

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 10, 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: SB-204, 205, 208, 231, 3/3/2005
Executive Action: SB-208, 260-Do Concur; SB-204, 205,
112-Tabled

HEARING ON SB 205

Sponsor: SEN. JIM SHOCKLEY, SD 45, VICTOR

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on SB 205, Restrict reinstatement of drivers' license for violation of liability insurance.

SEN. SHOCKLEY requested that House Judiciary Committee TABLE SB 205. He stated that SEN. LASLOVICH'S SB 493 better addressed the issue.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 26}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS inquired of the SENATOR if the committee could wait until SB 493 is presented before tabling SB 205. SEN. SHOCKLEY replied that he had already spoken with SEN. LASLOVICH and the "deal" had been struck. The status of SB 493 is that it passed out of the Senate Judiciary Committee.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 43}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 205.

{Tape: 1; Side: A; Approx. Time Counter: 43 - 47}

HEARING ON SB 204

Sponsor: SEN. JIM SHOCKLEY, SD 45, VICTOR

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on SB 204, Allow only one jury trial. The SENATOR informed the committee that this bill passed out of the Senate 45-5. SEN. SHOCKLEY explained that the justices of the peace courts are not courts of record; so the alleged offender can request another trial in district court.

In some cases, the defense counsel does not prepare for the justice of the peace trials. Then, when in the process of the justice of the peace trials, the defense is able to retrieve all the information from the prosecuting attorney that the defense may use in the subsequent hearing.

{Tape: 1; Side: A; Approx. Time Counter: 47 - 88}

Proponents' Testimony:

Leo Gallagher, Montana County Attorneys Association, Lewis and Clark County Attorney, rose in support of SB 204.

Mr. Gallagher spoke to the committee members about the additional costs for two trials, and that small counties do not have the resources to make over their JP courts to "courts of record." The "cost" to the victim for having to endure an additional trial is also unduly burdensome.

{Tape: 1; Side: A; Approx. Time Counter: 88 - 140}

Ali Bovington, Assistant Attorney General, Victim Services, spoke in support of SB 204 from the viewpoint of the victim and how stressful it is for the victim.

{Tape: 1; Side: A; Approx. Time Counter: 140 - 151}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS questioned Mr. Gallagher about the victim attending additional trials; in SB 204, the victim would still need to attend. **Mr. Gallagher** stated that the difference would be one of the trials would be in front of a judge.

They also discussed the fiscal note and if Mr. Gallagher agreed that there would be no monetary impact. **Mr. Gallagher** stated that he disagreed with that theory. He stated that the Public Defender costs would be higher.

REP. NOENNIG questioned Mr. Gallagher about the jury trial costs being recovered. The REPRESENTATIVE then proceeded to question the SENATOR about requests for a jury trial in a court of no record and if there were conflicts regarding due process.

SEN. SHOCKLEY responded by stating that Federal law already states that a jury trial is not required if the offender's sentence is less than one year. Therefore, in Montana, "the specific would control over the general," stated **SEN. SHOCKLEY**.

REP. STOKER spoke with **SEN. SHOCKLEY** about the small towns such as Darby that have less than 5,000 citizens and are not allowed to have "courts of record."

REP. HARRIS questioned **SEN. SHOCKLEY** about the situation where a defendant chooses a jury trial, appeals to a "judge" trial and then appeals to the Supreme Court--where the line of record and the testimony would be.

REP. RICE asked the **SENATOR** about a jury trial in a misdemeanor case. **SEN. SHOCKLEY** responded that one jury trial is enough.

REP. RICE continued to ask the **SENATOR** about the specificity of the language within SB 204 and if the voters would be able to understand the language therein. **SEN. SHOCKLEY** stated that he would be amenable to a "friendly amendment" regarding that issue for SB 204.

{Tape: 1; Side: A; Approx. Time Counter: 151 - 343}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 204.

{Tape: 1; Side: A; Approx. Time Counter: 343 - 345}

HEARING ON SB 208

Sponsor: **SEN. GARY PERRY, SD 35, MANHATTAN**

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 208**, Increase conviction charge to fund victim services.

Proponents' Testimony:

Gloria Edwards, Gallatin County Victims Services, rose in support of SB 208 and stated that funding for victim services are mandated under Chapter 24, MCA. She stated that presently, Gallatin County is the only county in the state to provide services for felony property crime victims.

Ms. Edwards stated that there are two employees that helped 674 victims and only one employee working with the Property Crime Victim's Unit in the State of Montana.

The money that is needed for funding is for the basics: brochures, staffing, printing and travel for training. The \$50 fee will only be charged when the offender is convicted, not when charged with the offense.

EXHIBIT (juh53a01)

{Tape: 1; Side: A; Approx. Time Counter: 345 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 18}

Gordon Morris, Montana Association of Counties (MACo), rose in support of SB 208.

[EXHIBIT\(juh53a02\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 18 - 36}

Leo Gallagher, Montana County Attorneys Association, Lewis and Clark County Attorney, rose in support of SB 208 and spoke to the committee about the Friendship Center and the Crime Victims Compensation Board in Helena.

{Tape: 1; Side: B; Approx. Time Counter: 36 - 60}

Ali Bovington rose in support of SB 208 and referred to subsection (2) as to the language regarding the imposition of fees only when the offender can pay. If the offender cannot pay, the fee will be waived.

{Tape: 1; Side: B; Approx. Time Counter: 60 - 77}

Michael Harris, Gallatin County Commissioners, Gallatin County Sheriffs, rose in support of SB 208.

[EXHIBIT\(juh53a03\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 77 - 100}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT began his questions to Ms. Edwards. The REPRESENTATIVE was interested in knowing how many counties in Montana have this type of program. **Ms. Edwards** replied that almost all of the counties in Montana have this program. The funding for these programs is derived from various sources such as the Board of Crime Control, grant monies, the Victim Surcharge Fee and the individual counties.

REP. EVERETT asked Ms. Edwards to explain to the committee what types of victims are served by this program. **Ms. Edwards** stated, "...one-third of the victims are from domestic violence charges, then assaults, child sexual abuse and robbery victims."

REP. GUTSCHE queried Ms. Bovington about the funding and whether this comes from the State's coffers.

Ms. Bovington replied that the funding doesn't come directly from the Department of Justice; there is funding from the Federal Board of Crime Control. The counties must apply to receive the funding and then the board determines the need and application. They continued to discuss the funding sources and the amounts that are received.

EXHIBIT(juh53a04)

REP. HARRIS discussed with Ms. Edwards the problem regarding the offenders that are destitute and their inability to pay the fee.

REP. NOENNIG continued with questions for Ms. Edwards. The REPRESENTATIVE was interested in when the \$25 surcharge was initiated and why the amount is doubled in this bill. **Ms. Edwards** replied, "...the fee was set in 1999 and the raise to \$50 is a compromise and is a reasonable amount...."

{Tape: 1; Side: B; Approx. Time Counter: 100 - 380}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 208 and stated to the committee that this bill does not require taxpayers dollars; it requires the offenders to pay.

{Tape: 1; Side: B; Approx. Time Counter: 380 - 400}

HEARING ON SB 231

Sponsor: SEN. JESSE LASLOVICH, SD 43, ANACONDA

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 231**, Revise collection laws. The SENATOR rose to explain SB 231 to the committee members. **SEN. LASLOVICH** concluded his testimony and stated that there is an amendment for SB 231; the amendment is to strike all of Section 8.

EXHIBIT(juh53a05)

{Tape: 1; Side: B; Approx. Time Counter: 400 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 108}

Proponents' Testimony:

Michael Moore, Montana Collectors Association, rose in support of SB 231 and spoke to the amendment and how the amendment would affect the "obligor" of a bad check debt in reference to 27-7-117, MCA.

{Tape: 2; Side: A; Approx. Time Counter: 108 - 155}

Jeff Koch, Montana Collectors Association, Collection Bureau Services of Missoula, rose in support and stated that SB 231 would help all businesses in Montana. He further stated \$8.5 million has been collected in the State of Montana in 2004.
{Tape: 2; Side: A; Approx. Time Counter: 155 - 200}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT questioned Mr. Koch about the electronic funds transfer and how that process works. **Mr. Koch** explained that the electronic transfers work the same as "paper checks" only much faster, and there is still a potential for non-sufficient money in checking accounts.

REP. NOENNIG posed his questions to Mr. Moore regarding Section 2 and the language therein that applied to the process server and the registration of that party. **Mr. Moore** explained that the process server is assigned a number for identification purposes, and the number is always on the papers to be served.

They continued to discuss the feasibility of the registration in other states. They then discussed the interest charges and the date from which it is accrued and the additional costs related to that.

REP. NOENNIG proposed an amendment to make the language in Section 4 more clear regarding that issue and what would happen if the process server is unable to serve the party; would a verification of non-delivery be helpful.

REP. HARRIS approached the issue of writing on checks, "paid in full" and whether Mr. Moore could comment on that process. **Mr. Moore** informed the committee that language is part of the Uniform Commercial Code (UCC). The REPRESENTATIVE proposed an amendment that would make the UCC not applicable. **Mr. Moore** stated that would be a good idea.

They then discussed the feasibility of making the service of papers by "certified letter" and the deletion of Section 8 amendment. **Mr. Moore** cited that the costs would be high for certified letters and the amendment for the deletion of Section 8 was due to problems with satisfying all the parties involved.

{Tape: 2; Side: A; Approx. Time Counter: 200 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 140}

Closing by Sponsor:

SEN. LASLOVICH closed the hearing on SB 231.

{Tape: 2; Side: B; Approx. Time Counter: 140 - 174}

EXECUTIVE ACTION ON SB 205

(Please Note: REPS. SONJU, LANGE, PARKER and DRISCOLL absent from the room.)

Motion: REP. GUTSCHE moved that SB 205 BE CONCURRED IN.

Substitute Motion/Vote: REP. STOKER made a substitute motion that SB 205 BE TABLED. Substitute motion carried 17-0 by voice vote. (REP. SONJU absent from room with no proxy vote.) (REPS. LANGE, PARKER and DRISCOLL voted by proxy vote.)

{Tape: 2; Side: B; Approx. Time Counter: 174 - 186}

EXECUTIVE ACTION ON SB 112

Motion: REP. GUTSCHE moved that SB 112 BE CONCURRED IN.

Motion: REP. GUTSCHE moved that SB 112 BE AMENDED.

[EXHIBIT](#)(juh53a06)

Discussion:

Mr. MacMaster explained the amendment to the committee.

Motion: REP. CLARK moved that SB 112 BE AMENDED by SEGREGATING SECTION 2 FROM SECTIONS 1 AND 3. (Granted by privilege.)

Vote: Motion that SB 112 BE AMENDED with SECTIONS 1 AND 3 carried unanimously by voice vote. (REPS. DRISCOLL, PARKER, LANGE and SONJU voted by proxy votes.)

Motion: REP. HARRIS moved that SB 112 BE CONCURRED IN AS AMENDED.

Vote: Motion that SB 112 BE AMENDED with SECTION 2 carried 16-2 by voice vote with REP. EVERETT and REP. HARRIS voting no. (REPS. DRISCOLL, PARKER, LANGE and SONJU voted by proxy votes.)

Motion: REP. HARRIS moved that SB 112 BE AMENDED with a CONCEPTUAL AMENDMENT FOR PAGE 2, LINES 5-6.

Discussion:

Mr. MacMaster explained the "substituted judgement test" and its difference from the "in the best interests test."

Vote: Motion that SB 112 BE AMENDED failed 2-16 by voice vote with REP. HARRIS and REP. WILSON voting aye. (REPS. DRISCOLL, PARKER, LANGE and SONJU voted by proxy votes.)

(Please Note: REP. GUTSCHE absent from the room.)

Vote: Motion that SB 112 BE CONCURRED IN AS AMENDED failed 7-11 by roll call vote with REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, and REP. WILSON voting aye. (REPS. DRISCOLL, GUTSCHE, LANGE, SONJU and PARKER voted by proxy votes.)

Motion/Vote: REP. STOKER moved that SB 112 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Counter: 186 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 305}

EXECUTIVE ACTION ON SB 204

(Please Note: REP. GUTSCHE returned to room, REPS. HARRIS and LANGE absent from the room.)

Motion/Vote: REP. STOKER moved that SB 204 BE CONCURRED IN. Motion failed 6-12 by roll call vote with REP. EVERETT, REP. GUTSCHE, REP. LANGE, REP. RICE, REP. SONJU, and REP. STOKER voting aye. (REPS. DRISCOLL, HARRIS, LANGE, SONJU and PARKER voted by proxy votes.)

Motion/Vote: REP. STOKER moved that SB 204 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 3; Side: A; Approx. Time Counter: 305 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 13}

EXECUTIVE ACTION ON SB 208

(Please Note: REP. SONJU returned to the room.)

Motion/Vote: REP. STOKER moved that SB 208 BE CONCURRED IN. Motion carried 17-1 by roll call vote with REP. KOOPMAN voting

no. (REPS. DRISCOLL, HARRIS, LANGE and PARKER voted by proxy votes.) (REP. EVERETT to carry)

[EXHIBIT\(juh53a07\)](#)

[EXHIBIT\(juh53a08\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 13 - 78}

EXECUTIVE ACTION ON SB 196

(Please Note: REP. HARRIS returned to the room.)

Motion: REP. STOKER moved that SB 196 BE CONCURRED IN.

Motion: REP. NOENNIG moved that SB 196 BE AMENDED.

[EXHIBIT\(juh53a09\)](#)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Motion: REP. CLARK moved that SB 196 BE INDEFINITELY POSTPONED.

Motion carried by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 78 - 206}

EXECUTIVE ACTION ON SB 260

Motion/Vote: REP. WINDHAM moved that SB 260 BE CONCURRED IN.

Motion carried unanimously by roll call vote. REPS. DRISCOLL, LANGE and PARKER voted by proxy vote.) (REP. CLARK to carry)

{Tape: 3; Side: B; Approx. Time Counter: 206 - 215}

ADJOURNMENT

Adjournment: 11:17 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh53aad0.PDF](#))