

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 21, 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. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

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 257, HB 264, HB 267, HB 280, HB 285, 1/14/2005
Executive Action: HB 257-Do Pass, HB 264-Do Pass, HB 40-Do Pass; HB 146-Do Pass As Amended

HEARING ON HB 285

REP. JANNA TAYLOR, HD 11, DAYTON

Opening Statement by Sponsor:

REP. JANNA TAYLOR (R), HD 11, opened the hearing on **HB 285**, Allow domestic violence victims to route mail through Secretary of State. REP. TAYLOR submitted to the committee an amendment that would allow the program to transfer from the Secretary of State to the Department of Justice (DOJ).

[EXHIBIT\(juh16a01\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 76}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General (AG), rose in support of HB 285. **Ms. Bucy** informed the committee members that this program has been in existence since 1985 under the auspices of the Board of Crime Control when it was then transferred to the Attorney General's Office (AG). She stated that 15 other states have similar programs.

{Tape: 1; Side: A; Approx. Time Counter: 76 - 103}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285. She stated that 16 states have similar statutes that authorize "address confidentiality" services. **Ms. Cholewa** stated that the State of Washington was the first state to create this program in 1991. The population requesting their services is currently 54% children, 41% women and 5% men.

This bill would allow victims to be assigned a "dummy address" by the Attorney General's Office. The mail is received at that substitute address with First Class mail then being forwarded by the Attorney General's Office to the confidential address of the victims.

Ms. Cholewa suggested to the committee that an amendment creating a requirement of Montana residency be addressed.

{Tape: 1; Side: A; Approx. Time Counter: 103 - 138}

Kelsey Young, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285.

{Tape: 1; Side: A; Approx. Time Counter: 138 - 145}

Michael O'Brien, Chief Deputy of Montana Secretary of State, rose in support and stated that the Secretary of State's Office is in agreement with the amendments that REP. TAYLOR distributed.

{Tape: 1; Side: A; Approx. Time Counter: 145 - 153}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN posed some questions to the sponsor regarding unintended consequences of having a "secret" address. His concerns were the abuse of the address to avoid debt collectors, etc. **REP. TAYLOR** assured the committee that could not happen as the debt collectors could still find the party through the substitute address.

REP. RICE then addressed Ms. Young as to the possibility of a breakdown in the system with the USPO. **Ms. Young** responded that it is the AG's Office that would change the address. She then stated the ways offenders find the victims; through voter records which are public or by paying a nominal fee to the USPO or government agencies that have "lists."

Ms. Young explained the procedure to the committee members. The victim would sign up with the AG's Office and be given a P.O. Box number that all the victims use. The victim would then have a "family code" identifying said mail. Then all of that victim's mail would go to the AG's Office to be distributed confidentially to them by the AG's Office.

REP. CLARK questioned Ms. Bucy thoroughly about the employee at the AG's Office who is the distributor of the victim's mail. Would that person have a security clearance and what other precautions would be there to insure that there are no breaches in that system. **Ms. Bucy** stated that would not be an issue, anyone who works at the Victims Bureau at the AG's Office already has clearance and certainly the person in charge of this service would be trained with confidentiality being the main issue.

REP. CLARK and **REP. NOENNIG** then questioned Mr. O'Brien regarding the issue of voter registration, by asking how the victim would be able to register to vote if those lists are public.

Mr. O'Brien informed the committee that the issue is resolved between the registrant and the AG's Office. **Ms. Bucy** also

responded that the Montana Secretary of State does not require a physical address to register to vote.

REP. HARRIS voiced his concern about if or when there is a leak in confidentiality; what about the legal exposure. **Ms. Bucy** stated that the Department of Justice would receive the immunity provision set forth in this bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 39}

HEARING ON HB 257

REP. GARY BRANAE, HD 54, BILLINGS

Opening Statement by Sponsor:

REP. GARY BRANAE (D), HD 54, opened the hearing on **HB 257**, Revise permissible term for personal service contracts.

Proponents' Testimony:

Kathy Kenyon, Deaconess Billings Clinic, rose in support of HB 257. She gave the example of negotiating contracts with incoming employees at the Clinic for longer terms without those prospective employees knowing of the two-year contract statute.

[EXHIBIT\(juh16a02\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 39 - 100}

Tom Ebzery, St. Vincent Healthcare, rose in support of HB 257 and stated that this bill is a housekeeping measure.

{Tape: 1; Side: B; Approx. Time Counter: 100 - 115}

John Flink, Montana Hospital Association, rose in support of this bill and stated that this is an issue especially for the rural areas of Montana.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG queried Ms. Kenyon regarding the "indentured servitude" attitude that drove the initial bill limiting employment to two years. They also spoke of the un-enforceability issue that the previous statute employs.

{Tape: 1; Side: B; Approx. Time Counter: 115 - 189}

Closing by Sponsor:

REP. BRANAE closed the hearing on HB 285.

{Tape: 1; Side: B; Approx. Time Counter: 189 - 207}

HEARING ON HB 267

REP. RON STOKER, HD 87, DARBY

Opening Statement by Sponsor:

REP. RON STOKER (R), HD 87, opened the hearing on HB 267, Convicted person to pay costs of local government after second trial. REP. STOKER gave the town of Darby, Montana, as an example of a town with limited jurisdiction that suffers the costs of a trial.

He spoke of the case where someone is charged with misdemeanor DUI and how that person will change his plea from Not Guilty to Guilty with the prospect of appealing the lower ruling to District Court. Supposedly, the District Court judges are more lenient and the chance may occur that the person would receive a smaller penalty.

REP. STOKER explained to the committee that after that trial is completed, the small town of Darby has had to pay for two trials, one prosecutor, one defense attorney and judge. In HB 267, the defendant will be required to pay for the two trials (if found guilty), the town's expenses, and an additional \$200 fee.

{Tape: 1; Side: B; Approx. Time Counter: 207 - 299}

Proponents' Testimony:

Harold Blattie, Montana Association of Counties, rose in support of HB 267.

{Tape: 1; Side: B; Approx. Time Counter: 299 - 306}

Alex Hansen, Montana League of Cities and Towns, rose in support of HB 267 and stated that this is one way to help small towns with limited jurisdiction courts.

{Tape: 1; Side: B; Approx. Time Counter: 306 - 335}

REP. GORDON HENDRICK, HD 14, rose in support of HB 267 and informed the committee that as the mayor of Superior, Montana, he understands the costs. He stated that if an offender goes to a second trial, the cost is approximately \$2,500 in addition to the defendant's attorney (if appointed), charging \$100 an hour to represent the offender.

{Tape: 1; Side: B; Approx. Time Counter: 335 - 372}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS questioned the sponsor about the MCA current statute regarding the "guaranteed right to trial by jury" provision.

REP. STOKER explained to the committee that this bill does not infringe on a person's right to trial by jury. This bill is about changing the attitude of the offender that is of "beating the local small court."

The discussion then ranged from an indigent defendant versus some one with money. The point being that a person who is indigent, if faced with having to pay this extra money, will just plead guilty and suffer those consequences. However, someone with money will still take the chance of pleading not guilty in an effort to try and "beat" the local court.

REP. HARRIS then questioned Ms. Bucy regarding the current system of assessing the costs of jury trials. **Ms. Bucy** replied that the imposition of fines by District Court is being done now, along with Municipal Courts. She also verified the theory that Justice of the Peace Courts and Municipal Courts are "harder" on defendants than District Courts.

REP. CLARK continued the questioning of Ms. Bucy. He asked if indigent defendants do not pay the court costs. The answer was, "Yes." Then he asked, "Do non-indigent defendants pay the court costs?" The answer again was, "Yes." **REP. CLARK** then stated that this could be construed as discrimination against people who have money and so would hinder them. **Ms. Bucy** then stated that the indigent could go for a second trial, "...if have no money, still no big deal."

{Tape: 1; Side: B; Approx. Time Counter: 372 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 87}

Closing by Sponsor:

REP. STOKER closed the hearing on HB 267 by stating that the lower courts can impose costs presently, however, the money does not go back to the small towns.

{Tape: 2; Side: A; Approx. Time Counter: 87 - 117}

HEARING ON HB 264

REP. JEANNE WINDHAM, HD 12, POLSON

Opening Statement by Sponsor:

REP. JEANNE WINDHAM (D), HD 12, opened the hearing on **HB 264**, Redirect restitution payments to Office victim services. **REP. WINDHAM** informed the committee that the money currently goes into the General Fund with the amount increasing every year. However, the Crime Victims Compensation Program (CVP) runs out of money each year. She further stated that the federal government matches 60% of recovered monies.

{Tape: 2; Side: A; Approx. Time Counter: 117 - 177}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, rose in support of HB 264. She spoke of the Federal money that is disbursed to the restitution fund.

EXHIBIT(juh16a03)

{Tape: 2; Side: A; Approx. Time Counter: 177 - 218}

Kate Cholwea, Montana Coalition Against Domestic and Sexual Violence, stood in support of HB 264.

{Tape: 2; Side: A; Approx. Time Counter: 218 - 227}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Ms. Bucy regarding the "workings" of the Crime Victims Compensation Program. **Ms. Bucy** then referred the line of questions to Cindy Paradis, who is with the Crime Victims Compensation Program.

Ms. Paradis explained how the money is disbursed to the victim for services. When a victim attends counseling, a medical service provider or needs money for utility bills, etc.; CVP examines the claims and if legitimate, pays the claim. At that point, restitution is sought from the offender.

One of the duties of Ms. Paradis, is to follow the offender's case through the court system, tracking when the defendant is able to make payments towards restitution. When any money is received, it is applied towards the defendant's accounts.

Ms. Paradis informed the committee that last year the fund disbursed more than \$2 million dollars towards claims.

{Tape: 2; Side: A; Approx. Time Counter: 227 - 390}

Closing by Sponsor:

REP. WINDHAM closed the hearing on HB 264 with a Fiscal Note for this bill.

EXHIBIT (juh16a04)

{Tape: 2; Side: A; Approx. Time Counter: 390 - 418}

HEARING ON HB 280

REP. PAT WAGMAN, HD 62, LIVINGSTON

Opening Statement by Sponsor:

REP. PAT WAGMAN (R), HD 62, opened the hearing on **HB 280**, Revise use of electronic proceedings for district court.

{Tape: 2; Side: A; Approx. Time Counter: 418 - 484}

Proponents' Testimony:

Wayne Phillips, District Court Judge, Montana Judges

Association, rose in support of HB 280. He explained to the committee members the cost-saving measure that this would be. Presently he must travel long distances on a weekly or monthly basis to be present at legal proceedings, thereby incurring traveling expenses of mileage, lodging, meals and, most importantly, time.

Court proceedings could happen on a much more timely basis and without huge expenses incurred by the counties for the equipment.

Judge Phillips did point out some small errors in the language of the bill to the committee members.

{Tape: 2; Side: A; Approx. Time Counter: 484 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 53}

Mary Phippen, Montana Association of Clerks of District Court, rose in support of HB 280.

{Tape: 2; Side: B; Approx. Time Counter: 53 - 59}

David Martin, Montana Newspaper Association and Lee Enterprises, rose in support of HB 280.

{Tape: 2; Side: B; Approx. Time Counter: 59 - 64}

Opponents' Testimony:

Anita Roessmann, Montana Advocacy Program, rose in opposition to HB 280. Her testimony included information that if the defendant is mentally disabled, that person would not be able to "track" or take in information or assist in their own defense. She also stated that they would not be able to pick up "cues" from any participant in the hearing including their own attorney and would be confused. Another concern that Ms. Roessmann had was to the confidentiality of court proceedings.

Ms. Roessmann's concerns were also about the client's right to object to video/audio hearings, the right to an explanation prior to making a decision regarding the hearing, and the right to speak with counsel. She made a recommendation to the bill that would require advance notice and then informed consent be given by the defendant prior to the hearing.

{Tape: 2; Side: B; Approx. Time Counter: 59 - 173}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked if Judge Phillips would address Ms. Roessmann's concerns.

Judge Phillips stated that the defendant is always allowed "notice" to be given, but would have no problem with adding language that would address that issue. Regarding the issue of the attorney and client privilege, in his courtroom for instance, there is always time for the defendant and the defense counsel to speak. He vacates the courtroom to facilitate that proceeding.

Judge Phillips then addressed the issue of mental capacity and capabilities. He handles 60-70 court proceedings for commitment purposes and does not see the problems Ms. Roessmann speaks of. Special consideration is given for the mentally disabled to make sure they understand what is happening. In his testimony, the Judge explained much of what he does in his courtroom to facilitate the varied proceedings he adjudicates.

He further stated the cost savings would be appreciable and well worth the expense of new equipment.

REPS. BECKER, MCGILLVRAY, NOENNIG and NOONAN continued with the questioning of Judge Phillips regarding some changes in the language that could be made to "clean-up" HB 280.

REP. NOONAN addressed his questions to Ms. Roessmann with regard to her concerns involving the informed consent issue.

REPS. STOKER, HARRIS, MCGILLVRAY and **EVERETT** finished the questioning of the witnesses' regarding the Fiscal Note and the purchase of equipment necessary to implementation of HB 280. **Judge Phillips** stated that the travel budget currently is \$5,000; he informed the committee that this would be a cost-saving measure.

{Tape: 2; Side: B; Approx. Time Counter: 173 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 182}

Closing by Sponsor:

REP. WAGMAN closed the hearing on HB 280 by saying that this would allow the Department of Corrections to be more efficient and would save money and time.

{Tape: 3; Side: A; Approx. Time Counter: 182 - 208}

EXECUTIVE ACTION ON HB 257

Motion/Vote: **REP. CLARK** moved that HB 257 DO PASS. Motion carried unanimously by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 208 - 228}

EXECUTIVE ACTION ON HB 264

Motion/Vote: **REP. WINDHAM** moved that HB 264 DO PASS. Motion carried 16-2 by voice vote with **REPS. KOOPMAN** and **SONJU** voting no.

{Tape: 3; Side: A; Approx. Time Counter: 228 - 303}

REP. HARRIS discussed the coordination of HB 40 and HB 146.

{Tape: 3; Side: A; Approx. Time Counter: 303 - 328}

EXECUTIVE ACTION ON HB 146

Motion: **REP. HARRIS** moved that HB 146 DO PASS.

Discussion:

Motion: **REP. HARRIS** moved that HB 146 BE AMENDED with a Conceptual Amendment to DELETE PAGE 7 LINE 3.

Mr. Macmaster explained the amendment to the committee members.

Vote: Motion carried unanimously by voice vote.

Motion: REP. HARRIS moved that HB 146 DO PASS AS AMENDED.

Discussion:

Motion: REP. MCGILLVRAY moved that HB 146 BE AMENDED with
AMENDMENT 146-01.
[EXHIBIT\(juh16a05\)](#)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. HARRIS moved that HB 146 DO PASS AS AMENDED.
Motion carried unanimously by roll call vote.
{Tape: 3; Side: A; Approx. Time Counter: 328 - 381}

EXECUTIVE ACTION ON HB 40

Motion/Vote: REP. HARRIS moved that HB 40 DO PASS. Motion
carried unanimously by voice vote.
{Tape: 3; Side: A; Approx. Time Counter: 381 - 500}

EXECUTIVE ACTION ON HB 46

Motion: REP. PARKER moved that HB 46 DO PASS.

Discussion:

Motion: REP. PARKER moved that HB 46 BE AMENDED.

Discussion:

There was much discussion regarding the amendments and the bill itself. The committee as a whole could not agree to the language and were wanting additional amendments with more questions to be answered. After much deliberation; the committee decided to rescind action until later after REP. PARKER could make some changes to the bill and amendments.

Motion/Vote: REP. CLARK moved that ACTION BE POSTPONED ON HB 46
UNTIL A LATER DATE. Motion carried unanimously by voice vote.
{Tape: 3; Side: B; Approx. Time Counter: 381 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 156}

ADJOURNMENT

Adjournment: 12:14 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh16aad0.PDF](#))