MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 11, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: HB 391, 392, 577, 585, 2/3/2005
Executive Action: HB 562-Do Pass As Amended

HEARING ON HB 391

Sponsor: **REP. ROBIN HAMILTON, HD 92, MISSOULA**

Opening Statement by Sponsor:

REP. ROBIN HAMILTON (D), HD 92, opened the hearing on **HB 391,** Criminal case mediation.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 36}

Proponents' Testimony:

Kerry Newcomer, Montana Mediation Association, rose in support of HB 391. She spoke to the committee about the membership of her association and the fundamental workings involved in mediation.
{Tape: 1; Side: A; Approx. Time Counter: 36 - 57}

John Larson, District Court Judge-Missoula, rose in support of HB 391. **Judge Larson** spoke to the committee regarding the positive aspects of a mediated settlement. He stated that during a normal legal proceeding, the victims may need to attend 8-10 trials where nothing is really finalized. Whereas with mediation, the process is hastened. The judge stated that 90-95% of cases could be resolved through mediation.
EXHIBIT(juh34a01)
EXHIBIT(juh34a02)
EXHIBIT(juh34a03)
EXHIBIT(juh34a04)
EXHIBIT(juh34a05)
EXHIBIT(juh34a06)
EXHIBIT(juh34a07)
{Tape: 1; Side: A; Approx. Time Counter: 57 - 195}

Colin Stephens, self, stated to the committee that he is a law student at the University of Montana and has seen in other states that the mediation process saves time and is a workable solution to the over-crowded court system.
{Tape: 1; Side: A; Approx. Time Counter: 195 - 215}

Opponents' Testimony:

Marty Lambert, Gallatin County Attorney, Montana County Attorneys Association, rose to speak in opposition to HB 391. **Mr. Lambert** stated for the committee members that:

1) There is no problem; 95% of the cases settle.
2) The cost, there is no revenue identified to pay for the program.

3) No finality, regarding 46-12-211; does not address and it would be difficult to maintain impartiality.
4) No confidentiality for the parties.

Mr. Lambert continued to describe for the committee a double homicide case that he is currently prosecuting. The cost so far is $17,000 for the medical tests for the offender which will be paid out of the Gallatin County general fund. He further stated that statutes in the MCA govern over what a judge may accept; whereby, if this were to pass, the judge would not be bound to accept. **Mr. Lambert** continued to speak to the committee about the reasons why this legislation would not be a viable avenue for justice.

He was concerned about whether or not the media would be able to attend the mediation. The fact that the mediation may endanger cooperative private citizens who may have come forward to help law enforcement and finally, the issue of confidentiality.
{Tape: 1; Side: A; Approx. Time Counter: 215 - 459}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG inquired of Judge Larson to explain the statute that covers mediation and also how the costs would be covered. The REPRESENTATIVE and Judge Larson continued to discuss who would be present at the mediation, confidentiality issues and whether or not the victims be allowed to attend.

REP. STOKER proceeded with his questions for Judge Larson. The REPRESENTATIVE was very interested in the costs and what entity should be the burden for paying for the mediation. **Judge Larson** explained to REP. STOKER that the costs would be shifted to the state, however; the costs would be decreased if offenders are not required to have trials. **REP. STOKER** asked, "...would this impact small justice of the peace courts?" **Judge Larson** replied, "Yes, the cases could be mediated prior to going to trial."

REP. CLARK began his questioning of Mr. Lambert. He asked Mr. Lambert to explain the difference in plea negotiations and the mediation process. **Mr. Lambert** said that he didn't know how the mediation process would work. He said the mediator would need to be an attorney, and that the parties would still need to meet with the county attorney.

REP. NOENNIG proceeded with his questions to Mr. Lambert. He was interested in knowing if any other counties/states use this process.

Mr. Lambert responded that this process is used in very isolated areas. They then discussed the costs in the current system and the costs related to the mediation process.

REP. CLARK questioned Judge Larson about whether or not he would be amenable to a pilot project to test this mediation process he described. **Judge Larson** stated that he would be "ok" with a pilot project and that there is three or four other judges who are also willing to participate in the project.

REP. KOOPMAN then posed his questions to Judge Larson. The REPRESENTATIVE was interested in the plea bargain situation that currently is presented and if mediation would create an increase in plea bargains. **Judge Larson** replied that plea bargains happen all the time now and mediation would allow more resources for more serious cases. They continued to discuss the validity of the theory that plea bargains help a county attorney's "record."
{Tape: 1; Side: A; Approx. Time Counter: 459 - 500}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 343}

Closing by Sponsor:

REP. HAMILTON closed the hearing and stated that the current court system is overloaded. She further stated that this process will not work everywhere, but would work in some areas and would provide one more option for the courts.
{Tape: 1; Side: B; Approx. Time Counter: 343 - 360}

HEARING ON HB 392

Sponsor: **REP. ROBIN HAMILTON, HD 92, MISSOULA**

Opening Statement by Sponsor:

REP. ROBIN HAMILTON (D), HD 92, opened the hearing on **HB 392,** Revise post conviction relief appeals. She stated that this bill would impose a time limit of one year plus 60 days for the appeal process.
{Tape: 1; Side: B; Approx. Time Counter: 360 - 390}

Proponents' Testimony:

Kirsten LaCroix, Missoula County Attorney, rose in support of HB 392. She stated that this bill would close a loophole and provide "teeth" to the current statute regarding the statute of limitations appeals.
{Tape: 1; Side: B; Approx. Time Counter: 390 - 440}

Jeff Roth, intern-Missoula County Attorney, spoke in support of HB 392. He stated that this bill is an effort to increase the efficiency in the judicial system. **Mr. Roth** stated the courts in Idaho and Washington have identical language. The language does not limit new "truths" or new evidence to be brought forward in an appeal such as DNA evidence and would not infringe on a person's constitutional rights.
{Tape: 1; Side: B; Approx. Time Counter: 440 - 500}

Fred VanValkenberg, Missoula County Attorney, Montana County Attorneys Association, rose in support and stated, "...this bill limits the time to a meaningful discourse of justice." **Mr. VanValkenberg** continued to state that many of the people are usually in Montana State Prison (MSP) for a lengthy time, for very serious crimes and are looking for ways to avoid "time" for those offenses. He concluded by saying that new evidence in cases will not be affected by bill.
{Tape: 2; Side: A; Approx. Time Counter: 0 - 46}

John Connor, Chief Prosecutor-Attorney General Office, rose in support of HB 392 by stating that the majority of the factual issues are resolved at the district court levels.
{Tape: 2; Side: A; Approx. Time Counter: 46 - 58}

Opponents' Testimony:

Kristina Guest, Assistant Appellate Defender, rose in opposition to HB 392 by stating that this bill is not needed. The District Courts already have power to disallow appeals. **Ms. Guest** stated that a pro sea petition helps to streamline post conviction appeals and petitions.
{Tape: 2; Side: A; Approx. Time Counter: 58 - 101}

William Hooks, self, rose in opposition to HB 392. **Mr. Hooks** stated that the system is already in place, working and this bill is not needed. He spoke to the committee members about the cases where this bill would not apply such as DNA.
{Tape: 2; Side: A; Approx. Time Counter: 101 - 205}

Michael Donahoe, Montana Association of Criminal Defense Attorneys, he spoke to the committee about the jurisdictional statute of limitations. **Mr. Donahoe** also stated that the district court has the power to address currently in Rule 15 and that this bill could violate writs of habeas corpus.
{Tape: 2; Side: A; Approx. Time Counter: 205 - 254}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOONAN and **Mr. VanValkenberg** discussed the filing of petitions stating ineffective counsel and proceedings that are in front of the Commissioner of [Legal] Practices.

REP. NOENNIG questioned Mr. Connor about one year limit for filing and how that would interface with new evidence, etc. **Mr.** Connor stated that this bill deals with amendments of substance; not amendments that are pro-se as the opponents stated. The REPRESENTATIVE queried if a new claim could be raised after the one year limit. **Mr. Connor** replied in the affirmative and agreed that "all grounds for relief" must be submitted in the one-year time frame. **Ms. LaCroix** entered into the discussion after the question of a conflict arising from the one year time frame, new DNA evidence finding new witnesses and whether or not the information was raised at the time of the trial.

REP. GUTSCHE spoke with Ms. Guest about the amended petitions filed that have new claims within them and if one year is enough time for those cases to be adjudicated. **Ms. Guest** replied, "...that it was not enough time...."
{Tape: 2; Side: A; Approx. Time Counter: 254 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 38}

Closing by Sponsor:

REP. HAMILTON stated that the current statute states one year and that means one year.
{Tape: 2; Side: B; Approx. Time Counter: 38 - 56}

HEARING ON HB 577

Sponsor: **REP. DAVE MCALPIN, HD 94, MISSOULA**

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, opened the hearing on **HB 577**, Appropriate money to fund rape kits and examinations. The REPRESENTATIVE spoke to the committee about how this bill would affect how rapes are reported. This bill will offer "Jane Doe" the option of not reporting a rape immediately but allow a rape kit examination to be administered in the absence of the report.
{Tape: 2; Side: B; Approx. Time Counter: 56 - 93}

Proponents' Testimony:

Tina Hedin, Sexual Assault Examiner, Deaconess Billings Clinic, rose in support of HB 577. **Ms. Hedin** spoke to the committee about the procedures that are required to collect evidence from a rape that may be used in the prosecution of the rapist. She stated that for every one person who makes a report of rape; five rapes will go unreported for various reasons such as cost and knowing the offender (65% of rapists in Billings are known by the victim).

Ms. Hedin reported that victims may need a grieving time after a rape and that this bill will give them that time and the assurance that they may still report the crime. She stated, "...[the] better the evidence, [the] better the prosecution."
{Tape: 2; Side: B; Approx. Time Counter: 93 - 175}

Jenny Daniel, Missoula County Crime Victim Advocate, rose in support of HB 577. **Ms. Daniel** spoke to the committee about the after effects of a rape and how the victim may need more time before reporting the crime.
{Tape: 2; Side: B; Approx. Time Counter: 175 - 209}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 577. **Ms. Cholewa** explained to the committee members the various examination kits, the kit's cost and how this bill will be a positive step toward the reporting and eventual prosecution of a rape.
EXHIBIT(juh34a08)
{Tape: 2; Side: B; Approx. Time Counter: 209 - 313}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, The Friendship Center, rose in support of HB 577. **Mr. Kembel** spoke to the committee about an incident involving his cousin.
{Tape: 2; Side: B; Approx. Time Counter: 313 - 338}

Pam Bucy, Assistant Attorney General, spoke to the committee about the Office of Victim Services/Restoration of Justice that is within the office of the Attorney General. **Ms. Bucy** stated that the additional workload can be incorporated into that office. She also spoke to the committee about the State Crime Lab and how they are charged with assembling the rape kits and that the kits are designed specifically for the needs of prosecution of crimes.
{Tape: 2; Side: B; Approx. Time Counter: 338 - 402}

Patricia Bassett, Associated Students of the University of Montana, rose in support of HB 577.
{Tape: 2; Side: B; Approx. Time Counter: 402 - 413}

Jessica Crennan, Associated Students of the University of Montana, spoke in support of HB 577.
{Tape: 2; Side: B; Approx. Time Counter: 413 - 427}

Charmy Gonnerman, Network Against Domestic and Sexual Violence, rose in support of HB 577.
{Tape: 2; Side: B; Approx. Time Counter: 427 - 477}

Jim Ahrens, Montana Hospital Association, rose in support of HB 577.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 8}

Christina Powell, Sexual Assault Center-Bozeman, rose in support of HB 577.
{Tape: 3; Side: A; Approx. Time Counter: 8 - 21}

Kelsen Young, Montana Coalition Against Domestic and Sexual Violence, spoke in support of HB 577.
EXHIBIT(juh34a09)
{Tape: 3; Side: A; Approx. Time Counter: 21 - 45}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. SONJU began his questioning of Ms. Cholewa by asking about the costs involved and how that amount was estimated. **Ms. Cholewa** stated that $50,000 is the beginning amount; they will start with that number and see how many victims use this and then have a better conclusion of what they need for the 2007 Legislature.

REP. BECKER spoke with Ms. Bucy about the costs to administer this program.

REP. WARD continued with his questions for Ms. Bucy. The REPRESENTATIVE was interested in the statutes that provide for the "Jane Doe" privilege. **Ms. Bucy** replied, "...in 45-15-411, Sub Section 2...."

REP. WINDHAM began her questioning of Ms. Bucy regarding the arbitrary 30 days that has been spoken of. **Ms. Bucy** replied that the 30 day number is not in the bill, it is just to encourage the examination to be done.

REP. EVERETT also spoke with Ms. Bucy. **REP. EVERETT** was interested in the theories that if more rape kits are used, there would be more convictions; therefore, a fiscal note may be warranted for this bill. **Ms. Bucy** responded that the next two years could be an educational period for the program and there would be a better idea of what would be needed fiscally. **REP. EVERETT** was interested in the consensual sex statistics regarding false reporting in rapes. **Ms. Bucy** replied, "...1.6%...."

REP. KOOPMAN queried Ms. Bucy about hospitals and their policy toward victims of rape who do not want to report and whether or not the examinations are conducted. **Ms. Bucy** reported that hospitals would not turn away a victim when the victim does not want to report the crime. Further, **Ms. Bucy** stated that with the "Jane Doe" policy, the hospital would be mandated to do the examination. **REP. KOOPMAN** then inquired whether or not any other states have a similar statute. **Ms. Bucy** replied that the "Jane Doe" examinations are done in many other states. She then referred to **Ms. Powell** who stated that Gallatin County is starting this program currently.

REP. KOOPMAN began his questioning of Ms. Powell regarding the "handling" of the rape kit evidence. **Ms. Powell** replied that even if the victim pays for the examination, law enforcement must be the caretaker of the evidence. **Ms. Bucy** then stated that this bill would provide the official mechanism for law enforcement.
{Tape: 3; Side: A; Approx. Time Counter: 45 - 284}

Closing by Sponsor:

REP. MCALPIN closed the hearing on HB 577 and stated, "...this bill is the solution to the problem...."
{Tape: 3; Side: A; Approx. Time Counter: 284 - 297}

HEARING ON HB 585

Sponsor: REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 585,** Pregnant women and unborn children protection act. **REP. PARKER** informed the committee members that this bill will provide enhanced penalties for assaults on pregnant women and their unborn.

REP. PARKER stated that in MCA 45-2-101 Sub Section 2; "assault on a minor is currently a misdemeanor; this bill would elevate that assault to a felony." Further, the prosecution will not have to prove viability; just that the offender knew the woman was pregnant.
{Tape: 3; Side: A; Approx. Time Counter: 297 - 375}

Proponents' Testimony:

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 585. **Ms. Cholewa** spoke in support of HB 585 and stated, "...violence often escalates when a woman is pregnant."
EXHIBIT(juh34a10)
{Tape: 3; Side: A; Approx. Time Counter: 375 - 391}

John Connor, Chief Prosecutor-Attorney General, rose in support of HB 585.
{Tape: 3; Side: A; Approx. Time Counter: 391 - 405}

Opponents' Testimony:

Steven Ertelt, Life News.com, rose in opposition to HB 585 by stating that this is a "single victim bill." **Mr. Ertelt** referred to statements made by Lacy Peterson's mother, Sharon Roche, who stated that she is against these kinds of bills. Further, **Mr. Ertelt** stated that Montana would be in conflict with 30 other states and also federal law. This bill could also potentially be unconstitutional. He related a story to the committee about the professional athlete, Ray Caruth.
{Tape: 3; Side: A; Approx. Time Counter: 405 - 500}
{Tape: 3; Side: B; Approx. Time Counter: 0 - 18}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOONAN asked the sponsor about existing law and if this bill would eliminate the option of a double homicide charge. **REP. PARKER** responded, "No."

REP. MCGILLVRAY asked the REPRESENTATIVE about the language in Section 1, Sub Section 2 about "running the sentence consecutively." The sponsor stated that the sentence would "be tacked on."

REP. EVERETT queried REP. PARKER about a scenario on an Indian reservation where a pregnant woman died in a car accident and whether or not state or federal law would be applicable. **REP. PARKER** responded that state law would prevail.

REP. KOOPMAN continued with questions for REP. PARKER. **REP. KOOPMAN** was interested in Section l, Line 12 regarding the language, "known or should have known" and how that would be interpreted. **REP. PARKER** replied that knowledge under criminal law must rise to a level of reasonable doubt; i.e., a woman "showing." He did state that he would agree to strike the language "should have known."

REP. WARD inquired of REP. PARKER to discuss the "threat of harm" vs. "act of harm" on Page 2, Section 2. **REP. WARD** also stated that in his understanding of the bill, it would appear that intimidation has a more severe consequence than the actual assault. **REP. PARKER** informed REP. WARD that he must remember the prosecutorial discretion that enters into the event.

REP. NOONAN spoke with Mr. Ertelt regarding whether or not there should be two crimes prosecuted for both the mother and fetus and whether the enhanced penalties are something that women may not even support. **Mr. Ertelt** stated that women do not support the enhanced penalties.

REP. WINDHAM discussed with Mr. Connor the issue of constitutionality. **Mr. Connor** responded that in Section 1, the enhanced penalty section, that it is designed around the federal law, and in the MCA 46-1-401. In Mr. Connor's opinion, the new language would not be a problem.

REP. GUTSCHE also discussed with Mr. Connor the language of an enhanced penalty and whether or not women would support this penalty. **Mr. Connor** stated that he could not imagine women who would not support this enhanced penalty language.

REP. KOOPMAN continued with Mr. Connor in discussing the enhanced penalty language and that in his opinion; the bill focuses only on the women. **Mr. Connor** stated that as a prosecutor, he would seek the enhancement due to the women being pregnant. **REP. KOOPMAN** continued and asked, "...does the fetus have rights due under the law?" **Mr. Connor** replied, "...that in Montana law, the fetus must be born alive to be a human being." The REPRESENTATIVE and Mr. Connor continued with their discussion for a short time.
{Tape: 3; Side: B; Approx. Time Counter: 18 - 500}

Closing by Sponsor:

REP. PARKER closed the hearing on HB 577 and stated that he has tried very hard to be candid and honest with the committee about what this bill does and does not do. However, **REP. PARKER** stated that he takes very strong exception to some of the opponent's testimony and when witnesses appear whose testimony is so blatantly inaccurate; "I think it is important that we as members exercise our freedom of speech to point that out."

REP. PARKER continued with his statements regarding the inaccurate statements made by the opponents regarding the penalty enhancements and their unconstitutionality. He stated that these enhancements are modeled after the penalty enhancements for weapons that are contained in 46-18-221; a section that has been held specifically constitutional by the Montana Supreme Court. He continued to explain to the committee members about the instructions that would be given to the juries regarding the enhanced penalty findings.

Finally, **REP. PARKER** closed the hearing on HB 585 by stating, "to protect the unborn baby, you must protect the mother." The sponsor also thanked REP. MORGAN for bringing this issue to the attention of the legislature.
{Tape: 4; Side: A; Approx. Time Counter: 0 - 68}

EXECUTIVE ACTION ON HB 562

Motion: **REP. STOKER moved that HB 562 DO PASS.**

Discussion:

Motion/Vote: **REP. BECKER moved that HB 562 BE AMENDED with a CONCEPTUAL AMENDMENT TO STRIKE LINES 19, 20. Motion carried by voice vote.**

Motion: **REP. NOENNIG moved that HB 562 DO PASS AS AMENDED.**

Discussion:

The committee discussed the bill briefly.

Vote: **Motion that HB 562 DO PASS AS AMENDED carried 14-4 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. RICE and REP. WARD voting no. (REPS. HARRIS, LANGE voting by proxy vote.)**

ADJOURNMENT

Adjournment: 11:19 A.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh34aad0.PDF)