MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on January 14, 2005 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:
Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 112, 1/11/2005; SB 82, 1/11/2005; SB 29,1/11/2005
Executive Action: SB 121, SB 60, SB 94, SB 82

HEARING ON SB 112

Opening Statement by Sponsor:

SEN. DAN HARRINGTON, SD 38, opened the hearing on **SB 112,** Revise guardianship law.

The bill allows a legal guardian to petition the dissolution of a marriage or legal separation on behalf of the ward. The bill also requires a hearing where the district court would determine whether it is in the best interest of the ward to get a divorce. Several serious cases have recently arisen. In 2003 the Montana Supreme Court ruled that a legal guardian does not have statutory authority to seek a divorce or legal separation for his or her ward. The court stated that nothing in the language in Section 72-5-321 grants the guardian of an incapacitated person this authority.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}

Proponents' Testimony:

Rick Bartos, Adult Protective Agency, Department of Health and Human Services (DPHHS), investigates allegations of abuse, neglect, and exploitation of Montana's elderly and disabled. Currently there are approximately 220 guardianships for which they are responsible. There are approximately 1000 guardianship cases a year throughout Montana that are non-governmental guardianships. When an individual is incapacitated with little or no resources, they could become victims of financial exploitation. Medicaid cannot extend eligibility on the assumption that the person is eligible and may later seek recovery. There must be a disclosure and spend-down of marital assets for Medicaid to apply. The evidentiary standards need to be clear so that marital assets can be separated and used for the abandoned spouse.

{Tape: 1; Side: A; Approx. Time Counter: 8 - 11}

Anita Roessman, Montana Advocates Program, supports the bill and amendments to change the standards of guardianship. The problem for courts and families is how to exercise the rights of an incapacitated person.

{Tape: 1; Side: A; Approx. Time Counter: 11 - 17.8}

John Flink, Association of Hospitals and Nursing Homes and Health Care Providers, felt the bill very appropriate for residents in nursing homes and was in favor of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 17.8 - 18.4}

Opponents' Testimony:

Jenifer Balcerzak, representing himself, felt the language in SB 112 allows too much authority to a ward for exploitation through the court. She suggested the bill be amended to read abandonment, actual abuse that you can prove, neglect, or exploitation, to further limit the possibility that someone can come in and take financial assets that belong to an individual. She did not think one individual should be able to make that decision of behalf of the incapacitated person.

{Tape: 1; Side: A; Approx. Time Counter: 18.4 - 24.9}

Kathy Coey, representing herself, opposed giving a guardian power to petition for dissolution of marriage or legal separation because it is a personal matter and should not include an outsider's intervention. She felt, should the incapacitated person want a divorce, they could petition for it themselves prior to needing a guardian.

EXHIBIT(phs10a01)

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

REP. DAVE GALLIK, HD 79, HELENA, spoke in opposition of the bill because often a person does not make a will or enter into a dissolution. He asked the Committee to think about the bill and the potential trouble and litigation which could result. He understood one of the reasons for the bill was because, sometimes, it is said spouses aren't going to be supportive of the incapacitated and would have to pay for their support. He pointed out that 42-2-102, MCA, simply says, "Insofar as each is able, the husband and wife shall support each other out of their property and labor". There are also statutes that say the labor, and the assets that are received while married, could be thought of as separate property. Someone who may not have the best interests of either the spouse or the ward at heart would have the ability, without notice, to get an order from one court to become a guardian then go to another court and file for a dissolution of marriage. He asked the committee to think the bill through and to keep in mind the consequences when laws aren't thought through before being passed.

{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 5.8}

Dave Coey, representing himself said, from personal experience, the guardian turnaround uses separate proceedings for punitive

litigation for financial reasons. His concerns were with children from previous marriages and what could happen in the future. Regarding spouses not paying, he thought they were responsible for their bills. He thought the bill would provide guardians with alternative motives.

{Tape: 1; Side: B; Approx. Time Counter: 5.8 - 7.6}

Informational Testimony:

Erik Schiedermeyer, Montana Catholic Conference, rose in opposition and as an informational witness. He was concerned that a decedent, without marriage, when brought through a guardian or court, might evolve from a different set of standards. The Catholic Church believes marriage is more than a legal contract, it is a sacrament and covenant in sickness and in health.

{Tape: 1; Side: B; Approx. Time Counter: 7.6 - 10.9}

Questions from Committee Members and Responses:

SEN. O'NEIL'S question to **Anita Roessmann** pertained to a man in a nursing home where a member of the Adult Protective Services was the man's guardian. The man had good retirement income and the wife's only income was from this account. She didn't want the divorce, the man didn't want the divorce, but the guardian wanted to get the divorce form. What protection is there in this bill for the wife? **Ms. Roessmann** replied the court would, within this bill, ask what the legal options were for the ward under all circumstances. They would determine what the ward himself would choose, should he have the capacity at the moment, and they would evaluate his history, values, family relationships, religion and beliefs that he expressed over the years. They would then determine if the decision to dissolve the marriage is consistent with this person's values and history. She agreed the bill should be tightened by limiting the circumstances where the judge could conceivably allow a dissolution of marriage. The procedure should go through specific steps of abandonment, abuse and neglect, and nothing less.

{Tape: 1; Side: B; Approx. Time Counter: 10.9 - 13}

SEN. O'NEIL gave an example of a guardian's wife who works in another nursing home where there may be prejudice. The state helps the guardian sue for divorce. The ward's wife is destitute and has no legal representation. What alternative does she have? **Ms. Roessmann** thought that guardian that had conflict of interest would be removed and replaced. She thought the ward, in the nursing home, should be able to express his interests to the

court. If the person is able they should be able to take a stand.

{Tape: 1; Side: B; Approx. Time Counter: 13 - 15.6}

SEN. CROMLEY asked **Ms. Roessmann** if there was a court case currently involving dissolution of a marriage. **Ms. Roessmann** cited the marriage of Denowh, citation #317 Montana 2003 MT 234. **SEN. CROMLEY** asked that if the respondent, a non-incapacitated spouse, brought a dissolution action in this case, could a guardian be appointed for a response. **Ms. Roessmann** could not answer that as she didn't practice that area of law.

{Tape: 1; Side: B; Approx. Time Counter: 15.6 - 17.1}

SEN. CROMLEY asked **SEN. HARRINGTON** about narrowing this to cases where there is abuse or other types of activity endangering the potential ward, and if he was aware of any amendments coming forward to narrow this. **SEN. HARRINGTON** answered that if the bill could be narrowed, it would be acceptable. He referred to abandonment, abuse, and problems of this nature, as well as spouses taking off and abandoning the incapacitated person.

{Tape: 1; Side: B; Approx. Time Counter: 17.1 - 19.7}

SEN. WEINBERG asked **Ms. Roessmann** if there was another legal way to make the healthy spouse live up to his legal obligations. **Ms. Roessmann's** reply was she didn't do divorce law, but she thought it would be difficult. They would have to go to court to get an order of injunction for the non-supporting spouse, putting an ample burden on the ward. **SEN. WEINBERG** said he didn't hear her say it was impossible. **Ms. Roessmann** answered she did not think it was impossible.

{Tape: 1; Side: B; Approx. Time Counter: 19.7 - 22.2}

Closing by Sponsor:

SEN. HARRINGTON closed saying a young man in his community was forced to divorce his incapacitated wife because of his inability to provide for her. Because of marriage, the person may not be able to receive benefits under the medical system.

HEARING ON SB 82

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.3}

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 9, opened the hearing on **SB 82,** Revise definition of and utilization fee on ICF/DD.

He handed the committee a chart showing the funding source for the bill. He explained that it is a continuation of the utilization fee from 5 percent to 6 percent. The Medicaid program is a state-federal program for health care and they pay certain costs and taxes. Currently the State of Montana, on the Medicaid program, pays 29 cents on the dollar and the federal government pays 71 cents. This changes every year based on the state's total income vs. other states.

EXHIBIT(phs10a02)

{Tape: 2; Side: A; Approx. Time Counter: 1.3 - 4.5}

Proponents' Testimony:

Gail Briese-Zimmer, Administrator, Office of Planning, Coordination and Analysis, DPHHS, read her written testimony.

EXHIBIT(phs10a03)

Hank Hudson, Administrator of Human Community Services Division, DPHHS, said this was the continuation of support for a very important program from last session. It allows them to keep operating through funding from last session.

{Tape: 2; Side: A; Approx. Time Counter: 4.5 - 6.3}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. COBB closed.

HEARING ON SB 29

{Tape: 2; Side: A; Approx. Time Counter: 6.3 - 8.8}

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT, SD 11, opened the hearing on **SB 29,** Revise exemption from public assistance eligibility.

The bill came out of the Interim Committee on Public Health and Human Services. It exempts individuals convicted of a felony drug offense from eligibility for food stamps or temporary assistance and governing the rules for testing and reporting requirements to allow offenders to receive benefits. Some of the women serving time for possession are single parents and have dependent children and families to support.

Proponents' Testimony:

Minkie Medora, Food Policy Council, Montana Food Bank Network, informed the committee that it was important for ex-offenders to receive benefits because it sometimes makes the difference for these individuals between success or failure upon reintegration into the community.

EXHIBIT(phs10a04)

{Tape: 2; Side: A; Approx. Time Counter: 8.8 - 15.4}

Peggy Broadbank, Director of the Montana Food Bank Network, was in support of SB 29. She was representing 144 food agencies the Montana Food Bank Network serves. In comparing statistics for the 144 agencies, she found they have a 14 percent increase in the number of families using these food pantries and feeding programs throughout the state. There is a 195 percent increase in the amount of food available. She thinks the bill would relieve stress on agencies by allowing this population to receive food stamps so they wouldn't have to continue coming back to the food bank to utilize that pantry as a grocery store for the poor.

{Tape: 2; Side: A; Approx. Time Counter: 15.4 - 17.1}

George Harper, Montana Association of Churches, submitted written testimony.

EXHIBIT(phs10a05)

{Tape: 2; Side: A; Approx. Time Counter: 17.1 - 18.6}

Don Hargrove, Montana Addictive Services Providers, favored the bill. He felt people who have served their time and are following guidelines for parole as ordered by a court, should be entitled

to these benefits. He thought it would help them get off drugs and welfare.

{Tape: 2; Side: A; Approx. Time Counter: 18.6 - 20}

Marvin Sepker, Good Samaritan Legion, rose in favor of the bill. They provide housing, food, utilities, clothing and household items for people who can't afford them. He works with people who are incarcerated and with people when they come out, as well as with their families. He felt this would help get them off the streets and off public assistance.

{Tape: 2; Side: A; Approx. Time Counter: 20 - 23}

Chris Ward, Department of Corrections, said the Department has worked with the legislation. There is a 51 percent failure rate during an inmate's first year of release. One of the reasons for failure is they have families and no means to properly support them. Some have health issues, as well as medication expenses. This bill will provide food for them and their children. He pointed out it costs about $81 a day to keep a person incarcerated and about $69 if they do not have medical care.

{Tape: 2; Side: A; Approx. Time Counter: 23 - 27}

Chris Christiaens works in jails in Christian ministry, as well as former prison inmates. During the past month, he spent sixty hours working with four different individuals who were recently discharged from Montana State Prison, assisting with food, shelter and assistance with mental health facilities. Approximately 85 percent of all of those incarcerated have some type of chemical problem. The state should be promoting healthy eating habits for these people. Individuals are allowed to come to the Great Falls food bank only once a month. Consequently, the children suffer the most.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.6}

Bonnie Adee, Montana Health Ombudsman, supported the bill for the same reasons as **Mr. Christiaens** and others. She didn't think prohibiting access to food stamps or welfare served as a crime deterrent.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 6.1}

Anita Roessmann, Montana Advocacy Program, supported the bill, endorsing **Mr. Christaens'** reference to the connection between mental illness and drug use. She felt that if these people

receive what they care about, they will benefit and become part of the community.

{Tape: 2; Side: B; Approx. Time Counter: 6.1 - 7.3}

Hank Hudson, DPHHS, feels the change in the State policy is consistent with the mission and principles of their program, including their expectations of personal responsibility and accountability, and the well-being of children. HB 2 has adequate requests for food stamp authority, issuing more than a hundred million dollars in food stamps per year in the next biennium.

{Tape: 2; Side: B; Approx. Time Counter: 7.3 - 10}

Shirley K Brown, Division Administrator, Child and Family Services, DPHHS, supports the bill. When their Department becomes involved with families, their first goal is to reunite the parolees with their families. Many of the children involved in foster care come from families that are involved in drugs. She offered statistics regarding these cases.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 12.4}

Eric Schiedermayer, Executive Director, Montana Catholic Conference, spoke in support of the bill as an excellent plan of mercy and compassion.

EXHIBIT(phs10a06)

{Tape: 2; Side: B; Approx. Time Counter: 12.4 - 13.1}

Mike Touchette, state probation parole officer for the State of Montana, works directly with offenders impacted by passage of this law. He said this is a step in the right direction for drug offenders to improve their lives and situations, and to become productive members of society.

{Tape: 2; Side: B; Approx. Time Counter: 13.1 - 13.8}

At this time a letter from **Mr. Bill Slaughter, Director, Department of Corrections,** and a letter from **Gail Gray, DPHHS Director** were presented to the committee.

EXHIBIT(phs10a07)
EXHIBIT(phs10a08)
EXHIBIT(phs10a09)

Colette Gray, Community Advocate from Opportunities, Inc., Great Falls, presented information pertaining to what happens in her community when drug felons are returned to their families.

EXHIBIT(phs10a10)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESP questioned **Mr. Slaughter** about the part of the bill that says the Department may work with him and without addressing his specific role. He asked if he had any insight on how that might affect his costs. **Mr. Slaughter** replied that the people were under supervision of the Department of Corrections. They did not anticipate more than the normal expenses. He thought the cooperation of DPHHS made it more positive. **SEN. ESP** asked **Mr. Slaughter** if he was comfortable the DPHHS wouldn't develop rules requiring an increase. **Mr. Slaughter** didn't think so.

{Tape: 2; Side: B; Approx. Time Counter: 13.8 - 18.9}

SEN. ESP questioned **Hank Hudson** about how the fiscal note does not address the type of rules or monitoring standards for violations and if he anticipated anything that wasn't covered. **Mr. Hudson** didn't believe so. He thought the process was straight forward. The rules indicate that the Department will audit the eligibility of those people who are in compliance and those with probation or parole complications. **SEN. ESP** asked if this covered people who have discharged their obligation to the State with regard to their conviction and if there would be an additional requirement of eligibility. He understood they no longer would be relying on corrections to be monitored. **Mr. Hudson** interpreted it differently. It was his intent to be sure the people are involved in treatment. Once they have no parole or probation requirement, he did not plan on asking for their release.

{Tape: 2; Side: B; Approx. Time Counter: 18.9 - 21.1}

SEN. ESP referred **SEN. SCHMIDT** to line 21, page 3. He thought they agreed, while in the Interim Committee, to keep track of drug offenders beyond their obligation to the State as far as criminal activities. It was his understanding the Committee wanted to know if they were still in treatment and abstaining from substance abuse. He asked if that was how she remembered

it. **SEN. SCHMIDT** couldn't remember. **SEN. ESP** thought it was an issue and the Department should consider this. **SEN. SCHMIDT** said there were some concerns about the language and they could work on it.

Closing by Sponsor: **SEN. SCHMIDT** closed saying maybe she and **SEN. ESP** could work with **Mr. Hudson** on a solution.

{Tape: 2; Side: B; Approx. Time Counter: 21.1 - 28}

EXECUTIVE ACTION ON SB 121

Motion/Vote: **SEN. ESP moved that SB 121 DO PASS. Motion carried unanimously.**

{Tape: 3; Side: A; Approx. Time Counter: .0 - .03}

EXECUTIVE ACTION ON SB 60

Motion/Vote: **SEN. ESP moved that SB 60 DO PASS. Motion carried unanimously.**

{Tape: 3; Side: A; Approx. Time Counter: 0.0 - 1.5}

EXECUTIVE ACTION ON SB 94

Motion: **SEN. ESP moved that SB 94 DO PASS AS AMENDED.**

{Tape: 3; Side: A; Approx. Time Counter: 1.5 - 1.7}

Discussion: **SEN. ESP** told the committee that amendment SB009401.adm changed "may" to "must" because the statutory construction is important. If you left "may" it said you "may" do one of these three things in one of these three ways or you may not do anything. What it says now is you "must" do one of these three things, and you must do it one of these three ways.

{Tape: 3; Side: A; Approx. Time Counter: 1.7 - 4}

Motion: **SEN. CROMLEY moved that SB 94 BE AMENDED WITH SB009401.ASB.**

Discussion: The first item contained the previous amendment page 2, line 22. Striking "may" and inserting "must" remained the same; then strike ", the agency," on line 22 page 2. **SEN. CROMLEY** wasn't sure why they would serve the agency. He added that this is not the initial petition but a follow up petition which should be served upon the person or the person's attorney and not the

agency. Page 4, line 26, following "personally" insert "or by certified mail".

EXHIBIT(phs10a11)

SEN. O'NEIL wasn't sure they wanted to cite the agency because a person also has the right to serve the agency. This is the right to do it by certified mail. **SEN. CROMLEY** explained that the way it was worded, the individual could be served by serving the agency, which would be indirect. Having agency on line 22, page 2, was a mistake.

SEN. CROMLEY withdrew his motion.

SEN. O'NEIL said if the letter was sent by certified mail and they signed for the letter, it made sense. **SEN. CROMLEY** answered if it goes through publication it has to go through a procedure to show that they couldn't locate the person.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 7.8}

SEN. CROMLEY told the Committee they would consider **SB 94** again on Wednesday. The bill has been amended, so when the bill is moved next time, they will have to consider previous action on the bill.

EXECUTIVE ACTION ON SB 82

{Tape: 3; Side: A; Approx. Time Counter: 7.8 - 10.7}

Motion/Vote: SEN. SCHMIDT moved that SB 82 DO PASS. Motion carried unanimously.

ADJOURNMENT

Adjournment: 5:05 P.M.

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SEN. BRENT R. CROMLEY, Chairman

_____
RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT(phs10aad0.TIF)