MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 15, 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)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: Sen. Jeff Mangan (D)

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 403, SB 408, SB 416, SB 429, SB 430, SJ 19
Executive Action: SJ 19; SB 430

HEARING ON SB 430

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 430,** Senior citizen opt out of jury duty.

SEN. RYAN recounted the story of how he developed SB 430. He explained that SB 430 would allow an individual, 70 years or older, if they feel that it is a hardship, to choose to be excluded permanently from the jury pool. He saw this bill as affording a form of protection to the elderly. He noted that the Montana Clerks Association was in favor of the bill. They had requested that he present an amendment which would change the effective date on Page 3 to July 1, 2005. This amendment was so they could fully inform everyone what the new law would be. He provided a copy of the amendment.

EXHIBIT(jus00a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.7}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 25, BILLINGS, assumed that there did not have to be any incapacitation on the part of the elderly individual.

SEN. RYAN affirmed this assumption. He noted that a local clerk had commented that many elderly individuals do not want to label themselves as being incapacitated.

SEN. CROMLEY had a problem because it appears to be discrimination based on age.

SEN. RYAN responded that he did not believe that it was discrimination because it gives an individual the option to fulfill jury duty or not, depending on their preference.

SEN. CROMLEY followed up by asking about the issue of having an individual on trial who is over 70. He indicated that in a case

like this there would be a small chance of the individual being tried by a jury of his or her peers.

SEN. RYAN replied that the bill would not exclude people over the age of 70, simply give them the choice to be there. He did not feel that a jury of peers applied only to individuals of the same age.

{Tape: 1; Side: A; Approx. Time Counter: 5.7 - 8.5}

Closing by Sponsor:

SEN. RYAN urged support of SB 430.

{Tape: 1; Side: A; Approx. Time Counter: 8.5 - 8.7}

CHAIRMAN WHEAT closed the hearing on SB 430 and opened the hearing on SB 403.

HEARING ON SB 403

Opening Statement by Sponsor:

SEN. GLENN ROUSH (D), SD 8, opened the hearing on **SB 403,** Extend good Samaritan law to motor carriers.

SEN. ROUSH brought the bill forward on behalf of the Montana Motor Carriers and the Multi State Truckers Association. The bill would provide an exemption from civil liability for acts or omissions by a commercial vehicle operator employee who renders good faith emergency care or assistance at the scene of an accident or emergency. He noted that he was proposing to amend Section 27-1-714. He cited Subsection 1, Line 14, which required that the individual must volunteer their service. He mentioned that the amendment was related to Line 26, Subsection 4. He asserted that the bill required that the individual be properly trained to administer emergency assistance in order to be covered. He reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 8.7 - 13}

Proponents' Testimony:

Barry Stang, Executive Vice President of the Montana Motor Carriers Association, provided written testimony for the Committee. He expressed that the primary goal of the Association was to try and keep uniformity in laws throughout the west. He felt that this was a good measure to take liability off the

employers. He suggested that the Committee consider adding language requiring that if a commercial vehicle is parked properly on the roadside they would not be liable.

EXHIBIT(jus00a02)

{Tape: 1; Side: A; Approx. Time Counter: 13 - 17}

Jason Todhunter, Representing the Montana Logging Association, felt that this bill would be a good measure to help protect the employers of the log-haulers when they are rendering emergency assistance. He urged a do pass recommendation.

{Tape: 1; Side: A; Approx. Time Counter: 17 - 17.6}

Opponents' Testimony:

Al Smith, Representing Montana Trial Lawyers Association, stood in opposition of the bill. He pointed out that there was no requirement to stop and render assistance. The Good Samaritan Law encourages individuals to stop and provide assistance without fear of liability. He cited Line 15 "...or any other person in good faith...". He did not understand why the Motor Carriers needed to have special treatment because per the Good Samaritan Law the drivers were covered. He asserted that the bill was not discussing individuals being properly trained. He expressed that the only way an employer would be held liable in these situations would be under respondia superior which means that an employer is vicariously liable for the actions or omissions of their employee when they are at work. The problem he presented with this was that under Section 1, Lines 13-19, of SB 403, a trucker has no liability. If there is no liability for the employee then the employer would have no liability either. He urged the Committee to kill the bill.

{Tape: 1; Side: A; Approx. Time Counter: 17.6 - 23.3}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JIM SHOCKLEY, SD 45, VICTOR, asked Mr. Smith why he was opposing the bill if it did nothing.

Mr. Smith replied that he didn't feel that the codes should be cluttered with unnecessary laws. He felt that the bill was a special privilege immunity for the trucking industry.

SEN. SHOCKLEY followed up by asking about the possibility of the employer becoming responsible for simple negligence.

Mr. Smith responded that he was not sure how that would work since the liability of the employer flows from the acts of the employee. If the employee were to be found not liable, he did not see how the employer would be found liable.

SEN. CROMLEY requested more information about the two cases from Colorado, from which the bill arose.

Mr. Stang promised to try and get the information.

{Tape: 1; Side: A; Approx. Time Counter: 23.3 - 26}

SEN. GARY PERRY, SD 35, MANHATTAN, wondered why an individual would sue the company if a commercial vehicle was parked properly on the side of the road and the individual hit it.

Mr. Stang remarked that they would do it because they could.

SEN. PERRY asked if Mr. Stang knew what vicarious liability was.

Mr. Stang responded that it referred to the employer being liable for the acts of the employee.

SEN. PERRY said that, based on what Mr. Smith said, it did not make sense to single out one industry in a bill, he suggested an amendment to the bill; striking Lines 28-29, Sections A and B.

Mr. Stang replied that it would alleviate the problem but none of the other industries had asked them to do that. He commented that if the Committee wished to do that then it would be fine, but he felt that it would bring more opponents to the bill.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 28.9}

SEN. JON ELLINGSON, SD 49, MISSOULA, asked how an individual could be vicariously responsible for the liability of an individual who was not liable for something. The way he saw things was that an individual who stops and provides assistance could not be held liable for damages unless that person was grossly negligent. He was not aware of a principal of the law that would hold the employer liable when the employee was not liable.

Mr. Stang thought that the cases out of Colorado would aid in answering **SEN. ELLINGSON'S** question. Basically, he thought that the bill would inform people that they could not sue the trucking

companies just because their trucks were parked on the side of the road. He cited Lines 28-30; "...if the employee is liable then the employer could still be held liable."

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.2}

Closing by Sponsor:

SEN. ROUSH addressed the Committee's concerns. He was unaware of the issue of suing trucks parked on the side of the road. He expressed that what they were looking for is assistance for those who wish to render aid in emergencies. He urged a do pass recommendation on the bill.

{Tape: 1; Side: B; Approx. Time Counter: 2.2 - 5}

CHAIRMAN WHEAT closed the hearing on SB 403 and opened the hearing on SB 408.

HEARING ON SB 408

Opening Statement by Sponsor:

SEN. JERRY O'NEIL (R), SD 3, opened the hearing on SB 408, Authorize jury trial for termination of parental rights.

SEN. O'NEIL explained that SB 408 would allow parents the right to a jury trial if the State was attempting to remove children from the parents' custody. He provided statistics from Arizona where a similar bill has been put into effect. He did not think that there was a good excuse to keep a parent from having a trial by jury. He provided three handouts with information on the bill.

EXHIBIT(jus00a03)
EXHIBIT(jus00a04)
EXHIBIT(jus00a05)

Proponents' Testimony: None.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 5 - 8.1}

Shirley Brown, Division Administrator for Child and Family Services, The Department of Public Health and Human Services, opposed SB 408. She noted that while SB 408 provides the right

of a jury trial for any of the parties, the argument for the right to a jury trial is generally applied to parents' rights and not to the right of the child. She recognized that SB 408 contained protections for the child, specifically regarding whether the child's testimony is relevant and necessary and provides protection for the confidentiality of the child to the extent possible. However, she questioned how confidential the proceedings could really be.

She also focused on the child's right to permanency. She noted that, if reunification is not possible with the child, the social workers try to find permanent placement as quickly as possible. She asserted that SB 408 would frustrate that effort. She mentioned 41-3-422, Subsection 3, which requires that abuse and neglect petitions be given the highest preference by the court scheduling. However, she claimed that the courts in Montana were already backed up and it would take a long time for the trial to begin. She saw this as impacting the child's permanency. She had estimated that if SB 408 became law, children would stay in foster care at least 60 days longer than they currently did. She expressed that the decision-making process in a termination case would require a high level of technical expertise. The Children's Bureau of the Administration of Children and Families recommends that State law provide that termination of parental rights cases be tried without a jury. One of the reasons she cited for this recommendation, in addition to the delay and the additional time, was the quality of the decision is better when a single judge hears all of the portions of the case. She concluded by discussing the cost associated with SB 408.

{Tape: 1; Side: B; Approx. Time Counter: 8.1 - 14.6}

Leo Gallagher, Representing Montana County Attorney's Association, rose in opposition to the bill. He commented that prior to the petition for termination there is generally a lot of work that goes into the cases. He stated that this bill would not serve the children's interests. He claimed that the bill would result in parents, who have nothing to lose by a jury trial, backlogging the system. He indicated that by the time of the trial there has been a major failure by the parents. He attested that in Yellowstone County there had been 86 hearings to terminate parental rights. He extrapolated this out into a three day jury trial and figured that there would be $172,000 in simple jury costs. He restated that it would take more money, more time, and would be harmful to the children involved. He stated that it could jeopardize federal funding and could precipitate the cycle of pain for the children. He encouraged the Committee to not pass the bill.

{Tape: 1; Side: B; Approx. Time Counter: 14.6 - 19.7}

Informational Testimony:

Todd, McKittrick, A District Court Judge from Great Falls Representing the Montana Judicial Association, expressed that the Association felt they were in a dilemma because they are dedicated to trial by jury, however, they have a great deal of concern with the timing of the resolution of the cases, the maintenance of confidentiality, the additional expenses, and the increased workload for judges. He also expressed concern with the complexity of the cases compared to a judge trial.

{Tape: 1; Side: B; Approx. Time Counter: 19.7 - 23.4}

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. O'NEIL** what the significance of the case he had provided them with, Exhibit 5, was.

SEN. O'NEIL responded by citing sections of Paragraphs 13-17, Page 2, of Exhibit 5.

SEN. CROMLEY clarified that he was curious about jury trials.

SEN. O'NEIL replied that the case had nothing to do with jury trials, it just discussed the protective status when parental rights are severed.

{Tape: 1; Side: B; Approx. Time Counter: 23.4 - 26.6}

SEN. CROMLEY asked **SEN. LASLOVICH** if he had covered this topic and if he could explain to the Committee the difference between a case in law and a case in equity, if he could inform them whether jury trials were appropriate for cases in equity, and whether or not the termination of a parental right would be a case in equity or a case in law.

SEN. LASLOVICH responded that a case in law was an action where the complaint of the person bringing the action is requesting monetary damages of some sort. He explained that a case in equity would be one where the complainant was seeking a specific performance or an injunction. He thought that a case of this sort would be a case of equity and that it would not be appropriate to have a jury trial for a case in equity.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.8}

SEN. DANIEL MCGEE, SD 29, LAUREL, asked if Judge McKittrick felt that the system, which is in place currently, for the termination of parental rights works acceptably for the protection of the rights of the child and the parents.

Judge McKittrick replied that the short answer would be, yes. However, one of the frustrations he has experienced in the termination of parental rights is that the court is under the obligation of the reunification of family. He explained that there is usually a complex treatment plan which is established for the families. He is frequently frustrated when an individual follows through with 2/3 of a treatment plan. He knows that they were operating in good faith, but the case extends for long periods of time. He asserted that the system worked but the nature of the cases made it difficult to apply the letter of the law when the spirit of the law requires unification.

{Tape: 2; Side: A; Approx. Time Counter: 1.8 - 4.8}

SEN. MCGEE followed up asking the Judge for his perspective on how many of these types of cases are righteous and how many might involve "rogue social workers". He wanted to know in how many cases they were actually dealing with bad parents or some sort of departmental issue that needs to be fixed.

Judge McKittrick answered that he had never specifically run into "rogue social workers." He informed the Committee that the cases start at a low level and are often times solved. He noted that the social workers are under a tremendous burden and are told to do what is right for the child. He indicated that through the entire process they sift through the bruises, pictures, and testimony. They give the parents a chance to correct the problem and keep the child in the home. However, he reported that by the time the problem reaches the termination level it is very well documented and observed. The problem he sees with the jury trial idea is that these cases are very emotional and very hard to make decisions on. He reiterated that social workers are in a very difficult situation. He opined that the Health and Human Services Department works very hard to achieve reunification.

{Tape: 2; Side: A; Approx. Time Counter: 4.8 - 11.1}

SEN. SHOCKLEY wondered if making the hearing a closed hearing with a jury would make the situation any better.

Judge McKittrick expressed that even the very basics of the trial would cause problems in a small community.

SEN. SHOCKLEY followed up asking, if a jury could handle a complex embezzlement case, wouldn't they be capable of handling a parental termination case.

Judge McKittrick had a great deal of confidence in the jury system. Yet, if there were five fathers, one mother, and five children, and the jury was supposed to sort through which of the fathers was bad, especially among all of the charged emotion, it would take a long time, would be very expensive, and would rely heavily on expert testimony.

{Tape: 2; Side: A; Approx. Time Counter: 11.1 - 13.2}

SEN. AUBYN CURTISS, SD 1, FORTINE, cited Exhibit 5, which stated that Mississippi's record disclosed that parental status termination cases have few appeals. She wondered why Montana would be any different than Mississippi.

Judge McKittrick replied that if a parent felt strongly that their rights should not be terminated they would appeal if they had an adverse decision. He was hard-pressed to believe that almost every case would not be appealed because of the emotional component.

{Tape: 2; Side: A; Approx. Time Counter: 13.2 - 15}

SEN. SHOCKLEY wondered if **SEN. CROMLEY** knew that one could get a jury trial in equity if it involved real estate by the option of a judge.

{Tape: 2; Side: A; Approx. Time Counter: 15 - 15.5}

Closing by Sponsor:

SEN. O'NEIL closed by asserting that jury trials were created to protect an individual from arbitrary actions by the State. He claimed that 97% or more of the time the social workers were not "rogue social workers" but righteous social workers. He assumed that the court would support a social worker more often than not. While he agreed that in most instances it was appropriate to remove a child from the custody of its parents in these cases, he felt that there were cases where the child was removed unfairly. He stressed that the majority of these cases would not go to jury trial and so the extended time spent in foster care would be diminished. He also stressed that since there would be so few cases going to trial the increased costs would be minimal as well.

{Tape: 2; Side: A; Approx. Time Counter: 15.5 - 20.7}

CHAIRMAN WHEAT closed the hearing on SB 408 and opened the hearing on SB 416.

HEARING ON SB 416

Opening Statement by Sponsor:

SEN. AUBYN CURTISS (R), SD 1, opened the hearing on **SB 416,** Amend child support suspension of license statutes.

SEN. CURTISS provided four handouts to the Committee dealing with the issue addressed in SB 416. She presented a few stories where individuals she has known have had to deal with the loss of a driver's license because of a refusal to sign a payment plan. She indicated that many people would not sign a payment plan because it requires an individual to waive some of their rights. She encouraged the Committee to look at the language which dealt with out-of-state court orders. She wanted to establish the ability of these individuals who have suspended licenses to drive so that they can hold down a job. She felt that it was counter productive to remove a driver's licence from a person and jeopardize the livelihood of the children in the household for the sake of an alleged order from out-of-state.

EXHIBIT(jus00a06)
EXHIBIT(jus00a07)
EXHIBIT(jus00a08)
EXHIBIT(jus00a09)

{Tape: 2; Side: A; Approx. Time Counter: 20.7 - 27.5}

Proponents' Testimony: None.

Opponents' Testimony:

Amy Pfeifer, an Attorney for the Child Support Enforcement Division, Department of Public Health and Human Services, informed the Committee that the Department was opposed to the bill because it essentially removed an effective tool in collecting child support for families. She thought that it was important that the Committee know that the license suspension scheme that is in the statutes has been in effect since 1993. She pointed out that the license suspension scheme applies not only to the Department but also to district court. She noted that the bill created an absolute right to get the provisional probationary license even for persons who openly refuse to pay child support. She mentioned Section 3, which was new to the bill this session. She discussed the issue of waiving of rights.

She noted that license suspension only occurs after an individual is six months delinquent in support and is a statutory requirement. It is also used as a last resort when all other attempts to collect support have failed. She argued against the proposal that a delinquent parent needed a drivers license in order to pay child support. She asserted that if an individual was working, unless it was under the table, they would have been able to identify a source of income and would not have had to resort to license suspension. She stressed that licenses are only suspended when there is no income flow and they are not out looking for work. She mentioned that, if an individual has looked for work but has not notified the Department, they would get a warning letter or a notice of intent to suspend a license and have 60 days to schedule a hearing. She discussed Mr. Burson's case history and the results of the suspension. She reiterated that license suspension was only one tool they used and was considered a tool of last resort. She estimated that if this bill passed over $1,000,000 will be lost in child support that goes out to families. She addressed Section 3 again, which dealt with all payment plans. She asked that the Committee reject the attempt to weaken an effective tool for the collection of child support.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 15}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. PERRY quoted Ms. Pfeifer's comment about delinquent parents working under the table or not at all. He asserted that she assumed that every individual that the Department was dealing with was guilty of this action. He noted that if that was the case it would be covered under other provisions of the law and was not the purview of the Child Support Enforcement Division (CSED). He said that this was not a valid argument against the bill.

Ms. Pfeifer responded that not everyone they use the suspension of license on was working under the table. She clarified that what she had said was that there was no stream of income traceable, so if they are working for monetary compensation, they were not able to find it. She reiterated that individuals who have a support obligation have a duty to support their children and they need to take steps to fulfil this duty. She expressed that the obligation of the CSED was the financial support of the children.

SEN. PERRY followed up by asserting that Ms. Pfeifer had said "we are alleging you have not paid your support". He wanted to know what the proof was that these individuals had not paid support and what means they had to contest that allegation.

Ms. Pfeifer answered that in any child support enforcement action they issue a notice, alleging the amount of the debt based on the referral information they received. She informed the Committee that the individuals have an opportunity to request a hearing to contest these allegations and prove that they have paid.

{Tape: 2; Side: B; Approx. Time Counter: 15 - 19.6}

Closing by Sponsor:

SEN. CURTISS seriously doubted the fairness of using this tool as a method to gather child support. She provided figures indicating that 15.5% of those in the Department system were on public assistance, 61% were on public assistance at some time, 59% of the cases had child support collected on them, and 64% of cases with arrears had some payment collected. She provided a handout with questions she wanted to direct at the Department. She requested that they be answered before Executive Action. She restated that taking away a person's ability to get to and from work is counterproductive and would create a hardship for the children with the alleged arrears but also for any children that might be in the home of the obligor.

EXHIBIT(jus00a10)

{Tape: 2; Side: B; Approx. Time Counter: 19.6 - 23.3}

CHAIRMAN WHEAT closed the hearing on SB 416 and opened the hearing on SB 429. He asked if Ms. Pfeifer would be able to answer any of the questions provided by **SEN. CURTISS.**

Ms. Pfeifer clarified the questions provided by **SEN. CURTISS.**

CHAIRMAN WHEAT suggested that **SEN. CURTISS** and Ms. Pfeifer meet after the meeting.

Ms. Pfeifer noted that the last request on **SEN. CURTISS'** handout would take programming. She wanted to know if the Committee was asking for the Department to follow through with the request.

CHAIRMAN WHEAT did not think that they were asking to have new programming created.

SEN. CURTISS responded that the reason she had made the request was that the Legislative Branch had recommended this the last session. She questioned how the Department could prove the validity of the tool if there were no statistics kept.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.1}

HEARING ON SB 429

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 429,** Providing for use of electronic tracking devices in criminal investigations.

SEN. SHOCKLEY carried the bill on behalf of **SEN. LAIBLE.** He attested that the bill was basically a search warrant that would outline a procedure and regularize a procedure which the police are currently using. He indicated that the bill would prevent problems in the future. He informed the Committee that once an attorney has proved to a court that a crime has been committed or is about to be committed law enforcement can attach an electronic device. He indicated that starting on Page 2, Line 22, he was proposing to strike everything after Line 22.

{Tape: 3; Side: A; Approx. Time Counter: 2.1 - 5.6}

Proponents' Testimony:

John Connor, Representing the Attorney General's Office, informed the Committee that global positioning devices (GPS) have been a tool for law enforcement for a significant period of time. He mentioned that while it is suggested to get a search warrant before using these devices some jurisdictions do not do this. This bill was a product, in his opinion, of the effort on the law enforcement's part to codify into law a process by which law enforcement is made aware of how they get the devices, the limitations upon which they are able to be used, how long they last, how they can be renewed, and the limits on how they can be installed.

{Tape: 3; Side: A; Approx. Time Counter: 5.6 - 9.1}

Stephen Spanogle, Agent with the Montana Department of Justice, Division of Criminal Investigation, Representing the Montana Narcotics Officer's Association, and the Montana Alliance for the Drug Endangered Children, talked about the GPS tracking equipment. He restated that there was no regulation on how the equipment was used. He discussed what a GPS tracking device

does. He stated that the GPS was basically only for surveillance that allows officers to be proactive in their investigations.

{Tape: 3; Side: A; Approx. Time Counter: 9.1 - 12.6}

Jim Kembel, Representing the Chiefs of Police Association and the Montana Police Protective Association, wanted to stand in support of the bill. He asked for favorable consideration by the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 12.6 - 13}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. PERRY assumed that the law would apply to cell phones, on star, and GPS navigation systems.

SEN. SHOCKLEY thought that it would.

SEN. PERRY asked if this bill would mean that a person couldn't be tracked by cell phone or the other systems without a court order.

SEN. SHOCKLEY replied that in order to tap a phone, even a cell phone, law enforcement needs to have a court order.

SEN. PERRY commented that cell phones have chips in them which enable them to be tracked at all times.

{Tape: 3; Side: A; Approx. Time Counter: 13 - 15.2}

SEN. PERRY redirected his question to Mr. Spanogle.

Mr. Spanogle clarified that **SEN. PERRY** was talking about the GPS modules that have been placed in the last few years. He was not familiar with the GPS cell phone programs. He remarked that the reason that they wanted to implement the bill is because it states that GPS trackers and other electronic tracking devises cannot be used without the individuals consent or a court order. He believed that in order for law enforcement to use the GPS tracking devices in cell phones, they must receive the company's consent.

SEN. PERRY presented the scenario of an individual getting into a taxi cab which had a tracking device on it for the use of the

taxi company. He wanted to know if it would be a violation of this bill for law enforcement to track the individual using the taxi company's GPS device.

Mr. Spanogle replied that they could if they obtained the consent of the taxi driver. He deferred the question to **SEN. SHOCKLEY.**

SEN. SHOCKLEY responded the bill did not impair the right of a taxi company or anyone else who wanted to place a tracking device on their property. He stressed that the bill provided the way that law enforcement would have to follow if they were going to place a tracking device on another person's property. He cited Line 13, Page 1. He likened the tracking of individuals through their cell phones to getting information on an individual's phone record or tapping their phone. Either way he felt that there would have to be a warrant in order to get the information.

{Tape: 3; Side: A; Approx. Time Counter: 15.2 - 20}

SEN. LASLOVICH wanted to know how the bill would deal with a law enforcement agency which did not receive a court order to place a tracking device on an individual's property.

SEN. SHOCKLEY responded that if the cops break the law they would get punished.

SEN. LASLOVICH asked if everyone involved in the violation of the bill would be subject to the penalties in Subsection 3.

SEN. SHOCKLEY thought that **SEN. LASLOVICH** might have overstated things. He thought that the officers themselves would be punished alone, unless they were conspiring with their superiors.

{Tape: 3; Side: A; Approx. Time Counter: 20 - 21.6}

CHAIRMAN WHEAT understood that the thrust of the bill was to allow law enforcement to place a tracking device on someone they suspect is engaging in criminal activity.

Mr. Connor agreed essentially to **CHAIRMAN CROMLEY'S** comment. He perceived the bill as codifying, in an attempt to limit law enforcement's ability to place a tracking device to a specific set of circumstances or facts. He understood from talking to various agencies that the process was going on currently. They were trying to limit the actions that were already taking place.

CHAIRMAN WHEAT followed up by asking if they didn't have restrictions in place with the search warrant law.

Mr. Connor explained that this bill would provide specifics where the search warrant law leaves generalities.

CHAIRMAN WHEAT cited Page 1, Line 11. He felt that the language "a person" was very broad. He suggested amending the language to make it "law enforcement officers" or "law enforcement officials."

Mr. Connor was willing to make the change.

CHAIRMAN CROMLEY asked if Mr. Connor was really advocating punishing, fining, and possibly imprisoning law enforcement officers that may violate a bill like this.

Mr. Connor responded that the remedies would be that the court would throw out any evidence that might be illegally obtained. By applying a further sanction, saying that there will be consequences if there are violations, would not hurt anything in his opinion.

{Tape: 3; Side: A; Approx. Time Counter: 21.6 - 25}

CHAIRMAN WHEAT wondered if the associations which Mr. Kembel was representing were in favor of being punished and fined if they happened to violate the bill.

Mr. Kembel replied that they were in support of this section of the bill if it applied to violations which were done knowingly and willingly.

{Tape: 3; Side: A; Approx. Time Counter: 25 - 25.5}

Closing by Sponsor:

SEN. SHOCKLEY responded to **CHAIRMAN WHEAT'S** question on Lines 10-12. He noted that an individual, who was not a policeman, could want to track another person. He explained that the bill would apply to such individuals. He stated that the main purpose of the bill was to regularize what is currently in existence so that it would be clear to the police what the rules are.

{Tape: 3; Side: A; Approx. Time Counter: 25.5 - 26.3}

CHAIRMAN WHEAT closed the hearing on SB 429 and opened the hearing on SJ 19.

HEARING ON SJ 19

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on **SJ 19,** Resolution on the USA PATRIOT Act.

SEN. ELLIOTT first became concerned when he found out that he was not privileged to information on his wife's health but that the doctor was obligated to inform the government if they asked. He commented that no one was in the legislature that did not love their country and their state. However, they all also love the liberties which come with their citizenship. He provided a handout with quotes addressing the Patriot Act.

He asserted that the Patriot Act allowed the federal government to access, without judicial approval, personal information that in the absence of compelling information should be private. In order to access this information, the government does not need to show probable cause nor have permission from a judge. The person or business from which the information was obtained cannot inform the person or persons about whom the request was pertinent that someone has made a request to look at their records. He informed the Committee that the government could also search premises without notifying the subjects or the owners of the premises. He felt that if these examples applied merely to terrorism, it might be less egregious but they apply to all criminal activities.

He explained to the Committee the purpose of the resolution. He indicated that it was to state that the policy of the state of Montana and the legislature of Montana was to oppose the unconstitutional provisions of the Patriot Act. It would ask state agencies to not implement or participate in such unconstitutional acts. The resolution would ask the Attorney General of Montana to review the activities of the federal government and ask for a tally of the investigations that they have made. It would ask schools and universities to inform those whom information has been collected about. It would ask libraries to post a notice stating that the public's information was open to scrutiny and if it is scrutinized the library would not be able to inform the individual. He reserved the right to close on the bill.

EXHIBIT(jus00a11)

At this time, Wayne A. Lewis' written testimony was handed out.

EXHIBIT(jus00a12)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 8.7}

Proponents' Testimony:

Paul Edwards, Speaking for the Montana Patriot Committee, attested that the resolution would put Montana on record against the most threatening and invasive elements of the Patriot Act. He cited a few sections of the Patriot Act which violate the rights of American citizens. He informed the Committee that their intent in drafting this resolution was to set a higher standard for civil liberties and protections in Montana. He indicated that they were asking that Montana forbear to implement those elements of the Patriot Act which flagrantly and abusively aggregate or subvert the rights of citizens guaranteed under the State and federal constitutions. This means that Montanans are sending a message to the federal government that they are not willing to accept or tolerate the erosion and dismantling of the nation's and state's constitution. He informed the Committee that seven cities and counties in Montana have passed resolutions which are similar to SJ 19.

{Tape: 3; Side: B; Approx. Time Counter: 8.3 - 14.2}

Paul Cartwright, City Commissioner from Helena, brought a copy of the city's resolution for the Committee. He urged the Committee to pass the resolution.

EXHIBIT(jus00a13)

{Tape: 3; Side: B; Approx. Time Counter: 14.2 - 15.3}

Bernadine Abbott-Hoduski, Past Chair of the Montana Library Association Government Affairs Committee and the Past Chair of the American Library Association, informed the Committee that the library community around Montana was opposed to certain aspects of the Patriot Act. The Montana Library Association has passed a resolution opposing the Patriot Act and almost all of the country's state library associations have passed similar resolutions. She encouraged the Committee to adopt SJ 19.

{Tape: 3; Side: B; Approx. Time Counter: 15.3 - 16.8}

John Shontz, an Advocate for the Public's Right to Know, he discussed many countries where civil liberties have been abused. He felt that common law civil liberties have been violated by this bill. He mentioned that two years ago a civil liberty was violated in Montana. His final comment was that 30 years ago there was a law passed, called the RICO Statute. He indicated that it had the same provision as the Patriot Act, that it would

only be used for specific incidences. He asked the lawyers in the room to think of all the different areas to which the RICO Statute has been applied since then. He strongly urged the Committee to support the resolution.

{Tape: 3; Side: B; Approx. Time Counter: 16.5 - 21.5}

Gene Fenderson, Representing Montana Progressive Labor Caucus, stood in strong support of the resolution. He encouraged a do pass recommendation.

{Tape: 3; Side: B; Approx. Time Counter: 21.5 - 22}

Derrick Goldman, Citizen of Missoula County, informed the Committee that the Patriot Act granted pen register and tap and trace authority. He explained that pen register is where the government can record numbers of incoming calls and that tap and trace is where they can record outgoing numbers. He indicated that this authority has been expanded to e-mail, with no probable cause and no judicial oversite. He asserted that the Patriot Act would also allow for sneak and peek searches, where the subject of a search does not know that they are in fact the subject of a search. Both of these provisions are exempt from the sunset clause provision of the Act. He claimed that the Act shifted the delicate balance of power towards the Executive Branch and away from congressional oversite. In his opinion there has not been a proper public debate about the exchange of securities for civil liberties.

He felt that it was important to understand the Patriot Act in light of a larger policy context. He reported that on May 30, 2002, the Attorney General issued the new guidelines on terrorism, racketeering, and criminal enterprise. For the first time since 1996, these guidelines eliminated administrative approval for investigation of political and religious organizations. Another program which was implemented was the Total Information Awareness Office. This office included the capacity to store over 40 web-pages on each of the world's 6.2 billion people. There is also a program which is called the Human I.D. Program which would be able to identify individuals by their gait. The third program he discussed was the Matrix. He informed the Committee that the Matrix was a large computer software and database that they claim has the ability to predict a person's tendency to commit a crime. In conclusion he thought that some of the alarming aspects of the policy is that there is a strong outsourcing component.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 3.3}

Sydny Taber, provided a written version of her testimony. She hoped that the Committee would support the resolution.

EXHIBIT(jus00a14)

{Tape: 4; Side: A; Approx. Time Counter: 3.3 - 3.7}

SEN. SHOCKLEY expressed that it was not good practice for a member of the Committee to testify but he felt that he had information which was valuable to others in the room. He had spent a long time in research on the issue. He addressed the Intelligence Court in Washington D.C. The Court is made up of three district judges from the D.C. circuit who serve for one year. These judges are sworn to secrecy on their actions.

{Tape: 4; Side: A; Approx. Time Counter: 3.7 - 7}

SEN. CURTISS stood in strong support of the resolution. She felt that the resolution was very necessary.

{Tape: 4; Side: A; Approx. Time Counter: 7 - 7.4}

Wayne Lewis, Citizen of Helena, felt that Montana needed something stronger then the resolutions passed in the cities and counties. He felt that this resolution gave Montana's legislature the choice to express its civil liberties. He urged a do pass for SJ 19.

{Tape: 4; Side: A; Approx. Time Counter: 7.4 - 8.6}

Pat Hennessey, Nutritionist, provided a written copy of her testimony. She was a member of the committee which drafted the resolution in Helena. She expressed that passing the state resolution was the right thing to do.

EXHIBIT(jus00a15)

At this time, **SEN. MANGAN** arrived at the hearing.

{Tape: 4; Side: A; Approx. Time Counter: 8.6 - 10}

Matt Elsaesser, Citizen of Helena, thought that Americans needed to continue to realize the broad protection of civil liberties they have for security and freedom. He thanked the Committee for considering the resolution and urged a do pass recommendation.

{Tape: 4; Side: A; Approx. Time Counter: 10 - 10.7}

Walter Knight, Resident of Helena, read a statement from his daughter, Katherine Knight. She said in her letter that the Patriot Act had been passed without adequate research or understanding. She mentioned the discussion which was carried out by the citizens of Helena. She expressed that the Patriot Act was not required to investigate or prosecute terrorist cells or people engaged in criminal acts. She felt that it sought to extend the powers of the national government, treating innocent people as criminals and violating their constitutional rights. She stated that the Patriot Act was undemocratic and that by passing a resolution Montanans would be sending a message that they are not willing to surrender their constitutional rights.

He added his own comments after reading his daughter's testimony. He called the Patriot Act un-American. He mentioned some of the provisions which he felt were unsatisfactory. He asked the Committee to take a stand in support of the resolution.

{Tape: 4; Side: A; Approx. Time Counter: 10.7 - 13.7}

Scott Crichton, Executive Director of the American Civil Liberties Union, reported that many of the pieces of legislation which Congress had addressed after September 11 were infringing on individual liberties and rights. He mentioned that the House was having hearings but that the Senate was following with the President in seeking a broad, blanketed authority to restrict civil liberties in the name of national security. He informed the Committee that "patriot" stood for "uniting and strengthening America as Providing the Appropriate Tools Required to Intercept and Obstruct Terrorism." He noted that there were 376 communities around the country, including New York City, who have passed resolutions against the Patriot Act. He thought that SJ 19 provides the chance for the legislature to work on a nonpartisan basis.

{Tape: 4; Side: A; Approx. Time Counter: 13.6 - 20.9}

SEN. O'NEIL talked about the Whitefish resolution. He wanted to stand in support of SJ 19.

{Tape: 4; Side: A; Approx. Time Counter: 20.9 - 21.6}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ELLIOTT handed out a letter from **U.S. REP. BUTCH OTTER (R) ID.** He expressed that individuals who really want to do good and uphold the law can, at times, lose sight of the fact that Americans have fought long and hard to get these freedoms. He stated that the "so called Patriot Act" was not American. He left the Committee with another quote from Supreme Court Justice William Douglas.

EXHIBIT(jus00a16)

{Tape: 4; Side: A; Approx. Time Counter: 21.6 - 25}

Executive Action on SJ 19

Motion/Vote: SEN. CROMLEY moved that SJ 19 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 1.2}

Executive Action on SB 430

Motion: SEN. MCGEE moved that SB 430 BE CONCURRED IN.

Motion/Vote: SEN. MCGEE moved that SB 430 BE AMENDED. Motion carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.

EXHIBIT(jus00a17)

{Tape: 4; Side: B; Approx. Time Counter: 1.2 - 2.8}

Motion: SEN. MCGEE moved that SB 430 BE CONCURRED IN AS AMENDED.

Discussion: SEN. CROMLEY stated that he was opposed to the bill because he saw it as discriminating against an individual purely on the basis of age. He thought that an elderly person with an infirmity has the ability to be excused under the current law and did not see any reason for this bill.

SEN. PERRY spoke with **SEN. CROMLEY.**

SEN. MCGEE responded to **SEN. CROMLEY'S** concern. He concurred that 70 years of age was an arbitrary number. He believed that people reach a point where their body is no longer functioning properly and when that happens they do not want to have to

explain it in a public venue such as the court. He did not want to have to place people in that situation unless they needed to be there. He expressed that it was mandatory, not regulatory, and therefore not discrimination.

{Tape: 4; Side: B; Approx. Time Counter: 2.8 - 5.4}

SEN. PERRY asked **SEN. MCGEE** if, in his opinion, this bill were to pass, many elderly individuals would want to utilize it. He then asked if they did decide to use the bill, would that not limit the pool of individuals, age 70 and over, who would be available for jury and thus limit their available wisdom.

SEN. MCGEE replied if the first "if" of **SEN. PERRY'S** question was valid, then the subsequent ifs would be as well. However, he did not feel that the first "if" was valid. He felt that a number of people 70 and older would not want to be out of the pool.

{Tape: 4; Side: B; Approx. Time Counter: 5.4 - 6.8}

CHAIRMAN WHEAT gave **SEN. PERRY** the perspective of someone who had chosen juries. It had been his experience that on the questionnaire people have the chance to inform the court of impairments. In most cases the people who show up have to discuss the answers to the questionnaire. He thought that this bill would help people who have a problem not have to deal with the inconvenience of reporting to the jury pool.

SEN. PERRY did not see how Line 12 could not apply to everyone.

{Tape: 4; Side: B; Approx. Time Counter: 6.8 - 8.9}

SEN. CROMLEY pointed out that 70 was purely an arbitrary age.

SEN. SHOCKLEY responded to **SEN. PERRY.** He noted that one of the features of the bill was to make an affidavit permanent. This would cut down on administration and make things more simple.

Vote: Motion carried 8-4 by roll call vote with SEN. CROMLEY, SEN. LASLOVICH, SEN. O'NEIL, and SEN. PERRY voting no and SEN. ELLINGSON voting aye by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 8.9 - 11.3}

ADJOURNMENT

Adjournment: 11:27 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

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BRITT NELSON, Transcriber

MW/mp/bn

Additional Exhibits:

EXHIBIT(jus00aad0.PDF)