

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 6, 2005 at 9:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 36, SB 49, SB 30, 1/4/2005
Executive Action: None.

CHAIRMAN WHEAT announced to the Committee that on Friday, January 7, 2005 Attorney General Mike McGrath would be addressing the Committee at 8:30 a.m. prior to the start of the regular Committee Meeting at 9:00 a.m.

CHAIRMAN WHEAT asked the Committee their feelings regarding touring the Supreme Court Building. The Committee agreed that they would do so. **CHAIRMAN WHEAT** stated he would make arrangements for the tour.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.2}

HEARING ON SB 36

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, MISSOULA, opened the hearing on SB 36, Direct Code Commissioner to revise and recodify laws on title-by-title basis.

SEN. ESP informed the Committee that all SB 36 would do is remove language that is no longer necessary and update those things that need to be updated.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ESP closed on SB 36.

{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 5.6}

HEARING ON SB 49

Opening Statement by Sponsor:

SEN. DANIEL MCGEE (R), SD 29, LAUREL, opened the hearing on SB 49, Revise child protective services confidentiality laws.

SEN. MCGEE stated that SB 49 addresses the confidentiality of disclosure exceptions for the Department of Public Health and Human Services in issues related to child abuse. **SEN. MCGEE** went on to inform the Committee of the situations that had prompted this bill being brought before the Legislature. He continued by referring to SB 49 and pointing out the area of the bill that he considered the meat of the bill, which would allow fact specific information to be released regarding cases which will allow informed decisions to be made. **SEN. MCGEE** continued by talking about copies being provided without cost, however, with this bill the first copy would be provided without cost and further copies would be provided for a fee.

Proponents' Testimony:

REP. DON ROBERTS (R), HD 56, BILLINGS, provided the Committee with information regarding the reports that were provided to the Interim Committee. He went on to talk about the allegations he had heard and the lack of ability to substantiate information as to its reliability. He concluded by urging support for SB 49.

Shirley Brown, Child and Family Services Division, Department of Public Health and Human Services, spoke in support of SB 49. **Ms. Brown** provided the Committee with written testimony, attached hereto as Exhibit 1. **Ms. Brown** closed by urging the Committee to vote for SB 49.

EXHIBIT(jus04a01)

Shirley V. Tierman, private citizen and former employee of Child and Family Services. **Ms. Tierman** provided the Committee with a background of her expertise. She went on to talk about confidentiality and the need for the Department to be able to respond to allegations. She asked the Committee to support SB 49.

Colin M. Stephens, Montana Newspaper Association, and John Shontz. **Mr. Stephens** indicated that they supported SB 49, however, they had a problem with the final sentence regarding the costs for copying and restrictions regarding actual cost limits.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MANGAN inquired of **SEN. MCGEE** if e-mail was considered a public statement.

SEN. MCGEE responded that he did not have the exact answer.

SEN. CROMLEY asked **SEN. MCGEE** if on those occasions of allegations of children being taken without cause or proper procedure, if the Department had been able to defend itself.

SEN. MCGEE replied that the Department was not able to defend itself using specifics of the case. He went on to say that in trying to get information they went to the Department and inquired about their procedures and whether or not they had standard operating procedures county by county and if they had provisions for checking on the validity of allegations.

SEN. CROMLEY asked **SEN. MCGEE** if an allegation justified the release of information.

SEN. MCGEE referred to the entire bill, specifically subsection 3 of 41-3-205 which lists the entities to which the Department can release information to. He went on to say that the purpose of the bill is to allow the Department to release case specific information to legislators. **SEN. MCGEE** then addressed specific circumstances and exceptions to confidentiality.

SEN. ELLINGSON spoke of his concerns regarding the rights of the child and the child's right to privacy. He then asked **Shirley Brown** if she could clarify how the Department responds and if she would feel comfortable with adding language on page 4 to protect the privacy rights of the child.

Ms. Brown referred **SEN. ELLINGSON** to page 1, subsection 3 and the language that would limit how much information the Department would be able to release. She went on to say how important they felt it was to bring the bill forward for debate as they knew there would be a lot of questions. She continued by saying that if it was necessary to amend the bill to protect the right of privacy for the children she had no objection to doing so.

CHAIRMAN WHEAT asked **Ms. Brown** if the intent was to only respond to allegations against the Department with fact specific information. **Ms. Brown** stated that they would only be releasing information that was relevant to the specific allegation. **Ms. Brown** then informed the Committee about the case which had brought about this legislation.

CHAIRMAN WHEAT then asked **Ms. Brown** if she were present at an Interim Committee Hearing and heard an allegation, would she stand up and respond with fact specific information or stand and let the Committee know that the fact specific information was available to them. **Ms. Brown** responded that it would be her

intent to remind the Committee about this statute. She continued saying that it would never be her intent to stand up in a public meeting and give all the facts surrounding the matter. **Ms. Brown** concluded by saying that if the bill passed they would be establishing a strict protocol on how they would release information and, furthermore, that should the bill pass it would probably be amended.

CHAIRMAN WHEAT asked **Ms. Brown** if the Committee passed the bill if the Department would share their protocol with the Committee.

Ms. Brown responded that they would share their established protocol with the Committee.

Closing by Sponsor:

SEN. MCGEE thanked the Committee for a good hearing. He went on to say that he felt that when someone stands up in an Interim Committee and makes a statement regarding what has happened with Child and Family Services they are asking the Committee to do something. **SEN. MCGEE** then gave an example of just such a case where they had been asked to investigate and the results of that proposed investigation. He then said that what the bill was trying to do was give the Committee the ability to gather pertinent case specific information. He concluded by urging the Committee to pass this bill.

{Tape: 1; Side: A; Approx. Time Counter: 5.6 - 12.6}

HEARING ON SB 30

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, ANACONDA, opened the hearing on SB 30, Improve criminal history information on qualifying offenses.

SEN. LASLOVICH explained SB 30 and provided the Committee with the background for the bill. He then presented the Committee with a fact sheet which is attached as Exhibit 2. **SEN. LASLOVICH** proceeded to talk about the fact sheet and point out the various offenses which were cumulative and subject to this bill. He then explained that without this information going to the State Repository offenders could move around the state and avoid the penalties for cumulative offenses. **SEN. LASLOVICH** concluded by informing the Committee that Montana is the only state without this type of legislation.

EXHIBIT(jus04a02)**Proponents' Testimony:**

Pam Bucy, Assistant Attorney General, State of Montana, urged the Committee's support of SB 30. **Ms. Bucy** informed the Committee that Montana law requires all felony offenders to be booked and fingerprinted but does not require that all misdemeanor offenders be booked and fingerprinted. She then talked about the serious misdemeanor offenses which have cumulative penalties for recurring incidents of these offenses. **Ms. Bucy** stated that because these misdemeanor offenses, wherein the individuals are booked and fingerprinted, are not sent to the State Repository these individuals often do not suffer the consequences for committing the same offense more than one time when they move around to different areas. She continued that this scenario creates a public safety issue.

Paul Grimstad, Colonel, Montana Highway Patrol, spoke in support of SB 30. He stated that it was important that law enforcement officials be able to access information regarding all individuals convicted of offenses with cumulative consequences. **Colonel Grimstad** concluded by informing the Committee that Montana was the only State without such a policy.

Jim Kimbel, Montana Association of Chiefs of Police and the Montana Police Protective Association, offered support for SB 30.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked **Ms. Bucy**, that since whenever a person were arrested and booked the information was put into NCIC if he was correct that the information would be available if the person were stopped or arrested for the same offense.

Ms. Bucy stated that he was correct, because under federal law gross misdemeanors are required to be entered into NCIC. She went on to say that since Montana does not have a gross misdemeanor category, even those the five crimes in question would fall into that category, however, the Departments follow Montana law not federal law, therefore, these category of offenses are not always sent to the Repository.

SEN. SHOCKLEY further asked **Ms. Bucy** if it would not be better to enter the information on NCI since it is expensive to do fingerprint checks, therefore, it probably would not be done.

Ms. Bucy replied that the State Repository is the way be which Montana feeds into NCIC. She continued that both the State Repository and NCIC would be fingerprint based.

SEN. SHOCKLEY asked **Ms. Bucy** if the bill would require that the information would be put into NCIC.

Ms. Bucy stated that this bill would do that.

SEN. MANGAN asked **SEN. LASLOVICH** if there was a fiscal impact to the counties and why someone was not at the meeting to represent the Sheriffs and Peace Officers. **SEN. MANGAN** then asked if the Committee would be able to get a Local Government Fiscal Note.

SEN. LASLOVICH informed the Committee that a Fiscal Note had been requested but had not seen it yet. **SEN. LASLOVICH** then referred the question to **Ms. Bucy**.

Ms. Bucy stated that she had not seen a Fiscal Note. She then informed the Committee that the Sheriffs' and Peace Officers' Associations had informed her office that they stood in full support of the bill. She went on to say that she had contacted the Sheriff's Office and had been informed that there would be a nominal cost for sending the fingerprints in to be processed.

Closing by Sponsor:

SEN. LASLOVICH closed on SB 30.

ADJOURNMENT

Adjournment: 10:06 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus04aad0.PDF](#))