

## **MINUTES**

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

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on January 26, 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 97, HB 98, HB 99, 1/19/2005  
Executive Action: HB 259 and HB 267-Tabled

HEARING ON HB 97

**Sponsor: REP. MICHAEL LANGE, HD 55, BILLINGS**

**Opening Statement by Sponsor:**

**REP. MICHAEL LANGE (R), HD 55**, opened the hearing on **HB 97**, Add to types of prior convictions for, and increase, 4th DUI penalties.

**Proponents' Testimony:**

**Dennis Paxinos, Montana County Attorneys' Association, Yellowstone County Attorney**, rose in strong support of HB 97. **Mr. Paxinos** stated to the committee that for 20 years he has been able to observe what can "get" drunk drivers "off."

He informed the committee that Yellowstone County has approximately 1,000 DUI's with 10 percent of those being felony DUI. He spoke further of specific DUI cases that have occurred in Yellowstone County.

**{Tape: 1; Side: A; Approx. Time Counter: 0 - 190}**

**David Carter, Deputy Yellowstone County Attorney**, spoke in support of HB 97 in its original language. **Mr. Carter** stated HB 238 would give prosecutors more discretion in sentencing.

**{Tape: 1; Side: A; Approx. Time Counter: 190 - 257}**

**Pam Bucy, Assistant Attorney General**, rose in support of HB 97. She stated that negligent homicide and negligent vehicular homicide should be added to the bill. **Ms. Bucy** did not agree, however, with the language that would commit an offender to Montana State Prison. She would prefer the language state the commitments be to the Department of Corrections instead, which would mean the offender could be enrolled in the Warm Springs Addiction Treatment and Change Program (WATCH) Program.

**{Tape: 1; Side: A; Approx. Time Counter: 257 - 305}**

**Allen Recke, Cascade County DUI Task Force**, spoke in support of HB 97. He spoke to the committee about how HB 97 would affect DUI notification on Driver's Licenses.

**{Tape: 1; Side: A; Approx. Time Counter: 305 - 327}**

**Bill Robinson, physician, Bozeman Deaconess Hospital, MADD**, rose in support of HB 97. **Dr. Robinson** spoke to the committee members about the small group of offenders this bill would target.

**{Tape: 1; Side: A; Approx. Time Counter: 327 - 370}**

**Cathy Okeson, "WATCH" program**, spoke to the committee and explained the WATCH program to them. She informed the committee that the program has a 65-68% completion rate and that 93% do not receive subsequent DUIs.

She did have an area of concern regarding the language in the bill that would require the DUI offender to be sentenced to Montana State Prison (MSP) instead of the more encompassing Department of Corrections (DOC). One of the most compelling reasons would be the savings of state monies.

**EXHIBIT(juh20a01)**

**{Tape: 1; Side: A; Approx. Time Counter: 370 - 500}**

**Jason Kovneski, Community Corrections Counseling Services**, also rose in support of HB 97. He spoke to the committee members about the screening process and explained the statistics to the committee.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 60}**

**J.D. Lynch, Community Corrections Counseling Services**, rose in support of HB 97.

**{Tape: 1; Side: B; Approx. Time Counter: 60 - 89}**

**Kris Minard**, rose in support of HB 97.

**{Tape: 1; Side: B; Approx. Time Counter: 89 - 92}**

**Opponents' Testimony:** None

**Informational Testimony:**

**Michelle Jenicek, Department of Corrections, Community Corrections Division**, testified for informational purposes. She informed the committee of the training that program participants have each day, their recidivism statistics and finally, that fifth DUI is included in the bill. **Ms. Jenicek** agreed with the previous witnesses that the offender should be sent to the DOC instead of MSP.

**{Tape: 1; Side: B; Approx. Time Counter: 92 - 142}**

**Questions from Committee Members and Responses:**

**REP. CLARK** posed numerous questions to Ms. Okeson, Ms. Bucy and Mr. Kovneski. The REPRESENTATIVE was interested in the specific language the amendment referred to previously in testimony, the WATCH program and the incentives ("carrot") needed for the participants to complete said programs.

**Mr. Kovneski** was able to inform the committee that after completion of the program; participants enjoyed a 90% success rate and after two years a success rate of 65%. He explained that the success rate is measured by the collateral information supplied by probation and parole offices.

**REP. NOENNIG** began his questioning of Mr. Carter regarding the suggestion that negligent homicide and negligent vehicular homicide are added to the bill. **Mr. Carter** was able to explain how the prosecutors charge presently when someone was killed in an accident where alcohol was involved and how it would pertain to HB 97.

**REP. HARRIS** was interested in speaking with Ms. Okeson regarding the theory that incarceration of offenders at MSP initially would be a motivating factor for success at the WATCH program for those offenders. **Ms. Okeson** replied that, "...yes, it could be; it is shocking, nevertheless, it does not work effectively." She further stated that most of the repeat DUI offenders have been imprisoned before and it was not a deterrent as realized by the current DUI they are charged with. **Ms. Okeson** further stated that the WATCH program is more difficult than being at MSP.

**REP. GUTSCHE** queried Ms. Jenicek in reference to inserting the WATCH program as the initial course of action instead of MSP.

**Ms. Jenicek** stated that she would agree to that amendment on the basis that it is less costly, more successful and less recidivism in her opinion than MSP.

**REP. MCGILLVRAY** spoke with Mr. Paxinos and asked him to explain why people receive so many DUIs. **Mr. Paxinos** replied that usually the first DUI happens when someone is celebrating and makes an error in judgement by driving; the second time it appears the offender has a problem with alcohol and by the third DUI, a significant problem with alcohol is verified. The fourth DUI needs to be made a felony and the offender enrolled in treatment. **Mr. Paxinos** further stated that the State of Montana cannot afford to make third DUI offenses a felony; it is simply too expensive for the state.

**REP. NOENNIG** began his questioning by asking Mr. Paxinos the minimum requirement for enrollment into the WATCH program. **Mr. Paxinos** stated that the minimum time is 13 months with a maximum of five years. He then informed the committee that the DOC needs something to "bargain" with to use for a plea agreement with the offender.

**REP. RICE** asked of Ms. Okeson, "What happens to the offenders that are eliminated, what happens to them, are there any records kept?" **Ms. Okeson** responded that she did not know. **Mr. Kovneski** intervened and said that they usually are incarcerated at MSP.

**{Tape: 1; Side: B; Approx. Time Counter: 142 - 500}**

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 40}**

**Closing by Sponsor:**

**REP. LANG** closed the hearing on HB 97 by stating that Montana is "...getting tough on DUIs."

**{Tape: 2; Side: A; Approx. Time Counter: 40 - 62}**

**HEARING ON HB 98**

**Sponsor:** **REP. MICHAEL LANGE, HD 55, BILLINGS**

**Opening Statement by Sponsor:**

**REP. MICHAEL LANGE (R), HD 55**, opened the hearing on **HB 98**, Increase license suspension period for refusing an alcohol/drug test.

**{Tape: 2; Side: A; Approx. Time Counter: 62 - 124}**

**Proponents' Testimony:**

**Dennis Paxinos, Montana County Attorneys' Association, Yellowstone County Attorney**, rose in support of HB 98 and stated to the committee that this bill is a companion to HB 99 whereby the state is tightening the loopholes regarding felony DUI.

**{Tape: 2; Side: A; Approx. Time Counter: 124 - 163}**

**Allen Recke, Cascade County DUI Task Force**, informed the committee that the refusal rate is 50% in Cascade County and that by toughening the law, it may be a deterrent to future DUIs.

**{Tape: 2; Side: A; Approx. Time Counter: 163 - 185}**

**David Carter, Montana County Attorneys' Association, Deputy Yellowstone County Attorney**, spoke to the committee and stated that implied consent is stricken if an offender wants to take the breath test. This bill will give another tool for prosecutors when dealing with repeat offenders.

**{Tape: 2; Side: A; Approx. Time Counter: 185 - 212}**

**Pam Bucy, Assistant Attorney General**, rose in support of HB 98.

**{Tape: 2; Side: A; Approx. Time Counter: 212 - 220}**

**Kris Minard, self**, rose in support of HB 98.

**{Tape: 2; Side: A; Approx. Time Counter: 220 - 227}**

**Bill Robinson, physician, Bozeman Deaconess Hospital, MADD**, spoke to the committee about the correlation of refusal to submit to the breath test and the rate of recidivism.

**{Tape: 2; Side: A; Approx. Time Counter: 227 - 272}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. STOKER** started the questioning by asking Mr. Paxinos to explain the connection between portable breath tests and probable cause. The REPRESENTATIVE then queried Mr. Carter about the implied consent component, the portable breath test and the test given at the police station called Intoxilyzer 5000.

**Ms. Bucy** explained to the committee that the portable test is not admissible in court, whereas the Intoxilyzer 5000 is admissible.

**REP. SONJU** began his questions by asking Mr. Carter to explain the DUI process; when the alleged offender is stopped, the process of the breath tests and then the legal process of bringing the offender to court. **Mr. Carter** explained that the offender is read an advisory and asked to "blow" in the portable breath test. If the offender refuses, the offender's license is suspended immediately. The prosecutor at that point does not have the breath test as evidence, so the offender could theoretically be released. The offender's defense attorney is aware of how important that field test can be toward the conviction of a DUI charge.

**REP. NOENNIG** inquired of Mr. Carter to explain what the bill would do in the simplest of terms. **Mr. Carter** stated that this bill would increase the consequences of a refusal to take the portable breath test.

**{Tape: 2; Side: A; Approx. Time Counter: 272 - 500}**

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 75}**

**Closing by Sponsor:**

**REP. LANGE** stated for the committee that the repeat DUI offenders are most likely the offenders to refuse the breath test and we must "...close the loophole."

**{Tape: 2; Side: B; Approx. Time Counter: 75 - 91}**

HEARING ON HB 99

Sponsor: REP. MICHAEL LANGE, HD 55, BILLINGS

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on HB 99, Penalty for driving when license suspended or revoked for DUI or test refusal.

*{Tape: 2; Side: B; Approx. Time Counter: 91 - 165}*

Proponents' Testimony:

Dennis Paxinos, Montana County Attorneys' Association, Yellowstone County Attorney, rose in support of HB 99. Mr. Paxinos explained to the committee what HB 99 would provide for prosecutors in the way of pursuing convictions and what the offender would face in the penalty phase.

*{Tape: 2; Side: B; Approx. Time Counter: 165 - 225}*

David Carter, Montana County Attorneys' Association, Yellowstone County Attorney, rose to support HB 99 and stated for the committee that HB 98 and HB 99 work in conjunction with each other. He stated that at the time of the refusal of a breath test, there would be immediate consequences.

*{Tape: 2; Side: B; Approx. Time Counter: 225 - 255}*

Allen Recke, Cascade County DUI Task Force, stood in support of HB 99 and stated, "...time and money are strong deterrents for the repeat DUI offender."

*{Tape: 2; Side: B; Approx. Time Counter: 255 - 277}*

Bill Robinson, physician, Bozeman Deaconess Hospital, MADD, stated that he represents the victims/patients of DUI offenders. He is in support of HB 97, 98, 99.

*{Tape: 2; Side: B; Approx. Time Counter: 277 - 296}*

Kris Minard, self, rose in support of HB 99.

*{Tape: 2; Side: B; Approx. Time Counter: 296 - 311}*

Opponents' Testimony: None

Informational Testimony:

Jim Currie, Montana Department of Transportation, informed the committee that another fiscal note would be needed for the State Special Revenue Fund calculations.

*{Tape: 2; Side: B; Approx. Time Counter: 311 - 340}*

**Questions from Committee Members and Responses:**

**REP. EVERETT** questioned Rep. Lange about the statute as it applies to tribal reservations. **REP. LANGE** referred the question to Mr. Paxinos. **Mr. Paxinos** replied that roads that are open to the public would be subject to this law.

**REP. NOENNIG** then spoke with Mr. Paxinos regarding the language for a first time through third misdemeanor DUI and the penalties therein applied. **Mr. Paxinos** replied that the amendment discussed would be for fifth or sixth DUI and if the offender refuses a breath test, it would also be a felony offense. He did remind the committee that the vast majority of law enforcement vehicles have cameras and the offenders' actions are recorded to supplement the prosecution's case against the defense.

***{Tape: 2; Side: B; Approx. Time Counter: 340 - 488}***

**Closing by Sponsor:**

**REP. LANGE** closed the hearing on HB 99. **REP. LANGE** informed the committee that the fiscal note issue will be addressed.

***{Tape: 2; Side: B; Approx. Time Counter: 488 - 519}***

**Please Note: REP. LANGE IS NOT PRESENT FOR EXECUTIVE ACTION**

**EXECUTIVE ACTION ON HB 259**

**Motion:** **REP. GUTSCHE** moved that HB 259 DO PASS.

**Discussion:**

**Motion:** **REP. HARRIS** moved that HB 259 BE AMENDED with AMENDMENT 259-01.

**EXHIBIT**(juh20a02)

**Discussion:**

**REP. HARRIS** explained the amendment and that the amendment will delete all language regarding "marriage."

**EXHIBIT**(juh20a03)

**EXHIBIT**(juh20a04)

**Mr. MacMaster** explained the amendment in further detail.



**Discussion:**

The majority of the committee discussed the amendment at great length with variations to the amended language. After the discussion, **REP. HARRIS** proposed a "friendly amendment" to strike out the balance of Line 17.

**Substitute Motion/Vote:** **REP. HARRIS** made a substitute motion that HB 259 BE AMENDED by a "friendly" CONCEPTUAL AMENDMENT. Substitute motion failed 9-9 by roll call vote with **REP. BECKER**, **REP. CLARK**, **REP. DRISCOLL**, **REP. GUTSCHE**, **REP. HARRIS**, **REP. NOONAN**, **REP. PARKER**, **REP. WILSON**, and **REP. WINDHAM** voting aye. (**REP. LANGE** voted by proxy vote.)

**Substitute Motion/Vote:** **REP. CLARK** made a substitute motion that HB 259 BE TABLED. Substitute motion carried 15-3 by roll call vote with **REP. BECKER**, **REP. GUTSCHE**, and **REP. NOONAN** voting no. (**REP. LANGE** voted by proxy vote.)

**EXECUTIVE ACTION ON HB 267**

**Motion:** **REP. STOKER** moved that HB 267 DO PASS.

**Discussion:**

**REP. STOKER** proposed a "friendly" conceptual amendment regarding Page 2, Lines 11, 12, 13.

**Mr. MacMaster** explained the amendment.

**Motion/Vote:** **REP. STOKER** moved that HB 267 BE AMENDED with the "friendly" CONCEPTUAL AMENDMENT. Motion carried 18-0 by voice vote. (**REP. LANGE** voted by proxy vote.)

**Motion:** **REP. STOKER** moved that HB 267 DO PASS AS AMENDED.

**Discussion:**

The committee then discussed at length the costs of jury trials being imposed on lower courts, the possibility of appealing to higher courts for a lighter sentence by District Court judges, and indigent offenders versus non-indigent offenders.

Vote: Motion that HB 267 DO PASS AS AMENDED failed 6-12 by roll call vote with REP. DRISCOLL, REP. EVERETT, REP. LANGE, REP. PARKER, REP. STOKER, and REP. WILSON voting aye. (REP. LANGE voted by proxy vote.)

Please Note: REP. PARKER IS NOT PRESENT AT THIS POINT

Motion/Vote: REP. CLARK moved that HB 267 BE TABLED AND THE VOTE REVERSED. Motion carried 12-6 by voice vote with REP. DRISCOLL, REP. EVERETT, REP. LANGE, REP. PARKER, REP. STOKER, and REP. WILSON voting no.

(REP. LANGE and REP. PARKER voted by proxy vote.)

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 500}*

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 500}*

*{Tape: 4; Side: A; Approx. Time Counter: 0 - 55}*

Upon adjournment of the committee hearing, Mr. Smith handed in information regarding HB 97, 98, 99.

[EXHIBIT\(juh20a05\)](#)

**ADJOURNMENT**

Adjournment: 12:04 P.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

**EXHIBIT ([juh20aad0.PDF](#))**