

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 18, 2005 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Brent R. Cromley (D)
Sen. Jeff Mangan (D)
Sen. Jim Shockley (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 220, SB 208 1/13/2005,
SB 146, 1/12/2005;
Executive Action: None.

HEARING ON SB 220**Opening Statement by Sponsor:**

SEN. GREGORY BARKUS, SD 4, KALISPELL, opened the hearing on **SB 220**, Require vehicle to display proof of insurance decal. **SEN. BARKUS** discussed the reasons why many individuals in the State no longer carried liability insurance and why many people were lowering their maximum coverages. **SEN. BARKUS** indicated that there would always be those individuals who would buy and cancel their insurance just so they could obtain the sticker for their window. He further stated that SB 220 would simply try to protect and show that the insured were insured. He continued saying that the bill would not provided increased penalties for uninsured motorists, would not assume liability for the insurance companies providing stickers that were not up to code, but in concept would require that an insured vehicle display proof of insurance on the rear window of the vehicle with a color coded sticker indicating an expiration date. **SEN. BARKUS** concluded saying that it might not be perfect but he felt it was a step in the right direction.

Proponents' Testimony: None.

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association, expressed opposition to SB 220. She went on to say that they realized that SB 220 was a good faith effort to resolve or solve a problem. She continued saying that they felt SB 220 had a number of technical problems which would make it difficult to implement. **Ms. Lenmark** encouraged the Committee to reconsider SB 3 which they felt would be a good workable solution to the problem.

Greg Van Horssen, State Farm Insurance Company, suggested that the Committee give SB 220 a do not pass recommendation. He went on to say that he agreed that there were technical problems with the bill that would be difficult to meet as written. **Mr. Van Horssen** concluded asking the Committee to try to meld some of the bills regarding uninsured motorists together to form a workable bill.

Informational Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, Department of Justice, stated that he would be happy to answer any questions the Committee might have regarding mandatory insurance laws. He went on to say that during the past year there had been approximately 14,000 convictions written for first offense no

insurance, there were 2,500 written for second or third offense no insurance and 1,800 written for fourth offense no insurance.

Questions from Committee Members and Responses:

SEN. MCGEE asked **Greg Van Horssen** why he and Ms. Lenmark were not in favor of SB 220. **Mr. Van Horssen** responded that the question for the Legislature was to decide and determine what would be the most effective and efficient way of addressing the no liability insurance problem. He went on to say there were many ways to get around the requirement of placing a sticker in the window. **Mr. Van Horssen** proceeded to provide a couple of examples as to how the stickers could be used fraudulently. He then went on to discuss the problems passage of the bill would create for the insurance carriers in Montana.

Chairman Wheat asked **Dean Roberts** what the cost would be to the State to furnish the insurance stickers. **Mr. Roberts** replied that under the bill it would be the insurance companies that would be responsible for providing the stickers.

SEN. MCGEE asked **SEN. BARKUS** if there could be an electronic record filed with the Department of Justice which the officers could obtain when they stopped someone. **SEN. BARKUS** responded that it would be an excellent idea, however, he did not believe that the Department of Motor Vehicles would go along with the idea.

Closing by Sponsor:

SEN. BARKUS stated that there had been 14,000 citations issued for uninsured motorists and that it was the largest number for any type of citation issued. He went on to say that when the problem would bother anyone was when an uninsured motorist ran into them. **SEN. BARKUS** expressed his surprise that the insurance companies had opposed the bill. He concluded by stating that he would appreciate a do pass on SB 220.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 15.1}

HEARING ON SB 208

Opening Statement by Sponsor:

SEN. GARY PERRY, SD 35, MANHATTAN, opened the hearing on **SB 208**, Increase conviction charge to fund victim services. **SEN. PERRY** informed the Committee that the bill had been brought to his attention by his constituents in Gallatin County because of the

need to increase the victim witness fee from \$25.00 to \$50.00 for drug and alcohol related crimes. He went on to discuss the victims basic rights and referred to Title 50, Chapter 15; Title 46, Chapter 24; and Title 53, Chapter 9, and read the specific sections which relate to reimbursement for victims. **SEN PERRY** stated that in order to insure victims rights and provide them with the services to which they are entitled, counties need victim assistance programs. He went on to say that those programs cost money. **SEN. PERRY** then explained that there were two ways to pay victim costs, one that all taxpayers could pay for the services, or a larger surcharge could be placed on the offenders and make those individuals pay for the service.

Proponents' Testimony:

Gloria Edwards, Victim Witness Coordinator for Gallatin County, stated that they had asked the county to make the change for them. She went on to say that the victims had rights and they were finding that the counties were mandated to provide victim services, however, it was an unfunded mandate. **Mr. Edwards** continued saying that they were finding that there were a number of counties that were not providing the mandated services. She then stated that they felt that SB 208 was the right thing to do, it was the law and they could either have the taxpayers provide the funding or have the offenders provide the funding for the victims services. She concluded by saying that she thought it was rather funny that they were always funding programs for offenders when they were not funding programs for victims.

Michael Harris, Legislative Liaison for Gallatin County, spoke in support of SB 208. He stated that it was a priority for the Gallatin County Commissioners that SB 208 be passed. **Mr. Harris** provided the Committee with written testimony which is attached at Exhibit 1.

EXHIBIT(jus13a01)

Gordon Morris, Director of the Montana Association of Counties, thanked Senator Perry for carrying the bill. He went on to say that they had a resolution supporting the bill which was passed by his Association with a high priority. He then pointed out that it was not a surcharge, it was an amount to be imposed in addition to any fine which would be assessed. **Mr. Gordon** asked that an effective date be added to SB 208 and suggested July 1, 2005.

Opponents' Testimony:

Jim Nugent, City Attorney for the City of Missoula, stated that the Mayor, Mike Kadas, had requested that he express the concerns of the officials of the City of Missoula in respect to the bill. He went on to say that they did not oppose the witness and crime advocate programs, they were concerned with the funding mechanism and the fact that it was a doubling of the money that would go to that fund. **Mr. Nugent** continued saying that this proposed surcharge was only one of four surcharges that were mandated to be imposed by local government judges. He then discussed the problems the judges face as to what individuals can afford to pay; as the surcharges go up there is an adverse affect on the local fine revenues. **Mr. Nugent** expressed their concern that the State would get all of the up-front money and the local governments would be left with the problem of collecting the rest of the fine. **Mr. Nugent** then informed the Committee of Pat Morgan's concerns regarding the \$1.00 that the local courts would be able to assess for administrative fees which did not cover those costs. He concluded by discussing the costs of heating, building repairs, staffing and the need for a second judge. He stated that they felt that the proposed programs should be funded with State revenue.

{Tape: 1; Side: A; Approx. Time Counter: 15.1 - 29.3}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.5}

Tim Burton, City Manager, City of Helena, stated that they stood in opposition to the bill for financial reasons. He went on to say that they thought the intent of the bill was right on the mark. He then discussed the program already implemented in Lewis and Clark County and the City of Helena. **Mr. Burton** informed the Committee that the fines and forfeitures collected by the City Court were used to fund the Police Department, the Court, the City Attorney's Office and Public Defense. He then discussed the fines that they were unable to collect. **Mr. Burton** stated that if the bill could be crafted in a way that the actual money collected be turned over to the State on a quarterly or semi-annual basis, it would work better for them and then they would not have a problem. He concluded saying that he would want some assurance that they would only have to pay out money they had actually collected.

Linda Stoll representing Missoula County, stated that there were two ways that increased charges would decrease revenues to the Justice Courts. She went on to say that the Justices of the Peace had the latitude to decrease fines in cases where defendants do not have the ability to pay. She continued saying that the charges and surcharges would still have to be assessed.

She then stated that an increase in the total amount of charges, surcharges and fines would result in an increase of the fines waived and a decrease in County revenues. **Ms. Stoll** indicated that surcharges were paid first in the collection process. She then discussed what had happened when the 2003 Legislature increased the surcharge from \$45.00 to \$60.00. **Ms. Stoll** stated that increasing the surcharges would further erode county revenues.

Joe Mazurek on behalf of the City of Great Falls, stated that they were opposed to adding additional surcharges for local convictions. He went on to say that should the law enforcement surcharge increase and the victim witness surcharge increased to \$50.00, the City of Great Falls would be paying \$250,000 in surcharges which would come off of the top of what they would collect and in some cases before they even received the money. He then stated that these payments hindered the City of Great Falls General Fund which is used to support public safety.

Jani McCall representing the City of Billings, stated that they opposed SB 208. She continued saying that they did support the victim and advocates program. **Ms. McCall** indicated that their concern was with the doubling of the surcharge everything would be taken out of balance and they would have a decrease in revenue. She then stated that the \$1.00 charge added in for administrative costs was not enough and should be \$2.00.

Alec Hanson, League of Cities and Towns, expressed opposition to SB 208. He stated that they had no argument with the purpose of the bill, the argument was with the mechanics of it. He went on to say that the surcharges would be collected first, sent to the State and then the cities would have the problem of collecting the rest of the fine and could erode the municipal court revenues.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON asked **Ms. Edwards** what additional information she had wanted to present to the Committee. **Ms. Edwards** stated that she did not understand why the opponents kept saying that the money was going to the State. She continued, saying that it was specifically stated in the legislation that the money would be used locally. The money would go to the local fund to support the local program.

SEN. MCGEE asked **SEN. PERRY** why the opposition to the bill included the \$1.00 charge for administrative costs when it was

only the surcharge that had been increased. **SEN. PERRY** stated that it was his understanding that in doubling the surcharge from \$25.00 to \$50.00, it could be appropriate and proportional to double the \$1.00 to \$2.00 fee for administrative costs.

CHAIRMAN WHEAT asked **Mr. Morris** if he had any comments with regard to the effect the bill would have on Missoula, Billings and Great Falls. **Mr. Morris** replied that he would agree with Ms. Edwards and her assessment. He went on to say that he felt the concerns could be addressed by speaking with the judges and pointing out to them that they could not reduce a fine by offsetting the fine by the proposed \$50.00 surcharge. He then stated that the surcharge was in addition to the fine, not included in the fine. **Mr. Morris** concluded that the State would not be getting the money except in cases where there was no victim program.

Closing by Sponsor:

SEN. PERRY thanked the proponents and opponents for a good hearing. He then addressed some of the objections. First the ability to pay, and pointed out that there was structure in the bill that would allow for the waiver of the charge if there was an inability to pay by the individual. Then he pointed out that each county, city or town could retain the charges for payment of the expenses of a victim and advocate program. **SEN. PERRY** indicated that all charges collected would be paid to the crime victims compensation and assistance program with the Department of Justice for deposit in the State's General Fund to be used to provide services to crime victims. This would happen only if a city or town did not have their own program.

{Tape: 1; Side: B; Approx. Time Counter: 1.5 - 19.4}

The Committee took a five minute recess.

HEARING ON SB 146

Opening Statement by Sponsor:

SEN. DANIEL MCGEE, SD 29, LAUREL, opened the hearing on **SB 146**, Statewide public defender system. **SEN. MCGEE** provided the Committee with three handouts explaining SB 146, which are attached as Exhibit 2, Exhibit 3 and Exhibit 4. **SEN. MCGEE** stated that SB 146 was introduced at the request of the Law and Justice Interim Committee. He explained that the Interim Committee had decided that the statewide system was intended to cover all of the courts, the Supreme Court, district courts,

courts of limited jurisdiction, municipal courts, justice courts and city courts. He further indicated that it had been decided that there would be no more than 11 regions within the statewide system, that they needed a clear definition of the term "indigence", and that adequate defense should be provided across the State. **SEN. MCGEE** informed the Committee that there was a proposed amendment for the bill. **MCGEE** proceeded to walk the Committee through the bill in its entirety and discussed all of the instances in which an indigent individual would have the ability to be represented by a public defender. **SEN. MCGEE** then made specific reference to new Sections 5 through 15. He then pointed out the specifics of Section 67, which would put constraints in the Code. **SEN. MCGEE** concluded his introduction by discussing the Fiscal Note.

[EXHIBIT \(jus13a02\)](#)

[EXHIBIT \(jus13a03\)](#)

[EXHIBIT \(jus13a04\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 19.4 - 26.5}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.2}

Proponents' Testimony:

Mike McGrath, Attorney General, State of Montana, expressed his appreciation to the Law and Justice Interim Committee for their work on SB 146. He explained to the Committee that he had been a prosecuting attorney for 18 years and his experience with the criminal justice system. He went on to say that the bill was needed in the State and that his office had been involved in the discussions regarding the bill, and the reason for that involvement. **Attorney General McGrath** continued, saying that this was an issue that could be resolved as a matter of public policy and lends itself to a legislative resolution. He discussed a pending lawsuit, the lack of accountability both with legal issues and fiscal issues, and concluded by expressing his strong support for SB 146.

Tim Burton, City Manager, Helena, gave background information for the Lewis and Clark County Public Defender's Office. He went on to say that the bill would do the job correctly. He indicated that he did have some concerns which he felt should be addressed, however, the bill needed to move forward.

CHAIRMAN WHEAT indicated to all present that SB 146 would most likely go to a subcommittee to work out the details.

Ron Waterman, Attorney, Helena, informed the Committee that he was the lead attorney in the ACLU suit and that they stand in

support of SB 146. He went on to say that they felt that SB 146 was classic and important public legislation. He explained that there was no public defender system in the State, however, there were scattered remnants and parts of public defender programs in different parts of the State. **Mr. Waterman** then discussed the 1974 case which stated that all individuals accused of a major felony were entitled to counsel regardless of their ability to pay for such counsel. He then talked about 1976 and the National Defense Counsel coming to Montana to look at the public defender system and the report rendered by them. **Mr. Waterman** talked about the findings of the Counsel. This report is attached at Exhibit 5. **Mr. Waterman** went on to discuss **White v. Martz**, the report prepared by the National Legal Aid & Defender Association for use in that litigation and the conclusions of that report which is attached as Exhibit 6. **Mr. Waterman** stated that SB 146 was responsible legislation that would implement a Public Defender System, which would bring the State into Constitutional compliance. **Mr. Waterman** concluded by discussing the costs related to wrongful incarceration of individuals due to lack of adequate representation. He further commented on the fact that this type of legislation had been a long time in coming, however, the time had come and urged support for the bill.

[EXHIBIT\(jus13a05\)](#)

[EXHIBIT\(jus13a06\)](#)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 27.6}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.1}

Jacqueline Lenmark representing the American Civil Liberties Union, expressed strong support for SB 146 and strongly urged a do pass recommendation. She went on to say that this legislation would resolve some pending litigation. She further stated that SB 146 would create a model system. **Ms. Lenmark** then indicated that she had a couple of minor amendments which she explained. A copy of the proposed amendment is attached as Exhibit 7.

[EXHIBIT\(jus13a07\)](#)

Eric Schiedermayer, Montana Catholic Conference, discussed the effects of poverty on those individuals who find themselves involved with the justice system and the need for fair and equal treatment for all individuals no matter what their financial situation. He concluded by thanking the Committee for their efforts and asking for their favorable consideration of the bill.

Jani McCall, City of Billings, stated that they generally supported SB 146, however, they did have some concerns which she shared with the Committee. She stated that they felt there was a

difference between misdemeanors and felonies, the costs related, and the charges to the cities would be too high. She expressed the hope that they would be able to work with the Sponsor and Committee on looking at the revenue percentages. **Ms. McCall** then talked about the City Public Defender system in Billings which was working well and expressed their concerns regarding accountability and the loss of local control.

Joe Mazurek on behalf of the City of Great Falls, recognized the importance of SB 146. He then expressed their concerns regarding the funding mechanisms. **Mr. Mazurek** stated that he would look forward to working with the Subcommittee to make sure that they understand the funding mechanism and to make SB 146 the best bill possible.

Ed Tinsely on behalf of MACO and Lewis and Clark County, expressed their strong support for SB 146.

Linda Stoll representing Missoula County, stated that Missoula County stood in support of the idea of the Statewide Public Defender Office, however, they had a couple of issues regarding the funding of the program. She went on to say that they would appreciate the opportunity to work out their differences in the Subcommittee.

Anita Roessmann of the Montana Advocacy Program, expressed strong support for SB 146. She went on to say that it was a proud moment for Montana and thanked Chairman Wheat for his leadership and the Interim Committee for their work on the bill. **Ms. Roessmann** concluded by strongly supporting the amendment proposed by the ACLU.

Penny Strong, Chief Public Defender, Yellowstone County, stated that she stood in strong support of the legislation. She explained the need for consistent and adequate public defense representation statewide. **Ms. Strong** then discussed the need for statewide financial criteria, fiscal accountability and need for statewide supervision. She went on to talk about the need to pay the public defenders fairly and the need for parity with the prosecutors pay scale. **Ms. Strong** indicated that accountability was the key to success.

Gordon Morris, Director, Montana Association of Counties, thanked Senator McGee, Senator Wheat, Senator O'Neil and the rest of the legislators that had served on the Law and Justice Interim Committee. He stated that he was prepared to work with the Committee to fine tune the bill.

Charles Brooks representing the Yellowstone County Board of Commissioners, informed the Committee that all three Commissioners stood strongly behind the legislation and urged the Committee to give SB 146 a do pass. He went on to say that they would help the Subcommittee in anyway they could.

Jim Smith, Montana County Attorneys' Association, stated that they had worked with the Interim Committee on the legislation. He went on to say that the local prosecutors in the State of Montana support the bill and were willing to work with the Committee and others to take it through the rest of its legislative journey.

Alec Hansen, League of Cities and Towns, expressed support for SB 146. He went on to say that they wanted to work with the full Committee and the Subcommittee to work out details they were concerned about. He then talked about their concerns regarding the formula for depicting costs and asked for a spreadsheet that would show what the individuals cities and counties would spend under the proposed law. **Mr. Hansen** stated that they would like to see a change in Section 14, Part 7(b), regarding the money being automatically withdrawn from the Entitlement Account and explained why. He concluded by stated that SB 146 was a very important bill that needs to pass.

Jim Nugent, City Attorney, City of Missoula, stated that SB 146 was a very important bill, however, they were concerned about the financial impact. He went on to suggest that they consider some type of provision to provide funding. **Mr. Nugent** expressed his concerns for the impact of the bill on small cities and towns. He then requested that the Committee consider a companion bill which would provide annual training for prosecutors in small cities and towns to protect the community and the victims. He concluded by expressing strong support for SB 146 with some modification to the funding formula.

Opponents' Testimony: None.

Informational Testimony:

Deb Mattucci, Director, Montana Mental Health Association, talked about individuals with mental disorders and the need for their interests to be represented on the Commission. She then addressed the need for training for public defenders, which would address the special needs of these individuals.

{Tape: 3; Side: A; Approx. Time Counter: 2.1 - 28.3}

Questions from Committee Members and Responses:

SEN. O'NEIL asked **SEN. MCGEE** if the \$5,000,000 requested by the Supreme Court was reflected in the Fiscal Note for SB 146. **SEN. MCGEE** replied that the first time he had heard about a possible supplemental was today. He went on to say that he did not have a clue regarding what it was trying to cover.

SEN. MANGAN asked **SEN. MCGEE** what the yearly cost of the Public Defender System would be. **SEN. MCGEE** responded that in general numbers he believed the cost would be in the neighborhood of 14 to 16 million dollars per year.

SEN. MANGAN referred to the 77 percent of the cost being picked up by the State and asked **SEN. MCGEE** if the remaining 16 plus percent would be picked up by the cities and counties. **SEN. MCGEE** stated that 15.6 percent would be paid by the counties and the 6.7 percent would be paid by the cities.

SEN. MANGAN asked **SEN. MCGEE** if the program would be in full effect in 2008 or 2007. **SEN. MCGEE** replied that he thought it would be in full operation in 2006.

SEN. MANGAN asked **David Ewer, Budget Director, State of Montana**, to walk through the General Fund impact of the bill. He went on to inquire as to how much of the funding would come from the General Fund and how much would come from other sources. **Mr. Ewer** stated that what had been presented was as accurate as they could get at the present time. He continued, stating that they were looking at 14 to 15 million per year with 77 percent being paid by the State.

SEN. MANGAN further asked **Mr. Ewer** if his office had any problem with invoicing and check method versus taking the cities share out of their Entitlement. **Mr. Ewer** replied that payment would be cleaner and easier if payment were taken from the Entitlement.

Closing by Sponsor:

SEN. MCGEE thanked everyone for their work and a good hearing. He proceeded to explain the hard work and research that had gone into putting SB 146 together. He further stated that by defining "indigence", everyone would know which individuals would be covered under this bill. **SEN. MCGEE** then discussed the necessity of having competent counsel to guarantee to the maximum extent possible that there will be adequate representation of counsel.

He went on to say that they had tried to put as much flexibility into the bill as possible to provide the best service they could.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 14.4}

ADJOURNMENT

Adjournment: 11:21 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus13aad0.PDF](#))