MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 22, 2003 at 9:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

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

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	SB 164, 1/17/2003; SB 189, 1/17/2003
Executive Action:	SB 35; SB 141; SB 139; SB 147; SB 73

HEARING ON SB 164

Sponsor: **SEN. JEFF MANGAN, Senate District 23, Great Falls.**

Proponents: **Steve Rice, Chairman, Montana Youth Justice Council**
Audrey Allums, Juvenile Justice Specialist, Board of Crime Control Division

Opponents: **None.**

Opening Statement by Sponsor:

SEN. MANGAN stated this bill comes before the Committee at the request of the Montana Youth Justice Council which is a committee of the Board of Crime Control which oversees federal grants and juvenile issues and procedures in the state of Montana. The board is appointed by the Governor. **SEN. MANGAN** serves as the legislative representative for the Montana Youth Justice Council. Every session, the Montana Youth Justice Council reviews current statutes and federal regulations and then **SEN. MANGAN**, as the legislative representative, brings needed changes forward.

SEN. MANGAN explained this is a clarification bill as reflected in the title. Shelter care facilities, and there are approximately ten in the state, are licensed by the Department of Public Health and Human Services (DPHS) and are a temporary placement for non-offenders and status offenders. Status offenders are those offenders who, because of being under the age of 18, it is an offense for them but not if an adult had committed that act. Alcohol possession, tobacco use, and runaway are all examples of a status offense. Federal regulations do not allow non-offenders and status offenders to be held in secure facilities. Montana statute is in conflict with the federal regulations because it still allows for this placement. SB 164 would bring Montana in compliance with the federal regulations. This bill was brought before the entire Montana Youth Justice Council and had unanimous support.

Proponents' Testimony

Steve Rice, Chairman of the Montana Youth Justice Council, thanked **SEN. MANGAN** for bringing this legislation in an attempt to synchronize Montana's statutes. This bill will eliminate a potentially problematic inconsistency. The Montana Youth Justice Council supports SB 164.

Audrey Allums, Juvenile Justice Specialist with the Board of Crime Control Division, submitted written testimony in support of SB 164. **EXHIBIT(jus13a01).**

Opponents' Testimony: None.

Questions from the Committee:

SEN. MIKE WHEAT inquired whether failure to pass this bill would endanger federal block grants.

Ms. Allums stated that at this point, Montana had not been found to be out of compliance. Rather, it was simply pointed out as a point of concern. Currently, our shelter cares are not physically restricting, but someone could misinterpret the current language.

SEN. JERRY O'NEIL asked **SEN. MANGAN** if a ten-year-old runs away from home and gets placed in a nonsecure facility, could they run away again.

SEN. MANGAN stated this is a question they struggle with every day. First of all, it is not a certainty that if a youth were picked up for run away that they would be taken to a shelter care facility. **SEN. MANGAN** stated he could not speak to a shelter's policies and procedures, but these facilities do a good job to keep youth there without physical restraints.

SEN. DAN McGEE asked for definitions for "delinquent youth" and "youth in need of intervention" and the range of discrepancies a youth might employ to be adjudicated as one of these terms. **SEN. McGEE** wondered if either of these definitions would include acts of violence.

SEN. MANGAN replied both of these definitions are in statute. Non-offenders are children who are removed from abusive homes and provided a temporary safe residential place to go. Status offenders, like runaways, could be placed there as well. If a youth is violent, they would not be placed in a shelter care facility. When you are serving youth with a temporary safe shelter, you do not want someone who is violent in there. If youth needs a secure facility, shelter care is not an appropriate placement.

SEN. O'NEIL is concerned because the current language says that shelter care could be used for delinquent youth.

SEN. MANGAN responded that in Great Falls their shelter care was attached to their juvenile detention center. There were occasions when if the detention side was care, the shelter care could be used. This was not a good idea. When this law was written, people maybe thought this okay because juvenile delinquents could be someone who simply wrapped a house in toilet paper or was caught with beer. Today, there are many more services for these delinquent youth who do not belong in a shelter care facility. Presently, in Great Falls there is a children's receiving home which accepts infants, toddlers, and youth for a limited period of time. This home would not want to be forced to accept delinquent youth. This statute would clarify that.

CHAIRMAN GRIMES asked **Ms. Allums** to respond to these concerns.

Ms. Allums stated there is a provision for staff-security which means staff would supervise a youth always. A youth who is a non-offender or status offender should not be held securely. A "youth in need of intervention" means a youth who is adjudicated as a youth and committed an offense by law that, if committed by an adult, would not constitute a criminal offense. These kids can also be fairly physically dangerous to other children, and they should not be placed in shelter care. This would provide that they can be placed in juvenile detention facilities throughout the state. Shelter care is a safe secure place for youth to go. There are other options available including home arrest and electronic monitoring.

SEN. BRENT CROMLEY asked for an example of a shelter care facility in
Billings.

Ms. Allums responded the shelter care in Billings is attached to the detention facility. The shelter care facility has a separate entrance and is not secure. The shelter care is not physically restricting.

SEN. GARY PERRY asked if electronic monitoring could be used in a shelter care facility.

Ms. Allums responded that electronic monitoring could be used outside of the shelter care. This is used effectively in Great Falls. The cost of electronic monitoring is much lower than placing a youth in any kind of facility.

CHAIRMAN GRIMES asked **Ms. Allums** if she was familiar with the adoption of the code in 1995.

Ms. Allums is unfamiliar with the adoption of the current language in 1995, but she did speak with **Shirley Brown of DPHHS** and **Ms. Brown** had responded that it would not be a problem to change the language.

SEN. McGEE is concerned because at some point this language was deliberately and logically placed into the code by Montana law makers. Now, we want to delete this language to save federal funds. **SEN. McGEE** feels that just because the federal government requires something, does not make it right.

(Tape : 1; Side : B)

Closing by Sponsor:

SEN. MANGAN agreed to do some research, but he believes the language is in the statute because of shelter care facilities which were attached to detention facilities. **SEN. MANGAN** feels this language was placed in law because of the close proximity and was meant to address the separation of adults and youth. This was used also to prioritize youth depending on space and need. In the past four or five years, there has not been a shelter care that has utilized this language. The federal government has given the state a lot of money to send back to communities. In the past few years, communities have used this money to create hold over programs, community prevention programs, and intensive supervision programs. The creation of these programs have made the current statute obsolete. If someone wanted this language in here who is currently serving kids today, he would have heard from them during the last six months. **SEN. MANGAN** believes there was a reason this language was put in, but he does not believe that reason exists today. Progressive and community-based services are moving forward and this law is not needed anymore.

EXECUTIVE ACTION ON SB 35

Motion: **SEN. McGEE** moved **DO PASS.**

Discussion:

CHAIRMAN GRIMES stated the fiscal note was rather large. Currently, there is no method in the code for committing people who are developmentally disabled. As a result, there was one individual who was violent who was committed to Montana Developmental Center (MDC). This bill puts into code the fact that people can be committed to MDC. **CHAIRMAN GRIMES** spoke to the department about the large fiscal note and was told this

situation has only arisen once in two years and they do not anticipate this happening often. In drafting the fiscal note, it was decided to go with worst-case scenario; however **CHAIRMAN GRIMES** has a letter from Pat Gervais that states Assumption No. 15 on the fiscal note contradicts Assumption No. 1 on the fiscal note. **CHAIRMAN GRIMES** drafted his own fiscal note, making Assumption No. 15 to now be Assumption No. 1. **EXHIBIT(jus13a02).** The other item creating problems in the bill is the fact that "residential facility" is also defined as a place where people can be committed to. **CHAIRMAN GRIMES** proposed on page 2, lines 13-14, striking "or residential facility, as defined in 53-20-102." **CHAIRMAN GRIMES** feels this would ensure there is not an expansion of what judges currently know they can do. In **CHAIRMAN GRIMES'** fiscal note, this amendment removes the possibility of courts directly committing to undefined community settings which could result in unknown fiscal impacts. According to the department, this is what they are going to do anyway. The department will perform the 90-day evaluation period and these people may then be transferred out into community settings. This change in the bill will render the fiscal note neutral and alleviate concerns. **CHAIRMAN GRIMES** made the point of what else can the Committee do. There will be a price to pay somewhere.

Upon question from **SEN. O'NEIL, CHAIRMAN GRIMES** repeated his desire to strike "or residential facility, as defined in 53-20-102" on page 2, lines 13-14, and clarified this is an additional amendment.

Motion/Vote: **SEN. McGEE** moved to strike "or residential facility, as defined in 53-20-102," on page, 2, lines 13-14. The motion **CARRIED UNANIMOUSLY.**

Motion: **SEN McGEE** moved SB 35 DO **PASS AS AMENDED.**

Discussion:

Upon request of **CHAIRMAN GRIMES, Ms. Valencia Lane** explained that **André Larose** from Montana Advocacy Program had a few concerns and these amendments were drafted to address those concerns. Amendment 3 amends 46-14-102 and 103 which allow a person with a developmental disability to raise developmental disability as a defense. The first and second amendments change the title if the substantive amendments are adopted. Amendment 4 reflects **Ms. Larose's** suggestion that the language "so long as the unfitness endures" should be expanded to include "or until disposition of the defendant is made pursuant to this section, whichever occurs first." Also, the language was changed in amendments 5 and 6 to include the professionals who have evaluated the defendant.

(Tape : 2; Side : A)

CHAIRMAN GRIMES is worried this language will broaden the bill and he is concerned about unintended effects and that adding this language will make this a more readily available tool to the court.

Ms. Lane stated she is uncomfortable saying she can assure CHAIRMAN GRIMES without a doubt, but she believes the addition is simply a clarification. Placing developmental disability into the two earlier sections, 46-14-102 and 103 will simply be a clarification to recognize developmental disability from the beginning as a category which cause a person to be unfit to proceed.

SEN. CROMLEY agreed with Valencia in that this is simply clarifying language and he is comfortable with the amendments.

SEN. McGEE does not like these amendments and has a problem with the fact that these amendments could create an open hole for defense to argue that someone should be disposed of in a different way. **SEN. McGEE** does not want to see this language adopted.

Ms. Lane stated that she had been under the impression that **CHAIRMAN GRIMES** had discussed these amendments with **Ms. Larose** and that he had requested that they be drafted.

CHAIRMAN GRIMES stated there clearly are political intentions here which may or may not be reflected in this bill and that makes him a bit nervous.

Motion: **SEN. MANGAN** moved **Amendment SB003501.avl BE ADOPTED. EXHIBIT(jus13a03).**

Discussion:

SEN. MANGAN remembered the testimony and he believes Montana's statutes have been behind the ball when it comes to developmental disabilities. In addition, **SEN. MANGAN** does not see where this language is an expansion, and current law overlooks developmental disability as a defense. **SEN. MANGAN** believes that this just clarifies what **CHAIRMAN GRIMES'** bill says. He does not believe it is going to open up floodgates or affect the fiscal note. He agrees with **CHAIRMAN GRIMES** that the fiscal note does not reflect what was heard in testimony. **SEN. MANGAN** applauds **CHAIRMAN GRIMES** for bringing this bill forward.

SEN. AUBYN CURTISS stated that the Association of Facilities for Developmentally Disabled had concerns about the evaluation in Section 4 and wondered whether those concerns had been addressed.

CHAIRMAN GRIMES said the amendment addresses their concern.

SEN. CURTISS stated that 53-20-132 prohibits a court from ordering persons to a facility and wondered if that posed a conflict.

Ms. Lane stated that 53-21-32 prohibits a court into a community facility. **CHAIRMAN GRIMES'** amendment fixed that.

SEN. CURTISS stated that **Director Sturms** was concerned that there is a problem mixing criminal and civil clients.

CHAIRMAN GRIMES stated the technical note says the presence of a criminally sentenced population at MDC may jeopardize the facility's medicaid intermediate facility certification. **CHAIRMAN GRIMES** explained that status is in jeopardy now, and this was the purpose of the bill. This language will create a threshold people will need to go through to be assigned to MDC. In the meantime, the facility is undergoing necessary changes to secure the medicaid dollars in their certification. **CHAIRMAN GRIMES** stated that the concern of **SEN. CURTISS** has been addressed as best as it can be within the narrow scope of the title.

Vote: The motion that **SB003501 BE ADOPTED carried 7-2 with Senators Grimes and McGEE voting no.**
Note: **Amendment SB003502, EXHIBIT(jus13a04),** was delivered to the Committee Secretary on January 22, 2003.

Motion/Vote: **SEN. PERRY** moved **SB 35 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 73

Motion: **SEN. PERRY** moved **SB 73 DO PASS.**

Discussion:

CHAIRMAN GRIMES explained that this bill will raise the fine from $500 to $1,000 and informed the Committee that this would not raise the level of the crime from a misdemeanor to a felony.

SEN. PERRY does not favor the increase in fines because most people who are guilty of cruelty to animals do not have any money and generally their neglect of their animals is because they do

not have any money. Increasing the fine for people who do not have any money will result in jailing these people because they do not have any money. This will just add burden to our jail system.

CHAIRMAN GRIMES added that many times people are charged with multiple offenses, depending on the circumstances.

SEN. McGEE added that this is a designer bill because it is in response to the situation that occurred in Shelby with the Shelties. Therefore, **SEN. McGEE** will not support SB 73.

SEN. CROMLEY stated that he can see increasing a fine to account for inflation, but increasing the jail time from six months to one year is probably not necessary.

Motion/Vote: **SEN. CROMLEY** moved SB 73 **BE AMENDED** to delete the increase in jail time from six months to one year. The motion **CARRIED UNANIMOUSLY.**

SEN. McGEE asked **SEN. WHEAT** whether, as a former prosecutor, he would have prosecuted an offense for each animal in the Shelby case. **SEN. WHEAT** responded that option was available, but the first priority would be getting the animals away from the owner.

SEN. McGEE then wondered if the existing language in the Code would allow him to charge multiple offenses.

SEN. WHEAT stated it could be argued either way, but prosecutors have discretion in deciding whether to charge multiple offenses.

CHAIRMAN GRIMES then stated that he was dismayed by the number of proponents attending the hearing and therefore, is not sure this bill is necessary.

Motion/Vote: **CHAIRMAN GRIMES** moved **SB 73 BE INDEFINITELY POSTPONED.** The motion **carried 6-2 with Senators Wheat and Cromley voting no, and Sen. Mangan not voting.**

(Tape : 2; Side : B)

EXECUTIVE ACTION ON SB 141

Motion: **SEN. WHEAT** moved **SB 141 DO PASS.**

Motion: **SEN. WHEAT** moved **Amendment SB014102.avl BE ADOPTED.**

Discussion:

SEN. WHEAT explained the amendment was prepared by John Connor after he had discussions with representatives from the news media and is designed to clarify and make certain anybody that wants to gain access to confidential criminal information is not limited by this procedure set forth in SB 141. This clarifies that SB 141 is not the exclusive remedy and there are other remedies available under law.

CHAIRMAN GRIMES questioned is this was **SEN. WHEAT'S** original intention and whether they need to restrict other remedies or if this was meant to be the only avenue.

SEN. WHEAT relayed that in his discussions with John Connor and in his testimony at the hearing, they were not attempting to restrict any other avenues of remedy, and this was simply providing a mechanism for the prosecuting attorneys, whether that be at the county level or the attorney general's level. When the prosecutor receives a request for confidential criminal information, it gives them a manner in which to get the matter before the district court.

SEN. CROMLEY stated there would be violent opposition is this were to be an exclusive remedy.

CHAIRMAN GRIMES then asked **SEN. WHEAT** if he was confident the in-camera review would provide an adequate forum for considering weighing this privacy against the merits of public disclosure in a fair manner.

SEN. WHEAT replied he thought it would. The court would hear the arguments of both sides and then the court would look at the documents and make a decision as to what is private and what is not and what should be released. This is a procedure in place now, this just codifies that procedure.

CHAIRMAN GRIMES stated in many cases, it will be the media making the request. **CHAIRMAN GRIMES** is concerned about the political overtones and pressure this bill may be putting on the Court.

SEN. WHEAT feels this burden is properly placed with the district court because it is a balancing act between the constitutional right to know versus the constitutional right to privacy.

SEN. CROMLEY stated the procedure now is adversarial. This bill will be a new mechanism on the part of the state where they can say this material should be supplied anyway, so we will take the initiative and file the motion with the court.

SEN. WHEAT stated this bill will give the prosecuting attorney a vehicle to remove the matter from their jurisdiction to the court. Once the investigation has been terminated, it will allow the Attorney General to file a declaratory judgment action in the district court for it's decision.

SEN. O'NEIL questioned on page 6, paragraph (c), whether a person they would have to incur attorney fees in order to protect their own confidentiality.

SEN. WHEAT replied that the anticipated attorney fees which are the intent of this proposed legislation are intended to be borne by the parties directly involved, i.e. the party who has the information and the party who wants it. It is not directed toward a party who may be the subject of the information. Therefore, if someone had to hire an attorney to represent them, then the district court would have to make a decision, in equity, as to whether that person should have their attorney fees paid.

SEN. O'NEIL then questioned if he would be amenable to having an amendment that states that.

SEN. WHEAT stated that amendment would not change the intent of the bill. Also, **SEN. WHEAT** believes that power already exists with the court.

SEN. O'NEIL believes that power may already exist, but now we are amending that power out the way the bill reads.

Ms. Lane stated **SEN. O'NEIL** is anticipating something that is not going to happen. If someone goes to the county prosecutor and wants information about a case and, the county prosecutor cannot give them that information under law because it is confidential criminal information, this bill will allow for a procedure whereby the county attorney can turn everything over to the court and ask the court to decide. The court will weigh the individual's right of privacy against the public's right to know. **Ms. Lane** does not anticipate there would be third-party intervenors. However, under the bill right now, if there were a third-party intervenor, they would have to pay their own attorney fees.

Motion: **SEN. O'NEIL** moved to amend paragraph (c) to say that the court may, in its discretion, award attorney fees to third-party intervenors. This new language would be inserted as a new sentence after the last word "fees."

SEN. WHEAT reiterated he does not think **SEN. O'NEIL's** proposed amendment would change the intent of the bill, but does not feel

that language is necessary. He is concerned about who that third-party intervenor might be.

SEN. CROMLEY stated he believes the amendment does change the intent and gives the court the power to award attorney fees, which is an unusual power in Montana. Also, this amendment would require a fiscal note for the bill since attorney fees may be awarded to the third-party intervenor and have to be paid by the state.

SEN. O'NEIL stated if two females were picked up for sodomy, and one was a public official, and the newspaper wanted the information on the public official they could use this statute to obtain the information. The other woman, then, may want to intervene to keep the information about herself confidential. She should not, under these circumstances, have to pay attorney fees.

Vote: The motion to adopt **SEN. O'NEIL's** proposed amendment **FAILED** on a roll call vote.

Vote: The motion that **Amendment SB014102.avl BE ADOPTED CARRIED UNANIMOUSLY. EXHIBIT(jus13a05).**

Vote: The motion that **SB 141 DO PASS AS AMENDED CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 139

Motion: **SEN. MANGAN** moved SB 139 **DO PASS.**

Discussion:

SEN. MANGAN remarked that this bill is necessary to maintain relationships with other states in the transfer of juveniles between states. Montana occasionally finds it necessary to send juveniles out of state. We are one of first states, from testimony at the hearing, to review the new compact. That compact should be ratified by at least 35 states within the next year or so.

(Tape : 3; Side : A)

SEN. McGEE's concern with SB 139 because the stricken language deals with the juvenile compact and how they are going to talk about runaways, return of escapees, absconders, voluntary return procedure, detention practices, cooperative supervision, and so forth. The new language, on the other hand, talks exclusively

about a commission. **SEN. McGEE** feels this bill creates another level of bureaucracy. He is concerned that what we are striking in law is a "doing" thing and we are replacing it with a "bureaucracy" thing. The bill never addresses the handling of juveniles, but rather simply speaks to the creation of a commission. This commission will be a bureaucratic level between state and federal governments and may not reflect the views of the people of Montana. **SEN. McGEE** does not support this concept and will need further convincing.

CHAIRMAN GRIMES relayed to **SEN. MANGAN** that the question raised in his mind is whether Montana is stepping too far ahead of the curve. **CHAIRMAN GRIMES'** recollection from testimony is that Montana would be only the second state to adopt this legislation out of the 39 needed.

SEN. DEBBIE SHEA responded that she spoke with **Richard Masters, The Council of State Governments,** and he stated there are 17 states with this bill in their legislative process.

SEN. CROMLEY believes that **SEN. McGEE'S** concern is valid. **SEN. CROMLEY** noted this will not be effective until the 35th state ratifies it. **SEN. CROMLEY** requested **SEN. SHEA** to address this concern.

SEN. SHEA responded that it is her understanding the adult compact passed last session had the same component. In addition, she understood that at this point, they cannot even agree on a definition of juvenile. **SEN. SHEA** stated the idea is that the commission will obtain representation and input from every state. This will create commonalities in language and purpose and will create an effective commission. **SEN. SHEA** cannot envision a better way to do this.

SEN. O'NEIL stated this bill is going way too far, too fast. It is possible the current laws need to be updated. It appears to **SEN. O'NEIL** that this compact has all the powers of a government. **SEN. O'NEIL** is not comfortable with sitting up a new level of government.

SEN. CURTISS reluctantly opposes this bill because of the rule making authority and oversight and supervision granted to the commission. **SEN. CURTISS** directed the Committee to look at page 15, line 17, where the commission will have enforcement ability and, if Montana were to follow the same pattern it did in passing the adult compact, Montana could expect to be included with 40 other states, but have only one vote. **SEN. CURTISS** pointed out

the difference in circumstances in rural states like Montana and urban areas.

CHAIRMAN GRIMES stated he has voted for other compacts that have done similar things. He believes there are some very valuable things we will be able to do with juveniles on an interstate basis. He will support the bill because of what it will accomplish in dealing with juveniles, not the least of which those who are involved in drug activity across state lines.

SEN. MANGAN pointed out this bill is not designed to change our current statutes dealing with Montana juveniles within Montana. The interstate compact is designed to coordinate with our 49 brethren states. **SEN. MANGAN** feels if we do not start this process, are juveniles are at risk if they are picked up in other states. In addition, Montana will be financially liable if they are not involved in the compact at that point. Avoiding this financial obligation is as easy as getting together with other states and adopting a common law to deal with youth from other states who may end up in Montana, or Montana's youth who end up in other states. **SEN. MANGAN** feels the commission will do a good job.

Vote: The motion that **SB 139 DO PASS carried 5-4 by roll call vote** with **Senator Wheat voting by proxy** and **Senators Curtiss, O'Neil, Perry, and McGEE voting no.**

EXECUTIVE ACTION ON SB 147

SEN. McGEE stated the subcommittee unanimously voted to recommend to the Committee that this bill **BE TABLED** pending the outcome of the work regarding the financial end of state assumption.

Motion/Vote: **SEN. McGEE** moved **SB 147 BE TABLED.** The motion **carried UNANIMOUSLY.**

HEARING ON SB 189

Sponsor: **SEN. AUBYN CURTISS, Senate District 41, Fortine.**

Proponents: **Thomas Burson, Self**

Opponents: **Lonnie Olson, Administrator, Child Support Enforcement Division, Public Health and Human Services**

Opening Statement by Sponsor:

SEN. CURTISS opened the hearing on SB 189 stated that some will remember the passage of the bill which precipitated this bill. **SEN. CURTISS** is bringing this bill because a constituent of hers believes that policies adopted by the Child Support Enforcement Division have not only prevented him from defending himself from an improper out-of-state child support order. In addition, the suspension of his drivers' license has prevented him from employment opportunities and have interfered with his ability to support his family. **SEN. CURTISS** has concerns about out-of-state child support orders and the compilation of statistics to determine who successful suspension of drivers' licenses is as a method of collecting child support. As a practical matter, a person who is unable to drive has unlimited job opportunities. As a result, how is a person supposed to be able to pay child support unless that person is employed on a sustainable basis. SB 189 says a license can only be suspended for two years and a probationary license must be issued to allow a person to drive for occupational necessity, homemaking, and emergencies. Wisconsin state law currently contains similar provisions. **SEN. CURTISS** stated she would submit written testimony from **Kurt Flecker, Libby, Montana,** and did submit a letter she received from **Clayton Schenck, Legislative Fiscal Analyst for the Legislative Fiscal Division,** in response to her request for information regarding the Child Support Enforcement Division. **EXHIBIT(jus13a06).**

Proponents' Testimony:

Thomas Burson, Libby, Montana, who had his driver's license suspended for child support delinquencies, submitted written testimony in favor of SB 189. **EXHIBIT(jus13a07).**

(Tape : 3; Side : B)

Opponents' Testimony:

Lonnie Olson, Administrator, Child Support Enforcement Division, Public Health and Human Services, stands in opposition to SB 189 would like to share the other side of the story. There are certain predicates to any action to suspend a drivers' license. One of those predicates is a person must be delinquent six months in his child support payments. Certified notice must also be given to the person stating this action is going to be taken. At that time, the person has 60 days to request a hearing. Only after that time is the action to suspend actually undertaken. **Mr. Olson** stated if the Committee is interested in hearing the other side of the story, he will attempt to obtain signed releases from **Mr. Burson** and **Mr. Flecker.**

Mr. Olson informed the Committee that Montana law does give an opportunity for the obligor through the use of a Notice of Intent. This gives the individual an opportunity to argue whether the debt actually exists. It makes no sense to try to collect child support by depriving individuals of their right to earn their livelihood. The intent of the license suspension is to enforce payments of support. In many cases this is the only mechanism they can use to attempt to collect delinquent support. In most cases, income withholding orders are used to collect child support. This enables CSED to collect by having an employer withhold money from an obligor's paycheck. This will not work in cases where an obligor is self-employed or there is no record of an employer-employee relationship. Sometimes, the only way to make a person live up to their obligation is to go forward with a license suspension action. There are currently 40,000 to 41,000 open child support cases at CSED. Over 30,000 of those cases have arrears debt. Of that number, 10,845 cases have received no payments. **Mr. Olson** stated that the amount of the arrears debt in Montana alone is $185 million. **Mr. Olson** stated that the purpose of the driver's license suspension is to collect child support, not to deprive a family of their means of transportation. **Mr. Olson** asked the Committee to remember anytime there is an argument that they are depriving a family of their means of transportation, there is another family that they are acting in support of.

Mr. Olson reported that as a result of license suspension $1.2 million was collected in Montana. Over $1 million went directly to families. This is a result of suspending 530 licenses. **Mr. Olson** testified that CSED questions whether they would have this same outcome if they authorized the use of provisional licenses.

Mr. Olson submitted copies of the three types of payment plans utilized by the CSED. **EXHIBIT(jus13a08).** In addition, there is a means by which an individual can obtain a stay of any suspension plan and by showing the suspension will result in a hardship. All of these plans are subject to an administrative hearing and a final ruling and decision. Also, by entering into a payment plan agreement, certain rights are waived since these agreements are, in essence, a settlement document. These documents are very straight-forward, so there can be no question that if you enter into this agreement, you are giving up certain rights. Therefore, there are consequences. **Mr. Olson** stated there are many positive results from license suspension.

Mr. Olson closed by stating that due process is provided for at every step, and a person has to be substantially in arrears to be subject to license suspension. **Mr. Olson** feels CSED does a good job to help families and the purpose is to convince individuals

to pay child support. This statute forces people who can pay child support, but choose not to, to pay. **Mr. Olson** expressed his concern that issuance of a provisional license for homemaking duties would place the value of a current family above that of a former family. **Mr. Olson** feels the needs of that former family must be met as well.

Questions from the Committee Members and Responses:

SEN. WHEAT asked if provisional licenses are available to parents who have their license suspended under the enforcement statutes.

Mr. Olson replied no, but if a person enters into a payment agreement, the license is returned outright.

SEN. WHEAT then asked **Mr. Burson** if his driver's license is currently suspended and whether he got notice of a hearing.

Mr. Burson responded his license is currently suspended and that he attended the hearing via telephone.

Upon question from **SEN. WHEAT** as to whether he went to CSED and requested a stay of the suspension, **Mr. Burson** stated the burden is on the obligor to prove the resultant hardship is not merely an inconvenience but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the obligor's household, employees, or legal dependents, or other persons or entities served by the obligor. **Mr. Burson** stated he would like to know what the criteria is for irreparable harm.

SEN. WHEAT asked whether **Mr. Burson** went through the entire process to get a stay of his suspension of license.

Mr. Burson stated he did not get through the entire process since the process was overwhelming and frustrating.

Mr. Burson agreed to sign a release so the Committee could review his file.

(Tape : 4; Side : A)

SEN. O'NEIL questioned whether anyone had ever sought a writ of mandamus to stop the agency from taking their license.

Mr. Olson responded there are two opportunities for a person to take up the issue with a court. **Mr. Olson** responded his recollection is that **Mr. Burson** brought an independent action against the agency to have his license reinstated. Upon question

from **SEN. O'NEIL, Mr. Burson** responded the case filed by **Mr. Burson** resulted in summary judgment being granted to CSED.

In response to the same question from **SEN. O'NEIL, Mr. Burson** explained the district court rendered a "hands-off" decision, and he has appealed that decision to the Montana Supreme Court.

SEN. PERRY asked **Mr. Burson** about his arrearages and the length of time his children were living with him. **Mr. Burson** explained that the amount of arrearages were in error since there was no credit allowed when his children were actually living with him.

CHAIRMAN GRIMES inquired whether he consulted with legal counsel about testifying before the Committee in light of the fact that he has an appeal pending with the Montana Supreme Court.

Mr. Burson responded he was advised by a paralegal that the best way to effect a change is to go to the legislature as opposed to the court system.

SEN. GERALD PEASE inquired whether there were an cases relating to Indian children and if CSED has any problems with tribal jurisdictions.

Mr. Olson stated they do have cases relating to Indian children and that they do a very careful analysis of jurisdictional issues before undertaking actions that affect tribal members within the exterior boundaries of a tribal reservation.

SEN. PEASE asked CSED ever pursued child support through tribal courts.

Mr. Olson responded they had.

SEN. PERRY asked **Mr. Olson** to define exactly what CSED considers a "case" to be.

Mr. Olson explained a case is usually one of two-fold. First, would be when an individual who wants to establish child support, or enforce a current child support order, opens a case with the agency. Second, persons who are receiving public assistance are referred to CSED.

SEN. PERRY then asked whether one case could include multiple children.

Mr. Olson responded they are considered separate cases if each case has a separate mother.

SEN. PERRY recited CSED collected $1.2 million by suspending 530 licenses, and they have 10,845 cases in which there have been no payments made. Statistically, **SEN. PERRY** would like to know how many of those 530 cases, where the license was suspended, resulted in payments or correction of the arrearage.

Mr. Olson responded that information would be contained in the fiscal note. **Mr. Olson** further explained that as far as the 10,845 cases are concerned, the reason CSED did not receive payment may be due to the fact that the obligor could only pay current payments and was not able to pay on back child support.

Closing by Sponsor:

SEN. CURTISS closed by stating she questioned the Department about the validity of out-of-state court orders. Currently, if a spouse files for welfare, but the other parent has custody, that can require the custodial parent to go to court. **SEN. CURTISS** stated that she was informed the agency does not keep records of licenses suspended due to out-of-state orders or the number of license suspension pay plans that are successfully completed.

ADJOURNMENT

Adjournment: 12:00 P.M.

_____
SEN. DUANE GRIMES, Chairman

_____
CINDY PETERSON, Secretary

DG/CP

EXHIBIT(jus13aad)