

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 27, 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 265, HB 262, HB 368, HB 132, HB
326, 1/20/2005
Executive Action: None

HEARING ON HB 326

Sponsor: REP. JIM PETERSON, HD 30, BUFFALO

Opening Statement by Sponsor:

REP. JIM PETERSON (R), HD 30, opened the hearing on **HB 326**, Change penalty for 2nd & subsequent methamphetamine possession conviction.

[EXHIBIT\(juh21a01\)](#)

[EXHIBIT\(juh21a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 117}

Proponents' Testimony:

Bill Slaughter, Director-Department of Corrections (DOC), rose in support of HB 326. **Dir. Slaughter** spoke to the committee members about the increasing number of inmates that are incarcerated with "meth" use, and manufacturing or the sale as a component of their crimes. He stated that this bill will allow the judges to sentence these offenders to programs where there is sometimes a 70% completion/success rate.

Director Slaughter was able to explain to the committee members how the treatment programs and incentives are built into the system for success. If the offender completes the nine-month therapeutic program successfully, and with six months at a pre-release and after care center; the offender is then put on probation with a reduction in the sentence.

{Tape: 1; Side: A; Approx. Time Counter: 117 - 259}

Pam Bucy, Assistant Attorney General, spoke to the committee about how important incentives are for the successful completion of the treatment program for offenders.

{Tape: 1; Side: A; Approx. Time Counter: 259 - 283}

Ron Alsbury, Department of Corrections-Probation and Parole, rose in support of HB 326. He recommended the time frame be 15 months of treatment, pre-release and aftercare for offenders.

[EXHIBIT\(juh21a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 283 - 336}

John Hertel, Fergus County Port Authority, spoke to the community about the location of this proposed facility. He explained to the committee members that Lewistown currently has various properties in town that could be renovated to accommodate this type of center.

Mr. Hertel also stated that the addition of the 20-30 jobs this center would provide would be a welcome addition to the area.

{Tape: 1; Side: A; Approx. Time Counter: 336 - 414}

Kevin Myhre, Lewistown Police Chief, Lewistown City Manager, rose in strong support of HB 326 and in support of Lewistown supplying the facility.

{Tape: 1; Side: A; Approx. Time Counter: 414 - 442}

Mike Thatcher, Community Counseling Correctional Services, rose in strong support of HB 326 and stated, "...meth does not discriminate." **Mr. Thatcher** stated that with the Department of Corrections and Department of Justice working together, a solution can be found to address the growing problem of "meth" use. He further stated that his only concern with this piece of legislation is the 40 beds stated in HB 326 would not be enough.

Mr. Thatcher explained to the committee that the costs to incarcerate and to treat are higher due in part to increased medical costs for the offenders. He concluded his statements by saying, "...this is a proactive and farsighted piece of legislation."

{Tape: 1; Side: A; Approx. Time Counter: 442 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 40}

John Jensen, Lewistown Board of County Commissioners, rose in support of HB 326.

{Tape: 1; Side: B; Approx. Time Counter: 40 - 48}

Dale Chamberlain, dentist, rose in support of this bill and proceeded to explain to the committee members how "meth" users experience a higher rate of dental and medical problems.

{Tape: 1; Side: B; Approx. Time Counter: 48 - 60}

Mike Ruppert, Boyd Andrews Service Center/pre-release Center, stated he was in support of this legislation; however, he does not agree with the fiscal note. The figure of \$100 daily is too high and the fiscal note does not provide money for the pre-release segment. **Mr. Ruppert** stated that \$20 daily would be the pre-release/intensive care cost.

{Tape: 1; Side: B; Approx. Time Counter: 60 - 86}

Kathy McGowan, Montana County Attorneys Association, Montana Sheriffs and Peace Officers' Association, rose in support of HB 326.

{Tape: 1; Side: B; Approx. Time Counter: 86 - 102}

Kathie Bailey, self, 6-County Regulatory Development Commission, rose in support of HB 326.

{Tape: 1; Side: B; Approx. Time Counter: 102 - 108}

Chris Christiaenson, self, rose in support of this bill and stated that strong aftercare is essential for success and that an 80-bed facility would be needed.

{Tape: 1; Side: B; Approx. Time Counter: 108 - 122}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS began the questioning portion of HB 326 by posing questions to Director Slaughter regarding the monetary implications from either federal funds or funds earmarked from Gov. Schweitzer.

REP. PARKER queried **REP. PETERSON** if he would be amendable to a "friendly" amendment referring to Page 2 after Line 10 to insert "producing methamphetamine." **REP. PETERSON** agreed to that amendment in its conceptual form.

REP. KOOPMAN posed his line of questions to Dir. Slaughter. The REPRESENTATIVE was interested in what happens to the offender when the offender is just imprisoned in Montana State Prison (MSP). **Dir. Slaughter** replied that the inmate receives counseling if the inmate is willing to participate in that counseling. The REPRESENTATIVE was then interested in what percentage of inmates are "meth" users. **Dir. Slaughter** replied that he wasn't sure of the number; however, in the Women's Prison, 85% are nonviolent offenders which may indicate that drug use was their offense.

REP. KOOPMAN continued with his questions now directed to the sponsor. These questions were in relation to the \$36,000 cost for treatment per person and the reimbursement aspect of the bill language.

REP. KOOPMAN then directed his questions to Brenda Thompson, Department of Corrections. These questions were concerning the incentive that all treatment programs provide. **Ms. Thompson** replied that offenders upon successful completion of the program would have the remainder of their sentence suspended.

REP. HARRIS was interested in whether or not there are any medications that "meth" users could take that would counteract the effects of "meth." **Mr. Thatcher** replied that there are ongoing experiments and research happening; but as of now, there is no medication.

REP. MCGILLVRAY then posed his questions to Mr. Thatcher. The REPRESENTATIVE was interested in the theory of "meth" users and how they may become addicted to gambling. **Mr. Thatcher** responded that, "yes," it has been theorized that the bright/flashy/colors and noises tend to trigger a "meth" effect.

REP. RICE finished the question portion of HB 326 by asking Mr. Thatcher to explain the relapse phenomenon and if the time stated in the bill would be sufficient to affect the success of treatment.

{Tape: 1; Side: B; Approx. Time Counter: 122 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 33}

Closing by Sponsor:

REP. PETERSON closed the hearing HB 326 and explained the fiscal note. He also spoke of the amendment regarding Page 4, Line 22 where the word "may" would be changed to "must."

{Tape: 2; Side: A; Approx. Time Counter: 33 - 84}

HEARING ON HB 132

Sponsor: **REP. NORMA BIXBY, HD 41, LAME DEER**

Opening Statement by Sponsor:

REP. NORMA BIXBY (D), HD 41, opened the hearing on **HB 368**, Specify negotiation process for state-tribal class III gaming compacts.

The REPRESENTATIVE informed the committee that this bill was brought at the request of the Gaming Advisory Council. **REP. BIXBY** stated emphatically, "This bill does not expand gaming...." She further explained that the State of Montana must negotiate with the tribes in good faith to enter into gaming compacts. Currently in the State of Montana it is unclear who can negotiate with the tribal community.

REP. BIXBY said, "...this bill will clarify the current language" and then proceeded to inform the committee exactly what the changes would be:

- 1) This bill will make it clear that the Governor of Montana can negotiate gaming compacts.
- 2) This bill will set the role of the legislature in gaming issues.
- 3) The legislature would approve or disprove any future gaming issues.

REP. BIXBY concluded her statements by saying that tribal gaming provides much needed revenue for the tribes enabling them to offer services to their members. It also provides jobs where there is a 70% unemployment rate.

EXHIBIT(juh21a04)

{Tape: 2; Side: A; Approx. Time Counter: 84 - 156}

Proponents' Testimony:

Gene Huntington, Department of Revenue-Gambling Control Division, explained the three forms or levels of gaming that is permitted in Montana. The first level being raffles, etc.; the second being bingo etc., and the third level is "everything else" which would include video gaming machines but not include Black Jack and Las Vegas-style gaming. He stated that without these gaming compacts, no gaming would be allowed in Montana.

{Tape: 2; Side: A; Approx. Time Counter: 156 - 283}

Eric Stearns, Senior Legal Counsel-Governor Schweitzer, rose in support of HB 132. He stated that this bill "codifies and clarifies" the current statute. **Mr. Stearns** gave special emphasis to the committee members that Governor Schweitzer does not support increased gaming on or off the reservations.

{Tape: 2; Side: A; Approx. Time Counter: 283 - 316}

Sarah Bond, Assistant Attorney General, rose in support of HB 132. She stated that according to the Indian Gaming Regulatory Act (IGRA) the State of Montana is, "... required to negotiate in good faith with tribes on tribal land and if there are any changes in gaming, everything must come back to the legislature...." **Ms. Bond** also spoke further about an amendment for Line 9, in the title of HB 132.

EXHIBIT(juh21a05)

{Tape: 2; Side: A; Approx. Time Counter: 316 - 429}

Terral Matt, attorney-Blackfeet Tribes, rose in support of HB 132. He stated that previously the Governor was unable to sign or authorize gaming compacts.

{Tape: 2; Side: A; Approx. Time Counter: 429 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 34}

Jay St. Goddard, Blackfeet Tribes, rose to support HB 132 and stated, "...gaming is the arm of economic development...."

{Tape: 2; Side: B; Approx. Time Counter: 34 - 78}

Kevin Howlett, tribal representative-Gaming Advisory Council, rose in support of HB 132 and said this bill was needed to clarify current language.

{Tape: 2; Side: B; Approx. Time Counter: 78 - 108}

William Walks Along, Northern Cheyenne Gaming Commission, is in favor of HB 132 and stated that the gaming compact is fair and equitable. Further, this has been a collaborative effort between the gaming commissions of Montana and Wyoming and it will result in negotiating in good faith.

{Tape: 2; Side: B; Approx. Time Counter: 108 - 187}

Rick Wolf Name, Northern Cheyenne Tribe, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 187 - 191}

Joe Allen, Northern Cheyenne Tribe, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 191 - 195}

REP. JUNEAU, HD16, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 195 - 200}

REP. JAYNE, HD 15, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 200 - 204}

REP. SMALL-EASTMAN, HD 42, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 204 - 209}

SEN. SMITH, SD 15, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 209 - 219}

Roger Running Crane, Blackfeet Tribe, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 219 - 221}

REP. CAMPBELL, HD 31, rose in support of HB 132.

{Tape: 2; Side: B; Approx. Time Counter: 221 - 230}

Opponents' Testimony:

Dallas Erickson, Montana Family Coalition, rose to oppose HB 132. **Mr. Erickson** stated for the committee that this bill is, "a power grab" by the Governor. Further that all gaming dollars are offset by the harm that is caused by the addictions it causes. He continued to say that, "...it is a known fact that gambling fosters an increase in crime such as child abuse and domestic violence."

EXHIBIT(juh21a06)

{Tape: 2; Side: B; Approx. Time Counter: 230 - 343}

Alan Ruby, self, "Don't Gamble with the Future," stated that he is opposed to gambling, that gambling is not a sound source of income and does not provide beneficial products.

{Tape: 2; Side: B; Approx. Time Counter: 343 - 404}

Sue Roling, self, "Don't Gamble with the Future," rose in strong opposition to HB 132. She explained that the organization, "Don't Gamble with the Future" is a small grass roots group that has a special interest in not allowing level three gambling in Montana. Her group opines that if the state could, "...allow level three gambling in one place it will be all over Montana."

{Tape: 2; Side: B; Approx. Time Counter: 404 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 7}

Rachel Roberts, Montana Family Foundation, rose in opposition to HB 132. **Ms. Roberts** stated that there should be a separation of powers between the legislation and executive branches of the government. She further commented that Montana is one of the five states with the highest addiction rates in the country for gambling and it is a "predatory" enterprise.

EXHIBIT(juh21a07)

{Tape: 3; Side: A; Approx. Time Counter: 7 - 46}

Harris Himes, Montana Family Coalition, rose in opposition to HB 132 and stated that this bill is unconstitutional regarding the separation of power language. **Mr. Himes** spoke to the committee about the connection between "meth" and gambling and finally, that 40% of the money made by gaming on the reservation goes to the investors.

{Tape: 3; Side: A; Approx. Time Counter: 46 - 82}

Lynn Stumberg, Montana Eagle Forum, rose to oppose HB 132.

{Tape: 3; Side: A; Approx. Time Counter: 82 - 87}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG inquired of Ms. Bond to explain what the amendments are, the language specific to those amendments, the legislative impact these amendments and the bill would have on current statutes. He further asked Ms. Bond to explain the scope of gaming within the state of Montana currently. **Ms. Bond** explained that level three gaming is allowed in Montana currently but it is limited to video gaming, etc.

REPS. HARRIS and **NOONAN** continued the questioning of Ms. Bond about the language whereas the Governor may approve gaming compacts without the legislature's approval.

Closing by Sponsor:

REP. BIXBY closed the hearing HB 132 and stated to the committee that any income derived from gaming on the reservations stays on the reservation; the gaming is owned by each tribe with no outside investors involved. The REPRESENTATIVE stated that the tribes know about the addiction problems that can happen but it is gaming that allows more revenue to be recovered and to help with other services that tribes may need.

{Tape: 3; Side: A; Approx. Time Counter: 87 - 500}

HEARING ON HB 368

Sponsor: **REP. SCOTT MENDENHALL, HD 77, CLANCY**

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL (R), HD 77, opened the hearing on **HB 368**, Prohibit covert monitoring for traffic offenses.

REP. MENDENHALL spoke to the committee about the fact that two years ago, there were only two unmarked cars at the Montana Highway Patrol (MHP) now there are seven. He stated, "This is about privacy, and an increasing trend of police presence in our lives."

EXHIBIT (juh21a08)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 103}

Proponents' Testimony:

Doug Nulle, self, spoke to the committee about certain parameters that law enforcement must have and this bill is not meant to "tie" law enforcement hands. **Mr. Nulle** spoke about his concern for citizens that may be duped by impersonators.

{Tape: 3; Side: B; Approx. Time Counter: 103 - 172}

Terry Murphy, self, spoke to the committee about the covert surveillance of everyone in free society.

{Tape: 3; Side: B; Approx. Time Counter: 172 - 202}

Harris Himes, Montana Family Coalition, spoke to the committee about the movie, "Mystic River," and how it related to this bill.

{Tape: 3; Side: B; Approx. Time Counter: 202 - 209}

"Spook" Stang, Montana Motor Carriers Association, spoke in favor of this bill and stated since September 11, 2001, the rules have changed. The carriers are reluctant to stop due to the increase in cargo theft occurrences and with unmarked law enforcement vehicles on the highways there is an increased danger of impersonation.

{Tape: 3; Side: B; Approx. Time Counter: 209 - 227}

Chris Christiaenson, Montana Farmers Union, rose in support of HB 368.

{Tape: 3; Side: B; Approx. Time Counter: 227 - 233}

Opponents' Testimony:

Mike Tooley, Deputy Chief of Montana Highway Patrol (MHP), rose in opposition to this bill. The MHP has unmarked vehicles for the specific purpose of targeting certain violation zones such as school passing zones and construction zones. He further stated that the District Commander of the MHP must have a very good reason to use the unmarked vehicles.

{Tape: 3; Side: B; Approx. Time Counter: 233 - 307}

Jerry Williams, Montana Police Protective Association, spoke against HB 368 and stated to the committee that the use of unmarked vehicles can be to gather information for "undercover" police work. **Mr. Williams** further stated that most police departments have strict policies in place to authorize the use of unmarked vehicles.

{Tape: 3; Side: B; Approx. Time Counter: 307 - 337}

Jim Kembel, Montana Association of Chiefs of Police, rose in opposition to HB 368.

{Tape: 3; Side: B; Approx. Time Counter: 337 - 347}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. SONJU and MENDENHALL questioned the sponsor about the fiscal note and how the cost to paint the vehicles seems to be more than it should be.

REP. NOENNIG also questioned the sponsor regarding the signs that state an unmarked vehicle is in use. He asked the **REPRESENTATIVE** if he was aware that a similar bill came before this committee regarding eliminating the "radar" signs. **REP. MENDENHALL** did state he was aware of that bill.

REP. MENDENHALL asked Dep. Chief Tooley if the MHP could use cameras in the construction zones. **Dep. Chief Tulle** responded that construction zones are not "fixed" to a specific area all the time, otherwise the MHP could do that.

{Tape: 3; Side: B; Approx. Time Counter: 347 - 500}

Closing by Sponsor:

REP. MENDENHALL closed the hearing on HB 368 and stated, "...this bill is to set parameters and not to raise revenue; the goal is safety."

{Tape: 4; Side: A; Approx. Time Counter: 0 - 26}

HEARING ON HB 265

Sponsor: **REP. ELSIE ARNTZEN, HD 53, BILLINGS**

Opening Statement by Sponsor:

REP. ELSIE ARNTZEN (R), HD 53, opened the hearing on **HB 265**, Employment and residence restrictions on violent and drug offenders.

EXHIBIT(juh21a09)

{Tape: 4; Side: A; Approx. Time Counter: 26 - 69}

Proponents' Testimony:

Colleen Nichols, self, Montana Parent Teachers Association, stood in support of HB 265.

{Tape: 4; Side: A; Approx. Time Counter: 69 - 96}

Sheri Spina, self, Montana Parent Teachers Association, rose in support of HB 265.

{Tape: 4; Side: A; Approx. Time Counter: 96 - 108}

Opponents' Testimony:

Mike Thatcher, Community Counseling Correction Services, rose to oppose HB 265. **Mr. Thatcher** spoke about proximity as the issue. In the center in Butte there are violent offenders and drug manufacturers housed there but no sex offenders.

{Tape: 4; Side: A; Approx. Time Counter: 108 - 150}

Michelle Jenicek, Department of Corrections, initially rose as an informational witness; however, based on her testimony, **Chairman Rice** ruled her as an opponent. **Ms. Jenicek** works with five pre-release centers in Montana with the one in Billings accepting sex offenders. According to Ms. Jenicek, the Judge makes the ruling regarding restrictions for placement.

{Tape: 4; Side: A; Approx. Time Counter: 150 - 214}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD queried Ms. Jenicek about whether or not the offender is on the sex offender registry and when the public is made aware of the location of that offender. **Ms. Jenicek** replied, "...ten days after sentencing and prior to entering a pre-release center."

REP. KOOPMAN asked the sponsor about the proximity as defined in law and if the "meth" violators were selling or using the drug at the time of the offense. **REP. ARNTZEN** replied that the offenders were charged while selling the methamphetamine.

REPS. NOONAN, HARRIS, GUTSCHE and CLARK all posed their questions to Ms. Jenicek. They were interested in how a business such as a day care could be prohibited from opening a center within the proximity of a pre-release center; would the day care provider be the party at loss or would the pre-release center? What about if an offender would like to attend church; how long would that offender be allowed to be in the church?

Ms. Jenicek in an effort to allay their fears/questions, was able to state that the judge involved in each case pays close attention to these very issues and is able to construct a plan that would work to address these issues.

{Tape: 4; Side: A; Approx. Time Counter: 214 - 461}

Closing by Sponsor:

REP. ARNTZEN closed the hearing on HB 265 urging the committee's support and stating that she would be open to any amendment.

{Tape: 4; Side: A; Approx. Time Counter: 461 - 500}

HEARING ON HB 262

Sponsor: REP. MICHAEL LANGE, HD 55, BILLINGS

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 262**, Revise municipal court judge laws.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 16}

Proponents' Testimony:

Mary Jane Knisely, Municipal Court Judge, Billings, rose in support of HB 262. She explained to the committee that there are five municipal courts in the State of Montana with a 100,000 case load. This bill will provide these courts with the ability to appoint part-time judges to help with this case load.

Judge Knisely stated that Missoula has appointed interim judges to hear cases in Missoula and Billings has appointed three pro-tem judges to help with the overflow.

{Tape: 4; Side: B; Approx. Time Counter: 16 - 96}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN inquired of Judge Knisely as to what constitutes "part-time" in the language in the bill. **Judge Knisely** responded that part-time would mean 20 hours or less. The judge did say that she would be open to any other limits.

{Tape: 4; Side: B; Approx. Time Counter: 96 - 118}

Closing by Sponsor:

REP. LANGE closed the hearing on HB 265 and stated, "...this bill helps justice go forward."

EXHIBIT(juh21a10)

EXHIBIT(juh21a11)

EXHIBIT(juh21a12)

{Tape: 4; Side: B; Approx. Time Counter: 118 - 156}

ADJOURNMENT

Adjournment: 12:01 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh21aad0.PDF](#))