MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 2, 2005 at 8:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jon Ellingson (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 330, 1/28/2005
Executive Action: SB 251, SB 282

HEARING ON SB 330

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 39, CLANCY, opened the hearing on **SB 330,** Revise parental notice of abortion act.

SEN. GRIMES provided the Committee with background information that had brought about the introduction of SB 330. He then distributed an information sheet showing the types of laws in other states which are similar to the proposed law of SB 330. This information sheet is attached as Exhibit 1. **SEN. GRIMES** then explained the need for the judicial waiver process for young girls who do not feel that they could talk with a parent prior to obtaining an abortion. He then talked about the court decisions which had made the determination the present law was unconstitutional. **SEN. GRIMES** informed the Committee that approximately 40 young girls a year came to Montana from neighboring states for abortions because there is no parental consent law here. He then provided the Committee with the written testimony of **Sharon Hoff,** deceased, which had been presented in 1995 in support of the parental consent law. **Ms. Hoff's** written testimony is attached as Exhibit 2. **SEN. GRIMES** emphatically informed the Committee that all they were trying to do was amend that portion of the Parental Notification Law with regard to the judicial waiver process. He then read that portion of the law as it would read after being modified. He concluded saying that should SB 330 pass, the judge would only have to determine if the minor was competent and the abortion would be in her best interest. He urged the Committee to pass SB 330.

EXHIBIT(jus26a01)
EXHIBIT(jus26a02)

CHAIRMAN WHEAT asked **SEN. GRIMES** if the entire Montana Abortion Control Act had been declared unconstitutional by Judge McCarter. **SEN. GRIMES** replied that in the first place there had been a severability clause and secondly he did not feel it was clear and he did not think a conclusion could be made as to whether it was clear or not. He went on to say the point was they were trying to respond to the primary concern that this violates Montana's strong privacy clause in the constitution. He added that there was some language in Judge McCarter's decision that was not appealed and was broader. He then explained that it had not been challenged solely because of the privacy argument.

CHAIRMAN WHEAT asked **SEN. GRIMES** if he was trying to make the bill constitutional in his own mind. **SEN. GRIMES** responded that he was trying to make it constitutional with the best input they

could get from Montana's Constitution. He went on to say that this could be challenged again in light of the constitution far beyond the district court level.

Proponents' Testimony:

Eric Schiedermayer, Director, Montana Catholic Conference, stated that they continued to support this legislation. He pointed out that there had been some new developments since the mid- and late-90s that would also come to bear. One of those things discovered was that states that had enacted notification laws have experienced a significant drop in teen abortions and teen pregnancies. He then talked about the long-term emotional effects of abortion on a growing number of women. **Mr. Schiedermayer** concluded saying the government needed to support parental responsibility.

Gregg Trude, Executive Director of Right to Life in Montana, stated that SB 330 was about parents being involved in decisions that their young girls make. He expressed his concern of being before the Committee trying to convince them that parents needed to be involved when they young daughter is contemplating an abortion. He then discussed the statistics regarding the abortion rate of young girls and the number of out-of-state minors coming to Montana to obtain abortions.

Julie Millam, Montana Family Coalition, spoke in support of SB 330. **Ms. Millam's** written testimony is attached as Exhibit 3.

EXHIBIT(jus26a03)

Harris Himes, Montana Family Coalition, expressed his concerns that SB 330 would also be challenged and declared unconstitutional. He stated that he would support SB 330 from the legal standpoint in addition to the arguments that other proponents had made.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.2}

John Fenlason, East Helena resident, stated that as a parent of young children he fully supported SB 330. He went on to talk about his responsibility as a parent in doing what was right for his children. He encouraged the Committee to follow those states surrounding Montana that have a parental notification or consent law, and pass SB 330. **Me. Fenlason** provided the Committee with a copy of his wife's written testimony, which is attached at Exhibit 4.

EXHIBIT(jus26a04)

Shannon Bennett, Hamilton, expressed her concerns with the bill because of the fact that parents should be responsible for their children. **Ms. Bennett** read a list of complications that could arise from having an abortion. She then quoted information from the London Medical Journal regarding recipients of abortion being more likely to commit suicide than the general population of women. She concluded by urging the Committee to pass SB 330.

Jill DeClancy, representing Montana Eagle Forum, stated that she would like to go on record as supporting SB 330.

Gwendoline Coon, expressed her support for SB 330.

Becky Stockton, Helena, representing herself and her daughter, stated that her daughter felt it was very important for parents being involved in the children's lives regarding what is right and what is wrong in this type of situation. She went on to say that her daughter knew that her parents had been completely involved in her life in everything she did to make sure she was safe. **Ms. Stockton** expressed her belief that her 16- almost 17-year-old daughter would not be emotionally strong enough to handle a situation which would result in an abortion. She further stated that she knew that in such a situation her daughter would come to her for help. She then talked about being responsible for any medical costs incurred should there be complications related to an abortion. She concluded saying, as a parent she needed to be know what was going on so that she could help her children, therefore, she stood in strong support of SB 330.

Rachel Roberts, Montana Family Foundation, spoke in support of SB 330. **Ms. Roberts'** testimony is attached as Exhibit 5.

EXHIBIT(jus26a05)

Opponents' Testimony:

Jan Van Riper, ACLU Montana, testified in opposition to SB 330. Ms. Van Riper talked about the Wicklund decision that had been rendered by Judge Dorothy McCarter. She read an excerpt from Page 9 of that decision. She distributed copies of the Wicklund decision to the Committee and urged them to read it. The Wicklund decision is attached as Exhibit 6.

EXHIBIT(jus26a06)

Jeri Duran, Planned Parenthood of Montana, stated that she opposed SB 330. She went on to talk about statistics they had compiled from the studies they had conducted. She stated that

according to the statistics, 88% of all young women, that had come to their clinic, had included at least one of their parents in their decision. **Ms. Duran** explained the procedures the clinic goes through before they proceed with an abortion and the forms that have to be filled out. **Ms. Duran** provided a copy of their consent form and protocol list to the Committee. These forms are attached as Exhibit 7 and Exhibit 8.

EXHIBIT(jus26a07)
EXHIBIT(jus26a08)

Kate Cholewa, Montana NARAL, Pro Choice Montana, spoke in opposition to SB 330. **Ms. Cholewa's** written testimony is attached as Exhibit 9.

EXHIBIT(jus26a09)

Georgia Lovelady, concerned citizen, talked about the statistics regarding having an abortion and giving birth and the fact that the fatality rate was higher when giving birth. She went on to talk about the choices that parents do not get to make for their children. She then stated that she felt the aim of the bill was to discourage minor girls from seeking a legal abortion. She continued saying, that it had nothing to do with their medical safety or guiding their lives. She urged the Committee to vote no on SB 330.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Mr. Schiedermayer** if there was any occasion in which an abortion would be in the best interest of the mother according to the Catholic Church. **Mr. Schiedermayer** responded that he was correct. He went on to say if there was an ectopic pregnancy or pregnancy that was going to die in the tube, it would not be an abortion, it would be an attempt to save the mother's life.

SEN. CROMLEY asked **Mr. Schiedermayer** if he had a copy of the bill. **Mr. Schiedermayer** responded the he did.

SEN. CROMLEY asked **Mr. Schiedermayer** to look on Page 1, Lines 29 and 30. **SEN. CROMLEY** then asked **Mr. Schiedermayer,** if there was a Catholic Judge that was faithful to his faith, would there be any occasion in which he or she could determine that an abortion would be in the best interest of the mother. **Mr. Schiedermayer** replied that if the decision was being made based on the Catholic

faith, which in his point of view was not the case, he would concur.

SEN. MCGEE asked **Ms. Cholewa** if she would get the Committee the references she had made to the various medical associations. **Ms. Cholewa** responded that she would give a copy to the Secretary. A copy of the references is attached as Exhibit 10.

EXHIBIT(jus26a10)

CHAIRMAN WHEAT asked **SEN. GRIMES** why he had stricken "sufficiently mature" and inserted the word "competent" on Line 24. **SEN. GRIMES** responded that it was done solely to make it was a lower bar. He went on to say that competent was an easier or lower standard for judges to utilize.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 25}

CHAIRMAN WHEAT asked **SEN. GRIMES** to explain how they were using the word "competent" when under age, a minor was incapable of giving consent, with regard to the statutory rape statutes. **SEN. GRIMES** responded that even though the minor girls might not be aware of everything, they wanted to make sure that they were establishing a level that did not violated their right to privacy.

CHAIRMAN WHEAT asked **Ms. Van Riper** if she saw a problem with the use of the word "competent" as opposed to the term "sufficiently mature". **Ms. Van Riper** replied that she did not see a huge difference between the two terms. She went on to say that apparently Greg Petesch had felt that the word "competent" was a better word to use. She then stated that she felt there was a worry since the statutory rape provision states that anyone under 16 is not competent.

Closing by Sponsor:

SEN. GRIMES remarked that they were going to have to take a look at the definitions that apply to the Title versus the statutory rape Title. He then talked about the Wicklund case and the Armstrong case and how the those decisions apply to SB 330. **SEN. GRIMES** went on to discuss a similar law passed by South Dakota and the reason they passed the legislation. He concluded saying that by passing SB 330 they would be establishing a threshhold and it would be good for what is morally and ethically right.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 27.2}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.3}

EXECUTIVE ACTION ON SB 251

Amendments to SB 251 were passed out to the Committee and are attached as Exhibit 10.

EXHIBIT(jus26a11)

Motion: SEN. O'NEIL moved that SB 251 DO PASS.

Discussion: Valencia Lane explained amendments.

Motion: SEN. O'NEIL moved that paragraphs 2 and 3 of AMENDMENT NO. SB021501.AVL BE ADOPTED.

Discussion: SEN. O'NEIL stated that this amendment would make it so that an action would have to be filed in a timely manner before an individual would have a right to appeal the denial of a jury trial.

Vote: Motion that paragraphs 2 and 3 of AMENDMENT SB021501.AVL BE ADOPTED carried unanimously. SEN. ELLINGSON voted aye by proxy.

Motion: SEN. O'NEIL moved that paragraphs 1, 4, 5 and 6 of AMENDMENT NO. SB025101.AVL BE ADOPTED.

Discussion: SEN. SHOCKLEY and **Ms. Lane** discussed whether or not municipal courts would appeal to the district court or the Supreme Court.

SEN. CROMLEY stated that an appeal from city or justice court would go to the district court.

SEN. MCGEE remarked if they were to amend Title 25, Chapter 12, as to the way the bill is currently written it would go from district court to the Supreme Court. He went on to say if they were to amend Chapter 12, 30 and 33 it would cover all of the different courts. He then asked **SEN. O'NEIL** if there was any reason why they would want to include Chapter 12, which is the district court. He then asked if there was any time when a district court would deny a jury trial in a civil action that was timely requested. **SEN. O'NEIL** replied that there were times that they did.

CHAIRMAN WHEAT stated that under normal circumstances individuals have a right to a jury trial. He went on to say that in some instances people don't ask for a jury trial immediately, but at a later time they decide that they do want a jury trial. He further stated if the request was a made in a timely manner, the

request would be granted, however, if it was late in the case it would most likely be denied.

SEN. O'NEIL indicated that he did know of two cases where a request for a jury trial was denied. He indicated that in both instances it had involved cases he was involved in. He then explained what had happened when he had been denied the right to a jury trial.

SEN. CROMLEY asked if the amendment would make the bill apply only to courts of limited jurisdiction. **SEN. O'NEIL** responded that he was correct.

SEN. SHOCKLEY stated that he wanted the bill to apply only to courts of limited jurisdiction. He went on to say that he could see problems if it applied to district courts.

Vote: Motion that paragraphs 1, 4, 5 and 6 of AMENDMENT NO. SB025101.AVL BE ADOPTED carried unanimously with SEN. ELLINGSON voting aye by proxy.

Motion: SEN. O'NEIL moved that SB 251 DO PASS AS AMENDED.

Discussion: SEN. O'NEIL stated that SB 251 would allow an appeal from a justice court or city court to the district court if a jury trial had been denied.

SEN. CROMLEY stated that he did not know for sure if a problem did exist in the city courts, justice courts, or municipal courts, therefore, he could not support the bill.

SEN. O'NEIL gave an example of an instance where a jury trial had been denied. He concluded saying it was a good bill and hoped it would pass.

Vote: Motion that SB 251 DO PASS AS AMENDED failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye and SEN. ELLINGSON voting no by proxy.

Motion/Vote: SEN. WHEAT moved that SB 251 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 30.7}

EXECUTIVE ACTION ON SB 282

There was a discussion as to whether or not the Committee was prepared to take action on SB 282, possible amendments, and as to how a government agency could be fined.

Motion: **SEN. MANGAN moved that SB 282 DO PASS.**

Motion/Vote: **SEN. SHOCKLEY moved THAT ON PAGE 2, LINES 4 AND 5 STRICKEN AND ANY RENUMBERING NECESSARY BE AFFECTED. Motion carried unanimously with SEN. ELLINGSON voting aye by proxy.**

Motion: **SEN. SHOCKLEY moved that SB 282 DO PASS AS AMENDED.**

Discussion: **SEN. MANGAN** expressed his disappointment that the teeth had been taken out of SB 282. He further stated that this was an issue of vital state interest and asked **CHAIRMAN WHEAT** if the Law and Justice Interim Committee would obtain reports regarding the status of those local governmental agencies that have not fulfilled their duties.

SEN. PEASE asked if there was any possibility of making a Committee bill requesting an interim study of the problem. He went on to say, if the governmental entities were not adhering to rules regarding racial profiling, it needed to be addressed.

CHAIRMAN WHEAT responded that it would take 3/4 of the Committee to approve such a request.

SEN. SHOCKLEY stated that although the bill might not have any teeth, it still had merit.

SEN. O'NEIL asked if anyone on the Committee had any idea what funds the State was giving to the law enforcement agencies. **CHAIRMAN WHEAT** replied that he was not sure how it was done, however, he was sure that there was a bill that dealt with how they were funded.

SEN. SHOCKLEY stated if they were to put in some sort of an enforcement mechanism it would cost a fortune. He went on to say he felt SB 282 was a road map and he was all for it.

SEN. MCGEE asked **CHAIRMAN WHEAT** on Page 2, Line 2, if he could define "cultural sensitivity" and "bias-based policing" or if they were defined in code. **CHAIRMAN WHEAT** deferred to **Ms. Lane** for a response. **Ms. Lane** explained that the language had been requested by attorneys from the Attorney General's Office as they are currently teaching the courses at the Academy. She went on to say that she did not know that the language was actually defined in code.

SEN. MANGAN asked **Ms. Lane** if they could put something into the bill that would say that there would be reports to the Law and Justice Interim Committee that would sunset after the next session. **Ms. Lane** replied that she felt they could put language into the bill that would tell the Attorney General to make a report to the 2007 Legislature on implementation of the section.

SEN. CROMLEY suggested adding a section to the bill which would say, "at the request of the Law and Justice Interim Committee the Attorney General shall report on the degree of compliance with this statute." He further stated that this would leave it open for the Law and Justice Interim Committee to request updates from the Attorney General's Office with regard to compliance thereby not creating a fiscal note.

SEN. MANGAN indicated that he agreed with **SEN. CROMLEY.**

CHAIRMAN WHEAT asked **Ms. Lane** if she understood the conceptual amendment. **Ms. Lane** asked for clarification regarding adding a sunset clause. She then asked if they wanted the amendment to be a subsection of the appropriate section of the law. She went on to say that as she understood that the amendment would be a new Subsection 8, on Page 2, Line 14.

SEN. MCGEE stated that he felt they needed to tell the Law and Justice Interim Committee and the Attorney General's Office to, in fact, report to the 2007 Legislature with regard to the implementation of this section of law.

SEN. CROMLEY and **SEN. MCGEE** discussed the precise wording for the conceptual amendment.

SEN. CROMLEY moved to conceptually amend SB 282 by adding a new Subsection 8 on Page 2 which would read, "the Department of Justice shall periodically report to the Law and Justice Interim Committee regarding the degree of compliance with this section."

Discussion: **SEN. SHOCKLEY** stated that it should be numeral 7 not 8 because they had taken out Section 5.

Vote: **Motion that SB 282 BE CONCEPTUALLY AMENDED BY ADDING NEW SECTION 7 carried unanimously by voice vote with SEN. ELLINGSON voting aye by proxy.**

SEN. SHOCKLEY suggested that SB 282 be amended on Page 2 by taking out (4).

CHAIRMAN WHEAT responded that they had heard testimony in that they were already teaching a course on racial profiling at the Law Enforcement Academy.

Motion: **SEN. SHOCKLEY moved to strike Subsection 4 on Page 2 of SB 282.**

Discussion: **SEN. PEASE** indicated that he agreed with **SEN. SHOCKLEY.**

SEN. MANGAN stated the testimony had indicated that new officers were being trained. He went on to say what this section was doing was saying, the current officers needed to be trained as well as new officers. He continued saying that local governments needed to have a policy in place that would say that training would occur. He concluded saying that he would oppose the amendment.

CHAIRMAN WHEAT expressed his opposition to the amendment.

SEN. MOSS stated that she could not support the amendment because she believes that it is important that law enforcement officers be trained in the area of cultural sensitivity.

SEN. CURTISS expressed that with the border so close they should remember that law enforcement officers could be dealing with high profile illegal aliens.

CHAIRMAN WHEAT asked **SEN. CURTISS** if she made her comments in support of the amendment or in opposition to it.

SEN. CURTISS replied that she made the comment because she had a good deal of empathy with **SEN. PEASE** and his concerns, however, she also felt they needed to broaden the bill to encompass individuals that could be very dangerous to our society.

SEN. PERRY asked for a restatement of the amendment.

CHAIRMAN WHEAT stated that the amendment was to strike Subsection 4 on Page 2.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 27.7}

SEN. PERRY asked if **SEN. PEASE** supported the amendment.

CHAIRMAN WHEAT responded that **SEN. PEASE** did not know if he supported the amendment or not. **CHAIRMAN WHEAT** explained what he thought **SEN. PEASE'S** concerns were. That being the cultural

sensitivity and bias-based policing may not necessarily cast the net broad enough to take in all of the various cultural differences among the various Indian tribes in the State. He continued saying that, in addition, it may be too narrow to take in recognition that individuals might be coming across the border that we should be paying attention to that could represent a danger to our society.

SEN. PERRY asked if they were teaching cultural sensitivity and bias-based sensitivity at the academy. He went on to say that he had not heard any verification from anyone that these were the words used to describe "that" which is being taught at the academy. **CHAIRMAN WHEAT** responded that he believed that **Pam Bucy** had indicated they were teaching this sort of information at the academy. He went on to say, when he said "that" he did not mean it in the sense that it specifically meant cultural sensitivity and bias-based policing. He further stated that **Ms. Bucy's** testimony had encompassed that concept.

SEN. PERRY addressed **CHAIRMAN WHEAT** and stated, when they were talking concepts or ideas and placing words in law, he wanted to be specific about that which they were placing in law. **CHAIRMAN WHEAT** replied that **Ms. Lane** had already told them that these words were the words that "they", the people at the Justice Department, wanted in here. He further stated that he assumed there was a reason for it. He continued saying that they did not have a definition and that he understood the concern regarding being precise with the words they used.

SEN. MANGAN stated that by adding the language they would be ensuring that the program that was put in place would be reviewed and double checked by the individuals in law enforcement.

SEN. PEASE stated that after hearing what was going on in the department he felt they did need to keep the bill intact as a reminder to continue the training process.

SEN. O'NEIL stated that he did not feel that the bill went far enough.

SEN. SHOCKLEY stated that he wanted a road map as he was afraid that the statute could be misused and he did not think anyone needed to be too culturally sensitive to not arrest someone.

Vote: On motion to amend SB 282 by striking Subsection 4 failed 5-7 with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY and SEN. SHOCKLEY voting aye and SEN. ELLINGSON voting no by proxy.

SEN. MCGEE expressed his opposition to SB 282 and explained why he felt that way.

SEN. SHOCKLEY talked about testimony they heard in the past and at the hearing on SB 282. He concluded by saying that they had heard the testimony and people were mistreated because of racial profiling.

SEN. O'NEIL stated that he would support the bill and indicated that he felt they could make it better.

SEN. CURTISS stated that she would vote against the bill because it would place an unfunded mandate on local jurisdictions and with the additional wording it would create a new cause of action.

SEN. PERRY indicated that he had discussed a potential amendment with **Ms. Lane** that could work.

CHAIRMAN WHEAT stated that he was going to exercise his discretion to pull the bill from Executive Action for further amendments until the next day. He went on to say that the bill was already in law and all they were trying to do was strengthen it because of the proponents who had testified.

SEN. SHOCKLEY withdrew his motion to, "do pass as amended".

{Tape: 3; Side: A; Approx. Time Counter: 0 - 16.6}

ADJOURNMENT

Adjournment: 10:18 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus26aad0.PDF)