

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 17, 2005 at 8:05 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (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)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)

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 470, 2/14/2005; SJ 23,
2/14/2005; SJ 25, 2/14/2005; SB
462, 2/14/2005; SB 452, 2/14/2005;
SB 453, 2/14/2005; SB 472,
2/14/2005; SB 493, 2/14/2005
Executive Action: SB 472; SB 453; SJ 23; SJ 25; SB
470; SB 472

CHAIRMAN WHEAT informed the Committee of the order of bills for the day: SB 470, SJ 23, SJ 25, SB 462, SB 453, SB 452, SB 472, and SB 493. He opened the hearing on SB 470.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 1.0}

HEARING ON SB 470

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 provided a written version of his opening statements to the Committee. He explained to the Committee that SB 470 would provide for the Supreme Court to open all non-litigation conferences. This would put the Supreme Court in compliance with Article 2, Section 9, of the Montana Constitution. He proceeded to read his statement to the Committee. He expressed that there are many different types of hearings which the Supreme Court hears other than adversarial issues. He wanted to instruct the Supreme Court that they must follow the same rules as they require others to follow. The bill would mandate the need to open the administrative conferences of the Supreme Court.

EXHIBIT(jus39a01)

{Tape: 1; Side: A; Approx. Time Counter: 0.9 - 6.8}

Proponents' Testimony:

Ed Smith, Clerk of the Montana Supreme Court, stood before the Committee to strongly support SB 470. He felt that the bill was a fair piece of legislation that addressed the problem of the Supreme Court conferences not being open to the public, in violation of Article 2, Section 9, Montana Constitution, Right to Know. He noted that the Supreme Court had expanded this provision to many governmental entities and bodies. However, the Supreme Court has declined to implement an open government process for themselves. He reiterated that the Supreme Court handles many matters not related to litigation. He felt that these other matters fall under the mandate of the Open Meeting Law. He believed that these administrative deliberations should be allowed to be observed. He expressed that there were many important decisions being made with no notice given or minutes recorded. He indicated that many district court judges would like to observe the Supreme Court conferences when discussions

and decisions were being made by the Court that affect their offices. He claimed that the public would be better served when they could observe decisions being made in the open. He declared that institutional safeguards must be in place for the protection of all. He saw this bill as a small incremental step of great significance. He urged the Committee to pass SB 470. He mentioned that former Justice Trieweiler had given him a letter to be entered into record. He also provided a written version of his testimony and a copy of the order and opinion that appointed the chair of the Districting and Apportionment Commission in 1999.

[EXHIBIT \(jus39a02\)](#)

[EXHIBIT \(jus39a03\)](#)

[EXHIBIT \(jus39a04\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 6.8 - 11.4}

Harris Himes, Montana Family Coalition, thought that this bill would be an excellent law. He thought that having open conferences would be useful and appropriate.

{Tape: 1; Side: A; Approx. Time Counter: 11.4 - 12.9}

Al Smith, Montana Trial Lawyers Association, spoke in support of the bill. He mentioned that the Court had applied the constitutional Right to Know to other governmental agencies. He did not think that having open conferences would inordinately interfere with the functions of the Court.

{Tape: 1; Side: A; Approx. Time Counter: 12.9 - 13.5}

Ron Newbury, an Attorney Representing the Montana Newspapers Association, spoke in support of the bill. They felt that the Supreme Court has the responsibility of having open meetings.

{Tape: 1; Side: A; Approx. Time Counter: 13.5 - 14.6}

John Shontz, Lee Enterprises, indicated that one of the issues was that the Supreme Court has been a strong supporter of the Public's Right to Know when it came to various other governmental agencies. He felt that there were three important constitutional pieces to the issue: 1) the Open Meeting Law, 2) the right to document meetings, and 3) the right of the public to participate in governmental decisions. He asserted that the Open Meeting Law applied to the Supreme Court, whether they followed it or not. He felt that the second two pieces also applied to the Supreme Court. He believed that the third area of the law was incredibly important. He mentioned that there were exemptions to this law

including the Governor's Office and the Supreme Court. He suggested to the Committee that as far as non-litigation issues were concerned the exemption be removed from the statute as it relates to the Supreme Court. This would allow non-litigation cases to be opened with the public's right to participate. He felt that the Supreme Court, being a matter of significant public interest, should provide adequate notice that a meeting or decision was going to occur and provide to the public all of the information that is going to be used to make a decision, provide adequate time for the public to research the issue, and provide adequate time for the public to present its views before a final decision is made by the government entity.

{Tape: 1; Side: A; Approx. Time Counter: 14.6 - 24.7}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 25, BILLINGS, asked if the matter had ever been litigated.

Mr. Shontz replied that in terms of going to court, the matter had never been litigated.

SEN. SHOCKLEY followed up by asking if it would not be simpler to "knock on the door".

Mr. Shontz agreed that it would be.

SEN. SHOCKLEY wondered if a suit brought against the Supreme Court would have defenses based on statute or the constitution.

Mr. Shontz responded that the media in Montana would not create the situation for a story. He felt that it was a constitutional issue. He did not know if the Court would look at statutory law in terms of the Courts own operations.

{Tape: 1; Side: A; Approx. Time Counter: 24.7 - 27.8}

SEN. JIM SHOCKLEY, SD 45, VICTOR, cited Line 28. He asked if it meant that when the Supreme Court was deciding how they would vote on a case, the hearing would still be closed to the public.

Mr. Shontz affirmed that the hearing would be closed. However, he felt that the language in Line 28 should be amended in order to withstand constitutional arguments. The reason he gave was

that under the Right to Know Law the Court has consistently held, based on the acts of the Constitutional Convention, that the legislature does not have the authority, under the Constitution, to close people's access to government. He gave an example where the legislature tried to close access to the public.

{Tape: 1; Side: A; Approx. Time Counter: 27.8 - 29.7}

Closing by Sponsor:

SEN. HARRINGTON pointed out that the bill would affect only non-litigation items. He felt that it was an important area and was helping to open the door to the people of Montana. He expressed that he would appreciate a do pass on the bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.7}

CHAIRMAN WHEAT closed the hearing on SB 470 and opened the hearing on SJ 23.

{Tape: 1; Side: B; Approx. Time Counter: 0.7 - 0.8}

HEARING ON SJ 23

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on **SJ 23**, Urge federal trade negotiators to consult with Montana officials.

SEN. ELLIOTT informed the Committee that SJ 23 dealt with the North American Free Trade Act (NAFTA) and other trade agreements that the United States government has been party to. The concern he expressed was that these agreements benefit major international corporations more than they benefit the state of Montana. He thought that it was important for Montana to be able to preserve the state's rights. He attested that the trade treaties were created by international trade corporations who have the best interest for their stockholders but not for the citizens of America. He reported that trade treaties did not take a super majority of the Senate to ratify and are not amendable.

He expressed that one of the most significant issues was the usurpation of the constitutional rights of Americans vis-a-vis those of foreign investors. He gave a few examples where the US has been sued by individual investors per the NAFTA and the Central American Free Trade Agreement (CAFTA). He pointed out that if an American citizen brought a Takings Action before a

court of law, 90% of the value of that property must be taken. However, he noted that this was not the case in the international treatise. Furthermore, he claimed that these treaties usurp the rights of local and state governments to rule and regulate under the state's constitutional charters. He reported that Idaho and Montana might have energy laws that do not comply with NAFTA's access to free markets clause. He also indicated that the procurement practices of the state of Montana would not comport with NAFTA. He expressed that Montanans are willing to trade but not to the extent of giving up their right to self-government.

SEN. ELLIOT asserted that SJ Resolution 23 asked that the legislature be consulted by the United States trade representative so that Montana can have a say in how the items in the treaties may affect Montana. It would also ask the congressional delegation, when they look at the treatise, to consider the best interest of the state of Montana and not the mega-corporations of the world. He reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 0.8 - 8.2}

Proponents' Testimony:

Derek Goldman, Volunteer and Board Member of Community Action for Justice in the Americas, provided a written version of his testimony. He referred to the Investor State Law Suit Provisions of the trade agreements. He noted that the most pressing trade agreement was CAFTA. The Investor State Law Suit Provision allows corporations to sue governments. It is modeled after Chapter 11 of NAFTA. He mentioned that there have been 27 Chapter 11 lawsuits that have been brought to bear since 1994. He gave an example of a Chapter 11 lawsuit which allowed for the violation of the US Clean Air Act. He talked briefly about preferences in procurement, when the state says it will purchase products giving preference to a certain type of goods. Under the procurement laws, the Made-In-Montana Program and others that encourage the purchasing of Montana products would be illegal. He gave the Committee a handout by the Montana Cattleman's Association and R-Calf. He attested that his organization encourages the trade of goods and the exchange of ideas throughout the world. However, they support trade agreements that have standards for human rights, the rights of labor, the right to clean air, clean water, and the protection of public health and the environment. Mostly they feel that international trade agreements should grant no greater rights to foreign corporations than are granted to US citizens under US law. He asked the Committee to support SJ Resolution 23.

[EXHIBIT \(jus39a05\)](#)

[EXHIBIT \(jus39a06\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 8.2 - 13.5}

Darrell Holzer, Representing the Montana American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), stood in strong support of SJ 23. He emphasized that the resolution was attempting to show what the fair trade/free trade agreements are really doing to America. He indicated that the US was being challenged to compete with countries that have no value for workers' rights, environmental rights, or human rights. He expressed that the laws being passed at the legislature were subject to negation by the free trade policies. He asserted that many of the decisions were being made behind closed doors with no input by Americans. He claimed that since NAFTA had been introduced, Montana had lost over 1,700 jobs. He concluded by saying that the resolution was the state of Montana's opportunity to send clear directions to the congressional delegation about the problems that exist and tell them that Montanans want them to take a leadership position and address the issues.

{Tape: 1; Side: B; Approx. Time Counter: 13.5 - 16.2}

Don Judge, Representing Teamsters Local 190, mentioned that the Teamsters Union have been directly affected by NAFTA. He encouraged the Committee's support of the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 16.2 - 16.7}

Nancy Schlepp, Representing Montana Farm Bureau Federation, stood in support of SJ 23. She remarked that the Federation supports trade promotion authority for the president, which would give the president the authority to send a delegation out to make a trade package. She mentioned that there was a large provision of CAFTA which dealt with sugar goods. She noted that this would be bad for Montana. She asserted that the western states need to be a part of the decision-making process and that the resolution was their way of telling congress that they are interested.

{Tape: 1; Side: B; Approx. Time Counter: 16.7 - 18.6}

Gene Fenderson, Representing the Montana District Council of Laborers and the Montana Progressive Labor Caucus, stood in strong support of the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 18.6 - 18.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ELLIOT pointed out Line 24, Page 1, of the Resolution.

{Tape: 1; Side: B; Approx. Time Counter: 18.9 - 20}

CHAIRMAN WHEAT closed the hearing on SJ Resolution 23. He opened the hearing to SJ Resolution 25.

HEARING ON SJ 25

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on SJ 25, Urge congressional action on corporate rights.

SEN. ELLIOT carried this resolution for REP. MARY CAFERRO. He believed that this resolution tied in directly with SJ Resolution 23. He expressed that there was a concern that large multi-national corporations will grow at the expense of the common people of the United States of America. He gave a brief history of the corporation. He indicated that their original purpose was to own land where government could not. They were meant to perform specific acts for a specific amount of time. He felt that government has ceded control to corporations. He reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 20 - 24.8}

Proponents' Testimony:

Al Smith, Representing Montana Trial Lawyers Association, spoke in support of the resolution. He mentioned that early in history corporations could be controlled by the government and, in fact, the existence of certain corporations lead to America's revolution. He reminded the Committee of what the corporations were allowed to do when they were first created. He noted that Article 13, Section 1, provides the legislature power to charter corporations and a mandate to the legislature to provide protection and education for the people against harmful or unfair practices by corporations. He urged the Committee's support for the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 24.8 - 27.4}

Gene Fenderson, Representing the Montana District Council of Laborers and the Montana Progressive Labor Caucus, stood in strong support of the resolution. He felt that the development of corporations and the use of their power has caused many problems in our society. He felt strongly that the resolution should be passed.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.9}

Don Judge, Representing Teamsters Local 190, expressed strong support for the resolution. He discussed the power of corporations and the harm that it has caused. He encouraged a do pass for the resolution. He provided an article from the St. Louis Post talking about WR Grace.

EXHIBIT (jus39a07)

{Tape: 2; Side: A; Approx. Time Counter: 0.9 - 2.7}

Derek Goldman, Representing Community Action for Justice in the Americas, spoke in support of the resolution.

{Tape: 2; Side: A; Approx. Time Counter: 2.7 - 2.9}

Cedron Jones expressed that the roles of government and private enterprises have been changing. He thought that the debate over who should supply key services, government or corporations, would only intensify. He felt that the right of corporations to free speech and privacy, made the debate less fair because corporations have so many more resources with which to speak that they are capable of drowning out citizens' voices.

{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 6}

Opponents' Testimony:

Nancy Schlepp, Representing Montana Farm Bureau Federation, stood in opposition to SJ 25. She indicated that it had been better for farms to incorporate rather than form partnerships. Therefore, there are a number of ranches and farms, as well as small businesses, in Montana that will be under corporate law. For this reason they had to oppose the resolution.

{Tape: 2; Side: A; Approx. Time Counter: 6 - 7.3}

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ELLIOT closed by briefly reminding the Committee that President Eisenhower had warned America about a military industrial complex that could usurp the rights of American citizens. He did not want to malign corporations but he was passionate about regaining and retaining the rights of the individual American citizen which have been eroded.

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 8.6}

SEN. WHEAT closed the hearing on SJ Resolution 25 and opened the hearing on SB 462.

HEARING ON SB 462**Opening Statement by Sponsor:**

SEN. KEITH BALES (R), SD 20, opened the hearing on **SB 462**, Revise venue requirements for actions against state agencies.

SEN. BALES explained that the bill said if there was a question on any permit, license, authorization, or certificate by a state agency, action would take place in the county, or one of the counties, which that action affected. In essence this would take a burden off the individuals, and the people in those areas would be more aware of the circumstances. He reserved the right to close.

{Tape: 2; Side: A; Approx. Time Counter: 8.6 - 10.2}

Proponents' Testimony:

John Bloomquist, Representing Montana Stockgrowers Association, stood in support of the bill. He felt that it would clean up venue issues on challenges to state agency actions. He thought that the bill made changes across the board. He indicated that state land decisions or decisions made by the Department of Natural Resources and Conservation (DNRC) were the most important to the Stockgrowers Association. He urged the support of the Committee on SB 462.

{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 12.1}

John Youngberg, Representing the Montana Farm Bureau Federation, explained that the majority of the Federation's members were small businesses. He expressed that the need to travel in Montana to try a case with the DNRC makes it expensive and for

some not worth the time or the money. He urged the Committee to support SB 462.

{Tape: 2; Side: A; Approx. Time Counter: 12.1 - 13}

Ellen Engstedt, Representing Montana Wood Products Association, expressed support for SB 462. She felt that if a lawsuit was filed against a state timber sale it only made sense that the actions be taken in the county where it was filed.

{Tape: 2; Side: A; Approx. Time Counter: 13 - 13.7}

Jim Mockler, Executive Director of the Montana Coal Council, felt that the local judge and the local people should have more of an opportunity to decide these decisions than the common judges in Helena. He encouraged the Committee to support the bill.

{Tape: 2; Side: A; Approx. Time Counter: 13.7 - 14.2}

Opponents' Testimony:

Ann Hedges, Representing Montana Environmental Information Center (MEIC), expressed that a similar bill had gone through last session. She provided a list of acts and laws that had been past and require action to be brought in the county where the facility is located. She asserted that DNRC usually gets sued under the Montana Environmental Policy Act which requires that the case be heard in the county of origin. She did not see anything in the bill which was not already covered by other laws. She felt that the bill was superfluous and urged the Committee to reject it.

{Tape: 2; Side: A; Approx. Time Counter: 14.2 - 16.7}

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. BALES commented that there would not be a fiscal note attached to the bill. He addressed Ms. Hedges, stating that there were loopholes in the previous legislation which needed to be addressed. He asked the Committee to give adequate consideration to the bill.

{Tape: 2; Side: A; Approx. Time Counter: 16.7 - 17.7}

CHAIRMAN WHEAT closed the hearing on SB 462 and opened the hearing on SB 452.

HEARING ON SB 452

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 that SB 452 was a result of an interim study done by the Domestic Violence Fatalities Review Board.

EXHIBIT(jus39a08)

{Tape: 2; Side: A; Approx. Time Counter: 17.7 - 18.9}

Proponents' Testimony:

Judy Wang, Assistant City Attorney from Missoula, informed the Committee that in Missoula, they were currently prosecuting 300 cases of domestic violence every year. She covered three issues: 1) the problem, 2) how SB 452 would deal with the problem, and 3) written testimony from others who were unable to attend. She explained that the part that is seen in the criminal justice department, the violence, is only a part of the abusive relationship. She expressed that the problem is power and control. Examples she gave of this power and control were the phone calls received by victims from their attackers while they were in jail. She informed the Committee that SB 452 would give law enforcement and the judiciary tools to deal with the power and control issues after an arrest is made. It would give local judges the authority to issue a standard order that must be followed when an officer makes an arrest for partner assault. The standard order could make it illegal to contact the victim after arrest for at least 72 hours. The judge can then decide if the standard order needs to be continued, amended, or stopped. If an offender violates the no contact order they would be charged with a misdemeanor offense. She introduced a few letters of support for the bill. She spoke for Brian Fisher, a member of the Domestic Violence Fatalities Review Board. She urged the Committee to vote a do pass on SB 452.

EXHIBIT(jus39a09)

{Tape: 2; Side: A; Approx. Time Counter: 18.9 - 26.8}

Carl Ibsen, Captain with the Missoula County Sheriff's Department, provided a written version of his testimony. He remarked that as a sheriff he was missing the tool to protect the

victim after the attacker is in jail. He encouraged the Committee to support SB 452.

EXHIBIT(jus39a10)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.6}

Leslie McClintock, Senior Grants Administrator with the Office of Planning and Grants in Missoula and Supervisor of Missoula City/County Crime Victim Advocate Program, explained what the Crime Victim Advocate Program does. She asserted that domestic violence is different than other crimes in that there is an intimate relationship between the offender and the victim. She expressed that the pattern of power and control as well as intimidation causes problems in how the cases are handled. She urged the Committee to pass the bill.

{Tape: 2; Side: B; Approx. Time Counter: 1.6 - 5.6}

Ethan Lerman, An Attorney with Montana Legal Services, provides aid to low income residents of the state of Montana. He saw this bill as giving another layer of protection, it could aid in the criminal prosecution if there is one, it might also prevent future incidences of domestic violence, and it would aid in efficiency. He strongly urged the passage of SB 452.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 7}

Tanya Campbell, Criminal Victims Advocate for the Crime Victim Advocate Program in Missoula, indicated that the bill specifically addressed the 24 to 72 hour period after the attack when the offender could have influence over the victim. She reiterated that contact during that time includes among others guilt, intimidation, and threats. She thought that the bill would allow the voice of reason to break through after a traumatic experience.

{Tape: 2; Side: B; Approx. Time Counter: 7 - 8.5}

Susan Hanson, Executive Director of Doves, the Crime Victims Advocate Program for Lake County; and board member for the Montana Coalition Against Domestic and Sexual Violence, supported SB 452.

{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 8.9}

Mikeal Baker-Hajek, Executive Director of a Law Enforcement Based Victim/Witness Program for Great Falls and Cascade County, thought that it was important to add this extra layer of protection and safety for domestic violence victims. By making the calls from jail a chargeable crime, it would give the victims breathing room to make decisions regarding safety.

{Tape: 2; Side: B; Approx. Time Counter: 8.9 - 10}

Donetta Klein, Executive Director of the Montana Coalition Against Domestic and Sexual Violence, seconded the reasons previously stated. She strongly urged a do pass on the bill.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 10.4}

Ali Bovington, Representing the Attorney General's Office, thanked **SEN. PERRY** for carrying the bill and all of the proponents who had testified. She referred to HB 190, which was an extension of the Domestic Violence Fatality Review Commission. She clarified that the bill was not an order of protection, but a no contact order which does not have to be requested by the victim. She felt that it was an important bill to protect those who were the unfortunate victims of domestic violence.

{Tape: 2; Side: B; Approx. Time Counter: 10.4 - 12.4}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. DANIEL MCGEE, SD 29, LAUREL, recounted the steps taken by the sheriffs and deputies who respond to a domestic disturbance call. He asked if they were required to make an arrest.

Mr. Ibsen replied that as a general rule they are required to make an arrest. He informed the Committee that the law requires a good reason for not making an arrest.

SEN. MCGEE followed up by asking how they made the determination of who they were going to arrest.

Mr. Ibsen remarked that the decision was made based on experience, the dynamics of the incident, the primary aggressor, among others. He expressed that it was based on each incident because they are all unique.

SEN. MCGEE wondered if Mr. Ibsen had ever arrested the wrong individual.

Mr. Ibsen answered that he had not.

SEN. MCGEE inquired if arrest equaled guilt.

Mr. Ibsen replied that if he did not think a person was guilty he would not arrest them. Therefore, for him, personally, it would be but the technical determination would have to be up to the jury and judge.

{Tape: 2; Side: B; Approx. Time Counter: 12.4 - 14.4}

SEN. MCGEE understood that Ms. Wang wanted a blanket sanction against anyone who is arrested.

Ms. Wang disagreed. She indicated that what they were asking with the bill was for judges to have the authority to issue a standard order, similar to what they do now with standard bonds. The standard order would be enacted when an offender is arrested for a partner or family member assault. It is good only up to 72 hours or until the offender first appears and is limited to the victim of domestic violence.

SEN. MCGEE asserted that Ms. Wang kept mentioning offenders and victims. He asked if until someone has been ruled by the court to be one or the other can they be labeled.

Ms. Wang believed that it was accurate and fair to call someone a defendant once they have been criminally accused. She indicated that offender and defendant were interchangeable and thus it was accurate to call an individual an offender once they have been charged with a criminal offense.

SEN. MCGEE followed up stating that the problem he had with the bill was that it set up a precondition that the individual is an offender, not just a defendant. He asserted that they had already decided that the person is the offender and that the court has to issue this particular type of order before the court has heard the person. He wanted to know how this bill fit in with American jurisprudence.

Ms. Wang replied that they had looked through the system and found various analogies to what SB 452 would do. She informed the Committee that in a stalking case a victim or a peace officer can tell an individual that they cannot contact the victim. She mentioned the standard bond and the Criminal Procedure Code which allows judges the authority to do anything appropriate once the

criminal charge had been filed to protect the public or any particular citizen. She also mentioned the Domestic Violence Code which talks about peace officers taking necessary actions to protect any citizen enrolled in a domestic violence incident. She did not believe that they were deciding that a person is guilty but that there has been a probable cause determination that the individual should be charged with the offense.

{Tape: 2; Side: B; Approx. Time Counter: 14.4 - 18.2}

SEN. BRENT CROMLEY, SD 25, BILLINGS, understood that the bill called for a standard order and that a judge had no input into a particular case.

Ms. Wang informed the Committee that there would be a standing order, issued upon arrest. The judge could determine what the standing order would be in their jurisdiction and it would be effective from arrest until first appearance.

SEN. CROMLEY followed up, stating that he agreed with the intent of the bill but not with the presentation. He reiterated that there would only be one standing order that would be issued by the judge and that would go on until the judge revoked it.

Ms. Wang clarified that the standing order would be issued by the judge, the judge would decide what the standing order was in that jurisdiction, and then the police officer would serve the judge's standing order on an offender verbally and in writing at the time of the arrest.

SEN. CROMLEY asked if the judge who issues the order could put specific conditions in the order.

Ms. Wang explained that they could. However, there are a number of conditions suggested in the bill draft which the judge could follow or not depending on what they felt was necessary.

SEN. CROMLEY insisted that the order given to the defendant at the time of arrest would have no more specificity in it than the standing order.

Ms. Wang affirmed **SEN. CROMLEY'S** comment. She asserted that the officers had no authority other than what the judge issued as a standing order.

{Tape: 2; Side: B; Approx. Time Counter: 18.2 - 20.2}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, noted that the bill would allow an individual to be arrested even if the individual

protected by the no contact order invites or allows the defendant to violate the prohibition. He wanted to know if Ms. Wang would have any objections if this was amended to say that if the victim invited the defendant to violate the prohibitions they would also be in violation of the order and may be arrested.

Ms. Wang replied that it was a prior suggestion but that there was a due process problem. The court would have no jurisdiction to give a victim an order whereas they would have the authority over the defendant.

{Tape: 2; Side: B; Approx. Time Counter: 20.2 - 21.3}

Closing by Sponsor:

SEN. PERRY asked the Committee not to forget the seriousness of the bill because of the enforced brevity of the hearing.

{Tape: 2; Side: B; Approx. Time Counter: 21.3 - 21.7}

CHAIRMAN WHEAT closed the hearing on SB 452 and opened the hearing on SB 453.

HEARING ON SB 453

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 453**, Clarify prohibition of hearing examiner amending pleadings.

SEN. PERRY explained why he had brought the bill forward. He reported that there had been a case where an individual was charged with wage discrimination based on gender. He related that the claims examiner in his final decision ruled in favor of the defendant. However, using Rule 15 B of Criminal Procedure, he changed his decision. Rule 15 B says that "such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time". He stated that the bill was asking that when hearings officers hear contested cases, that they, when acting as the judge, cannot amend pleadings, only the parties could move.

EXHIBIT (jus39a11)

EXHIBIT (jus39a12)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.6}

Proponents' Testimony:

Mike Harris, Citizen of Bozeman, spoke in support of the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. PERRY closed on SB 453.

CHAIRMAN WHEAT closed the hearing on SB 453 and opened the hearing on SB 472.

{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 3.5}

HEARING ON SB 472

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 472**, Revise county jail work program.

SEN. PERRY brought the bill forth for Gallatin County.

{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 4}

Proponents' Testimony:

Jim Cashell, Sheriff of Gallatin County, thought of this as a housekeeping measure. It coordinated with a piece of legislation that authorized the county commission and the sheriff to establish a county jail work program. The older legislation allows individuals in jail, who are not specifically excluded by statute or by the application process, to participate in a program where they do eight hours of work on a county project and receive credit for 24 hours in jail. He indicated that the program allows the county jails to manage the sentenced population by placing them in work locations. The problem is that the old statute only allows the inmates to be used for county projects and not for city or state projects. He pointed out the important things about the program specifically in that it is voluntary for the county. He noted that the changes to the statute would not force anyone to do anything, it would only open up options for county government in managing their jail

populations. He indicated that it is also voluntary on the inmates part. He related a comment from David Bennett. He related that another statute of the bill would be the two-for-one provision, so that for every day an inmate works they get credit for two days in jail.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 11.4}

Brian Goodkin, Administrator of the Detention Center at the Gallatin County Sheriff's Office, said that the proposed wording changes would allow programs throughout the state to benefit a broader base of the community.

{Tape: 3; Side: A; Approx. Time Counter: 11.4 - 11.8}

Opponents' Testimony: None.

Informational Testimony:

Tim Reardon, an Attorney with the Department of Transportation, thought that some of the language was too broad. He had some proposed amendments to make the bill more acceptable to state agencies.

{Tape: 3; Side: A; Approx. Time Counter: 11.8 - 13.8}

Mike Harris informed the Committee that Gallatin County would support the amendments.

{Tape: 3; Side: A; Approx. Time Counter: 13.8 - 14.1}

At this time, **SEN. MANGAN** arrived at the hearing.

Questions from Committee Members and Responses:

SEN. CROMLEY thought that, by allowing the inmates to work, it might be taking jobs away from other individuals who want to work.

Sheriff Cashell replied that they would be specifically excluded from interfering with a construction project, they cannot replace or displace workers either.

{Tape: 3; Side: A; Approx. Time Counter: 14.1 - 15.8}

SEN. SHOCKLEY asserted that the counties would be able to work with the state on their own and did not think that it needed to go into statute.

Mr. Reardon insisted that the intent of the bill was for counties to work with the state upon request and that it should be done that way. He agreed that common sense should apply, but, unfortunately, it did not always apply.

SEN. SHOCKLEY requested Mr. Reardon to follow up on his mention of a law suit.

Mr. Reardon explained that if an inmate is injured working on a county program and they decide to sue for some reason, there is no criteria for the county to use.

{Tape: 3; Side: A; Approx. Time Counter: 15.8 - 17.5}

CHAIRMAN WHEAT wondered if Sheriff Cashell was representing the other programs across the state or only that of Gallatin County.

Sheriff Cashell informed the Committee that they had brought the bill strictly from Gallatin County. He reported that they have signs and information regarding the program.

CHAIRMAN WHEAT followed up by asking Sheriff Cashell if there would be problems with coordination between the designated detention officer and the state agencies.

Sheriff Cashell replied that it would not be a problem because they would be prohibited from being on construction projects. In addition, he noted that the inmates were provided worker's compensation and orange vests as well as any other need they might have while working. He commented that the public appreciates the program.

{Tape: 3; Side: A; Approx. Time Counter: 17.5 - 20}

Closing by Sponsor:

SEN. PERRY closed on SB 472.

{Tape: 3; Side: A; Approx. Time Counter: 20 - 20.3}

CHAIRMAN WHEAT closed the hearing on SB 472 and opened the hearing on SB 493.

HEARING ON SB 493**Opening Statement by Sponsor:**

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 493**, Revise motor vehicle liability insurance laws.

SEN. LASLOVICH informed the Committee that the bill was a revised version of **SEN. HANSON'S** bill. The bill would make anyone convicted of not having liability insurance in the last five years, subject to a random survey. He referred to Page 3, Line 24, through Page 4, Line 3. This states that if an individual is convicted twice of not having liability insurance they must have SR 22 insurance for at least one year. If the individual drops their SR 22, insurance the insurance company must report it to the Department of Justice so they can suspend the driver's license. He provided a copy of the Code 61-6-133 through 61-6-134. He reserved the right to close.

EXHIBIT(jus39a13)

{Tape: 3; Side: A; Approx. Time Counter: 20.3 - 22.8}

Proponents' Testimony:

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, asserted that SR 22 was a mechanism that is currently in code and is also used in the industry. He urged the support of the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 22.8 - 26}

Brenda Nordland, Representing the Department of Justice, expressed that the first half of the bill dealt with the survey issue. She remarked that the second half of the bill was a significant change from **SEN. HANSEN'S** bill. She noted that the second part of the bill dealt with SR 22. She informed the Committee that the SR 22 was an instrument that was already being used by insurance companies across the US. She cited Lines 24-27, Page 3. She explained that an SR 22 meant that an insurance company who underwrites insurance for an individual, directly files a report, SR 22, with the Department of Justice that says the individual has insurance with their company. The insurance cannot be dropped. She indicated that on Page 3, Line 18, the intent was to have "second or subsequent". She proposed amending the bill to include this. She urged support for the bill.

CHAIRMAN WHEAT asked if there would be a fiscal note attached.

Ms. Nordland replied that she did not know at this time, but thought that there would be a small one.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 0.6}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY commented that there might need to be coordinating language with SB 205.

Closing by Sponsor:

SEN. LASLOVICH closed by saying that Mr. VanHorsen and Jacqueline Lenmark both supported the bill.

{Tape: 3; Side: B; Approx. Time Counter: 0.6 - 1.7}

CHAIRMAN WHEAT closed the hearing on SB 493.

At this time, **SEN. MCGEE** left the hearing.

Executive Action on SB 472

Motion: **SEN. PERRY** moved that SB 472 DO PASS.

Discussion: **Valencia Lane**, Legislative Fiscal Analyst Assistant, read the amendment to SB 472.

Motion/Vote: **SEN. PERRY** moved that SB 472 BE AMENDED. Motion carried 9-1 by voice vote with **SEN. SHOCKLEY** voting no.

{Tape: 3; Side: B; Approx. Time Counter: 1.7 - 5.7}

Motion/Vote: **SEN. PERRY** moved that SB 472 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 5.7 - 6.1}

Executive Action on SB 453

Motion: **SEN. PERRY** moved that SB 453 DO PASS.

Discussion: **SEN. CROMLEY** admitted that he had concerns about the bill. He noted that the hearings officer's order would be the final order, which would be appealable. He did not understand the need for the bill.

CHAIRMAN WHEAT stated that he did not like the bill. He thought that the court, including a hearings officer, has the inherent power to amend the issues so that it conforms to the evidence. He did not think that it was something that needs to be changed. He did not want to tie the hands of the hearings officer.

SEN. PERRY indicated that he had discussed the topic with judges around the state and with Greg Petesch. He did not see a reason that a hearings officer, acting as a judge, should not have the same rules apply to them.

CHAIRMAN WHEAT reiterated his opinion.

SEN. O'NEIL expressed support for the bill. He did not think that it was fair to have a hearings officer make a decision outside of the pleadings.

SEN. PERRY agreed with **SEN. O'NEIL**. He felt that if a hearings examiner, after the hearing, makes a final decision and creates charges on which the defendant was not able to defend themselves at the hearing, would be outside the scope of the law.

SEN. CROMLEY remarked that a court could make the decision on its own to amend the pleadings. He was concerned with the consequences of passing the bill. He felt that it would hurt individuals who were unrepresented.

SEN. PERRY expressed that Rule 15B said that the amendments could be made by a motion of any party, and a judge or hearings examiner would not be a party to the contested case.

{Tape: 3; Side: B; Approx. Time Counter: 6.1 - 13}

Vote: Motion failed 6-6 by roll call vote with **SEN. MOSS, SEN. ELLINGSON, SEN. PEASE, SEN. MANGAN, SEN. WHEAT, and SEN. CROMLEY** voting no.

Motion/Vote: **SEN. MANGAN** moved that SB 453 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 13 - 15.5}

Executive Action on SJ 23

Motion/Vote: SEN. CROMLEY moved that SJ 23 DO PASS. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 15.5 - 16.3}

Executive Action on SJ 25

Motion: SEN. CROMLEY moved that SJ 25 DO PASS.

Discussion: SEN. AUBYN CURTISS, SD 1, FORTINE, expressed that she could not support the resolution because so many of Montana's rural people have family corporations. She thought that the bill was too broad. She felt that the jobs provided by corporations across the country support America's economy. She saw this resolution as a negative message. She understood that there were culprits but did not think that the whole system needed to be blamed.

{Tape: 3; Side: B; Approx. Time Counter: 16.3 - 18.5}

Vote: Motion failed 5-7 by roll call vote with SEN. O'NEIL, SEN. SHOCKLEY, SEN. MANGAN, SEN. MCGEE, SEN. PERRY, SEN. LASLOVICH, and SEN. CURTISS voting no.

Motion/Vote: SEN. MANGAN moved that SJ 25 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 18.5 - 20.1}

At this point in time, SEN. MCGEE returned to the meeting the bills were all held open and he was allowed to cast his vote at this time. On SB 472 he voted aye, on SB 453 he voted aye, and on SJ 23 he voted aye.

With SEN. MCGEE'S vote on SB 453, the bill was still on the table with a tie vote.

At this time, SEN. PEASE was allowed to cast his vote for SB 472. He voted aye causing the bill to be passed unanimously.

{Tape: 3; Side: B; Approx. Time Counter: 20.1 - 24.9}

Executive Action on SB 470

Motion: SEN. ELLINGSON moved that SB 470 DO PASS.

Discussion: SEN. CROMLEY stated that he would vote against the bill on principal. He expressed that he did not see the purpose of passing the legislation since it was already in statute.

SEN. CURTISS had a question relating to the language on Line 28. It seemed to her that the language would weaken what they were trying to accomplish with this because almost everything that would reach the Supreme Court would be adversarial.

SEN. CROMLEY replied that it was his understanding that it only addressed the non-controversial things such as scheduling meetings. He asserted that it would not open hearings to contested cases but it would open administrative or non-judicial types of things.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 2.3}

SEN. O'NEIL remarked that he was carrying a bill clarifying what the requirements to practice law are because he thought that it needed to be more clear. He felt that this was an important bill.

Vote: Motion carried 10-2 by roll call vote with SEN. MANGAN and SEN. CROMLEY voting no.

{Tape: 4; Side: A; Approx. Time Counter: 2.3 - 3.9}

Executive Action on SB 452

Motion: SEN. CROMLEY moved that SB 452 DO PASS.

Discussion: SEN. CROMLEY suggested an amendment to delete the last sentence on Page 3. He felt that they were trying to make it appear there would be a specific order done in a particular case. As he understood it, each district judge would be able to issue an order. He did not think that the particular delivery of the standing order was appropriate.

{Tape: 4; Side: A; Approx. Time Counter: 3.9 - 9.6}

Motion: SEN. CROMLEY moved that SB 452 BE AMENDED.

Discussion: SEN. CROMLEY reiterated the reasons for his amendment.

SEN. PERRY asked if, in **SEN. CROMLEY'S** opinion, this amendment would allay **SEN. SHOCKLEY'S** objections to the bill.

SEN. LASLOVICH had spoken with **SEN. SHOCKLEY** and felt that he could reply that the amendment would not allay his concerns. He admitted that he had the same objections.

CHAIRMAN WHEAT commented that he understood what **SEN. CROMLEY** was objecting to. He noted that if the standing order was available, the last sentence would not need to be in the bill. He did not think that it would change the bill at all if the sentence was taken out.

{Tape: 4; Side: A; Approx. Time Counter: 9.6 - 13.4}

Vote: Motion carried 10-1 by voice vote with **SEN. LASLOVICH** voting no.

{Tape: 4; Side: A; Approx. Time Counter: 13.4 - 13.8}

Motion: **SEN. PERRY** moved that SB 452 DO PASS AS AMENDED.

Discussion: **SEN. LASLOVICH** opposed the bill although he agreed with the intent of the bill. Regardless of the amendment he felt that the bill was still an illusion. He asserted that the peace officer is the one who is issuing the no contact order, not the judge. He felt that there was no due process of law. He felt that there had to be some mechanism in place for the judge to review the circumstances.

SEN. CURTISS wondered if there were any statistics which indicate how many of the offenses are one-time occurrences.

SEN. PERRY did not have any statistics.

{Tape: 4; Side: A; Approx. Time Counter: 13.8 - 16.3}

SEN. CURTISS asked if the information was available to the Committee.

SEN. CROMLEY replied that his impression was that a majority of the instances are repeats.

CHAIRMAN WHEAT responded that there were 300 cases per year in Missoula according to Ms. Wang and, according to Ms. McClintock, there were 666 victims of domestic violence. However, he did not recall anything on the repetition of the crimes.

SEN. CROMLEY had some of the same concerns as **SEN. LASLOVICH** but he felt that if a peace officer can choose to make an arrest or give a no contact ticket, it is similar to a notice to appear at court for a speeding ticket.

SEN. LASLOVICH noted that the difference with a notice to appear was that it is in a court setting whereas a no contact order is not issued by a judge but a peace officer. He felt that the order was not a peace officer's duty, but that of the judge.

{Tape: 4; Side: A; Approx. Time Counter: 16.3 - 19.8}

SEN. SHOCKLEY explained that the way the law is drafted, when a cop shows up someone is going to jail. He expressed that they would not get a ticket 99.9% of the time. When in jail, the individual would be arraigned. He felt that there are adequate protections. He also felt that cops do not have the authority to tell an individual where to go.

SEN. ELLINGSON expressed that there was a due process issue that needed to be addressed. However, he felt that another problem is alleged offenders making contact with the alleged victim. In being able to do this, it allows the cycle of repetitive violence to occur. He would not be able to support this bill if it was a no contact order if it lasted longer than 72 hours. He felt that it was important that an offender not be allowed to talk a victim out of proceeding with the case. He felt that the process was appropriate for the situation.

{Tape: 4; Side: A; Approx. Time Counter: 19.8 - 22.6}

SEN. MCGEE agreed with **SEN. LASLOVICH**. He noted that under current law Page 3, Line 11, "the summoning of a peace officer constitutes an exigent circumstance for making an arrest." The problem he said was that due process is missing. He reiterated that calling an individual the offender without due process is a problem. He did not think that making things simple is an excuse to take care of an issue. He related a story where it was a mistake to arrest the husband. His point is that even in a compelling situation the legislature needs to keep sight of due process.

{Tape: 4; Side: A; Approx. Time Counter: 22.6 - 25.5}

SEN. LYNDA MOSS, SD 26, BILLINGS, commented that she was leaning towards not supporting the bill based on the invisible nature of the proponents and opponents.

SEN. O'NEIL cited Page 2, Line 12, as a problem with the bill. He noted that if a call comes from jail, it has to be collect, so the person at home has to accept who they are talking to.

SEN. PERRY replied to **SEN. MOSS'S** comment on not having proponents to the bill. He named off those who had come on behalf of the bill who represent battered women.

{Tape: 4; Side: A; Approx. Time Counter: 25.5 - 28.7}

SEN. PERRY understood **SEN. MCGEE'S** concern about an arrest being made. He asked what the solution would be in a domestic violence situation.

SEN. MCGEE expressed that his response would be lengthy.

Substitute Motion/Vote: **SEN. LASLOVICH** made a substitute motion that SB 452 BE TABLED. Substitute motion carried 7-5 by roll call vote with **SEN. ELLINGSON**, **SEN. WHEAT**, **SEN. CROMLEY**, **SEN. PERRY** voting no and **SEN. MANGAN** voting no by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 2.4}

Additional documents handed out on this day were a letter by Mr. Barry Stang, of the Montana Motor Carriers Association, regarding SB 403. There was also a memo sent to Ms. Prewett for the Judiciary Committee regarding SJ 19.

[EXHIBIT\(jus39a14\)](#)

[EXHIBIT\(jus39a15\)](#)

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

BRITT NELSON, Transcriber

MW/mp/bn

Additional Exhibits:

EXHIBIT ([jus39aad0.PDF](#))