MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 2, 2005 at 8:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Jeff Mangan (D)
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. Brent R. Cromley (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 46, 2/24/2005; HB 205, 2/24/2005; HB 307, 2/24/2005; HB 66, 2/24/2005; HB 128, 2/24/2005; HB 40, 2/24/2005
Executive Action: HB 66; HB 128

HEARING ON HB 46

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 46 would have a deterrent effect because it explicitly makes it a crime for an individual to negligently kill another person while driving under the influence of alcohol. He said that the definition of "negligent homicide" is very broad and largely designed to prevent a tree-spiking problem emerging in the early 1990s. HB 46 requires a prosecutor to prove both negligent homicide and driving under the influence. If a conviction is obtain, the penalty would be a maximum of 30 years instead of 20 years.

{Tape: 1; Side: A; Approx. Time Counter: 4.1 - 15.4}

Proponents' Testimony:

Ali Bovingdon, Attorney General's Office, said that the Department of Justice (DOJ) believes that HB 46 would be another strong deterrent against drinking and driving. She urged the Committee's support.

Bill Muhs, Mothers Against Drunk Driving (MADD), provided written comments in support of HB 46.

EXHIBIT(jus46a01)

Kris Minard, Citizen, said that tough laws make good deterrents, and she hoped that the Committee would reinforce the reality that when a drunk driver gets behind the wheel of a car, it is no accident. She urged the Committee's support of HB 46.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JESSE LASLOVICH, SD 43, asked why the language "the imposition of a sentence may not be deferred" was added. **REP. PARKER** said that the language was meant to give HB 46 some "teeth". Victims of drunk drivers expressed a deep concern about this issue. Their loved ones will never come back, and yet, the drunk driver has the ability to have his or her sentence discharged.

SEN. JERRY O'NEIL, SD 3, asked why there was no fiscal impact when the sentence is increased from 20 years to 30 years. **REP.**

PARKER said that during the last negligent homicide case that he presented, the individual was sentenced as a persistent felony offender and given 35 years without parole because of his background. However, the defense attorney presented a thorough memorandum showing that no offender convicted of negligent homicide had ever been given more than 10 years. **REP. PARKER** felt that the reason that there was no fiscal impact was because negligent homicide statutes already exists.

SEN. JIM SHOCKLEY, SD 45, said that he defended a negligent homicide and the person was found not guilty. The testimony was that the driver was drunk, but that drunk or sober, the accident would have happened anyway because there was no way that it could have been avoided. He asked if that person would be convicted under HB 46. **REP. PARKER** said that HB 46 requires a higher standard of proof; i.e., a negligent homicide and a DUI. Criminal negligence is a far higher standard than civil negligence and is a gross deviation from the ordinary standard of care. Being drunk, alone, as heinous as that might be, would not be enough to sustain a conviction beyond a reasonable doubt.

Closing by Sponsor:

REP. PARKER said that he was most interested in the future treatment of drunk driving offenders who kill other people on Montana's roadways. It is an abomination in criminal law that a person in that situation could ever be back in court on a misdemeanor DUI. It is offensive and a failure in the system to not provide adequate and accurate accountability and treatment options. He urged the Committee's support of HB 46.

HEARING ON HB 205

{Tape: 1; Side: A; Approx. Time Counter: 15.4 - 16.9}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 205 was requested by the Montana Supreme Court and requires that bond forfeitures in felony cases be deposited in the general fund rather than the treasury of the city or county. It puts the money where the function is.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 16.9 - 18.4}

Beth McLaughlin, Support Services Director, Supreme Court Administrator's Office, said that HB 205 is a housekeeping bill. During the District Court Council's work, it discovered that bond forfeitures in felony cases were still going to the city or county general fund when, in fact, they should be going to the state general fund to support the expenses of the Court or the Public Defender if the person had been assigned counsel. She urged the Committee's support of HB 205.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. PARKER requested the Committee's support of HB 205.

HEARING ON HB 307

{Tape: 1; Side: A; Approx. Time Counter: 18.4 - 25.5}
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Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 307 creates a new criminal offense of money laundering. It attempts to tackle the events that make crime profitable at the point at which criminal money enters the main stream economy.

Proponents' Testimony:

Pat Brinkman, Great Falls Police Department, said that part of the problem is the huge volume of cash being made from the sale of illegal drugs. The goal of every drug transaction is to make money. Detecting and seizing money derived from drug trafficking is critical because it disables criminals by cutting off their ability to finance future drug activity.

{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 14.9}

Detective Sergeant Brian Fulford, Kalispell, provided written comments in support of HB 307.

EXHIBIT(jus46a02)

Jim Kembel, MT Association of Chiefs of Police, and Jim Smith, MT Sheriff's and Peace Officers Association (MSPOA), spoke in support of HB 307.

Mike Batista, Administrator, Division of Criminal Investigation, DOJ, said that there are many money laundering cases that occur in Montana that do not meet the federal threshold or there are insufficient federal resources to investigate and prosecute these cases. He added that although federal prosecutors may look at the drug end of an investigation for prosecution, the money laundering issues have to be addressed by state investigators and prosecutors. HB 307 will provide a vehicle to do that.

Karen Powell, Deputy Securities Commissioner, State Auditor's Office (SAO), said that the SAO is a criminal justice agency, and it both prosecutes and assists in the prosecution of financial crimes. Over the past few years, the SAO has received information from Montana citizens involving insurance and securities transactions that could involve money laundering. The SAO stands in support of HB 307 to ensure that there is a definition of money laundering in statute.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 14.7 - 25.3}

SEN. AUBYN CURTISS, SD 1, asked if assets could be seized without guilt being established. **REP. PARKER** said that the forfeiture provision under HB 307 are modeled after the drug forfeiture petitions under existing law. It does not require guilt, as such, because rather than it being a criminal proceeding, the forfeiture proceeding is a civil matter.

SEN. MCGEE questioned the meaning of money laundering. **REP. PARKER** said that "money laundering" is the movement of money from an illegally obtained source into the main stream of business finance where it appears to come from a legal source.

SEN. JON ELLINGSON, SD 49, questioned how the forfeiture sections of HB 307 worked together. **REP. PARKER** said that there is a number of areas in criminal law where there is a civil proceeding that runs on a parallel track to a criminal proceeding. For example, in a DUI case, there is the underlying criminal offense

that parallels the civil hearing that determines whether a driver's license is seized. HB 307 provides a similar situation in forfeiture matters. There is the criminal track where guilt has to be proven beyond a reasonable doubt, while the asset forfeiture hearing is a civil matter. It is related but runs on a parallel track. **SEN. ELLINGSON** said that he understood the intent of HB 307, but did not believe that HB 307 accomplished it. He suggested further work on the bill to remove the confusion. His problem is forfeiture provisions without a finding of guilt.

{Tape: 1; Side: B; Approx. Time Counter: 25.3 - 29.1}

SEN. O'NEIL asked if he were to sell a car in California without the inspection permit, which is unlawful under the laws of California, would the money he received from the car be subject to forfeiture because it is an unlawful act. **REP. PARKER** said that there would have to be a nexus of criminal activity within Montana to implicate Montana's criminal jurisdiction. If all of the criminal activity happens in California, it would not trigger HB 307. However, if the crime is committed in California and the money from that criminal activity is laundered in Montana, it would trigger HB 307.

{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 11.7}

SEN. GARY PERRY, SD 35, asked, if a person violates the law in another state, would there need to be a violation of a Montana law in order for HB 307 to take effect on that person. **REP. PARKER** said that there are specific statutes in criminal code governing when Montana's criminal jurisdiction comes to play. For the purpose of HB 307, if a criminal activity takes place outside of the state, HB 307 would only come into play if some of the assets are laundered within Montana's boundaries. **SEN. PERRY** questioned whether the language "any activity that is unlawful under the laws of any state" was too broad for Montana law. **REP. PARKER** said that he was not concerned about the "any activity" language because the activity has to be something that violates the law of another state or the United States.

SEN. MICHAEL WHEAT, SD 32, said that his concern is that the term "money laundering" could apply to almost every transaction. He asked about the victim to the crime and whether HB 307 should include language "unless the money can be traced back to the victim of a crime, the court can forfeit". **REP. PARKER** viewed specific language that gives restitution higher priority over forfeiture as a friendly amendment.

Closing by Sponsor:

REP. PARKER said that HB 307 was targeted to address a specific group of "bad actors" who are higher up the criminal food chain. HB 307 is designed to implicate a very wide range of criminal finance activities, and he hoped it would have a significant impact on crime in Montana communities. He urged the Committee's support of HB 307.

HEARING ON HB 66

{Tape: 2; Side: A; Approx. Time Counter: 11.7 - 15.7}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, said that HB 66 addresses discretionary credit against a fine for time served if jail time and a fine are imposed. If HB 66 is passed, jail time credit would become mandatory. If a defendant spends a certain amount of time in jail before the Judge's sentence, the defendant gets that amount of credit against his or her sentence. It is also discretionary if the Judge wants to give credit against a fine.

Proponents' Testimony:

Ali Bovingdon, DOJ, said that HB 66 arises from the Supreme Court case State of Montana v. Michael Fisher. In interpreting 46-18-403, MCA, the Supreme Court concluded that the credit against the fee was mandatory and that the section of law was not a discretionary section that a judge could apply. HB 66 clarifies that there is a mandatory credit for incarceration prior to conviction but that any credit against a fee is discretionary on the part of the Judge.

{Tape: 2; Side: A; Approx. Time Counter: 15.7 - 19.1}

Harold Blattie, MT Association of Counties (MACo), said that, independent of the other stakeholders, MACo has also worked on 46-18-403, MCA. The issue with the counties is who has to pay the costs of the confinement. When a judge uses the credit to offset the fine, not only are the local taxpayers losing the fine as revenue, but they are also having to pay for the cost of incarceration. He provided a copy of a resolution adopted by the MACo membership showing the exact wording as contained in HB 66.

EXHIBIT(jus46a03)

Jim Smith, MSPOA, spoke in support of HB 307

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked if the Board of County Commissioners setting the rate was a problem. **REP. JENT** said, no, that the expenses of running a jail vary from county to county just as the cost of living expenses vary.

Closing by Sponsor:

REP. JENT said that HB 307 was a simple bill, and he urged the Committee's support.

HEARING ON HB 128

{Tape: 2; Side: A; Approx. Time Counter: 19.1 - 21.4}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, said that HB 128 allows the National Guard to decommission a commissioned officer who has been convicted of a felony without going through a complicated and lengthy administrative proceeding to prove that the officer is guilty of what he has already been convicted of in Court. HB 307 also allows for the withdrawal of federal recognition of the officer's commission.

Proponents' Testimony:

Stan Putnam, Assistant Adjutant General, Department of Military Affairs, provided written comments in support of HB 128.

EXHIBIT(jus46a04)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. JENT urged the Committee's support of HB 128.

HEARING ON HB 40

{Tape: 2; Side: B; Approx. Time Counter: 9.9 - 17.1}

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, said that HB 40 expands coverage of civil and criminal false claims against the state and provides the tools to go after anyone who engages in a reverse false claim against the state.

Proponents' Testimony:

Ali Bovingdon, DOJ, provided a fact sheet explaining the intent of HB 40.

EXHIBIT(jus46a05)

Ms. Bovingdon said that rather than a claim based on an entity overcharging a state agency, a reverse false claim involves a fraud that leads to an entity paying the state less than it actually should, such as in the case of State of Montana v. Abbott Laboratories. Montana joined Nevada in suing a number of pharmaceutical manufacturers charging that the company's drug pricing practices had defrauded the state. The Medicaid fraud portion of the lawsuit is still pending, but the reverse false claims portion was dismissed by the federal judge who determined that Montana's current statute governing false claims did not cover a reverse false claim. HB 40 adds a reverse false claims provision that is modeled after the federal law. It allows civil and criminal prosecutions of reverse false claims and allows the state to establish liability when claims are made that lead to financial underpayment to a state agency.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: B; Approx. Time Counter: 17.1 - 20.9}

Questions from Committee Members and Responses:

SEN. O'NEIL asked if HB 40 applied if a person filed a claim for income taxes if the person owes less taxes than what the state believes the person owes. **REP. HARRIS** said, no, the Department of Revenue (DOR) has its own laws which are very comprehensive in terms of criminal and civil violations. If there is a tax

violation of any kind, it is handled by the Department. HB 40 is separate and apart from anything having to do with the DOR codes.

SEN. SHOCKLEY asked if legal costs included attorney fees. **Ms. Bovingdon** said that legal costs do not refer to attorney fees, only the actual costs of the litigation. **SEN. SHOCKLEY** asked if the Title of HB 40 could encompass what is customary attorney fees, costs, and expenses. **REP. HARRIS** said it may, and could be amended to include attorney fees.

Closing by Sponsor:

REP. HARRIS urged the Committee's favorable support of HB 40.

EXECUTIVE ACTION ON HB 205

{Tape: 2; Side: B; Approx. Time Counter: 20.9 - 23.4}

Motion: **SEN. MCGEE moved that HB 205 DO PASS.**

Discussion: **SEN. O'NEIL** said that he has requested an amendment for HB 205. He requested that Executive Action be postponed.

SEN. MCGEE withdrew his motion.

EXECUTIVE ACTION ON HB 66

{Tape: 2; Side: B; Approx. Time Counter: 23.8 - 28.2}

Motion: **SEN. MANGAN moved that HB 66 BE CONCURRED IN.**

Discussion: **SEN. PERRY** was confused about the language in HB 66. **SEN. WHEAT** said, if someone sits in jail before they are sentenced, the Court must give them credit for time served. However, if a person is in jail for 30 days but were sentenced to 20 days plus a fine, under current law, the person must be given credit against the fines on a per-day basis. HB 66 give the Court the discretion to do that. Currently, because the Court has to give credit for time served against fines, local governments were losing money. **SEN. PERRY** asked, if a person supplies bail, could the reverse be true, that a Judge could allow a credit for monetary value against days of incarceration. **SEN. WHEAT** said, no, because the person is not in jail. The only way a person can get credit for incarceration is if the person is incarcerated. If a person posts bail, the person is not incarcerated. **SEN. JEFF**

MANGAN, SD 12, explained that the credit is applied upon conviction.

SEN. SHOCKLEY said that as part of the sentence, some courts include the costs of incarceration. She asked if it would create a problem. **Valencia Lane, Legislative Services Division (LSD),** said that some courts do include the cost of incarceration in sentencing, but she was unsure whether there should be a concern. HB 66 applies to incarceration before conviction.

SEN. O'NEIL said that if someone is in jail for three weeks and they post bail and are released, according to HB 66, the person cannot be given credit for the three weeks served. **Ms. Lane** said that HB 66 applies only to those who do not post bail.

Vote: SEN. MANGAN'S motion that HB 66 DO PASS carried unanimously by voice vote. SENATORS MOSS and LASLOVICH voted aye by proxy. SEN. MANGAN will carry the bill.

EXECUTIVE ACTION ON HB 128

{Tape: 3; Side: A; Approx. Time Counter: 0.6 - 2.2}

Motion/Vote: SEN. MCGEE moved that HB 128 BE CONCURRED IN. Motion carried unanimously by voice vote. SENATORS MOSS and LASLOVICH voted aye by proxy. SEN. WHEAT will carry the bill.

ADJOURNMENT

Adjournment: 9:40 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

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LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT(jus46aad0.PDF)