

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 15, 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 355, 357, 378, 381, 3/8/2005
Executive Action: SB 355-Do Concur In

HEARING ON SB 355

Sponsor: SEN. JIM SHOCKLEY, SD 45, VICTOR

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 355**, Revise court reporter salaries. **SEN. SHOCKLEY** stated that Judges McCarter, Honzel and Sherlock all support SB 355 for "fairness and practicality."

EXHIBIT (juh57a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 45}

Proponents' Testimony:

Leo Gallagher, Lewis and Clark County Attorney, spoke in support of SB 355 and stated that Court Reporters do not get paid for transcription fees that are done for outside entities.

{Tape: 1; Side: A; Approx. Time Counter: 45 - 72}

Glenda Travitz, court reporter, Ravalli County, rose in support of SB 355 and spoke to the committee about the \$12,000 worth of equipment that she purchased when she went to work for Ravalli County. She explained to the committee how the transcription process works and how the court reporters are not paid in addition for the transcription.

{Tape: 1; Side: A; Approx. Time Counter: 72 - 105}

Gordon Morris, Montana Association of Counties (MACo), rose in support of SB 355.

{Tape: 1; Side: A; Approx. Time Counter: 105 - 110}

Penny Martin, court reporter, Lewis and Clark County, rose in support of SB 355 and spoke to the committee about requests from attorneys for transcripts.

{Tape: 1; Side: A; Approx. Time Counter: 110 - 142}

Vickie Pratt, court reporter, First Judicial District, rose in support of SB 355. She explained to the committee members that the court reporters signed a contract with the State of Montana to provide services at a salary rate and the reporters would now like to be paid at a "per page rate" for transcription instead of overtime.

{Tape: 1; Side: A; Approx. Time Counter: 142 - 158}

Becky Orozco, court reporter, City of Billings, rose in support of SB 355.

{Tape: 1; Side: A; Approx. Time Counter: 158 - 165}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD queried the sponsor as to why this pay procedure was changed by the State of Montana. **SEN. SHOCKLEY** replied that he didn't know.

REP. CLARK questioned Ms. Travitz about the ownership and maintenance of the specialized equipment and their role as an independent contractor in the business of court reporting. **Ms. Travitz** explained that they are paid a salary and that transcripts requested would be paid at a per page rate at approximately \$2.50 per page.

REP. MCGILLVRAY also spoke with Ms. Travitz about the filing of tax returns and how they are completed. **Ms. Travitz** explained that they are considered self-employed and also an employee of the State of Montana. They are required to complete a Schedule C along with the regular tax return.

REP. RICE asked the SENATOR why he didn't sign the fiscal note with his reply being that he did not agree with it and that he estimates that cost would be approximately \$15,000.

{Tape: 1; Side: A; Approx. Time Counter: 165 - 264}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 355 and stated that there will be little fiscal impact as the counties are already paying the overtime hours. He continued by saying that the court reporters signed a contract with the State that they would be paid, then the State of Montana changed the law and the court reporters are not being paid.

[EXHIBIT \(juh57a02\)](#)

[EXHIBIT \(juh57a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 264 - 294}

HEARING ON SB 357

Sponsor: SEN. CAROLYN SQUIRES, SD 48, MISSOULA

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES (D), SD 48, opened the hearing on **SB 357**, Criminal background check required before licensing social workers. The SENATOR informed the committee that the Social Workers Association is not in support of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 294 - 400}

Proponents' Testimony:

Deb Holland, student, University of Montana, rose in support of SB 357 and referred to the Arkansas Code, 17-103-306, 307. **Ms. Holland** spoke to the fact that this bill would protect the State from financial liability and would allow access to previous files. There would no financial impact, as the candidates pay the fees themselves. She related a story to the committee members regarding a convicted sex offender in Florida.

EXHIBIT (juh57a04)

{Tape: 1; Side: A; Approx. Time Counter: 400 - 500}

John Connor, Chief Criminal Prosecutor, Attorney Generals Office, rose in support and stated that the Department of Justice would be responsible for the background checks.

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

Harris Himes, Montana Family Coalition, spoke to the committee about the church schools and how they deal with this situation.

{Tape: 1; Side: B; Approx. Time Counter: 13 - 28}

Opponents' Testimony:

Mary McCue, National Association of Social Workers, rose in opposition to SB 357 and spoke to the committee about the 560 members in Montana who are social workers and that if social workers are to be regulated, etc. so should anyone who comes in direct contact with children.

EXHIBIT (juh57a05)

EXHIBIT (juh57a06)

{Tape: 1; Side: B; Approx. Time Counter: 28 - 83}

Informational Testimony:

Jeanne Worsuch, Legislative Fiscal Division, rose to inform the committee that she prepared the fiscal note and would be available for questions if needed.

{Tape: 1; Side: B; Approx. Time Counter: 83 - 93}

Questions from Committee Members and Responses:

REP. WARD spoke with Ms. Holland regarding her experiences as a social worker.

REP. STOKER discussed with Ms. McCue the number of social workers licensed in Montana and the number of people in the healthcare industry in Montana.

REP. NOENNIG questioned Ms. Worsuch about the numbers of clinical social workers in Montana. **Ms. Worsuch** explained that there are 445 licensed clinical social workers that have a Masters Degree in Social Work (MSW) with 1,500 hours of supervision. There are 500 unlicensed MSWs and 1,400 Bachelor of Social Work (BSW) that primarily work for the Department of Public Health and Human Services (DPHHS), working at nursing homes and do not work independently. (All numbers are approximate.)

REP. NOENNIG continued with questions for Ms. McCue regarding the fingerprinting of any other professions such as teachers, etc. and the equitable rationale of selecting just one group.

REP. CLARK spoke with Ms. Worsuch about the number of people who could be affected by these background checks and fingerprinting and would this process be a deterrent for undesirables to enter this field. **Ms. Worsuch** agreed that it could be deterrent.

REP. CLARK spoke with Ms. McCue about the fact that employers already do background checks.

REP. KOOPMAN spoke with Ms. Holland about the amendment regarding new applicants only, the REPRESENTATIVE was questioning why aren't all social workers checked. **Ms. Holland** stated that was previously in the bill but amended out and that this bill is a first step forward.

REP. KOOPMAN brought forward Bill Griffenberg to explain how background checks are accomplished. **Mr. Griffenberg, Information Technology Department (IT)** explained that the fingerprints along the name and date of birth, are forwarded to the FBI and all states.

If a "HIT" occurs, the states send the information back to the State of Montana. They continued their discussion regarding the information process.

REP. HARRIS also questioned Mr. Griffenberg about the information that may be accessed through fingerprinting and background checks.

REP. HARRIS then questioned Mr. Connor about the waiver provision on Page 4 and the awkwardness of that provision. **Mr. Connor** stated that the "certain conditions" are not articulated and it would make sense if they were articulated.

REP. GUTSCHE spoke with Mr. Connor regarding the fact that other professions require background checks.

REP. GUTSCHE then directed her questions to Ms. Holland regarding the other states that have a similar statute for background checks. **Ms. Holland** replied that two other states, Arkansas and Nevada have a statute. Nevada's statute is applicable only to the social workers.

REP. GUTSCHE spoke with SEN. SQUIRES regarding the language regarding the "look back" provision. **SEN. SQUIRES** replied that the "look back" provision would have been for social workers who have been on the job for a long time and that there was no way to do both; so the SENATOR had to choose one or the other and her choice was for the new social workers.

REP. EVERETT inquired of Mr. Connor about the double jeopardy aspect of a potential employee. **Mr. Connor** did not agree with the double jeopardy concept.

REP. NOENNIG spoke again with Mr. Griffenberg about the other professions that have background checks. **Mr. Griffenberg** replied that teachers and other IT people are required to have background checks.

REP. MCGILLVRAY completed his questions to Mr. Griffenberg regarding the possibility that the fingerprints or information received could be fall into the wrong hands. **Mr. Griffenberg** stated that any information received by the FBI is destroyed and/or given to the individual to destroy.

{Tape: 1; Side: B; Approx. Time Counter: 93 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 210}

Closing by Sponsor:

SEN. SQUIRES closed the hearing on SB 357 and stated that if only one person is saved, this bill would be worth it.

{Tape: 2; Side: A; Approx. Time Counter: 210 - 265}

HEARING ON SB 381

Sponsor: SEN. LYNDA MOSS, SD 26, BILLINGS

Opening Statement by Sponsor:

SEN. LYNDA MOSS (D), SD 26, opened the hearing on **SB 381**, Define "child" for criminal laws & revises "sexual abuse of children" law.

SEN. MOSS informed the committee that this bill was brought on the behalf of the Department of Justice (DOJ) and the Attorney Generals (AG) Office regarding 45-5-625, MCA.

{Tape: 2; Side: A; Approx. Time Counter: 265 - 334}

Proponents' Testimony:

John Connor, Chief Criminal Prosecutor, Attorney Generals Office, rose in support of SB 381 as an effort to "keep pace with the changes in technology." He stated that this bill was drafted by Barb Harris who is with the computer crime unit of the AGs office.

{Tape: 2; Side: A; Approx. Time Counter: 334 - 387}

Barb Harris, computer crimes unit, Assistant Attorney General, rose to support SB 381 and to inform the committee about the vast array and number of crimes that are perpetrated on computers.

{Tape: 2; Side: A; Approx. Time Counter: 387 - 430}

Dallas Erickson, Montana Citizens for Decency Through Law, rose in support of SB 381.

EXHIBIT (juh57a07)

{Tape: 2; Side: A; Approx. Time Counter: 430 - 457}

Harris Himes, Montana Family Coalition, rose in support of SB 381.

{Tape: 2; Side: A; Approx. Time Counter: 457 - 467}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LANGE began the questions for Ms. Harris regarding the language on Page 11, Lines 3 through 6. He asked about the language therein and if it would legally enable officers to perform a "sting" to trap offenders.

REP. MCGILLVRAY began his questions to Ms. Harris regarding the differing language regarding 18-year-olds on Page 1, and on Page 6, the 16-year-olds and could that language be the same. **Ms. Harris** replied that the sponsor felt the two ages should be distinct.

REP. HARRIS questioned Ms. Harris about whether or not she had personally prosecuted anyone yet for this crime. **Ms. Harris** stated that she had not; however, "...the time is coming where she will be prosecuting an offender...." They continued their discussion about the fine possibly being too low and the fact that for a crime like this, "...the fine would not be a deterrent...."

REP. GUTSCHE continued with the questions for Ms. Harris as to the amended language on Page 11, Lines 3-5, where a 25-year-old person could be prosecuted. **Ms. Harris** responded that if a 25-year-old person was trying to portray themselves as younger in order to contact the teens, it would be a crime.

REP. RICE spoke with Ms. Harris about the technological situation where someone is "morphed" and how would that situation be addressed. **Ms. Harris** explained that the person would be charged regardless of whether they are actual or simulated. They continued their discussion of how prevalent this problem is becoming in Montana.

REP. NOENNIG referred to Page 11, Line 5, "to engage in sexual conduct" in his questions to Ms. Harris. **Ms. Harris** responded that language will broaden the statute and the prosecutor would not need to prove "luring."

REP. STOKER continued with the questions for Ms. Harris regarding a 16-year-old perpetrator. **Ms. Harris** stated, "...that if that person "beams" out the information and then follows-up, this bill would be applicable...."

{Tape: 2; Side: A; Approx. Time Counter: 467 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 165}

Closing by Sponsor:

SEN. MOSS closed the hearing on SB 381 and requested that REP. NOENNIG carry the bill.

{Tape: 2; Side: B; Approx. Time Counter: 165 - 179}

EXECUTIVE ACTION ON SB 355

Motion/Vote: REP. GUTSCHE moved that SB 355 BE CONCURRED IN. Motion carried unanimously by voice vote. (REPS. WINDHAM and WILSON voted by proxy vote.) (REP. PARKER to carry.)

{Tape: 2; Side: B; Approx. Time Counter: 179 - 225}

EXECUTIVE ACTION ON SB 357

Motion: REP. HARRIS moved that SB 357 BE CONCURRED IN.

Motion: REP. HARRIS moved that SB 357 BE AMENDED.

Discussion:

Mr. MacMaster explained the amendment. The amendment would be:

STRIKE, PAGE 2, LINES 25-PAGE 3, LIST OF OFFENSES
INSERT, PAGE 4, LINES 16-24, ADD NATURE OF CRIME
INSERT, PAGE 4, LINES 24-25, APPLICANT "DOES NOT POSE A
THREAT..."

REP. HARRIS (without objection) stated that he would like to postpone action on SB 357.

{Tape: 2; Side: B; Approx. Time Counter: 225 - 346}

There was some discussion among the committee for Executive Action on SB 279; however, **REP. HARRIS** stated that he did not understand the bill, so no action was taken on SB 279.

{Tape: 2; Side: B; Approx. Time Counter: 346 - 395}

HEARING ON SB 378

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 378,** Allow pre-filing request for insurance liability limits for torts.

SEN. WHEAT spoke to the committee about how this bill would pertain to the filing of lawsuits as to the policy limits under Rule 26 and that the insurer must respond within 45 days.

{Tape: 3; Side: A; Approx. Time Counter: 395 - 468}

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association, stood in support of SB 378 and informed the committee members that the States of Florida and Georgia have a similar statute to SB 378.

Mr. Smith reported that this bill would decrease litigation as all the parties will know "up front" whether to proceed with the litigation.

{Tape: 2; Side: B; Approx. Time Counter: 468 - 500}

Opponents' Testimony:

Greg VanHorsen, State Farm Insurance, rose in opposition to SB 378 and stated that this will involve the release of private and personal information for the coverage limits of insurance that a person may possess. SB 378 would require that anyone may receive that information.

Mr. VanHorsen did refer to the statutes that Florida and North Carolina have and recommended that the committee look at those statutes in order to "fix" this bill. He explained the North Carolina statute to the committee.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 105}

John Metropoulos, Farmers Insurance Company, rose in opposition to SB 378 and stated, "...the plaintiff's damages have nothing to do with limits in a [insurance] policy..." He spoke to the privacy problems and the theory that this bill will let the plaintiff's attorneys know ahead of time if they want to take the case after the limits are disclosed.

{Tape: 3; Side: A; Approx. Time Counter: 105 - 180}

Bruce Spencer, Montana Automobile Dealers Association, stood in opposition to SB 378 and stated that this bill will not promote settlements before a lawsuit is needed and this bill could possibly lead to more litigation.

{Tape: 3; Side: A; Approx. Time Counter: 180 - 215}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GUTSCHE spoke with the sponsor about the privacy protection act and how this bill would affect the injured party.

REP. GUTSCHE then turned to Mr. Smith and spoke with him about this bill being a "jobs" bill for attorneys.

REP. CLARK questioned **SEN. WHEAT** about the most equitable process an injured party and the attorneys can engage in to resolve this process. **SEN. WHEAT** explained the procedure when someone comes to him about damages they feel they have incurred; he and the party look into the lifetime impact on the person and the loss of work and then proceed from there. **SEN. WHEAT** stated that there is a three-year window to file a claim. If in the case where a claim exceeds the coverage, the injured party brings a suit against the person individually.

REP. KOOPMAN spoke with **SEN. WHEAT** about the retrieval of personal information for lawsuits and the cases where an injured party may be indigent, wherein, they would be reluctant to file a lawsuit for financial reasons.

REP. NOENNIG entreated **SEN. WHEAT** to explain again about the punitive damages aspect that he had previously spoken about and at what point can the information be retrieved. **SEN. WHEAT** explained about the discovery process for the committee's benefit.

{Tape: 3; Side: A; Approx. Time Counter: 215 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 7}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 378 and stated that the proposed amendment would not fit the title of the bill. He also opined that SB 378 would not lead to more litigation and would also not lead to inflated settlements.

{Tape: 3; Side: B; Approx. Time Counter: 7 - 25}

ADJOURNMENT

Adjournment: 11:35 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh57aad0.PDF](#))