**MINUTES**

**MONTANA SENATE**
**58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DUANE GRIMES** on February 12, 2003 at 9:00 A.M., in Room 303 Capitol. **VICE CHAIRMAN DAN MCGEE** chaired the majority of the meeting.

**ROLL CALL**

**Members Present:**
Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

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

**Committee Business Summary:**
Hearing & Date Posted: HB 18, 2/7/2003; HB 14, 2/7/2003; HB 234, 2/7/2003
Executive Action:

## HEARING ON HB 18

**Sponsor**: **REP. JIM SHOCKLEY, HD 61, Victor.**

**Proponents**: **Karla Gray, Chief Justice, Montana Supreme Court**
**Dan Chelini, Information Technology Director, Montana Supreme Court**
**Jeff Koch, Vice President, Collection Bureau Services, Missoula**
**Gary Olsen, Broadwater County Justice of the Peace, Montana Magistrates Association**
**Ms. Nancy Sweeney, Clerk of District Court, Lewis and Clark County, Supreme Court Commission on Technology, State Bar of Montana Access to Justice Committee**
**Mr. Richard Meeker, Montana Juvenile Probation Officers' Association**
**Mr. Robert Throssell, Montana Magistrates Association**
**Gordon Morris, Director, Montana Association of Counties**
**Chris Manos, Executive Director, State Bar of Montana**

**Opponents**: **None.**

**Informational Witnesses**: **Jeff Brandt, Deputy Chief Information Officer, State of Montana**

**Opening Statement by Sponsor**:

**REP. JIM SHOCKLEY** opened the hearing by stating he is carrying HB 18 on behalf of the Montana Supreme Court. Currently, there is a $5 surcharge on people who are tried as criminals in Montana courts if they lose, as well as for other users of the courts who are not governmental entities. There is a sunset provision on this charge for this year. HB 18 will raise the $5 surcharge to $10 and remove the sunset. This money is used for information technology to improve computers and buy new programs. Specifically, the courts are interested in buying Full Court, a rather expensive program designed for the court's purposes. In addition, the courts would like more technical support.

**Proponents' Testimony**:

**Karla Gray, Chief Justice of the Montana Supreme Court,** appeared as a proponent for HB 18. This is the bill **Chief Justice Gray**

had mentioned in her State of Judiciary address. This bill is simple but cautioned the Committee to not be mislead by its simplicity, because the bill is critical to the judicial branch of government. **Chief Justice Gray** reported there is not general fund impact from HB 18. Even under the $5 surcharge, there has never been enough money, even pre-state assumption, for court information technology. State assumption brought them a whole bunch more people needing a whole bunch more services, including connectivity to the state IT system. State assumption included no additional money for information technology, and this bill is absolutely essential to the branch's ability to provide information technology to the courts, their staff, and to ultimately help the people of Montana get the best and most efficient service from the court's at all levels. **Chief Justice Gray** proclaimed this bill is absolutely critical and without eliminating the sunset, there will be nothing for information technology, and the fact is they cannot do information technology for their branches without the funds from this bill. Revenue from this bill will allow them to move ahead in a steady, but not overly expeditious, manner in meeting the IT needs of the branch. In **Chief Justice Gray's** words this will give them "a Chevy, but certainly not a Cadillac" move ahead program. In addition, there was only one opponent in the House Judiciary Committee, Mr. Jeff Koch, who has a particular approach to this bill, but **Chief Justice Gray**, warned that these surcharges should not be placed just on the criminal side of the dockets. The civil side of the dockets is at least one-half or more of the total docket. **Chief Justice Gray** urged the Committee to give HB a do pass recommendation.

**Dan Chelini**, **Information Technology Director for the Montana Supreme Court**, stated the currently the technology staff is about one percent for the total of the branch. This percentage compares to other state agencies which is roughly four percent. Throughout the country, that number is about five and one-half percent. Therefore, the judicial branch is way behind in staffing. Besides **Mr. Chelini**, there are two network support staff members, one programer, and three trainers for the Full Court system. The money collected over the years from the $5 surcharge has historically been spent one-half on equipment and software for the field offices, 35 percent on staffing, and the remaining 15 percent on operating expenses, mostly travel to field offices. Issues related to staffing and replacement of equipment include support for users, which is inadequate. Many employees in the field feel that support is not adequate because they do not receive timely answers to their questions and problems. **Mr. Chelini** stated from his standpoint as an IT professional, this is inexcusable. Being able to track those calls, and the issues involved with those calls, is a key

component to allocating available resources. Updating of software and hardware cannot be accomplished within the current level of staffing. They support over 900 people and so this is not a feat that can be timely accomplished. Providing case management software to all courts is slow or non-existent in many parts of the state. Users experience a high-frequency of problems because of their old and out-dated equipment. Some of these problems could be mitigated if they were able to update these systems. The passage of this bill and the subsequent authority would add five network positions: two programmers to help program and train, a dedicated help desk position to help allocate resources, complete deployment of case management system for courts of limited jurisdiction. Currently, they are averaging two to four courts per month. At that rate, they are many years away from completing deployment, which will be outdated by completion. Additional staffing will also enable them to update the district court case management system. Currently, the one programmer on staff spends most of his time in different parts of the state supporting that system. You cannot build, program, and analyze a system from the field. If this bill passes, they will continue to attain the objectives lined out in their IT Strategic Plan. If the legislation does not pass, IT support in the Montana court system will cease to exist.

**Jeff Koch, Vice President of Collection Bureau Services in Missoula**, stated contrary to **Chief Justice Gray's** statement, he is a proponent of HB 18. In the House, he testified as a qualified opponent, because he supports court technology. The fiscal note reflects raising the surcharge to $10 will generate $918,000 over the fiscal year. **Mr. Koch** asked the Committee to consider that doubling of any budget for any program, this year, is a wonderful thing. There is a companion bill, HB 369 introduced by **REP. CINDY YOUNKIN**, which, in addition to the surcharge here, will add a $10 surcharge to speeding tickets. That bill has passed the House. **Mr. Koch** asks the Committee to coordinate these two bills and work between the two of them to end up with the increase that this bill asks for, i.e. $918,000. **Mr. Koch** feels there is a couple of ways to approach this. The fiscal note for HB 369 shows it will raise $423,000, or half of the $918,000. One option would be to not increase the civil surcharge under HB 18. Another idea would be to half the increase from $5 to $2.50. Either of these options, in conjunction with HB 369, will lead to the same result.

**Gary Olsen, Broadwater County Justice of the Peace, representing the Montana Magistrates Association**, highly supports HB 18. If the sunset were to occur, the fiscal impact would fall back to the local governments as state law mandates that they fund our courts. **Mr. Olsen** feels the local governments simply cannot

afford to take on this task. In regards to what **Mr. Chelini** had to say about the new program, Full Court, the installation process is about 25 percent complete. Broadwater County is one of the fortunate ones to already have this installed and Mr. Olsen feels it is a wonderfully efficient and complete program. It is thorough and saves them a massive amount of time. This bill is needed to complete the installation of this program in the courts of limited jurisdiction throughout the state. One of the most beneficial aspects of this bill is that they are planning to replace the computers in each court on a four-year cycle. It is a cost-effective and beneficial bill to all the citizens of the state as it funds the very necessary information technology of the courts.

**Ms. Nancy Sweeney, Clerk of District Court for Lewis and Clark County, a member of the Supreme Court Commission on Technology, and as a member of State Bar Access to Justice Committee,** is not here to testify to the Judicial Case Management System (JCMS) is the solution to all the computer needs in her office or that it operates flawlessly in all the varied network environments across the state, or that it integrates seamlessly with the other data bases and programs. In fact, **Ms. Sweeney** has appeared in front of the Committee before stating quite the opposite. She is here today to say the major reason she does not have a system that would do all these things is that the state has never adequately funded court technology. **Ms. Sweeney** testified Lewis and Clark County was one of the first pilot projects for the judicial docketing system about 14 years ago. From the beginning of the pilot project until today, funding for court technology has been inadequate. In 1995, the $5 user surcharge funding mechanism was initially developed. Although the members of the Supreme Court Commission on technology, as well as the rest of the people involved in the administration of justice, do not particularly like user fees in place of a general fund allocation, the courts are now at a critical juncture on technology. The Supreme Court Commission on technology has developed the very first Court Technology Plan for Montana. Subcommittees are already prioritizing tasks to meet the goals established by the Commission. These goals were developed with input from all sectors of the judiciary, as well as a representative of the general public. During the development of the Court Technology Plan, it became clear to the members on that Commission that the percentage of the technology's budget to the branch's total budget is considerably lower than any other branch. Although the Technology Commission's function was not necessarily to develop additional funding, each member was aware that the critically needed resources had to be developed both for the short term and the long term. The current user surcharge has not been increased since its implementation eight years ago. The surcharge, or an

increase in the surcharge, does not deny access to anyone who seeks justice through the court system. Fees can be, and in fact routinely, are waived for anyone who cannot afford to pay a filing fee. **Ms. Sweeney** absolutely believes that technology is part of Montana's solution to providing citizens access to government, all branches of government, at no additional cost. Technology can make distances inconsequential, saving both time and money spent on travel. Data sharing can reduce redundant entry of information which not only saves time, but reduces errors. **Ms. Sweeney** urged the Committee to help the Judiciary develop an adequate level of funding to set up, maintain, and support a state-wide court technology system and, at least until a more stable method of funding state technology is developed, **Ms. Sweeney** asked that the Committee give HB 18 a do pass recommendation.

**Mr. Richard Meeker, representing the Montana Juvenile Probation Officers' Association,** supports this legislation. Since state assumption, the state now provides all their connections to the state computer system, provides support to their employees, updates the computer equipment, and responds to their questions. Without this funding, the Judicial Branch will be unable to support their operation. Computers are essential to their line of work. They maintain a client file on their computer database. Without the proper technology and support they are greatly handicapped in performing their jobs. This bill will provide and adequate funding source to ensure and maintain their basic computer technology.

**Mr. Robert Throssell, representing the Montana Magistrates Association,** testified that technology for the courts of limited jurisdiction is very important. The current surcharge, and the proposed increase, is primarily collected by the courts of limited jurisdiction since they process the majority of offenses. There are many smaller jurisdictions that do not have the funding from the county or city to purchase hardware let alone implement the information technology referred to by **Mr. Chelini.** There are a lot of courts who do not have any technology and are working in the dark ages with ledger sheets and paper.

**Gordon Morris, Director of the Montana Association of Counties,** rises in support of HB 18.

**Chris Manos, Executive Director of the State Bar of Montana,** supports HB 18 for a variety of reasons. **Mr. Manos** feels the funding is critical. **Mr. Manos** suggested the Committee not consider parceling or changing the surcharge amount. In addition, HB 18 will accomplish the mission of the Judiciary. The Judiciary has a strategic plan and a mission statement which

provides for an independent, accessible, responsive, impartial, and timely forum to resolve disputes, to preserve the rule of law, and to protect the rights and liberties guaranteed by the Constitution of the United States and the State of Montana. To accomplish this mission, technology has to exist. The expectations of the citizens of Montana were articulated by Chief Justice Gray when she said the intelligent application of information technology, all technology, is a key success factor the state government in the 21st Century. Therefore, **Mr. Manos** suggests the Committee give HB 18 a do pass recommendation.

**Opponents' Testimony: None.**

**Informational Testimony:**

**Jeff Brandt, Deputy Chief Information Officer for the State of Montana,** submitted written testimony as an information witness for HB 18. **EXHIBIT(jus31a01).**

***(Tape : 1; Side : B)***

**Questions from Committee Members and Responses:**

**SEN. MIKE WHEAT** asked **Mr. Brandt** to describe what risks would be mitigated by the implementation of information technology.

**Mr. Brandt** responded the biggest risk is selecting the right kind of technology and implementing it in such a way as to be on time and within budget. This ranges from selecting the right kind of computer to setting the right type of technology, web enabling, putting information on the Internet. Mr. Brandt believes if the Judicial Branch will work with the state's Information Technology Services Division, a lot of these risks will be mitigated.

**SEN. WHEAT** is not complete familiar with the information technology computer system used by the courts and wondered if it was capable of being fully integrated with the state computer system.

**Mr. Brandt** responded the infrastructure they provide, including the state's data network and the things they are responsible for providing to all of state government, is compatible with the kind of system used by the court. As far as the level of integration within the court system, **Mr. Brandt** deferred the question to **Mr. Chelini.**

**Mr. Chelini** responded affirmatively and that they have two main case management systems. One is Full Court, for the courts of limited jurisdiction, and it is compatible and uses an oracle

data base, which is the state standard. The district court package is older technology, but is compatible. The update will bring it into the modern world. It is very stable and usable, just old.

**SEN. WHEAT** stated what he understands from reading the fiscal note is they are anticipating a four-year turnover for computers. Every year they will be replacing a certain number of computers, so at the end of a four-year cycle, you start all over again.

**Mr. Chelini** stated **SEN. WHEAT** was correct.

**SEN. DAN McGEE** stated one of the areas of concern he has under state assumption is fiscal reporting. **SEN. McGEE** wondered if this information technology will dovetail with the SABERS program.

**Mr. Chelini** stated it was not meant to. What **SEN. McGEE** is referring to is financial reporting for the branch. The connections in place locally and in the field do allow staff to interact with SABERS. The case management systems he has described are specifically for court cases management use only.

**SEN. McGEE** followed up by asking if his assumption was correct that the dollars will not go to SABERS programming.

**Mr. Chelini** stated **SEN. McGEE's** understanding was correct.

**SEN. JERRY O'NEIL** stated he had been informed that the court's computer language was Advanced Revelation.

**Mr. Chelini** responded that is the tool package used for the past ten years on the district court case management system.

When asked by **SEN. O'NEIL** if that language is still being used, **Mr. Chelini** responded it is, and the vendor for that tool package has more modern tools which are compatible and will allow them to update the system to become current with state standards.

**SEN. O'NEIL** asked how many people working in the Supreme Court know how to program in Advanced Revelation.

**Mr. Chelini** responded one.

**SEN. JEFF MANGAN** asked if there were any other convenience fees or other fees charged to non-court entities that might utilize or gain access to court information through the Internet.

**Mr. Chelini** stated the surcharge is the only fee they currently have to fund their operation. They collect no other fees at this time.

**SEN. MANGAN** asked if others besides non-court personnel utilize any of the information technology to access information from the Supreme Court or another agency.

**Mr. Chelini** responded there are many users of court information around the state that are not necessarily people from the Montana Judiciary. This bill is focused on providing the support for the members of the Montana Judiciary, including courts of limited jurisdiction, the district court clerks' offices, the district courts themselves, the Supreme Court, juvenile probation offices, and such.

**SEN. MANGAN** supports the bill, but he is curious because last session they allowed state agencies to charge fees for accessing information to help assist in the payment of these types of things. He wondered if consideration had been made to adding a surcharge to users who are not part of the Judiciary.

**Mr. Chelini** deferred the question to the **Chief Justice.**

**Chief Justice Gray** responded the only access to Judicial Branch IT of any kind that she can think of that is not solely by members of the branch, is through the Law Library. There are certain fees charged by the Law Library to users who seek legal research on the net, but that is separate from the Judicial Branch's needs for IT.

**SEN. GARY PERRY** stated the Judicial's budget is $17 or $18 million.

**Chief Justice Gray** corrected **SEN. PERRY** and responded for the entire Judicial Branch, the budget is substantially more.

**SEN. PERRY** is new to government and he is appalled that the Judicial Branch is saddled with the cumbersome method of taking care of a matter that seems so basic and vital to the system. **SEN. PERRY** feels this is a no-brainer, and he would like an explanation as to why the Judicial Branch should have to go through all these steps to accomplish something so vital.

**Chief Justice Gray** repeated the question as she understood it stating **SEN. PERRY** is somewhat distressed that they have to go through a surcharge routine to be able to fund something as basic as information technology for the entire Judicial Branch.

**SEN. PERRY** explained that he is looking for efficiencies in government and he does not see a great deal of efficiency within a system that for such an important thing, there is not a cost-evaluation and budgeting so that technology can be accomplished without the necessity of going to the Legislature.

**Chief Justice Gray** presented that she believes Judicial Branch Information Technology should be funded through the regular budget process, as opposed to the state special revenue account method. She believes it is a basic service. Had the state's circumstances been significantly different, the Judiciary might have attempted to tap into the general fund. Obviously, if ever there was a time not to try to do this, this is it.

As a citizen, **SEN. PERRY** is looking at this as an extremely cumbersome method of getting the funding to do what you need to do. With information technology absolutely vital in today's world, his newness to this situation and from a business background, this is amazing to **SEN. PERRY** and leaves him speechless.

**Chief Justice Gray** responded she could not agree with **SEN. PERRY** more, but this is the only mechanism they have. Going to the budget subcommittee this year and asking for money from the general fund, the chances of success would have been nil and none. Hopefully, some day they can move to general fund funding.

**SEN. WHEAT** asked for a background of the procurement and installation process, and whether the state would contract with somebody or if they were going to contract with a manufacturer and establish an ongoing relationship.

**Mr. Chelini** responded the Judicial Branch does currently, and will in the future, use the state's term contract for purchasing those assets. Currently, the viable vendors are IBM, Dell, and Compaq. At the present time, the purchase mostly Dell computers. This is one of the ways they mitigate risks. They utilize the services as much as they can from Internal Technology Services Division.

**SEN. WHEAT** then asked if the software would be a specialized program or if it was something the state would program itself. The reason he is asking this question is because they just saw the point system go down the tubes, and it cost the taxpayers of this state millions of dollars.

**Mr. Chelini** responded the software is the Judicial Case Management System used in district courts, which is a very stable, widely-used package. The software is old, but it works

well. The other package is for courts of limited jurisdiction is Full Court, which is very modern and full-featured. They are past the testing and evaluation of this software and it was found to be quite good. There have been no significant problems with the package. The biggest problem is getting it out there and in use by those courts that need it.

**Closing by Sponsor:**

**REP. SHOCKLEY** closed by reiterating they need the money and the user's fee will accomplish the mission and the general fund does not take the hit. **REP. SHOCKLEY** would appreciate a do concur on the entire bill.

## HEARING ON HB 14

**Sponsor:** **REP. JIM SHOCKLEY, HD 61, Victor.**

**Proponents:** **Mr. Leo Gallagher, Lewis and Clark County Attorney, Montana County Attorneys' Association**
**Ali Bovingdon, Assistant Attorney General, Montana Department of Justice**

**Opponents:** **None.**

**Opening Statement by Sponsor:**

**REP. SHOCKLEY** bluntly stated this is not a great bill. It is a compromise and like most compromises, it is not perfect. In Montana, for a misdemeanor, a person can have two trials, one in justice court or city court, and, if convicted there, a person can have a whole new trial in district court. This is called a trial *de novo*. **REP. SHOCKLEY** is in favor of jury trials, but feels one is enough. The government does not want any fair jury trials, the defense wants two fair jury trials, and the taxpayers can only afford one. The 1997 Legislature passed a bill which provides for one jury trial, in either justice court or district court, at the election of the defendant. This idea did not work because the court said our Constitution gets in the way of what the Legislature has done. The statute said you could have one of your trials in front of a Justice of the Peace. Even if you have a jury trial in front of a Justice of the Peace, and there is a legal objection, it was felt you could not have a fair jury trial unless legal errors are preserved for appeal in district court. Therefore, if you went to justice court before the Justice of the Peace and saved your jury trial for district court, you had to have your trial before the justice court. If you had your jury trial in justice court, you could not have a record for appeal to district court. This bill will put on the ballot a referendum

allowing your choice: one jury trial in justice court or one trial in district court. However, **REP. SHOCKLEY** feels this will not solve the whole problem. **REP. SHOCKLEY** referred to a case captioned Woirhaye v. Montana Fourth Judicial District Court, 292 Mont. 185. **REP. SHOCKLEY** feels this bill will not solve the whole problem, and in the next session, the Legislature will have to provide for a mechanism to make it work. The bill still does not provide for how the record will be preserved in justice court if someone elects to have their jury trial in that forum. **REP. SHOCKLEY** informed the Committee that as a prosecutor, he preferred justice court over district court because it was quicker, less formal, and yielded the same result. There needs to be a way to provide a record in justice court trials. This could be accomplished by stipulation of the parties to legal error. Another route would be to record the entire trial. That way, if there was an error, it could be identified from the tape. This is the current practice in small claims court. **REP. SHOCKLEY** reported this is not a common practice in Montana, but it is common in military courts.

***(Tape : 2; Side : A)***

HB 14 is an attempt to make a complicated system perform more cheaply, yet still maintain justice afforded by the Constitution. **REP. SHOCKLEY** stated HB 14 received 55 votes on the second reading, and 80 on the third reading. Therefore, **REP. SHOCKLEY** feels there are plenty of votes to get this issue on the ballot if the Senate concurs.

**Proponents' Testimony**:

**Mr. Leo Gallagher, Lewis and Clark County Attorney, and a member of the Board of Directors of the Montana County Attorneys' Association**, stated the County Attorneys' Association has been interested in bringing this legislation for the past ten years. **Mr. Gallagher** outlined four reasons why he believes the bill deserves support. **Mr. Gallagher** provided the Committee with a copy of the Woirhaye case referenced by **REP. SHOCKLEY.** **EXHIBIT(jus31a02).**

The first reason **Mr. Gallagher** supports the bill is because the types of cases likely to generate jury trials are cases that matter. In his jurisdiction, the cases tried before a jury are multiple DUI offenders and partner family member assault cases. With respect to the partner family member assault cases, it is very difficult for victims to come before, not one, but two juries.

The second reason **Mr. Gallagher** supports the bill is the costs associated with two jury trials. Roughly, it costs somewhere between $500 and $600 for one day of a jury trial. This is just for the cost of the jury. If there are two jury trials, it costs more money. In addition, there is time associated both with the public defenders, the prosecutors, the court, and court personnel. There is case law in Montana which says if you have the ability to pay and you are convicted, you can assess costs of a jury; however, there is case law in Montana that says if you go to the appellate level, you can have the second trial essentially for free. Those costs generated in the justice court cannot be assessed by the district court upon appeal. Therefore, this is a very expensive process.

The third reason **Mr. Gallagher** supports HB 14 is that it is effective to prosecute these cases. If it is not a case that matters, you have people who are driven by anti-government sentiment to jam up the system as much as they can, and they will try everything twice.

Lastly, Public Defenders are overworked and are obligated to do the bidding of their clients. Therefore, they have to litigate low-level misdemeanor cases to the maximum. This is one of the very most primary bills that the County Attorneys support.

**Ali Bovingdon, Assistant Attorney General, Montana Department of Justice,** feels this bill is a practical solution which will save time and money for the courts, prosecutors, and public defenders. For all the reasons stated by **Mr. Gallagher,** the Department of Justice hopes the Committee will give the bill a do pass recommendation.

**Opponents' Testimony: None.**

**Informational Testimony: None.**

**Questions from Committee Members and Responses:**

**SEN. BRENT CROMLEY** told **REP. SHOCKLEY** he is sympathetic to what he is trying to accomplish, but he is initially reluctant when he sees proposed changes to the Constitution. **SEN. CROMLEY** asked about possible alternatives and how other states avoid two jury trials.

**REP. SHOCKLEY** stated if it were simply a matter of having a record, we could get around this issue without a constitutional amendment. **REP. SHOCKLEY** cited the Woirhaye decision at page 191 quoting, "however, forces a misdemeanor defendant to be convicted by a judge, either in justice court or in district court, rather

than by a unanimous jury." This is what the court found to be unconstitutional. By changing the Constitution, you can say you can have one trial before a judge, and a judge alone, and you can also have your jury trial in whichever court you choose to have it. If it were just a matter of record, we would not need to do this. The other case the district court judge relied on was Ludwig v. Massachusetts, which was a United States Supreme Court case which upheld a two-tiered system that only provided for one jury trial. **REP. SHOCKLEY** believes Montana is in the minority handling jury trials the way we do.

**SEN. WHEAT** asked **Mr. Gallagher** if, as a prosecutor, he has the power to decide which court he is going to file his case in.

**Mr. Gallagher** responded that regional jurisdiction falls within the Justice of the Peace. For example, a first-offense DUI will be filed in JP Court. Multiple offense DUIs are filed in district court if it is a felony DUI.

**SEN. O'NEIL** asked what other types of cases, besides misdemeanor cases, are handled in justice court.

**REP. SHOCKLEY** responded civil matters up to $7,500 are filed in justice court.

**SEN. O'NEIL** questioned whether it was **REP. SHOCKLEY's** intent to provide a jury trial in a civil matter in justice court. He believes they are provided for, but he is not familiar with the system and does not feel competent to comment.

**SEN. O'NEIL** stated if a civil matter in justice court has a right to a jury trial, and he presumes they can appeal that decision to the district court and have another jury trial, why they would be excluded from the bill.

**REP. SHOCKLEY** replied he was simply focusing on the misdemeanor problem with which he was familiar.

**SEN. O'NEIL** wanted to know how **REP. SHOCKLEY** felt about amending the bill to include all trials in justice court.

**REP. SHOCKLEY** remarked he hoped the bill would not be amended by the Committee.

**CHAIRMAN GRIMES** asked about omitting the word "only," and asked if the language we are putting into the Constitution could be shorten up immensely by just using the same language they are proposing to place on the ballot.

**REP. SHOCKLEY** verified that **CHAIRMAN GRIMES** was speaking about the language in the body of the bill on line 22. **REP. SHOCKLEY** went on to explain the drafter wanted to make in emphatic that you only got one jury trial. **REP. SHOCKLEY** remembered that they word smithed on page 2, beginning on line 11, with **REP. NOENNIG** and **REP. GUTSCHE.** They made a complicated subject, as simple as they thought they could.

**CHAIRMAN GRIMES** then asked if they spent any time at all on the language that goes into the Constitution or whether they did not worry about it.

**REP. SHOCKLEY** did not recall there being any contention about the language being inserted directly into the Constitution. The contention was about how to make it clear on the ballot.

**SEN. CROMLEY** stated part of his problem is that as he understands it, civil trials in justice court do not get two juries because the appeal is only on the record. **SEN. CROMLEY** wondered about making a provision for that in the Constitution.

**REP. SHOCKLEY** stated he is embarrassed that he is not familiar with how the civil system works in the justice court city court context. The only thing he is familiar with is Small Claims Court where a lawyer is not allowed to be present, record their transcript and then it is appealed to district court based upon that transcript. If they tried to expand the bill, it means they would have to go back to the House and re-vote. **REP. SHOCKLEY** feels the House vote of 80 is a good number.

**SEN. O'NEIL** stated the Committee passed some very good legislation setting a three-day time limit for eviction from rental property for drug use. Of course, if they do not leave within that three-day period, the landlord would have to file in justice court. If the tenants have a right to a jury trial, and if the tenant loses that jury trial, he can appeal to district court, and he would have a right to another jury trial. **SEN. O'NEIL** feels it would be good to have HB 14 apply to all trials in justice court, not just misdemeanor cases.

**REP. SHOCKLEY** responded that you would not be entitled to a jury trial in an eviction case in justice court anyway.

**SEN. WHEAT** stated one of the issues important for passage of this bill was the cost of jury trials. **SEN. WHEAT** reviewed the fiscal note which talks about costs, but he does not see any information regarding numbers indicating how often this occurs. **SEN. WHEAT** would like to know if this is such a serious problem that it

warrants changing the Constitution. **SEN. WHEAT** would like to know the number of cases which are appealed from justice court to district court after they have had a jury trial.

**REP. SHOCKLEY** stated he would attempt to find this information for the Committee.

**SEN. McGEE** asked how a person who has been arrested will know where he wants a jury trial. **SEN. McGEE** feels attorneys will know which court they will want, but wonders how the average citizen, who does not deal with the courts on a daily basis, will decide.

**REP. SHOCKLEY** responded in the criminal context, if a person is indigent, the get an appointed attorney if there is a possibility of jail time. If they are not indigent, it is **REP. SHOCKLEY's** experience they will invariably hire someone. The attorney is charged with having knowledge to advise a client. If a person pleads guilty, all their rights to a jury trial, etcetera are given to them in the process of pleading guilty. They actually have to waive a jury trial now.

**SEN. McGEE** interpreted the process as amending the Constitution to limit the provision of a jury trial, with the only safeguard or gatekeeper to the whole issue being a defense attorney, whether appointed by the court or hired by the defendant, as the one explaining this process to the members of the public.

**REP. SHOCKLEY** responded if the person was representing himself, he has to be informed of his right to a jury trial. Usually, they are advised of their rights at an arraignment.

**SEN. McGEE** said it seems to him it would be more simple and clear if they just made the justice courts of record to make things clearer.

**REP. SHOCKLEY** stated when people go before the Justice of the Peace they have to sign papers acknowledging they have been advised of their rights. **REP. SHOCKLEY** is certain they are advised of their right to a jury trial. If the bill passes, this procedure would have to be changed because it will be more complicated.

**SEN. CROMLEY** asked Mr. Gallagher if he could give the Committee a feel for the types of cases that are currently receiving two jury trials.

**Mr. Gallagher** answered it is primarily multiple DUIs, usually second or third offense. Occasionally, you see them on first-

offense DUIs if someone has the money to hire an attorney to do both trials, or if someone just simply wants to stand on their rights. The other cases you see this in is in partner member assault because there are issues with firearm rights. These cases tend to be litigated strenuously. Also, they had two jury trials this last year in an indecent exposure case. There has also been concern expressed by the Ravalli County Attorney for people who are devoted to jamming up the system such as Freeman. These individuals will stand on their rights and take traffic tickets all the way through twice.

**SEN. WHEAT** asked if the Legislature could simply change the jurisdictional requirements of some of these crimes so they are filed initially in district court, rather than the courts of limited jurisdiction.

**Mr. Gallagher** stated that could be done, but cautioned the district courts are swamped.

**SEN. WHEAT** feels this is a method for alleviating the double trial in those kinds of cases.

**Mr. Gallagher** stated it would. **Mr. Gallagher** was involved with a bill last session that attempted to create county courts which would make the county courts a court of record, which would provide another solution. That proposal went down in a big ball of flames and there was no support for the bill.

**SEN. WHEAT** asked what the reasoning was behind the opposition to that bill.

**Mr. Gallagher** stated the smaller rural counties have Justices of Peace, who are good men, but not lawyers. There was a suspicion that if this became law, you would have to have a lawyer which is difficult in some rural communities.

**Closing by Sponsor**:

**REP. SHOCKLEY** closed the hearing by stating to **SEN. McGEE** he believes when people are arrested they are given their rights at arraignment and are required to sign a form acknowledging they have received their rights. **REP. SHOCKLEY** then told **SEN. WHEAT** there is not enough money to try these cases initially in district court. HB 14 is not the best way to accomplish this, but this is not a perfect world, and he thinks this is the best way to handle a tough problem.

***(Tape : 2; Side : B)***

## HEARING ON HB 234

**Sponsor**: **REP. JILL COHENOUR, HD 51, East Helena.**

**Proponents**: **Col. Shawn Driscoll, Montana Highway Patrol**
**Senator Mike Cooney, SD 26, Helena**
**Representative Tim Dowell, HD 78, Kalispell**
**Jim Smith, Montana Sheriffs' and Peace Officers' Association, Montana County Attorney's Association**
**Tom Harrison, AAA Mountain West**
**Jim Kembel, Montana Association of Police Chiefs, Montana Police Protective Association**
**Officer Joe Cohenour, Montana Highway Patrol**

**Opponents**: **Steve White, Bozeman, Self**
**Mike Fellows, Missoula, Self**

**Opening Statement by Sponsor**:

**REP. COHENOUR** opened the hearing on HB 234 by stating the bill would allow law enforcement officers to stop a vehicle operated by a driver under the age of 18, or containing occupants under the age of 18 for failure to wear seatbelts. **REP. COHENOUR** directed the Committee to look at lines 8 and 9 where it states, "WHEREAS, making failure to wear a seatbelt a primary offense for individuals under 18 years of age will enhance the protection of minors as authorized under Article II, section 15, of the Montana Constitution." This is the reason **REP. COHENOUR** is bringing this bill. The real meat of the text is on page 2 where it allows the department or its agents to make the stop. The reason for bringing the bill is to create a habit. They want kids to put their seatbelts on because they know it will save lives.

**Proponents' Testimony**:

**Col. Shawn Driscoll, Montana Highway Patrol,** supports HB 234. In the last three years, there have been an average of 26 deaths a year in Montana that would be affected by the age group addressed in the bill. Approximately 300 incapacitating injuries occur each year in Montana. Nationally, the costs of these injuries is estimated to be approximately $1.1 million per person throughout their lifetime. Therefore, there is not only a human toll, but an economic toll. **Col. Driscoll** feels we tell our young people when they need to go to school with truancy laws, we tell them when to be home at night by curfew laws, we have laws governing the use of tobacco and alcohol, laws that govern use of a driver's license, and we also tell kids when they can vote. This

is a step in that same direction. When kids are ten, twelve, and fifteen years old, they may need help making choices. This is an investment in the future, because for those kids who get into the pattern of using a seatbelt, it will last them a lifetime.

**SEN. MIKE COONEY**, is pleased to join **REP. COHENOUR** in supporting this bill. Earlier, **SEN. COONEY** brought a primary seatbelt law for all citizens of the state of Montana. Although he still hopes headway can be made on that bill, he feels **REP. COHENOUR's** bill makes very good sense. As a father of three teenagers, two of which are drivers, he always tells his kids to wear their seatbelts because we know how seatbelts can prevent serious injury and perhaps death. As parents, we fear getting that phone call telling us our child has been in an accident. As a parent, **SEN. COONEY** knows giving that advice to his children, they will sometimes listen to his advice and sometimes forget about it. However, if they know there is a law, they can get in trouble, and it may cost them some money, they are more likely to pay attention. **SEN. COONEY** hopes the Committee will give the bill serious consideration.

**REP. TIM DOWELL** brought the debate back to a personal family issue, the family of legislators. For three terms he served with a fine gentleman from Kalispell who was affected because of lack of a seatbelt. He suffered a serious spinal injury. Our Legislature had to make serious accommodations each session by providing a special desk, a full-time aide, and special microphone. This legislator was in an accident, under the age of 18, in Flathead County where he was thrown from a vehicle. This is a good bill and it is the right thing to do. We have control over young people until they are 18. Each of **REP. DOWELL's** kids wrecked their cars before six months had passed on their new driver's licenses. Fortunately, they were wearing their seatbelts, and both his kids came away uninjured. This is the time when accidents happen at an alarming rate.

**Jim Smith, representing the Montana Sheriffs' and Peace Officers' Association and the Montana County Attorney's Association,** testified that both these organizations appeared before the Committee on January 13, 2003, to support **SEN. COONEY's** SB 16. It would appear SB 234 is the only seatbelt bill left, so he stands in support. Given the carnage going on Montana's highways, the time involved for law enforcement officers dealing with accidents, County Attorneys in prosecuting cases and developing reports, this bill really seems to make sense. In **Mr. Smith's** house, it was his kids who convinced him and his wife to wear seatbelts. This is reflective of a cultural change, and the Sheriff's and County Attorneys would say Montana needs a cultural

change regarding its habits and attitudes regarding seatbelts and DUI laws.

**Tom Harrison, representing AAA Mountain West,** is strongly in favor of this bill because it helps to teach a lesson at a time when this lesson should be learned. The result will be less injuries and less deaths. **Mr. Harrison** believes this is good public policy for Montana.

**Jim Kembel, representing the Montana Association of Police Chiefs, and the Montana Police Protective Association,** would like to go on record as supporting SB 234.

**Officer Joe Cohenour,** a Montana Highway Patrolman assigned to the Helena area, sees this bill as a choice bill. The choice of the Legislature makes them the envy of law enforcement since they have the choice of saving a child from death or serious injury. **Officer Cohenour** feels law enforcement officers make tough choices all the time. Right now, the seatbelt law is primary for four years and forty pounds. It is sometimes a difficult choice to determine whether a child is four or five. The decision is made though an investigative stop. **Officer Cohenour** told of stopping a vehicle because there was a child standing up in the seat who looked to be four years of age. After asking for the mother's driver's license, proof of insurance, and registration, he determined her license was suspended, and she had no insurance. Ultimately, the child was five years old, and **Officer Cohenour** could not issue any citations because he did not have probable cause to make the stop. Therefore, he just drove the mother and child home. **Officer Cohenour** recalled a one-vehicle rollover accident in the Clancy area where a 12-year old girl, Jessie, was killed because she chose not to where her seatbelt. **Officer Cohenour** stated the hardest thing he has had to do in his law enforcement career was tell Jessie's mother that the next time she would see her daughter would be in a coffin.

**Opponents' Testimony:**

Written testimony was submitted by Steve White, Bozeman. **EXHIBIT(jus31a03).**

Mike Fellows, Missoula, submitted written testimony in opposition to HB 234. **EXHIBIT(jus31a04).**

**Questions from Committee Members and Responses:**

**SEN. AUBYN CURTISS** was puzzled with the language on lines 28 and 29 and wonders how an officer could have reasonable cause to

believe that an occupant of the vehicle has violated another traffic regulation.

**SEN. McGEE** responded striking "he" and inserting "an occupant of the vehicle" is an attempt to clean up the language and to not use the pronoun "he," in an attempt to not be gender specific.

**COL. DRISCOLL** re-referred the question to **Officer Cohenour.**

**Officer Cohenour** explained that in his career, he has had several times where another occupant of the vehicle, besides the driver, actually committed a crime, such as littering. At that point, if a stop is made, then enforcement action could be taken if someone in the vehicle is not wearing their seatbelt.

**SEN. WHEAT** then told **Officer Cohenour** that the Committee had already considered a bill like this, and the bill did not make it out of the Committee. There were a number of people who viewed this as a bill whereby police officers could stop anybody, anywhere, anytime, for anything. **SEN. WHEAT** understands the bill is safety motivated and is full support of educating youth to wear seatbelts. You can never legislate common sense or personal responsibility. **SEN. WHEAT** asked if there was a way to structure the bill so if passed, the violation would not go on the record, there would not be a fine, and it is designed to educate rather than prosecute and punish. Additionally, could the law be designed so that even though you have probable cause to stop someone because they are not wearing a seatbelt, that is as far as it goes.

**Officer Cohenour** felt the bill could be written to accomplish all these things, but it would take the teeth out of the bill. First, it would be an invasion of privacy if the teeth were taken out, because youth would feel law enforcement is stopping them to harass them. If you want to structure the bill the same as it is now, with a $20 fine and the violation does not go on a record, **Officer Cohenour** feels that would be best, stating $20 is a lot to a kid. This fine would provided a learned lesson.

**SEN. WHEAT** stated **SEN. MAHLUM,** in his DUI bills, wanted to give a mulligan for the first DUI. There was testimony from the department stating that was a very difficult thing to do. **SEN. WHEAT** wondered if it would be difficult to give a mulligan for the first seatbelt violation.

**Officer Cohenour** referred the question to **Col. Driscoll** who responded there are no points on a seatbelt violation. Currently, a seatbelt violation receives no points, does not get used for insurance information, and does not get placed on the

driving record. DUIs are a pointed violation, is hazardous, and there are repeat offenders. As a result, there is a ratcheting up, so it needs to be tracked at the very beginning. This would not be an issue with the seatbelt laws.

**SEN. WHEAT** followed up by asking **Col. Driscoll** to respond to his question about not being able to issue citations for anything else when you stop someone for a seatbelt violation.

**Col. Driscoll** responded that his first thought is that they need enforcement power that goes beyond the warning aspect. There are people who will refuse to wear the seatbelt and will force themselves into a citation. When the seatbelt law came into affect in 1987, there was a mandatory warning grace period and then at a certain point, it became a violation.

**CHAIRMAN GRIMES** asked if it was **Col. Driscoll's** preference to cite the driver rather than the occupant for the proposed traffic violation. If an occupant were under the age 18, does that meant the $20 violation would go to the driver.

***(Tape : 3; Side : A)***

**Col. Driscoll's** interpretation was that any occupant who was not buckled in would give probable cause to make the stop. The violation would actually go to the driver. They had discussions about making occupant's responsible to their own actions, but they do not want to be writing 12-year-old children tickets. Col. Driscoll feels the driver needs to be accountable for those people who are underage.

**CHAIRMAN GRIMES** then asked for confirmation that this is the current law with the secondary violation.

**Col. Driscoll** responded that is correct, the driver is held accountable for all occupants in the vehicle, the difference being it is a secondary offense, and law enforcement needs probable cause to make the stop.

**SEN. MANGAN** supports HB 234, but asked **REP. COHENOUR** how she would feel about amending HB 234.

**REP. COHENOUR** responded she feels the bill should be left as written because they do want it to be ever so slightly punitive. The purpose of HB 234 is to change a behavior and save lives. Therefore, you need to give a reason people should comply with the law other than it is for their own good. The $20 fine is the teeth that will get people to pay attention. The bill will give the officers more of an opportunity to have contact with young

people. Officers do not write these tickets all the time and often times give warnings. This bill will be a way to help young people form life-time habits.

**SEN. MANGAN** asked if **REP. COHENOUR** would consider, whether a warning or a ticket, that the whole process would be considered education.

**REP. COHENOUR** responded definitely and stated she would not have too much of a problem with the violation not going on their record the first time, but suggested keeping the teeth in the bill.

**SEN. MANGAN** assumes, whether through training or experience, law enforcement is fairly well qualified to make determinations about the age of drivers and behaviors and asked Col. Driscoll to comment.

**Col. Driscoll** stated law enforcement officers make assessments and discretionary decisions and are held accountable for those decisions all the time. Cameras are in patrol cars to verify proper contact between law enforcement and citizens. Whatever actions they take is reviewed by county attorneys, judges, courts, and juries. There are training programs and supervisory training programs in place. They review their officers' actions on a daily basis to make sure they are accountable for the actions they take, and that those actions are reflective of the legislative intent. Those assessments are made all the time on every call they go on.

**CHAIRMAN GRIMES** asked Col. Driscoll that if he sees a vehicle with a child under two years of age not restrained properly, if that is a primary offense.

**Col. Driscoll** responded up to the age of four or forty pounds they have primary enforcement ability whether it be citation or warning.

**CHAIRMAN GRIMES** asked what **Col. Driscoll's** experience has been using that tool.

**Col. Driscoll** stated this has caused them concern and they are constantly making stops and sometimes someone looks like they are four and they turn out to be five or six. Those kinds of issues are dealt with on a continuous basis. Overall, the law is a good law and makes people place their children in appropriate restraints. Part of this is education, part is enforcement; and the law has made a big impact. This law is clearly saving lives on a regular basis.

**CHAIRMAN GRIMES** then asked under this bill from the age of four to eighteen, they would be able to pull someone over and there were enough seatbelts, because that is an exception, then a citation could be given. **CHAIRMAN GRIMES** sought to know if there were not enough seatbelts, would there be a violation.

**Col. Driscoll** stated if all the seatbelts were appropriately used and they had more people in there than seatbelts available, and there were no alterations to the vehicle, then we would provide informational guidance to make other adjustments. However, no enforcement would be given.

**CHAIRMAN GRIMES** then clarified that it is **Col. Driscoll's** intention that all the exceptions currently used would apply.

**Col. Driscoll** stated he did not feel anything would change with current enforcement other than they would have the ability to stop those people under 18 and take appropriate enforcement.

**SEN. CROMLEY** wanted to make it clear stating the situation described by **Officer Cohenour** with the woman with the expired license and the five-year-old child in the back, she could be cited under this bill because it is a primary offense.

**Col. Driscoll** replied that was absolutely correct, and **Officer Cohenour** could have taken action on the seatbelt violation and the driving while suspended and no insurance.

As **SEN. McGEE** reads through 61-13-103, it says a driver may not operate a motor vehicle upon the highway of the state of Montana unless each occupant of a designated seated position is wearing a properly adjusted and fastened seatbelt and the it goes on to discuss certain cases that do not apply. The new language on page 2 of the bill states the department or its agent may stop a vehicle if the driver or an occupant of the vehicle is under 18 years of age and is not wearing a properly adjusted and fastened seatbelt. **SEN. McGEE** wanted to know if under the language of the bill they would have probable cause to stop a school bus.

**Col. Driscoll** responded no because school buses are an exception under federal authority. Right now, school buses are not required to have seatbelts.

**SEN. McGEE** realizes school buses are not required to have seatbelts but stated passing this language under 61-13-103, it says, "A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seat belt." Then the section goes on to list exclusions, but school buses are

not listed as an exclusion. In addition, the language being added in says, "The department or its agent may stop a vehicle if the driver or an occupant of the vehicle is under 18 years of age and is not wearing a properly adjusted and fastened seatbelt." **SEN. McGEE** sees nothing that would prohibit law enforcement from stopping a school bus. In fact, the clear language of the law, together with the amendment, would require law enforcement to stop a school bus.

**Col. Driscoll** referred the question to **REP. COHENOUR** who stated the issue of school buses is addressed in another section and they are completely exempted even from the secondary citation already in the codes.

**SEN. McGEE** was emphatic in wanting to know why a school bus operating on the highways and carrying children would not have seatbelts.

Personally, **REP. COHENOUR** stated she would love to see seatbelts on buses, but feels the economic cost would be intrusive. Buses fall under federal regulation and have an exception under Montana Code. HB 234 is trying to address a small portion of the problem. This is a way to get started.

**SEN. McGEE** presented a scenario of driving his Suburban, which has tinted windows in the back, and him and his wife are both wearing their seatbelts, and his daughter is sitting in the middle of the backseat which is equipped only with a lap belt, would probable cause exist to be pulled over.

**Col. Driscoll** responded probable cause would not exist. Under this scenario, the child would have to be moving around clearly indicating that she was not wearing a seatbelt.

**SEN. McGEE** reminded **Col. Driscoll**, that law enforcement would not be able to determine whether his daughter was buckled in. He believes under the language of the bill, probable cause to make the stop would exist.

**Col. Driscoll** respectfully disagreed, stating from a Highway Patrol standpoint, they would not make stops on people where they are not sure whether they have seatbelts on. They will make stops only on people they can clearly identify as not being seat belted in.

**SEN. McGEE** recounted that **Col. Driscoll** stated,"unless they can see" someone is not buckled in and his point is they cannot always see. Therefore, because they cannot see, they would have probable cause. The clear language of the law says you may stop

a vehicle if the driver or an occupant of the vehicle is under 18 and not wearing a properly adjusted and fastened seatbelt. It gives no guidelines for how you know. If you see the seatbelt harness, you can make that determination, but if his daughter is sitting in the middle with only a lap belt, that determination cannot be made, so probable cause could exist.

**Col. Driscoll** responded you do not have probable cause unless you can articulate probable cause. Just because the windows are darkened does not establish probable cause. The officer has to have an articulate reason to make the stop. Tinted windows would not be a factor in making that determination. Just because the officer cannot see into a vehicle is not a reason to make the stop.

**SEN. McGEE** believes this language will open the door for that to happen.

**SEN. McGEE** expressed his regrets to **Officer Cohenour** for having to tend to the accident in Clancy and the death of Jessie. **SEN. McGEE** compassionately spoke for the entire Committee, thanking **Officer Cohenour** and **Col. Driscoll** for their service.

**SEN. McGEE** asked if this law were in place before Jessie's death, whether **Officer Cohenour** believed it have saved her life.

**Officer Cohenour** responded he did not know.

**SEN. McGEE** is not sure passing a law like this would have saved Jessie's life, unless the law can be locked into people's brain cells.

**Officer Cohenour** believes 100 percent that if Jessie would have been wearing her seatbelt, she would have walked away from the crash.

**SEN. McGEE** asked if he believed this law was on the books, Jessie, would have been more likely to wear her seatbelt.

**Officer Cohenour** stated this is a perception and it is difficult to answer. He thinks her father would have forced her to wear her seatbelt and, possibly, it would have been more Jessie's frame of mind was to what was the right thing to do.

**SEN. CROMLEY** asked **REP. COHENOUR** asked why the language "being operated in violation of this section" was struck on page 2, line 1.

**REP. COHENOUR** stated it was for clarification to make sure the exemptions on the first page would apply.

**SEN. CROMLEY** noted Section 2, subsection (e), excludes children subject to the provisions of 61-9-420, but his understanding is that the way it is worded now, the very last sentence of the bill would bring these children back in. In other words, if law enforcement sees a five-year-old child unrestrained in a vehicle, they could make the stop.

**REP. COHENOUR** stated that was correct, adding anybody from age 18 and younger would fit into this.

**Closing by Sponsor:**

**REP. COHENOUR** closed stating law enforcement officers make stops like this all the time and have to articulate probable cause to write these tickets and bring the charges forward. There are other things you could be pulled over for.

**(Tape : 3; Side : B)**

Officers need to have increased contact with the public to provide education. **REP. COHENOUR** reported many of these same questions were debated on the floor of the House. A poll was taken of the pages on the floor, and the pages were 100 percent unanimous in supporting this bill. Also, **REP. COHENOUR** was reminded by her husband that the reason for the exemption of school buses is they fall under federal regulations. **REP. COHENOUR** encouraged **SEN. McGEE** to bring a bill addressing this forward next session.

**REP. COHENOUR** stated **Office Cohenour** asks the students in driver's education classes if they wear their seatbelts. Approximately 30 percent say they religiously wear their seatbelts. There are usually about five or six kids in the class who will state they never, ever, wear their seatbelts. Those students are what this bill is about. So far this session, all the seatbelt bills have been killed, and **REP. COHENOUR** feels this is the wrong direction to be going. In the last three years there were 26 deaths of kids under the age of 18. In the National Traffic Safety website reported that a primary seatbelt offense increases the likelihood of living through an accident by 45 to 75 percent. Therefore, out of those 26 deaths, 13 to 20 of those kids could have been sent back home to their parents. The economic toll of this is $13 million to the state of Montana using the $1.1 million per incapacitating injury. The personal toll on the officers, parents, and communities is extreme, and this law will assist in going forward in a positive fashion.

**REP. COHENOUR** stated the whole point is the education process and establishing a habit for children. The first thing we want our kids to do when getting in a car is put on their seatbelt. This bill will establish a life-long and life-saving habit.

**ADJOURNMENT**

Adjournment: 11:30 A.M.

_____
SEN. DUANE GRIMES, Chairman

_____
CINDY PETERSON, Secretary

DG/CP

**EXHIBIT(jus31aad)**