

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 14, 2003 at 9 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 257, 3/10/2003; SB 39,
3/10/2003; SB 263, 3/10/2003
Executive Action: SB 257

HEARING ON SB 257

Sponsor: SENATOR MIKE COONEY, SD 26, Helena

Opening Statement by Sponsor:

SENATOR COONEY opened on SB 257. He stated that this bill would require additional notice of time deadlines in child abuse and neglect proceedings.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 19}

Proponents' Testimony:

Shirley Brown, Division Administrator, Child Support Services, supported SB 257. She stated that time frames are crucial in accessing federal funds.

Mike Barrett, Former Town Councilman, Helena, supported SB 257.

EXHIBIT (juh54a01)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GALLUS asked Mr. Barrett where he was a former town councilman. Mr. Barrett responded in District 4, Helena.

Closing by Sponsor:

SENATOR COONEY closed on SB 257. He stated that Chief Justice Karla Gray meant to appear as a proponent on SB 257 but was unable to make it. She wanted the Committee to know she would be available for questions.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 100}

HEARING ON SB 39

Sponsor: SENATOR DALE MAHLUM, SD 35, Missoula

Opening Statement by Sponsor:

SENATOR MAHLUM opened on SB 39. He stated that this bill prohibits open containers in vehicles. He stated this bill is necessary in order to receive the maximum federal highway construction funds and for safety issues.

{Tape: 1; Side: A; Approx. Time Counter: 101 - 162}

Proponents' Testimony:

Dave Galt, Director of Department of Transportation, supported SB 39. He stated the time has come to pass this bill.

Governor Judy Martz, Helena, supported SB 39. Governor Martz stated that this bill would improve the safety and health of all Montanans by banning open containers. Last April, she appointed members to serve on an alcohol, drug and tobacco task force to address drunk driving. SB 39 is a part of that legislation. She emphasized that driving is a privilege and can be taken away. Drunk driving puts all at risk. Open containers are a temptation to the drivers. She asked the Committee to take quick action and pass SB 39. She stressed that if SB 39 is not passed, Montana would have to transfer \$5.6 million out of the highway construction fund to the highway safety fund. Forty-two jobs are provided by each million in the highway construction fund. She firmly believes the Legislature must serve as a role model by not allowing open containers in their vehicles.

{Tape: 1; Side: A; Approx. Time Counter: 165 - 253}

George Corn, Ravalli County Attorney, supported SB 39. He stated that *Animal House* was a documentary and not a movie. He stressed that we have all experienced tragedies of alcohol-related crashes which this bill would help eliminate.

{Tape: 1; Side: A; Approx. Time Counter: 249 - 295}

Allie Bovingdon, Assistant Attorney General, Department of Justice (DOJ), supported SB 39.

Don Hargrove, Montana Nicotine Services Provider, supported SB 39.

Carrie Hegreberg, Montana Contractor's Association, supported SB 39. He emphasized that if one life is saved by this bill it is worth it. He asked the Committee to keep the money in the construction fund by passing SB 39.

{Tape: 1; Side: A; Approx. Time Counter: 320 - 481}

Mona Jamison, Boyd Andrews Community Services, Helena, supported SB 39. She emphasized that driving is a privilege. She stated this bill sends a strong, common sense message to our youth that we will not tolerate drinking and driving.

{Tape: 1; Side: A; Approx. Time Counter: 481 - 513}

Julie Ippolito, Mother's Against Drunk Drivers (MADD), Helena, supported SB 39. She stated that Montana is only one of five states without an open container law. This bill would address a lot of the issues the Committee brought up at the House bill hearing.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 30}

"Spook" Stang, Montana Motor Carriers, supported SB 39. He stressed that the motor carriers concern is highway safety. He stated that 75 percent of motor carrier accidents are caused by other drivers. He felt strongly that highway construction funds need to go to the pavement.

{Tape: 1; Side: B; Approx. Time Counter: 30 - 53}

Jim Kembell, Montana Association of Chiefs of Police, supported SB 39.

Opponents' Testimony:

John Iverson, Helena, opposed SB 39, stressing that drunk driving is already illegal. He stated this bill is nonsensical. He stated if we put guardrails across Montana all over the roads, it would save a life. It would be financially infeasible but may save a life. He stresses we take reasonable risks every day such as crossing the street to attend this hearing. He asked whether Montana is still a sovereign State or an arm of the federal government. He asked whether he should even come before the Legislature; whether the Legislature is relevant. He posed whether he should drive to Washington, D.C. since it appears they are making Montana's decisions. He respectfully disagreed with anyone who believed this legislation would save lives. He

stressed that as soon as a drunk passenger kills someone he cares about, he will change his position.

{Tape: 1; Side: B; Approx. Time Counter: 54 - 144}

Mark Staples, Montana Tavern Owner's Association, Helena, opposed SB 39. He stated that they supported most of the DUI legislation but took no position on this bill when it was in the Senate. He stressed that a National survey was taken and it was more of an inquisition. They asked pre-drawn conclusions as if to state that law enforcement and judges could have been more skilled; that the conviction rate could have been higher; that the legislature should have been tougher. He stated this bill will not address the DUI problem.

Christy Blazer, Montana Beer and Wine Wholesalers Association, supported SB 39. She stated some measures need to be taken to prevent drunk driving but this bill would not address the problem. She emphasized that Montana should pass the good measure bills such as the .08 and repeat offender bills. This bill is duplicitous and unnecessary.

{Tape: 1; Side: B; Approx. Time Counter: 141 - 275}

Brad Gerrity, Bartender, Overland Express, opposed SB 39. He has tended bar the past 16 years. His experience is that people will get a go cup or slam it right there. He stated the feds should not dictate what Montana should do on this issue. He closed stating, "The mountains are high, the valleys are low, and the city is far, far away."

{Tape: 1; Side: B; Approx. Time Counter: 276 - 289}

Informational Testimony: None

Questions from Committee Members and Responses:

The Committee discussed different scenarios of possession of open containers, whether a passenger or a driver is in possession, whether it is near the driver, locked in the glove box or the trunk or not. **CHAIRMAN SHOCKLEY** stated that lots of cities have open container laws. He asked Mr. Corn whether he would prefer to have one mile of highways or 45 misdemeanor probation officers. **Mr. Corn** stated that misdemeanor probation officers are more important because it would deal with the problem at the front end alleviating more serious problems on the back.

CHAIRMAN SHOCKLEY asked Mr. Galt about the DOT road budget for this year. **Mr. Galt** responded it is \$275 million with 30 million left at the year's end. **CHAIRMAN SHOCKLEY** commented that on the safety issue, 1.5 million would build about a mile of highway. **Mr. Galt** stated that is approximately correct and it would not build a four lane highway. **CHAIRMAN SHOCKLEY** stated that Mr. Galt agreed if this bill was tabled, the money could be used for funding probation and parole officers. He asked Mr. Galt if this bill dies, and HB 2 passes with the Shockley Amendment, would he obey the law and fund the 45 positions. **Mr. Galt** stated he would not and that he would put the money into hazard elimination as House Bill 2 has no authorization or appropriation in it. **Mr. Galt** felt it would be up to the Governor as to how the money would be spent.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 159}

Closing by Sponsor:

SENATOR MAHLUM closed on SB 39 stating that safety is the number one priority.

{Tape: 2; Side: A; Approx. Time Counter: 160 - 190}

HEARING ON SB 263

Sponsor: **SENATOR DWAYNE GRIMES, SD 20, Clancy**

Opening Statement by Sponsor:

SENATOR GRIMES opened on SB 263. He stated this bill creates a child hearsay exception in criminal proceedings. It would allow the use of child hearsay testimony. This bill is a restatement of current case law.

{Tape: 2; Side: A; Approx. Time Counter: 210 - 231}

Proponents' Testimony:

Judy Wang, City Attorney, Missoula, supported SB 263. She stated that she has prosecuted criminal cases for 16 years. She stressed that it is a constitutional right to confront one's accusers. The court looks at allowing hearsay when the child is a victim of a sexual or violent assault or a witness to either. In order for this bill to apply, the statement of the child must be at issue.

EXHIBIT (juh54a02)

{Tape: 2; Side: A; Approx. Time Counter: 232 - 410}

Tanda Moon, supported SB 263. She stated that she is the mother of a child victim. She emphasized that the perpetrator is in control and children will lie to the police to protect the perpetrator.

{Tape: 2; Side: A; Approx. Time Counter: 411 - 461}

Jim Ivan Moon, supported SB 263. He stated that he is 11 years old and that his father abused him. He stated that he was not able to tell on his father when he was younger. He urged a do pass.

{Tape: 2; Side: A; Approx. Time Counter: 461 - 513}

Wendy Gay, supported SB 263. She stated she is the mother of a child victim who was abused by the father. She stressed that the betrayal of the child by the father was devastating for her four-year-old daughter. She believed that had her daughter been forced to testify live in court, she would have suffered severe, long-term psychological harm. She felt fortunate that her daughter was allowed to testify by video recording.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 30}

Allie Bovingdon, DOJ, supported SB 263. She stressed this bill is a good compromise to protect kids and safeguard the rights of defendants.

George Corn, Ravalli County Attorney, supported SB 263. He stated that this is a very important bill which makes it clear what judges need to do regarding child hearsay. He emphasized that this bill would merely codify case law and what is usually done.

{Tape: 2; Side: B; Approx. Time Counter: 30 - 60}

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported SB 263.

EXHIBIT (juh54a03)

{Tape: 2; Side: B; Approx. Time Counter: 60 - 66}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NEWMAN asked what a judge needs to determine for a child to testify and whether that is similar to the determination process in this bill is similar. **Ms. Wang** stated in order for a child to testify, a judge would have a competency hearing. The court would try to determine if the child has the ability to speak, recall, and understand truth from a lie. This bill would be a four factor analysis to determine if child hearsay is admissible. She emphasized the SB 263 process is much more complex than a competency hearing.

Ms. Wang explained that this bill closely mimics the JCE case. JCE was a 1998 incest case affirmed in the Osborne, sexual intercourse case. Both cases involved child victims of sexual or violent crimes. JCE is a very important case and deserves to be codified because a statute is more convincing than a case.

{Tape: 2; Side: B; Approx. Time Counter: 67 - 167}

REP. RICE commented about the day care center in Washington where the children recanted their testimony and she expressed concern about this scenario. **Ms. Wang** responded that she was generally familiar with that case. She stated the court would look at whether the statement was made to more than one witness, how much time passed since the incident and the statement, the relationship between the witness and the child making the statement and whether the witness has any reason to falsify. **Ms. Wang** stated those types of issues which REP. RICE brought up are looked at very carefully.

{Tape: 2; Side: B; Approx. Time Counter: 168 - 253}

REP. CLARK asked what protections exist for kids on cross examinations. **Ms. Wang** responded that the prosecution would argue that no cross examination is allowed.

Closing by Sponsor:

SENATOR GRIMES closed on SB 263. He stated that he spared the Committee the horrific act which drove this bill. He stressed that 40 other states have this law on their books.

{Tape: 2; Side: B; Approx. Time Counter: 253 - 372}

EXECUTIVE ACTION ON SB 257

Motion/Vote: REP. FACEY moved that SB 257 BE CONCURRED IN.
Motion carried 18-0, by voice vote. Carried by REP. HARRIS.

{Tape: 2; Side: B; Approx. Time Counter: 372 - 442}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh54aad)