

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 7, 2005 at 9:00 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. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Christopher Harris (D)
Rep. John Parker (D)

Members Absent: None.

Staff Present: Pam Schindler, Committee Secretary
John MacMaster, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 510, HJR 15, 2/3/2005
Executive Action: HB 222-Tied

HEARING ON HJ 15

Sponsor: REP. CAROL JUNEAU, HD 16, BROWNING

Opening Statement by Sponsor:

REP. CAROL JUNEAU (D), HD 16, opened the hearing on HJ 15, Study sentencing equity.

[EXHIBIT\(juh30a01\)](#)

[EXHIBIT\(juh30a02\)](#)

[EXHIBIT\(juh30a03\)](#)

[EXHIBIT\(juh30a04\)](#)

[EXHIBIT\(juh30a05\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 160}

Proponents' Testimony:

REP. BIXBY, HD 41, spoke in favor of HJ 15.

{Tape: 1; Side: A; Approx. Time Counter: 160 - 178}

James Mason, Native American Liaison, Department of Corrections, rose in support of HJ 15.

{Tape: 1; Side: A; Approx. Time Counter: 178 - 186}

Pam Bucy, Assistant Attorney General, rose in support of HJ 15 on behalf of Attorney General Mike McGrath. Ms. Bucy stated that there are a disproportionate number of Native Americans incarcerated. She spoke to the committee members about the ongoing training for police cadets in the Bias Base Policing format currently at the Police Academy.

{Tape: 1; Side: A; Approx. Time Counter: 186 - 253}

Steve Gibson, Department of Corrections-Youth Services, spoke in support of HJ 15. Mr. Gibson gave as an example of the increase of Native Americans incarcerated, Riverside Girls Facility. At Riverside, more than 80% are Native American girls.

{Tape: 1; Side: A; Approx. Time Counter: 253 - 271}

SEN. FRANK SMITH, SD 16, rose in support of HJ 15.

{Tape: 1; Side: A; Approx. Time Counter: 271 - 289}

Opponents' Testimony: None

Informational Testimony:

Judy Edwards, Montana Consensus Council, rose to inform the committee that she would be happy to supply them with any information they may need.

{Tape: 1; Side: A; Approx. Time Counter: 289 - 295}

Syl Robinson, Montana Board of Crime Control, stated that minorities are incarcerated in disproportionate numbers within the Department of Corrections. She spoke to the committee about the statistical information they were given and that information does include Native Americans on and off the reservation.

{Tape: 1; Side: A; Approx. Time Counter: 295 - 349}

Questions from Committee Members and Responses:

REP. WARD, STOKER and WINDHAM asked the sponsor about her statistics that were distributed to them. They were interested in the jurisdictional aspects between the reservations, state and federal jurisdictions. Ms. Bucy was also asked questions about the state's jurisdiction in tribal matters.

REP. NOONAN then inquired of **REP. JUNEAU** about the narrow scope of HJ 15 in relation to studying Native Americans and the language that states for "lack of equity." **REP. NOONAN** stated that language already implies it is a conclusion; whereas, if the language read "if there is an equity" a more thorough report could possibly be completed.

REP. GUTSCHE questioned Mr. Gibson whether it would be feasible to study the youth detention facilities and detention reform issues if HJ 15 does go forward. **Mr. Gibson** replied that he would be able to supply the additional information and the comparisons between the percentages and the actual numbers.

{Tape: 1; Side: A; Approx. Time Counter: 349 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 217}

Closing by Sponsor:

REP. JUNEAU closed the hearing on HJ 15 and stated that she would look at the suggestion for the different language suggested by **REP. NOONAN**.

{Tape: 1; Side: B; Approx. Time Counter: 217 - 260}

HEARING ON HB 510

Sponsor: REP. PAUL CLARK, HD 13, TROUT CREEK

Opening Statement by Sponsor:

REP. PAUL CLARK (D), HD 13, opened the hearing on HB 510, Revise trespass laws. The REPRESENTATIVE explained HB 510 as it related to "corner jumping" and the trespass language currently in statutes.

[EXHIBIT\(juh30a06\)](#)

[EXHIBIT\(juh30a07\)](#)

[EXHIBIT\(juh30a08\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 260 - 437}

Proponents' Testimony:

Wes Krawczgk, self, spoke in support of HB 510. As a hunter himself, **Mr. Krawczgk** explained his support of this bill as it related to being a Montanan and stated, "... (there is) nothing more important than for Montanans being able to recreate."

[EXHIBIT\(juh30a09\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 437 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 26}

Ron Mashek, self, spoke to the committee about a hunting incident that had happened to him regarding "crossing corners." He reported that there are 23 million acres of land east of the Rocky Mountain front and only 11 million of those acres allow public access.

{Tape: 2; Side: A; Approx. Time Counter: 26 - 61}

Dave Arbenz, self, spoke in support of HB 510.

{Tape: 2; Side: A; Approx. Time Counter: 61 - 75}

Gary Wulf, self, rose in support of HB 510. He stated that inaccessible public lands are just an extension of private land owners.

{Tape: 2; Side: A; Approx. Time Counter: 75 - 113}

Bob Gilbert, self, stated to the committee that there is a double standard; private landowners are able to use public lands, but the public is unable to go from public lands to public lands without benefit of crossing private landowner's corners.

{Tape: 2; Side: A; Approx. Time Counter: 113 - 150}

Doug Nulle, self, rose in support of HB 510.

{Tape: 2; Side: A; Approx. Time Counter: 150 - 166}

Robert Throssell, Montana Wildlife Federation, rose in support of HB 510.

{Tape: 2; Side: A; Approx. Time Counter: 166 - 183}

Opponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, stated to the committee that this bill does not address the private landowner's issuance of the "block management program." He further reported that in Article 2 Section 3 of the MCA, it is stated that a private landowner has the fundamental right to that privacy. Therefore, this bill would be unconstitutional. **Mr. Bloomquist** also asked about the need of "compelling state interest" and where that need is in HB 510.

His concerns were about the "corner cutting," exactly where are these corners are located, and of the "takings" of private property. **Mr. Bloomquist** finished by saying the solution to this problem is very simple, "...why not just ask the property owners permission?"

{Tape: 2; Side: A; Approx. Time Counter: 183 - 316}

Mike Murphy, Montana Water Resources, spoke to the committee of his concerns about the abrogation of private property owners' rights.

{Tape: 2; Side: A; Approx. Time Counter: 316 - 354}

Don Allen, Western Environmental Association, spoke in opposition to HB 510.

{Tape: 2; Side: A; Approx. Time Counter: 354 - 366}

Kathy Kriestkoff, self, spoke to the committee members about her family's ranch and the situations that arise regarding this issue.

{Tape: 2; Side: A; Approx. Time Counter: 366 - 389}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN questioned the sponsor about the frequency of this problem occurring. **REP. CLARK** referred this question to Bob Lane who is Chief Counsel with the Montana Department of Fish, Wildlife and Parks. **Mr. Lane** replied that this situation is a growing issue. **REP. KOOPMAN** directed his questions back to the sponsor and asked about the responsibility of the landowner to give permission. **REP. CLARK** stated that the public has a right to access lands that are licensed public lands.

REP. GUTSCHE then asked Mr. Lane to explain to the committee the graph that was distributed and the language in the bill regarding trespassing.

REP. NOENNIG then queried Mr. Lane about the local county attorney prosecuting the trespassers. "How often does that occur?" **Mr. Lane** stated that usually there is another violation committed before the county attorney gets involved with the trespassing charge.

REP. MCGILLVRAY questioned Mr. Bloomquist about the "takings" of private property aspects that he had spoken of earlier; "Are property values diminished by these 'corner crossings'?" **Mr. Bloomquist** replied that he did know the answer to that.

REP. LANGE spoke of the hunting access program with Mr. Lane. The REPRESENTATIVE was interested in the access corridor agreement and how game hunters are currently handling the retrieval of big game when a "corner crossing" is applicable.

REPS. WINDHAM and **RICE** were interested in the "step over" language in the bill and how many acres of land would actually be relevant to this bill.

In summary, much of the questioning by the REPRESENTATIVES was about the conflict between the private land owners and the public needing access to public lands that are "checkerboarded" within all public and private lands.

{Tape: 2; Side: A; Approx. Time Counter: 389 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 472}

Closing by Sponsor:

REP. CLARK closed the hearing on HB 510. He stated that if this bill were to pass, HB 510 would help the landowners. **REP. CLARK** stated, "...it is time either to legislate or to litigate this matter...." Finally, he stated that HB 510 does not give permission to go on private lands.

EXHIBIT(juh30a10)

EXHIBIT(juh30a11)

{Tape: 2; Side: B; Approx. Time Counter: 472 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 25}

EXECUTIVE ACTION ON HB 222

Motion: REP. LANGE moved that HB 222 DO PASS.

Discussion:

Motion: REP. LANGE moved that HB 222 BE AMENDED with AMENDMENT 222-01.

EXHIBIT (juh30a12)

Discussion:

The committee members and Mr. MacMaster discussed the amendment and whether more clarification was needed.

Vote: Motion carried unanimously by voice vote.
(REPS. HARRIS, PARKER voted aye by proxy vote.)

Motion: REP. STOKER moved that HB 222 DO PASS AS AMENDED.

Discussion:

Motion: REP. NOENNIG moved that HB 222 BE AMENDED by raising the \$50,000 limit to \$100,000.

The committee discussed the amendment and whether or not the amendment would have that much of an impact on the bill itself.
REP. LANGE stated that he would consider this amendment as "friendly."

Vote: Motion carried 14-4 by voice vote with REP. EVERETT, REP. MCGILLVRAY, REP. WARD, and REP. WILSON voting no.
(REPS. HARRIS, PARKER voted yes by proxy vote.)

Discussion:

Motion: REP. KOOPMAN moved that HB 222 BE AMENDED to include PHYSICIAN'S ASSISTANT to the language on Page 1, Lines 11 and 19.

Discussion:

The committee discussed this amendment as to who employs the Physician's Assistant and if that employer would be the responsible party.

Vote: Motion failed 2-16 by voice vote with REP. KOOPMAN and REP. MCGILLVRAY voting aye.

(REPS. HARRIS, PARKER voted no by proxy vote.)

Motion/Vote: REP. STOKER moved that HB 222 DO PASS AS AMENDED.

Motion failed 9-9 by roll call vote with REP. EVERETT, REP.

KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. NOENNIG, REP. RICE,

REP. SONJU, REP. STOKER, and REP. WARD voting aye.

(REPS. HARRIS, PARKER voted no by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 25 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 48}

ADJOURNMENT

Adjournment: 12:03 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh30aad0.PDF](#))