MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 18, 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. Christopher Harris (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: None.

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 231, HB 232, 1/11/2005
Executive Action: None

HEARING ON HB 232

REP. MARK NOENNIG, HD 46, BILLINGS

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 232,** Require pre sentence report to propose payment of IT charge.

REP. NOENNIG informed the committee that REP. LANGE had requested him to carry this bill. He referred to Page 1, Line 30 to explain the bill and Page 2; Line 4 as to the "sunset" provision in this bill.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 58}

Proponents' Testimony:

Jim Oppedahl, Administrator, Montana Supreme Court, rose in support of HB 232. **Mr. Oppedahl** informed the committee members that at the end of February 2005, the 100th Court of Limited Jurisdiction will be up and running on "Full Court" which is a modern state standard "Windows"-based program. Currently, The Supreme Court of Montana and the District Courts are both running with more than 1000 users on WordPerfect 1.
{Tape: 1; Side: A; Approx. Time Counter: 58 - 128}

Ted Clack, Montana Magistrates Association, rose in support of HB 232.
{Tape: 1; Side: A; Approx. Time Counter: 128 - 135}

Mary Phippen, Montana Clerks of Court Association, rose in support of HB 232.
{Tape: 1; Side: A; Approx. Time Counter: 135 - 142}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD inquired of REP. NOENNIG if a fiscal note should have been prepared. **REP. NOENNIG** responded that he didn't have an answer for that. He referred the question to Mr. MacMaster who said that law is already on the books and this bill is about extending the sunset date; however, a fiscal note should have been done. **Mr. Oppedahl** informed the committee that a fiscal note is in the process of being done.

CHAIRMAN RICE asked Mr. Oppedahl for an explanation regarding the shortfall of money. **Mr. Oppedahl** proceeded to explain the surcharge has been in effect since 1995 in the amount of $5. The opinion at that time was that if you doubled the surcharge, the courts would double the funds. However, that did not happen according to Mr. Oppedahl. He stated that there has always been a "lag" in collections at the rate of about 30%. The offenders do not pay the fine/surcharge in a timely manner.
{Tape: 1; Side: A; Approx. Time Counter: 142 - 237}

Closing by Sponsor:

REP. NOENNIG closed the hearing on HB 232.
{Tape: 1; Side: A; Approx. Time Counter: 237 - 239}

HEARING ON HB 231

REP. PENNY MORGAN, HD 57, BILLINGS

Opening Statement by Sponsor:

REP. PENNY MORGAN (R), HD 57, opened the hearing on **HB 231,** Unborn child homicide act.

REP. MORGAN presented this as the "Lacey and Connor" bill. She stated this bill follows the federal law that was passed in 1999 by the U.S. House of Representatives. **REP. MORGAN** related the stories of several young women that have been murdered; she also informed the committee members of the sources of research that she had referred to in her presentation.
EXHIBIT(juh13a01)
EXHIBIT(juh13a02)
EXHIBIT(juh13a03)
EXHIBIT(juh13a04)
{Tape: 1; Side: A; Approx. Time Counter: 239 - 500}

Proponents' Testimony:

REP. MIKE LANGE, HD 65, rose in support of HB 231. He referred to Sections 7 and 9 of the bill in his presentation. **REP. LANGE** stated this bill is, "...justice for the child."
{Tape: 1; Side: B; Approx. Time Counter: 0 - 204}

REP. SCOTT MENDENHALL, HD 77, rose in support of HB 231. He stated, "...an opportunity to represent another constituent, an unborn child."
{Tape: 1; Side: B; Approx. Time Counter: 204 - 218}

Eric Sheidermayer, Montana Catholic Conference, rose in support of HB 231 by stating, "...all life is sacred" and the unborn child is the most vulnerable.
{Tape: 1; Side: B; Approx. Time Counter: 218 - 261}

Jeff Lazloffy, Montana Family Coalition, rose in support and related to the committee members the story of the unborn child removed from the womb that happened just recently.
{Tape: 1; Side: B; Approx. Time Counter: 261 - 276}

Gilda Clancy, Montana Eagle Forum, stood in support of HB 231 and referred to Section 2 of the bill where the definition of an unborn child is human.
{Tape: 1; Side: B; Approx. Time Counter: 276 - 291}

Harris Himes, Montana Family Coalition, rose in support and stated, "...pro-choice is the issue."
{Tape: 1; Side: B; Approx. Time Counter: 291 - 320}

Dallas Erickson, Montana Family Coalition, rose in support.
EXHIBIT(juh13a05)
{Tape: 1; Side: B; Approx. Time Counter: 320 - 345}

Shannon Bennett, self, rose in support of HB 231.
{Tape: 1; Side: B; Approx. Time Counter: 345 - 359}

Opponents' Testimony:
Jessica Rhodes, NARAL, rose in opposition to HB 231. She stated that this bill is disingenuous and is an effort to undermine Roe v. Wade. That HB 231 changes the definition of a fetus.
{Tape: 1; Side: B; Approx. Time Counter: 359 - 396}

Danci Bardash, Planned Parenthood of Montana, rose in opposition to HB 231 with regard to the potential of undue criminal investigations of family members, in the cases of stillbirths, pre-term births before 37 weeks of gestation and births resulting in low birth-weight babies.
EXHIBIT(juh13a06)
{Tape: 1; Side: B; Approx. Time Counter: 396 - 463}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, stood in opposition to HB 231. She stated that this bill distracts from the real issue; that is violence against women. **Ms. Cholewa** offered her opinion that there is no penalty listed in this bill for violence against pregnant women. She stated that this bill is about damage to an unborn baby.
{Tape: 1; Side: B; Approx. Time Counter: 463 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 88}

Jan Van Riper, ACLU, stated to the committee members that, "...largely most of the problems described by the sponsor are already addressed in current law."

Ms. Van Riper spoke to the members of the committee about the four areas of concern that the ACLU has with HB 231:

1) Constitutional due process
2) Investigative process in the very early stage of pregnancy or very late in the pregnancy.
3) Exception to liability
4) Better alternatives to address the harm.

EXHIBIT(juh13a07)
{Tape: 2; Side: A; Approx. Time Counter: 88 - 208}

Bob Ream, Montana Democratic Party, rose in opposition to HB 231 stating that there are technical problems in this bill. He also spoke about the imposition of one person's religious beliefs on another person.
{Tape: 2; Side: A; Approx. Time Counter: 208 - 233}

Informational Testimony:

John Connor, Attorney General, stated to the committee members that the Attorney Generals Office would support the intent of this bill; however, the Attorney Generals Office finds some structural difficulties in HB 231. The problems are in Section 3-deliberate homicide; Section 4-mitigated homicide; Section 5-assault on an unborn child; and Section 5-suffer bodily harm and aggravated assault.

Mr. Connor stated that with current law; the statutes cannot address death of an unborn child in Montana.
{Tape: 2; Side: A; Approx. Time Counter: 233 - 403}

Questions from Committee Members and Responses:

REP. WARD inquired of Ms. Rhodes what the definition of a fetus is as she had stated earlier that this bill changed that definition. **Ms. Rhodes** answered REP. WARD by saying that in Section 9 of HB 231, it defines a fetus as an unborn child in an attempt to give legal rights to that fetus.

REP. HARRIS asked the sponsor of the bill to answer his questions regarding the unintended consequences of HB 231. For instance in Section 3; "Why was burglary included as a predicate offense for this crime?" **REP. MORGAN** stated this section was taken from current law.

REP. HARRIS then shifted his questions to Mr. Connor from the Attorney Generals Office. **Mr. Connor** stated that he suspects the language in that section was taken from the felony burglary provision of a deliberate homicide statute. The questioning continued about knowledge or lack thereof of the women's pregnancy by the perpetrator.

REP. HARRIS then spoke of Section 9 of HB 231 and stated, "...I am generally confused about the new language, it says 'accept as provided' in Sections 1 through 8." The REPRESENTATIVE wanted to know how that would work. **Mr. Connor** stated that he is having trouble with that provision also. **REP. HARRIS** then asked Mr. Connor, "...then this runs into some serious 'void for vagueness' problems, wouldn't you agree?" **Mr. Connor** replied, "...there are a number of 'void for vagueness' problems with this, yes."

REP. NOONAN proceeded to question REP. LANGE about various aspects of this bill, especially the drafting of HB 231. **REP. NOONAN** stated, "...this bill is a lot more tortured and convoluted that I would like to see." His area of concern included unusual standards of medical care, what the definition of conceived and the acts of the mother against an unborn child; are; i.e., drug abuse, etc. **REP. LANGE** answered, regarding the question of the definition of conceived, "...when the egg is fertilized." He then explained to REP. NOONAN and the rest of the committee the reasons for the language in HB 231.

REP. GUTSCHE commented to the sponsor, "...that (proponents, opponents and the sponsor)all can agree that there is a serious problem with violence against women and some of them are pregnant." **REP. GUTSCHE** then referred to the fiscal note and stated that none of the assumptions provided any protection for the women herself. **REP. MORGAN** replied, "...the woman is already covered by other statutes." **REP. GUTSCHE** continued this line of questioning is about protecting the mother, thereby, protecting the fetus.

REP. GUTSCHE then proceeded to question Ms. Van Riper regarding the definition of a fetus if defined as an unborn child and if that could lead to eventually outlawing abortion. **Ms. Van Riper** responded by saying that in reference to the language in Roe v. Wade; the Supreme Court looked at the fact that no state recognized the fetus as a person.

She continued by saying that one of the ways the pro-life movement is focusing, is to insert the term unborn child into state statutes. Therefore, when the U.S. Supreme Court looks at Roe v. Wade; there will be states with that terminology in their statutes which could possibly lead to that overturn of Roe v. Wade.

REP. KOOPMAN directed his line of questioning to Ms. Cholewa. The REPRESENTATIVE proceeded to relate to the committee and Ms. Cholewa the story of a trucker who while driving; killed a pregnant woman. The REPRESENTATIVE wanted to know if this bill would have been able to address the unfortunate accident that happened. Ms. Cholewa stated that Roe v. Wade does not cover viable babies, and didn't know if this accident could have been prosecuted any differently. **REP. KOOPMAN** then asked Ms. Cholewa a question about the prosecution of post-viability babies. **Ms. Cholewa** responded that she does not want to see laws protecting women from violence "muddied-up" from people who have an agenda to erode reproductive rights, as apparently this bill does.

REP. KOOPMAN continued with his questions now directed to REP. LANGE. He referred to MCA 45-2-101 (P) 28; definitions as to human being as the following: a person who has been born and is alive. **REP. KOOPMAN** asked **REP. LANGE** if that definition works against HB 231 and that the bill should be amended to change that definition. **REP. LANGE** replied that the intent of this bill is not to be the definition of a human being.

REP. CLARK started his questioning of Mr. Connor with a scenario involving a pregnant woman who has been beaten and two months later the fetus died, "How would the enhanced penalty included in the language of this bill apply?" **Mr. Connor** stated that under the terms of this bill, that would be deliberate homicide. The discussion continued with how the prosecution could prove beyond a reasonable doubt the causation, how that causation could be proved and eventually that there would be a "battle of the experts" during the trial.

REP. NOONAN asked Mr. Connor to refer to Section 9 of HB 231 as to struggles that he is having with the language. He posed the question of whether or not this section excludes the definition of unborn child from the other sections unless there is no definition in other sections. **Mr. Connor** stated, "...I am having the same struggle with this."
{Tape: 2; Side: A; Approx. Time Counter: 403 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 410}

Closing by Sponsor:

REP. MORGAN closed the hearing on HB 231 by stating that the opponents think this bill is about abortion and over-turning Roe v. Wade. The sponsor read more information into the record from various resources.
EXHIBIT(juh13a08)
{Tape: 2; Side: B; Approx. Time Counter: 410 - 500}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 46}

PLEASE NOTE: AFTER THE HEARING ADJOURNED, AN EXHIBIT WAS HANDED IN THAT IS RELATED TO HB 232.
EXHIBIT(juh13a09)

ADJOURNMENT

Adjournment: 11:16 A.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh13aad0.TIF)