

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 16, 2005 at 8:03 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jesse Laslovich (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 304, HB 113, HB 730, 3/11/2005
Executive Action: None.

HEARING ON HB 304**Opening Statement by Sponsor:**

REP. DIANE RICE (R), HD 71, opened the hearing on **HB 304**, Revise driver's license laws.

REP. RICE stated that this is a response to nationwide occurrences. She commented that this is a fairly simple bill. She spoke about the issuance of a driver's license for a legal citizen.

Proponents' Testimony:

Brenda Nordlund, Department of Justice (DOJ), stated that she stands in support of a legal presence clause for this bill. This aspect is on Page 4, Line 4 and 5. She spoke about HB 385 and its relation to this bill. She also talked about the exemption sections, as well as the issue of reciprocity. She provided two documents to the Committee which support her testimony.

[**EXHIBIT\(jus58a01\)**](#)

[**EXHIBIT\(jus58a02\)**](#)

Doug Nulle, retired attorney, advised that he supports the security features in this bill. He commented that driver's licenses are utilized for more than just driving. There needs to be security features in this bill.

Harris Himes, Montana Family Coalition (MFC), requested that they support this bill in its entirety.

Jill DeClancy, Montana Eagle Forum, declared that they strongly support HB 304.

Ed Palmalier, citizen of Bitterroot Valley, stated that Montana should not support a crime; illegal aliens are committing a crime by being here. He added that if Montana issues them a driver's license, they become involved in the crime.

Gene Williams, citizen of Bitterroot Valley, attested that the security of this nation is very much in danger. A lot of this is due to the number of illegal aliens in the country, and those trying to get into the country.

Brustein Flenore, citizen of Bitterroot Valley, said she is in favor of this bill, and urge the Committee's support.

Dancing Bear, citizen of Hamilton, asserted that he is in favor of this bill. The problem of illegal aliens is getting progressively worse.

Lester Johnson, citizen of Bitterroot Valley, claimed that this bill makes good sense and he supports it.

Phyllis Lamping, self, stood in support of HB 304.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 18.7}

Questions from Committee Members and Responses:

SEN. CROMLEY inquired of Ms. Nordlund about the requirements for obtaining a driver's license. **Ms. Nordlund** stated that some states allow individuals to obtain a driver's license even if they do not present legal status papers. Utah and Tennessee are two of those states.

SEN. CROMLEY asked if she knew exactly how many states this occurs in. **Ms. Nordlund** asserted that she believes there are approximately 14 states that operate this way. Montana is one of these, and will remain so until this piece of legislation passes.

SEN. CROMLEY posed the example of a driver from Utah being stopped. He wondered if this individual would have to present other legal documents, seeing as how it is not available on the driver's license. **Ms. Nordlund** stated, "That is correct". It becomes a roadside determination as to the legal standing of a citizen.

SEN. O'NEIL inquired about the driver's license issuance with passage of this bill. **Ms. Nordlund** directed the Committee to the prohibition on Page 6. She believed that would answer his question.

SEN. O'NEIL wondered if she would recommend that they amend the bill to allow the security features to be determined by the Department. **Ms. Nordlund** stated, "That would be an okay amendment".

SEN. O'NEIL inquired of the sponsor if she had any response to what Ms. Nordlund stated. **REP. RICE** stated that she is in opposition to the comment that Ms. Nordlund made. She explained her reason in more detail.

SEN. O'NEIL asked how she recommends they negotiate once the new contracted driver's licenses are issued. **REP. RICE** stated that she believes this implementation, once passed through the Senate, will not occur until 2008. She added that they have time to have this debate.

Closing by Sponsor:

REP. RICE asserted that she forgot to inform them that there is an exemption for commercial driver's licenses. They will not be included in this bill. She submitted a document for the record as well.

EXHIBIT(jus58a03)

HEARING ON HB 113

{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 28.4}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, opened the hearing on **HB 113**, Require DNA samples from all felons.

REP. JENT described what would be required of felony convictions with passage of this bill. He commented that DOJ already collects samples on some felonies. He stated that there are 38 states that have statutes similar to this. He spoke about nationwide experiences with this sort of a statute. He explained how this could help prevent crime in the future. This would be paid for by the federal special revenue fund.

Proponents' Testimony:

John Connor, Attorney General's Office, stated that **REP. JENT** is an expert in the area of DNA. He reiterated that currently there is a lot of confusion created at the lab. This would help to clarify how the sample would be utilized.

Jim Kembel, Montana Association of the Chiefs of Police and the Montana Police Protective Association, respectfully requests the Committee's support on this bill; it is a good tool in solving crimes.

Laurie Hutchinson, Crime Lab, provided some information on the processes they go through when obtaining a DNA sample.

Opponents' Testimony:

Peter Fisher, Law Student, Missoula, spoke about the limits and why we need these limits. He discussed the need for less drastic means to fix the problem.

Informational Testimony:

Mike Mahoney, Warden, Montana State Prison, rose as a representative of the Department of Corrections and stated that he would be available for questions.

{Tape: 1; Side: A; Approx. Time Counter: 28.4 - 44.2}

Questions from Committee Members and Responses:

SEN. O'NEIL asked Ms. Hutchinson how much it costs to run a DNA sample. **Ms. Hutchinson** stated that they estimate it costs approximately \$40 per sample.

SEN. O'NEIL inquired how many samples are present in the database. **Ms. Hutchinson** claimed that the database has roughly 2500 samples that have been profiled and entered. There is a total of approximately 7000 samples that are either waiting to be analyzed or have not been analyzed at this point.

SEN. O'NEIL wondered if the \$40 cost includes the swabbing at the police station and so forth. **Ms. Hutchinson** attested that it does not.

SEN. PERRY inquired of the sponsor about the requirement of fingerprinting in the military. **REP. JENT** explained the process and confirmed that it is required.

SEN. PERRY spoke about fingerprinting being very unique in that no two people have the same one. He wondered what the practical difference is between fingerprinting and DNA samples. **REP. JENT** declared that a DNA sample is presented in probabilities. He spoke about the four loci involved in a sample of DNA and how that avails them to study it in detail. He stated that the idea is to establish probability.

SEN. PERRY referred to Mr. Fisher's testimony. He inquired of the practical objection between fingerprints and DNA samples. He wondered if Mr. Fisher is correct in his statement. **REP. JENT** stated that he does not believe Mr. Fisher is correct. He explained his reasoning behind this statement.

SEN. MCGEE inquired of Mr. Connor what an individual has yielded when they agree to provide a sample of DNA. **Mr. Connor** asserted that not all of the rights of that individual are suspended at that point. He explained that an individual loses certain rights, but still has others. He went into further detail.

{Tape: 1; Side: A; Approx. Time Counter: 44.2 - 53.6}

SEN. MCGEE claimed that he has never really seen fingerprinting as an invasive procedure; however, taking a DNA sample does seem invasive. He wondered at which point do they cross over from a law enforcement procedure to a violation of a person's reserved civil rights. **Mr. Connor** spoke about reserved civil rights and stated that there are statutory protections. He also commented that DNA samples are simply more precise.

SEN. MCGEE asked about a situation in which a convicted individual is later found innocent. He wondered what would happen to the DNA sample that was acquired at the time of conviction. **Mr. Connor** stated that he believed the sample would be removed from the database.

SEN. MCGEE inquired of Ms. Hutchinson how an individual's right of privacy is maintained when she is doing her work. He also wondered how long it takes to get a test back when administering the DNA sample. **Ms. Hutchinson** explained the process and effectiveness of the database. She discussed how the federal money was allocated and why. She also stated that if she is working on a sample, and that is all she is working on, she will receive a result in four to five days.

SEN. MCGEE questioned her as to how they protect the privacy of an individual's sample. **Ms. Hutchinson** explained the process they go through when analyzing a person's DNA.

SEN. MCGEE inquired about redundant testing. He asked if he was correct in that they send out two cotton swabs. **Ms. Hutchinson** stated that was correct.

SEN. MCGEE wondered if they process these individually and later compare the results. **Ms. Hutchinson** asserted that they do a lot of quality control to verify that they do not cross different samples. However, they only administer one test.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.2}

SEN. CROMLEY inquired of the sponsor about the relationship between the state database and the federal database. **REP. JENT** believed that law enforcement agents collect the data for the database both on a state and federal level. He redirected the question to Ms. Hutchinson to explain this further. **Ms. Hutchinson** explained the structure of KOTUS, the database system.

SEN. CROMLEY wondered if all the samples in the state would be in KOTUS. **Ms. Hutchinson** stated that is correct; those are the ones at the national level.

SEN. CROMLEY wondered if there would be any more samples from Montana anywhere. **Ms. Hutchinson** stated there would not be any more from Montana convictions.

SEN. CROMLEY wished to clarify that they no not need to go out of the state for testing. **Ms. Hutchinson** asserted that is not true; they do out-source the samples of convictions. She also wished to speak about DNA samples versus fingerprints.

SEN. O'NEIL asked Ms. Hutchinson about the number of samples in KOTUS. He wondered if it was possible for there to be samples somewhere else. **Ms. Hutchinson** reiterated that there are two other categories at the national level.

SEN. SHOCKLEY inquired of Mr. Connor if there will be a significant increase in the data with the utilization of DNA. **Mr. Connor** believes that it is true that there would be a lot more information with this form of identification.

Closing by Sponsor:

REP. JENT provided some examples of what is, and what is possible in the future through DNA testing. He added that this could help solve cold cases.

HEARING ON HB 730

{Tape: 1; Side: B; Approx. Time Counter: 5.2 - 16.5}

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 730**, Revise judicial bypass provisions under parental notice of abortion act.

REP. LANGE directed the Committee to specific portions of the bill and explained why he chose to change the language. He spoke about his reasons for bringing this bill forward.

Proponents' Testimony:

Gregg Trude, Right To Life of Montana, spoke about minors coming from other states to have abortions. He commented that this is about parental rights.

Susan Gliko, post-abortive woman, asserted she is very involved in the post-choice movement. She stated that young women that have abortions are more likely to suffer emotionally than adult women. She provided a document to support her testimony.

[EXHIBIT\(jus58a04\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.7}

Harris Himes, Montana Family Coalition, stated that their constituents are firmly behind **REP. LANGE** and this bill.

Mary Fox, citizen of Deer Lodge, asserted that she is also a post-abortive woman. She talked about the issue of fear and shame that goes along with pregnancy. This bill goes to the issue of parental rights. She provided a document to the Committee as well.

[EXHIBIT\(jus58a05\)](#)

Rachel Roberts, Montana Family Foundation, spoke about the Child Custody Transport Act, and its relation to this bill.

Scout Murphy, Carroll College student, representing Eric Sheidermayer, Montana Catholic Conference, stated that the Montana Catholic Conference rises in strong support of HB 730.

Jackie Trude, Montana Eagle Forum, relayed a personal story which adheres to this issue.

{Tape: 2; Side: A; Approx. Time Counter: 7.7 - 15.5}

Lanie White, concerned citizen, believed that parents have the best interests of the child, and it is important that they be aware of what their child is going through.

Vila Shields, stay-at-home mother, stated that abortions are not safe. It is a parent's obligation to keep their children safe. Parents should be aware of anything that involves their child, including an abortion.

Kim Sinrud, citizen of Bozeman, asked the Committee for their help. She stated that when her child is a teenager, she will not be available 24 hours a day to make sure she is making the right decisions. She urged the Committee's support.

Irene Fennelson, citizen of Helena, stated that she would like to see parents and children work together as a team.

Phyllis Lamping, citizen of Helena, urged the Committee to pass this bill.

Bonnie Zapata, citizen of Helena, strongly supports this bill.

{Tape: 2; Side: A; Approx. Time Counter: 15.5 - 24}

Opponents' Testimony:

Jan Van Riper, ACLU of Montana, referred to SB 330 and reiterated that there are two minor changes to this bill. She discussed these changes and how they may not address the unconstitutionality of the language. She also read a passage from a court decision which speaks to this issue.

Jeri Duran, Planned Parenthood of Montana, stands in opposition to this bill. They feel it is unnecessary as well as being unconstitutional.

Kate Cholewa, NARAL Pro-Choice Montana, stated that they oppose this bill. She provided a comment on testimony from several of the proponents.

Brad Martin, Montana Democratic Party, asserted that there is a constitutional problem with this bill.

David Jersey, concerned citizen, believes that this bill is unconstitutional. He does not agree with the language in it.

Informational Testimony: None.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 10.5}

Questions from Committee Members and Responses:

SEN. SHOCKLEY inquired of the sponsor about the proposed amendments to the bill. **REP. LANGE** does not see a problem with the amendments changing the intent of the bill.

SEN. SHOCKLEY wondered what the vote in the House was on this bill. **REP. LANGE** asserted that it was 50-49.

SEN. SHOCKLEY asked Ms. Duran if doctors will do abortions on minors without a parental consent or a court order. **Ms. Duran** claimed that at a certain age, they will do the procedure.

SEN. SHOCKLEY asked what the cut-off age is. **Ms. Duran** stated that the age is 15.

SEN. SHOCKLEY confirmed that if a 15-year old girl comes in, a doctor will not have a problem with it. **Ms. Duran** stated that is correct.

SEN. SHOCKLEY inquired of Ms. Van Riper about the language in regard to the proper constitutionality. **Ms. Van Riper** attested that she believes there is no possible way to pass this bill due to the court decision.

SEN. SHOCKLEY spoke about the rights of persons, not adults, in relation to the Wickland case. **Ms. Van Riper** stated that it is open to interpretation due to the definition of a fetus.

SEN. SHOCKLEY asked about a specific portion of the constitution. **Ms. Van Riper** claimed that part of the constitution is addressed in the Wickland case.

SEN. SHOCKLEY inquired if this was a district court case. **Ms. Van Riper** stated that it was a district court case that was appealed to the Montana Supreme Court, then the Attorney General of Montana motioned to have it dismissed.

{Tape: 2; Side: B; Approx. Time Counter: 10.5 - 18.9}

SEN. MCGEE asked Ms. Van Riper to direct him to the area in the constitution that discusses abortion. **Ms. Van Riper** spoke about the Montana constitution and the right of privacy clause, as well as the personal autonomy privacy.

SEN. MCGEE wondered if the right of privacy clause is conditional. **Ms. Van Riper** asked him to clarify "conditional".

SEN. MCGEE wondered about the right of privacy without the showing of a compelling state interest. He believed this provided the issue of "conditional". **Ms. Van Riper** spoke about the issue of this topic.

SEN. MCGEE wondered if the Montana Supreme Court has ever established a procedure for establishing a compelling state interest. **Ms. Van Riper** asserted that she is not sure there is a procedure written in stone; however, there have been case laws that have provided a compelling state interest.

SEN. MCGEE reiterated that each case is handled individually with this issue at hand. He commented that there is no written formula for this process when writing a bill. **Ms. Van Riper** stated that is largely true. There are a lot of factors to take into consideration.

SEN. MCGEE wondered if it is possible to pass a piece of legislation that met with considerable compelling state interest. **Ms. Van Riper** stated that she would have to agree with him.

SEN. MCGEE asked if it is correct that the constitutional right to an abortion is in the right of privacy act of the constitution. **Ms. Van Riper** stated that is correct, and added that the word "privacy" does not tell them a lot.

SEN. MCGEE asked if it is ACLU's contention that a 12-year old girl is as competent as an adult in making this type of a decision. **Ms. Van Ripen** attested that she would not, on behalf of ACLU, agree with that statement. She added that one would need to look at the whole context, and make a judgement from that.

SEN. MCGEE asked then if he misunderstood her testimony. He believed that she stated that adolescent women are competent to make these decisions. **Ms. Van Ripen** asserted that she was not going to say that all 12-year olds have the requisite to determine if they want to bring a child to term, on behalf of ACLU.

SEN. MCGEE inquired of Ms. Van Ripen for a definition of an adolescent woman. **Ms. Van Ripen** stated that what she read to him was a court decision. They came to the conclusion that minor females are competent to make these decisions; that was not testimony on behalf of ACLU.

SEN. MCGEE repeated a phrase from her testimony and asked Ms. Van Ripen to clarify what the intent was. **Ms. Van Ripen** stated that what **SEN. MCGEE** stated is true.

SEN. MCGEE asked her to define adolescence. **Ms. Van Ripen** reiterated that for purposes of the discussion it would be a minor in the age of child-bearing years.

SEN. MCGEE asked if there is a universal definition of this with the ACLU organization. **Ms. Van Ripen** stated that she does not have an answer to that.

SEN. MCGEE inquired of **REP. LANGE** if he would have a problem with an amendment that provides that this issue is a compelling state interest, for any potential lawsuits in the future. **REP. LANGE** stated that he is generally pretty flexible on bills and amendments. He said he would not clearly object to that. He discussed his intent of this bill in further detail.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 6.2}

SEN. PERRY asked Mr. Jersey about his testimony. He wondered about his statement that, "this is a meaningless debate". **Mr. Jersey** claimed that is purely his opinion.

SEN. PERRY wondered why he believes this is a meaningless debate, and if that is true why he is here at all. **Mr. Jersey** stated that he believes the debate on this bill is meaningless; however, the debate on the larger issue is not. He believes that the bill is meaningless, rather than the debate.

SEN. PERRY wished to voice an objection to the fact that the Executive Director of the Montana Democratic Party left the hearing.

CHAIRMAN WHEAT acknowledged this objection and moved on.

SEN. MOSS inquired of Ms. Van Riper about a 12-year old's ability to carry out a pregnancy versus having an abortion. **Ms. Van Riper** asserted that she believes a 12-year old child is just as competent as an adult to make these decisions either way.

SEN. MOSS asked Ms. Duran to repeat the types of counseling one receives. **Ms. Duran** explained this process at Planned Parenthood.

SEN. MOSS asked Ms. Duran to explain the levels of medical training and degrees for the individuals at her clinic. **Ms. Duran** provided this information to her best knowledge.

{Tape: 3; Side: A; Approx. Time Counter: 6.2 - 15.5}

SEN. ELLINGSON inquired into the procedural status of the Wickland case. He wondered if this was the initial case in which an appeal was taken to the Supreme Court. **Ms. Van Ripen** stated that is correct.

SEN. ELLINGSON wondered if it was dismissed because of another case. **Ms. Van Ripen** said that is also correct. She stated that case was Armstrong v State.

SEN. SHOCKLEY asked the sponsor about Section 15 of the constitution in which it would protect the privacy of minors. **REP. LANGE** asserted that is correct.

SEN. MCGEE asked if the Wickland case was dismissed by the Supreme Court, or if it was brought to the Supreme Court. **Ms. Van Ripen** described that it went to the Supreme Court and held there while they heard another case. Upon that decision, they dismissed the Wickland case.

{Tape: 3; Side: A; Approx. Time Counter: 15.5 - 18.2}

Closing by Sponsor:

REP. LANGE stated that this is intended to look at the best interests of the child. This kind of an issue deserves to be questioned.

ADJOURNMENT

Adjournment: 10:42 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

KIM LEIGHTON, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus58aad0.PDF](#))