MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD,** on March 23, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB 527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB 257, HB 308, HB 374, HB 382, HB 396

HEARING ON HB 374

Sponsor: **REP. JOAN HURDLE, HD 13, Billings**

Proponents: **Allen Horsfall, Montana Board of Crime Control**
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

Opponents: **None**

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, Billings, introduced HB 374 which makes several changes to the Youth Court Act. It requires that juveniles be afforded a hearing before they are tried as adults. Currently, they are simply transferred from juvenile court to adult court based on the severity of their crime. The county attorney automatically files a case of severe crime in the district court. Since this is too automatic, this bill requires that juveniles be afforded a hearing. The hearing needs to take place in district court because the direct file is connected to funding received by the Board of Crime Control.

The hearing involves a determination of public safety and also whether or not the needs of the juvenile offender can best be met in district court or by the youth court. An amendment is being offered which concerns crimes for which a youth may be at risk for the death penalty when tried in district court. When the subject of executing youth under 18 was brought up at a meeting of juvenile probation officers, there was utter silence. She believes the silence was directed at the idea that it could be legally possible to execute someone under 18. This was changed to age 16 in the House Judiciary Committee in an attempt to fold in another bill sponsored by **REP. LOREN SOFT.** This bill would have prohibited execution of mentally retarded persons. The only part that was folded into this bill was the provision involving a youth of age 16. She asked that this bill be restored to it's original form of 18 years of age.

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

Proponents' Testimony:

Allen Horsfall, Montana Board of Crime Control, explained that he has been informed by the federal government that if the direct file is handled wherein the county attorney may file directly into district court, that particular grant would not be in jeopardy in this state. This grant amounts to $1.722 million for juvenile justice programs.

Sharon Hoff, Montana Catholic Conference, raised a concern regarding the age of execution of youth. She urged the Committee to adopt the amendment mentioned earlier. While there is no excuse for some of the crimes that happen, there are always mitigating circumstances and issues in their lives that may have pushed them to that point. Sixteen is a very young age to be sentenced to death and then having to spend twenty years on death

row before execution. We need to find ways to hold children accountable and yet remember that they are children.

Al Smith, Citizen - Montana Abolition Coalition, rose in support of the amendments offered. The original intent of the bill provided for 18 to be the age provided for in the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked for more information on the discussion in the House Committee where age 18 was changed to age 16. **REP. HURDLE** explained that the sole purpose was to fold in **REP. SOFT'S** bill which provided for youth age 16 or mentally retarded. The bills were not melded together but HB 374 did retain the age 16 provision.

SEN. BARTLETT asked why the bill was not folded into HB 374. **REP. HURDLE** responded that the concept of mentally retarded did not fit into HB 374. She was not in the meeting when HB 374 was passed out of Committee with the age 16 concept still in the bill.

Closing by Sponsor:

REP. HURDLE summarized that since 1976 there have been twelve men executed for crimes they committed as juveniles. The average length of stay on death row for those men was over twelve years. All had committed crimes at age 17. Montana is one of only a few states which allow youths to be executed in this fashion. It is very appropriate for this provision to be changed.

{Tape : 1; Side : A; Approx. Time Counter : 9.20}

HEARING ON HB 527

Sponsor: **REP. HAL HARPER, HD 52, Helena**

Proponents: **Steve Browning, Anheuser Busch**
Brenda Nordlund, Department of Justice
William Shear, Rocky Mountain Interlock Devices

Opponents: **Lucas Foust, Lewis and Clark County Public Defenders Office**

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, introduced HB 527 which offers a better way of addressing the problem of drunk driving. When a person is charged with a DUI and loses his or her license, they usually drive anyway. They need to get to work or school. This bill involves having an interlock ignition device to be installed in the vehicle following a second or subsequent DUI. In the 1997 Legislative Session a bill was passed to allow this to be voluntary. It was only used a few times. There are 27 users in the state even though 1300 people could be using this device.

Following a second DUI, if the offender wants to drive it is necessary to have this device installed in his or her vehicle. The person needs to blow into the device before the car will start. There is a rolling retest on the device which makes the driver blow into the device again. There is a record of the rolling retest which includes the time, date, and alcohol content. These devices will allow a person to blow into the device three times before the car will refuse to start for 15 minutes.

A user has told him that classes he has attended provide theory on how to deal with his problem but this device gave him something he needed to deal with on a daily basis. It reminds him of his problem and helps to keep him straight because his child and wife depend on his ability to drive a vehicle.

The device costs approximately $75 to install and remove. There is also a $60 to $65 per month charge. This is an effective way to get drunk drivers off the road. It allows them to be productive citizens.

{Tape : 1; Side : A; Approx. Time Counter : 9.25}

Proponents' Testimony:

Steve Browning, Anheuser Busch, commented that prior to 1997, some judges used ignition interlock devices as a part of their probationary power. The 1997 provision authorized these devices but they still have not been widely used. He provided two handouts, **EXHIBIT(jus65a01)** and **EXHIBIT(jus65a02)**. A major problem for traffic safety includes hard core drunk drivers, who represent less than one percent of the drivers on the road but are responsible for more than half of the road fatalities. Hard core drunk drivers drive at alcohol content levels that would be fatal for most people.

Brenda Nordlund, Department of Justice, claimed that in 1998, Montana recorded 5,746 DUIs or BAC (blood alcohol content) violations. Of this amount, 1,328 offenses were second or subsequent offenses. Only 27 offenders were sentenced by the courts, under the current discretionary section, to use an interlock device. The statistics for 1997 are worse. In 1997, there were 5,771 DUI or BAC offenders. Second or subsequent offenders amount to 1,389 and eight were sentenced to an interlock restriction.

This bill will change the model so the discretion to impose the ignition interlock on a second or subsequent offender no longer lies with the justice of the peace but instead will be part of the administrative license for relicensure. After a second or subsequent DUI, the driver's license is revoked for a period of one year. Under present law, the offender has the ability to receive a probationary license after serving three months of the one year period provided SR22 insurance has been filed, and the treatment required by the court has been completed.

This bill will allow drivers to receive their driver's license on a probationary status before the three month period. They will be eligible for a probationary drivers license once they complete treatment and provide proof of compliance with the ignition interlock device. This is optional in that the person may spend the one year revocation period without any driving privileges.

The reality of this population is that of the 1,300 second or subsequent DUI and BAC offenders in 1998, only 144 of them came back to the Motor Vehicle Division to ask for a probationary drivers license. A large number do not seek lawful driving privileges. This may give them the way to come back to the driving system in a lawful manner. It may provide the reenforcement they need to successfully overcome their disease of alcoholism.

{Tape : 1; Side : A; Approx. Time Counter : 9.37}

William Shear, Rocky Mountain Interlock Devices, explained that on the monthly printouts of this devices, if it is obvious that someone is blowing two times and failing and then have someone else blow into the device for them, a calibrated breath pulse can be added. This is a learned breath pulse and anyone else who blows into the system will not pass the test.

Opponents' Testimony:

Lucas Foust, Lewis and Clark County Public Defenders Office, commented that the vast majority of his clients are truly

indigent and have limited resources for interlock devices. A second offender DUI has committed a second offense within five years. This bill is not appropriate in that it goes after second offenders. It would dovetail better with a third offender. After the third offense the vehicle can be taken away. This bill affects poor people. His figures show that this device costs approximately $170 per month. This bill will cause people to drive without a license.

He further reported from a memo from **Melissa Edwards, Public Defender's Office in Yellowstone County.** Her memo stated that Section Two of the bill would amend Section 61-5-208 to require that any individual who is convicted of a second or subsequent offense DUI or per se will have his or her license revoked for one year and "upon issuance of any restricted probationary license, during the period of revocation restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device." Many of her clients cannot afford to pay the installation and monthly usage fees. Her clients are often unable to pay rent and purchase food. Requiring them to pay for the installation and usage of the interlock device would place a heavy burden on many indigent clients. The proposed language would make it impossible for an individual to get even a probationary license without submitting to the interlock device. If you have money to fund the interlock ignition company, you can drive. If you do not have money, you cannot drive. Currently, the sentencing judge has discretion to restrict an individual to interlock driving. If the court is aware that the individual cannot afford the device, the judge usually does not impose it. Consequently, the individual loses his or her license and cannot get a probationary permit for 90 days. This 90 day requirement is an inconvenience, but in most cases it is preferable to paying the interlock fees. If the client can afford the device, the defendant usually requests the court to impose it on him. If this is done, the defendant does not lose his license but the license is restricted to interlock use. There is no need for a probationary license in such a case.

He asked that the language be changed from a second offense to a third offense. This would be a more appropriate way to handle the situation.

Questions from Committee Members and Responses:

SEN. HOLDEN asked the degree to which this would be mandatory?
REP. HARPER responded that after the second DUI within a five year period, it would be necessary to have this device.

SEN. HOLDEN remarked that his understanding is that the total cost would be shifted to the offender. **REP. HARPER** explained that the fiscal note shows $1,800 for the Department of Justice from the General Fund. However, the fiscal note states that 70 people are incarcerated at a cost of approximately $21,000 a year. This would amount to approximately $1.5 million. By diverting 10 of these offenders from the prison system, the savings would amount to over $200,000.

SEN. HOLDEN questioned the availability of the devices and/or maintenance of same in eastern Montana. **Mr. Shear** explained that they are the vendor for eastern Montana. They have mobile units and on two days a week they will make the loop.

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

If they have 50 people in an immediate area, they will be able to afford a center in this area and then would be available on a 24 hour basis.

SEN. HOLDEN asked for further clarification of the cost. **Mr. Shear** explained there would be a one-time cost of $75 to install and remove. There is a $65 a month fee. There is a $5 a month insurance fee which they may choose to take. They are responsible for the unit if it is damaged. This would amount to $2.15 a day. This is the cost of a beer. The parent company allows two persons per one hundred for an indigent program. This would be totally free to the individual. They also cover one-half of the cost of another two persons per one hundred.

CHAIRMAN GROSFIELD asked **Judge McLean** if he currently used this provision in the law. **Judge McLean** explained that he has used it once in the past year. The interlock devices are not commonly known throughout the judiciary as being readily available in Montana. This bill would make all the judiciary aware that it is readily available. He believes the judiciary would use this very readily and the passage of the bill will reduce the overall costs of the DUIs in the state.

CHAIRMAN GROSFIELD remarked that people who are charged with a third offense would be less able to afford the device than they would have at a second offense. By keeping this at the second offense, the third offense may be avoided. **Mr. Foust** remarked that the second offense occurs for people who are your neighbors. Sometimes people make two mistakes within five years. A third or subsequent offender clearly has an alcohol abuse problem. He is not entirely opposed to requiring interlock devises. When requiring an interlock device after a second offense, people who are not chronic users will be included.

CHAIRMAN GROSFIELD questioned whether the judges would have a concern with not having the discretion to make a decision in this instance. **Judge McLean** believed that the person who receives a second DUI has no concept of the cost to society at large. If someone is careless enough to obtain a second DUI conviction, that individual must face some serious consequences and there should be mandatory provisions other than incarceration.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

Closing by Sponsor:

REP. HARPER summarized that this is a method to control drunk drivers. He resisted the suggested amendments. By the time someone has a second DUI, serious help is necessary. This protects society from adverse impacts and encourages an individual to seek help.

HEARING ON HB 339

Sponsor: **REP. PAUL SLITER, HD 76, Somers**

Proponents: **John Warner, Montana Judges Association**
Candace Payne, State Bar of Montana
Al Smith, Montana Trial Lawyers Association

Opponents: **None**

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Somers, introduced HB 339 which creates an interim study of reapportionment of the judicial districts in the state. Senate Bill 273, which has passed the Senate, adds one judicial district and three judges to our judicial system. This bill would ask the interim committee on Law Justice and Indian Affairs to make a determination as to whether reapportionment should take place and draft legislation.

On page 1, line 18, the **Judges Association** has raised a concern that the scope of the study would be too narrow based on population estimates and caseload. He proposed a conceptual amendment that on line 18 following the word "estimate", the word "and" be stricken and a comma be inserted. On line 19, strike the period after the word "load" and insert a comma and "and on other considerations". This would give the committee the ability to take all the pertinent factors into consideration to make their decision.

Proponents' Testimony:

John Warner, Montana Judges Association, remarked that the bill as originally written would consider caseload and population, which are obvious considerations. Some of the judges have lower caseloads, but have a huge area to cover and spend a large amount of their time traveling. Judicial districts run deep and are political. There are 40 judges in the state, but 21 judicial districts, which is are0 historical accident. Judges are elected officials. He suggested that this study may need to be undertaken by a special study committee formed for this purpose. This committee should include county commissioners as well as legislators.

Candace Payne, State Bar of Montana, rose in support of HB 339. The 1998 annual report of the judiciary shows a huge disparity in caseloads. In one of the urban districts in Montana, the judges have 506 cases per judge. In another, each judge has 1,200 cases and in a third, the judge has 1,300 cases. Much of the imbalance has to do with population changes within our state. Our citizens have a constitutional right to a speedy trial and this right is being short changed in some of Montana's busier judicial districts.

Al Smith, Montana Trial Lawyers Association, rose in support of the bill and the amendment proposed by **REP. SLITER.** He added that the people most impacted by the delays in the courts are the citizens of Montana. This is a good first step forward.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked the sponsor his view on the suggestions made by **Judge Warner. REP. SLITER** believed that the amendment would address the windshield time of judges. The geography of the districts will be a consideration in redistricting. Considerations relating to campaign practices for judges may not be appropriate in determining redistricting. If this Committee sees fit to create an interim study committee where individuals other than legislators could be appointed, that is the Committee's privilege. He added that when an interim study committee is created, it is placed into a pool and prioritized by the membership of both Houses. He would not like to see this study go through the appropriations considerations that might render it larger than the legislature would adopt.

SEN. HALLIGAN clarified that under SB 11, subcommittees could be created on standing committees that will allow for two public members.

SEN. BARTLETT added that she had come up with several items that might impact a decision about an appropriate judicial district. One of the items was if the split between the number of civil cases versus the number of criminal cases in a particular district has significance. **Judge Warner** stated that would be of significance. Criminal law cases are some of the cases of shortest duration. Domestic relations cases can drag on for years. A products liability case can also be very lengthy. Family law cases are more susceptible to alternative dispute resolution than other cases.

SEN. BARTLETT added that the use of special masters, settlement conferences, and other techniques to handle the workload could make a difference. **Judge Warner** maintained that this spoke to the need for judges and county commissioners to serve on the interim committee.

SEN. BARTLETT remarked that her understanding of the restructuring of interim committees is because the legislature placed studies into bills and then tried to find the necessary funding. The workload for the staff ultimately outstripped their capability to manage the same. She suggested an amendment using the standard language stating that the council is requested to designate an appropriate legislative interim committee. **REP. SLITER** resisted the amendment. If he thought this should be an option to the legislature, it would have taken the form of a resolution. We currently have a bill which adds judges. Assuming that bill passes, the problem is well known. This is a study that needs to be conducted this interim.

{Tape : 2; Side : A; Approx. Time Counter : 10.22}

SEN. BARTLETT maintained that everyone who carries a study resolution feels strongly about it. If everyone uses the word "shall", how do we avoid the situation where the resources available for interim studies are not sufficient to carry out what the council is required to carry out. **REP. SLITER** asserted that if the amendment is offered, it is his duty to resist it.

Closing by Sponsor:

REP. SLITER claimed that with the passage of SB 273 in the Senate, it is clearly recognized that there is a disparity amongst districts. If we are going to spend money by adding new judges, we owe it to ourselves to look at the big picture.

{Tape : 2; Side : A; Approx. Time Counter : 10.25}

HEARING ON HB 244

Sponsor: **REP. TOM FACEY, HD 67, Missoula**

Proponents: **Ed McLean, Missoula District Judge, District Judges Association**
Judge Bob Boyd, Anaconda
John Warner, Montana Judges Association
Al Smith, Montana Trial Lawyers Association
Michael Conner, Executive Director of the Public Employees Retirement System

Opponents: **None**

Opening Statement by Sponsor:

REP. TOM FACEY, HD 67, Missoula, introduced HB 244 which revises pay for substitute judges. The key to the bill is that the hourly rate now paid to judges is now $12.13 to $24.78. Currently judges are paid $37.00 per hour and subtracted from that rate is their retirement pay. This bill would stop the practice of subtracting the retirement pay.

Proponents' Testimony:

Ed McLean, Missoula District Judge, District Judges Association, remarked that there are 25 to 30 retired judges throughout the state. Only two retired judges are willing to serve. Part of the reason is that in order to draw retirement pay, a judge has to be 65 years of age. When a judge sits in the stead of an active judge, that judge receives only the difference between his or her retirement and that of an active sitting judge. When judges become ill, one of the two judges willing to serve are asked to work up to three or four months at a time just to keep the caseload flowing. When a judge is substituted, a judge from another jurisdiction is called in. He added that the courts are very cognizant of the financial constraints of the legislature.

Judge Bob Boyd, Anaconda, stated that he believes he has an obligation to serve as a retired judge. If he breaks even doing this, he is lucky. Since he has been on the bench, he has been the permanent alternate on the Sentence Review Division of the Supreme Court. While he enjoys the work, it does take time.

John Warner, Montana Judges Association, remarked that retired judges have taken on cases to supplement their income. This eliminates them from the pool. If a retired judge has served the necessary time and paid into the retirement fund, he should still be paid the current salary when called into service.

Al Smith, Montana Trial Lawyers Association, rose in support of the bill which provides fair compensation. Retired judges are a very valuable resource that is lost if adequate compensation is not paid.

Michael Conner, Executive Director of the Public Employees Retirement System, remarked that they want to make sure they maintain the plan qualification with the IRS. They applied to the IRS for a private letter ruling to make sure that plan qualification is maintained. One of the issues they have looked at in the retirement system is the call back to service. Is it temporary in nature? This bill addresses the fact that it is temporary in nature. Last year 1300 hours were paid out to two judges.

Opponents' Testimony: None

{Tape : 2; Side : A; Approx. Time Counter : 10.40}

Questions from Committee Members and Responses:

SEN. BISHOP remarked that the bill looked like it was calling for involuntary servitude. On line 12, the words "must be called" are used. He added that line 11 speaks to voluntary retirement. **Judge Boyd** remarked that if a judge lost in an election he or she would be involuntarily retired and would not be called.

SEN. BISHOP questioned if a retired judge would lose part of his or her retirement. **Judge Boyd** stated there was no such requirement. The bill would limit a retired judge to 180 days in a calendar year.

Closing by Sponsor:

REP. FACEY remarked that the wording "voluntary/involuntary" was added by the legislature some time ago because certain people in the community did not want judges who were defeated in an election to be trying cases.

EXECUTIVE ACTION ON HB 374

Motion/Vote: **SEN. GRIMES** moved that **AMENDMENT HB037401.avl, EXHIBIT(jus65a03), BE CONCURRED IN. Motion carried 6-1 with Holden voting no.**

Motion: **SEN. HALLIGAN** moved that **HB 374 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN noted that he is not necessarily happy with the new hearing requirements specified by this bill. He believes it is important for judges, prosecutors, public defenders, and family members to be able to eventually come in and argue that a child ought not to be dealt with in district court. It will add a lot of time to cases.

SEN. GRIMES the time delay anticipated. **SEN. HALLIGAN** estimated a thirty day delay.

Vote: Motion **carried 7-1 with Grimes voting no.**
{Tape : 3; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 244

Motion/Vote: **SEN. HALLIGAN** moved that **HB 244 BE CONCURRED IN. Motion carried 8-0.**

EXECUTIVE ACTION ON HB 527

Motion: **SEN. GRIMES** moved that **HB 527 BE CONCURRED IN.**

Discussion:

SEN. BARTLETT asked why revocation of a license is being stricken in several places of the bill and being replaced with suspension of a license. An answer was not given.

SEN. HALLIGAN noted that the ignition interlock probably costs a great deal more than what was presented to the Committee. If ignition interlock becomes mandatory, public funds will more than likely need to be made available.

SEN. JABS asked if this bill would require a mandatory interlock after the second DUI offence. **CHAIRMAN GROSFIELD** commented that if a person wanted to drive legally, they would need to request a temporary license. In order to get the temporary license after the second DUI, they would need to agree to put an interlock device on their car.

SEN. HALLIGAN noted that a contempt citation will be filed by a judge if an individual refuses to comply with regulations requiring interlock installation. If the offender doesn't have the money, they will have to come back to the courts again and again, tying up the system, and all the while still be driving.

SEN. GRIMES noted that the judges are not against these devices. They just are not aware of them and don't realize that they are available. We need to be careful that we are not mandating something without an exclusion for financial circumstances, or judicial discretion. It is also important to keep in mind that if there are a sufficient number of resources available for these interlock devices, they can be purchased from any number of vendors at competitive prices. **CHAIRMAN GROSFIELD** noted that the free market system should take care of that issue.

CHAIRMAN GROSFIELD said that it would be better to hold off executive action on this bill until a later time.

SEN. GRIMES withdrew his motion.

EXECUTIVE ACTION ON HB 308

Motion/Vote: **SEN. DOHERTY** moved that **HB 308 BE CONCURRED IN. Motion carried 7-0.**
{Tape : 3; Side : A; Approx. Time Counter : 12.7 - 13.5}

EXECUTIVE ACTION ON HB 382

Motion: **SEN. HALLIGAN** moved that **HB 382 BE CONCURRED IN.**

Discussion:

SEN. BISHOP asked if it would be possible to select jurors without using a list of electors. **SEN. HALLIGAN** maintained that it was all part of being involved in the democratic process. The jury is the buffer between the power of the state and the smallest individual. If someone doesn't want to take part in the incredible responsibility jury appointment establishes, then so be it.

SEN. BARTLETT noted that in some states drivers licenses, or a combination of drivers license and voter registration lists, are used in order to choose jurors.

Vote: Motion **carried 7-0.**

EXECUTIVE ACTION ON HB 115

Motion/Vote: **SEN. HALLIGAN** moved **AMENDMENT HB011505.AVL, EXHIBIT(jus65a04), BE CONCURRED IN. Motion carried 7-0.**

Motion/Vote: **SEN. BARTLETT** moved that **AMENDMENT HB011502.AVL, EXHIBIT(jus65a05), BE CONCURRED IN. Motion carried 8-0.**

Motion: **SEN. HALLIGAN** moved that **HB 115 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN asked if there were any provisions for victim notification on this bill. **Valencia Lane** responded that was an issue put into the Departments amendments in the case of an unconditional discharge. She added that **SEN. BARTLETT'S** amendments took out the unconditional discharge, thereby eliminating the need for that amendment.

Vote: Motion **carried 8-0.**

EXECUTIVE ACTION ON HB 203

Motion/Vote: **SEN. BARTLETT** moved that **AMENDMENT HB020303.AVL, EXHIBIT(jus65a06), BE CONCURRED IN. Motion carried 8-0.**

Motion/Vote: **SEN. BARTLETT** moved that **HB 203 BE CONCURRED IN AS AMENDED. Motion carried 8-0.**
{Tape : 3; Side : A; Approx. Time Counter : 27.5 - 36.2}

EXECUTIVE ACTION ON HB 257

Motion: **SEN. HOLDEN** moved that **HB 257 BE CONCURRED.**

Motion/Vote: **SEN. HALLIGAN** moved that **AMENDMENT HB025701.AVL, EXHIBIT(jus65a07), BE CONCURRED IN. Motion carried 8-0.**

Motion: **SEN. HOLDEN** moved that **HB 257 BE CONCURRED IN AS AMENDED.**

Discussion:

CHAIRMAN GROSFIELD asked if this bill is essentially a sentence enhancement. There was no response offered for the record.

Vote: Motion **carried 8-0.**
{Tape : 3; Side : A; Approx. Time Counter : 36.2 - 43.2}

EXECUTIVE ACTION ON HB 527

Discussion:

SEN. HALLIGAN asked **Mr. Browning** if he had considered requiring the interlock system after the third and subsequent offense rather than the second. **Mr. Browning** remarked that originally it

was to be required after the first offense if the individuals BAC level was above 0.18. The determination to have it apply to second and subsequent offences was that the first offense would be discretionary.

SEN. HALLIGAN asked why the judges are not using this now. **Mr. Browning** said that the problem is the lack of awareness. The expense has not entered into the discussion as a problem.

SEN. HALLIGAN inquired as to the procedure if the offender did not have the money. He asked if hardship language could be added that would allow limited discretion by the judge in specific cases. **Mr. Browning** related that some people testified that if an offender has the money to consume alcohol, they will have the money to pay for the ignition interlock device. Others testified that having the interlock placed on their vehicle was the best money spent for their problem.

SEN. HALLIGAN asked if it would jeopardize the bill if hardship language was added. **Mr. Browning** explained the approach that the bill takes is an administrative approach rather than a judicial approach.

EXECUTIVE ACTION ON HB 396

Motion: **SEN. DOHERTY** moved that **AMENDMENT HB039602.avl, EXHIBIT(jus65a08), WITH THE EXCEPTION OF AMENDMENT NUMBER FIVE, BE CONCURRED IN.**

Discussion:

SEN. HOLDEN asked if the one-year reporting time could be decreased. **SEN. DOHERTY** agreed to a six month time frame.

SEN. HOLDEN hoped that notification would take place within a few days of injury. He added that time casts doubt on the validity of the injury.

CHAIRMAN GROSFIELD asked what type of injury would need a six month time length. **SEN. DOHERTY** suggested back or disk injuries. **SEN. HALLIGAN** added that many personal injury accidents are filed close to when the statute of limitations is up because the full extent of injuries are not known until that time.

CHAIRMAN GROSFIELD questioned the process if the injured person were unable to report due to an injury. **SEN. DOHERTY** said that his amendment would include individuals unable to report due to their injury.

SEN. DOHERTY added that this bill eliminates the limit on recovery. **SEN. GRIMES** believed that there may be a value to placing a limitation which would provide some disincentive for people to file false claims on the operator. **SEN. DOHERTY** insisted that frivolous claims are dealt with in the legal system under Rule 11.

Vote: Motion **carried 5-1 with Grimes voting no.**

Motion: **SEN. DOHERTY** moved that **HB 396 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. BARTLETT questioned whether including a person immediately leaving the vicinity of an amusement ride may be too broad.

SEN. DOHERTY withdrew his motion.

Substitute Motion: **SEN. DOHERTY** moved that **HB039603.AVL, EXHIBIT(jus65a09), BE CONCURRED IN.**

Vote: Motion **carried 8-0.**

SEN. DOHERTY withdrew his motion on HB 396 as amended.

ADJOURNMENT

Adjournment: 12.05 P.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus65aad)