

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on March 7, 2005 at 9:00  
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 104, 119, 260, 2/28/2005  
Executive Action: None

**HEARING ON SB 104**

**Sponsor: SEN. KIM GILLAN, SD 24, BILLINGS**

**Opening Statement by Sponsor:**

**SEN. KIM GILLAN (D), SD 24,** opened the hearing on **SB 104,** Graduated driving privileges. The SENATOR stated that this bill is at the request of the Department of Justice.

**SEN. GILLAN** continued with her explanation of the bill to the committee members. She stated that statistics show that 16 year-old drivers have the highest accident rates and the states with a Graduated Drivers License (GDL) have shown a reduction in accidents by 9-15%. SB 104 would have the following language:

- 1) A driver must have a learner's permit for six months.
- 2) While having a permit, a driver must have the parents certify that they have ridden with the "learner" 50 hours, ten of which must be at night.
- 3) There would be restrictions for driving at night
- 4) There would be a limit to the number of passengers allowed in the vehicle while with a young driver at the wheel.

**SEN. GILLAN** proceeded to inform the committee about the history of this bill and finally, that 48 other states in the nation have a Graduated Drivers License statute.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 129}***

**Proponents' Testimony:**

**Mike McGrath, Attorney General,** rose in strong support of the GDL and related stories to the committee members about automobile accidents involving teens that are driving.

He continued to inform the committee about the decreases in accidents resulting in teen deaths in the other states that have Graduated Drivers License provision. He listed California, Kentucky, North Carolina, and Ohio, all with significant decreases in deaths. Further, Montana and Wyoming are the only states left in the nation without GDLs.

**EXHIBIT** (juh50a01)

***{Tape: 1; Side: A; Approx. Time Counter: 129 - 220}***

**Paul Grimstad, Colonel, Montana Highway Patrol (MHP),** rose in support of SB 104.

***{Tape: 1; Side: A; Approx. Time Counter: 220 - 242}***

**Wes Choc, Montana Chapter, Wyoming Chapter-American Automobile Association (AAA)**, rose in support of SB 104 and informed the committee that in the year 2003, there were 263 driving fatalities in Montana, 50% of those fatalities were 15-17 years old.

He also stated that the State of Wyoming put into statutes the Graduated Drivers License provision on March 3, 2005; thereby, making Montana the last state in the nation to not have the law.  
{Tape: 1; Side: A; Approx. Time Counter: 242 - 296}

**Jo Ann Dotson, bureau chief, Family and Community Health, Department of Public Health and Human Services**, spoke in support of SB 104.

[EXHIBIT\(juh50a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 296 - 342}

**Jim Lynch, director, Montana Department of Transportation**, spoke to the committee about the "Lynch Family Graduated Drivers License" in his own home.

{Tape: 1; Side: A; Approx. Time Counter: 342 - 428}

**David Huff, Driver's Education Division, Office of Public Instruction**, spoke to the committee on behalf of Linda McCulloch, Director, Office of Public Instruction. **Mr. Huff** stated that teen driving accidents are due to a lack of experience, easily being distracted and driving at night with no fear of risks being taken.

{Tape: 1; Side: A; Approx. Time Counter: 428 - 481}

**Bill Muhs, Mothers Against Drunk Driving (MADD)**, rose in support of SB 104 especially with the language for restricting driving at night. He stated that 41% of accidents occur between the hours of 9:00 P.M. and 6:00 A.M. Further, that 81% of teens driving cars have three or more passengers with them and 74% of the parents support a GDL.

[EXHIBIT\(juh50a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 481 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 13}

**Steve Yeakel, Montana Traffic Educators, Montana Council of Maternal and Child Health**, rose in support of SB 104. He spoke to the committee about the research that was released that specifically stated that a portion of a teenager's brain called the "pre-frontal cortex" is not fully developed until 25 years old. This part of the brain controls the "risk" thinking/taking part of a teen's brain.

{Tape: 1; Side: B; Approx. Time Counter: 13 - 48}

**Jon Metropoulus, Farmer's Insurance Company**, rose in support of SB 104 and stated that the best part of the bill is the parent's involvement in the teen's driving experience.

*{Tape: 1; Side: B; Approx. Time Counter: 48 - 64}*

**Greg Van Horsen, American Insurance Association, State Farm Insurance**, rose in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 64 - 74}*

**Larry Kibbee, Property Casualty Insurance of America**, stood in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 74 - 90}*

**Roger McGlenn, Independent Insurance Agents of Montana**, rose in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 90 - 95}*

**Jean Curtiss, Montana Parent Teachers Association (MPTA)**, rose in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 95 - 120}*

**Elaine Taylor, Miller Brewing Company**, rose in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 120 - 130}*

**Twila Costigan, Deaconess Billings Clinic**, spoke in strong support and stated that Jani McCall, Montana Children's Initiative is also in strong support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 130 - 158}*

**Jim Ahrens, Montana Hospital Association**, stood in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 158 - 162}*

**Frank Cote, Farmers Union Mutual Company**, rose in support of SB 104.

*{Tape: 1; Side: B; Approx. Time Counter: 162 - 176}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. EVERETT** began the question portion of SB 104 by directing his questions to Mr. VanHorsen. The REPRESENTATIVE wanted to know if insurance rates would decrease if SB 104 were to be adopted.

**Mr. VanHorsen** replied that rates are driven by drivers experience; therefore, if there are less claims and the claims are less serious, rates "may moderate."

**REP. KOOPMAN** began his questions to the **SEN. GILLAN**. The REPRESENTATIVE was concerned that this bill would supplant the parent's responsibilities and involvement in the teen's driving. **SEN. GILLAN** stated, "...this will actually increase the parent's involvement; i.e., the 50 hours of driving that the parents must participate in."

**REP. SONJU** spoke with Col. Grimstad regarding the Minor in Possession (MIP) language within SB 104 and the effect a drinking violation would have on a driver's record. The REPRESENTATIVE was also interested in how law enforcement would be able to determine the ages of the teen drivers before "pulling them" over for a violation.

**REP. CLARK** spoke with Attorney General, Mike McGrath about Page 5, Lines 3-4, regarding the definition of "immediate and proximate" supervision of an adult or parent.

**REP. CLARK** then began his questioning of Ms. Nordlund regarding the penalties, license suspension and other consequences for violating the terms of the GDL provisions.

[EXHIBIT \(juh50a04\)](#)

[EXHIBIT \(juh50a05\)](#)

[EXHIBIT \(juh50a06\)](#)

[EXHIBIT \(juh50a07\)](#)

[EXHIBIT \(juh50a08\)](#)

**REP. GUTSCHE** also had questions for Ms. Nordlund and Mr. Huff regarding the MIP provisions. She also spoke with Mr. Huff regarding the nighttime driving prohibition slated to start at 11:00 P.M. **Mr. Huff** stated that research shows that an earlier hour would be better.

**REP. CLARK** continued with questions for Mr. Huff regarding the driver education programs that are provided by the school districts and how, if teens do not live near a school or are home schooled, are they to receive this education. **Mr. Huff** stated that is a situation that was not thought of in the drafting of the bill.

**REP. NOONAN** questioned **SEN. GILLAN** about the language in the bill where the consequences from violations could be linked to the parents.

**REP. RICE** spoke with Col. Grimstad about the local law enforcement agencies enforcement of SB 104. **Col. Grimstad** stated, "...hopefully they'll [local law enforcement] contact the MHP for guidance...."

**{Tape: 1; Side: B; Approx. Time Counter: 176 - 500}**

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 258}**

**Closing by Sponsor:**

**SEN. GILLAN** closed the hearing on SB 104 by referring to **REP. RICE'S** questions regarding the local law enforcement's understanding of SB 104. She stated, "...the officer must be able to articulate the facts in court as to the reason why [they] stopped the vehicle." Finally, that for every automobile accident in the State of Montana, the cost is \$520 for each person in this state.

**{Tape: 2; Side: A; Approx. Time Counter: 258 - 350}**

**HEARING ON SB 119**

**Sponsor:** **SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS**

**Opening Statement by Sponsor:**

**SEN. TRUDI SCHMIDT (D), SD 11**, opened the hearing on **SB 119**, Revise child protective services laws. The **SENATOR** stated that this bill is a "compliance" bill brought at the request of the Child Family Division of Department of Public Health and Human Services (DPHHS) to deal with a shortfall of funding.

**SEN. SCHMIDT** continued with the explanation of SB 119 to the committee members.

**{Tape: 2; Side: A; Approx. Time Counter: 350 - 466}**

**Proponents' Testimony:**

**Shirley Brown, director, Child and Family Services Division, Department of Public Health and Human Services**, rose in support of SB 119. **Ms. Brown** explained to the committee members the funding from the Federal Government that is needed to be accessed for the children who are in foster care placements. The shortfall in funding is attributable, in part, to the number of children for whom a permanency hearing has not been held for various reasons.

**Ms. Brown** continued to explain to the committee the reasons why the permanency hearings have not been held and the proposed role of the Foster Care Review Committee.

**EXHIBIT (juh50a09)**

**EXHIBIT (juh50a10)**

*{Tape: 2; Side: A; Approx. Time Counter: 466 - 500}*

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 157}*

**Twila Costigan, Montana Children's Initiative, Montana Foster-Adopt Parents Association**, rose in support of SB 119. **Ms. Costigan** spoke as a foster parent and as a member of the Foster Care Review Committee.

*{Tape: 2; Side: B; Approx. Time Counter: 157 - 207}*

**Jani McCall, Montana Children's Initiative Association**, rose in support.

*{Tape: 2; Side: B; Approx. Time Counter: 207 - 237}*

**Opponents' Testimony:**

**Kandi Matthew-Jenkins, Families Falsely Accused**, rose in opposition to SB 119. **Ms. Matthew-Jenkins** spoke to the committee about the Foster Care Review Board and stated that the people who serve on this board have a "stake" in the funding or is an associate of DPHHS. She further informed the committee that if SB 119 were to pass, the courts would be removed from these cases and there would be not documentation of what occurred during these meetings.

**Ms. Matthew-Jenkins** continued to state that "false allegations are all about the money" that is involved as is DPHHS who "is all about the money."

*{Tape: 2; Side: B; Approx. Time Counter: 237 - 466}*

**David Cook, pastor, self**, also rose in opposition to SB 119. He related to the committee his own personal history of being in foster care, orphanages and his own children being removed from his care. He also stated that the Review Board "is all about the rubber stamping of what DPHHS and the Division of Family Services have decided."

*{Tape: 2; Side: B; Approx. Time Counter: 466 - 500}*

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 27}*

**Melissa Worthan, Families Falsely Accused**, stood in opposition to SB 119. **Ms. Worthan** informed the committee members that she had attended two Foster Care Review Board hearings and did not receive a fair hearing.

*{Tape: 3; Side: A; Approx. Time Counter: 27 - 58}*

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BECKER** spoke with Ms. Brown regarding whether or not a parental termination of rights would be addressed at the Foster Care Review Board meetings. **Ms. Brown** replied, "...no, termination court hearings are the venues for that proceeding....."

**REP. GUTSCHE** also spoke with Ms. Brown regarding who would be allowed to participate at the Foster Care Review hearings and what sort of documentation would be deemed appropriate for those hearings. **Ms. Brown** replied that attorneys, parents, Guardian Ad Litem (GAL), service providers, etc., would be allowed to participate in the "hearings" and that the language regarding minutes/documentation of those hearings needs to be strengthened on the bill.

**REP. CLARK** began his questioning of Ms. Brown regarding the "loose guidelines" that are within the bill for the placement of children as recommended by the Review Committee. **Ms. Brown** replied that much of that language is from federal statutes and cannot be changed. The REPRESENTATIVE then spoke with Ms. Brown regarding the Indian Child Welfare Act as to the placement of children, the progress of the child, the membership on the Review Committee that would be Native American, etc.

**REP. KOOPMAN** questioned Ms. Brown about the "make-up" of the Foster Care Review Board and whether or not the membership has a "vested interest" in being on that board. **Ms. Brown** stated that on Page 2, Line 17 is an explanation and description of the criteria required and that the courts then decide who to appoint as members.

**REP. RICE** directed her questions to Ms. Brown. The REPRESENTATIVE asked, "With 1,400 children removed [from their parent's care] in Montana, how many go back to their birth parents?" **Ms. Brown** replied, "Approximately 50% go back to their parents and/or approximately 76% are placed with family members."

**REP. RICE** continued to query Ms. Brown about the children whose parent's rights have been terminated, how many of the those children are adopted, placed in long-term foster care or with family or placed in a guardianship. **REP. RICE** also inquired as to where the Federal Funding monies go.

**{Tape: 3; Side: A; Approx. Time Counter: 58 - 452}**

**Closing by Sponsor:**

**SEN. SCHMIDT** closed the hearing on SB 119 by speaking to the committee members about the fact that the District Court Judges will have the option to use the Foster Care Review Boards to expedite the legal process for these children if SB 119 were to pass.

*{Tape: 3; Side: A; Approx. Time Counter: 452 - 475}*

**HEARING ON SB 260**

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

**Opening Statement by Sponsor:**

**SEN. GARY PERRY (R), SD 35,** opened the hearing on **SB 260**, Confirmation of written decision to an oral pronouncement -- contested cases. The SENATOR spoke to the committee members about the hearing examiners acting as "quasi-courts."

**EXHIBIT** (juh50a11)

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 34}*

**Proponents' Testimony:**

**Pam Bucy, Assistant Attorney General,** rose in support and informed the members of the committee that the Attorney General's division acts as the administrative office for this process.

*{Tape: 3; Side: B; Approx. Time Counter: 34 - 46}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. CLARK** queried Ms. Bucy about the usage of this language, "has it ever been used?" **Ms. Bucy** replied, "Yes, it has been used." They continued their conversation regarding the conforming language and the administrative rulings versus criminal/civil rulings.

*{Tape: 3; Side: B; Approx. Time Counter: 46 - 75}*

**Closing by Sponsor:**

**SEN. PERRY** closed the hearing on SB 260.

*{Tape: 3; Side: B; Approx. Time Counter: 75 - 80}*

**ADJOURNMENT**

Adjournment: 12:04 P.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

**EXHIBIT ([juh50aad0.PDF](#))**