

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 3, 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: None, 1/12/2005
Executive Action: HB 265, 231-Tabled;
HB 285, 245, 356, 349, 363-Do Pass As Amended

EXECUTIVE ACTION ON HB 265

Motion: REP. STOKER moved that HB 265 BE AMENDED with AMENDMENT 265-01.

(Please Note: HB 265 was postponed on 2/2/05 with a Do Pass As Amended motion on the table.)

[EXHIBIT \(juh27a01\)](#)

Discussion:

Mr. MacMaster explained the amendment to the committee. The committee discussed the amendment for clarification purposes.

Vote: Motion failed 6-12 by voice vote with REP. BECKER, REP. MCGILLVRAY, REP. NOENNIG, REP. RICE, REP. STOKER, and REP. WARD voting aye.

Substitute Motion/Vote: REP. BECKER made a substitute motion that HB 265 BE TABLED. Substitute motion carried by voice vote. {Tape: 1; Side: A; Approx. Time Counter: 0 - 258}

EXECUTIVE ACTION ON HB 285

Motion: REP. STOKER moved that HB 285 BE AMENDED with AMENDMENT 285-02.

(Please Note: HB 285 was postponed on 2/2/05 with a Do Pass As Amended motion on the table.)

[EXHIBIT \(juh27a02\)](#)

Discussion:

Motion: REP. KOOPMAN moved that HB 285 BE AMENDED by SEGREGATING SECTIONS 1 and 4 FROM 2 and 3.

Discussion:

The committee members discussed the immunity provisions that would be needed as in relationship to the gross negligence referenced.

Vote: Motion failed 9-9 with a voice vote on SECTIONS 1 and 4.

Vote: Motion carried 17-1 with a voice vote on SECTIONS 2 and 3.

Motion/Vote: REP. STOKER moved that HB 285 DO PASS AS AMENDED. Motion carried 16-2 by voice vote with REP. HARRIS and REP. WINDHAM voting no.

{Tape: 1; Side: A; Approx. Time Counter: 258 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 103}

EXECUTIVE ACTION ON HB 245

Motion: REP. STOKER moved that HB 285 DO PASS.

Discussion:

Motion: REP. HARRIS moved that HB 245 BE AMENDED with AMENDMENT 245-02.

[EXHIBIT](#) (juh27a03)

Discussion:

The committee discussed the amendment with **Mr. MacMaster** explaining it further.

Vote: Motion carried unanimously by voice vote for AMENDMENT 245-02.

Motion/Vote: REP. NOENNIG moved that HB 245 BE AMENDED with a "FRIENDLY" AMENDMENT to change 17 years old to 16 years old. Motion carried unanimously by voice vote.

Motion/Vote: REP. STOKER moved that HB 245 DO PASS AS AMENDED. Motion carried 17-1 by voice vote with REP. WARD voting no. *{Tape: 1; Side: A; Approx. Time Counter: 103 - 379}*

Please Note: The committee members discussed whether or not to do Executive Action on HB 307; however, due to the complexity of the amendments no Executive Action was taken on HB 307.

{Tape: 1; Side: B; Approx. Time Counter: 379 - 401}

EXECUTIVE ACTION ON HB 356

Motion: REP. STOKER moved that HB 356 DO PASS.

Discussion:

Motion/Vote: REP. NOENNIG moved that HB 356 BE AMENDED with AMENDMENT 356-01. Motion carried unanimously by voice vote. [EXHIBIT](#) (juh27a04)

Motion/Vote: REP. NOENNIG moved that HB 356 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 1, Line 30, change word to "acknowledge." Motion carried unanimously by voice vote.

Motion: REP. STOKER moved that HB 356 DO PASS AS AMENDED.

Discussion:

The committee members discussed the "notarized" language in the bill as to the certainty of public safety issues. The discussion also involved whether or not a written copy should be provided to the applicant of what information is to be released.

Motion: REP. BECKER moved that HB 356 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 2, end of Line 1 to insert "...to be given a copy of information." Motion carried by voice vote.

Motion/Vote: REP. STOKER moved that HB 356 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 401 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 227}

EXECUTIVE ACTION ON HB 349

Motion: REP. NOENNIG moved that HB 349 DO PASS.

Discussion:

Motion/Vote: REP. NOENNIG moved that HB 349 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 1, at the end of Line 24, to cross out "an" and insert "good faith," cross out "arising out" and insert "under the sections" and Page 2, Line 8 and 9, the same changes. Motion carried unanimously by voice vote.

Motion: REP. STOKER moved that HB 349 DO PASS AS AMENDED.

Discussion:

Motion/Vote: REP. LANGE moved that HB 349 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 1, Line 21, to delete "in jail." Motion carried unanimously by voice vote.

Motion/Vote: REP. STOKER moved that HB 349 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 227 - 500}

EXECUTIVE ACTION ON HB 363

Motion: REP. PARKER moved that HB 363 DO PASS.

Discussion:

Motion: REP. PARKER moved that HB 363 BE AMENDED with AMENDMENT 363-01.

[EXHIBIT](#) (juh27a05)

Discussion:

The committee discussed the bill and amendment.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. STOKER moved that HB 363 DO PASS AS AMENDED. Motion carried 15-5 by roll call vote with REP. CLARK, REP. KOOPMAN, REP. MCGILLVRAY, REP. RICE, and REP. SONJU voting no. {Tape: 2; Side: B; Approx. Time Counter: 0 - 342}

EXECUTIVE ACTION ON HB 231

Motion: REP. STOKER moved that HB 231 DO PASS.

Discussion:

Motion: REP. LANGE moved that HB 231 BE AMENDED with AMENDMENT 231-01.

[EXHIBIT](#) (juh27a06)

Discussion:

The committee members discussed the amendment with **Mr. MacMaster** explained the language regarding "unborn child."

Vote: Motion carried 10-8 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. NOONAN, REP. PARKER, REP. WILSON, and REP. WINDHAM voting no.

Motion: REP. LANGE moved that HB 231 DO PASS AS AMENDED.

Discussion:

Motion/Vote: REP. LANGE moved that HB 231 BE AMENDED with a CONCEPTUAL AMENDMENT to STRIKE SECTION 9. Motion carried by voice vote.

Discussion:

Motion: REP. LANGE moved that HB 231 DO PASS AS AMENDED.

Discussion:

Motion/Vote: REP. SONJU moved that HB 231 BE AMENDED with a "FRIENDLY AMENDMENT" TO INSERT "20 WEEKS AS UNBORN CHILD." Motion failed by voice vote.

Discussion:

Motion/Vote: REP. KOOPMAN moved that HB 231 BE AMENDED with a "FRIENDLY AMENDMENT" TO INSERT "26 weeks AS UNBORN CHILD." Motion failed 8-10 by a roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, REP. WARD, REP. WILSON, REP. WINDHAM voting no.

Discussion:

Motion/Vote: REP. LANGE moved that HB 231 DO PASS AS AMENDED. Motion failed 8-10 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye.

Motion/Vote: REP. CLARK moved that HB 231 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Counter: 342 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 213}

SUB-COMMITTEE HEARING ON HB 243

Present: REP. NOENNIG, REP. LANGE, REP. GUTSCHE

Also Present: Mr. Gordon Morris, Mr. Jim Smith, Ms. Linda Stoll, Mr. Bill Kennedy, Ms. Pam Bucy, Mr. John Prinki

This SUB-COMMITTEE met to discuss HB 243 in reference to the time-frame involved from the time an offender is found guilty or makes a plea to the time when the written order and the oral order are made and the time for that inmate's incarceration to be paid to the local counties.

Gordon Morris, Montana Association of Counties (MACo), stated that clarification is needed for the statutory basis of sentencing. The Attorney General in a 2001 opinion stated that "...it is upon an oral pronouncement of sentence...." HB 243 would change that to "...date of conviction."

Bill Kennedy, Yellowstone County Attorney, stated that his county's accounting procedure is to bill "after the fact" therefore, the accounting changes would not be a problem.

There was some discussion about the possibility that an offender would want a new trial and/or if the judge vacated a verdict, who would be responsible. The general consensus was that the accounting systems were in place presently so still not a problem.

Linda Stoll, Missoula County, informed the panel that Missoula County has the system in place currently. **Ms. Stoll** also indicated that she would appreciate the effective date of this bill to be July 1, 2005.

Harold Blattie, MACo, gave an explanation to the members that rural counties in Montana are the reason behind this bill. The judge comes when he has a chance to hear the case, when in the meantime the offender "sits" in the county's jail. Those rural counties then must "foot the bill" until pronouncement and DOC takes over.

Linda Stoll stated the problem that Missoula county has is that the jail in Missoula houses out of county inmates and then has no room for inmates from Missoula County.

Jim Smith, Mayor of Helena, Montana County Attorneys Association, stated that this bill will give the DOC incentives to get inmates out of county jails and into Montana State Prison.

Motion/Vote: REP. NOENNIG moved that per the SUB-COMMITTEE's recommendation to SHIFT THE COST BACK TO THE TIME OF PLEA OR THE FINDING OF GUILTY and to CHANGE THE EFFECTIVE DATE TO 7/1/2005 (LINE 8 IN TITLE) be an amendment HB 243. Motion carried by voice vote.

ADJOURNMENT

Adjournment: 11:24 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh27aad0.PDF](#))