

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 22, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (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. Jon Ellingson (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: HB 385, HB 476, HB 611, HB 721,
3/18/2005
Executive Action: None

CHAIRMAN WHEAT opened the hearing and explained the order of bills being heard.

HEARING ON HB 385

Opening Statement by Sponsor:

REP. JACK WELLS (R), HD 69, opened the hearing on **HB 385**, Revise law on driver license eligibility.

REP. WELLS explained that this would amend the issuance of a driver's license in Montana. He stated that this issue has become more of a problem since 9/11. This would allow a Department to check on a person's identity and provides proof of status for being in the United States. He stressed the importance of an expiration date. Also, an individual cannot renew their license via mail. He briefly discussed the fiscal note involved.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.5}

Proponents' Testimony:

Brenda Nordlund, on behalf of the Department of Justice (DOJ), stands in support of this bill. She commented that a driver's license is much more than a representation of driving skills. It has become a de facto identity document. She stressed the need for secure documents with secure identity. **Ms. Nordlund** spoke about specific language in the bill and possible conflicts with other bills. She concluded by stating that this is a state policy decision.

{Tape: 1; Side: A; Approx. Time Counter: 5.5 - 11.7}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN WHEAT asked Ms. Nordlund if she had the choice between HB 304 and HB 385, which one she would like to see pass.

Ms. Nordlund asserted that unequivocally she would like to see HB 385 and provided an explanation. She also provided a document to the Committee.

EXHIBIT (jus63a01)

SEN. PERRY asked Ms. Nordlund about Page 7, Line 10. He wished for a clarification of the language.

Ms. Nordlund stated that she wasn't sure they addressed that portion specifically. She directed him to Page 9, Lines 9-11.

SEN. PERRY wondered, if they left the language on Line 10 in, if it would be a conflict.

Ms. Nordlund asserted that it is not a conflict; this will provide them with the maximum flexibility.

SEN. CROMLEY inquired if the language should be changed due to the pragmatics involved.

Ms. Nordlund spoke about legitimacy.

{Tape: 1; Side: A; Approx. Time Counter: 11.7 - 18.3}

Closing by Sponsor:

REP. WELLS closed by stating that this is a good step to protect the state and the country.

HEARING ON HB 476

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, opened the hearing on **HB 476**, Increase marriage license fees for funding domestic & sexual violence victims' services.

REP. MCALPIN stated that they are lucky to have a model program to follow with the help of federal grants. He added that it is not a revolving grant; it terminates in two years.

{Tape: 1; Side: A; Approx. Time Counter: 18.3 - 22.8}

Proponents' Testimony:

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence (MCADSV), provided a document which outlined her testimony. She stands in support of HB 476.

EXHIBIT (jus63a02)

Donetta Cline, Executive Director, MCADSV, provided a document to the Committee which outlined her testimony. She addressed serious problems in the communities. She spoke about Flathead and discussed their program as well as grants they have received.

EXHIBIT(jus63a03)

Amy Hall, Attorney, Montana Legal Services Association, asserted that they represent domestic violence victims all over the state of Montana. She commented that offenders need to be forced to comply with court-ordered requirements. She added that currently courts do not have enough staff to regulate these laws.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.1}

Nancy Sweeney, Clerk of District Court, Lewis & Clark County, encouraged the Committee to support this bill.

Terri Kendrick, YWCA, Missoula, stated that this bill addresses the need for compliance officers. She urged the Committee to pass this bill.

Ali Bovington, Office of the Attorney General, echoed what other proponents stated. She reiterated three key areas: 1) early intervention, 2) intensive supervision and, 3) offender accountability.

Sarah Singer asked for the Committee's support of HB 476.

Opponents' Testimony: None.

Informational Testimony:

Mary Phippen, Montana Association of Clerks of District Court, provided a proposed amendment to the Committee.

EXHIBIT(jus63a04)

Kate Cholewa, MCADSV, stood up on behalf of Wendy Stern. Ms. Stern is the program manager for the Montana Board of Crime Control who administers the grant Ms. Cholewa spoke about. She provided a document on her behalf.

EXHIBIT(jus63a05)

{Tape: 1; Side: B; Approx. Time Counter: 6.1 - 11.2}

Questions from Committee Members and Responses:

SEN. CROMLEY asked Ms. Hall what kind of treatment the violent offenders receive. **Ms. Hall** stated that it depends on what the judge orders. She declared that in Lewis & Clark County, they are often referred to an anger-management program.

SEN. CROMLEY wondered if the probation officer is in contact with the victim of the crime. **Ms. Hall** claimed that they do not deal with criminal law; however, she believes the victim is still in touch with the state officers, but they do not have a role in the offender's treatment.

SEN. PERRY inquired of Ms. Hall of the effectiveness of the program in relation to the abuse of drugs and alcohol. **Ms. Hall** replied that the judge can order drug and alcohol treatment as well as the anger management treatment.

SEN. O'NEIL spoke about three different areas of domestic violence: 1) marriage, 2) common-law marriage and, 3) unmarried. He wondered if there is any difference in the rate of punishment for these different areas of domestic violence. **Ms. Bovington** stated that she does not know the answer to that question. **SEN. O'NEIL** wished to redirect the question to any individual that would be capable of answering it. **Ms. Cline** asserted that domestic violence occurs in all kinds of relationships; however, it appears to be more prevalent with women who have been married, even if they are not married at the time of the incident.

SEN. MCGEE wondered if victims attend anger management classes. **Ms. Hall** declared that she is not aware of any instances in which a victim was court ordered to attend. She does recall situations in which the victim realizes they have a problem as well, and attend the meetings.

SEN. MCGEE reiterated that they can certainly deal with the perpetrator, and issue treatment programs. He is wondering if she would agree that perhaps they are only dealing with half of the problem. **Ms. Hall** stated, in her experience, dealing with the perpetrator and having them own up to their responsibility generally takes care of the problem.

SEN. MCGEE wished to clarify that in 95% of the cases, the disturbance is one-sided. **Ms. Hall** attested that she can see where he is coming from; however, one needs to look at the bigger picture. There is often times trouble within the relationship if domestic violence is occurring.

{Tape: 1; Side: B; Approx. Time Counter: 11.2 - 22.7}

SEN. MANGAN spoke about his program, and stated that they do not receive state funds. He inquired of Ms. Cholewa where she got her figures from. **Ms. Cholewa** declared that they received some information from probation officers and **SEN. SHOCKLEY**.

SEN. MANGAN responded to her statement that the program should be self-sustaining in two years. He inquired into the rule-making authority involved in this. **Ms. Cholewa** agreed that is in place and that it must be self-sustaining in two years.

SEN. MANGAN spoke about the state special revenue fund and asked what would happen to this if the program is self-sustaining. **Ms. Cholewa** believed that the money can be regranted once a program is self-sufficient.

SEN. MANGAN stated that he does not believe that the program will be self-sufficient in two years. He inquired what would happen with potential grants if the program isn't self-sustaining. **Ms. Cholewa** asserted that there would need to be some data showing that the program is capable of becoming self-sustaining.

SEN. MANGAN wondered if there should be a termination date in the bill due to the statement she made in relation to being self-sustaining. **Ms. Cholewa** stated that could be done, and explained why it may be a good idea.

SEN. MANGAN inquired of **REP. MCALPIN** when he believes the first grants will be presented in relation to the effective date. **REP. MCALPIN** stated that he would like to see the grant being written before the funds for the biennium are collected.

CHAIRMAN WHEAT asked the sponsor about the fiscal note. **REP. MCALPIN** stated that the House Judiciary Committee amended the bill from \$20 to \$13.

SEN. PERRY asked the sponsor who brought this bill to him. **REP. MCALPIN** asserted that he is working with the Montana Coalition Against Domestic & Sexual Violence.

SEN. PERRY asked why the marriage license was the source of revenue picked for this bill. **REP. MCALPIN** stated that he looked at similar programs around the country. He added that approximately 24 states provide for such programs through court fees.

Closing by Sponsor:

REP. MCALPIN attested that through this testimony today, it is clear that there is a need for a program like this in Montana. He added that they will never know how a program like this will work if they do not try it.

HEARING ON HB 611

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.9}

Opening Statement by Sponsor:

REP. JONATHAN WINDY BOY (D), HD 32, opened the hearing on HB 611, Increase penalties for partner or family member assault.

REP. WINDY BOY spoke about the fiscal note. He directed the Committee to several specific portions of the fiscal note and described the content to them.

Proponents' Testimony:

Kate Cholewa, MCADSV, spoke about the bill in its original form and provided a document to the Committee.

EXHIBIT(jus63a06)

Amy Hall, Montana Legal Services Association, urged the Committee's support on this bill.

Ali Bovington, Attorney General's Office, stated that this would strengthen penalties for these crimes and she urged a do pass.

Sarah Singer, stated that she is a prior volunteer at an organization in California for partner and family abuse. She reiterated that people were concerned that they could not get out of the situation. She exclaimed that this is a good bill, she urged the Committee's support.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: A; Approx. Time Counter: 8.9 - 21.9}

Questions from Committee Members and Responses:

SEN. SHOCKLEY inquired of Director Slaughter how many jail beds are available. **Director Slaughter** stated that the last time he checked was approximately a week ago. He searched the database for all of the regional prisons, women's prisons, state prisons, and so forth, and there were 3 available beds.

SEN. SHOCKLEY wondered about a county prison, like Yellowstone County. **Director Slaughter** asserted that they run approximately 50-60 beds over the capacity every day.

SEN. PERRY asked Director Slaughter about the problem of overcrowding and how passage of this bill would affect that. **Director Slaughter** stated that is what county prisons were designed for. It is important to give victims that time to recover, when they know the offender cannot get to them. He stressed the importance of having a bed available for these offenders.

SEN. CROMLEY wondered if there seemed to be a difference between first-time offenders versus repeat offenders. **Ms. Cholewa** declared that, "Repeat offenders are more the norm". She added that this is probably due to the fact that they do not have follow-up on these cases.

SEN. CROMLEY inquired if fines are being assessed and paid. **Ms. Cholewa** asserted that in some ways it is the honor system. Unfortunately, they are not real aggressive in the collection process; therefore, many fines go uncollected.

SEN. CROMLEY noted the fines on first, second, and third offenses. He asked for her input on the significant increase for the third offense. **Ms. Cholewa** stated that this is the work of the House Judiciary Committee; she is not sure where the numbers came from.

CHAIRMAN WHEAT asked **REP. WINDY BOY** if he had a response to **SEN. CROMLEY**. **REP. WINDY BOY** replied to the question of raising the fine for the third offense.

SEN. MCGEE spoke about the potential tension between a man and a woman in any kind of relationship. He proposed the idea of introducing a "human decency training" program at some point in this process, whether it be the first, second, or third offense. **Ms. Cholewa** expressed appreciation for what he is saying. She stated that the state cannot force somebody to attend counseling-like sessions, unless they have done something wrong.

SEN. LASLOVICH stated, "I hate mandatory, minimum sentences". He stated that he believes the judge needs to have some discretion. He believes there will be significant costs to local prisons. He wondered if there is any wiggle room in regard to lessening the sentences.

REP. WINDY BOY asserted that is a good question. He simply wants to raise the awareness of this issue. At this point, he feels that the punishment is not working to make their point.

Closing by Sponsor:

REP. WINDY BOY closed.

HEARING ON HB 721

{Tape: 2; Side: B; Approx. Time Counter: 0 - 12.1}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 721**, Montana Drug Offender Accountability and Treatment Act.

REP. PARKER stated that this bill would create a statutory link for counties to be able to create drug treatment courts. He spoke about the courts that have already been established in Billings, Bozeman, Missoula, and Great Falls.

Proponents' Testimony:

Bill Slaughter, Director, Department of Corrections, asserted that this bill came about through the Board of Crime Control. This can be seen as a team approach.

Ali Bovington, on behalf of AG Office and DOJ, stated that this is a priority. She also addressed the meth problem in this state.

Ron Alsberry, Probation & Parole Bureau, declared that a treatment court is a critical concept that needs to be addressed. This piece of legislation has the potential to lay the foundation of a very serious problem in Montana. He commented that this is very forward-looking.

Kris Minard, concerned citizen, attested that she is pleased to stand in support of HB 721.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: B; Approx. Time Counter: 12.1 - 24.2}

Questions from Committee Members and Responses:

SEN. O'NEIL stated that he has attended the drug court in Missoula. He wondered why it is cheaper for an offender to come in once a week to the drug court, rather than once a week to the Probation & Parole Bureau. **Mr. Alsberry** stated that he has experience with the Gallatin County drug court. He commented that they are often times present when the offender attends the drug court. He feels that it is more valuable for them to attend that, rather than the Probation & Parole Bureau.

SEN. O'NEIL inquired if they cannot do the effective treatment without a judge present. **Mr. Alsberry** reiterated that the process of the drug court treatment allows the judge to be in a very powerful, influential position. He explained how this works and how effective it is.

SEN. O'NEIL inquired if he sees any problems with the separation of power if the ordering judge would also act as the corrections officer. **Mr. Alsberry** stated that the way he understands it is that the whole proceeding is a matter of record. Counsel is present as well, to ensure the offender has rights.

SEN. O'NEIL inquired if it would be acceptable to reduce the funding in the Probation & Parole Bureau, in order to increase the funding in the DOJ. **Mr. Alsberry** stated that they would like to be involved with the drug court; however, funding is always a problem.

SEN. LASLOVICH asked **REP. PARKER** to help him understand the process. **REP. PARKER** reiterated that this bill is structured to allow for flexibility. He discussed the system in more detail to **SEN. LASLOVICH**.

SEN. LASLOVICH inquired of **REP. PARKER** what the meaning of the new Section 8 referred to. **REP. PARKER** explained why he added this provision and stated that he is open to amendments by the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 10.2}

SEN. O'NEIL inquired of Jed Fitch, Montana Trial Lawyers Association, if he had looked at the bill and seen the section on immunity of liability. **Mr. Fitch** stated that he has seen the bill, and recognizes that section.

SEN. O'NEIL asked him if he thinks that is a good idea. **Mr. Fitch** echoed some of **REP. PARKER's** comments. He added that he tends to agree on some of these comments. However, he does not believe the section needs to be in the bill.

SEN. O'NEIL wondered if he believes that they should extend this to the Probation & Parole Bureau. **Mr. Fitch** stated that the individuals with Probation & Parole Bureau are already performing their duties. He added that they are either already covered, or there is no way they can be covered in the drafting of the bill.

CHAIRMAN WHEAT asked **REP. PARKER** about Page 2, Line 28. He attested that he is not real crazy about the immunity section. **REP. PARKER** stated that if that provision is taken out, the responsibility will fall on the localities to address the issue. He does not think it would be a huge fatality if that provision is struck.

CHAIRMAN WHEAT spoke about the treatment court in Gallatin County. He mentioned that he is not aware of any lawsuits in that area. He wondered if **REP. PARKER** was aware of any. **REP. PARKER** asserted that he is not aware of any. This is an anticipatory step.

CHAIRMAN WHEAT spoke about the public defender team being a part of the treatment program. He also mentioned the funding of this program. **REP. PARKER** replied with information about grants from the federal government. He explained the responsibilities of the localities as well. He also discussed why he had not requested funding at this time.

CHAIRMAN WHEAT asserted that he does not believe this is in an experimental phase. He believes it works; at some point the legislature will need to figure out a way to fund this program. They cannot continually rely on federal grants.

SEN. CROMLEY wondered if there is money available for the initial set-up of these programs, at which point they will need to be self-sustaining. **REP. PARKER** replied that is correct. He believed that all of the programs in the state were initiated with federal start-up funding.

CHAIRMAN WHEAT posed the question, "Why not extend the bill to other treatment programs"? **REP. PARKER** declared that it was his hope that this bill would encompass all types of treatment courts in the beginning.

{Tape: 3; Side: A; Approx. Time Counter: 10.2 - 25.4}

Closing by Sponsor:

REP. PARKER closed by thanking everyone for their close attention to this bill.

ADJOURNMENT

Adjournment: 11:10 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

KIM LEIGHTON, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus63aad0.PDF](#))