" medical decisions that would endanger the lives of children. He argued that public school systems always promoted parental involvement and this bill would facilitate that. He mentioned an incident where a parent disagreed with a book and took that complaint peacefully to the school board, but was embarrassed to the point that she couldn't present her case. It pointed out that schools wanted involvement, but only until parents raised issue or objected to something. This was the problem. He pointed out that no examples from other states were presented that proved an "explosion" of litigation. He felt that those who delved into the education would opt for home or private schooling. He appreciated the comment on reasonable and prudent, but looking at the highway death rates, he felt reasonable and prudent did work. He countered the opinion that schools would have to change their curriculums because of this bill by saying it would be a good idea. He felt this bill was not created to "get in the way" of public school systems, but would make them more accountable. He said he was not fond of the United Nations and believed the United States did not endorse all of the UN declarations because the U.S. was not under their rule or jurisdiction. He felt that using UN declarations as evidence did not apply in Montana.

ADJOURNMENT

Adjournment: 12:07 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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ANNE FELSTET, Secretary

LG/AFCT