

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 22, 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. 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. Michael Lange (R)
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: SB 426, 429, 430, 435, 3/15/2005
Executive Action: SB 426-Do Concur, SB 435, 2, 423-Do
Concur As Amended, SB 139, 357-
Tabled

HEARING ON SB 435

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 435**, Revise probate laws. The **SENATOR** spoke to the committee and explained how this bill would affect Montanans who are left property from someone in another state.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 66}

Proponents' Testimony:

Thomas Darland, self, coauthor of SB 435, rose in support of SB 435 and stated the four reasons why this bill is needed:

- 1) This bill will not cost any money.
- 2) This bill is "apolitical."
- 3) This bill is an economical solution.
- 4) This bill will save people money.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS questioned **SEN. WHEAT** about the bill and asked if this would be only related to property in Montana. **SEN. WHEAT** replied, "Yes....," that SB 435 would only apply to "real" (real estate) property in Montana.

REP. NOENNIG began his questions to Mr. Darland regarding wills that are filed with the courts in other states. **Mr. Darland** explained that the specific circumstances where a will could be retrieved from another state and the costs that would be accrued for the party in Montana to resolve that situation.

REP CLARK spoke with the sponsor and asked him to explain the probate process to the committee members.

REP. RICE then asked **SEN. WHEAT** to explain how a person who owns property in more than one state would resolve their probate and will procedures.

{Tape: 1; Side: A; Approx. Time Counter: 66 - 319}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 435 and informed the committee the bill is explained on Page 1, Lines, 22-24.
{Tape: 1; Side: A; Approx. Time Counter: 319 - 342}

HEARING ON SB 426

Sponsor: **SEN. COREY STAPLETON, SD 27, BILLINGS**

Opening Statement by Sponsor:

SEN. COREY STAPLETON (R), SD 27, opened the hearing on **SB 426,** Youth privacy for electronic information. **SEN. STAPLETON** explained to the committee that SB 426 will define the process on how to "Seal a Record" from Youth Court Records.
{Tape: 1; Side: A; Approx. Time Counter: 342 - 417}

Proponents' Testimony:

Richard Meeker, Juvenile Probation Office of Montana, rose in support and stated that presently there is a lack of uniform consistency and this bill would clarify how to maintain the "hard" files of youths.
{Tape: 1; Side: A; Approx. Time Counter: 417 - 442}

Karen Duncan, Youth Services Division, Department of Corrections (DOC), explained to the committee that SB 426 will clarify when youth records may be shared without proper authority and identification.
{Tape: 1; Side: A; Approx. Time Counter: 442 - 461}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK asked Mr. Meeker about the records and if all of the records are electronic. **Mr. Meeker** replied that some of the records are electronic; however, the hard copies of the records are with the clerk of court. He continued to state that when the records are on the computer, they are protected by passwords, etc.

REP. CLARK then questioned the sponsor about the safeguards in the system when the information is shared between agencies.

REP. EVERETT spoke with Ms. Duncan about the types of information that is within those records. **Ms. Duncan** stated that those records contain any type of offenses committed while the offender was a youth.

After a youth reaches the age of 18; the court may keep those records for 10 years at which point they are sealed. A court order is required to retrieve any information after that time.

{Tape: 1; Side: A; Approx. Time Counter: 461 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 109}

Closing by Sponsor:

SEN. STAPLETON closed the hearing on SB 426.

{Tape: 1; Side: B; Approx. Time Counter: 109 - 116}

HEARING ON SB 429

Sponsor: **SEN. JIM SHOCKLEY, SD 45, VICTOR**

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 429**, Providing for use of electronic tracking devices in criminal investigations. **SEN. SHOCKLEY** rose to inform the committee that this bill was brought on behalf of law enforcement and explained to the committee how these devices would be used.

{Tape: 1; Side: B; Approx. Time Counter: 116 - 137}

Proponents' Testimony:

John Connor, Chief Criminal Prosecutor, Attorney Generals Office, rose in support of SB 429 and stated that these devices are used as a way to track drug traffickers. **Mr. Connor** stated that a search warrant was needed previously to obtain the same information and that they are cumbersome to obtain.

He stated that this bill was drafted by law enforcement officers according to 46-4-401, MCA and has these three provisions:

- 1) The device could only be used in Montana.
- 2) The department must have probable cause before using the device.
- 3) The device could only be issued pursuant to a District Court Judge's order.

{Tape: 1; Side: B; Approx. Time Counter: 137 - 189}

Craig Campbell, Montana Narcotics Officers Association, rose in strong support of SB 429 and showed the device that would be used in tracking the alleged offenders to the committee members. He explained that the device could be used in drug trafficking, murder cases, serial burglaries, chemical buys, etc.

{Tape: 1; Side: B; Approx. Time Counter: 189 - 235}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of SB 429.

{Tape: 1; Side: B; Approx. Time Counter: 235 - 239}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WINDHAM queried Mr. Campbell about the length of time the that the battery would last. **Mr. Campbell** replied that the battery would last up to several days and would be retrieved after the suspect was arrested, etc.

REP. NOENNIG questioned Mr. Connor about the language on Page 2, Line 7, 8, and 21 regarding "probable cause," "of something" and "issuances."

REP. STOKER queried Mr. Campbell about the "OnStar" program and if a court may order that system to be used. **Mr. Campbell** referred the question to **Mr. Connor** who replied that it would be too intrusive.

REP. MCGILLVRAY continued the conversation with Mr. Connor regarding the "OnStar" system; whether or not the device may be placed while the vehicle is on private property and the "Big Brother" theory. **Mr. Connor** responded by saying that the device may not be attached while on private property. In reference to the "Big Brother" question; **Mr. Connor** stated that while constructing this bill, there was consideration for the limits/statutes on how this device could be used and there is language therein for the limited use of this device.

REP. CLARK questioned Mr. Campbell about the number of cases where this device could be used. **Mr. Campbell** replied that in different parts of states, the device would be used more frequently than in other parts of the state.

REP. CLARK then spoke with Mr. Connor about the device already being used by law enforcement prior to this bill being drafted.

Mr. Connor explained to the committee that in the training of the Department of Criminal Investigation (DCI) agents, the device has been used previously and when the DCI learned that other states were using the device also.

Further, **Mr. Connor** explained that when a person is on public roadways, there is no expectation of privacy afforded the driver. He stated, "Montanans do have a heightened sense of privacy," so this bill was written with that in mind

REP. CLARK continued his conversation with Mr. Connor regarding the other laws on the books regarding "bugs."

REP. CLARK commented to Sen. Shockley that he was dismayed that SB 429 is "coming after the fact."

REP. STOKER spoke with Mr. Campbell about the Robert Blake and Martha Stewart cases regarding the ankle devices they have been charged with wearing.

REP. KOOPMAN discussed with Mr. Connor the issue of privacy on a public highways and if SB 429 does not pass; what is the recourse for law enforcement. **Mr. Connor** stated that if SB 429 does not pass, law enforcement will need to through the search warrant process as previously done.

REP. NOONAN began his questions by commenting that SB 429 is not that much different than bugging and what is the reason why that current law was not used as a basis for SB 429. **Mr. Connor** replied that in the State of Montana; there is no authorization for wire taps. The only surveillance allowed is to "trap" the phone lines; which allows the law enforcement to retrieve the history of phone calls.

REP. RICE spoke with Mr. Connor about what if any incident occurred to precipitate this bill being brought forward. **Mr. Connor** replied that it was brought forth after discussions during the training of DCI agents.

REP. RICE asked Mr. Campbell how long this device had been used in Montana. **Mr. Campbell** replied that he personally had not used this device; however, the Narcotics Agency in Montana has had this for approximately 1.5 years.

REP. RICE questioned Mr. Connor about the privacy issue regarding public roads. **Mr. Connor** explained that law enforcement may not search the contents of a vehicle; however, law enforcement may search the location of the vehicle and where it is traveling to. A District Court Judge does need to authorize that process.

{Tape: 1; Side: B; Approx. Time Counter: 239 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 219}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 429 and stated, "...this is going to happen with or without SB 429." He further commented that this bill will standardize, regulate and limit the use of these devices.

{Tape: 2; Side: A; Approx. Time Counter: 219 - 256}

HEARING ON SB 430

Sponsor: SEN. DON RYAN, SD 10, GREAT FALLS

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 430**, Senior citizen opt out of jury duty. **SEN. RYAN** related to the committee the conversation that he had previously with an elderly couple who were on their way to try and have the 80-year-old man excused from jury duty. This bill would also eliminate the need for people to go to their physician to receive a medical reason for not serving on jury duty.

{Tape: 2; Side: A; Approx. Time Counter: 256 - 319}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD spoke with the SENATOR regarding Page 1, Line 22, regarding the age of 70 being considered and the question of impaneling a "jury of their peers."

REP. NOENNIG discussed with **SEN. RYAN** the current law where the person may be excused from jury duty due to undue hardship. **SEN. RYAN** explained to the committee that this law would mean that the person would not have to appear at the court for an excuse from the presiding judge. They continued their discussion regarding the "permanent excuse" that this bill would allow and instead use it on a case by case situation.

SEN. RYAN stated that the District Court requires the prospective juror to travel to the court at the District Court's expense to garner an excuse from the judge and wasting the time of the judge and the court. **REP. NOENNIG** pressed on and asked, "...then you would resist, '...some showing of the person at court, and if a person is 70 years old, they would get an automatic out'?" **SEN. RYAN** replied, "It is the intent of this bill and it would save money."

{Tape: 2; Side: A; Approx. Time Counter: 319 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 17}

Closing by Sponsor:

SEN. RYAN closed the hearing on SB 430.

{Tape: 2; Side: B; Approx. Time Counter: 17 - 25}

EXECUTIVE ACTION ON SB 426

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

Motion/Vote: **REP. MCGILLVRAY** moved that SB 426 BE CONCURRED IN. Motion carried by roll call vote unanimously. (REPS. GUTSCHE, HARRIS, LANGE, PARKER, SONJU and WILSON voted by proxy vote.) (REP. PARKER to carry)

{Tape: 2; Side: B; Approx. Time Counter: 25 - 76}

EXECUTIVE ACTION ON SB 435

Motion: **REP. WINDHAM** moved that SB 435 BE CONCURRED IN.

Motion: **REP. NOENNIG** moved that SB 435 BE AMENDED.

Discussion:

Mr. MacMaster explained the amendment for Page 3, Line 24, to change "non-resident" to "non-domiciliary."

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

Vote: Motion that SB 435 BE AMENDED carried unanimously by voice vote. (REPS. GUTSCHE, HARRIS, LANGE, PARKER, and WILSON voted by proxy vote.)

(Please Note: REP. SONJU left the room.)

Motion/Vote: REP. STOKER moved that SB 435 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote. (REPS. GUTSCHE, HARRIS, LANGE, PARKER, SONJU, and WILSON voted by proxy vote.) (REP. NOENNIG to carry)
{Tape: 2; Side: B; Approx. Time Counter: 76 - 136}

EXECUTIVE ACTION ON SB 2

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

Motion: REP. STOKER moved that SB 2 BE CONCURRED IN.

Motion: REP. CLARK moved that SB 2 BE AMENDED.
[EXHIBIT\(juh63a01\)](#)

Discussion:

REP. CLARK explained the amendment to the committee.

Vote: Motion that SB 2 BE AMENDED carried 13-5 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. RICE, REP. SONJU, and REP. WARD voting no. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

Motion: REP. WINDHAM moved that SB 2 BE CONCURRED IN AS AMENDED.

Motion: REP. CLARK moved that SB 2 BE AMENDED.
[EXHIBIT\(juh63a02\)](#)

Discussion:

The committee discussed the amendment with the result being REP. CLARK without objection WITHDREW AMENDMENT 02-02.

Vote: Motion that SB 2 BE CONCURRED IN AS AMENDED carried 17-1 by voice vote with REP. GUTSCHE voting no. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.) (REP. MCGILLVRAY to carry)
{Tape: 2; Side: B; Approx. Time Counter: 136 - 295}

EXECUTIVE ACTION ON SB 119

Motion: REP. STOKER moved that SB 119 BE CONCURRED IN.

Motion: REP. CLARK moved that SB 119 BE AMENDED.

[EXHIBIT](#)(juh63a03)

Discussion:

Mr. MacMaster explained the amendment to the committee members with discussion following by the committee members.

Vote: Motion that SB 119 BE AMENDED carried unanimously by voice vote. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

Motion: REP. WARD moved that SB 119 BE CONCURRED IN AS AMENDED.

Discussion:

The committee discussed the bill as to the timeliness that the courts require in handling foster care children. They also discussed the fines that may be levied if the matters concerning children are not resolved in a timely manner.

Vote: Motion that SB 119 BE CONCURRED IN AS AMENDED failed 9-9 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. HARRIS, REP. NOENNIG, REP. NOONAN, REP. PARKER, REP. WILSON, and REP. WINDHAM voting aye. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

{Tape: 2; Side: B; Approx. Time Counter: 295 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 200}

EXECUTIVE ACTION ON SB 139

Motion: REP. EVERETT moved that SB 139 BE CONCURRED IN.

Discussion:

The committee discussed the bill as to the due process language within the bill.

Vote: Motion that SB 119 BE CONCURRED IN failed 2-16 by roll call vote with REP. MCGILLVRAY and REP. WARD voting aye. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

Motion/Vote: REP. WINDHAM moved that SB 139 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 3; Side: A; Approx. Time Counter: 200 - 417}

EXECUTIVE ACTION ON SB 357

Motion: REP. MCGILLVRAY moved that SB 357 BE CONCURRED IN.

Motion: REP. CLARK moved that SB 357 BE AMENDED.

[EXHIBIT](#)(juh63a04)

Discussion:

Mr. MacMaster explained the amendment to the committee.

Vote: Motion that SB 357 BE AMENDED carried unanimously by voice vote. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

Motion: REP. STOKER moved that SB 357 BE CONCURRED IN AS AMENDED.

Discussion:

The committee discussed SB 357 briefly.

Substitute Motion/Vote: REP. STOKER made a substitute motion that SB 357 BE TABLED. Substitute motion carried 13-5 by voice vote with REP. DRISCOLL, REP. HARRIS, REP. KOOPMAN, REP. MCGILLVRAY, and REP. NOENNIG voting no. (REPS. GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 417 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 174}

EXECUTIVE ACTION ON SB 423

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

Motion: REP. CLARK moved that SB 423 BE CONCURRED IN.

Discussion:

The committee discussed the bill as Mr. MacMaster explained the locking ignition and that counties would not know from one county to the other county as to other DUIs.

Motion: REP. KOOPMAN moved that SB 423 BE AMENDED with a CONCEPTUAL AMENDMENT by STRIKING SECTION 3.

Discussion:

REP. KOOPMAN explained to the committee members this amendment. After some discussion by the committee members, REP. KOOPMAN, without objection, WITHDREW THE CONCEPTUAL AMENDMENT.

Motion: REP. KOOPMAN moved that SB 423 BE AMENDED with a CONCEPTUAL AMENDMENT TO STRIKE PAGE 4, LINE 3.

Vote: Motion that SB 423 BE AMENDED carried 11-7 by voice vote with REP. CLARK, REP. GUTSCHE, REP. HARRIS, REP. NOENNIG, REP. NOONAN, REP. PARKER, and REP. WILSON voting no. (REPS. EVERETT, GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.)

Motion/Vote: REP. STOKER moved that SB 423 BE CONCURRED IN AS AMENDED. Motion carried 17-1 by voice vote with REP. SONJU voting no. (REPS. EVERETT, GUTSCHE, HARRIS, LANGE, PARKER and WILSON voted by proxy vote.) (REP. HARRIS to carry.)

{Tape: 3; Side: B; Approx. Time Counter: 174 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 35}

ADJOURNMENT

Adjournment: 11:32 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh63aad0.PDF](#))