

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 21, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 781, SB 385, 402, 407, 3/14/2005
Executive Action: HB 781-Tabled

HEARING ON HB 781

Sponsor: REP. BOB LAKE, HD 88, HAMILTON

Opening Statement by Sponsor:

REP. BOB LAKE (R), HD 88, opened the hearing on HB 781, Dept. of Corrections to establish misdemeanor probation office. REP. LAKE requested that the committee Table HB 781.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 23}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LAKE closed the hearing on HB 781.

{Tape: 1; Side: A; Approx. Time Counter: 23 - 25}

HEARING ON SB 407

Sponsor: SEN. DUANE GRIMES, SD 39, CLANCY

Opening Statement by Sponsor:

SEN. DUANE GRIMES (R), SD 39, opened the hearing on SB 407, Revise minors in possession law. SEN. GRIMES stated that during the 2003 Legislative Session a group was left out of the Minor in Possession Bill; the group was the 18-21 year olds.

{Tape: 1; Side: A; Approx. Time Counter: 25 - 87}

Proponents' Testimony:

Bill Muhs, Mothers Against Drunk Driving (MADD), rose in support of SB 407 and stated that this bill and the others regarding drinking and driving are not about personal freedoms; "...these bills are about the public health issues...." Mr. Muhs stated that SB 407 is about prevention for the 18-21 year olds. He also submitted testimony from another proponent.

EXHIBIT (juh62a01)

EXHIBIT (juh62a02)

{Tape: 1; Side: A; Approx. Time Counter: 87 - 156}

Don Hargrove, Montana Addiction Service Providers, rose in support of SB 407 and also spoke for **Mona Jamison-Boyd Andrews Service Center** who is also in support of SB 407. **Mr. Hargrove** stated, "...if we catch early; [we] can prevent addiction."

{**Tape: 1; Side: A; Approx. Time Counter: 156 - 190}**}

Beda Lovitt, Montana Medical Association, rose in support of SB 407 and stated that this is a public health issue and that SB 407 will close the loophole.

{**Tape: 1; Side: A; Approx. Time Counter: 190 - 209**}

Kris Minard, self, rose in support of SB 407 and stated that this is an "unpopular war, but after too many deaths, it is time."

{**Tape: 1; Side: A; Approx. Time Counter: 209 - 250**}

Opponents' Testimony: None

Informational Testimony:

Becky Robideaux, Alcohol and Drug Services, rose to inform the committee that she is a prevention specialist that teaches the Minor in Possession (MIP) Classes. She proceeded to inform the committee about the students who attend the classes and how the classes may influence a person to never drink again. However, if a minor is a second offense MIP, there is a strong indication that there is a problem with alcohol for that minor.

Ms. Robideaux continued to speak to the committee about the undeveloped brains of the minors and how it affects their judgement and choice making skills.

{**Tape: 1; Side: A; Approx. Time Counter: 250 - 350**}

Questions from Committee Members and Responses:

REP. KOOPMAN questioned Mr. Muhs about any research that shows the effectiveness of a bill like this for the 18-21 year olds and if there would be any "unintended consequences" from passing SB 407. The REPRESENTATIVE was also interested that if minors are unable to drink, would they go on to other drugs. **Mr. Muhs** referred the question to **Ms. Robideaux** who stated, "Yes, there are some kids who would go to marijuana, etc., but it is a much bigger jump to do that."

REP. WILSON queried SEN. GRIMES about the second offense MIP and the requirement that the violator attend counseling and he asked, "Who will pay for this?"

SEN. GRIMES referred the question to **Ms. Robideaux** who answered the REPRESENTATIVE that the costs are either paid from health insurance, or a state contract with the provider or a sliding fee scale and that no one is refused. **REP. WILSON** then was interested in where a young person would go to obtain treatment that had been ordered. **Ms. Robedeaux** stated that most cities have treatment facilities for outpatient services.

REP. MCGILLVRAY questioned the sponsor about the fiscal note that was unsigned. **SEN. GRIMES** stated that he had not seen the fiscal note; so cannot answer as to the validity of the fiscal note.

REP. CLARK began his questioning of Ms. Robideaux with questions regarding the 56 counties in Montana and whether or not they all offer services for substance abuse. **Ms. Robideaux** stated that there are treatment systems in place in almost all of the counties; with some smaller counties offering on-line classes only. They continued to discuss the treatment options as to distances to travel and the time frames in which they are offered.

REP. EVERETT asked Ms. Robideaux about the increase in teen drinking. **Ms. Robideaux** informed the committee that in Montana the rate has increased higher than the national average. They discussed the Drug Abuse Resistance Education (DARE) program and how it is successful for youths.

REP. EVERETT asked Ms. Robideaux if these problems are the result of a moral breakdown of the family and system. **Ms. Robideaux** replied, "...it is a combination of many things...."

REP. RICE engaged Ms. Robideaux in conversation about the "schools" that the parents are mandated to attend with their minor and the loss of the minor's drivers license. The REPRESENTATIVE reported that she personally had heard from parents and some Justices of the Peace, who do not like these mandates. **Ms. Robideaux** replied, "...at first, the parents are not happy, but after talking to the other parents in attendance and by "graduation" they have changed their minds...." They then discussed the parents of the 18-21 year olds and that they do not need to attend the classes.

REP. SONJU related a scenario to Ms. Robideaux of a group of minors at a party and that there are people who do not know that there is drinking occurring; would all of the people at the party receive a MIP and if so, would they all have to attend classes, treatment, etc. **Ms. Robideaux** replied that she had never seen a situation occur where everyone in attendance at a party received a MIP.

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The REPRESENTATIVES continued with questions, comments and responses that had been discussed previously.

{*Tape: 1; Side: A; Approx. Time Counter: 350 - 500}*}

{*Tape: 1; Side: B; Approx. Time Counter: 0 - 443}*}

Closing by Sponsor:

SEN. GRIMES closed the hearing on SB 407 and spoke to the language on Page 1, Lines 11-12 regarding, "knowingly consume and personally possess."

The SENATOR stated, "We need a complete restoration of minds; we are here to protect the public and constituents."

{*Tape: 1; Side: B; Approx. Time Counter: 443 - 500}*}

{*Tape: 2; Side: A; Approx. Time Counter: 0 - 14}*}

HEARING ON SB 385

Sponsor: SEN. JOHN ESP, SD 31, BIG TIMBER

Opening Statement by Sponsor:

SEN. JOHN ESP (R), SD 31, opened the hearing on **SB 385**, Revise duties for mental health ombudsmen to include child protective services. The SENATOR explained to the committee members that the "meat" of the bill is one Page 2.

On Page 8, Line 20, the language states what the vision of the ombudsman will be; i.e., to assist the family with the Department of Public Health and Human Services (DPHHS).

SEN. ESP informed the committee that there is an amendment for Page 2, Line 6 changing "allegation" to "complaint."

EXHIBIT(juh62a03)

{*Tape: 2; Side: A; Approx. Time Counter: 14 - 87*}

Proponents' Testimony:

Kandi Matthew-Jenkins, Montana Families, rose in support of SB 385 and stated that she is an advocate for families who are falsely accused usually by DPHHS and that SB 385 would provide the much needed outside observer such as the ombudsman.

{*Tape: 2; Side: A; Approx. Time Counter: 87 - 105*}

Melissa Worthan, self, stood in support of SB 385.

{*Tape: 2; Side: A; Approx. Time Counter: 105 - 118*}

Steve Craig, self, stood in support of SB 385 and proceeded to relate to the committee the story of his family and the incident of their son removed from their care by DPHHS.

{**Tape: 2; Side: A; Approx. Time Counter: 118 - 272}**}

Opponents' Testimony: None

Informational Testimony:

Bonnie Adeé, Mental Health Ombudsman, Governor's Office, spoke to the committee members about what her current role as a "go between" for people with mental health needs that require assistance with navigating the "system."

EXHIBIT (juh62a04)

{**Tape: 2; Side: A; Approx. Time Counter: 272 - 318**}

Shirley Brown, director, Child and Family Services, Department of Public Health and Human Services, explained to the committee the process that families must go through once a report is received through Centralized Services.

{**Tape: 2; Side: A; Approx. Time Counter: 318 - 345**}

Questions from Committee Members and Responses:

REP. BECKER questioned the sponsor about the intent of the bill; that the ombudsman would not investigate but just help the families with the process. **SEN. ESP** referred to Page 8 for an explanation of what the bill would do.

REP. BECKER then referred her questions to Ms. Adeé. The REPRESENTATIVE referred to Page 2, Line 14, where "access" to the public records is addressed. **Ms. Adeé** replied that the people that she would be working with may sign a waiver for information that is not readily accessible.

REP. GUTSCHE began her questions with Ms. Brown and requested that the grievance procedure be explained to the committee members. **Ms. Brown** explained that once an issue arises, the party may go to the social worker in charge of the case, then may go to that social worker's supervisor, then on to the regional supervisor and finally to Ms. Brown for her consideration in the matter. **Ms. Brown** continued to explain the situation where a child may be removed and that the decision is made at the local level.

REP. STOCKER queried the SENATOR again about the ombudsman's role in these matters. **SEN. ESP** replied that Ms. Adee's participation will be in all child protective service (CPS) matters that impacts the family lives.

REP. MCGILLVRAY asked Ms. Adee if she was presently involved with these families for CPS matters. **Ms. Adee** responded that she is not directly, but indirectly if mental health issues are present.

REP. MCGILLVRAY was then interested in the staffing for this bill within Ms. Adee's department and how an .5 FTE would be able to handle the increased workload. **Ms. Adee** explained how her department would be able to absorb this workload with the addition of the .5 FTE.

REP. CLARK posed his questions to Ms. Brown regarding the number of cases CPS handled during the year. **Ms. Brown** replied that for the last fiscal year, approximately 8,000 investigations were performed which included approximately 13,000 children. The number of children placed outside of the home was approximately 1,400. The REPRESENTATIVE and Ms. Brown continued their conversation about the .5 FTE and if that would be enough staff to handle the increased workload.

REP. CLARK requested that SEN. ESP explain to the committee members the fiscal note and if the money requested would be adequate. **SEN. ESP** referred to Page 8, Line 23 for the explanation of what the ombudsman's priority would be; that is to assist the families with DPHHS's procedures. He further stated that if the committee chose to do so, the committee could narrow the scope of assistance that would be provided in order to stay within the scope of funding.

REP. SONJU began his questions to Mr. Craig regarding his families' problems with DPHHS and the REPRESENTATIVE also was interested if DPHHS was helpful in the grievance filing procedure for Mr. Craig. **Mr. Craig** stated that he was unable to get past the original social worker and supervisor and since that time, his family has suffered retaliation from DPHHS.

The REPRESENTATIVE then turned to Ms. Brown for her response to what Mr. Craig had stated. **Ms. Brown** stated that there is a chain of grievance procedures that must be followed. She also stated that she was unable to comment on the case in question due to confidentiality rules.

REP. SONJU pressed Ms. Brown on why she was not a proponent for SB 385. **Ms. Brown** stated that she was an opponent when the bill was presented in the Senate; however, when the amendments were put forth, she elected to become an informational witness when SB 385 was to be presented in the House. **REP. SONJU** expressed his concern and asked, "...Why aren't you a Proponent; there always needs to be checks and balances and why can't [people] have access to DPHHS?" **Ms. Brown** replied, "People do have access to DPHHS, it is not perfect, but the checks and balances are in place. The social worker must still be able to make the case to the county attorney."

REP. BECKER asked Ms. Brown about the Governor's Advocate and what their duties are. **Ms. Brown** replied that position takes care of issues within the State Government.

REP. STOKER questioned Ms. Matthew-Jenkins about the previous testimony that was presented regarding the 1,400 children that were placed out side of the home and what in her estimation would be the number of families that would use the ombudsman. **Ms. Matthew-Jenkins** stated that she believed that the amount of families that would use the ombudsman would "grow in numbers." She continued to speak about the families not being heard in Montana presently.

REP. KOOPMAN began his questions to Ms. Brown regarding the 1,400 children removed and the testimony of the Craig family. The REPRESENTATIVE wanted to know if those types of stories are common. **Ms. Brown** explained to the committee the process wherein a social worker may remove a child in an emergent situation and also the protocol that must be adhered to in a non-emergent situation.

The REPRESENTATIVE then asked Mr. Craig to explain as much as he could to the committee about their incident with the removal of their child. **REP. KOOPMAN** turned to the sponsor of the bill to describe how the ombudsman would have been able to help in Mr. Craig's situation.

REP. WINDHAM requested of Ms. Brown to explain to the committee members about the sequence of time from the removal of a child to the possible return of a child to the family home. **REP. WINDHAM** was concerned about the time lapse and attachment issues that the child may have when the time frame may be extended. **Ms. Brown** stated that the decision to remove a child is not taken lightly and that various types of services are offered to the family prior to the removal of the child. "Only when the services do not work, is the child removed from the home," stated **Ms. Brown**.

REP. RICE began her questioning of Ms. Brown relative to the social worker's responsibilities. **Ms. Brown** stated that there are approximately 170 social workers in the State of Montana. Further, these social workers do have the authority to remove children based on their own decision.

When there are decisions that are in question; the social worker's supervisor may become involved, along with the regional administrator and eventually even to the director, Ms. Brown.

REP. RICE finally asked Ms. Brown, "If you had more funds, what would you do with that extra money?" **Ms. Brown** replied, "I would hire 40 more social workers."

{Tape: 2; Side: A; Approx. Time Counter: 345 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 178}

Closing by Sponsor:

SEN. ESP closed the hearing on SB 385 and stated that confidentiality is always an issue and that the ombudsman will have limited accessibility to help. **SEN. ESP** stated that he would be amenable to any amendment.

{Tape: 3; Side: A; Approx. Time Counter: 178 - 212}

HEARING ON SB 402

Sponsor: **SEN. GARY PERRY, SD 35, MANHATTAN**

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 402**, Vital statistics for stillbirth. **SEN. PERRY** spoke to the committee about a letter he had received from a constituent that spoke of that constituent's own story when they suffered the loss of their baby and that this bill would be helpful to those types of families. The SENATOR also related the story of his own son's frightening birth.

EXHIBIT (juh62a05)

{Tape: 3; Side: A; Approx. Time Counter: 212 - 500}

Proponents' Testimony:

Gary Trude, Right to Life of Montana, rose in support of SB 402.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4}

Opponents' Testimony:

Judy Edwards, self, rose in opposition to SB 402. **Ms. Edwards** spoke to the committee about her previous employment at Montana's Vital Statistics Bureau and explained to the committee how SB 402 would alter Montana's database in the National Statistics.

{**Tape: 3; Side: B; Approx. Time Counter: 4 - 23}**}

Informational Testimony:

Jacqueline Lenmark, American Insurance Association, Association of Casualty and Life Insurers, ACLU, spoke to the committee about the requirements per 50-15-403, MCA, for a death certificate to be issued. **Ms. Lenmark** stated that with SB 402, "...we have created an identity that has no end...?" She continued with her explanation of when a certificate is to be provided and advised the committee members to look at the technical notes in the fiscal note.

{**Tape: 3; Side: B; Approx. Time Counter: 23 - 88**}

Questions from Committee Members and Responses:

REP. KOOPMAN questioned the sponsor about the states that issue birth and death certificates at the same time; i.e., miscarriages and how would this bill apply to miscarriages. **SEN. PERRY** explained that this bill would only apply to stillbirths after 20 weeks, per 50-15-403, MCA, in addition to the death certificate.

The REPRESENTATIVE inquired if on P1, Lines 14-15, regarding the language, "fetus does not show any signs of life," and if the SENATOR would be amenable to an amendment that would insert, "after delivery." **SEN. PERRY** stated that he would not be amenable to any amendment.

REP. STOKER queried Ms. Edwards about her role as a statistician and how passage of this bill would interfere with the National Database.

REP. RICE then questioned SEN. PERRY about the certificate itself and if it would read as a "special" death certificate, or would there be two forms, one for birth and one for death. **SEN. PERRY** replied that the certificate would be a birth certificate.

REP. NOENNIG spoke with the SENATOR about the issue of death prior to the 20 weeks as mandated in 50-15-403, MCA. **SEN. PERRY** responded that SB 402 would only apply to fetuses 20 weeks or older.

REP. CLARK began his conversation with Ms. Lenmark regarding the family insurance policies and if the issuance of a birth certificate would have any impact on the such issues as creating an "interest"; i.e., beneficiaries to a health or life insurance policy. **Ms. Lenmark** replied that she did not have the answers for that and that the passage of this bill would create an identity that would be in the data base.

{*Tape: 3; Side: B; Approx. Time Counter: 88 - 307}*}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 402 and stated to the committee that he had spoken with Planned Parenthood, NARAL, Montana Family Coalition, etc., and had put together a coalition before bringing SB 402. He continued to explain to the committee that Vital Statistics already has a record of the stillborns and that the certificates would only be issued to the parents by their request.

Further, the death certificate would be in addition to the birth certificate and that the life insurance would not be affected unless the fetus lived for 24 hours.

SEN. PERRY stated, "This is about common sense for families dealing with stillbirths and is a bipartisan issue across the nation."

{*Tape: 3; Side: B; Approx. Time Counter: 307 - 462*}

EXECUTIVE ACTION ON HB 781

Motion: REP. STOKER moved that HB 781 DO PASS.

Substitute Motion/Vote: REP. STOKER made a substitute motion that HB 781 BE TABLED. Substitute motion carried unanimously by voice vote.

{*Tape: 3; Side: B; Approx. Time Counter: 462 - 474*}

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ADJOURNMENT

Adjournment: 12:24 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT (juh62aad0.PDF)