

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 17, 2005 at
7:00 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: HB 617, 693, 695, 697, 701, HR 2,
2/10/2005

Executive Action: HB 697, 561-Tabled, HR 2, HB 701-Do Pass; HB 520, 695-Do Pass As Amended; HB 222, 659-"Silver Bullets"

EXECUTIVE ACTION ON HB 561

Motion: REP. HARRIS moved that HB 561 DO PASS.

Discussion:

The committee discussed the bill as to the deterrent factor, mistakes that could be made and the theory that "death is too good" for these offenders.

Vote: Motion HB 561 failed 8-10 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. WILSON, and REP. WINDHAM voting aye. (REPS. EVERETT, KOOPMAN, LANGE, MCGILLVRAY voted by proxy vote.)

Motion/Vote: REP. CLARK moved that HB 561 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 5; Side: A; Approx. Time Counter: 100 - 275}

EXECUTIVE ACTION ON HB 240

Motion: REP. CLARK moved that HB 240 DO PASS. CHAIRMAN RICE did not recognize REP. CLARK'S motion.

{Tape: 1; Side: A; Approx. Time Counter: 275 - 300}

EXECUTIVE ACTION ON HB 520

Motion: REP. WILSON moved that HB 520 DO PASS.

Motion: REP. CLARK moved that HB 520 BE AMENDED on Page 4, Lines 28-29.

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Motion: Motion carried 12-6 by voice vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, and REP. STOKER voting no. (REPS. EVERETT, LANGE, KOOPMAN, MCGILLVRAY voted by proxy vote.)

Motion: REP. CLARK moved that HB 520 DO PASS AS AMENDED.

Discussion:

The committee discussed HB 520 at length.

(REP. EVERETT here, REP. HARRIS absent.)

Motion/Vote: REP. NOENNIG moved that HB 520 BE AMENDED with a Conceptual Amendment for Page 4, Line 30. Motion carried by voice vote. (REPS. KOOPMAN, LANGE, MCGILLVRAY voted by proxy vote.)

Motion/Vote: REP. GUTSCHE moved that HB 520 DO PASS AS AMENDED. Motion carried 12-6 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, and REP. STOKER voting no. (REPS. HARRIS, KOOPMAN, LANGE, MCGILLVRAY voted by proxy vote.)

{Tape: 1; Side: A; Approx. Time Counter: 300 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 175}

HEARING ON HB 693

Sponsor: REP. JACK WELLS, HD 69, BOZEMAN

Opening Statement by Sponsor:

REP. JACK WELLS (R), HD 69, opened the hearing on HB 693, Citizen self-defense and firearms rights. REP. WELLS explained the nine sections of HB 693. The REPRESENTATIVE also related the story of his nephew in Oklahoma.

{Tape: 1; Side: B; Approx. Time Counter: 175 - 500}

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, rose in support of HB 693 and spoke to the committee about the training that he does for the various agencies and departments and how this bill is about inalienable rights. He also related a story to the committee about the woman in Billings who was charged criminally for using her firearm at her home.

[EXHIBIT \(juh39a01\)](#)

[EXHIBIT \(juh39a02\)](#)

[EXHIBIT \(juh39a03\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 218}

Doug Nulle, self, rose in support of HB 693.

{Tape: 2; Side: A; Approx. Time Counter: 218 - 237}

Gilda Clancy, Montana Womens Shooting Association, rose in support and said that she had been trained by Mr. Marbut.
{Tape: 2; Side: A; Approx. Time Counter: 237 - 250}

Harris Himes, Montana Family Coalition, rose in support of HB 693.
{Tape: 2; Side: A; Approx. Time Counter: 250 - 259}

Charles Robison, self, stated that as a student of gun laws, he is in support of HB 693.
{Tape: 2; Side: A; Approx. Time Counter: 259 - 269}

Opponents' Testimony:

Randy Morris, State Personnel Division-Department of Administration, spoke in opposition to HB 693. He stated that there have been 693 workplace homicides nationwide with 487 of them being done by shooting. He also informed the committee that 31% of these deaths are at the Local, State and Federal government workplaces.
{Tape: 2; Side: A; Approx. Time Counter: 269 - 327}

Marty Lambert, Montana County Attorney Association, rose to oppose HB 693 and spoke to the committee members about the bill. HB 693 would give the upper-hand to people who abuse firearms.

Mr. Lambert stated that this bill is a radical departure from laws that have been around for 215 years. He further spoke to the issue of returning the firearms in seizures of property and why that particular statute would be exempted if HB 693 were to pass.
{Tape: 2; Side: A; Approx. Time Counter: 327 - 440}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in opposition to HB 693.
{Tape: 2; Side: A; Approx. Time Counter: 440 - 456}

Wade Sykorski, self, rose in opposition to HB 693.
{Tape: 2; Side: A; Approx. Time Counter: 456 - 500}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN began his questions of Mr. Marbut by asking about an "affirmative defense" in relation to this bill. The REPRESENTATIVE and Mr. Marbut discussed self defense, probable cause and the constitutional right to "bear arms."

REP. HARRIS asked Mr. Marbut to supply the committee a list of the expert witnesses he spoke of, a list of the over zealous prosecutors he was speaking of earlier, and the Billings woman who was charged with assault and intimidation for her use of a firearm at her residence.

REP. NOONAN spoke with the sponsor about the concealed weapons provisions using a holster, etc.

REP. CLARK queried Mr. Lambert about Section 4, Page, 2, Lines 15-16 regarding the seizure of the evidence. **Mr. Lambert** stated that the seizing of a weapon would not be a problem in reference to evidence procurement. They continued their conversation about the seizing of weapons. **Mr. Lambert** remarked that only in domestic violence incidents, are all the weapons taken by law enforcement.

REP. CLARK asked Mr. Lambert if it would be problematic to have firearms in vehicles; **Mr. Lambert** responded, "...he could see both sides of the argument...."

REP. GUTSCHE spoke with John Connor about his familiarity with the story of the Billings woman where she was arrested and about the current statute about justifiable force.

EXHIBIT (juh39a04)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 378}

Closing by Sponsor:

REP. WELLS closed the hearing on HB 693 by saying that when the employees leave their guns at home; it is then that the workplace is not safe. Further, the REPRESENTATIVE stated that this bill would not give the abusers a break regarding firearms. **REP. WELLS** made his final statement and said, "The threat that you may have firearms will deter criminals."

EXHIBIT (juh39a05)

{Tape: 2; Side: B; Approx. Time Counter: 378 - 500}

HEARING ON HB 617

Sponsor: **REP. ROGER KOOPMAN, HD 70, BOZEMAN**

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on **HB 617,** Require notice of and filing of a certificate of death for abortions.

The REPRESENTATIVE informed the committee members that he is "Pro-Lifer" and wanted them to know that from the beginning of this discussion.

He stated that in 2003; 2,213 abortions were performed in the State of Montana. **REP. KOOPMAN** stated, "...I do not see numbers, I see 2,213 little kids." He spoke about his bill and said that this bill would not restrict or limit a woman's right to have an abortion. The REPRESENTATIVE also stated that New York has a similar statute.

REP. KOOPMAN spoke further of the hundreds of e-mails he has received from women who tell him "their stories" and who are in support of HB 617 and of the specifics of this bill.

[EXHIBIT \(juh39a06\)](#)

[EXHIBIT \(juh39a07\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 313}

Proponents' Testimony:

Greg Trude, Right to Life Montana, rose in support of HB 617 and informed the committee that Kentucky, Louisiana, Missouri and South Dakota have similar statutes.

[EXHIBIT \(juh39a08\)](#)

[EXHIBIT \(juh39a09\)](#)

[EXHIBIT \(juh39a10\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 313 - 365}

Gilda Clancy, Montana Eagle Forum, spoke in support of HB 617.

[EXHIBIT \(juh39a11\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 365 - 418}

Eric Schiedermayer, Montana Catholic Conference, spoke support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 418 - 440}

Rachel Roberts, Montana Family Foundation, rose in support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 440 - 460}

Harris Himes, Montana Family Coalition, rose in support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 460 - 476}

Becky Stockton, self, rose in support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 476 - 482}

Doug Nulle, self, rose in support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 482 - 490}

Lyn Stumberg, self, rose in support of HB 617.

{Tape: 3; Side: A; Approx. Time Counter: 490 - 500}

Helen Myers, self, rose in support of HB 617.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 6}

Opponents' Testimony:

Jeri Duran, Planned Parenthood of Montana, spoke in opposition to HB 617. **Ms. Duran** spoke to the committee members about the recent (1/18/05) article written by Bob Anez in the Independent Record and stated, "...this bill's only purpose is to be punitive [to women]."

EXHIBIT (juh39a12)

{Tape: 3; Side: B; Approx. Time Counter: 6 - 60}

Jan Van Riper, ACLU, rose in opposition to HB 617. **Ms. Van Riper** spoke to the statements made by the sponsor, especially the statement that NY state has a statute similar to this. She stated that NY state does not have a statute for this issue.

Ms. Van Riper continued with her testimony and stated for the committee members that the proper role of the legislature is to focus on constitutionality issues and that the legislature may not interfere, "...without a compelling state interest." The Montana and the United States Supreme Court have already ruled that a woman's reproductive rights are protected.

EXHIBIT (juh39a13)

{Tape: 3; Side: B; Approx. Time Counter: 60 - 170}

Kate Cholewa, National Abortion Rights Action League (NARAL), spoke in opposition and stated that this is a privacy issue.

{Tape: 3; Side: B; Approx. Time Counter: 170 - 204}

Bob Ream, Montana Democratic Party, rose in opposition and asked for the committee members to look at the fiscal note.

{Tape: 3; Side: B; Approx. Time Counter: 204 - 210}

Wade Sykowski, self, rose to oppose HB 617.

{Tape: 3; Side: B; Approx. Time Counter: 210 - 217}

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. KOOPMAN closed the hearing on HB 617 and stated that this bill is not about inflicting suffering or trauma on women and that part of this bill is about protecting a woman's privacy.

The REPRESENTATIVE spoke of Attorney Bob Kelleher from Butte, who apparently has information or knowledge of the occurrence of baby parts from aborted babies being shipped to other parts of the world. **REP. KOOPMAN** stated that he supports fewer abortions as a proper social goal to encourage. He closed the hearing by reading to the committee members an e-mail from a woman regarding a friend's abortion.

{Tape: 3; Side: B; Approx. Time Counter: 217 - 380}

HEARING ON HB 701

Sponsor: REP. MARK NOENNIG, HD 46, BILLINGS

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 701**, Revise estate and trust law. The REPRESENTATIVE stated that he brought this bill at the request of the State Bar Committee.

REP. NOENNIG explained each section of HB 701 to the committee members.

{Tape: 3; Side: B; Approx. Time Counter: 380 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 43}

Proponents' Testimony:

Dan McLean, attorney, rose in support of HB 701. **Mr. McLean** further explained to the committee the purpose of this bill regarding trusts, estates and how the language is defined within the statute.

{Tape: 4; Side: A; Approx. Time Counter: 43 - 115}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Mr. McLean about the change in Section 1 in reference to "unintended consequences."

REP. CLARK spoke with Mr. McLean about Page 1, Line 19 regarding the problem with regulating living trusts.

{Tape: 4; Side: A; Approx. Time Counter: 115 - 204}

Closing by Sponsor:

REP. NOENNIG closed the hearing on HB 701.

{Tape: 4; Side: A; Approx. Time Counter: 204 - 248}

HEARING ON HB 695

Sponsor: REP. JOEY JAYNE, HD 15, ARLEE

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 695**, Fund representation for indigent victims of domestic violence.

{Tape: 4; Side: A; Approx. Time Counter: 248 - 270}

Proponents' Testimony:

Klaus Sitte, Montana Legal Services Association, rose in support of HB 695 and informed the committee that his organization will no longer be receiving funding for the 44 counties that this bill would eventually appropriate.

{Tape: 4; Side: A; Approx. Time Counter: 270 - 319}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of this bill and again stated that the 44 counties will not have funding for legal assistance for the victims of domestic violence.

{Tape: 4; Side: A; Approx. Time Counter: 319 - 330}

REP. JEANNE WINDHAM, DOVES, rose in support of HB 695.

{Tape: 4; Side: A; Approx. Time Counter: 330 - 339}

Tawnia Ramstad, Violence Free Crisis Line, Kalispell, rose in support of HB 695 and spoke to the committee about her being an advocate/witness for victims of domestic violence.

{Tape: 4; Side: A; Approx. Time Counter: 339 - 383}

Amy Hall, Montana Legal Services Association, spoke to the committee members about the five chapters in Montana have domestic violence staff: Butte, Bozeman, Missoula, Helena, and Great Falls and the facts that there are no domestic violence staff for Eastern Montana.

EXHIBIT (juh39a14)

{Tape: 4; Side: A; Approx. Time Counter: 383 - 500}

Susan Hanson, Doves, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 695.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 10}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LANGE began the questioning of Mr. Sitte regarding the federal poverty level (125%) for qualifying for this assistance and why couldn't 133% be used as a qualifier. **Mr. Sitte** replied, "...that they can only provide service at the 125% level."

REP. NOENNIG spoke with Mr. Sitte about a bill that was brought forth in the 2001 session that would have applied a surcharge on divorce filings to pay for this type of legal assistance. **Mr. Sitte** replied that there was funding for \$75-80,000 for 1.5 FTE but the bill was written for only two years.

REP. MCGILLVRAY inquired of Mr. Sitte about private fund raising, "...has that ever been tried?" **Mr. Sitte** responded, "Yes, that is done and is always an ongoing project." **Mr. Sitte** also stated that there is pro-bono legal work done for these victims.

{Tape: 4; Side: B; Approx. Time Counter: 10 - 166}

Closing by Sponsor:

REP. JAYNE closed the hearing on HB 695 and informed the committee that from July 2003 to July 2004; there were 9,324 cases of domestic violence in Montana.

{Tape: 4; Side: B; Approx. Time Counter: 166 - 176}

HEARING ON HB 697

Sponsor: **REP. JOEY JAYNE, HD 15, ARLEE**

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 697**, Revise sentencing of persistent felony offenders. The sponsor explained to the committee what this bill would do.

{Tape: 4; Side: B; Approx. Time Counter: 176 - 234}

Proponents' Testimony:

Bill Hooks, Montana Association of Criminal Defense Attorneys, rose to support HB 697 and spoke to the committee about the restrictions in the bill for certain offenders.

{Tape: 4; Side: B; Approx. Time Counter: 234 - 289}

Opponents' Testimony:

John Connor, Chief Criminal Prosecutor, Assistant Attorney General, rose in opposition to HB 697. He spoke to the committee about the 1991 Montana Supreme Court case: State v. Fitzpatrick where Mr. Fitzpatrick was a persistent offender as stated in 46-18-502 MCA. The statute Mr. Connor referred to stated that "it is not a sentence in addition to the sentence you receive."

{Tape: 4; Side: B; Approx. Time Counter: 289 - 365}

Marty Lambert, Montana County Attorneys Association, Yellowstone County Attorney, rose in opposition to HB 697 and stated that the underlying crime is not sufficient; there needs to be a persistent felony offender sentencing statutes.

{Tape: 4; Side: B; Approx. Time Counter: 365 - 428}

Doug Nulle, self, rose in support of HB 697.

{Tape: 4; Side: B; Approx. Time Counter: 428 - 446}

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. JAYNE closed the hearing on HB 697.

{Tape: 4; Side: B; Approx. Time Counter: 446 - 500}

HEARING ON HR 2

Sponsor: REP. JON SONJU, HD 7, KALISPELL

Opening Statement by Sponsor:

REP. JON SONJU (R), HD 7, opened the hearing on **HR 2,** Urge opposition to federal requirements for birth certificates. **REP. SONJU** spoke about HR 418 in the United States Congress.

{Tape: 5; Side: A; Approx. Time Counter: 0 - 37}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SONJU closed the hearing on HR 2.
{Tape: 5; Side: A; Approx. Time Counter: 37 - 40}

EXECUTIVE ACTION ON HB 240

Motion: REP. HARRIS moved that HB 240 DO PASS.

Discussion:

CHAIRMAN RICE did not recognize the **Motion of REP. HARRIS regarding HB 240**. The committee discussed when HB 240 and HB 91 could be heard for Executive Action in order to meet the transmittal date.
{Tape: 5; Side: A; Approx. Time Counter: 40 - 52}

EXECUTIVE ACTION ON HR 2

Motion/Vote: REP. HARRIS moved that HR 2 DO PASS. Motion carried unanimously by voice vote.
{Tape: 5; Side: A; Approx. Time Counter: 52 - 65}

EXECUTIVE ACTION ON HB 697

Motion: REP. GUTSCHE moved that HB 697 DO PASS.

Motion/Vote: REP. LANGE moved that HB 697 BE TABLED. Motion carried 14-4 by voice vote with REP. CLARK, REP. GUTSCHE, REP. HARRIS, and REP. NOONAN voting no.
{Tape: 5; Side: A; Approx. Time Counter: 65 - 74}

EXECUTIVE ACTION ON HB 695

Motion: REP. LANGE moved that HB 695 DO PASS.

Discussion:

Mr. MacMaster explained a Conceptual Amendment to insert "appropriate to use."

Vote: Motion that HB 695 BE AMENDED carried unanimously by voice vote.

Motion/Vote: REP. LANGE moved that HB 695 DO PASS AS AMENDED. Motion carried 17-1 by voice vote with REP. KOOPMAN voting no. {Tape: 5; Side: A; Approx. Time Counter: 74 - 100}

REP. CLARK inquired of CHAIRMAN RICE as to what is the intention of the CHAIRMAN RICE regarding HB 240. **CHAIRMAN RICE** stated, "...[we] hope to do [it] tomorrow...."

EXECUTIVE ACTION ON HB 701

(Please Note: REP. WINDHAM AND REP. PARKER absent from room.)

Motion: REP. NOENNIG moved that HB 701 DO PASS.

Motion: REP. MCGILLVRAY moved that HB 701 BE AMENDED.

Discussion:

The committee discussed striking Section 1 in its entirety.

Vote: Motion that HB 701 BE AMENDED failed 4-14 by voice vote with REP. MCGILLVRAY, REP. RICE, REP. SONJU, and REP. STOKER voting aye. (REPS. WINDHAM, and PARKER voted by proxy vote.)

(Please Note: REP. WINDHAM returned to room.)

Motion/Vote: REP. HARRIS moved that HB 701 DO PASS. Motion carried 16-2 by voice vote with REP. MCGILLVRAY and REP. STOKER voting no. (REP. PARKER voted by proxy vote.)

EXECUTIVE ACTION ON HB 659

Under Adopted House Rule H30-50, Procedures, Subsection 5, HB 659 was placed on the Committee of the Whole Agenda for second reading on February 17, 2005.

EXECUTIVE ACTION ON HB 222

Under Adopted House Rule H30-50, Procedures, Subsection 5, HB 222 was placed on the Committee of the Whole Agenda for second reading on February 17, 2005.

ADJOURNMENT

Adjournment: 11:35 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh39aad0.PDF](#))