MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 28, 2003 at 9:00 A.M., in Room 303 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

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

Committee Business Summary:

Hearing & Date Posted:	SB 257, 1/24/2003 HB 48, 1/23/2003; HB 70, 1/23/2003;
Executive Action:	SB 257; HB 70; SB 116; SB 177; SB 189; SB 226;

HEARING ON SB 257

Sponsor: **SEN. MIKE COONEY, SD 26, HELENA**

Proponents: **Karla Gray, Chief Justice of the Montana Supreme Court**
Shirley K Brown, Child Protective Services Division, DPHHS

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE COONEY, SD 26, HELENA, introduced SB 257.

Proponents' Testimony:

Karla Gray, Chief Justice of the Montana Supreme Court, stated that the Legislative Audit Division performed an audit of the Child Protective Services Division of the Department of Public Health and Human Services Department (DPHHS). This audit reached out to district courts and others. She recommended to the Legislative Audit Committee that a bill be drafted to try to help the district judges meet the short statutory deadlines for hearings. The bill adds notice of time deadlines to the court in child abuse and neglect proceedings. The bill adds new language on the top of page 2 about when a petition is filed in the child abuse or neglect area. The person filing the petition shall file a separate notice to the court stating the statutory time deadline for a hearing. On page 4 in 41-3-432 is the other change in this bill. A separate notice to the court of the 10-day hearing requirement must accompany any petition to which the requirement applies.

Shirley K. Brown, Child Protective Services Department, DPHHS, rose in support SB 257. She reported there are multiple time frames that need to be met in an abuse and neglect proceeding. If a petition is filed, the show cause hearing must be held within 10 days. If the show cause hearing is not combined with the adjudicatory hearing, the adjudicatory hearing must be held within 90 days. The dispositional hearing must be held within 20 days of the adjudicatory hearing. There are also time frames for the permanency plan hearing. The child abuse and neglect proceedings do have the highest priority of all the cases coming before the district court.

Opponents' Testimony: **None**

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL stated that there is another bill which changed the 10-day time frame to 20 days. He questioned whether it would be sufficient to notify the court of the time frames and not state that it is a 10-day time frame. **Chief Justice Gray** acknowledged that another bill existed which changed the time frame to 20 days. She doesn't have a position on that bill. She was not interested in offering an amendment to change the 10-day period to 20 days. Regardless of the time frame set, it is important to tag the separate notice so the courts have a rational chance to meet the time deadlines. Everyone tries to move these cases as quickly as possible due to all the people involved who need immediate attention and care.

SEN. MIKE WHEAT asked **REP. BRAD NEUMAN, HD 38, Chief Deputy County Attorney for Silver Bow County**, to respond to the separate notice filing being added in the bill. **REP. NEUMAN** explained that in Silver Bow County a private law firm handles their abuse and neglect cases.

SEN. WHEAT asked whether consideration was given to requiring that a courtesy copy of the hearing deadline be given directly to the district judge or the district judge's scheduling secretary. Sometimes there is a lapse between the district court office and the judge's office. **Chief Justice Gray** noted that filings are made with the clerk of the district court. The surmise is that when the clerk of the district court receives the petition with a notice stating the time deadline for setting a hearing, the clerk of the district court will immediately notice the judge.

Closing by Sponsor:

SEN. COONEY closed on SB 257.

HEARING ON HB 48

Sponsor: **REP. BRAD NEWMAN, HD 38, BUTTE,**

Proponents: **John Connor, Attorney General's Office and the Department of Justice,**

Opponents: **None**

Opening Statement by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, introduced HB 48. He stated that the bill deals with a situation referred to as an "Anders brief". In some cases, defendants appeal their cases. In rare instances,

they are actually guilty. There is no reason for them to appeal, either factually or legally. A conflict occurs in that the appellants are represented by counsel. Counsel is not only an advocate of his or her client's position, but also an officer of the court. When the appeal is frivolous or wholly without merit, counsel has a duty to advise the court that the appeal is without merit. This bill address appellate counsel's duties and obligations. It is important to have a uniform and consistent practice among the various defense appellate counsel so they understand their duties and obligations. This is especially important when they advise the court that they have met with their client and have discussed the fact that they believe the appeal is without merit and are asking to withdraw from the case.

Proponents' Testimony:

John Connor, Attorney General's Office and the Department of Justice, rose in support of HB 48. The genesis for this bill comes from a 1967 California case called Anders v. California. This case struck down a procedure in California which stated that all counsel needed to do when he or she believed the appeal was without merit, was to file a conclusary letter to that effect. Anders held that it was necessary to advise why there was no merit to the appeal and cite to the record those places where there might be some merit in the appeal. In 1991, the Anders concept was incorporated in the Criminal Procedure Code. Since Anders, the U. S. Supreme Court has held that this procedure is not necessarily exclusive and the states could follow more encompassing processes for handling these issues if it chooses to do so. It is important to have a process that is uniform. On line 22 of the bill, there is a House amendment. The original bill contained the language "and discussing why those issues lack merit". This was based upon a 1988 decision of the U.S. Supreme Court which stated it was not contrary to counsel's responsibility to his client to explain why there is no merit to the appeal. The House Judiciary Committee struck that language. They had received testimony from an appellate defender who believed that it would require him and others in his position to argue against the interests of his client. Mr. Connor further noted that he has recently learned that at least one appeal in Helena has been returned to the public defender handling it because, in the view of the court, he was arguing against the interests of his client. He has no problem with the House amendment. This bill still allows a procedure which will give counsel some idea of how to follow the Anders process.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. O'NEIL asked whether an attorney appointed by the court would be required to handle the appeal. **Mr. Connor** explained that there is a statute which states that the attorney's responsibility carries through the appeal unless there are issues of ineffective assistance of counsel. In this instance the appellate defender handles the appeal.

SEN. O'NEIL raised a concern in the instance of the defendant who hired an attorney and then the attorney would tell the court that they do not have a good case. He believed this would be a violation of the attorney/client privilege. **Mr. Connor** maintained that the attorney is an officer of the court and as such also has an obligation not to carry forward with frivolous issues to the Supreme Court. While the attorney does have a responsibility to the client, he or she also has an obligation to notify the court that in his or her opinion the issues are groundless. A memorandum needs to be presented. It would then be up to the court to review the record to decide whether there are any issues worthy of consideration by the court. Currently the appellate defender would file a notice stating there are no issues but then their office proceeds to argue the merits.

SEN. O'NEIL suggested that the attorney simply be allowed to drop out of the case if he or she believed there were no valid issues for an appeal. **Mr. Connor** didn't see how that would benefit the client. Another attorney would need to be appointed and he or she may conclude the same facts as the initial attorney. The defendant has a right to file a response of his own if he disagrees with the position being brought forward by his counsel.

SEN. O'NEIL questioned whether a person had a constitutional right to appeal. **Mr. Connor** stated that in a criminal case, a defendant has an absolute right to appeal.

SEN. O'NEIL believed it would violate his appeal to have his attorney tell the court that there are no issues that justify an appeal. **Mr. Connor** did not believe so. The defendant has the right to be heard before the Supreme Court. He can be heard. He will file a response of his own if he disagrees with the position of his counsel. The court does not have to adopt the defense attorney's position with respect to the Anders issue. It can disagree and require the defense counsel to file a merits brief. The court is required to examine all the issues brought before it so it can determine whether or not there are any valid appeal issues.

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SEN. O'NEIL maintained that the client has a right to an impartial court on appeal. If the attorney tells the court that the appeal is frivolous or wholly without merit, this would void an impartial court because the court is hearing this ex parte. **Mr. Connor** claimed the attorney would be saying that, in his or her professional judgement, there are no issues worthy of appeal. The court would then make its own decision about whether that is correct. The defendant would have a right to respond on his own if he so chooses.

CHAIRMAN DUANE GRIMES noted that this has been required in the past. The bill would add that a motion would need to be made and a higher burden of proof would be required. **REP. NEWMAN** claimed that the intent of the proposed amended language was to place the notice requirement on appellate counsel and also to provide a standard or uniform list of reasons why counsel wants to be let out of the proceeding. On lines 18 and 19, counsel must speak about reviewing the record, researching applicable statutes, case law and rules and make that notice to the court. The information is shared with the appellate court when appellate counsel concludes that there is no merit to an appeal after all these factors have been researched and discussed with the client. Through case law, appellate counsel has been told to do this. Many trial attorneys only handle one appeal a year and may not have this knowledge base.

CHAIRMAN GRIMES summarized that in some cases this would prevent the misuse of the application of permission to withdraw. **REP. NEWMAN** noted that this would involve motions to withdraw as counsel as opposed to a motion to dismiss the appeal. The intent is to prevent abuse of this process. It is important to have appellate counsel from across the state present the same kinds of information to the appellate court so the decisions are consistent and not in violation of the appellant's rights.

SEN. WHEAT inquired about the deadline to file a notice of appeal in a criminal case. **REP. NEWMAN** clarified that the notice of appeal is to be filed within 30 days of the judgment.

SEN. WHEAT asked whether the process involved in HB 48 would toll the period of time in which the defendant has to file his notice of appeal. **REP. NEWMAN** stated that would be his understanding. Once the proper notice is given and the briefing period begins in the Supreme Court, an issue such as this would toll the period of time for the actual briefs on the merits as required under the court's schedule. **Mr. Connor** affirmed. The notice of appeal is filed and then the record is prepared. Once the record is prepared and counsel has an opportunity to review the record for

issues relating to the appeal, the Anders type of situation would be filed instead of the appellate brief.

SEN. WHEAT asked whether the jurisdiction transferred to the Supreme Court when the notice of appeal was filed. **Mr. Connor** affirmed this to be the case.

SEN. WHEAT questioned whether the district court would make the decision proposed in HB 48. **Mr. Connor** clarified that the Supreme Court would make the decision.

SEN. BRENT CROMLEY questioned whether this type of filing would be required in every case where counsel is assigned. After conviction, either there is an appeal or this notice from Section 46-8-103 is filed. **Mr. Connor** affirmed this to be true unless counsel and defendant decided not to appeal. If the state decides to pursue an appeal, it has fourteen days in which to file the notice of appeal. Once that is done, the record is reviewed to determine whether or not the issue is worthy of appeal or not. This would be referred to the Attorney General's Office and the Appellate Review Committee would advise the county attorney whether or not, in their opinion, the issue is one in which they would prevail. At this time, the notice could be withdrawn. The same would hold true for the defense. The notice is filed so that the statutory period does not run. The option is then available to decide whether or not to appeal.

SEN. CROMLEY further questioned whether it would be necessary to file anything under 46-8-103 if counsel and defendant both wished not to appeal. **Mr. Connor** stated that the judgment would stand and there would be nothing filed in the Supreme Court. Section 46-8-103 addresses instances where there is a disagreement between counsel and the defendant.

SEN. CROMLEY commented that HB 48 seemed to ask defense counsel to do the state's work in terms of reviewing the record and researching to determine the case for the state against his or her client. **Mr. Connor** maintained that counsel would need to do this anyway. This would provide guidance and consistency.

SEN. CROMLEY asked whether this has been discussed with the defense bar. **Mr. Connor** commented that the appellate defender was present at the hearing on HB 48 in the House Judiciary Committee. The only problem he had with the bill was line 22 which the house remedied by striking the language.

SEN. DAN MCGEE asked whether some cases, especially deliberate homicide cases, had automatic appeal processes. **Mr. Connor** affirmed this to be true in death penalty cases only.

Closing by Sponsor:

REP. NEWMAN closed on HB 48. He noted that in the case of retained counsel, the defendant always has the right to discharge counsel and retain another counsel. The existing language in 46-8-103 deals with the duration and duties of appointed counsel. This is only the case where a court has come in and said the defendant is entitled to counsel at public expense. This is where the conflict surfaces between the appellant and the appointed counsel. Appointed counsel is not only serving the defendant's interest in these cases, he or she is also an officer of the court. In these rare cases where the defendant and counsel differ as to the merits of the case on appeal, the Anders situation applies. In the instance of retained counsel, it is the defendant's case. If the defendant disagrees with counsel, the defendant simply discharges counsel and retains other counsel. The vast majority of cases do not result in any appeal. The appellate defender encouraged the House Judiciary Committee to adopt this bill because it adds uniformity and consistency in the Supreme Court's review of these rare cases.

HEARING ON HB 70

Sponsor: **REP. JOHN PARKER, HD 45, GREAT FALLS**

Proponents: **John Connor, Attorney General's Office**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOHN PARKER, HD 45, GREAT FALLS, introduced HB 70. This bill would allow a district court judge to dismiss an appealed misdemeanor case in situations where the defendant fails to appear for a trial or a hearing. Under current law a defendant who is appealing a misdemeanor conviction, can drag the case out indefinitely. In one case in Cascade County, an individual was convicted of a misdemeanor case in May of last year. He filed an appeal in June. Since that time he has failed to appear for two omnibus hearings and a show cause hearing. After failing to appear for a district court status hearing, a bench warrant was issued for his arrest. Since that time he has failed to appear for additional hearings and the district court may have heard this trial within the last week. This bill is necessary as we work together to enhance DUI enforcement. If a criminal defendant can drag out their misdemeanor charge indefinitely, this delays the finality of the misdemeanor conviction and impairs the prosecutor's ability to charge a case as a felony because the underlying misdemeanor has never been achieved.

Proponents' Testimony:

John Connor, Attorney General's Office, noted that this bill is a straightforward procedural change. It address a problem in the statute because of the mandatory language in Section 46-17-311(1) which states all cases on appeal from justice's or city court must be tried anew in the district court. This issue was brought to light in two cases when the district judge dismissed the appeal when the defendant failed to show up for hearing or trial. The Attorney General's Office believed the district judge was not given statutory discretion to do so. Judge McCarter suggested this approach which makes the defendant responsible for his actions and requires him to show up. They brought an amendment to the bill in the House Judiciary Committee which addressed good cause.

{Tape: 2; Side: A}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. CROMLEY raised a concern regarding the constitutionality of this bill. **Mr. Connor** stated it was the opinion of the Attorney General's Office that this bill would be constitutionally acceptable. It establishes a process when the defendant does not meet his obligation.

SEN. CROMLEY questioned the added language on line 28, "AND THE RIGHT TO A JURY TRIAL IS CONSIDERED WAIVED BY THE DEFENDANT." **Mr. Connor** explained that the language was amended into the bill by the House Judiciary Committee. There was some discussion about the fact that the judge did not appear to have any discretion if the defendant had asked for a jury trial and the matter had been tried on the lower court level with a jury, the court did not have any discretion but to go ahead with a jury trial on the appellate level as well. This would not be cost effective or of any consequence to the parties when the defendant did not show up.

Closing by Sponsor:

REP. PARKER noted that many district court judges face an immense backlog of cases. Under current law, the criminal defendant has an opportunity to scuttle another individual's trial date by forcing the court to clear out all other trials that could have gone on a given date. This bill does not take away any constitutional rights of the defendant. It simply requires that they show up in order to take part in the process.

EXECUTIVE ACTION ON SB 257

Motion: **SEN. MCGEE** moved that **SB 257 DO PASS.**

Substitute Motion: **SEN. O'NEIL** made a substitute motion that **SB 257 BE AMENDED.**

Discussion:

SEN. O'NEIL explained the amendment. On page 4, line 18, the language would read, "A separate notice to the court stating any statutory time deadline for a hearing requirement must accompany any petition to which the requirement applies."

Ms. Lane remarked that her understanding was that the language was to be the same as it appears on page 2 of the bill. Following the word "court" the word "of" would be stricken. The word "stating" would be inserted. The words "10-day" and "requirement" would be stricken. It would read, "A separate notice to the court stating any statutory time deadline for a hearing must accompany any petition to which the requirement applies."

SEN. O'NEIL accepted the modification to his motion.

SEN. JEFF MANGAN raised a concern about the fact that the Committee did not have a hearing on the 10-day provision. This is in current statute on line 15, page 4. He would be more comfortable with a coordinating instruction to the other bill should the other bill pass.

SEN. MCGEE believed the Code Commission would automatically coordinate the two bills. **Ms. Lane** maintained that he would not and this would pass as a conflict. It would remain in the code as 10-days even if it had been changed to 20-days in the language which was two lines above. The code commissioner could not change this without a coordination instruction.

SEN. MCGEE questioned the status of the 20-day bill. **SEN. O'NEIL** did not know the status of the bill.

SEN. MCGEE spoke against the motion due to the fact that the Committee did not know the circumstances of the 20-day bill.

SEN. GARY PERRY maintained that since the language in the amendment is consistent to the language on page 2, any changes on line 15 would apply. He spoke in support of the amendment.

SEN. MANGAN stated that he would vote against the amendment because the notice time frame was not discussed. If he had more information, he may be able to support the amendment.

Ms. Lane suggested a slight revision to the proposed amendment. Instead of stating "any statutory time deadline", it would make more sense to change the word "any" to "the". This would state, "the statutory time deadline for a hearing". The word "requirement" would not make sense on line 19. This should read, "A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies." She did not believe this would be a substantive change and it would eliminate the need for a coordination instruction.

SEN. CROMLEY agreed and added that the notice would need to have the number of days in it.

SEN. O'NEIL stated that the language change **Ms. Lane** suggested was exactly the language he intended to have in the amendment.

SEN. MANGAN supported the amendment.

Vote: Motion **carried unanimously.**

Motion/Vote: **SEN. MCGEE** moved that **SB 257 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON HB 70

Motion/Vote: **SEN. MANGAN** moved that **HB 70 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 116

Motion: **SEN. MANGAN** moved that the Committee **RECONSIDER ITS ACTION** on **SB 116.**

Discussion:

SEN. MANGAN stated that it is important not to dismiss the issues in this bill. He would like to propose an amendment that would only change the current law to increase the fine from $20 to $50. This will send a positive message. He has spoken with the sponsor and if the bill came out with that proposed amendment and the rest of the changes were taken out, he would resist any attempts to take the law back to its original form. He read in the paper this morning that there have been 20 highway deaths

this year and it is only January 28th. Twelve of the victims involved were not wearing seat belts.

CHAIRMAN GRIMES raised a concern that the title of the bill may not be broad enough. **Ms. Lane** stated that SB 116 as introduced is quite specific that it is making a violation of the seatbelt law a primary offense and no longer a secondary offense. She couldn't find a reference to the penalty being $10 and changing that to $20. If all the other changes were incorporated, the title would need to be rewritten. Section 1 would need to be stricken from the bill. The section with the penalty would need to be added so it could be changed there. She believed this would be way out of the scope of the bill.

SEN. MANGAN rescinded his motion for reconsideration. He asked the Committee to consider a committee bill.

Motion: **SEN. MANGAN** moved that the staff draft a committee bill to increase the fine on the current seatbelt law.

Discussion:

CHAIRMAN GRIMES noted that usually committee bills were necessary when there is not another bill in the legislature to deal with a particular issue. There are other seatbelt bills this session where this amendment could be incorporated. April 8th would be the last day for committee bills.

SEN. MANGAN did not want to go forward if the committee was not interested in a committee bill. His only purpose for either consideration would be to increase that penalty to a minimum of $50.

CHAIRMAN GRIMES stated that given the circumstances in Manhattan, he was considering discussing the possibility of a bill addressing driver education. The number of youth that could be in a car would depend on the experience of the driver. It is important to send a good message. He would be opposed to the motion due to the timing. It may be more appropriate to see if there is another legislator with a related bill.

SEN. WHEAT would look favorably on **SEN. MANGAN's** motion but agreed it was necessary to see if there was another bill that could accomplish the same end.

SEN. O'NEIL believed this would apply to someone who had incorrectly buckled their child into a child restraining seat. If it would, it is his understanding that when there is a free check for the child restraining seat to see if they are properly

installed, approximately 40 percent are not properly installed. This 40 percent would be in violation of our seatbelt law. He would not raise the fine in this instance.

SEN. MANGAN withdrew his motion to investigate whether or not there was another bill that could accommodate this amendment. A committee bill from the Senate Judiciary Committee would send a positive message.

{Tape: 2; Side: B}

EXECUTIVE ACTION ON SB 177

Motion: **SEN. CROMLEY** moved that **SB 177 DO PASS.**

Substitute Motion: **SEN. O'NEIL** made a substitute motion that **SB 177 BE AMENDED.**

Discussion:

SEN. O'NEIL explained that his amendment would state that a person commits an offense of malicious intimidation or harassment when, because of another person's attributes or beliefs, the person acted purposely or knowingly in causing the offense. On line 11, after the word "person's" he would strike the word "race" and all of line 12.

CHAIRMAN GRIMES noted that this change is similar to an amendment that was to be made last session and it was necessary to request a separate bill because it was outside the title.

Ms. Lane believed that would be outside the title. The title is very specific.

SEN. O'NEIL stated that this bill would require that one class would be set above other classes. He withdrew his motion.

Motion: **SEN. MCGEE** moved that **SB 177 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. CROMLEY spoke against the motion. He stated this bill is only adding another group. The opponents were of the opinion that the people to be protected were bad people. Even if they were, they are a target of crimes aimed toward their sexual orientation and therefore do require the protection. From the hearing, he realized that this type of crime is not directed at one person but at a group of persons. In Billings a few years ago a Jewish family was targeted. A crime of this type is not

just against the family but against the family down the street that may also be Jewish. This is the reason why he supports hate crime legislation. Whether or not we believe there is a biblical component to their lifestyle, they are a group of people who require the protection of this statute.

CHAIRMAN GRIMES noted that in the testimony he did not believe they were saying that the people were bad, but that they were objecting to the lifestyle.

SEN. MANGAN stated that good people have suffered under this type of intimidation and harassment. It is a crime and it is meant to scare and instill fear because of their sexual orientation. At some point, society must understand this must be addressed and we cannot allow a group to continue to be intimated and placed in fear under perception or reality. The young man's testimony alone is a reason to support the original bill. He opposes the motion.

Vote: Motion **carried 5-4.**

EXECUTIVE ACTION ON SB 189

Motion: **SEN. AUBYN CURTISS** moved that **SB 189 DO PASS.**

Discussion:

SEN. WHEAT stated that he asked the gentlemen who testified if he would be willing to sign a release for information. He said he would. He does not intend to look at the information. The fact that he said he would was sufficient.

SEN. O'NEIL explained that he would like to make this bill apply to people who have an out-of-state child support order. If the person is from out-of-state, they are denied due process because they cannot afford to go to the issuing state to achieve justice.

Ms. Lane found the child support statutes confusing. She would like to discuss the amendment with **Amy Pfeiffer, Child Support and Enforcement Division, DPHHS** to make sure the amendment would be proper.

SEN. MANGAN stated there may be an interstate compact which may not allow us to proceed with the proposed amendment.

SEN. CURTISS did not believe the amendment would help. She had been contacted by a number of constituents who believed they had been mistreated by the system and there wasn't adequate opportunity for them to defend their interest from out-of-state

orders. When an out-of-state order is issued, the individual accepts the amount of the alleged indebtedness or they lose their drivers license. Some are not signing the contracts with the department because either they believe the amount is incorrect or it is inappropriate. A POW with a 100 percent disability has been trying to establish for 12 years that he is not the father of this child. A court order has been issued to have the child tested but this has not happened. They are taking $75 of his disability payment. In another instance, they went into the bank account and took $15,000 for alleged arrearages. That individual has never had an opportunity to defend himself in court. We have a responsibility to make the system function in a fair and just way. These orders should not be accepted at face value.

{Tape: 3; Side: A}

SEN. CROMLEY stated that over the past few years it has been necessary to tighten up the child support laws because there has been a lot of abuse. One of the tools is the potential suspension of a drivers license. From the testimony, he had the impression that it is not used very often. This is a special statute.

SEN. CURTISS noted that one of the handouts from the department showed that for calendar 2001, there were 1186 suspension packets issued and there were 453 payment plans entered. This indicates that those suspension notices were not all that acceptable to a large majority of the persons upon whom they were served.

SEN. WHEAT claimed that there is a responsibility that goes with being a parent. This is a one person bill. The gentleman who testified had every opportunity to exercise his rights and have his case heard.

CHAIRMAN GRIMES further asked if the 453 payment plans would still have been entered it if it had not been for this process.
SEN. CURTISS stated that in a letter from Mr. Olsen, he admitted they do not keep separate statistics on payment plans. There seems to be a lack of accountability in speaking to the legislative branch. They suggested that the Montana Child Support Enforcement Division did not have available information regarding how much child support is collected in cases where suspension of a driver's license was utilized as a collection tool. In the U.S. General Accounting Office report, it states that based upon data and driver's license suspensions in four states, nearly one of every three cases made at least one payment after being notified that their licenses could be or was being suspended. This is not very convincing.

The Legislative Services Division suggested options to correct some of these deficiencies in accounting. Option 1 would be to introduce legislation to include guidance on cases in which a stay of suspension should be issued due to hardship. The legislature may wish to specify in statute that a stay of a license suspension would be issued when the license being suspended is a driver's license needed for the individual's transportation to work. This is the route she has chosen to take. If an individual is not able to drive to work, there doesn't seem to be any way for that individual to support himself or make up the arrearages. Another option would be to amend Title 40 to include suspension of licenses for non-support and to require the department to maintain statistical information regarding the frequency of license suspension by type of license and the amount of child support collected in cases where license suspension is utilized as a collection tool.

SEN. MANGAN did not believe the language in the bill went far enough. It does not stay a suspension until they start paying. There is no incentive for the individual to work towards paying back the obligation. After suspension, if they negotiated or entered into an agreement to maintain their payments, they could have a probationary license to drive to work. In order to pay child support, the person needs to work and in Montana the person needs to drive to work.

SEN. CROMLEY stated that there are alternatives in the following statute which states that an obligor may at any time after the hearing, petition the support enforcement entity for an order staying suspension of the license. The support enforcement entity shall consider whether or not continued suspension of the license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household or to person's businesses or other entities served by the obligor.

CHAIRMAN GRIMES noted that the bill needed to be more fully explored in this legislative session. There may be information the department needs to weigh in regard to out-of-state actions.

SEN. MCGEE spoke in support of this bill. The original bill addressing this issue was mandated by Congress and what was learned is that welfare was being paid out at a horrendous rate because many obligors were not paying what they owed. In 1997, the pendulum swung to the side of the Child Support Enforcement Division. The original bill always put the obligor on the defensive and he or she then had to prove their case. He has had a lot of correspondence over the last nine years with people who

have had trouble with CSED. Since 1997 there have been some changes to give some of the due process back.

SEN. PERRY spoke in support of this bill. He asked Director Olson how many driver's license suspensions resulted in payments. He did not have a clear answer.

Vote: Motion **carried 5-4.**

EXECUTIVE ACTION ON SB 226

Motion: **SEN. MCGEE** moved that **SB 266 DO PASS.**

Motion: **SEN. CURTISS** moved that **SB 266 BE AMENDED.**

Discussion:

Ms. Lane provided a copy of the amendment SB022601.avl. **EXHIBIT(jus18a01).**

CHAIRMAN GRIMES stated not only do drugs need to be seized but now there also needs to exist a reasonable potential that tenants or property is endangered. It also states that the landlord "may" instead of the landlord "shall" terminate the rental agreement. This is a substantive change.

SEN. MANGAN stated that this bill needed more work before it left committee. One of the issues with the amendment is the components of dangerous drugs, particularly with meth labs and other things needed to make dangerous drugs. The components of dangerous drugs is too vague. Does a component include the components needed for manufacturing drugs? His concern is holding landlords responsible if they chose to overlook the rights of their tenants and their neighbors and not care what is going on in their rental units.

CHAIRMAN GRIMES claimed it would be necessary to take some drastic measures to deal with the drug problem. The drugs are being seized and he is hearing from people who are concerned about their well-being due to the odors and appearance of inappropriate activity. The fact that everyone smokes outside instead of inside so that the place does not blow up is an indication that something is going on. Even with this bill, it will be too late to help the landlord or to correct the problems which were going on in the home which more often than not involves youngsters.

{Tape: 3; Side: B}

The amendment makes the bill work better and places some burden on the landlord.

SEN. MANGAN claimed that the bill was not well written but the Committee has an opportunity to make a good bill.

Substitute Motion: **SEN. GERALD PEASE** made a substitute motion that **SB 226 BE AMENDED.**

Discussion:

SEN. PEASE suggested that on page 2, line 2, after the word "components" the words "for manufacturing dangerous drugs" be inserted.

SEN. PERRY stated that the language should read that if the landlord does indeed terminate the rental agreement, then he will deliver a written notice.

SEN. PEASE agreed to make that a part of his motion.

SEN. CROMLEY suggested the language state that the landlord may terminate the rental agreement by delivering a written notice.

Ms. Lane clarified that the amendment SB022601.avl, in the second instruction after the word "components" insert "for manufacturing". On page 2, line 3, after "agreement" strike ". The landlord shall deliver" and insert "by delivering". The sentence would read: "If illegal drugs or components from manufacturing of dangerous drugs are seized from the premises by a peace officer and reasonable potential exists that tenants or property is endangered the landlord may terminate the rental agreement by delivering a written notice to the tenant."

SEN. O'NEIL asked if this amendment would include someone smoking marijuana in a rental property.

CHAIRMAN GRIMES believed it would tie back to the rental agreement. The question is whether a minor drug offense would trigger this action.

Ms. Lane believed it would.

Vote: Motion **carried unanimously.**

Motion: **SEN. MCGEE** moved that **SB 226 DO PASS AS AMENDED.**

Discussion:

SEN. WHEAT stated the bill focuses on the premises rather than on the person. He asked if a guest was arrested on the property, would they be guilty by association. The answer was yes. If a teenage son had a guest over and the guest was found with illegal drugs, the landlord could terminate the rental agreement. This throws presumption of innocence out and becomes guilt by association. Most of the testimony was focused on the manufacture of methamphetamine, which needs to be addressed.

CHAIRMAN GRIMES claimed the net may need to be broad. If there is that kind of activity going on in the home, it is still endangering people whether or not the working single mother knew about it or not. Because of the dangers to the tenants and the property, the far reaching effect may be needed.

Ms. Lane stated she has some concerns regarding the drafting of the bill. The existing law on page 1, line 13, comes off the introductory phrase "if there is a noncompliance by the tenant". With the new language, on page l, lines 25 and 26, presumably that would be noncompliance involving a violation of criminal law by the tenant. On page 2, line 2, this becomes an absolute liability in the sense that illegal drugs are seized from the property and this has nothing to do with noncompliance with the rental agreement by the tenant. One of the concerns mentioned at the hearing is that there is no due process in the terms of not knowing if the person who has the rental agreement had anything to do with the drugs or any knowledge of the drugs. All we are talking about is a property interest and the person having the right to live in those premises. Due process requires notice and opportunity to be heard if property rights are being taken away. It could be argued that an interest in housing is a property interest.

CHAIRMAN GRIMES appointed a subcommittee to work on the bill. Members include: **SEN. PERRY**, **SEN. MANGAN**, **SEN. CROMLEY**, and **SEN. O'NEIL**.

Motion/Vote: **SEN. MCGEE** moved that **SB 226 BE TABLED. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 11:50 A.M.

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SEN. DUANE GRIMES, Chairman

_____
JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus18aad)