

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. DAN MCGEE**, on February 11, 2005 at 8 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

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: Sen. Mike Wheat, Chairman (D)

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 357, SB 381, 2/4/2005
Executive Action: SB 207, SB 2, SB 355

HEARING ON SB 357

{Tape: 1; Side: A; Approx. Time Counter: 2.5}

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, opened the hearing on **SB 357**, a bill requiring a criminal background check before licensing social workers.

Proponents' Testimony:

Deb Holland, University of Montana Student, said she is the student who drafted the bill and passed around "Explanation of Need for Criminal Background Checks", a chart of how each state is currently addressing the issue, and a copy of the applicable Arkansas Code. The primary purpose of SB 357 is to prevent convicted offenders from choosing Montana social work clients as their new victims. The secondary purpose is to prevent the state from financial and legal liability, and protect the state's medicaid funds. She emphasized that because criminal background checks are not done, convicted offenders could obtain a Montana Social Work License. She said that negligent hiring is an emerging area of the law. She stated, "It stands to reason that if a company is held liable for a criminal offense committed by an employee with a criminal history, so, too could a state be held liable for a criminal offense committed by a licensed social worker with a criminal history".

EXHIBIT(jus34a01)

EXHIBIT(jus34a02)

John Connor, Department of Justice, spoke about the Fiscal Note. He said that Bill Griffenberg, Information Technologies Division, is available to answer any technical questions.

Opponents' Testimony: None.

Informational Testimony:

Jeanne Worsech, Unit Supervisor for Healthcare Licensing, Department of Labor and Industry, said she is available for any questions.

Mary McHugh, Montana Chapter, National Association of Social Workers, stated there is a broader issue. The only social workers in Montana who are presently licensed are clinical social workers. A bill is being introduced today that would license all persons in Montana who are providing social work services.

Questions from Committee Members and Responses:

SEN. PERRY asked how long it takes to do a criminal background check. **Mr. Connor** did not have that information and deferred the question. **Bill Griffinberg, Administrator, Department of Justice Information Technology Division**, said that when a fingerprint background check is done, it takes several days. When a name-based background check is done, it only takes a few hours.

SEN. PERRY referred to Page 4, Line 8, and asked if that meant the person could get a license and go to work before the background check is done. **Mr. Connor** said that is the way he would read it. **SEN. PERRY** expressed concern that there could be danger in doing that and asked if that should be amended. **Mr. Connor** agreed and said that should be fixed.

SEN. LASLOVICH asked if it would be a friendly amendment to strike Lines 8-9, Page 4. **Ms. Holland** said, "Yes". She said that as a non-law student who was using Arkansas Code to draft the bill, she is very open to amendments. She only intended the bill to be a starting point for discussion.

SEN. O'NEILL asked if a social worker is under supervision or actually works independently with clients for the first six months after they get a license. **Ms. Holland** said once the person has their social work license in Montana, they have met the requirements necessary to practice independently. She stated she would agree that they could wait to grant the license until the results are known from the background check.

Closing by Sponsor:

SEN. SQUIRES said they are open to amendments and emphasized this bill is not part of a larger social worker bill that is coming up. She thanked the Committee and asked for support of SB 357.

HEARING ON SB 381

{Tape: 1; Side: A; Approx. Time Counter: 20.1}

Opening Statement by Sponsor:

SEN. LYNDA MOSS, SD 26, BILLINGS, opened the hearing on **SB 381**, a bill that would define "child" for criminal laws & revise the "sexual abuse of children" law. She presented written testimony.

EXHIBIT (jus34a03)

Proponents' Testimony:

John Connor, Attorney General's Office, expressed their support and said the bill was requested by the Department of Justice. It is the result of growing awareness of the problem, and is designed to recognize the increasing complexity of our technology and how technology is used in the commission of crimes. He said that many crimes involve computers in some form or another. Their staff person, Jimmy Weg, and one other Federal employee in Billings are the only people in the state with the expertise to do this, and he is overwhelmed with computer-related inquiries. They obtain the computers through search warrants from sex abuse cases, homicides, etc. He closed by saying that Barb Harris and Mr. Weg both worked with him in the preparation of this bill. They will explain the need and the technology involved.

{Tape: 1; Side: A; Approx. Time Counter: 27}

Barbara Harris, Assistant Attorney General, and Supervisor, Special Prosecutions Unit, said there is a real problem and explained that Mr. Weg is trying to keep up with the demand, but there is not enough time. This legislation is similar to what many other states have with regard to "luring". They are seeing many cases where someone gets online and starts "chatting" with children and they end up having an online relationship that leads to a "meet". This is a situation where a perpetrator can get with a child and engage in sexual conduct. They want to have the language that will allow them to prosecute for the "luring".

{Tape: 1; Side: B; Approx. Time Counter: 5.9 - 8}

Jimmy Weg, Head of the Computer Crime Unit for the Division of Criminal Investigation, and a member of the task-force that engages in undercover online crimes, said they get online and attempt to discover individuals whose goal is to travel to Montana to engage in sexual relations with children of any age. The task-force has established 12 cases, and they are not doing this full time. One of the hurdles they face is that a defendant will argue that there is no case to be made because the person with whom he was "chatting" was a police officer and not a child.

Rachel Roberts, Montana Family Foundation, said they support this bill.

Dallas Erickson, Montana Citizens for Decency through Law, sent a written statement that was read by Rachel Roberts.

EXHIBIT(jus34a04)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. PERRY said it appeared there may be a conflict if they are saying that a child is anyone under the age of 18. There is a contradiction as Page 11, Line 21, says if a victim is under the age of 16 and they should be coordinated. **Mr. Connor** said he did not anticipate that would be a problem, but will look into it. Page 1 states "unless a different age is specified" and the provision on Page 11 is strictly from a penalty perspective.

SEN. PERRY said he felt the definition and the application of the definition is awkward. **Mr. Connor** said the bill was not designed to interfere with legitimate relationships between people; it is only where there is a provable intent on the part of a perpetrator to commit a crime against the person under age 18.

SEN. PERRY asked, if a father were to sign an authorization for a marriage license for a person under 18, would he be committing a crime or allowing a crime to be committed, or is there any interpretation of this that would apply. **Mr. Connor** stated there has to be provable intent by the perpetrator to commit a crime. If the person is younger than 16, where consent is not possible, there might be a crime. If an individual consents and there is no criminal intent on the part of the other person, there isn't a crime.

SEN. SHOCKLEY suggested changing the age from 18 to 16 to coordinate with other sexual offenses and address **SEN. PERRY'S** concern. **Mr. Connor** said if that was changed there would be a problem with children between ages 16-18 who would be victimized.

SEN. SHOCKLEY noted that those children can now have sex with adults and it is not illegal. **Mr. Connor** agreed, and said it is a situation where they are capable of consenting. It is not a crime when they are consenting.

SEN. SHOCKLEY said if a 16-year-old is solicited, the person doing the soliciting would be committing a crime. But if the same 17, 19, or 20-year-old had sex with the 16-year-old, it wouldn't be committing a crime. **Mr. Connor** said there is a difference between consenting to an act and being deceived into committing an act that you otherwise would not consent to. He deferred to Ms. Harris and said it is the act of "luring" that concerns them. **Ms. Harris** said in a lot of sex crimes it doesn't matter what age they are talking about if consent is an issue.

She stated, "With regard to protecting children, what you will see in statutes across the nation, is that they have chosen an age. I would assert that you have the ability to choose an age under which this is not acceptable". If the Committee feels that 16-18-year-olds do not need to be protected by this type of statute, the age could be set at 16.

SEN. O'NEIL asked what the Statute of Limitations is on this.

Mr. Connor said it was five years for criminal acts, but in sex crimes it is five years after the age of 18. If it is a consenting situation between two people, and a 17-year-old is capable of consent under the law, it is not a crime. **SEN. O'NEIL** said the bill does not mention consent. **Mr. Connor** said they could address it with an amendment that redefines "child" for the purposes of this act. He said "child" is not defined in the criminal code. Title 41 is the only place where "child" is defined, and they wanted to put "child" in the criminal code.

SEN. CROMLEY asked if the problem they are addressing is a case where there is consent, but there is a child involved. If a perpetrator is online "luring" children into sexual acts, if in fact the crime is successful, the child is going to consent; and the problem is that the child cannot consent. **Mr. Connor** said that was correct.

SEN. MCGEE noted there are two conditions if someone is "lured" into a situation where sex can be executed; either the person can consent, or the person may be raped. In the situation where the person is raped, that is criminal; what this bill tries to do is address the "luring" or courting of someone through the internet in order to have sex. **Mr. Connor** said they are trying to shut down the pedofiles on the internet. They will do whatever they need to do to make this a better bill.

Closing by Sponsor:

SEN. MOSS closed and said they will work toward getting appropriate amendments that address everyone's concerns.

Comment: SEN. MOSS and SEN. LASLOVICH left the room.

{Tape: 1; Side: B; Approx. Time Counter: 30}

EXECUTIVE ACTION ON SB 207

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

Motion: SEN. PERRY moved that SB 207 DO PASS.

Motion: SEN. PERRY moved that AMENDMENT SB020702.AVL DO PASS.

EXHIBIT(jus34a05)

Discussion:

Ms. Lane explained the Amendment and said it was prepared with the help of Brenda Thompson, Department of Corrections, and Pam Bucy, Department of Justice. The Amendment makes the bill apply only to Level III offenders. She also noted that Amendment SB020701 has already been adopted.

Vote: Motion carried unanimously by voice vote. SENS. LASLOVICH, ELLINGSON, MOSS, and WHEAT voted aye by proxy.

Motion: SEN. PERRY moved that SB 207 DO PASS AS AMENDED.

Discussion:

SEN. MANGAN discussed the Fiscal Note and said that it is not correct as it does not include manpower time, or the level of monitoring.

Comment: **SEN. MOSS** returns.

SEN. PERRY discussed the bill. Cost has been prohibitive, and that is why they zeroed in on Level III, so it is more realistic. The Department of Corrections will furnish information as to how many Level III offenders will be released in the next year, and they will revise the Fiscal Note. He said that a Committee Bill was suggested to address the sentencing issue, and he will work toward writing one.

SEN. O'NEIL said the Fiscal Note is missing the fact that once offenders can be safely monitored, there is a chance some offenders can be let out a year earlier, and that will save money.

Vote: Motion carried unanimously by voice vote. SENS. LASLOVICH, ELLINGSON, and WHEAT voted aye by proxy.

EXECUTIVE ACTION ON SB 2

{Tape: 2; Side: A; Approx. Time Counter: 9.8}

Comment: **SEN. LASLOVICH** returned.

Motion: SEN. CURTISS moved that SB 2 DO PASS.

Discussion: SEN. CROMLEY said he opposed the bill as it is not needed. He said there already is a state motto. The bill will be divisive and uses religion to interpose division in the legislative body. Subsection 2 is too broad.

Motion: SEN. PERRY moved that AMENDMENT SB000201.AVL DO PASS.

EXHIBIT (jus34a06)

Discussion: SEN. PERRY explained suggested amending the Amendment with a Conceptual Amendment that would change the word "encouraging" to "allowing". After discussion, he withdrew the Conceptual Amendment.

Vote: Motion carried unanimously by voice vote. SEN. WHEAT and SEN. ELLINGSON voted aye by proxy.

Motion: SEN. CURTISS moved that SB 2 DO PASS AS AMENDED.

Discussion: SEN. CROMLEY said he opposed the bill because it recognizes authority and doesn't add anything.

SEN. PERRY said the bill is saying in statute what he thinks should be allowed. If it is stated in statute, they have stated what they believe should be allowed. He believes that the historical documents listed in the bill should be recognized because they are part of our history. The word "God" appearing in historic documents should not be the reason that historic documents can't be shown to kids. He felt this is an important bill.

SEN. MOSS said there is a difference between the historic document and using language from those documents out of context. An example was when a proponent showed the committee the example of "In God We Trust" that he displayed in his classroom. It was very different, and was created as a sampler. Samplers have been used throughout our culture specifically to share proverbs and excerpts from the Bible. It is important to use the original documents as an educational tool. She felt there was a fundamental difference, and could not support the legislation.

SEN. PEASE asked why "allowing" couldn't be used. SEN. MCGEE said the assumption is that they are already allowed to do this. The problem is the ACLU that likes to sue, and those things are being prohibited. The reason for this bill is to make a statement in the Montana Code that various agencies and schools can display these things without being sued. Any school district

can do that today, but they don't know that they can do that today. There is a question, so the point of the bill is to settle the question, at least at the statutory level.

SEN. CROMLEY said those are Constitutional issues and they won't be decided by the statute. These are broad issues and would allow any agency to display the word "hell", for example. He said that would not be appropriate and is not what was intended.

SEN. SHOCKLEY said he did not think this was needed, but would vote for it anyway.

Vote: Motion failed 5-7 by roll call vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting aye. **SEN. ELLINGSON** and **SEN. WHEAT** voted no by proxy.

Motion/Vote: **SEN. MANGAN** moved that SB 2 AS AMENDED BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote. **SEN. ELLINGSON** and **SEN. WHEAT** voted aye by proxy.

EXECUTIVE ACTION ON SB 355

{Tape: 2; Side: A; Approx. Time Counter: 22}

Motion: **SEN. SHOCKLEY** moved that SB355 DO PASS.

Discussion: **SEN. SHOCKLEY** said he had a Fiscal Note but did not think it had been passed out. He estimated that the cost will be much more than is indicated, but it still is not a lot of money. He said the bill just changes the way court reporters are compensated. It reverts back to the way it was in 2001. He explained there were two options and said that a deal was made, but then the compensation was changed and he felt they should stand by their word. A letter from the Twenty-First Judicial District supporting the bill was entered into the record.

EXHIBIT(jus34a07)

Motion: **SEN. PERRY** moved to add a Conceptual Amendment that would address the inflation factor.

Discussion: **Ms. Lane** said a Conceptual Amendment would probably be an additional sentence in length.

SEN. PERRY said that if the amounts in the bill are acceptable, such an addition would prevent the need to come back in a few years once inflation has eaten up their money.

SEN. MANGAN said they didn't ask for it, but if this is passed, he would like to have a new Fiscal Note that **SEN. SHOCKLEY** would agree with. He did not know if **SEN. SHOCKLEY** wanted to hold up the bill.

SEN. O'NEIL said that with the new software, the transcripts will be cheaper to produce. He felt the inflation factor should not be added right now but could be addressed at a later date.

SEN. SHOCKLEY stated he appreciated what **SEN. PERRY** is doing but did not understand **SEN. MANGAN**. He said the Fiscal Note only says \$10,000 and stated he knew it would be more. He suggested that just raising the salaries would be easier, as implementing this would be convoluted.

Vote: Motion failed 1-11 by voice vote with **SEN. PERRY** voting aye. **SEN. WHEAT** and **SEN. ELLINGSON** voted no by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 2.5}

Motion/Vote: **SEN. SHOCKLEY** moved that SB 255 DO PASS. Motion carried unanimously by voice vote. **SEN. WHEAT** and **SEN. ELLINGSON** voted aye by proxy.

With no further business, the meeting was adjourned.

{Tape: 2; Side: B; Approx. Time Counter: 4.6}

ADJOURNMENT

Adjournment: 9:38 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Committee Secretary

MW/mp/lk

LINDA KEIM, Transcriber

Additional Exhibits:

EXHIBIT ([jus34aad0.PDF](#))