

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 3, 2005 at 8:00 A.M., in Room 137 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. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

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: HB 127, 3/1/2005; HB 90, 3/1/2005;
HB 80, 3/1/2005; HB 190, 3/1/2005;
HB 197, 3/1/2005; HB 216, 3/1/2005
Executive Action: HB 127; HB 80; HB 90; HB 197; HB
190; HB 205

CHAIRMAN MIKE WHEAT provided the order of bills to be heard: HB 127, HB 90, HB 80, HB 190, HB 197, and HB 216.

HEARING ON HB 127

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL (R), HD 77, opened the hearing on **HB 127**, Revise definition of seriously developmentally disabled.

REP. MENDENHALL worked in conjunction with the Montana Developmental Center (MDC) to bring forward this bill. The reason he gave for this bill was that MDC's mission had changed and they requested the change in definition to reflect the change in their focus of treatment.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.3}

Proponents' Testimony:

Jeff Sturm, Director, Developmental Disabilities Program for Montana, stood in support of the bill. He explained that over the last 20 years MDC's mission had changed to take care of individuals with behavioral issues. The cleanup of the language would be appropriate in his opinion to remove the near-total care statute that currently exists. He informed the Committee of the types of individuals which come into MDC. He thought that in order to move forward with MCD's mission the language needed to be cleaned.

{Tape: 1; Side: A; Approx. Time Counter: 2.3 - 3.5}

Beth Brenneman, an Attorney with Montana Advocacy Program, rose in support of the bill. She felt that it was a move towards ensuring that individuals who do not need to be institutionalized stay in the community. She expressed that this was part of the settlement from their Travesty Litigation.

{Tape: 1; Side: A; Approx. Time Counter: 3.5 - 4.1}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MENDENHALL informed the Committee that **SEN. GRIMES** would be carrying the bill on the Senate floor.

{Tape: 1; Side: A; Approx. Time Counter: 4.1 - 4.5}

CHAIRMAN WHEAT closed the hearing on **HB 127** and opened the hearing on **HB 90**.

HEARING ON HB 90**Opening Statement by Sponsor:**

REP. CHRISTINE KAUFMANN (D), **HD 81**, opened the hearing on **HB 90**, Extend domestic violence fatality review commission.

REP. KAUFMAN reported that the review commission was set to sunset, yet there is still work for them to do. She noted that the purpose of the Commission was to review homicides that are caused by an intimate family partner. They look at the systems that were in place in the community and make recommendations about how the systems might be able to prevent homicides from happening. The Commission only works with cases that are finished in the court processes. She informed the Committee that **SEN. PERRY** serves on the Commission and would be able to answer any questions. She continued by explaining that the Commission looks at what agencies had contact with the victim and the offender, if they were communicating with one another, how they could have provided services, all the things that might have gone differently that might have changed the events that lead to the homicide. The funding, she mentioned, comes completely from the Violence Against Women Act. She also noted that all of the members on the Commission volunteer their time with only their travel being covered by the grant.

{Tape: 1; Side: A; Approx. Time Counter: 4.5 - 8.6}

Proponents' Testimony:

Ali Bovington, Representing the Attorney General's Office, provided the Committee with a fact sheet and the current provision in the law. She reported that the Commission, in structure and purpose, is similar to the State Fetal Infant and Child Mortality Review Team. She introduced a few of the Commission members and explained what they did. She restated the

purpose of the Commission and what the bill would do. She stressed that there would be no fiscal impact with the bill.

[EXHIBIT\(jus47a01\)](#)

[EXHIBIT\(jus47a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 8.6 - 11.3}

Matthew Dale, Director, Office of Victims Services and Restorative Justice Division and Coordinator, Montana Domestic Violence Fatality Review Commission, handed out a report that was part of the authorizing legislation reported every two years. He noted that in the summary specific communities, agencies and individuals are not noted. He indicated that it was not the role of the Commission to place blame on any individual or agency. The report he provided attempted to summarize what the Commission had discovered up to that point so that an individual who knows nothing about the Fatality Review Commission could look in the document and get all of their questions answered. He asked for the support of the Committee so that the Commission could continue its work.

[EXHIBIT\(jus47a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 11.3 - 14}

Bill Slaughter, Director, Department of Corrections, discussed his experience with an assessment done by the Commission brought about by a domestic violence homicide. He learned so much on what could be done differently and better. He asked for the Committee's support.

{Tape: 1; Side: A; Approx. Time Counter: 14 - 18.2}

Terry Kendrick, Representing the Montana Coalition Against Domestic and Sexual Violence as well as the YWCA, asked for the Committee's support in order to continue to help communities learn from their past events and prevent future tragedies.

{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 18.8}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. KAUFMANN closed the bill stating that the Commission was important. She suggested that **SEN. PERRY** might be carrying the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 18.8 - 19.8}

CHAIRMAN WHEAT closed the hearing on **HB 90** and opened the hearing on **HB 80**.

HEARING ON HB 80**Opening Statement by Sponsor:**

REP. MARGARETT CAMPBELL (D), HD 31, opened the hearing on **HB 80**, Allow CSED interaction with tribal IV-D programs.

REP. CAMPBELL informed the Committee that the Child Support Enforcement Division of the Department of Public Health and Human Services asked her to carry the bill. The bill would seek to amend state child support enforcement statute to allow the state child support program to send referrals to and receive referrals from tribal child support enforcement agencies established pursuant to Title 4D of the Federal Social Security Act. She explained what the Act did and how it worked. In her opinion the provision would lessen the chances for a jurisdictional dispute. The changes in the provision would only have an affect on tribes if the tribe becomes a Title 4 Part D program and an agency elects to send a referral to the state for enforcement. She explained the referrals and jurisdiction issues that would be affected by this bill. She reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 19.8 - 24.8}

Proponents' Testimony:

Lonnie Olson, Administrator of the Child Support Enforcement Division, thanked **REP. CAMPBELL** for bringing the bill to the Committee and **SEN. SCHMIDT** who had agreed to be the Senate Floor sponsor for the bill. He indicated that the purpose of the bill was to allow Montana's Child Support Agency to treat any tribal nation in exactly the same manner as they would any state. He explained that it would not force tribes to create a system and would not affect tribal sovereignty.

{Tape: 1; Side: A; Approx. Time Counter: 24.8 - 26.5}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. CAMPBELL closed on **HB 80**. She expressed that she thought the bill brought about personal responsibility and would support the children of Montana.

{Tape: 1; Side: A; Approx. Time Counter: 26.5 - 27.5}

CHAIRMAN WHEAT closed the hearing on **HB 80** and opened the hearing on **HB 190**.

HEARING ON HB 190

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on **HB 190**, Revise definition of victim for purpose of right to attend proceedings.

REP. BECKER gave a background on the bill. She indicated that in an apparent over-site the section of law that provides victims the right to attend proceedings does not include the victims who have reasonable apprehension of bodily injury. The definition of victim in this part of the law only includes those victims who suffer property loss or bodily injury. She professed that the main crux of the bill was on Page 2 Line 1. **HB 190** would amend the definition of victim who have the right to attend court proceedings to cover all crime victims including those who had reasonable apprehension of bodily injury under Montana's domestic violence statutes. She reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.8}

Proponents' Testimony:

Ali Bovington, Representing the Attorney General's Office, repeated that currently 46-24-106 as the section that covers crime victims ability to their right to attend court proceedings precludes victims who have reasonable apprehension of bodily injury. She explained the definition of partner/family member assault. She urged the Committee to support **HB 190**.

EXHIBIT(jus47a04)

{Tape: 1; Side: B; Approx. Time Counter: 1.8 - 3.7}

Terry Kendrick, Representing the Montana Coalition Against Domestic and Sexual Violence and the YWCA, urged the Committee to support HB 190.

{Tape: 1; Side: B; Approx. Time Counter: 3.7 - 4.1}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 25, BILLINGS asked why the statute was necessary since most trials are open to the public anyways.

Ms. Bovington replied that the reason this statute is in place is that sometimes witnesses are excluded from the courtroom. This statute ensures that the victim, if also a witness, has the right to attend the proceedings.

SEN. CROMLEY followed up by stating that the statute provides that the court could still exclude the victim under Subsection 3.

Ms. Bovington commented that she thought the principle statute was trying to protect is just making it a general assumption that the victim could attend the proceeding and if the court wanted to exclude them they actually had to make a ruling rather than an automatic exclusion because they were a witness in the proceeding.

{Tape: 1; Side: B; Approx. Time Counter: 4.1 - 5.9}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS asked if a judge could exclude a victim from watching the trial if they were going to testify in the trial or if a defendant could have a victim excluded from watching what they said before the victim testifies.

Ms. Bovington cited that in Section 3, Lines 24-25 if the victim is excluded from a trial or hearing upon finding of specific facts supporting exclusion the victim must be allowed to address the court on the issue of exclusion prior to the findings. She interpreted this to mean that it was still possible for the victim to be excluded from the court room but it would have to be

done by a decision from the court based on specific findings. This allows that the defendant could request that the victim be excluded for a section or all of the trial.

SEN. O'NEIL followed up citing from Section 1 Subpart 2. He wondered if the statute in this section was overridden.

Ms. Bovington explained that the statute was intended to create a general rule that victims have the right to attend criminal proceedings and if they are going to be excluded there have to be specific facts supporting exclusion. She noted that the section did not define what the specific facts would be. She felt that the general rule that the bill would create is that just because a victim is going to testify does not mean they are immediately excluded from the courtroom.

{Tape: 1; Side: B; Approx. Time Counter: 5.9 - 8.5}

SEN. DANIEL MCGEE, SD 29, LAUREL wondered if the phrase 'reasonable apprehension' had been determined by a court.

Ms. Bovington informed the Committee that 'reasonable apprehension of bodily harm' is defined in Montana Code at the beginning of Title 45.

{Tape: 1; Side: B; Approx. Time Counter: 8.5 - 9.4}

Closing by Sponsor:

REP. BECKER urged a do pass consideration for **HB 190**.

{Tape: 1; Side: B; Approx. Time Counter: 9.4 - 9.7}

SEN. ELLINGSON volunteered to carry the bill on the Senate Floor.

CHAIRMAN WHEAT closed the hearing in **HB 190** and opened the hearing on **HB 197**.

HEARING ON HB 197

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 197**, Increase elder abuse penalties.

REP. JAYNE presented this bill to the Committee on the behest of the Department of Health and Human Services. She urged their support of **HB 197** as amended. She informed the Committee that

the elderly and disabled are one of the most vulnerable populations in the state and are unfortunately the victims of assault, neglect, battery, and abuse. Currently elderly and disabled abuse is considered a misdemeanor for first time offense. Only after an individual has been convicted of a second offense would it be considered a felony. The current law has resulted in multiple consequences. They feel that a felony penalty attached to the crime of abusing or neglecting an elderly person or a person with a developmental disability would potentially reduce criminal actions. The bill would provide options for the county attorney. If the county attorney believed that such actions were not purposely or knowingly perpetrated they may prosecute it as a misdemeanor or not at all. The law allows the charge to be determined by the mental state of the suspect. She concluded stating that these crimes are serious and perpetrated against the most vulnerable individuals. She reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 15.5}

Proponents' Testimony:

Rick Bartos, Chief of Montana's Adult Protective Services, noted that the Montana Elder and Developmentally Disabled Abuse Prevention Act attempts to protect individuals who are 60 and over and those that are developmentally disabled from the criminal actions of sexual abuse, abuse, neglect, and exploitation. Currently 2,600 referrals are received by his agency a year. Of those 1,600 involve the elderly in Montana and 500 involve the developmentally disabled. He indicated that only a handful of these are prosecuted. He informed the Committee that 60-70% of the victims are women over 70 years of age and fully reliant on other care givers. He provided two examples of abuse which they had experienced recently. He asked that the Committee give a favorable do pass recommendation on elevating the first offense to a felony, giving the discretion to the county attorney.

{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 22.6}

Leo Gallagher, County Attorney of Lewis and Clark County, spoke in support of **HB 197**. He thought that this bill revamped the work of the legislature last session. He felt that leaving a first offense of abuse as a misdemeanor would create unintended consequences. He explained that these cases are difficult and hard to prosecute. He pointed out that there was a constitutional rule which indicates that if there is a more specific statute that addresses an issue then the government must

go forth with the prosecution under the more specific statute. He urged the Committee to pass the bill.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.9}

Jim Ahrens, President of the Montana Hospital Association, commented that all of the hospitals in the Association run long-term care facilities. They support the bill because it is important to take care of the elderly and developmentally disabled. He urged the Committee to support the bill.

{Tape: 2; Side: A; Approx. Time Counter: 0.9 - 2}

Eric Schiedermayer, Representing the Montana Catholic Conference, stated that one of the fundamental measures of a society is how they care for the most poor and vulnerable. He expressed that the Catholic Church sees this as an important step to building a society where every human being is cherished and protected.

{Tape: 2; Side: A; Approx. Time Counter: 2 - 3.2}

Karen Powell, Deputy Securities Commissioner for the State Auditor's Office, reported that the majority of crimes which they prosecute or assist with are perpetrated against senior victims. They rose in support of the increased penalties for all abuse and neglect cases.

{Tape: 2; Side: A; Approx. Time Counter: 3.2 - 3.9}

Alex Ward, Associate State Director for Community Outreach with American Association of Retired Persons, spoke on behalf of the bill. They support the tenets of the legislation mainly because it covers victims where there is a power differential between the victim and the suspect. This makes it a much more serious and difficult crime in his opinion. He stated that if the penalty remains a misdemeanor there is less chance that an individual will come forth to report the crime and it is unlikely that the police department will charge a misdemeanor. He urged the support of the Committee.

{Tape: 2; Side: A; Approx. Time Counter: 3.9 - 6}

Beth Brenneman, Attorney with the Montana Advocacy Program, rose in strong support to HB 197.

{Tape: 2; Side: A; Approx. Time Counter: 6 - 6.6}

Colette Gray, Board Member for the Cascade County Chapter for the Prevention of Elder Abuse, urged the Committee to pass HB 197.

She informed the Committee that these crimes are highly unreported and are on the rise. She felt that this was a good first step towards solving the problem of elderly abuse. She provided a written version of her testimony.

EXHIBIT(jus47a05)

{Tape: 2; Side: A; Approx. Time Counter: 6.6 - 8.1}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON requested that **REP. JAYNE** tell the Committee about the amendment which was made to the bill on Page 1 Line 27.

REP. JAYNE replied that the amendment was made in the House Judiciary Committee. It was an inclusion that a person with a developmental disability would not be charged under Subsection 2 B or 2 A. The reason for this was that the mental state had to be proven to show that an individual perpetrated abuse in a purposeful and knowing way. She provided the definition of a mentally disabled individual.

SEN. ELLINGSON followed up assuming that the thinking behind the amendment was that someone who was developmentally disabled did not have the requisite mental state in order to commit the crimes discussed in the bill and should not be charged.

REP. JAYNE affirmed this assumption because they would not meet the mental state.

{Tape: 2; Side: A; Approx. Time Counter: 8.1 - 10.4}

SEN. CROMLEY wanted citation for the definition of developmentally disabled.

REP. JAYNE answered that it was MCA 53-20-102.

SEN. O'NEIL wondered why the elderly and infirm were not included in the category of who could not be charged with a felony under this bill.

REP. JAYNE explained that an elderly spouse would be charged.

CHAIRMAN WHEAT clarified that the developmentally disabled are individuals who can not retain the requisite mental intent in

order to be charged for a crime. He felt that just because an individual is old does not mean that they do not have the mental capacity to purposefully or knowingly do something. He indicated that if the spouse fit that definition then they wouldn't be charged but just because they are old they shouldn't be excluded from being charged because they may have the requisite mental capability and intent to commit the crime.

{Tape: 2; Side: A; Approx. Time Counter: 10.4 - 14.4}

SEN. O'NEIL rebutted that just because they are old they deserve special protection because they do not have the capability to protect themselves. He felt that if they were to receive special protection because they were old why shouldn't they receive special protection if they are old and are accused of abuse.

CHAIRMAN WHEAT rejoined that it had everything to do with mental intent or capability. He also indicated that it had to do with whether an individual was the abuser or the abused.

{Tape: 2; Side: A; Approx. Time Counter: 14.4 - 15.8}

CHAIRMAN WHEAT wanted to know if the assisted living home referred to in Mr. Bartos' testimony was owned by a corporation that has its corporate offices outside of Montana.

Mr. Bartos informed the Committee that to the best of his knowledge it was a personal care home owned and operated within Montana and did not have any affiliation outside of the state.

CHAIRMAN WHEAT requested to know who licensed the homes.

Mr. Bartos indicated that in this particular case the Quality Assurance Division of the Department of Public Health and Human Services licensed the facility.

CHAIRMAN WHEAT followed up asking if the license for the home discussed had been revoked.

Mr. Bartos replied that the facility had gone out of business and closed down.

{Tape: 2; Side: A; Approx. Time Counter: 15.8 - 17.1}

CHAIRMAN WHEAT asked what the protocol was for dealing with the employers of individuals who were charged with abuse in care facilities.

Mr. Bartos explained that Adult Protective Services tries to coordinate with Licensing in the Quality Assurance Division to see if they could suspend their license or close the facility. If the facility is really bad and other people are vulnerable they have the ability to remove the individuals from the facility and place them in other facilities. With regard to the employer of the particular facility being discussed, it was the employer who was part of the problem. However, in another case if the employer was not guilty of any first known offense then the case would be referred to law enforcement to see if there was a culpability connection under the law. Civil actions are often filed against the employers which provides additional compensation for the victim.

{Tape: 2; Side: A; Approx. Time Counter: 17.1 - 19.2}

SEN. WHEAT asked what kind of a background check an individual had to undergo in order to receive a license for one of these facilities.

Mr. Bartos was not sure but knew that it was operated through administrative rule and policy adopted through licensing. He knew that there was extensive review and requirements about the facility by the county health department. He did not know the specifics of background checks on employees. However, several personal care attendants who have been referred to law enforcement for suspected abuse and neglect have moved on to other facilities. He admitted that there was no central registry for individuals who have been convicted or plead guilty to this type of misdemeanor.

{Tape: 2; Side: A; Approx. Time Counter: 19.2 - 20.5}

Closing by Sponsor:

REP. JAYNE closed by saying that she would like to clarify the issue with **SEN. O'NEIL**. She urged the Committees serious and favorable consideration of the bill. She informed the Committee that she needed someone to carry it on the Senate Floor.

{Tape: 2; Side: A; Approx. Time Counter: 20.5 - 21.7}

CHAIRMAN WHEAT closed the hearing on **HB 197** and opened the hearing on **HB 216**.

HEARING ON HB 216**Opening Statement by Sponsor:**

REP. MARY CAFERRO (D), HD 80, opened the hearing on **HB 216**, Revise laws concerning child support.

REP. CAFERRO brought the bill on behalf of the Child Support Enforcement Division or the Department of Health and Human Services. She indicated that **HB 216** would allow Child Support Enforcement to complete their job of collecting child support in a more efficient, effective and timely manner. She asserted that there was an overwhelming majority who voted for the bill. In her opinion the important thing about **HB 216** was that in Montana over 50% of children do not receive their child support. This is a critical component for economic stability for children to receive their support. She reserved the right to close.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.4}

Proponents' Testimony:

Lonnie Olson, Administrator of the Child Support Enforcement Division, explained that the purpose of the bill was to make the system by which the CSED operated run more effectively. In his opinion there was one section to the bill which was absolutely essential, the allowance for the Department of Revenue to release information regarding employers and their new employees to the agency. If this section does not pass it would be possible for the federal government to find the state out of compliance with the requirement. If this occurs then the child support system in Montana and the Temporary Assistance to Needy Families (TANF) grant could be jeopardized. The reason he gave for this is that in order to receive federal funding for the child support program each state must comply with requirements that are laid out in the Social Security Act under Title 4D. In order to compel the states to enact each of these requirements the federal government tied payment of the state TANF grant to the child support program. He referred to the provision under the federal statute entitled the State Directory of New Hires. This informs the federal child support agency, the Office of Child Support Enforcement, of all new hires by information being forwarded from each state.

He indicated that Montana law specifies that the new hire registry be a part of the CSED case registry and payment processing unit. He mentioned that the CSED contracted with the Department of Revenue to operate a new hire registry in order to provide the employers with the one stop business shop. The

Department of Revenue informed the CSED that they need additional statutory authority to release all of the information required by the federal government. He asserted that this bill provides that statutory authority.

Mr. Olson informed the Committee that the bill authorizes the establishment and the enforcement of medical insurance requirements against both parents without requiring a child support order in terms of cash payments be established. Current law requires that child support order to be established. The bill also extends the period of time that an agency render a warrant for distraint to 120 days. It would also change the statutory language of CSED's enabling statute to clarify that the agency may do income withholding on a debt without first determining the debt. This would bring the CSED into accord with the system under Montana law by which a private person can collect unpaid child support without first going into court and obtaining a judgement. The reason he gave for this was that unpaid child support is a judgement by operation of law in Montana. Another provision of the bill would allow the electronic service of a medical enrollment order where it is agreed to by the party receiving the order. The section also extends the time to which an entity can respond to this service. A fifth provision of the bill he discussed specifically requires that children be enrolled in health insurance plans when the health plan administrator receives an enrollment order. The bill would also inform an employer how to prioritize withholding. The last provision he discussed was that it made the crime compensation payments.

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 13.3}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE addressed his question to Amee Phieffer. He wondered if there was a cessation of parental rights and there was still an obligation owed, would there be confusion and conflict in code by changing 'obligor' to 'parent' throughout the code.

Ms. Phieffer, CSED Attorney and Principle Drafter of HB 216, responded that there would not be conflict in this section because if there is a termination of parental rights the obligation to pay current support and the obligation to carry future health insurance coverage stops. If these changes regarding health insurance coverage would not be enforced.

However, she indicated that the obligation which remains after termination of parental rights is the obligation to pay the child support arrears that had accumulated up to the point of termination.

{Tape: 2; Side: B; Approx. Time Counter: 13.3 - 15.1}

SEN. MCGEE followed up inferring that the order would still refer to the parent even though that individual was no longer the parent after a certain amount of time.

Ms. Phieffer affirmed this stating that they were able to do so because the obligation had already accumulated while they were a parent.

SEN. MCGEE referred to Page 2, Subsection H, Lines 9-11. He wanted to know if the language referred to an employer.

Ms. Phieffer explained that the intent was that if the obligor or the obligee is the president or director of a corporation and that is the source of their income or they are in a partnership they could collect on their return.

{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 16.5}

At this time **SEN. CROMLEY** left the Committee hearing.

SEN. MCGEE was concerned that the phraseology could be used somehow to require the records of the employer. He wondered if a court would read that to mean that an employer's records would be subject to the terms of this act.

Ms. Phieffer supposed that it could happen, yet if the person was a wage earner their individual income tax return would be sufficient. However, if they have other interests in the business then they would need to know the degree of other interest.

SEN. MCGEE claimed he understood her point but reiterated that his concern was that with the way the language was worded.

{Tape: 2; Side: B; Approx. Time Counter: 16.5 - 18.5}

SEN. O'NEIL added that Ms. Phieffer consider what would happen if the obligor happened to be a manager or assistant manager of a business.

Ms. Phieffer suggested that they look at a 'but only if' provision to clarify their intention.

{Tape: 2; Side: B; Approx. Time Counter: 18.5 - 19.5}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.3}

CHAIRMAN WHEAT requested that Ms. Phieffer work on putting together amending language.

Closing by Sponsor:

REP. CAFERRO addressed **SEN. O'NEIL** and **SEN. MCGEE'S** concerns when she discussed the bill with the Department of Revenue. She indicated that the Department of Revenue had done research on the issue and was comfortable with the language and felt that it was within the federal laws and within confidentiality. She closed by talking about what the CSED means to Montana.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 2.8}

Executive Action on HB 127

Motion/Vote: **SEN. MCGEE** moved that HB 127 BE CONCURRED IN. Motion carried 9-0 by voice vote with **SEN. MANGAN** voting by proxy.

CHAIRMAN WHEAT indicated that **SEN. GRIMES** would be carrying the bill on the Senate Floor.

{Tape: 3; Side: A; Approx. Time Counter: 2.8 - 4.6}

At this time **SEN. PERRY** arrived.

Executive Action on HB 80

Motion/Vote: **SEN. MCGEE** moved that HB 80 BE CONCURRED IN. Motion carried 10-0 by voice vote with **SEN. MANGAN** voting by proxy.

CHAIRMAN WHEAT informed the Committee that **SEN. SCHMIDT** would be carrying this bill on the Senate floor.

{Tape: 3; Side: A; Approx. Time Counter: 4.3 - 6.3}

Executive Action on HB 90

Motion: **SEN. PERRY** moved that HB 90 BE CONCURRED IN.

Discussion:

SEN. O'NEIL understood that the Commission cost \$10,000 per year. He wanted to know if the results of the organization were worth the cost.

SEN. GARY PERRY, SD 35, MANHATTAN thought that the Commission was worth far more than it cost. He explained that it was funded by federal grant not state money. He shared that through the experiences which he has had on the Commission it has been proven to him that it is worth while.

{Tape: 3; Side: A; Approx. Time Counter: 6.3 - 8.7}

CHAIRMAN WHEAT inquired of **SEN. PERRY** if in his opinion, was it worth while to keep the Commission going for the purposed of learning more about the process.

SEN. PERRY expressed that he wanted the Commission to go forward. The reason he gave for this was that most individuals in the room were remotely removed from the type of violence which the Commission addressed.

{Tape: 3; Side: A; Approx. Time Counter: 8.7 - 9.8}

SEN. MCGEE commented that **REP. KAUFMANN** had mentioned that the system had failed and posed the question of wether or not homicides could be prevented. He felt that he would not support he bill but since **SEN. PERRY** was willing to support it he would also.

{Tape: 3; Side: A; Approx. Time Counter: 9.8 - 10.5}

CHAIRMAN WHEAT agreed with **SEN. MCGEE'S** comment.

Vote: Motion carried unanimously 10-0 by voice vote with **SEN. MANGAN** voting by proxy.

CHAIRMAN WHEAT identified **SEN. PERRY** as the senator who was going to carry the bill on the Senate Floor.

{Tape: 3; Side: A; Approx. Time Counter: 10.5 - 11.6}

Executive Action on HB 197

Motion: **SEN. LASLOVICH** moved that HB 197 BE CONCURRED IN.

Discussion:

Motion: SEN. O'NEIL moved that HB 197 BE AMENDED ON LINE 27 TO ADD 'OR AN OLDER PERSON' AFTER 'DISABILITY'.

Discussion:

SEN. MCGEE understood what SEN. O'NEIL was saying but he thought that the difference was that an individual who has been determined to be developmentally disabled will not be charged because of their mental ability. In the case of an older individual he felt that they could be competent. He felt that the amendment should be concerned with an individual who had been determined to be incompetent. He felt that simply because an individual is older does not mean that they are incompetent.

CHAIRMAN WHEAT added that under Section 52-3-803 definitions, 'older person' is defined to mean a person who is at least 60 years of age. What he felt SEN. O'NEIL was doing was saying any one who is 60 or older could not be charged. He thought that it was too broad and he agreed with SEN. MCGEE that the issue was competency not age.

{Tape: 3; Side: A; Approx. Time Counter: 11.6 - 14.8}

SEN. O'NEIL responded that he agreed with their thoughts and had tried to use these arguments when he decided that a person 60 years or older received special treatment. However, now that there were special provisions for elderly care he felt that there should be special protection for the elderly if they were charged with neglect or abuse. He suggested that the language be 'an older person who is incapable' or some other caveat.

Vote: Motion failed 1-9 by voice vote with SEN. O'NEIL voting aye and with SEN. MANGAN voting by proxy.

At this time SEN. SHOCKLEY arrived in the hearing.

{Tape: 3; Side: A; Approx. Time Counter: 14.8 - 18}

SEN. JIM SHOCKLEY, SD 45, VICTOR had a problem with negligent abuse being a crime.

CHAIRMAN WHEAT indicated that the way the bill read was that anyone who purposely or knowingly abused, sexually abused, or neglected an elderly or developmentally disabled individual was guilty of a misdemeanor. He informed SEN. SHOCKLEY that the purpose of the bill was so they could charge a first offender with a felony.

At this time **SEN. CROMLEY** returned.

SEN. SHOCKLEY informed the Committee that he had been looking at Line 21 of the first page of the bill.

SEN. O'NEIL asked about the meaning of 'neglects an older person' on Line 18.

SEN. WHEAT referenced the statute 52-3-803 and its definition of abuse, mental injury, physical injury, sexual abuse, and neglect.

{Tape: 3; Side: A; Approx. Time Counter: 18 - 22.1}

SEN. O'NEIL expressed again that he felt a felony was too harsh.

{Tape: 3; Side: A; Approx. Time Counter: 22.1 - 22.9}

Vote: Motion carried 9-3 by voice vote with **SEN. CURTISS**, **SEN. O'NEIL**, and **SEN. SHOCKLEY** voting no with **SEN. MANGAN** voting by proxy.

At this time **SEN. ELLINGSON** left the hearing.

{Tape: 3; Side: A; Approx. Time Counter: 22.9 - 23.9}

SEN. CROMLEY volunteered to offered to carry the bill on the Senate Floor.

{Tape: 3; Side: A; Approx. Time Counter: 23.9 - 24.4}

Executive Action on HB 190

Motion: **SEN. CROMLEY** moved that HB 190 BE CONCURRED IN.

Discussion:

SEN. MCGEE questioned Page 2, Line 1 where it talked about 'reasonable apprehension of bodily injury.' He reported that Ms. Bovington had provided him with a letter which explained that 'reasonable apprehension' had been determined by the Montana Supreme Court and that the definition had its origin in common law.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 1.6}

Vote: Motion carried 10-2 by voice vote with SEN. MCGEE and SEN. O'NEIL voting no with SEN. MANGAN and SEN. ELLINGSON voting by proxy.

CHAIRMAN WHEAT designated that SEN. ELLINGSON would carry the bill on the Senate Floor.

{Tape: 3; Side: B; Approx. Time Counter: 1.6 - 2.3}

Executive Action on HB 205

Motion/Vote: SEN. MCGEE moved that HB 205 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. MANGAN and SEN. ELLINGSON voting by proxy.

SEN. MCGEE volunteered as the senator who was going to carry the bill on the Senate Floor.

{Tape: 3; Side: B; Approx. Time Counter: 2.3 - 4.6}

Executive Action on HB 40

Motion: SEN. SHOCKLEY moved that HB 40 BE CONCURRED IN.

Discussion:

Motion: SEN. SHOCKLEY moved that HB 40 BE AMENDED.

Discussion:

SEN. SHOCKLEY explained amendment HB004001.av1.

[EXHIBIT\(jus47a06\)](#)

Vote: Motion carried unanimously by voice vote with SEN. MANGAN and SEN. ELLINGSON voting by proxy.

Motion: SEN. SHOCKLEY moved that HB 40 BE CONCURRED IN AS AMENDED.

Discussion:

Motion: SEN. O'NEIL moved that HB 40 BE AMENDED TO STRIKE 'INCLUDING' AND INSERT 'PLUS' ON LINE 20.

Discussion:

CHAIRMAN WHEAT asked Ms. Lane if there was a difference between the word "including" and "plus".

{Tape: 3; Side: B; Approx. Time Counter: 4.6 - 7.6}

Valencia Lane, Legislative Fiscal Division Staffer, did not see a difference.

SEN. O'NEIL explained that he was trying to change the language so that it would give the amount of the legal cost and not double them.

Ms. Lane concluded that what **SEN. O'NEIL** was trying to say was that the current bill stated that an individual was subject to a civil penalty which would be a fine not to exceed \$2,000 plus double amount of damages including expenses. She assumed from this language that the intent was to double the amount of legal costs as well.

SEN. CROMLEY agreed with the intent of the amendment. He suggested placing a period after "statement" in Line 20. And then begin a separate sentence for their legal expenses.

Substitute Motion: **SEN. CROMLEY** made a substitute motion that HB 40 BE AMENDED TO PLACE A PERIOD ON LINE 16 AFTER 'CLAIMS' AND CREATE A NEW SENTENCE THAT SAYS 'THE COURT MAY ALSO AWARD EXPENSES, COSTS AND ATTORNEY'S FEES.' THEN ON LINE 20 PLACE A PERIOD AFTER 'STATEMENT' AND FORM ANOTHER SENTENCE WHICH SAYS 'THE COURT MAY AWARD LEGAL EXPENSES, COSTS AND ATTORNEY'S FEES.'

Discussion:

SEN. MCGEE thought that the way the bill was written, it would be mandatory. He wanted to see it kept mandatory.

SEN. CROMLEY agreed to place "shall" in the sentence instead of "may." for both of the new sentences.

Ms. Lane restated the amendment with "shall" instead of "may."

Vote: Motion carried unanimously by voice vote with **SEN. MANGAN** and **SEN. ELLINGSON** voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 7.6 - 13.5}

Motion: SEN. SHOCKLEY moved that HB 40 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. PERRY said he would support the bill if he could get an answer on whether or not the Department of Revenue has separate tax rules and whether or not the bill would apply to the Department of Revenue.

CHAIRMAN WHEAT recalled that the testimony had been that the Department of Revenue had its own statutes related to false filing of income tax returns. It was his impression that it was not a problem.

SEN. PERRY interjected that he could not vote affirmatively based on impression only.

SEN. O'NEIL inquired about placing a statement in the bill which would preclude it from applying to income taxes and the Department of Revenue.

SEN. SHOCKLEY withdrew his do concur as amended motion with no objection.

{Tape: 3; Side: B; Approx. Time Counter: 13.5 - 15.7}

ADJOURNMENT

Adjournment: 10:13 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

BRITT NELSON, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus47aad0.PDF](#))