

## **MINUTES**

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

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on February 1, 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. Jon Sonju (R)  
Rep. John Ward (R)  
Rep. Jeanne Windham (D)

**Members Excused:** Rep. John Parker (D)  
Rep. Bill Wilson (D)

**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 380, HB 414, HB 432, 1/25/2005  
Executive Action: HB 380-Tabled, HB 432-Tabled, HB  
98-Do Pass, HB 99, 197 & 414-Do  
Pass As Amended

**HEARING ON HB 432**

**Sponsor:** REP. HOLLY RASER, HD 98, MISSOULA

**Opening Statement by Sponsor:**

REP. HOLLY RASER (D), HD 98, opened the hearing on HB 432, Penalty for using cell phone during a vehicular accident.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 81}***

**Proponents' Testimony:** None

**Opponents' Testimony:**

Margaret Morgan, Western Wireless, Cellular One, rose in opposition to HB 432. She stated that there are forms of distraction while driving that are not penalized such as: eating, talking with passengers, changing a cassette tape/cd etc.

Ms. Morgan stated that this bill would duplicate current statutes.

**EXHIBIT(juh25a01)**

***{Tape: 1; Side: A; Approx. Time Counter: 81 - 148}***

Amy Grmjclez, Verizon, rose in opposition to this bill. She stated that this bill would single out all cell phone users and that there is no basis for this proposed law. Ms. Grmjclez demonstrated a hands-free device for cell phone usage.

***{Tape: 1; Side: A; Approx. Time Counter: 148 - 194}***

Geoff Feiss, Montana Telecommunications Association, rose to oppose HB 432 and stated that there are many other distractions while driving a vehicle. He proceeded to explain them to committee members.

***{Tape: 1; Side: A; Approx. Time Counter: 194 - 260}***

**Informational Testimony:**

Paul Grimstad, Colonel-Montana Highway Patrol, stated that in 2003, there were 5,998 crashes with the drivers charged with careless driving and of those crashes there were 67 fatalities.

The total of accidents in Montana were more than 58,000; with 62 noted on record due to cell phone use. Col. Grimstad stated that conversations taking place in vehicles are more of a factor in accidents than the use of cell phones.

***{Tape: 1; Side: A; Approx. Time Counter: 260 - 303}***

**Questions from Committee Members and Responses:**

**REP. RICE** questioned the sponsor concerning how the use of a cell phone in an accident could be determined. **REP. RASER** stated that one wouldn't be able to determine that unless someone saw the driver using a cell phone or by cell phone records.

**REP. NOENNIG** then asked **REP. RASER** why a crash has to occur before there is an offense charged to the driver. **REP. RASER** said that the intention was to be "In the commission of an accident."

*{Tape: 1; Side: A; Approx. Time Counter: 303 - 348}*

**Closing by Sponsor:**

**REP. RASER** closed the hearing on HB 432 by stating that this bill would raise awareness.

*{Tape: 1; Side: A; Approx. Time Counter: 348 - 444}*

**HEARING ON HB 380**

**Sponsor:** **REP. DAVE GALLIK, HD 79, HELENA**

**Opening Statement by Sponsor:**

**REP. DAVE GALLIK (D), HD 79**, opened the hearing on **HB 380**, The terrorism awareness and prevention act. The sponsor stated that this bill is patterned after several other state's laws.

*{Tape: 1; Side: A; Approx. Time Counter: 444 - 500}*

**Proponents' Testimony:**

**Pam Bucy, Assistant Attorney General (AG)**, rose in support of HB 380.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 24}*

**Opponents' Testimony:** None

**Informational Testimony:**

**"Spook" Stang, Montana Motor Carriers Association**, spoke to the committee about a program that is already in place and being used in Montana called "Highway Watch."

**EXHIBIT**(juh25a02)

*{Tape: 1; Side: B; Approx. Time Counter: 24 - 66}*

**Questions from Committee Members and Responses:**

**REP. NOONAN** questioned Ms. Bucy about the necessity for this bill; he asked, "...isn't the AG already doing a program like this as in Homeland Security?" **Ms. Bucy** replied, "Not necessarily, that money is tightly controlled and its use has strict recommendations on usage."

**REP. EVERETT** posed his questions to Ms. Bucy also. The REPRESENTATIVE wanted to know about the terrorism threat "color levels," hoaxes and myths. Ms. Bucy referred the question to Mike Batista, Department of Justice-Division of Criminal Investigations. **Mr. Batista** replied that the Federal Government receives much information regarding terrorists on an ongoing basis.

**REP. PARKER** (now present) asked Mr. Batista about the "red alert" and the AG's response to that program. **Mr. Batista** stated that the AG office receives information from the Federal Government and disseminates that information to the public.

**REP. LANGE** spoke to the sponsor about Section 2 in the bill regarding the low amount of funding available/requested. **REP. GALLIK** responded by saying that it would have helped to receive more money; however, this amount would at least get the local program started.

**REP. RICE** asked Ms. Bucy about the difference of this proposed program and Homeland Security which is already in place. **Ms. Bucy** explained that Homeland Security is spread throughout all the agencies and that there isn't any one person in charge of that program. **Mr. Batista** spoke and stated that this bill would allow the coordination of all the information by State agencies put forth to the public.

**REP. NOENNIG** then asked Mr. Batista about the feasibility of only one person being able to handle this program. **Mr. Batista** replied that there is no way to sustain this program without a "hard-funded" position.

***{Tape: 1; Side: B; Approx. Time Counter: 66 - 230}***

**Closing by Sponsor:**

**REP. GALLIK** closed the hearing on HB 380. He stated, "...there is a need to make sure the right hand knows what the left hand is doing and the public needs to be brought in."

***{Tape: 1; Side: B; Approx. Time Counter: 230 - 275}***

**HEARING ON HB 414**

**Sponsor:** REP. DEE BROWN, HD 3, HUNGRY HORSE

**Opening Statement by Sponsor:**

REP. DEE BROWN (R), HD 3, opened the hearing on HB 414, Statutorily appropriate unexpended juvenile delinquency funds to Supreme Court.

*{Tape: 1; Side: B; Approx. Time Counter: 275 - 293}*

**Proponents' Testimony:**

Jim Oppedahl, court administrator-Montana Supreme Court, spoke in support of HB 414.

*{Tape: 1; Side: B; Approx. Time Counter: 293 - 330}*

Karen Duncan, Department of Corrections-Youth Services, rose in support of HB 414. She stated that this bill deals with surplus money in the court system and that the amendment would be acceptable.

[EXHIBIT\(juh25a03\)](#)

*{Tape: 1; Side: B; Approx. Time Counter: 330 - 364}*

John Northey, chief council-Legislative Audit Committee, stated that this bill is a "housekeeping" bill and that the amendment is acceptable.

*{Tape: 1; Side: B; Approx. Time Counter: 364 - 387}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

REP. NOENNIG asked Mr. Oppedahl to explain to the committee members how this money is left over; where it goes and when the Supreme Court receives this money; and how it is then transferred to the District Court for Youth Services. Mr. Oppedahl explained that the money is appropriated initially to the Department of Corrections. When there are unexpended funds left at the end of the year; the Supreme Court account then legitimately on the State's financial page may spend those dollars. The DOC sets aside \$1 million in a cost containment fund and if any of that money is left over at the end of the year; the counties then can use that money. In this case, District Court can use those monies for the intervention and youth programs.

At that point, because of the transfer from county run youth courts to state run youth courts, the Supreme Court needs that authority to disburse that money.

**{Tape: 1; Side: B; Approx. Time Counter: 387 - 448}**

**Closing by Sponsor:**

REP. BROWN closed the hearing on HB 414.

**{Tape: 1; Side: B; Approx. Time Counter: 448 - 457}**

**EXECUTIVE ACTION ON HB 61**

**Motion:** REP. STOKER moved that HB 61 be "LIFTED OFF THE TABLE" for RECONSIDERATION.

**Discussion:**

CHAIRMAN RICE stated that this is a "present and voting" vote.

**Vote:** Motion that HB 61 BE "LIFTED OFF THE TABLE" carried by voice vote by the members of the committee who were present.

**Motion:** REP. STOKER moved that HB 61 DO PASS.

**Discussion:**

There was discussion within the committee about what was occurring/and what this bill is, etc. during this Executive Action. Some of the members were absent.

**Vote:** Motion carried by present members with voice vote. REP. BECKER, REP. NOONAN, REP. WINDHAM voted no.

Mr. MacMaster informed the committee that an amendment by REP. KOOPMAN to add "target shooting" had been added to the bill during previous Executive Action. That Executive Action [Do Pass As Amended] had resulted in a tie vote. Therefore; the motion should have been **DO PASS AS AMENDED**. REP. NOENNIG then stated that he had added an amendment during the previous Executive Action also. If the Motion was just **DO PASS**, REP. NOENNIG would want to change his vote. CHAIRMAN RICE stated that was what was meant to be said; therefore, the motion is **DO PASS AS AMENDED**. **Per CHAIRMAN RICE, the MOTION CARRIED** (i.e., today's voice vote stands).

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 37}**

**(PLEASE NOTE REMARKS AT END OF HEARING REGARDING HB 61.)**

EXECUTIVE ACTION ON HB 414

Motion: REP. STOKER moved that HB 414 DO PASS.

Discussion:

Motion: REP. SONJU moved that HB 414 BE AMENDED with amendment distributed at the hearing.

Discussion:

REP. STOKER explained the amendment to the committee.

Vote: Motion to AMEND HB 414 carried by 15-0 voice vote.  
(REPS. WILSON, HARRIS and PARKER ABSENT from voting on this bill and no proxys.)

Motion/Vote: REP. STOKER moved that HB 414 DO PASS AS AMENDED.  
Motion carried 15-0 by voice vote.  
(REPS. WILSON, HARRIS, and PARKER ABSENT from voting on this bill and no proxys.)  
{Tape: 2; Side: A; Approx. Time Counter: 37 - 110}

EXECUTIVE ACTION ON HB 380

Motion: REP. BECKER moved that HB 380 DO PASS.

Discussion:

The committee discussed HB 380 as to the need for this bill and whether or not the money applied for is enough to fully implement this program.

Vote: Motion that HB 380 DO PASS failed 4-14 by voice vote with REP. BECKER, REP. HARRIS, REP. NOONAN, and REP. PARKER voting aye. (REPS. WILSON, HARRIS, PARKER voted aye by proxy vote.)

Substitute Motion/Vote: REP. LANGE made a substitute motion that HB 380 BE TABLED AND THE VOTE REVERSED. Substitute motion carried by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 110 - 216}

EXECUTIVE ACTION ON HB 432

Motion: REP. STOKER moved that HB 432 DO PASS.

Discussion:

Substitute Motion/Vote: REP. LANGE made a substitute motion that HB 432 BE TABLED. Substitute motion carried 16-2 by voice vote with REP. BECKER and REP. GUTSCHE voting no. (REPS. WILSON, HARRIS, PARKER voted aye by proxy vote.)  
{Tape: 2; Side: A; Approx. Time Counter: 216 - 243}

EXECUTIVE ACTION ON HB 197

Motion: REP. BECKER moved that HB 197 DO PASS.

Discussion:

Motion: REP. BECKER moved that HB 197 BE AMENDED with AMENDMENT 197-02.

[EXHIBIT\(juh25a04\)](#)

Discussion:

REP. BECKER explained the amendment.

Vote: Motion that HB 197 BE AMENDED carried unanimously by voice vote. (REPS. WILSON, PARKER voted aye by proxy vote.) (REP. HARRIS here)

Motion: REP. BECKER moved that HB 197 DO PASS AS AMENDED.

Discussion:

The committee discussed the bill as to the exclusion of mental status. Mr. MacMaster explained this amendment.

Motion: REP. NOENNIG moved that AMENDMENT 197-02 BE STRICKEN FROM HB 197.

Discussion:

There was discussion then about that Motion to strike Amendment 197-02. REP. NOENNIG disagreed that the mentally challenged people should not be excluded.



REP. LANGE then stated that the language will be in Title 45 and the mentally challenged people could be charged under that statute. Mr. MacMaster explained the proposed language change.

**Substitute Motion/Vote:** REP. LANGE made a substitute motion that HB 197 BE AMENDED by SEGREGATING the 197-02 AMENDMENT, AND TO STRIKE THE REST: "BUT IS SUBJECT TO ANY OFFENSE in TITLE 45 APPLICABLE." Substitute motion carried unanimously by voice vote.

REP. NOENNIG then discussed an amendment to strike the rest of the amendment 197-02.

(REP. HARRIS is now present, REP. GUTSCHE is absent.)

**Motion:** REP. NOENNIG moved that AMENDMENT 197-02 BE STRICKEN FROM HB 197.

**Discussion:**

The committee then discussed whether or not this would make some people exempt from being charged with offenses.

**Vote:** Motion to STRIKE THE REST OF AMENDMENT 197-02 failed 5-11 by voice vote with REP. NOENNIG, REP. STOKER, REP. RICE, REP. EVERETT, REP. KOOPMAN voting aye.

**Motion/Vote:** REP. BECKER moved that HB 197 DO PASS AS AMENDED. Motion carried 16-2 by roll call vote with REP. KOOPMAN and REP. RICE voting no. (REP. GUTSCHE, PARKER, WILSON voted yes by proxy vote.)

*{Tape: 2; Side: A; Approx. Time Counter: 243 - 500}*

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 304}*

(REP. GUTSCHE returns)

**EXECUTIVE ACTION ON HB 97**

**Motion:** REP. MCGILLVRAY moved that HB 97 DO PASS.

**Discussion:**

Mr. MacMaster explained the coordination of bills, HB 46 and HB 97 to the committee members.

**Motion:** REP. LANGE moved that HB 97 BE AMENDED TO INSERT "TO THE DEPARTMENT OF CORRECTIONS" ANYWHERE APPLICABLE WITHIN THE BILL.

After much discussion between committee members regarding the offender being able to attend the WATCH program, the members decided postpone action on HB 97.

**Substitute Motion/Vote:** REP. LANGE made a substitute motion that HB 97 BE INDEFINITELY POSTPONED. Substitute motion carried unanimously by voice vote.

*{Tape: 2; Side: B; Approx. Time Counter: 304 - 500}*

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 56}*

#### **EXECUTIVE ACTION ON HB 98**

**Motion:** REP. LANGE moved that HB 98 DO PASS.

#### **Discussion:**

The committee discussed HB 98 as to the possibility of a "friendly amendment" for the first refusal of a breath test. The intent of this bill is to raise the penalty from refusing the breath test. There was some disagreement about the accuracy of the BAC test.

**Motion:** REP. NOENNIG moved that HB 98 BE AMENDED to STRIKE "3 YEARS" ON PAGE 2, LINE 16.

#### **Discussion:**

The committee members discussed this amendment and stated that this bill enables Montana to get "tough" on drinking and driving and to apprehend the multiple offenders.

**Substitute Motion/Vote:** REP. NOONAN made a substitute motion that HB 98 BE AMENDED to LEAVE "1ST REFUSAL TO 6 MONTHS."

Motion failed by voice vote.

Without objection, REP. NOENNIG withdrew the previous motion to amend HB 98.

**Vote:** Motion that HB 98 DO PASS carried 15-3 by roll call vote with REP. DRISCOLL, REP. EVERETT, and REP. RICE voting no.

(REPS. WILSON, PARKER voted aye by proxy vote.)

*{Tape: 3; Side: A; Approx. Time Counter: 56 - 500}*

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 94}*

#### **EXECUTIVE ACTION ON HB 99**

**Motion:** REP. LANGE moved that HB 99 DO PASS.

**Discussion:**

**Motion/Vote:** REP. LANGE moved that HB 99 BE AMENDED with AMENDMENT 99-02. Motion carried by voice vote.

[EXHIBIT\(juh25a05\)](#)

**Motion:** REP. LANGE moved that HB 99 DO PASS AS AMENDED.

**Discussion:**

**Mr. MacMaster** spoke to the bill and with the committee members. This bill is for the suspension of a drivers license. There was some discussion about rural Montana and "small town Montana."

**REP. WINDHAM** informed the committee members that the average BAC for drivers drinking and driving is .17%.

**Vote:** Motion that HB 99 DO PASS AS AMENDED carried 15-3 by roll call vote with REP. KOOPMAN, REP. NOONAN, and REP. RICE voting no. (REPS. PARKER, WILSON voted aye by proxy vote.)

{Tape: 3; Side: B; Approx. Time Counter: 94 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 44}

**PLEASE NOTE:**

At the conclusion of all the Executive Action, **REP. CLARK** respectfully requested a recount of the action taken on HB 61 "moving out of committee." **REP. CLARK** stated, "I was present with proxies in the room when the vote was taken and I don't think those proxies were considered." **CHAIRMAN RICE** denied the request for a recount.

**REP. CLARK** called for a "point of order" and requested, "An explanation as to why votes that are on a proxy sheet handed in will not be counted." **CHAIRMAN RICE** stated, "The [first] vote was to reconsider HB 61 and then the [second] vote was on the [motion and vote] 'DO PASS' of HB 61." She continued to state the first motion was "present and voting" and the second [motion/vote] was "...if you weren't here, we don't have proxies (counted)." **REP. CLARK**, "I was here, I was in the room when that vote was taken and I handed my proxies in, and that will be reflected in the proxy count, so this bill will be passing out of this committee with a nine-to-nine vote."

**CHAIRMAN RICE** recognized **REP. GUTSCHE**: "...request[ed] the secretary to give us the vote count on that bill, please."

**Pam Schindler, secretary**, stated, "Everything happened so fast, I have down that REP. STOKER requested to 'lift HB 61 off the table for reconsideration,' then there was a DO PASS, the only ones that I have as a 'no' were REPS. Becker, Noonan and Windham. Some of this problem may be mine also, because it went so fast and I wasn't catching everything and it was a voice vote; so I was going to go back through my records and through the tape and do everything before I put the bill out for CHAIRMAN RICE'S signature."

**REP. CLARK** stated, "I just want the committee to know that my proxies will be handed in and will reflect, since I was in the room when that vote was taken, the votes of REP. PARKER, REP. HARRIS, REP. GUTSCHE, and myself, which were not recorded."

**EXHIBIT** (juh25a06)

**CHAIRMAN RICE** recognized REP. GUTSCHE. **REP. GUTSCHE** stated that she was confused and asked, "...if the bill was actually on the table or was it on nine-nine...." **CHAIRMAN RICE** stated that it was nine-nine. **REP. GUTSCHE** then said, "The move then would have been to reconsider, and there were several of us missing; then there was a motion to pass the bill." **CHAIRMAN RICE** stated, "...that was correct." **REP. GUTSCHE** then stated, "On the motion to pass the bill, REP. CLARK is saying that he had the proxies and handed them in and so they are not being counted." **CHAIRMAN RICE** stated, "We are taking the votes that were here at the time." **REP. GUTSCHE** continued by saying that REP. CLARK was in the room and had the proxies, and asked "...is that correct, could someone else...." **CHAIRMAN RICE** stated that she didn't remember him being there, and inquired, "...could someone else remember him being here?"

**REP. WINDHAM** stated that she was standing right next to REP. CLARK when the vote was taken. **CHAIRMAN RICE** stated, "Pam will review the tape and let us know."

**REP. HARRIS** informed the committee that he was presenting a bill in another committee and, "Certainly would expect my proxy to be counted and if VICE-CHAIR CLARK was in the room with my proxy, I would expect my proxy to be voted." **CHAIRMAN RICE** stated again that the tapes will be reviewed.

**REP. NOONAN** informed the committee that he would have voted REP. GUTSCHE'S proxies. "But I did in fact look down the table and REP. CLARK was standing there, so I did not vote them," he said.  
**{Tape: 4; Side: A; Approx. Time Counter: 44 - 96}**

At the adjournment of the hearing, the video tape was reviewed and it was verified that REP. CLARK was in the room at the time.

The vote at that time would have been a 9-9 tie with **REPS. CLARK, WILSON, PARKER, GUTSCHE, HARRIS, DRISCOLL, NOONAN, BECKER, WINDHAM** voting NO.

Upon review and consultation with Marilyn Miller, Chief Clerk of the House, it was decided that this Executive Action on HB 61 would be "held in Committee" and no action was reported out until February 18, 2005 when Executive Action occurred resulting in HB 61-Do Pass As Amended, 16-2, with a Grey Bill.

**ADJOURNMENT**

Adjournment: 12:20 P.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

**EXHIBIT ([juh25aad0.PDF](#))**