

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 13, 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. 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: Rep. Christopher Harris (D)

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 100, HB 110, HB 113, HB 196,
1/7/2005
Executive Action: HB 68-Do Pass As Amended

HEARING ON HB 100

REP. RICK MAEDJE, HD 2, FORTINE

Opening Statement by Sponsor:

REP. RICK MAEDJE, HD 2, opened the hearing on HB 100, clarify limits on search warrants.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 105}

Proponents' Testimony:

Erik Johnson, self-resident of Lincoln, Montana, related a personal story of himself and wife regarding a search warrant that was served on them in November 2003.

{Tape: 1; Side: A; Approx. Time Counter: 105 - 205}

Janice Cowell-Johnson, self-resident of Lincoln, Montana, further related the story to the committee members of the incident that happened to them on November 22, 2003.

{Tape: 1; Side: A; Approx. Time Counter: 205 - 277}

Andrew Huff, Attorney in Helena, ACLU, spoke in support of HB 100. This bill would address searches that are bad and searches conducted that are too aggressive, destructive and violative of people's rights. **Mr. Huff** stated that the only part of this bill that would be problematic is Section 1, Part 2.

{Tape: 1; Side: A; Approx. Time Counter: 277 - 335}

Opponents' Testimony:

John Connor, Montana Assistant Attorney General, rose in opposition to this bill. He explained to the committee many of the misconceptions regarding search warrants. **Mr. Connor** stated that this bill is just bad public policy for law enforcement. Many of the issues that the Johnsons have articulated can be solved through legal and civil remedies through the federal statute.

{Tape: 1; Side: A; Approx. Time Counter: 335 - 479}

Dennis Paxinos, Yellowstone County Attorney, Montana County Attorneys Association, rose in opposition to HB 100. To quote Mr. Paxinos: "The Johnsons should sue the be-jesus out of these people," if the facts are as they portend. **Mr. Paxinos** further explained to the committee the protocols for instance; privacy in bathrooms and "kick and announce." He continued by saying that this bill would hinder legitimate searches and put the safety of the officers at risk.

{Tape: 1; Side: A; Approx. Time Counter: 479 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 52}

Jim Kembel, Montana Association of Chiefs of Police, rose in opposition to this bill.

{Tape: 1; Side: B; Approx. Time Counter: 52 - 57}

Kathy McGowan, Montana Sheriffs and Peace Officers Association, rose in opposition to this bill; she stated that this was an isolated incident and the Johnsons should seek other remedy.

{Tape: 1; Side: B; Approx. Time Counter: 57 - 76}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. DRISCOLL, WARD, CLARK, EVERETT, NOENNIG, MCGILLVRAY, KOOPMAN, PARKER, SONJU, and RICE questioned the sponsor; Mr. Johnson, Mr. Connor, Mr. Paxinos, and Mr. Huff extensively regarding a myriad of topics. Among those questions was whether the Johnson family is suing, with the Johnson's answer being "Yes."

REP. WARD then asked Mr. Connor if this is a duplication of existing statute and the applicability of certain sections of the bill. The areas of questioning would be if the subjects are allowed to read the search warrant prior to a search and returning the search area to its original form. **Mr. Connor** referred to Section 1, Page 1 to support his answers, with regard to reading the warrant; the subject is currently provided with a copy of the search warrant (existing statutes) and whether the person reads the warrant is up to the individual. He further stated that the fact the person is reading the warrant will not stop the search from its execution. As for returning the area searched to its original form, that is not practical. **Mr. Connor** related to committee members the example of the search scene where there have been ankle-deep dog feces and the food was stored in bags and hung from the ceiling so the dogs would not be able to get at it.

REP. CLARK continued the questioning of Mr. Connor with regard to the "reasonable and necessary" force officers use when conducting a search warrant. **REP. CLARK** wanted to know if there was something that officers could read for the definition of "reasonable and necessary" force. **Mr. Connor** stated that he had tried to research this very subject and definition in the MCA, however, was unsuccessful in his efforts.

REP. CLARK then commented and voiced the concerns he had with the restraint criteria and using the least restrictive restraints to enable the search to be executed.

REP. EVERETT proceeded to inquire of Mr. Connor if the statute has procedures for returning items that were seized in the service of the search warrant; including how soon these items are returned. **Mr. Connor** stated that if the search was illegal, the property would be returned immediately, if it is a legal search, those procedures are presently covered in the existing law.

REP. NOENNIG asked of Mr. Johnson if he and his neighbors continue to have problems; and to clarify what Mr. Johnson had previously stated about the discharging of his own rifle to resolve this volatile situation; and finally, the disposition of the lawsuit filed by the Johnsons. **Mr. Johnson** replied that he did discharge his rifle but not in the direction of his neighbors. He also stated that the lawsuit is pending.

REP. MCGILLVRAY questioned Mr. Paxinos as to the body of law where "search and seizure" is covered. **Mr. Paxinos** responded by saying that it is in case law through Montana Supreme Court decisions. Mr. Paxinos was also questioned whether the search warrants would need to be written in foreign languages to allow people to be able to read them with different ethnicity and who didn't read English. His response was that he didn't think that would be necessary.

REP. KOOPMAN questioned Mr. Johnson about the areas to be searched as to what the warrant stated and what was actually searched. **Mr. Johnson** stated, "Those fruits-of-the-crime," outbuildings and vehicles; however, Mr. Johnson stated that the officers took two pages listing personal items. **REP. KOOPMAN** then turned to Mr. Connor for questioning. This area of questioning was about people being concerned with excesses in search warrants. **REP. KOOPMAN** also asked the question, "Why would anyone oppose this legislation?" **Mr. Connor** responded to that question and said that this bill is not good legislation, there are already laws in place and no language in any statute will stop bad officers.

REP. WARD asked questions of Mr. Paxinos regarding the "knock and announce" provision that the Montana Supreme Court had ruled on previously and that bathroom privacy is to be honored due to the higher court's ruling. **Mr. Paxinos** explained these recent rulings to **REP. WARD**. He gave an example to the committee about a party with many youths attending and someone vomiting in the bathroom. The law enforcement officer was not allowed to enter that bathroom.

REP. PARKER continued the questioning of Mr. Paxinos. His questions were in the arena of law enforcement officers safety. If this bill passes and time is needed for search warrant to be read, people could be destroying evidence. Also an area of concern is when officers arrive, it is a very uncertain time. In trying to secure the area suspects could be escaping, warning others of the officers arriving and, if there are victims being held against their will, those victims' safety could be at risk.

REP. KOOPMAN closed the questioning portion of the hearing by again stating that he just couldn't understand why this bill has problems, etc.

{Tape: 1; Side: B; Approx. Time Counter: 76 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 378}

Closing by Sponsor:

REP. MAEDJE closed the hearing on HB 100 and stated to the committee that the incident described by the Johnson family is uncommon and the officers can secure the site within the language of this bill, thereby leading to greater safety for said officers.

{Tape: 2; Side: A; Approx. Time Counter: 378 - 500}

HEARING ON HB 196

REP. JOEY JAYNE, HD 15, ARLEE

Opening Statement by Sponsor:

REP. JOEY JAYNE, HD 15, opened the hearing on HB 196, Power of attorney fiduciary notice. The sponsor further stated that this bill is an elderly consumer protection bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 68}

Proponents' Testimony:

Rick Bartos, Montana Department of Health and Human Services-Adult Protective Services, spoke to the committee regarding the abuse of the elderly. He stated that in FY2004, 2,600 referrals of abuse, neglect and exploitations were reported with 500 of them relate to financial exploitation. **Mr. Bartos** continued to explain to the committee members the power of attorney dilemma facing the elderly.

{Tape: 2; Side: B; Approx. Time Counter: 68 - 144}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NOENNIG and **MCGILLVRAY** questioned Mr. Bartos regarding the signature aspect of the power of attorney protocol, whether it should be made mandatory not just voluntary and the enforceability of the aforementioned signature. **Mr. Bartos** responded that the power of attorney is presently enforceable without the signature and that by making signatures mandatory, if a party did not want to sign it that could give people reason to evaluate whether that person should have power of attorney for them.

{Tape: 2; Side: B; Approx. Time Counter: 144 - 255}

Closing by Sponsor:

REP. JAYNE closed the hearing on HB 196.

{Tape: 2; Side: B; Approx. Time Counter: 255 - 298}

HEARING ON HB 110

REP. KEVIN FUREY, HD 91, MISSOULA

Opening Statement by Sponsor: **REP. KEVIN FUREY, HD 91**, opened the hearing on HB 110, An Identity theft passport for victims of identity theft. The sponsor informed the committee members that there are 9.9M victims in the nation resulting in a \$50B cost to everyone.

EXHIBIT(juh09a01)

{Tape: 2; Side: B; Approx. Time Counter: 298 - 358}

Proponents' Testimony:

Mike McGrath, Montana Attorney General, testified before the committee and stated that identity theft is the fastest growing crime in the United States. He stated that what this bill will do is provide assistance to the victims and provide them with an avenue to help resolve their credit problems once they have been victimized.

{Tape: 2; Side: B; Approx. Time Counter: 358 - 433}

Claudia Clifford, AARP, informed the committee that the greatest fear among the 143,000 members in Montana is identity theft and concern about their pension and retirement savings. **Ms. Clifford** stated that five other states have a similar statute.

EXHIBIT(juh09a02)

{Tape: 2; Side: B; Approx. Time Counter: 433 - 500}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of HB 110. He related a personal family story to committee members regarding an incident of identity theft.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 12}

Dennis Paxinos, Yellowstone County Attorney, Montana County Attorneys Association, rose in support of HB 110.

{Tape: 3; Side: A; Approx. Time Counter: 12 - 25}

Court Jensen, Montana Department of Administration-Consumer Protection Office, rose in support of HB 110. **Mr. Jensen** spoke to the committee members regarding the Fair Credit Reporting Act and the Fair and Accurate Transaction Act.

In his testimony, **Mr. Jensen** informed the committee members that one in thirty people has had their identities stolen. He further explained the components of identity theft and what transpires.

{Tape: 3; Side: A; Approx. Time Counter: 25 - 69}

Brad Griffin, Montana Retail Association, rose in support but stated that his organization has some concerns. One of the members of his organizations is the Consumer Data Industry Association, which represents the Credit Bureaus in the country. One of their concerns is in trying to prevent fraud, but it is important that HB 110 does not perpetuate fraud.

[EXHIBIT\(juh09a03\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 69 - 136}

Karen Powell, Montana State Auditors Office-Deputy Securities Commissioner, rose in support HB 110. She spoke of stocks, bonds and mutual funds businesses that are very protective of clients and clients' accounts.

{Tape: 3; Side: A; Approx. Time Counter: 136 - 165}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NOONAN, NOENNIG, PARKER, STOKER, MCGILLVRAY, KOOPMAN and WARD questioned the sponsor, **Mr. McGrath** and **Mr. Connor** at length regarding the procedures and specific criteria required in obtaining an identity passport, the safeguards built in to protect against fraud and other states who have similar "passports."

Mr. Connor explained that in order for victims to receive a passport, their case would be reviewed by the Victim's Review Board who then investigates the facts themselves. There are also specific criteria built into this bill to safeguard against "Black Market" passports, much like drivers' licenses require.

{Tape: 3; Side: A; Approx. Time Counter: 165 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 10}

Closing by Sponsor:

REP. FUREY closed the hearing on HB 110.

{Tape: 3; Side: B; Approx. Time Counter: 10 - 13}

HEARING ON HB 113

REP. LARRY JENT, HD 64, BOZEMAN

Opening Statement by Sponsor:

REP. LARRY JENT, HD 64, opened the hearing on HB 113, Require DNA samples from all felons. The sponsor stated that they are two million offenders in the national offender base. In Montana the base is approximately 2,200. Presently there are 36 other states that have a similar statute in place. **REP. JENT** further explained to committee members the process involved in obtaining and testing the DNA for investigative purposes.

{Tape: 3; Side: B; Approx. Time Counter: 13 - 139}

Proponents' Testimony:

John Connor, Montana Assistant Attorney General, spoke of the crime lab in Missoula. This bill would enable DNA testing that could eventually lead to the vindication of innocent offenders. He further explained how this bill would expand the DNA testing from sex offenders to all violent crime offenders. This bill would be good for both prosecutors and the defense.

EXHIBIT(juh09a04)

{Tape: 3; Side: B; Approx. Time Counter: 139 - 274}

Dennis Paxinos, Yellowstone County Attorney, Montana County Attorneys Association, rose in support then related to committee members the story of Mr. Bromguard who was released from prison due to DNA testing after serving 16.5 years incarceration. **Mr. Paxinos** made the statement: "DNA can be used to convict and acquit."

{Tape: 3; Side: B; Approx. Time Counter: 274 - 334}

Jim Kembel, Montana Police Protective Association, rose in support of HB 113.

{Tape: 3; Side: B; Approx. Time Counter: 334 - 346}

Opponents' Testimony: None

Informational Testimony:

Andrew Huff, Attorney in Helena, ACLU, stated that his organization supports targeted DNA sampling and testing, but not of all convicted felons.

{Tape: 3; Side: B; Approx. Time Counter: 346 - 400}

Questions from Committee Members and Responses:

REPS. EVERETT and **KOOPMAN** questioned the **REP. JENT** about the costs related to HB 113, the data base to prove innocence and if there is a "sunset" for convicted felons or would the felon be marked for life if DNA sampling was done. **REP. JENT** replied that the cost would be in the Missoula crime lab and that he had not seen the fiscal note yet. He further continued that this DNA data base could help prove innocence as well as convict. The sunset provision could be addressed with an amendment.

{Tape: 3; Side: B; Approx. Time Counter: 400 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 46}

Closing by Sponsor:

REP. JENT closed the hearing on HB 113 and stated that this bill would allow for, "cold cases" to be solved and help to exonerate the innocent.

{Tape: 4; Side: A; Approx. Time Counter: 46 - 61}

EXECUTIVE ACTION ON HB 68

Motion: **REP. WARD** moved that HB 68 DO PASS.

Motion: **REP. NOENNIG** moved that HB 68 BE AMENDED with the 68-01 AMENDMENT.

EXHIBIT(juh09a05)

Discussion:

Mr. MacMaster explained the amendment as to the 3 tier penalty systems. **REPS, CLARK, STOKER, WARD, PARKER** and **KOOPMAN** discussed the amendment in further detail.

Vote: Motion that HB 68 BE AMENDED WITH the 68-01 AMENDMENT carried unanimously with a roll call vote. (REPS. HARRIS, NOENNIG and WILSON voting by proxy.)

Motion: REP. STOKER moved that HB 68 DO PASS AS AMENDED.

Discussion:

REPS. LANGE, CLARK, MCGILLVRAY, PARKER, KOOPMAN and GUTSCHE discussed the bill in its entirety both the unintended consequences and the good intentions within passage of HB 68.

Vote: Motion that HB 68 DO PASS AS AMENDED carried 13-5 by roll call vote with REPS. CLARK, GUTSCHE, HARRIS, KOOPMAN, and WILSON voting no. (REPS. HARRIS, WILSON and NOENNIG voting by proxy.)

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/PS

Additional Exhibits:

EXHIBIT ([juh09aad0.PDF](#))