MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 6, 2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Anne Felstet, 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 238, HB 266, HB 286, HB 336, 2/22/2001
Executive Action: HB 216, HB 238, HB 286, HB 336

HEARING ON HB 336

Sponsor: **REP. GAIL GUTSCHE, HD 66, MISSOULA**

Proponents: **John Connor, Department of Justice, Attorney General's Office**
Troy McGee, MT Chiefs of Police Association

Opponents: **None**

Opening Statement by Sponsor:

REP. GAIL GUTSCHE, HD 66, MISSOULA, opened on HB 336. She said the entire crux of the bill was on page 2, line 3. The bill clarified that when orders of protection were served, the victim did not pay for the orders. She said it was not a new policy or change in law; it was a clarification to ensure receipt of federal grant funds. The funding came from the Violence Against Women Act, enacted by Congress in 1994. The Montana Board of Crime Control administered the grant money. These grants, called stop grants, allowed communities to develop coordinated responses to violent crimes against women including domestic violence and stalking.

Proponents' Testimony:

John Connor, Department of Justice, Attorney General's Office, provided a clarification sheet regarding the bill prepared by the department, **EXHIBIT(jus51a01).** He said the bill was requested by the Attorney General to address a requirement in federal law in order to continue to receive the Violence Against Women grants. He said Nancy Knight, the victims' services coordinator from the Board of Crime Control, could advise the committee regarding how the grants were distributed and administered. He said the practice was already being done, and no law enforcement agency charged for it anyway, but the federal government required the bill to exist.

Troy McGee, MT Chiefs of Police Association, said they were in strong support of the bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if the program was means tested; did it matter how much money a litigant had. **John Connor, Department of Justice, Attorney General's Office,** said no.

SEN. O'NEIL questioned if it applied to the respondent in the action. For example, if the accused gave a response, would that be done without cost also? **Mr. Connor** said the statute provided for the service of the petition for order of protection. Therefore, it didn't address the respondent's response to that petition.

SEN. O'NEIL continued, asking if it was a violation of equal protection. **Mr. Connor** said that was for the courts to determine; he would say no.

SEN. MIKE HALLIGAN clarified that a hearing was established after a petition was filed. The response was attending the hearing and there was no responsive pleading requested, procedurally.

SEN. O'NEIL said when he wrote up papers for a restraining order, he usually included that with the papers for divorce, or a custody action. In those cases, there was a response, and maybe a denial.

SEN. HALLIGAN interjected that the bill didn't deal with that. It dealt with the initial filing for a restraining order and the like.

SEN. AL BISHOP said the committee would discuss it later.

Closing by Sponsor:

REP. GUTSCHE closed on HB 336, pointing out that the bill stated there was no cost to file the petition. The bill was clarification language, regarding the order of protection only. It absolutely was needed for the state to continue receiving federal grant money under the Violence Against Women Act.

HEARING ON HB 266

Sponsor: **REP. GILDA CLANCY, HD 51, HELENA**

Proponents: **Andy Skinner, Helena Property Owners Association**
Page Dringman, MT Association of Realtors
Cliff Christian, MT Building Industry Association

Riley Johnson, NFIB
Webb Brown, MT Chamber of Commerce

Opponents: **Gordon Morris, Director of MACo**
Tim Burton, City of Helena
Alec Hansen, MT League of Cities and Towns
Joe Mazurek, City of Great Falls
Janie McCall, City of Billings

Opening Statement by Sponsor:

REP. GILDA CLANCY, HD 51, HELENA, opened on HB 266, a revision to the Government Accountability Act. The GAA was enacted in 1997. The purpose of the Act required governmental entities to clearly articulate their authority to perform government acts by providing, upon request, a statement of government authority. The language in HB 266 clarified and reaffirmed the original intent of the Act. Throughout the state, numerous applicants had been given reasons for governmental acts, but in those citings, the governmental authority had not always pertained to their request. Section 1 of the bill stated the applicant must request the statement of legal authority in writing. This statement must be completed within 30 days after the government act was taken, or after the written request was received, whichever occurred last. In subsection 3 of that section, the failure of the government to provide the statement rendered the government act invalid. The House added subsection 4, which gave the applicant a means of recourse for recovery in the event the statement of legal authority was not correct. She mentioned the Department of Revenue had requested amendments, **EXHIBIT(jus51a02).**

Proponents' Testimony:

Andy Skinner, Helena Property Owners Association, stated the 80 member group oversaw the government in Helena. They were concerned that government was taking action where they shouldn't. He noted the support of the House for HB 266. He illustrated their concerns by saying a subdivision developer was required to carry the cost of paving several roads in order to put in the development. They felt it was appropriate for the developer to ask why the entire burden fell to him/her. He noted the bill required the government to pay attorney fees in unsuccessful court hearings over their wrongful governmental act. They felt it was a good thing to balance the playing field of the developers who couldn't afford expensive lawsuits. He also noted that unless a complaint was lodged, the bill would not take effect and that was a good thing too.

Page Dringman, MT Association of Realtors, supported the bill as a common sense approach for government's supporting their actions by citing their authority. She provided an example of a guest ranch that questioned the government's authority. The government cited laws not pertaining to guest ranches, but to hotels/motels. This bill made the government accountable and made them cite their legal authority. If they relied on improper statutes, then they should be responsible for the costs incurred by the people trying to figure out their rights.

Cliff Christian, MT Building Industry Association, said their problem dealt with rough proportionality, where the U.S. Supreme Court had allowed local governments to charge the building industry for costs outside of the development. Some were rightfully charged, but there were significant problems with accountability. He felt in the government's desperation to find funds, the building industry incurred unfair costs unrelated to the project at hand. They felt this bill helped ensure accountability. He believed Montana had a need for economic development, but if that ever came, adequate homes needed to be present. They were happy to pay their share, if rough proportionality could be found.

Riley Johnson, NFIB, said the organization supported HB 266 because it was fair and a reasonable request of the people elected and paid for through salaries and taxes. This bill made government accountable to the law, to the people they served.

Webb Brown, MT Chamber of Commerce, believed it was a good government bill, which provided the ability to know why the acts were made and the ability to question those acts to determine the impacts.

Opponents' Testimony:

Gordon Morris, Director of MACo, said some of the changes in the bill were the result of his testimony in the House. However, he opposed the idea that government would pay for court costs and litigation. He felt there was no problem with the Governmental Accountability Act, and the bill was brought from a concern in one county. He felt if government didn't respond to inquiries of their authority under current law, they already could be legally questioned. He didn't feel additional provisions were needed. He wanted to remove the amendment regarding litigation.

Tim Burton, City of Helena, said he felt this was an issue of legislative or local control. He argued one remedy for problems was for the citizen to contact the city or county commissioner to discuss the problem, which typically resolved the problem. The

issue was confusing because of the 30-day time frame. He said typically when the government acted, they provided their authority prior to a decision being made so they were using the proper existing authority. If there was a conclusion about a government action, that was also provided. He felt the issue was not as clear as it appeared. He also noted that there were a few time-tested processes: 1) the Administrative Procedures Act 2) local governments providing notifications ordered by statute and the process of public hearings ordered by statute relating to adopting ordinances. He felt the bill clouded those issues because it made it unclear if the government was acting under local statutes or the Administrative Procedures Act. He said they were similar, but not the same. He acknowledged that the government did sometimes make unfair requests, but it was already codified that citizens were allowed to legally challenge those decisions.

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Alec Hansen, MT League of Cities and Towns, said under the proposed legislation, a developer could request in writing the government's authority. He argued the federal government required rough proportionality and Nexus. It involved judgments, not clear legal authority. He mentioned a defeated House bill that would have restricted the definition of rough proportionality. He feared this bill had now become the attempt to redefine federal law as cited in federal court decisions. He said elections were held so people could vote in new leaders if the current leaders were disliked. He also stated people already had the ability to go to court. The bill simply required additional paperwork, creating a requirement that probably didn't provide any real benefit. He noted section 4 could expose local governments to additional costs of legal fees. He argued this bill would not promote economic development.

Joe Mazurek, City of Great Falls, said the bill arose out of a local dispute in Lewis and Clark County. In the context of state government and not local government, the bill introduced legal ramifications statewide. He noted the bill now became the vehicle to address the takings issue and what constituted proportionality and what did not in terms of obligations imposed upon developers. He said the House bill on rough proportionality was defeated primarily because local governments had to balance who should bear the responsibility of new developments. Would the responsibilities shift to the general tax payers, or could it be balanced between existing tax payers and developers. He was concerned about the effects of the bill on existing law. If somebody in government provided a written statement of authority, it became a right of action that could be taken directly to court. If it was incorrect in any way, the government then had to

pay court costs and attorney fees to the plaintiff. He suggested making that clause reciprocal, just as in the business community. If one side was allowed attorney fees, then the other side should be too if they prevailed. If government did act reasonably and had a valid reason, they should be entitled to the same privilege. The tax payers would pay if the government lost. He closed saying the current system worked and did not need to be changed.

Janie McCall, City of Billings, said the current procedure worked, and it was not in the best interests of the state for the legislature to move on this bill.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked for explanation of the Department of Revenue's amendment, **exhibit (2). Dave Woodgerd, Chief Legal Council for the Department of Revenue,** said the amendments were in response to the House amendments, and more clearly clarified the intent of the bill. He said the first and fourth amendments ensured consistency throughout the bill. The second amendment clarified the intent of the bill. The third amendment served as clean-up language. The fifth amendment was the concern of the administration; attorney fees provision. The bill created an ambiguity in terms of the ability to obtain attorney fees in a simple case. The amendment clarified that attorney fees could only be collected by the applicant for specific reasons and not for such things as a typographical error, or other kinds of litigation. He mentioned a case law that specifically indicated state government attorneys could not issue attorney fees because they were salaried employees. He said there was not a quid pro quo. The bill required state and local government to pay attorney fees without the converse being true.

SEN. LORENTS GROSFIELD commented that subdivision law and other concerns brought about the bill. He wanted to know why the administration's response to the bill came from the Department of Revenue. He speculated maybe the bill applied in tax appeal situations or other things that were totally outside what the proponents talked about. **Mr. Woodgerd** said concerns were raised by several agencies after the House amendments. It was determined that since the Department of Revenue was part of the original legislation, they should come forward with the attempt to reach a compromise.

SEN. GRIMES referred to the damages portion of the bill. He wanted it to specify actual losses rather than something broader such as potential or punitive damages. He wanted to know if the sponsor was open to amendments on the damages section and what

she thought of the last amendment proposed by the Department of Revenue. He also wanted to put actual damages in that amendment as well. **REP. CLANCY** said it wasn't her intention to make it more difficult for government entities to do their job. She was open to the amendments he suggested.

SEN. MIKE HALLIGAN inquired about the suggestion of reciprocal attorney fees allowing taxpayers to be refunded when someone filed a potential frivolous suit or when the government prevailed. **REP. CLANCY** said she was open to wording that allowed reciprocal fees. When the bill was brought forth, it wasn't the intention to make it more difficult for local governments to operate. If those costs fell to taxpayers, that could be a problem.

SEN. HALLIGAN asked why the existing law didn't address the situation he raised; why were changes needed to fit the situation perfectly. **Andy Skinner, Helena Property Owners Association**, gave examples in Lewis and Clark County. When they asked for data, they received a letter from the County Attorney stating they had complied with the law. The requester disagreed, so the only recourse was to go to court. They were trying to preclude going to court. He spoke against making the fees reciprocal because people couldn't afford to pay and the purpose of the bill would be defeated.

SEN. HALLIGAN said a lawsuit had to be filed under the proposed legislation as well as current law. He also mentioned that there was some concern about what kind of information a governmental entity had to supply. **Mr. Skinner** replied 101-103 spelled out that the government had to supply a detailed reason. It attempted to make the government explain how they were interpreting the law. If they merely cited the law, it gave no clear answer.

{Tape : 2; Side : A}

With a detailed explanation, the requester would know how to carry on and how to make an appeal to solve the problem.

SEN. GRIMES noted that state and local employees probably already operated under the scope of their authority. He was concerned with the depth of information they would have to provide. For example, if a person was required to put in fire protection and was given an explanation of public safety, that was sufficient for a reason. He didn't expect them to cite statistics. He was concerned about someone merely arguing over the stated reason. He asked the building industry's opinion on what was a sufficient reason for the application of the law. **Cliff Christian, MT Building Industry Association**, said something more than "health

and safety" given as a reason to pave a road to the next county road. He said the Industry would accept changes to make the language of the bill more clear in this area.

SEN. GRIMES wanted to know an estimate of the amount of detail, the amount of proof expected in a reason given by an agency for applying a rule. **Mr. Christian** replied he did not have an answer.

SEN. GRIMES re-directed. He clarified if state and local employees already did cite the laws they were applying, so supplying a reason statement would not be difficult. **Tim Burton, City of Helena**, agreed. He said they had a process, related to land use, of a pre-application meeting of all the vested authorities (fire, building codes, and applicant) so the desires could be addressed at one time. The conversation centered around the authority that did or did not exist for the project. He mentioned he was concerned about the balancing of a local government's responsibility to keep the people away from a subsidy on a proposed development. He argued these questions were litigated and had been for years.

SEN. GRIMES then asked the appropriate amount of rationale that should be given in citing authority. **Mr. Burton** said he considered that, but did not have a clear answer because there was a myriad of authorities that could exist for one decision. He noted the public hearings that allowed people to know what the government was thinking. If it was taken too far, it got into questioning a person's thoughts.

Closing by Sponsor:

REP. CLANCY closed on HB 266. She addressed the 30-day recommendation that it was already in statute under 211-104. The amendment provided by the Department needed a clarification. #5 needed to have the word, "shall" instead of "may" award damages. She said the bill was a constituent request by someone other than **Mr. Skinner.** She said the concern wasn't about public employees working within the scope of their authority, but rather employees who exceeded their authority. She felt the bill kept people honest and reiterated she accepted the suggestion to make court costs reciprocal. She argued accountability was needed.

HEARING ON HB 238

Sponsor: **REP. BILL THOMAS, HD 93, HOBSON**

Proponents: **Mark Robbins, representing self**
Jon Parker, Victim Advocate in Fergus Co.

John Connor, Attorney General's Office

Opponents: **None**

Opening Statement by Sponsor:

REP. BILL THOMAS, HD 93, HOBSON, opened on HB 238, a victims' rights bill requiring that prompt notification be given to victims or witnesses of certain offenses. He noted a potentially tragic incident precipitated the legislation.

Proponents' Testimony:

Mark Robbins, representing himself, spoke of an incident involving his son and a gunman. He said the gunman, after shooting at his son, but not injuring him, was released after interrogation to return to school and the community at large without the son's or parent's knowledge. Once the family realized the gunman was back in school, they requested a meeting with the County Attorney to have the case reviewed. After that review, the gunman was denied access to school, but victimized the son simply by hanging out across from the school. Eventually, other offenses removed the gunman from the community. He said if they would have been notified before the release, they would have had some input to the court as to what occurred. In this case, only one side of the story was presented. The bill would avoid that situation by strengthening the laws. Victims did deserve the right to know what was happening with their cases. He didn't think it would be an inconvenience to the prosecutors or the juvenile probation officers to keep in contact with the victims before proceeding with the cases.

John Parker, Victim Advocate in Fergus Co., said 46-24 of the Montana code provided for the services and treatment for crime victims. Under the current law, victims of youth matters, and some adult situations, were only notified if they left the proper telephone number with the agency. This statute changed that to encourage the prosecutor's office or a designee to make a good faith effort to contact and consult with someone who had been injured by another. More importantly, it required notification prior to a probable cause hearing. The legislation couldn't take away past frustrations, but it did strengthen the current notification laws relating to youth court felony matters.

John Connor, Attorney General's Office, said juvenile offenders had a unique situation in that they interacted more frequently with their victims because they were returned to school and allowed to engage in their activities that put them in the same circles as the victim. He said this differed from adult

situations where the offender and the victim were more separated. The Department of Justice felt the bill was good practical sense. He noted that county attorneys might have difficulties initially addressing the issue, but they could handle it. He said the legislature had done a lot for victims since the passage of 46-24 of the Montana Code. He felt the bill was a good stride in the right direction.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN said 46-24-104 talked about the county attorney consulting with the victim of felony offense or misdemeanor as soon as possible prior to the disposition of the case. Why wasn't that part of the statute addressed as well? It also stated dismissal or release of the accused pending judicial proceedings. **John Connor, Attorney General's Office,** said the distinction was in the youth court act. Title 41 didn't relate to the Title 46 situation.

SEN. HALLIGAN questioned the use of the language "county attorney or designee" in the bill. He wanted to ensure the gatekeeper was the county attorney. **Mr. Connor** alluded to that in his testimony. He thought there were mandated requirements in the current law about what county attorneys had to do to notify victims. In some counties that was done well, and in others, it wasn't. The "designee" meant the county attorney would have to meet with the people who dealt with juvenile offenses at the local level and figure out a notification process. The bill mandated some action on the prosecutors and they needed to accept it.

Closing by Sponsor:

REP. THOMAS, closed on HB 238. It provided equal treatment for adult and youth offenders. Consulting with the victim and the family members could prevent the type of mishap testified above from occurring in the future. He felt it was a fair bill.

HEARING ON HB 286

Sponsor: **REP. BILL THOMAS, HD 93, HOBSON**

Proponents: **Jon Parker, Victim Advocate in Fergus Co.**
John Connor, Attorney General's Office

Opponents: **None**

Opening Statement by Sponsor:

REP. BILL THOMAS, HD 93, HOBSON, opened on HB 286, which addressed the rights of a victim of a crime and his/her family to be present at any trial or proceedings concerning the crime. Exclusions were included to ensure the accused's right to a fair trail would not be jeopardized.

Proponents' Testimony:

Jon Parker, Victim Advocate in Fergus Co., said the legislation allowed trial attendance rights for crime victims, regardless if they were to testify or not. Excluding them from the trial process re-victimized the people. He argued the right to accuse another seemed to be forgotten.

{Tape : 2; Side : B}

Due process, the right to a fair trial, was not denied by the presence of a crime victim at a trial. It also took nothing away from the fundamental right afforded an accused person from the ultimate goal of the prosecutor or from the court process itself. HB 286 simply provided a right to crime victims that had been neglected too long. He asked the committee to be advocates for those who had suffered at the hands of another to bring a halt to the additional pain inflicted upon them by the judicial system, and to bring the scales of justice into balance. He provided written testimony regarding HB 286, **EXHIBIT(jus51a03);** information on other state statutes, **EXHIBIT(jus51a04);** and letters of support, **EXHIBIT(jus51a05).**

John Connor, Attorney General's Office, said the bill was straight forward. He said one of the most difficult things in the world, when prosecuting a criminal case, was to explain to the families why they weren't allowed at the trial. He said witnesses were excluded by a matter of course by one side or the other so that they couldn't build on the testimony of other witnesses. He said that was the sole reason for exclusion. He said there were exceptions to the rule and provisions that allowed statutory exceptions to the rules. He felt this fell under those same lines. It would still be the court's discretion if there was a problem. He said the bill was a good idea and the prosecutor could choose to exclude the victim as strategy, but it could be worked out. Acknowledging and recognizing the right of the victim to be present was a part of the overall victim protection legislation.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN asked if **REP. THOMAS** had seen the memo provided by **REP. SHOCKLEY** and asked for his thoughts. **REP. THOMAS** said no, but would review it for the close.

SEN. MIKE HALLIGAN said the memo raised the due process issue of the statute over-riding case law and violating the due process rights of the defendant. **John Connor, Attorney General's Office,** said he looked at that issue. State vs. Claric, a 1995 case, addressed the issue of whether or not the state was entitled to have the investigator at the table during the presentation of the case. Prior to that decision, it was always permissible for the prosecution to have the investigating officer, even if a witness, sit with the prosecution. The Claric decision said it was a mistake and based the ruling on Rule 615, of the Rules of Evidence; it was not a Constitutionally protected right. It was simply a Rule of Evidence. He believed it was a Rule of Evidence because it only related to excluding witnesses and not parties. Rule 615 allowed for exceptions. It was not a Constitutionally based situation.

Closing by Sponsor:

REP. THOMAS closed on HB 286, saying he approached the bill from a layperson's perspective. He felt the existing and new legislation covered the concern about allowing victims and relations into the courtroom. He said some people had suffered and this legislation helped address the situation. He said changes in other states allowing trial attendance was applied broadly and did not put an undue burden on the criminal justice system or interfered with the Constitutional rights of the accused. He noted that in the House testimony, a lady testified that she was a victim of a double murder of her brothers. She couldn't attend the trial and said it prevented her from closure and full healing. He argued this bill provided relief to a victim and the relatives. He closed saying the system victimized those it was seeking to protect.

EXECUTIVE ACTION ON HB 286

Motion: **SEN. HALLIGAN** moved that **HB 286 BE CONCURRED IN.**

Substitute Motion: **SEN. O'NEIL** made a substitute motion to **AMEND HB 286 TO STRIKE WORD, "WOULD" AND INSERT "MAY" ON LINE 26.**

Discussion:

SEN. JERRY O'NEIL thought it would be a lesser level of proof.

SEN. MIKE HALLIGAN felt the intent was to have the defendant prove that the victim's presence would jeopardize the fair trial, not that it "may" jeopardize.

SEN. O'NEIL asked how it would be proven that it would jeopardize before the verdict was read.

SEN. HALLIGAN said there would be a hearing about having the victim or family members present. The judge would then rule on whether it would jeopardize the fair trial issue. It would be taken to the Supreme Court.

SEN. O'NEIL said "would" would force a decree in a trial before the effect of the decision was known.

SEN. HALLIGAN said it would be a separate issue as opposed to a verdict at the end. He assumed that someone would do a motion in limine to deal with the issue. If that wasn't resolved, the trial would be delayed until the issue was resolved. He suggested that **John Connor** offer his insight.

John Connor, Attorney General's Office, thought that it was the court's call. They would decide if the defendant's right to a fair trial would be jeopardized. The "may" was inherent in the ruling. The court simply decided and in reaching that conclusion could use the "may" standard if it chose. There wasn't an ultimate issue of proof other than in the courts discretion if the judge decided that it would cause a problem. He felt the concern was covered by the "would".

Vote: Substitute motion **to amend HB 286 failed 2-6 with Grosfield and O'Neil voting aye. SEN. BISHOP** and **SEN. DOHERTY** excused.

Vote: Motion that **HB 286 be concurred in carried 7-1 with Grimes voting no. SEN. BISHOP** and **SEN. DOHERTY** excused. **SEN. HALLIGAN** would carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 238

Motion/Vote: **SEN. HALLIGAN** moved that **HB 238 BE CONCURRED IN. Motion carried 7-0. SEN. BISHOP** and **SEN. DOHERTY** excused. **SEN. HALLIGAN** would carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 336

Motion: **SEN. O'NEIL** moved that **HB 336 BE AMENDED** to include the recipients' response costs as well.

Discussion:

SEN. JERRY O'NEIL said if the order of protection was served with another process, such as dissolution or custody, then the response should also be served for no cost.

CHAIRMAN GROSFIELD asked for help in knowing if this amendment fit within the title.

John Connor, Attorney General's Office, said the distinction between the two was that the order of protection was required to be personally served; the law enforcement agency took it to serve it, whereas the response was mailed. If a response was served, it was not personally served. He said the expense responsibility was not equal.

SEN. O'NEIL withdrew his **motion.**

Motion/Vote: **SEN. GRIMES** moved that **HB 336 BE CONCURRED IN. Motion carried 7-0. SEN. BISHOP** and **SEN. DOHERTY** excused. **SEN. EMILY STONINGTON** would carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 216

CHAIRMAN GROSFIELD brought up the points made by the proponent to the bill regarding deterrence factors other than fines, especially increasing community service requirements. He thought that was a good point. The bill stated "if a community service program was available", but he didn't know why one wouldn't be available.

SEN. JERRY O'NEIL said a program required supervision and financial resources that did not always exist.

SEN. WALT McNUTT agreed with the thought process, but felt community service required supervision. In his community, community service was not always available due to weather or such.

SEN. DUANE GRIMES questioned if the penalties could include, "if available".

CHAIRMAN GROSFIELD said they already did.

SEN. GRIMES said that language had been stricken in one of the amendments.

{Tape : 3; Side : A}

He said it was out of the bill on page 4 in the case of attempting to purchase alcohol.

SEN. O'NEIL referred to page 2, line 27.

SEN. GRIMES asked if that line allowed for community service in an alcohol offense.

Valencia Lane, Legislative Staffer, said she was trying to figure it out. Page 4 was within section 2 of the bill, 45-5-625 and subsection 1 talked about possession and section 2 talked about the penalties for offense of possession. Page 4 talked about the offense of the attempt to purchase. It looked like it used to provide for community service, but the House amendment removed it.

Motion: **SEN. GRIMES** moved that **HB 216 BE AMENDED** to include consistent language.

Discussion:

SEN. GRIMES wanted to add consistent language, "to perform community service when available." The fine would still exist, so the penalty would be both fine and service.

SEN. MIKE HALLIGAN said judges could designate organizations that would accept community service and have them sign off that the work had been completed. An agency didn't have to exist for the sole purpose of overseeing community service. He didn't want to limit it, so he preferred to say, "perform community service" so the judge could receive a signed document from a variety of organizations who accepted community service hours.

SEN. O'NEIL asked if the list of agencies to go to constituted a community service program.

SEN. HALLIGAN said if that was the case, that was fine. He was concerned about the need for a non-profit agency serving as a clearinghouse for community service.

SEN. O'NEIL asked if different language would encompass that concern.

SEN. GRIMES suggested saying, "may be ordered to perform community service." If there was not a program available and the judge didn't want to do it, then it was permissive. It also allowed for other means of community service.

SEN. O'NEIL said it sounded good.

Ms. Lane clarified that "may be ordered to perform community service" would be added to page 4. She would see if that needed to be added for both the over 18 and younger than 18 groups. Tacking it on at the end wasn't clear if it applied to both. She pointed out that all places referred to community service as "if available". It addressed the concern that it wasn't always available.

CHAIRMAN GROSFIELD suggested consistency.

SEN. HALLIGAN agreed with consistency and said the discretionary part was good. However, he said they weren't intending to have the adults/parents paying the fine. He wanted the offender to pay the fine and the community service was absolutely critical; kids hated it. It helped the community and helped the offenders know there were consequences to the actions. With the restorative justice issues in the codes about balanced approach, it allowed kids to work in non-profits. He felt it taught them a lot more about the consequences than a fine.

CHAIRMAN GROSFIELD agreed with that. He wanted to make the amendment wording even stronger. Instead of "may", he wanted "shall", and strike, "if available" to give the judges the discretion to figure out what to do.

SEN. GRIMES withdrew his motion.

Motion: **SEN. GRIMES** moved that **HB 216 BE AMENDED** to include both minor age groups and to include the House amendments.

Discussion:

SEN. GRIMES wanted to keep it discretionary because some circumstances should be left to the judge because the youth could be working or have mitigating circumstances. His new motion applied to both younger and older than 18 and would say, "may be ordered to perform community service". He also requested the House amendments of page 5 conform with the same language. Strike "if available" and insert "may".

CHAIRMAN GROSFIELD pointed out there were some other places, so it should be left to Valencia's discretion.

Ms. Lane clarified that anywhere the phrase appeared in the bill, it would say, "may" instead of "shall". The phrase "if available" would be struck.

CHAIRMAN GROSFIELD said he would vote against the motion because he wanted to see it stronger. He did want to see the phrase in all places. He wanted to say "shall" unless the judge determined unnecessary.

SEN. O'NEIL said he would vote for it because most of the judges were ornery enough to make the child do something in order to pay for the offense.

SEN. RIC HOLDEN said he would vote against the motion because it took away from the intent of the bill. It seemed that the intent was that instead of the parent paying the fine, public policy would be changed to require the kid to perform community service. The word "may" gave the judge discretion and it wouldn't happen as often as the public policy would have dictated. He said Glendive didn't have a set program, but the kids did do community service. He was all for community service rather than parents paying the financial fine.

SEN. O'NEIL replied if it wasn't amended as suggested, it allowed the offenders to say the law didn't require community service because a program wasn't available. He felt it would provide more instances of youth performing community service.

SEN. GRIMES closed on his motion. He understood if a kid tried to purchase alcohol or tobacco, the penalty ought to be raised and they should have to do something onerous like community service. However, he thought there were instances that called for judicial discretion. The net result of the bill: 1) bigger fines that the offender and/or parents had to pay 2) community service whether a program was available or not. He felt everyone's intent was the same and he liked the wording.

Vote: Motion to **amend HB 216 carried 6-2 with Grosfield and Holden voting no. SEN. BISHOP** excused.

Motion/Vote: **SEN. O'NEIL** moved that **HB 216 BE CONCURRED IN AS AMENDED. Motion carried 7-0. SEN. BISHOP** and **SEN. DOHERTY** excused. **SEN. O'NEIL** would carry the bill on the Senate Floor.

ADJOURNMENT

Adjournment: 11:13 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT(jus51aad)