

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on January 11, 2005 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Diane Rice, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Ron Stoker, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Robyn Driscoll (D)  
Rep. George Everett (R)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Roger Koopman (R)  
Rep. Michael Lange (R)  
Rep. Tom McGillvray (R)  
Rep. Mark E. Noennig (R)  
Rep. Art Noonan (D)  
Rep. John Parker (D)  
Rep. Jon Sonju (R)  
Rep. John Ward (R)  
Rep. Jeanne Windham (D)

**Members Excused:** None.

**Members Absent:** Rep. Bill Wilson (D)

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

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

**Committee Business Summary:**

Hearing & Date Posted: HB 94, HB 95, HB 66, HB 68,  
1/5/2005  
Executive Action: None

HEARING ON HB 94, HB 95

REP. JOHN SINRUD, HD 67, BOZEMAN

Opening Statement by Sponsor:

REP. JOHN SINRUD, HD 67, opened the hearing on HB 94, Revise terms of office for supreme court.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 49}*

Proponents' Testimony: None

Opponents' Testimony:

Chris Manos, Executive Director, State Bar of Montana, rose in opposition to HB 94. Mr. Manos stated those term limit restrictions are against the Montana State Constitution. He commented that in Montana, as in all states, there are three different branches of the government with checks and balances built into each of them. This bill would restrict one of those branches.

[EXHIBIT\(juh07a01\)](#)

*{Tape: 1; Side: A; Approx. Time Counter: 49 - 112}*

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. EVERETT, DRISCOLL, HARRIS, KOOPMAN, MCGILLVRAY, NOONAN, CLARK, STOKER, HARRIS, and WINDHAM questioned REP. SINRUD and Mr. Manos extensively. Among the questions posed to him and Mr. Manos was how many judges had been impeached or charged with a violation. REP. SINRUD replied that he did not know. When asked if there has ever been corruption or political influence authenticated within the Supreme Court; the answer was again that he did not have any knowledge of this. This information would be in the Judicial Standards Review division. REP. SINRUD did say that he would get the information for the committee. The committee was interested in whether there had ever been a precedent for term limits for judges and would term limits increase costs for elections. REP. SINRUD responded that in his opinion the costs would decrease and further stated that he did not know if there is a precedent for term limits.

**REP. SINRUD** was also queried about whether these bills were being proposed as retaliation for some recent rulings the Montana Supreme Court had recently made and that the court is viewed as liberal and activist by conservatives. **REP. SINRUD** replied; "Absolutely not."

The questioning continued with committee members asking Mr. Manos and the representative about whether the Montana constitution gives the Supreme Court justices more protection than legislators; i.e., term limits. **Mr. Manos** replied that the legislature determined term limits, not the people. Another question posed was how much experience as judges do the justices have prior to being on the Montana Supreme Court. **Mr. Manos** replied that he would supply the members of the committee with that specific information.

**{Tape: 1; Side: A; Approx. Time Counter: 112 - 500}**

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 167}**

**Closing by Sponsor:**

**REP. SINRUD** closed the hearings on HB 94 and HB 95 imploring the committee members to look at all the issues and to give opportunities to voters the option to vote for term limits.

**{Tape: 1; Side: B; Approx. Time Counter: 167 - 217}**

**HEARING ON HB 66**

**Sponsor:** **REP. LARRY JENT, HD 64, BOZEMAN**

**Opening Statement by Sponsor:**

**REP. LARRY JENT, HD 64**, opened the hearing on HB 66, Discretionary credit against fine for time served if jail and fine imposed. **REP. JENT** stated that this bill is brought forth at the request of the Montana State Department of Justice. He gave committee members amendment HB006601 to show the changes.

**EXHIBIT(juh07a02)**

**{Tape: 1; Side: B; Approx. Time Counter: 217 - 262}**

**Proponents' Testimony:**

**Pam Bucy, Montana Assistant Attorney General**, rose in support of HB 66. She stated that this bill is at the request of the Montana County Attorneys. The proposed language would change the word "must" to "may."

**{Tape: 1; Side: B; Approx. Time Counter: 262 - 282}**

**Gordon Morris, Montana Association of Counties**, rose in support of HB 66 and the amendment changing "must" to "may."

**{Tape: 1; Side: B; Approx. Time Counter: 282 - 303}**

**Jim Smith, Montana County Attorneys Association**, rose in support of HB 66 stating that this would bring current statutes in alignment.

**{Tape: 1; Side: B; Approx. Time Counter: 303 - 318}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REPS. HARRIS, LANGE and CLARK** questioned **REP. JENT** and **Ms. Bucy** regarding whether the bill would create uniformity in sentencing. They question if this bill and the amendment would undermine judges' mandatory sentencing guidelines or would the judges have options. **Ms. Bucy** replied that in her opinion it would not undermine the judges' ability for the sentencing guidelines or other options.

**{Tape: 1; Side: B; Approx. Time Counter: 318 - 500}**

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 56}**

**Closing by Sponsor:**

**REP. JENT** closed the hearing on HB 66.

**{Tape: 2; Side: A; Approx. Time Counter: 56 - 64}**

**HEARING ON HB 68**

**REP. JOAN ANDERSEN, HD 59, FROMBERG**

**Opening Statement by Sponsor:**

**REP. JOAN ANDERSEN, HD 59**, opened the hearing on HB 68, Prohibit daycare from providing medicine without parental consent. **REP. ANDERSEN** gave committee members a hand out from Alabama outlining what they have done regarding this issue.

**EXHIBIT(juh07a03)**

**{Tape: 2; Side: A; Approx. Time Counter: 64 - 94}**

**Proponents' Testimony:**

**Travis Heggem, private citizen**, informed committee members about the tragic event of his young son's death due to a daycare provider that had given his son unauthorized over-the-counter medicine.

**EXHIBIT(juh07a04)**

*{Tape: 2; Side: A; Approx. Time Counter: 94 - 151}*

**Calista Heggem, private citizen**, reiterated the tragic story of her son's death. However, due to the emotional state of Mrs. Heggem, **REP. ANDERSEN** completed the testimony for Ms. Heggem.

**EXHIBIT(juh07a05)**

*{Tape: 2; Side: A; Approx. Time Counter: 151 - 210}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REPS. STOKER, BECKER, and GUTSCHE** inquired of **REP. ANDERSEN** to clarify whether daycare providers are required to record drugs that are given; how in emergency situations medication may be given; how parents can give permission and how to deal with pre-existing conditions requiring medication to be given. **REP. Andersen** knew of criteria in California, however was not sure of the specifics in Montana. **(see below for response by Ms. Siebenaler)**

**REP. GUTSCHE** notified committee members that a person in the audience would be able to supply committee members with answers to their questions.

*{Tape: 2; Side: A; Approx. Time Counter: 210 - 261}*

**Becky Fleming-Siebenaler, State of Montana, Department of Health and Human Services, licensing**, informed the committee that there is a requirement that day care providers must have written authorization from parents before they can administer medications. She explained to the committee many more criteria that must be met by providers and what the state is doing to toughen current requirements through education and training.

**REPS. DRISCOLL, WARD, HARRIS, NOENNIG, KOOPMAN, GUTSCHE, RICE** questioned **REP. ANDERSEN**, Mr. Heggem and Ms. Siebenaler extensively regarding what legal charges the daycare provider in this case would face.

**Mr. Heggem** answered the daycare provider has been charged with one count of negligent homicide, three counts of child endangerment and one count of destroying evidence. The daycare provider will face these charges in June, 2005.

The committee members continued with the possibility of revamping the requirements daycare providers would have to adhere to; i.e., more substantial penalties for any infraction. The members were also interested in what other states have been doing regarding this issue. Some of these cases involved prescribed medications; what about over-the-counter medications was another question the committee posed to the sponsor and licensor. Presently there is no specific statute that deal with the over-the-counter medications.

**Mr. Heggem** explained to committee members the specifics of his son's incident with the daycare provider, the investigation and the upcoming legal case that will occur in the spring.

The entire House Judiciary Committee expressed their condolences to the Heggem family and wished them well.

**{Tape: 2; Side: A; Approx. Time Counter: 261 - 500}**

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 150}**

**Closing by Sponsor:**

**REP. ANDERSEN** closed the hearing on HB 68.

**{Tape: 2; Side: B; Approx. Time Counter: 150 - 169}**

**ADJOURNMENT**

Adjournment: 10:05 A.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/PS

Additional Exhibits:

**EXHIBIT ([juh07aad0.PDF](#))**