

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **VICE CHAIRMAN DUANE GRIMES**, on January 18, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None

Members Absent: Sen. Lorents Grosfield, Chairman (R)

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 128
Executive Action: SB 28 & SB 209

EXECUTIVE ACTION ON SB 28

Motion: SEN. MIKE HALLIGAN moved SB 28 DO PASS.

Discussion:

SEN. JERRY O'NEIL asked if he could propose an amendment with this bill consisting of section six on page fifteen, which requires the court's review to include a standard of review.

SEN. DUANE GRIMES mentioned that **SEN. O'NEIL** would have to allow 24 hours for amendments and he could possibly work with the drafter and bring this to the Senate Floor.

SEN. HALLIGAN asked if the portion of **SEN. O'NEIL'S** letter is a duplication at that level. He also said it would be good to receive a response to what points were made by the state.

MaryAnn Welbank, Administrator Child Support Enforcement Division, answered the questions raised with regard to section six and section seven do not deal with court orders at all. The main portion of this bill is to allow them to do all the preliminary steps.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 209

Motion: **SEN. STEVE DOHERTY** moved **SB 209 DO PASS.**

Discussion: None

Vote: Motion **carried 5-3** Roll call vote with **SEN. BISHOP, SEN. HOLDEN** and **SEN. O'NEIL** voting no.

EXECUTIVE ACTION ON SB 17

Motion: **SEN. O'NEIL** moved **SB 17 DO PASS.**

Discussion:

SEN. GRIMES asked **SEN. O'NEIL** to answer the allegations of the opponents as to the indirect affect of this bill of inserting fault back into divorces.

SEN. O'NEIL answered this bill will introduce fault back in, but not where there is no children involved and it will allow one parent to show the other parent that the child's home was broken up. He added that from the information he presented this bill should reduce the number of divorces and protect children.

SEN. DOHERTY asked if why this is a good idea to introduce fault into the notion of divorces. **SEN. O'NEIL** answered he has dealt with non-contested divorces mainly, but he does work with some contested divorce cases and an example is one spouse who is unhappy due to the other parent having a significant other therefore, breaking up the home. He said with this bill there

would be less chance of the parent leaving for a significant other and leaving the child in a broken up home. He stated this bill will allow the judge to approve primary care for a parent and determination to custody issues for the child.

SEN. RIC HOLDEN said trying to put fault back into this bill wouldn't make sense. He pointed out anyone who tries to gain custody of their children will say the other parent was at fault for something. He felt this to be a good bill because it clarifies what an attorney might be able to present on behalf of one parent or the other.

SEN. DOHERTY said the existing language regarding the continuity and stability of care tries to determine the individuals involved and whether those individuals can care for the child. He felt that by introducing the language including the parent's reckless disregard for the stability of the child's home it introduces fault back in and then they are not looking at the best interest of the child at that point, but laying blame on who has shown reckless disregard for the stability of the home. Whether this subject involves extra marital activities, alcoholism or during hunting months a spouse is gone for that time - that could be reckless disregard for the stability of the home.

SEN. HOLDEN wondered how it possibly could be fair to a judge to determine the custody of children if he doesn't have the full picture of the family. He asked how could the judge make an educated decision if he doesn't know what has happened or what will happen in this situation.

{Tape 1; Side B}

SEN. GRIMES felt mixed emotions to the purpose of the section. He said because the judge considers these factors it should not be limited to these factors. He wondered if this was a good effort on spending time with the language and there was no question that the continuity and stability of care was needed for change. He added the judge will need to know the responsibility of the parent and if a parent leaves due to coercion or pressure it could add to the allegations of the parent who stays and has responsibility of the child and home and points to the parent who left as the victim. This bill does give a benefit of the doubt or adds leverage to the parent who has financial stability to take care of the child and home. The motive of this bill is good to try and establish some balance and to allow the judge more flexibility when there is an irresponsible parent.

SEN. AL BISHOP said he believed that when two people marry and have children they have created responsibility to the children rather than to their rights for each other in the marriage and the children are the most important issue.

Vote: Motion **Tied 4-4** Roll call vote with **SEN. DOHERTY, SEN. HALLIGAN, SEN. PEASE** and **SEN. GRIMES** voting no. The vote to be held open until **CHAIRMAN GROSFIELD** returns.

HEARING ON SB 128

Sponsor: **SEN. JOHN BOHLINGER, SD 7 BILLINGS**

Proponents: David Morales, Director of the Child & Family Intervention Project
Mike Samson, Police Officer City of Billings
Dave Lemoine, FBI Agent
Shawna Smith, Victim of Prostitution
Mike Moreni, Police Officer City of Billings
Dennis Paxinos, Yellowstone County Attorney
Dallas Erickson, Montana Citizens for Decency Through Law
Harris Himes, Attorney

Opponents: None

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7 BILLINGS handed in his testimony **EXHIBIT** (jus14a01).

Proponents' Testimony:

David Morales, Director of Child & Family Intervention Project, began with mentioning the tragedies with the children who become involved with rape and abuse. He said how he dealt with many of these victims while working as a truancy officer and he received a "hands-off" policy by the schools so these children were left out on the streets where they are victims to pimps and drug dealers. He commented that there are no strong laws on the books regarding penalties for pimps or drug dealers, no way to take these people in for their crimes because these little girls and boys who became victims were too scared to come forward and testify against their perpetrator.

He added this is not just a Billings problem because the children who are affected by this crime come from all over the state of

Montana and they want to come to Billings and then the pimps and drug dealers come from other states and they do not kidnap these children, the perpetrators are convincing enough to get the children to come with them across the state line. The perpetrators receive a lot of money for selling these children, which is very sad and there needs to be a stronger force as this bill encourages to have stricter penalties for these crimes. He said that this is a national market that is making a lot of money at the costs of the lives of our children especially here in Montana.

Mike Samson, Police Officer City of Billings, explained when he began working with the Billings Police Department he was assigned a walking beat in downtown Billings and in this position he encountered many prostitutes on the street. He stated at the time of this position there were a number of pimps working the streets and working these girls, calling the circuit a 'loop', which pimps traveled from Illinois to Minnesota to Las Vegas and to Billings. Billings was a prime recruiting ground for these pimps and they would search for girls who were the most vulnerable, girls who had no family or support systems because the pimps knew that if they took one of these girls the girl would not be missed.

{Tape 2 Side A}

He mentioned how these girls would get into situations with these pimps such as being severely beaten and raped and this cycle continued with the girls who came from all over the state and brought to Billings for the market of prostitution. He added when these girls were arrested for prostitution, which is a misdemeanor charge with a fine of up to \$200, the girls would be out of jail before his report was done because the pimps would pay the fine and then beat the girls for being arrested and their quota would go up due to the bond that the pimp paid for. He felt he was punishing the victims and it was difficult for him because there wasn't enough of a penalty to stop this act and if the girls were taken across state lines they wouldn't return. He added without a victim it becomes hard to prosecute the crime and this bill may not eliminate the problem completely, but it is a step in the right direction.

Dave Lemoine, FBI Agent, said when he was assigned to Billings he worked on a drug task force and next to the drugs the other biggest problem was the situation of pimps. He had worked conspiracy cases such as the ones in Billings before and when interviewing the prostitutes he asked, to gain information, if they were abused as a child and most of the cases were. In these cases they were trying to protect children who were not protected due to socioeconomic reasons when they were younger.

He explained how these girls would get in on the circuit and leave the state traveling to all the major cities and they wouldn't stay in a location for more than two or three weeks because if they girl was arrested for prostitution the pimps would move them on. He added it was difficult to track the girls because they would use more than one name and while working the interstate crimes these cases became even harder because the evidence would then be in another state.

He mentioned over 80 girls were identified had come from Billings and traveled in this circuit to other states. He went on to explain how one girl made her way back to Montana and told the situation, but this girl was afraid to testify due to the pimp coming after her plus it makes it harder to go after these pimps when the evidence is in another state. Of course no one testifies against these pimps if the maximum sentence in jail is only six months, these girls become afraid that once the pimp has done his time he will get out and come after them. He said that if the state and local officials gain the enforcement to go after these pimps and have greater penalties for them then the crime will cut down.

Shawna Smith, Victim of Prostitution, explained she met her pimp when she was fifteen and her mom was a drug addict so she was taking care of her siblings and received fake promises from this pimp to have a better life and that is what lead her into prostitution. She said she was beaten and raped quite often and she was put out on the street to gain money for the pimp and she stayed with him due to the fake promises that he would help her family situation.

She finally decided she wanted to leave and at this time she was in California and when she arrived back to Montana she was ashamed to go home. Her mom found her and she went into the hospital where she was treated for her broken ribs and broken nose and all the beatings. She expressed how this pimp came back for her and he would beat her to make her go with him. Through tears she explained how she was able to try and fight for her life back and worked on the case with officials to get this pimp in jail, who is now convicted to twenty years, but she has to live with the pain everyday and she feels she lives in shame. She doesn't believe that the law right now means much, \$500 for a bond is nothing because these girls could make that money within two hours and six months in jail is not worth the rest of her or any of these girls lives.

{Tape 2; Side B}

Mike Moreni, Police Officer City of Billings, said he was assigned to the downtown beat and made many prostitution arrests.

He stated he worked on a task force with the FBI and indicted ten pimps and these pimps were arrested for other crimes other than prostitution because it was hard to have a girl testify against a pimp plus there was never enough evidence to frame them with prostitution. To be able to prosecute these pimps the police officers would need the testimonies from these girls and it was impossible to gain this information since the girls feared that by putting the pimp in jail they would be released in six months and be back out on the streets and abusing the girls.

Julie Millam, Christian Coalition of Montana, handed in a testimony **EXHIBIT (jus14a02)**.

Dennis Paxinos, Yellowstone County Attorney, stated within Yellowstone County more felonies are prosecuted in this area each year and zero of these are for prostitution. He said there is a large prostitution ring in Billings and the federal government is able to be successful in this area because of the ability to keep a person, who commits an offense like this, in jail pending trial without bond, which we do not have the ability to do so.

He felt promotion of prostitution should not be a misdemeanor it should be a felony and an aggravated promotion of prostitution, where you take a sixteen or less of age child and the pimp is only three years older, the treatment should be the same as children who are victims of sexual assault and children who are in sexual intercourse without consent - 100 years.

Dallas Erickson, Montana Citizens for Decency Through Law, handed in a testimony **EXHIBIT (jus14a03)**.

Harris Himes, Attorney, encouraged the committee to consider the effort of the sponsor and the proponents to testify in support of a higher penalty and possibly amending this bill to become a capital offense. He felt a no bond situation would make it easier to keep the criminal around and it would assist with finding more evidence in these crimes.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked if young boys get recruited into prostitution also. **David Lemoine** answered there was not a big market for young boys in the state of Montana.

Julie Millam handed out a copy of what she researched on the internet in regard to boys and girls who get recruited into

prostitution in answer to **SEN. HOLDEN'S** question.

EXHIBIT (jus14a04)

SEN. O'NEIL asked if it would be a felony in the case of college students who solicited or urged others to be with a prostitute. **Dennis Paxinos** answered it was not the intent of the statute and it would be a stretch of the interpretation. He said this language is needed because the individual who is soliciting is trying to get the female to engage in sexual intercourse with someone else.

SEN. DOHERTY asked how many arrests were made for aggravated promotion. **Dennis Paxinos** said in his years as county attorney there has been zero prosecutions for aggravated promotions of prostitution. He mentioned part of the reason for this was due to the inability to gain a witness to testify.

SEN. DOHERTY said he noticed the definition of aggravated within the bill and asked why it had not been used as a possible tool as opposed to simple promotion. **Dennis Paxinos** stated zero to twenty may sound like a lot of time, but it isn't a lot of time in Montana because he can't get a judge to give the maximum penalty or can not get witnesses and aggravated promotion is harder to obtain.

{Tape 3; Side A}

SEN. DOHERTY said there are felony sentencing statutes and the state has tried to provide some uniformity for felony and misdemeanor statutes. He asked why was there the same monetary penalty for simple promotion as there is for aggravated. **Dennis Paxinos** answered they tried to be consistent and looked at sexual assault of a minor and the sexual intercourse without consent of a minor and that is the penalty section the committee will see within this bill.

SEN. DOHERTY asked what the fiscal impact would be to the state, there is a need to know to make contingency plans for filling the prisons who will stay for a much longer period of time. **SEN. HALLIGAN** answered there is fiscal note with this bill and there is no impact due to only three people were sent to jail under this statute in the previous nine years.

SEN. DOHERTY asked about the penalty and fine for an aggravated situation with an individual under the age of sixteen - why this age as it also states the penalties for an eighteen year old. **Dennis Paxinos** answered the language in Subsection (b) is the statute that is already in place and the new language comes from

sexual intercourse without consent and sexual assault of a minor and legislation has used the age sixteen.

SEN. DOHERTY asked if the age of sixteen is already in the statutes. **Dennis Paxinos** answered yes, that is correct and the age eighteen has been on the books for years and age sixteen seemed to be the trend from the legislation during the 1990s so they were mimicking that statute.

SEN. HALLIGAN asked if under the existing statute could a higher amount of a bond be stated. **Dennis Paxinos** answered in Montana the bonding scheme is only a capital offense that can have no bond. He added that due to a penalty of 100 years he would be able to ask a judge to have a higher bond and he may or may not receive it. He said in this case if a defendant gets out of jail he will temper with the witness.

SEN. HALLIGAN asked if this bill amends the bond statutes to deal with that issue and can a no bond be used in a prostitution case. **Dennis Paxinos** answered if only this was made into a capital offense then they might be able to ask for a no bond.

Closing by Sponsor:

SEN. JOHN BOHLINGER, SD 7 BILLINGS, summarized the bill and explained it should help the pain these prostitutes experience and assist the frustrations of police officers and officials that deal with these crimes. He pointed out the testimonies the committee heard and how emotional this situation is having ruthless pimps run these girls lives. He said the inability of the present Montana law, to get convictions of these pimps, needs to be changed to help these girls and the situation in Billings and in Yellowstone County.

ADJOURNMENT

Adjournment: 11:42 A.M.

SEN. DUANE GRIMES, Vice Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus14aad)