MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 19, 2003 at 8:00 A.M., in Room 303 Capitol.

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: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted:	HB 404, HB 61, HB 247, HB 448, 3/14/2003
Executive Action:	HB 66, HB 220, HB 256, HB 480, HB 17, HB 284, HB 618

EXECUTIVE ACTION ON HB 66

Motion/Vote: **SEN. MIKE WHEAT** moved that **SB 56 BE INDEFINITELY POSTPONED. Motion carried with SEN. BRENT CROMLEY voting no.**

EXECUTIVE ACTION ON HB 220

Motion: **SEN. DAN MCGEE** moved that **HB 220 BE CONCURRED IN.**

Substitute Motion: **SEN. MCGEE** moved that **HB 220 BE AMENDED, HB022 001.avl., EXHIBIT(jus58a01).**

Discussion:

Ms. Lane noted that HB 220 conflicted with SB 10. The amendment addressed the conflict.

Vote: The motion carried unanimously.

Substitute Motion: **SEN. MCGEE** moved that **HB 220 BE AMENDED, HB022 002.avl, EXHIBIT(jus58a02).**

Discussion:

CHAIRMAN DUANE GRIMES remarked that the notice and copy of the report would be provided to the Office of Victim's Services. The amendment would strike all the language between lines 4 and 6 on page 5.

Ms. Lane explained this would be a policy change. It was suggested by **Diana Koch, Chief Legal Officer, Department of Corrections (DOC).**

SEN. JERRY O'NEIL claimed if the felony offender was left under state supervision, based upon payment of restitution, this would create a debtor's prison. By striking the language, that concern would be alleviated.

Vote: The motion carried unanimously.

Motion: **SEN. MCGEE** moved that **HB 220 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. AUBYN CURTISS raised a concern about the fiscal note. She believed the DOC would need to hire more FTEs. She understood

the fiscal note to state they were looking for 10 percent of what has been received by the counties.

CHAIRMAN GRIMES noted that restitution has been identified as being critically important. A mechanism is necessary to provide that the money be returned to the victims.

SEN. MCGEE was reluctantly willing to vote for the bill and review the outcome.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 256

Motion/Vote: SEN. GARY PERRY moved that the Committee **RECONSIDER ITS ACTION ON HB 256. Motion carried unanimously.**

Motion: SEN. MCGEE moved that **HB 256 BE CONCURRED IN.**

Substitute Motion: SEN. MCGEE moved that **HB 256 AMENDED, HB025601.avl., EXHIBIT(jus58a03).**

Discussion:

CHAIRMAN GRIMES remarked a one-mile boundary would be in place if there was no agreement between campus security and the city police department. **Bill Johnston, University of Montana,** explained one of the concerns was the situation if an agreement had not been reached on a campus. If this was the case, the situation would revert to current law and this would be the one-mile jurisdiction. If the city chief and the campus chief negotiated and reached an agreement, the new agreement would supersede the existing language.

SEN. CROMLEY pointed out the current language is working very well. The amendment would allow the campus security to have primary jurisdiction in non-campus related activities, if an agreement was reached. He did not believe there were any non-campus related activities in which the campus security should have primary jurisdiction. **Mr. Johnston** maintained this was an item that would be worked out with the campus chief of security and the city chief of police. They would determine primary jurisdiction. This may involve a noise complaint. It could be difficult for the city police to travel to the location to visit with the occupants. If there was a burglary, the response would be to 911 and they would dispatch. If the city police were all called out and were unable to respond, campus security would then respond.

SEN. WHEAT believed the city police would have primary jurisdiction and they are trying to provide supplementary jurisdiction to the campus police in certain instances. He suggested removing the language addressing whether the city or campus had primary jurisdiction. The language could state the instances when campus security would have jurisdiction that would supplement the city's primary jurisdiction.

SEN. CROMLEY claimed the use of the term "primary jurisdiction" gave him considerable concern. It implies an agreement can be reached in which a geographical area will involve the campus security having primary jurisdiction. If there was a murder or a domestic dispute, the campus security would have primary jurisdiction. The current situation seems to work very well. The language "within one mile" could be removed and "the area adjacent to the campus" could be inserted, as set out in the amendment.

{Tape: 1; Side: B}

SEN. MCGEE maintained the reason for the discussion in regard to primary jurisdiction is because the campus security officers are still not recognized as police officers. The language is not clearly defined that they are police officers. He proposed that the bill be disregarded and suggested next session the campus security entities and the city police departments work together to make these officers bonafide peace officers.

SEN. CURTISS suggested using the term "delegated jurisdiction". This could be spelled out in the agreements negotiated between the two parties.

CHAIRMAN GRIMES noted a dilemma would be presented by deputizing the entire security force. This may cause fiscal problems for the universities.

SEN. MCGEE maintained that during the hearing, **Bill Slaughter, Director of the Department of Corrections,** stated that when he was sheriff, he deputized all of the campus security officers.

Substitute Motion: **SEN. PERRY** moved that **HB 256 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. PERRY claimed it was his understanding that this is not an issue at the Montana State University.

CHAIRMAN GRIMES asked **Mr. Johnston** what his feedback was from the Missoula Law Enforcement Community in regard to the concerns the Committee had raised. **Mr. Johnston** explained that he did not speak to city law enforcement but he did speak to the Chief of Security at the University of Montana. His understanding was the Committee's main concern was regarding the language relating to the one-mile requirement and this would meet with no objection from security at the University. This is an important bill for the University of Montana. They have tried to hold harmless any other campus not affected. This bill is not as critical to the Montana State University. The statute addresses the university system. In regard to primary jurisdiction, page 2 of the bill refers to "shared jurisdiction". They are not stuck on the word "primary".
CHAIRMAN GRIMES asked why the University of Montana could not have their campus security deputized. **Mr. Johnston** had not asked this question of the Chief of Campus Security.

Vote: **Motion carried with MANGAN voting no.**

EXECUTIVE ACTION ON HB 480

Motion: **SEN. CROMLEY** moved that **HB 480 BE CONCURRED IN**

Substitute Motion: **SEN. CROMLEY** moved that **HB 480 AMENDED, HB048001.avl., EXHIBIT(jus58a04).**

Discussion:

SEN. JEFF MANGAN explained he had asked for an amendment to return the language to the original version of the bill.

Ms. Lane pointed out the introduced version simply raised the fines from $10 to $200; $100 to $300; $25 to $300 and $200 to $400. In the last sentence, the fines were changed from $50 to $400. The House amended the bill and left the fines unchanged in (1) of the amended bill and then in (2) increased the fine to $500 but only for persons convicted under 61-7-104 through 106.

SEN. CROMLEY noted this refers to the statutes regarding leaving the scene of an accident and makes those penalties more serious than for other traffic violations.

Ms. Lane further explained (2) was created by the House so they could raise the fine only for those violations. Subsection (2) did not exist in the introduced bill or in current law. The purpose of (1) and (2) in the amended version of the bill is simply to pull out certain offenses and leave the others in their current form.

SEN. CROMLEY further noted that the sponsor had a problem in that the changes made in the House did not provide a minimum.

Vote: Motion carried unanimously.

Motion: SEN. CROMLEY moved that **HB 480 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. CROMLEY remarked the House added an amendment on line 29, page 1, by changing $10 to $20. This refers to all penalties. It is a significant change. A person with a penalty of $50 would serve five days, under the old law. Under the new law, the same person would serve two and a half days. The daily rate used for a prisoner to work off a fine should be addressed in the title or the $20 should be changed back to $10.

Ms. Lane pointed out this was not addressed in the title and would have made the bill susceptible to challenge on that basis. It should either be addressed in the title or removed from the bill.

Substitute Motion: SEN. CROMLEY moved that **HB 480 AMENDED.**

Discussion:

SEN. CROMLEY explained his amendment would change "$20" to "$10".

Vote: The motion carried with MANGAN voting no.

Motion/Vote: SEN. CROMLEY moved that **HB 480 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 17

Motion: SEN. CROMLEY moved that **HB 17 BE CONCURRED IN.**

Substitute Motion: SEN. MCGEE moved that **HB 17 AMENDED, HB001701.avl, EXHIBIT(jus58a05).**

Discussion:

Ms. Lane explained SB 444 amended the penalty section, 52-3-825, but the amendment was not the same as HB 17 so a coordination instruction was necessary.

{Tape: 2; Side: A}

Ali Bovingdon, Department of Justice, noted she had read SB 444 and the difference was in the penalty provision of the elder abuse statute, Section 825. Senate Bill 444 would remove the first offense misdemeanor so all offenses committed under that section would be a felony offense. She had spoken to **Barb Harris, Attorney General's Office,** and she would prefer to have the misdemeanor option in the bill. In certain circumstances, the facts do not always match to a felony offense. This is the primary difference between the two bills.

Ms. Lane clarified the amendment would coordinate the two bills so that if both bills passed, the amendments to the penalty section in HB 17 would prevail and the amended section in SB 444 would be void.

Vote: Motion carried unanimously.

Motion: **SEN. MCGEE** moved that **HB 17 BE CONCURRED IN AS AMENDED.**

Substitute Motion: **SEN. O'NEIL** moved that **HB 17 AMENDED.**

Discussion:

SEN. O'NEIL explained his amendment. On page 1, line 7, he would strike "an older person or" and following the word "disability" he would insert "or a person with a mental impairment".

CHAIRMAN GRIMES ruled the amendment out of order. This is a substantive amendment. This could be developed for floor action.

SEN. O'NEIL did not believe someone should be given special consideration because he or she reached the age of 60. If someone steals from them, this is a theft. If someone exploits them, it is because they were exploited and does not have anything to do with their age.

Ms. Lane raised a concern that amending the title of the bill or amending the sections in this bill to remove references to older persons would not accomplish what is being proposed to accomplish. This would require repeal of the entire part.

SEN. CROMLEY maintained there was an additional threshold beyond the age of 60. The person must additionally be unable to provide personal protection from the exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

CHAIRMAN GRIMES maintained the amendment was ruled out of order and the discussion pertained to the motion the bill be concurred in.

SEN. MANGAN liked the bill and he also liked the section in HB 444 that made this offense a felony. He understood the misdemeanor offense for neglect and abuses. If a person is sexually abused, this should be charged as a felony. Hopefully, this can be changed next session.

Vote: The motion carried with SEN. O'NEIL voting no.

HEARING ON HB 404

Sponsor: **REP. DEE BROWN, HD 83, HUNGRY HORSE**

Proponents: **Kevin Olson, Chief of Police, Havre**
Ali Bovingdon, Assistant Attorney General, Department of Justice
Kim Kradolfer, Assistant Attorney General, Department of Justice
Jim Kembel, Montana Police Protective Association

Opponents: **None**

Opening Statement by Sponsor:

REP. DEE BROWN, HD 83, HUNGRY HORSE, introduced HB 444. She explained the bill would allow law enforcement agencies to require background investigations for persons who have a conditional offer of employment with the agency. It will provide them with the information on a new recruit to determine the character, honesty, trustworthiness, reliability and temperament of perspective law enforcement applicants. They will be allowed to conduct thorough and complete background investigations on these applicants. This bill provides protections for both the public and the private employers for releasing information about law enforcement applicants. The Department of Justice has prepared amendments which will enhance the bill. The applicants will permit such disclosure by use of waivers bearing the applicants original notarized signature.

Proponents' Testimony:

Kevin Olson, Chief of Police, Havre, stated several years ago they started to encounter substantial difficulties when conducting background investigations for perspective employees in law enforcement positions. This bill will give law enforcement the necessary tools to measure traits of an individual to ensure

that the people in positions of authority have the highest integrity and credibility.

CHAIRMAN GRIMES raised a concern that under current law in Montana, an employer is under extreme risk supplying information regarding former employees. There is a bill this session that attempts to change this. He raised concerns regarding lines 20 and 21, page 1, concerning the individual performance and absences or attendance. This places local employers at great risk. **Chief Olson** explained the immunity provision attached to the bill would provide those individuals who supply information with a certain level of immunity to protect them from repercussion. The perspective applicant is advised the information will be sought. He is presented with a waiver. The waiver is signed and notarized. It is then supplied to the former employer. The immunity should encourage businesses to speak candidly and provide them insulation.

Ali Bovingdon, Assistant Attorney General, Department of Justice, rose in support of the bill and provided proposed amendments, **EXHIBIT(jus58a06).**

Kim Kradolfer, Assistant Attorney General, Department of Justice, provided her written testimony, **EXHIBIT(jus58a07).**

Jim Kembel, Montana Police Protective Association, rose in support of HB 404. On page 1, lines 28 and 29, the process requires consent of the applicant and page 2, lines 7 through 10 does address protection of the person providing the information.

{Tape: 2; Side: B}

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

REP. BROWN closed on HB 404.

HEARING ON HB 61

Sponsor: **REP. JESSE LASLOVICH, HD 57, ANACONDA**

Proponents: **Beth Brenneman, ACLU of Montana**
REP. JIM SHOCKLEY, HD 61, VICTOR

Opponents: **Dan Haffy, Butte Chemical Dependency**
Kevin Olson, Havre Chief of Police

Opening Statement by Sponsor:

REP. JESSE LASLOVICH, HD 57, ANACONDA, introduced HB 61. He remarked he is very intolerant of underaged drinking. This comes down to a fundamental issue of fairness. We should not punish those who are obeying the law. We should not punish those who are leaders and not giving in to the peer pressure around them. The bill has been targeted as a designated driver bill. This is not the case. The House Judiciary Committee questioned whether this bill would send the wrong message to our young people. He did not believe it did. As a practical matter, in the real world underaged drinking exists. Regardless of what we do, the laws we pass, SB 362, there will still be young people going to parties whether they have the intention of drinking or not. He prefers that those who make the choice not to drink not be punished due to association with those who are drinking. This is a clarification bill. The bill states if a person knowingly consumes or has in the person's possession an intoxicating substance they are issued a minor in possession (MIP) citation. This is current law. The bill clarifies they cannot be issued the citation based upon their mere presence at the party. Why is this necessary? Persons who have taken the blood alcohol concentration (BAC) test and have blown zero will have their case thrown out by the judge. The goal of the bill is to save lives. Those who are being leaders should not be punished for doing what is right.

Proponents' Testimony:

Beth Brenneman, ACLU of Montana, remarked this bill provided an opportunity to teach the youth of Montana a very important constitutional lesson. Just because they are under the age of 18 they should not be presumed guilty before being proven innocent.

REP. JIM SHOCKLEY, HD 61, VICTOR, stated this bill does not change the law. If a young person under the legal drinking age drinks only soft drinks at a beer party, does not contribute to purchasing the alcoholic beverages, and simply associates with those who are breaking the law, he or she is not currently breaking the law. Under our present law, they may be arrested because the law is not clear. The person who simply attends a beer party and drinks only non-alcoholic beverages should not be arrested. If a law were passed that a youth should not be found

within 200 feet of a keg in the woods, he could support that law. He is a co-signor on the bill that registers kegs so they can be tracked because many of these kegs are used by underaged drinkers. He supports this bill because people are abusing the law. The laws should address underaged drinking.

Opponents' Testimony:

Dan Haffy, Butte Chemical Dependency, stated currently Montana ranks no. 4 in the nation in underaged substance abuse. Passing this bill that states young people can attend underaged drinking parties, which are clearly illegal events, would send a message that we do not take this problem seriously. These parties involve much more than drinking. There are a variety of other drugs at these parties. If we look at the number of young people under the state's care, we could see that many of these young people started their careers in crime and underaged substance abuse addiction by going to parties in high school that were condoned by their friends and, oftentimes, by adults. He has been in charge of certain groups at Montana State Prison for three years. When he asks young people if their friends have ever visited them, the ususal answer is that they do not visit. The friends who were there to support them at underaged parties when they were teenagers, were not their friends but merely party partners. A young lady in one of his classes who had been issued an MIP went to another party to be the designated driver. She stated for that reason she should be able to be there and as long as she wasn't drinking she should not be charged with anything. He agreed with that statement. He asked her how things worked out in that case. She explained it would have worked out fine but she stopped at a convenience store and while she ran in to get a soda, her friends stole her car and had an accident. He has seen the nightmares that follow after these parties. Even if only 10 percent of the young people attending the parties become addicted, this is a huge problem for the state because the state ends up taking care of these people later on.

Kevin Olson, Havre Chief of Police, stated the current law states that it is against the law for minors to possess alcohol. The verbiage woven into the law presents inherent problems for law enforcement. A scenario would be an untapped keg of beer in the back of a pickup with three 16 year olds going down the highway. Are they in violation of the law? They are not consuming alcohol. They are at a place where alcohol is somewhat present but they have not arrived to their destination. If law enforcement encounters them, would they have lawful authority to intervene? A criminal violation has not been committed. Possession of alcohol beverage is a crime. One evening his daughter left home at 11:35 in the evening and was home at 12:05 with a possession ticket. She had not had a drop to drink in

that 30 minute time span. He told her that because she was the daughter of a chief of police she did not have to forfeit any of her rights under the Constitution. If she wanted to plead not guilty, she could make her argument. She did plead not guilty. However, two days before the trial, she and three of the four other people she was with pled guilty. She received a deferred imposition of sentence and the judge took it off their records in six months. The fifth person, who also had not had a drop to drink, pled not guilty and a jury found her not guilty. The system works. Law enforcement operates on a presumption of probable cause. They do not operate in absolutes. If a person is truly in the wrong place at the wrong time and a victim of circumstance, they have the right to plead not guilty and to present their case to a judge and jury. It is not the job of law enforcement to be judge, juries, and executioners. They are finders of fact. The law states a person may not be arrested or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcohol. The fact that someone is not holding a beer doesn't mean they are not subject to be in charge. It has been suggested that the youth all be given breath tests. This is not practical. There have been up to 45 youth at a house party. The three officers on the scene each carried one portable breath tester. They would have been able to test 15 youth out of the 45 youth at the party. The test takes approximately 5 minutes to perform.

On the first day of school he attends a general assembly at the high school and sets the tone of what he expects the students conduct to be for the year. The last item he discusses is MIPs. He explains the law and the fact that if they are present at a party, they will be cited. The fact that they are cited does not mean they are guilty. They need to exercise their rights and let the court systems handle the matter. He also tells them that they need to take care of one another. In a time of need, if they received that one phone call where their friend has had too much to drink, they need to offer them a ride home. They can help their friend without subjecting themselves to criminal wrongdoing. All they need to do is drive up to the house and honk the horn and their friend needs to go to the car. They can knock on the door and say they are there to pick up their friend, but they cannot go inside the residence. The goal of taking care of one another can be accomplished without being subject to a MIP.

{Tape: 3; Side: A}

Questions from Committee Members and Responses:

SEN. MANGAN provided a copy of SB 362 to the sponsor. He noted that in the sponsor's opening he had stated that the bills were

in complete opposition. The amendments to SB 362 struck the accountability language so the two bills were no longer complete opposites. He asked **REP. LASLOVICH** to respond to some of the opponents. **REP. LASLOVICH** noted the amendments to SB 362 made it a good bill. He disagreed with **Chief Olson** in regard to certain statements. In regard to the three youth driving down the road with a keg in the back of the truck, the person driving the vehicle should be issued a citation because he or she is in possession of a keg. The two others in the vehicle should not be issued a citation. As an underaged youth, he did not drink at beer parties but his mere presence made the people who were drinking feel guilty. They told him they did not like having him around at the parties because it made them feel guilty. He should not be punished for his mere presence at the party. He further noted that **Chief Olson** told the youth at the high school assembly that they would be issued citations for merely being at a party. This is against current law. A person commits the offense of an MIP if he or she knowingly consumes or has in their possession an intoxicating substance. The person sponsoring the party is always the one who was drinking and should be issued the MIP. Ten times out of ten that would be the situation. He does not know of one person who would sponsor a party and not drink at the party.

SEN. MANGAN noted SB 362 strengthens the sanctions for a MIP to include drivers license confiscation, parents and the youth attending classes, etc. Would this strengthen the intent of his bill? **REP. LASLOVICH** supported SB 362 in its present form and he believed it would also strengthen HB 61.

SEN. CROMLEY asked **Chief Olson** for further clarification of the situation with his daughter. **Chief Olson** explained that she ultimately pled guilty. Five youth left in a vehicle and went to a house to pick up others. She was not consuming alcohol. The law states possession. Through prior court cases, the Supreme Court has ruled there are two types of possession to include constructive possession and physical possession. The courts have said that the laws of possession in regard to alcohol are constructive possession. If there are no inherent barriers between the person and the substance, the person is in constructive possession. In this case, his daughter was at a house, there were several cold packs of beer present, she knew the beer was there, and she chose not to leave. She was in constructive possession and ultimately pled guilty.

SEN. CROMLEY asked **Mr. Haffey** if he believed **Chief Olson's** daughter was guilty. **Mr. Haffey** noted the problem with the current law is that it has been consistently applied inconsistently. If she was at the party and there was alcohol

within a zone of control, he believed she was guilty. He also raised a concern in regard to the comment that the driver of the truck should be charged with being in possession of the keg. One of the other people in the truck may have purchased the keg. They are clearly in possession and the officer needs discretion to make the call. If six youth are driving down the street and there are three cases of beer in the car, the officer must have discretion to determine intent. The intent to drink the alcohol is there. Constructive possession is a reality in many areas of Montana. If a person picks up a friend from a party and there is no alcohol in the car, clearly there is no intent to consume or possess alcohol by the designated driver and he or she should not be cited.

SEN. CROMLEY remarked that it appeared to be **Mr. Haffy's** position that the persons at the party who were not drinking but by virtue of simply being present were guilty of violation of the law. **Mr. Haffy** maintained officers did a great job in reviewing the individual situations. If a person is at the party for two or three hours, that person is not there to pick someone up but would be a part of the illegal process. This can be pled to the judge.

SEN. CROMLEY questioned whether a person should be arrested solely for being at a place where persons were consuming alcoholic beverages. **Mr. Haffy** noted this is a very gray area. They do not know the intentions of the people at the party. The officer makes the call based on what he sees.

SEN. CROMLEY maintained if a gray area existed, it would make sense to clarify the law as was being done under HB 61. **Mr. Haffy** agreed. There is no provision in the bill to provide for an implied consent ruling. If a young person doesn't want to take a test, he does not have to. The officer will cite the individual and the case will be taken to the judge.

SEN. O'NEIL remarked that a bowl of spiked punch at a wedding party would lead to all the children at the wedding party being guilty of possession of alcoholic beverages. **REP. LASLOVICH** found it hard to believe that they would all be issued citations for MIP. The judge would throw the citation out.

SEN. O'NEIL questioned the difference between the non-consumers at a wedding party and the non-consumers at a friend's house. **REP. LASLOVICH** affirmed there would be no difference. Those who are not drinking should not be issued a citation.

SEN. CROMLEY remarked if a 17 year-old was with his family and his father was drinking a beer, the minor would be guilty of

violation of a statute. **Chief Olson** could not make that assumption because there is a common sense application on the part of law enforcement. In rural Montana wedding parties occur in barns and at VFW Clubs. The application law enforcement prefers to use is the unsupervised gatherings of youth at areas in which alcohol is being possessed.

SEN. CROMLEY did not see that written in the statute. **Chief Olson** did not believe it was in the statute. He recalled a statute on the books many years ago which stated a father could take his 16 year-old son into a tavern and buy him a beer and that was not against the law. With every criminal statute, there needs to be a common sense application and a great deal of discretion. Every action taken by the police is subject to the individual's day in court. This should be exercised.

SEN. CROMLEY questioned whether **Chief Olson's** daughter would still be guilty if the persons at the party were his friends and acquaintances. **Chief Olson** remarked if he was having a barbeque and some adults were in the backyard, his daughter would not have been guilty. The intent of the law is to regulate the possession of alcohol by youth who are unsupervised or attending unsupervised functions without reasonable adults present.

Closing by Sponsor:

REP. LASLOVICH responded to the remark in regard to the young driver who went into the convenience store and her intoxicated friends drove off with her car. The young driver provided coherence to a situation that was lacking the same. If she had not stopped at the store, all her friends had been driven home and no accident would have occurred. When she left the car, the accident occurred. If someone has every intention of being the designated driver, they should not be punished for doing so. His friends thought he was very stubborn for not drinking at a party, but they also did admire his courage. His bill involves common sense. One should not be punished for being at a scene where alcohol is being consumed by minors. An attorney in the audience told him that she represented a young woman who was not drinking at a party. The girl was issued an MIP. She asked for a BAC test which was denied. She consequently went through the process and pled not guilty but it cost her $2,000. It should not cost $2,000 to prove that a person was not guilty.

HEARING ON HB 247

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN**

Proponents: **Beth Brenneman, ACLU of Montana**

Ali Bovingdon, Department of Justice

Opponents: None

Informational Witness: Alec Hanson, League of Cities and Towns

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN, introduced HB 247. Following the black plague in 1248, Parliament enacted the statute of laborers. This stated a laborer would either live in the barracks or work. There would be no wandering around. This was the first vagrancy statute. It has found its way to the Colonies and vagrancy statutes were enacted. Vagrancy statutes were enacted in Bozeman as well as other communities. The trouble with a vagrancy statute is that it is unconstitutional. This has been demonstrated in the case of Popicristi v. City of Jacksonville. The U.S. Supreme Court stated this violated the Fourteenth Amendment of the Constitution. These ordinances still remain on the books. A woman in Bozeman in front of the Target store carried a sign which read "Anything will help". She was not blocking anyone's access. She was arrested for vagrancy and it took six months for her case to be tossed out. The law was on the books and it was enforced. Vagrancy is the crime of being idle. It does not involve disturbing the peace, blocking an entrance or disorderly conduct. Those three offenses would remain on the books and be available to local governments to enforce.

{Tape: 3; Side: B}

Proponents' Testimony:

Beth Brenneman, ACLU of Montana, stated the Morallis case is a more recent case decided by the U.S. Supreme Court. It established that only so many things can be illegal. Some things cannot be made criminal offenses. A great society does not criminalize status, especially the status of being homeless, poor, and/or mentally ill.

Ali Bovingdon, Department of Justice, rose in support of HB 247.

Informational Witness:

Alec Hanson, League of Cities and Towns, remarked the bill as introduced caused some concern in regard to providing assistance to homeless shelters. Those issues have been addressed by amendment and their objections to the bill have been removed. He added that these kinds of things are unconstitutional. The

police officer in Bozeman made a mistake and the case was disposed of but this did take some time.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. CROMLEY questioned whether the word "loitering" on page 3, line 2, should be changed to "remaining". **REP. HARRIS** believed there were cases that would make it clear that the offense of loitering when blocking ingress or egress would be constitutional. This would involve disorderly persons who are loitering. He had no objection to the word "remaining". It would accomplish the same thing.

SEN. O'NEIL questioned the difference between loitering and vagrancy. **REP. HARRIS** explained there would be a big overlap. On page 2, line 15, the language would deny local governments any power to enact ordinances prohibiting or penalizing vagrancy.

SEN. MCGEE asked whether vagrancy had been defined in code. **REP. HARRIS** remarked it was not.

SEN. MCGEE raised a concern about stating entities would not have the power to enact ordinances prohibiting or penalizing something that was not defined. **REP. HARRIS** explained vagrancy would have definitions as a result of case law. He agreed to provide a legal definition of vagrancy. It is important that it would not prohibit the enactment of loitering statutes where loitering statutes were appropriate.

Closing by Sponsor:

REP. HARRIS maintained vagrancy statutes are unconstitutional. The bill is very targeted and will allow cities and local governments to prohibit unlawful loitering, disturbing the peace, trespassing, or disorderly conduct.

HEARING ON HB 448

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN**

Proponents: **None**

Opponents: **None**

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN, introduced HB 448. He stated this bill is the intersection of code clutter and creeping criminalization. If an e-mail were forwarded to someone and permission were not given to open the forwarded e-mail, the person opening the e-mail would be guilty of a misdemeanor. If you do not have permission to read the e-mail, you had better be looking into a good e-mail defense attorney. This bill is intended to delete code clutter.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. PERRY asked for further clarification of the bill. **REP. HARRIS** explained when an e-mail message is sent by the author of the message and was opened, there would be no problem. If the opened message was forwarded and the person receiving the e-mail did not have the permission of the original author, the person receiving the e-mail would be in trouble if he or she opened the e-mail.

SEN. CROMLEY noted the original Section l was stricken from the bill.

{Tape: 4; Side: A}

REP. HARRIS affirmed this to be the case. He believed the House would reject the bill if there was an attempt to reinsert the language. He asked that the balance of the bill be adopted.

SEN. WHEAT questioned if there had been any prosecutions in regard to opening e-mails. **REP. HARRIS** was not aware of any prosecutions. He believed there was a hidden defense of permission being granted every time an e-mail was forwarded. He further noted the origin of the statute was in the telegraph era. One could see a telegraph as it was being transmitted. This law does not work for e-mails.

SEN. MANGAN noted the stricken language on lines 17-19 on page 2 and questioned whether the stalking laws would be in any way affected by the language being stricken. **REP. HARRIS** did not object to leaving the language in the law.

SEN. O'NEIL questioned whether deleting the language on line 7, page 3, would allow another person to read someone else's sealed letter. **REP. HARRIS** remarked the context in which he sees the language is a letter from a credit card company that is filled out. There are federal laws which address tampering with the mail. The language that is being stricken is very broad and would even address opening junk mail addressed to another person.

Closing by Sponsor:

REP. HARRIS summarized this bill addresses code clutter intersecting with creeping criminalization. It is important to get rid of the language as it now stands.

EXECUTIVE ACTION ON HB 284

Motion: **SEN. MANGAN** moved that **HB 284 BE CONCURRED IN.**

Discussion:

Ms. Lane remarked that she was concerned about whether the bill required testing and made it mandatory. She contacted **Brenda Nordlund, Department of Justice,** and both **Ms. Nordlund** and **Ms. Lane** agreed that it would not do so. Even though the threshold to ask for testing has changed, the privilege of refusing testing has not been affected.

SEN. MCGEE questioned what was being accomplished by the bill if this was not mandated. **Ms. Lane** noted without the bill, the investigating officer could not request the test unless he had reason to believe the person is DUI. Whether he has reason to suspect DUI or not, if the accident involved serious bodily injury or death, he can still request that the test be performed.

SEN. MCGEE questioned who could refuse the test if the person suspected of the DUI was taken by ambulance to an emergency room. **Ms. Lane** maintained the right to refuse under the current law would still exist.

SEN. MCGEE maintained an unconscious person may not want his or her blood tested. They would have a right to refuse to have that done. **Ms. Lane** explained the language on page 1, line 30, which is current law, states that a person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by the law.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON HB 390

Motion: **SEN. PERRY** moved that **HB 390 BE CONCURRED IN.**

Discussion:

Ms. Lane explained at the hearing, **Chris Tweeten, Attorney General's Office,** asked for several amendments. She provided a copy of an e-mail in regard to the amendments, **EXHIBIT(jus58a08).**

Substitute Motion: **SEN. O'NEIL** moved that **HB 390 BE AMENDED, HB039001.avl., EXHIBIT(jus58a09).**

Discussion:

SEN. O'NEIL remarked that a person who acted as his or her own attorney should be allowed attorney fees for the use of their time.

SEN. WHEAT maintained a person acting as his or her own attorney would not have an expense. Attorneys fees are usually awarded when attorneys fees have been paid to someone. He didn't oppose the concept but believed the language was not accurate.

SEN. O'NEIL claimed the person who was acting as his or her own attorney could be awarded attorneys fees for that service.

Vote: The motion failed with O'NEIL voting aye.

Ms. Lane further explained the amendments proposed by **Chris Tweeten.** The first amendment would be found on page 1, line 25. He recommended a different definition of government attorney. On page 3, line 9, following the word "complaint", he would insert "under this section". On page 4, line 28, he would change the language that a private citizen may enter the action. The inserted language would be "may intervene of right in the action". The fourth amendment would be whether or not to delete Section 12 from the bill.

SEN. MANGAN claimed the amendments were fairly significant. He requested they be put into proper form for the Committee's consideration.

SEN. PERRY withdrew his motion.

EXECUTIVE ACTION ON HB 618

Motion: **SEN. MANGAN** moved that **HB 618 BE CONCURRED IN.**

Substitute Motion: **SEN. MANGAN** moved that **HB 618 BE AMENDED, HB061801.alk., EXHIBIT(jus58a10).**

Discussion:

Ms. Lane explained that current law provides that one-half of the fees collected go to the general fund and the other half be appropriated and use for funding the county drinking and driving prevention treatment programs. The amendment would provide that one-half would continue to go to the general fund but the other one-half would go into a state special revenue fund. She reminded the Committee that this same section as was set out in SB 37.

SEN. MCGEE raised a concern in that the fine was being doubled but 50 percent was going to the DUI Task Force. This would result in doubling the money actually going to the DUI Task Forces.

{Tape: 4; Side: B}

SEN. WHEAT stated he would like to see the money split because he believed the money going to the local level could be used wisely.

SEN. MANGAN withdrew his amendment. The statute already states that 50 percent must be appropriated to the DUI Task Forces. This has not happened. The only reason the DUI Task Forces are still up and running are due to the volunteer efforts of a number of people.

CHAIRMAN GRIMES remarked the decisions had already been made in SB 37. This bill would simply be a backup provision.

SEN. CROMLEY maintained it was vital that the funds be distributed to the local level because that is where the real education and prevention work will be carried out. Subsection (2) states one-half will be used for funding county drinking and driving prevention programs.

SEN. MANGAN stated current law states one-half of the money must be appropriated to the program. However, decisions are still made not to do this. The amendment would place the funds into a special revenue account. He has a concern about the formula being changed.

Substitute Motion: **CHAIRMAN GRIMES** moved that **HB 618 BE AMENDED.**

Discussion:

CHAIRMAN GRIMES explained that he would like the bill amended conceptually to state if this section and SB 37 both pass, this bill is null and void.

Vote: The motion carried unanimously.

Motion: SEN. MANGAN moved that **HB 618 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. WHEAT raised a concern that the money may not go to the local programs.

Substitute Motion: SEN. MANGAN moved again that **HB 618 BE AMENDED, HB061801.alk, (Exhibit 10).**

CHAIRMAN GRIMES pointed out earmarking funds so the Legislature does not touch the funds is a sensitive issue.

SEN. MCGEE claimed the Legislature has appropriation control over approximately 27 percent of the general fund budget. The remainder is all in special revenue accounts.

SEN. MANGAN maintained in this case there is a law which has not been followed by the Legislature. The sponsor of HB 618 has asked that the money be set up in a special revenue account.

Vote: The motion carried with MCGEE and O'NEIL voting no.

Motion/Vote: SEN. MANGAN moved that **HB 618 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

ADJOURNMENT

Adjournment: 12:30 P.M.

_____
SEN. DUANE GRIMES, Chairman

_____
JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus58aad)