

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 23, 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: SB 447, 452, 468, 470, SJR 6,
HB 794, 3/16/2005
Executive Action: None

HEARING ON SB 468

Sponsor: SEN. JEFF MANGAN, SD 12, GREAT FALLS

Opening Statement by Sponsor:

SEN. JEFF MANGAN (D), SD 12, opened the hearing on **SB 468**, Revise law on temporary restraining orders (TROs). **SEN. MANGAN** explained the bill to the committee members regarding a youth that receives a TRO and the ramifications for that youth to participate in school activities.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 39}

Proponents' Testimony:

Debra Silk, Chief Counsel, Montana School Boards Association, spoke to the committee about the situation where a school may try to suspend a youth from school and that the parents may try to intervene in the process referencing 27-19-315, MCA.

{Tape: 1; Side: A; Approx. Time Counter: 39 - 63}

Kathy Brammer, Office of Public Instruction (OPI), explained to the committee that this bill is about, "fairness." She related a story about the Miles City wrestlers who had received TRO's and the impact that had on another school's participation in that school's planned activities.

{Tape: 1; Side: A; Approx. Time Counter: 63 - 111}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG began his questions to Ms. Silk regarding the situation where more groups would request TROs and the issue of "conflicting statements regarding notice to be given." **Ms. Silk** spoke about the schools all knowing the rules beforehand regarding forfeitures of games, etc.

{Tape: 1; Side: A; Approx. Time Counter: 111 - 176}

Closing by Sponsor:

SEN. MANGAN closed the hearing on SB 468.

{Tape: 1; Side: A; Approx. Time Counter: 176 - 185}

HEARING ON SB 470

Sponsor: SEN. DAN HARRINGTON, SD 38, BUTTE

Opening Statement by Sponsor:

SEN. DAN HARRINGTON (D), SD 38, opened the hearing on **SB 470**, Certain supreme court meetings to be open. **SEN. HARRINGTON** spoke to the committee about Article 2, Section 9 regarding open meetings. The SENATOR continued his dialogue regarding his participation as a delegate to the Montana Constitutional Congress in 1972.

He stated that the Montana Supreme Court does not think they are subject to the same rules as the other branches of government regarding open meetings and that SB 470 would mandate that the Supreme Court of Montana would need to adhere to the same open meetings criteria.

{Tape: 1; Side: A; Approx. Time Counter: 185 - 273}

Proponents' Testimony:

Ed Smith, clerk-Montana Supreme Court, rose in support of SB 470 and stated that he had requested SEN. HARRINGTON to bring forth this bill. He spoke to the committee about the recent opening of a small segment of the Supreme Court's meetings; but also stated that there is no guarantee that those proceedings will remain open.

Mr. Smith continued to speak to the committee about the lack of documentation from meetings and that no formal entries from some of those meetings are recorded, etc.

EXHIBIT (juh64a01)

EXHIBIT (juh64a02)

{Tape: 1; Side: A; Approx. Time Counter: 273 - 415}

Colin Stephens, Montana Newspaper Association, rose in support of SB 470 and spoke to the committee about the lack of a formal mandate to require the Montana Supreme Court meetings to be open.

{Tape: 1; Side: A; Approx. Time Counter: 415 - 442}

Jim Fall, Executive Director, Montana Newspaper Association, rose in support and spoke to the committee about a letter he had recently written to Chief Justice Gray.

{Tape: 1; Side: A; Approx. Time Counter: 442 - 469}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. HARRINGTON closed the hearing on SB 470 and stated, "this will put into law what should be in the law."

{Tape: 1; Side: A; Approx. Time Counter: 469 - 500}

HEARING ON SB 447

Sponsor: SEN. JON ELLINGSON, SD 49, MISSOULA

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 447**, Revise initiative and referendum process. **SEN. ELLINGSON** spoke to the committee members about the ballot review process and the delays in the judicial review process regarding counting ballots.

SEN. ELLINGSON informed the committee that SB 447 was requested by the Attorney General's Office.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 70}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General (AG), rose in support of SB 447 and distributed an amendment to the committee.

EXHIBIT (juh64a03)

EXHIBIT (juh64a04)

{Tape: 1; Side: B; Approx. Time Counter: 70 - 84}

Anthony Johnstone, Assistant Attorney General, rose in support of SB 447 and informed the committee that he is in charge of the election review process within the AG's office. **Mr. Johnstone** explained to the committee the fundamentals of the election review process and gave examples of some issues that may arise during this process.

Mr. Johnstone also explained to the committee the amendment and how the amendment would leave the determination to the courts, but would provide information to the voters. The amendment would also not allow argumentative language to be included; however, would allow preambles that are not argumentative to be included.

The challenges for fraudulent numbers in petition signatures would also be addressed.

{Tape: 1; Side: B; Approx. Time Counter: 84 - 195}

Ronda Carpenter-Wiggins, self, spoke in support of SB 447 with the amendments and stated that she works on ballot initiatives and has a first hand knowledge of the balloting process.

{Tape: 1; Side: B; Approx. Time Counter: 195 - 279}

Opponents' Testimony:

Mark Mackin, self, rose in opposition to SB 447 and informed the committee that he has done work on the initiative process and laws for many years. **Mr. Mackin** stated, "...with the AG's amendment, [I] would withdraw [my] opposition to SB 447...."

{Tape: 1; Side: B; Approx. Time Counter: 279 - 311}

Informational Testimony:

Michael O'Brien, Secretary of States Office, spoke to the committee about the current law that requires the AG's office to seek public comment and/or notice and therein is the problem; who the public comment should be sought from.

{Tape: 1; Side: B; Approx. Time Counter: 311 - 347}

Questions from Committee Members and Responses:

REP. NOENNIG spoke with Mr. Johnstone as to who is entitled to a challenge and where is it in the amendment. **Mr. Johnstone** replied that it is at the top of the Page 1 and then proceeded to explain the "dueling" initiatives.

REP. NOENNIG then referred to Ms. Carpenter-Wiggins about the signature gathering language.

REP. CLARK questioned Mr. Johnstone about the language in Amendment B regarding the Secretary of State and the "public notice" provision. They continued their discussion about the number of votes and the review process.

REP. CLARK queried the sponsor to explain the role of the Supreme Court in SB 447.

REP. RICE began her questions to Ms. Carpenter-Wiggins. The REPRESENTATIVE was interested in the elimination of the District Courts in these types of proceedings.

Ms. Carpenter-Wiggins explained that all decisions will "wind up" in the Supreme Court and this would save the courts money. **REP. RICE** then inquired about the elimination of a second opinion for the Supreme Court's consideration; i.e., the District Court opinion. **Ms. Carpenter-Wiggins** replied that the Supreme Court would eliminate the other opinion regardless.

REP. STOKER spoke with Mr. Johnstone about Amendment D, "contested signatures," and whether or not that could be challenged in District Court. **Mr. Johnstone** stated that the District Court would involve the findings of fact, whereas, the Supreme Court cannot do that.

REP. GUTSCHE continued with questions for Mr. Johnstone regarding the language that would allow the problems to be addressed earlier and the gathering of signatures.

{Tape: 1; Side: B; Approx. Time Counter: 347 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 240}

Closing by Sponsor:

SEN. ELLINGSON closed the hearing on SB 447 and informed the committee that he would be amenable to the amendments and that this bill would streamline what the Supreme Court accomplishes.

HEARING ON SB 485

Sponsor: **SEN. JON ELLINGSON, SD 49, MISSOULA**

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 485**, Establish next-of-kin registry. **SEN. ELLINGSON** explained to the committee members that the registry would be held at the AG's Office at a 24-hour accessible web site. This registry would be optional for people without living wills, durable power of attorneys or advanced directives.

[EXHIBIT \(juh64a05\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 240 - 315}

Proponents' Testimony:

Anita Roessmann, Montana Advocacy Program, rose in support and stated that SB 485, "may restore some dignity to some folks." She stated, "...people with disabilities tend to be unmarried and with no children; this bill would allow them to plan for the future...."

EXHIBIT (juh64a06)

{Tape: 2; Side: A; Approx. Time Counter: 315 - 366}

Jessica Grennan, Associated Students of the University of Montana, rose in support of SB 485. She stated that this bill may also relate to students who are away from home with families far away.

{Tape: 2; Side: A; Approx. Time Counter: 366 - 391}

Barb Allen, PRIDE, rose in support and spoke about the unique circumstances as to the "next-of-kin."

{Tape: 2; Side: A; Approx. Time Counter: 391 - 419}

Andrew Huff, ACLU, stated that this is a common sense bill.

{Tape: 2; Side: A; Approx. Time Counter: 419 - 429}

Eric Schiedermayer, Montana Catholic Conference of Bishops, stood in support of SB 485 and said this is a next-of-kin registry, not "akin" to marriage and that this is a registry that could benefit many.

{Tape: 2; Side: A; Approx. Time Counter: 429 - 489}

Ali Bovington, Assistant Attorney General, rose in support of SB 485 and stated that with this bill, "...people would be able to deal with the end of life issues...."

{Tape: 2; Side: A; Approx. Time Counter: 489 - 500}

Terry Kendricks, Montana Human Rights Network, rose in support of SB 485.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 10}

Charles Briggs, Montana Association of Independent Disability Services, rose in support of SB 485.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 14}

Opponents' Testimony: None

Informational Testimony:

David Westlake, St. James Healthcare, spoke to the durable power of attorney.

{Tape: 2; Side: B; Approx. Time Counter: 14 - 34}

Mike Mahoney, Warden, Department of Corrections, rose and spoke to the committee about inmates that can already add next-of-kin registries to their files. **Mr. Mahoney** expressed concern that the inmates may manipulate the provisions in this bill by requesting that the next-of-kin be allowed to visit inmates while in a hospital.

{Tape: 2; Side: B; Approx. Time Counter: 34 - 60}

Questions from Committee Members and Responses:

REP. NOONAN spoke with the sponsor about the rules regarding conflicts within the persons who may have been named the next-of-kin. **SEN. ELLINGSON** stated that the registry would clarify one next-of-kin over the other.

REP. NOENNIG questioned the sponsor about the revocation of one designate over another; with the sponsor replying that is addressed in Section 4 and he would be amenable to an amendment if needed.

REP. STOKER asked **SEN. ELLINGSON** what the definition of next-of-kin is. The SENATOR replied that this is for the registry only.

REP. WARD then queried the sponsor about the registry as it relates to a of power of attorney form. The sponsor replied that this would be a statewide registry.

REP. MCGILLVRAY questioned **SEN. ELLINGSON** about the new advanced directives to be addressed in this bill and if it would be cheaper for people with this new registry. The SENATOR stated that it would be cheaper, with **REP. MCGILLVRAY** commenting, "...it would be cheaper at the taxpayer expense."

REP. SONJU spoke with the sponsor about the new Section 5 regarding an out of state incident and if other states would recognize this registry. **SEN. ELLINGSON** stated that a power of attorney "trumps" the registry. The REPRESENTATIVE discussed with Ms. Bovington the costs that would be incurred by an individual.

REP. NOENNIG was interested in the other states that have a next-of-kin registry. **SEN. ELLINGSON** replied that California has the registry.

REP. CLARK spoke with Ms. Bovington about the benefits of this registry versus current law. **Ms. Bovington** replied that this bill would make this available for all Montanans and there is nothing presently that would be easier.

{Tape: 2; Side: B; Approx. Time Counter: 60 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 225}

Closing by Sponsor:

SEN. ELLINGSON closed the hearing on SB 485 and reminded the committee that there were no opponents to this bill.

{Tape: 3; Side: A; Approx. Time Counter: 225 - 237}

HEARING ON SB 452

Sponsor: **SEN. GARY PERRY, SD 35, MANHATTAN**

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 452,** Penalty for violation of no contact order. **SEN. PERRY** explained the bill to the committee members.

{Tape: 3; Side: A; Approx. Time Counter: 237 - 390}

Proponents' Testimony:

Judy Wang, Missoula City Attorney, spoke in support of SB 452.

EXHIBIT (juh64a07)

{Tape: 3; Side: A; Approx. Time Counter: 390 - 422}

Gregg Willoughby, Lieutenant, Missoula City Police, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 71}

Deborah Brennan, self, spoke to the committee in support of SB 452 and related her own story as an abused wife to the committee members.

{Tape: 3; Side: B; Approx. Time Counter: 71 - 104}

Ali Bovington, Assistant Attorney General, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 104 - 119}

Leslie McClintock, Missoula Office of Planning and Grants, crime victim advocate, rose in support of SB 452 and spoke to the committee about the victims who continue to have a relationship with their domestic violence perpetrators. **Ms. McClintock** also spoke of the level of fear the victims have that is hard for them to express.

{Tape: 3; Side: B; Approx. Time Counter: 119 - 156}

Ethan Leman, Montana Legal Services, spoke to the committee in support of SB 452 and said, "...with the repeat victims and the repeat offenders, any additional layer is significant."

{Tape: 3; Side: B; Approx. Time Counter: 156 - 181}

Nanette Smith, Montana County Attorneys Association, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 181 - 186}

Matthew Dale, Department of Justice, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 186 - 194}

Tootie Welker, self, spoke in support of SB 452.

[EXHIBIT\(juh64a08\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 194 - 224}

Helen Schmidt, Coalition Against Domestic Violence, Richland County, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 224 - 231}

Susan Hanson, Domestic Violence Emergency Services, Polson, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 231 - 238}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 238 - 245}

Maura Costea, Missoula County Crime Victim Advocates, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 245 - 252}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG spoke with Ms. Wang at length about what SB 452 may accomplish and asked Ms. Wang to describe how the procedure progresses once a violent incident occurs. The REPRESENTATIVE referred to Page 1, Lines 25-26.

REP. MCGILLVRAY spoke with the sponsor about the amendment in reference to the 72 hour rule.

REP. CLARK began his questions to Ms. Wang about Page 1, Lines 28-29 regarding the 48 hours language versus the 72 hour language.

REP. WARD spoke with Ms. Wang about a friendly amendment for Page 1, Lines 27-29.

{Tape: 3; Side: B; Approx. Time Counter: 252 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 85}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 452 and spoke to the committee about an incident close to his home in Bozeman,
{Tape: 4; Side: A; Approx. Time Counter: 85 - 104}

HEARING ON SJ 6

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SJ 6**, Study legal services for low and moderate income Montanans. **SEN. WHEAT** read some of the resolution to the committee members and requested an amendment on the Family Treatment Courts.

{Tape: 4; Side: A; Approx. Time Counter: 104 - 180}

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, spoke in support of SJ 6 and stated, "...this is about equal justice for the most vulnerable."

{Tape: 4; Side: A; Approx. Time Counter: 180 - 208}

Klaus Sitte, Montana Legal Services, rose in support of SJ 6 and explained the exhibit that was distributed to the committee. He stated that SJ 6 is about, "...the role of Montana in securing equal access to justice...."

EXHIBIT(juh64a09)

{Tape: 4; Side: A; Approx. Time Counter: 208 - 282}

Ann Gilkey, State Bar Association, rose in support of SJ 6 and spoke to the committee about the Legal Needs Study that has been accomplished recently.

EXHIBIT(juh64a10)

{Tape: 4; Side: A; Approx. Time Counter: 282 - 333}

Kim Abbott, Working for Equality and Economic Liberation (WEEL), rose in support of SJ 6 and stated that this is the first step of many steps.

{Tape: 4; Side: A; Approx. Time Counter: 333 - 362}

Beth Baker, attorney, Access to Justice Committee, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 362 - 390}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 390 - 398}

Donna Goff, self, spoke to the committee about her own story regarding the Self Help Law Project.

{Tape: 4; Side: A; Approx. Time Counter: 398 - 468}

Helen Schmidt, Coalition Against Domestic Violence, Richland County, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 468 - 493}

Eric Shiedermayer, Montana Catholic Conference of Bishops, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 493 - 500}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY spoke with Ms. Gilkey about the information from her that was distributed to the committee members.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 13}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SJ 6 and stated that an amendment would be drafted.

{Tape: 4; Side: B; Approx. Time Counter: 13 - 25}

At the conclusion of the hearing, there was some discussion by the committee regarding SB 139 that was **tabled** previously.

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh64aad0.PDF](#))