

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 30, 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. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: Rep. Michael Lange (R)

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 18, 207, 493, 3/23/2005
Executive Action: SB 18, 470-Do Concur; SB 114, 385-
Do Concur As Amended

HEARING ON SB 18

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on SB 18, Provide additional judge for 18th Judicial District. SEN. WHEAT stated that would allow a third judge for Gallatin County.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 35}

Proponents' Testimony:

Dorothy McCarter, District Judge, Lewis and Clark County, Montana Judges Association, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 35 - 41}

Mike Salvagni, District Judge, Gallatin County, spoke in support of SB 18; he further stated that the caseload in 2003 had risen by 67%. The number of cases filed in 2004 versus 2003, increased by 339 cases.

[EXHIBIT\(juh67a01\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 41 - 140}

Joe Skinner, Gallatin County Commissioner, rose in support of SB 18 and stated that with the growing population of their jurisdiction, the need for a third judge is great.

[EXHIBIT\(juh67a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 140 - 170}

Linda White, Gallatin County Bar Association, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 170 - 198}

Marty Lambert, Gallatin County Attorney, spoke in strong support of SB 18 and spoke to the committee about the number of cases that have come through their office is at an all time high. Mr. Lambert explained how the judges need to prioritize their caseloads of criminal, mental commitments and child neglect cases.

{Tape: 1; Side: A; Approx. Time Counter: 198 - 239}

Jed Fitch, Montana Trial Lawyers Association, rose in agreement with Mr. Lambert about the need to prioritize criminal cases.

{Tape: 1; Side: A; Approx. Time Counter: 239 - 255}

SEN. GARY PERRY, SD 35, MANHATTAN, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 255 - 265}

Holly Brown, District Court Judge, Gallatin County, spoke to the committee about her appointment after the previous judge had passed away. She explained how the litigants must wait months before receiving an "answer" by the judge. **Judge Brown** stated that her court presently has trials scheduled for January and February, 2006.

{Tape: 1; Side: A; Approx. Time Counter: 265 - 315}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN addressed Mr. Lambert about the appointment of the third judge and was concerned that an election should be held for that judge rather than an appointment. **Mr. Lambert** explained that the next election would not be until November, 2006 and that the county cannot wait that long. They continued their discussion as to the pros and cons of appointed versus elected judges.

REP. KOOPMAN then referred some of the same questions to Mr. Salvagni for clarification.

REP. SONJU spoke with the sponsor about the fiscal note, specifically Line 5, regarding court reporters and the equipment necessary to do their job.

REP. HARRIS spoke with **SEN. WHEAT** about the appointment of Judge Brown; he was interested if there was any criticism regarding the appointment versus waiting for an election. **SEN. WHEAT** stated, "No, absolutely not." The **REPRESENTATIVE** then addressed Ms. Brown regarding the same issue. **Ms. Brown** replied that the selection process is very arduous, nonpartisan and very thorough.

REP. NOENNIG spoke with the sponsor about the caseload per District Court Judge throughout the State.

REP. RICE asked the **SENATOR** about the lack of presence by the Court Administrator for the hearing.

{Tape: 1; Side: A; Approx. Time Counter: 315 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 100}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 18 and stated that this is not a political or partisan issue.

{Tape: 1; Side: B; Approx. Time Counter: 100 - 120}

HEARING ON SB 493

Sponsor: SEN. JESSE LASLOVICH, SD 43, ANACONDA

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 493**, Revise motor vehicle liability insurance laws. **SEN. LASLOVICH** spoke to the committee about the number of people who do not obtain liability insurance for their vehicles. This bill would provide among other things, that a survey be done by the Department of Justice that would involve people who are convicted of having no liability insurance.

{Tape: 1; Side: B; Approx. Time Counter: 120 - 262}

Proponents' Testimony:

Brenda Nordlund, Motor Vehicle Division, assistant, Attorney General, rose in support and spoke to the committee about Section 4 as it related to the SR 22 and SR 26 types of insurance. She spoke at length about the number of vehicles driven with no liability and that many of current deterrents do not work.

EXHIBIT(juh67a03)

{Tape: 1; Side: B; Approx. Time Counter: 262 - 430}

Roger McGlenn, Independent Insurance Agents of Montana, spoke in support of SB 493 and began his testimony by explaining how this bill would interact with 61-6-133, MCA, regarding uninsured vehicles.

{Tape: 1; Side: B; Approx. Time Counter: 430 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29}

Dwight Easton, Farmers Insurance Company, rose in support of SB 493 and stated that this will address the issue of SR 22 insurance. **Mr. Easton** also spoke for Jacqueline Lenmark, American Insurance Association, who is also in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 29 - 43}

Greg VanHorsen, State Farm Insurance, spoke in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 47}

Larry Kibbee, Property Casualty Insurance of America, spoke in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 47 - 53}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT spoke with Ms. Nordlund about the 15,000 violations that she had spoken of in her testimony. **Ms. Nordlund** stated that many of these violations are convictions of people who do not have insurance under 61-6-304, MCA. She proceeded to inform the committee of the fines and penalties that an offender would receive from a first offense, etc.

The **REPRESENTATIVE** continued with his conversation with Mr. VanHorsen. He was interested in the fiscal note and the number of accidents that involve drivers without insurance. **Mr. VanHorsen** was unable to answer many of the questions, but assured the REPRESENTATIVE that the information would be distributed to the committee as soon as possible.

REP. SONJU asked Mr. Easton about the insurance companies opinion as to why people do not have insurance and how that affects insurance companies. **REP. SONJU** queried Mr. Easton about whether or not insurance rates would decrease if this bill were to pass and more people drove vehicles with insurance. **Mr. Easton** replied, "...I cannot say for sure, but if [the insurance companies] have less uninsured drivers, there may be lower costs."

REP. NOENNIG questioned Ms. Nordlund about Section 15 as to the penalties and fines that would be levied for the violation of no insurance. They continued their conversation as to why people do not have insurance, and if offenders do not have "regular" liability insurance, why they are not purchasing SR 22 insurance.

REP. MCGILLVRAY spoke with Ms. Nordlund about the survey that is indicated in SB 493. **Ms. Nordlund** replied that the survey would be backward looking. **SEN. LASLOVICH** stood and explained that the survey would be applicable to first-time offenders.

REP. KOOPMAN questioned Mr. McGlenn about the insurance companies insuring either the driver or the vehicle. **Mr. McGlenn** replied that the insurance companies insure both and that the insurance "follows" the vehicle. **REP. KOOPMAN** was interested if there was a "bare bones" insurance that low-income people could purchase. **Mr. McGlenn** responded, "State law already requires a minimum insurance package of \$25,000 per person with \$10,000 property damage, which is already very low and 'bare bones'."

The REPRESENTATIVE was also interested in the idea of people who are uninsurable and whether or not they could self-insure.

Mr. McGlenn replied that the law in Montana does not allow self-insuring; but there is a universal assigned-risk program where the next insurance company in the rotation must insure that person, regardless. **REP. KOOPMAN** continued with his questions regarding the language on Page 3, Lines 25-28, referencing changing the word "shall" to "may." **SEN. LASLOVICH** and **Ms. Nordlund** both stated that they saw no problem with a Judge using his or her own discretion in the penalty phase of sentencing.

REP. STOKER began his questions to Ms. Nordlund regarding the 15,000 violations and what the survey proposes to accomplish.

REP. SONJU had a short question for Mr. Vanhorsen regarding the uninsured motorist. **Mr. VanHorsen** stated that 10% of insurance claims are for uninsured motorists. They then discussed the option for the SR 22 insurance.

REP. NOONAN spoke with the sponsor regarding SB 493 and asked if the purpose of the bill was to increase the compliance among uninsured drivers. **SEN. LASLOVICH** stated the frustration level among people involved in automobile accidents has become too high and that hopefully this bill would help.

REP. RICE asked Mr. VanHorsen to supply the committee with information about the possible increase of liability insurance purchased since September 11, 2001.

REP. RICE then questioned Ms. Nordlund about the increased fines and penalties and if there is a "point of no return" for people who cannot afford insurance and they cannot afford to pay the fines. **Ms. Nordlund** replied, "...she agreed to a point; however, driving is a privilege."

{Tape: 2; Side: A; Approx. Time Counter: 53 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 57}

Closing by Sponsor:

SEN. LASLOVICH closed the hearing on SB 493 and stated that the deletion of the second offense or subsequent violation would be acceptable.

He further commented about the argument made for the low-income problem, "...it amazes me how people who are concerned about the cost of car insurance for low-income people and that they [low-income people] are not able to afford to purchase this insurance,

[but these same people] are not concerned about the people who cannot afford to purchase health insurance for themselves or their kids."

SEN. LASLOVICH concluded his closing by stating, "People who follow the law are paying for those who do not." The SENATOR was amenable to the deletion of the survey from SB 493.

{Tape: 3; Side: A; Approx. Time Counter: 57 - 137}

HEARING ON SB 207

Sponsor: SEN. GARY PERRY, SD 35, MANHATTAN

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 207**, Electronic monitoring of sexual offenders. The **SENATOR** explained SB 207 to the committee and stated that there is a pilot program in the State of Tennessee that mirrors SB 207.

EXHIBIT(juh67a04)

{Tape: 3; Side: A; Approx. Time Counter: 137 - 211}

Proponents' Testimony:

Marty Lambert, Montana County Attorney Association, rose in support and stated that this is a good first step. He stated that there are not that many Level Three sex offenders with the Department of Corrections; so this would be a good time to start a "pilot program." This bill would help judges to determine who should be a Level Three sex offender.

{Tape: 3; Side: A; Approx. Time Counter: 211 - 243}

Mike Ferriter, Department of Corrections, rose in support of SB 207 and stated that the monitoring capabilities would be outstanding.

{Tape: 3; Side: A; Approx. Time Counter: 243 - 274}

Pam Bucy, assistant Attorney General, rose in support of SB 207 and stated that many states are proposing this type of legislation especially in the Eastern and Southeastern States.

This bill will attach this specified penalty to the sentencing portion, not the administration portion of the sentence; therefore, there would be no problem with due process.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Ms. Bucy about the methodology with Level Three sex offenders and that, "...they have a higher rate of recidivism, so why not lock them up forever." **Ms. Bucy** replied that current sentencing structure does not always apply and so offenders may not be kept in Montana State Prison forever. The REPRESENTATIVE was interested in whether or not the device could be removed. **Ms. Bucy** replied, "...if they do remove the device, that makes for very strong circumstantial evidence."

REP. KOOPMAN continued with questioning the sponsor about the civil liberty and due process issues that may arise with SB 207.

REP. MCGILLVRAY spoke with Ms. Bucy and Mr. Ferriter about what is currently being done regarding monitoring and the new technology that is available using both phone lines and the GPS system.

REP. NOENNIG questioned Ms. Bucy about the registration of Level Three sex offenders even after they have served their sentence. **Ms. Bucy** replied that they do register through the administrative process. They continued their conversation about due process and how this bill would enable them to be sentenced to wearing this device through the sentencing process, not the administrative process.

REPS. STOKER and **SONJU** finished the question portion regarding the costs related to the wearing of this device, (\$8.50 daily) and that the cost could be paid by the offender as a condition of the probation or parole.

{Tape: 3; Side: A; Approx. Time Counter: 274 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 155}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 207 and stated to the committee that originally, he had wanted to have all sexual offenders wear this device but the fiscal note was too high. If an offender removes the device, there would be further evidence to hasten the prosecution of an offender.

{Tape: 3; Side: B; Approx. Time Counter: 155 - 255}

EXECUTIVE ACTION ON SB 18

(Please Note: REPS. LANGE and WILSON absent from the room.)

Motion/Vote: REP. HARRIS moved DO CONCUR. Motion carried 17-1 by voice vote with REP. EVERETT voting no. (REPS. LANGE and WILSON voted by proxy vote.) (REP. HARRIS to carry)
{Tape: 3; Side: B; Approx. Time Counter: 255 - 332}

EXECUTIVE ACTION ON SB 114

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

Motion: REP. HARRIS moved that SB 114 BE CONCURRED IN.

Motion: REP. HARRIS moved that SB 114 BE AMENDED.
[EXHIBIT](#)(juh67a05)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Vote: Motion that SB 114 BE AMENDED carried 17-1 by voice vote with REP. KOOPMAN voting no. (REPS. LANGE, WILSON and PARKER voted by proxy vote.)

Motion: REP. HARRIS moved that SB 114 BE CONCURRED IN AS AMENDED.

Discussion:

Mr. MacMaster explained the bill in its entirety to the committee members.

Vote: Motion that SB 114 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. HARRIS to carry.)
{Tape: 3; Side: B; Approx. Time Counter: 332 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 73}

EXECUTIVE ACTION ON SB 385

Motion: REP. STOKER moved that SB 385 BE CONCURRED IN.

Motion: REP. STOKER moved that SB 385 BE AMENDED by CHANGING "INVESTIGATION" to "COMPLAINT" and DELETING "WRITTEN AUTHORIZATION."

Discussion:

REP. CLARK explained the amendment to the committee members.

Vote: Motion that SB 385 BE AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.)

Motion: REP. STOKER moved that SB 385 BE CONCURRED IN AS AMENDED.

Discussion:

The committee discussed the bill with the amendment and spoke about the stories that constituents have shared with them regarding Child Protective Services and Department of Public Health and Human Services.

Vote: Motion that SB 385 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. KOOPMAN to carry.)
{Tape: 4; Side: A; Approx. Time Counter: 73 - 396}

EXECUTIVE ACTION ON SB 470

Motion/Vote: REP. STOKER moved that SB 470 BE CONCURRED IN. Motion carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. NOONAN to carry.)
{Tape: 4; Side: A; Approx. Time Counter: 396 - 415}

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh67aad0.PDF](#))