MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 7, 2005 at 8:03 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. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Jim Shockley (R)
Sen. Gary L. Perry (R)

Members Excused: Sen. Jon Ellingson (D)
Sen. Dan McGee (R)

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 100, HB 280, HB 110, HB 262, HB 97, HB 98
Executive Action: None

HEARING ON HB 100

Opening Statement by Sponsor:

REP. RICK MAEDJE (R), HD 2, said that HB would put into statute the requirement that law enforcement use the least restrictive manner possible when restraining people at a search premises. He relayed an incident that happened in Lincoln County, which is the nexus of HB 100. He added that the House Judiciary Committee struck language related to searching persons putting the premises back into the condition in which they found it after the search has been conducted. He requested that the Committee give consideration to putting the language back into the bill.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 10}

Proponents' Testimony:

Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU), felt that in a society of law there needed to be some measure of professionalism and standard of decency. He said that it was important that professional standards and the assumption of innocent-until-proven-guilty were needed throughout the law enforcement system, not just in the court system.

{Tape: 1; Side: A; Approx. Time Counter: 10 - 13}

Opponents' Testimony:

Dennis Paxinos, Montana County Attorneys Association (MCAA), said that there are two major remedies available when trying to enforce warrants: (1) call the search illegal and repress the evidence or (2) if officers violate the constitutional rights of the persons in the home, the officers could be sued and be made to pay all attorney fees if they lose. He questioned whether HB 100 created problems that did not need to be created.

{Tape: 1; Side: A; Approx. Time Counter: 13.0 - 14.8}

Jim Smith, Montana Sheriffs and Police Officers Association (MSPOA), felt that matters such as search and restraint would be better handled through departmental leadership, training, and policy. He said that law enforcement agencies do their training around issues such as this and reinforce the values of law enforcement that include respect for citizens property and possessions. It should not be a matter of statute.

{Tape: 1; Side: A; Approx. Time Counter: 14.7 - 16.1}

Jim Kembel, Montana Association of Chiefs of Police (MACP) and the Montana Police Protective Association (MPPA), echoed **Mr. Smith's** comments and spoke in opposition to HB 100.

{Tape: 1; Side: A; Approx. Time Counter: 16.1 - 16.4}

Informational Testimony:

The Honorable Mike McGrath, Attorney General, said that his Office obtained all of the information pertinent to the incident in Lincoln County, and testimony heard by the Committee is not close to actual events. He said that it was not a situation where innocent citizens were being brutalized by the police.

{Tape: 1; Side: A; Approx. Time Counter: 16.4 - 18}

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MAEDJE remarked that if the language was already in the law enforcement policy books, there should no problem putting it into statute and codifying it. He felt that HB 100 was the most reasonable language to remind law enforcement agents to be respectful of people's constitutional rights.

{Tape: 1; Side: A; Approx. Time Counter: 18 - 21.4}

HEARING ON HB 280

Opening Statement by Sponsor:

REP. PAT WAGMAN (R), HD 62, said that HB 280 revises the use of electronic proceedings for district courts. Under current law, District Court Judges are allowed to use electronic proceedings for plea arraignments and sentencing associated with misdemeanors. HB 280 expands the use to felonies, and its intent was to allow courts to save money. He said that the bill would allow the defendant, if the defendant and the judge both agree, to use electronic equipment to enter a plea.

{Tape: 1; Side: A; Approx. Time Counter: 21.4 - 27.6}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, said that the time and financial savings that HB 280 provides would be an incredible asset. She urged the Committee's support.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.6}

Informational Testimony:

Scott Crichton, ACLU, understood the importance of cost and time savings. However, he was concerned, that at some point, people would lose their day in court. He remarked that television was a two-dimensional medium, and he thought that it was important that the defendant and the Judge be in the same room with each other for at least a part of the proceedings. He thought it important to keep in mind that the justice system is based on being able to confront an accuser.

{Tape: 1; Side: B; Approx. Time Counter: 0.6 - 4.4}

Opponents' Testimony:

Anita Roessmann, Staff Attorney, Montana Advocacy Program (MAP), provided written comments in opposition to HB 280 and a copy of the American Law Reports related to the constitutional and statutory validity of judicial videoconferencing.

EXHIBIT(jus50a01)
EXHIBIT(jus50a02)

{Tape: 1; Side: B; Approx. Time Counter: 4.4 - 15.3}

Questions from Committee Members and Responses:

SEN. JEFF MANGAN, SD 12, GREAT FALLS, said that he was a fan of the use of electronic proceedings and asked if the amendments proposed by MAP would lessen the use of the medium. **REP. WAGMAN** said that courts have been using the medium for a number of years, and it has been working well. He did not believe that Judges would object to advance notice and a written waiver by the defendant as proposed by MAP.

SEN. MANGAN asked whether it was current practice to require that clients have the opportunity to object to the form of arraignment, or do they just take it for granted. **Mr. Paxinos**

said that the status quo is that arraignments are conducted by videoconferencing and change of pleas and sentencing is conducted in person.

{Tape: 1; Side: B; Approx. Time Counter: 15.3 - 20.2}

SEN. MANGAN asked if there would be a decrease in the use of video media if a person objected to being on video. **Ms. Roessmann** responded that the seven jurisdictions had ruled that there was no constitutional problem with having arraignments by video. She thought that if people tried to enter a state of objection to video arraignments, they would probably fail.

{Tape: 1; Side: B; Approx. Time Counter: 20.2 - 23.2}

SEN. MICHAEL WHEAT, SD 32, asked if the Attorney General's Office objected to the amendments. **Ms. Bucy** said, no.

{Tape: 1; Side: B; Approx. Time Counter: 23.2 - 23.7}

Closing by Sponsor:

REP. WAGMAN reiterated that the main purpose of HB 280 was to allow courts to operate more efficiently and expand their productive time. However, at the same time, he wanted to ensure that the defendant's rights were not infringed upon in any way.

HEARING ON HB 110

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

Opening Statement by Sponsor:

REP. KEVIN FUREY (D), HD 91, said that HB 110 creates an identity theft passport to help victims of identity theft prove their identity and limit the cost and stress that they experience. He presented written comments and urged the Committee's support.

EXHIBIT(jus50a03)

{Tape: 2; Side: A; Approx. Time Counter: 0.9 - 4.2}

Proponents' Testimony:

The Honorable Mike Mcgrath, Attorney General, expressed that there were numerous instances of identity theft in Montana, and HB 110 would provide real assistance to persons victimized by it. He said that HB 110 requires an individual to report the crime to

law enforcement who would, in turn, submit the application and police reports to the Attorney General's Office. It also requires that the credit reporting agencies accept the passport. He said that HB 110 was a victim-friendly bill.

{Tape: 2; Side: A; Approx. Time Counter: 4.1 - 8.7}

Cort Jensen, Chief Attorney, Consumer Protection Office, noted that when someone's identity is stolen, there are two crimes committed: (1) when a person takes the identity of another and uses it to commit crimes or obtain credit information, and (2) the bureaucracy faced by victims when they try to clean up their record. He discussed the steps which are currently taken when identity theft occurs and said that HB 110 would be very helpful.

{Tape: 2; Side: A; Approx. Time Counter: 12.2 - 20.6}

Chantele Artman, Consumer Data Industry Association (CDIA), spoke in support of HB 110 and provided an overview of the current dispute process. She said that identity theft costs everyone money, not just consumers. It costs banks, credit bureaus, and it costs accuracy standards. The CDIA is regulated by federal law to maintain maximum possible accuracy. She proposed an amendment to Section 1(2)(a)(iii) to strike "accept" and insert "consider". She said that the reason for the amendment is because, with just the identity theft passport, there may not be enough information for the CDIA to locate the consumer and process a dispute.

Ms. Artman also requested to strike the language "and shall include notice of the dispute in all future reports that contain dispute information caused by identity theft" on lines 24 and 25. She said that, under federal law, when a consumer presents an identity fraud report, a consumer reporting agency must block the item from appearing on the consumer's credit report. HB 110 states that fraudulent information can stay on the credit report as long as there is a note that the item is in dispute. It is frustrating to federal law, confusing for consumer reporting agencies to comply with, and consumers are less protected because it is still on their credit report in the form of a dispute.

{Tape: 2; Side: A; Approx. Time Counter: 20.6 - 29.9}

Karen Powell, Deputy Securities Commissioner, State Auditor's Office (SAO), spoke in support of HB 110.

Alex Ward, Associate State Director, AARP Montana, provided written comments in support of HB 110.

EXHIBIT(jus50a04)

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 5.2}

Jim Kembel, Montana Association of Chiefs of Police (MACP) and the Montana Police Protective Association (MPPA), spoke in support of HB 110.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: B; Approx. Time Counter: 5.2 - 14.9}

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 25, did not feel that changing the language from "accept" to "consider" would make a difference. **Ms. Artman** said that changing the language to "consider" would give the CDIA the opportunity to request additional information from the consumer, such as their Social Security Number and other pieces of identifying information it may need in order to resolve a dispute. **SEN. CROMLEY** asked if a consumer reporting agency were to issue a report, would they not include notice of the dispute. **Ms. Artman** said that under federal law, if a consumer requests information to be reinvestigated or if they note that an item is fraudulent on their account, the consumer reporting agency is required to notify people who furnish that information. There is a 30-day turn-around period of time. Once the dispute is resolved, the outcome has to be reported on a credit report. If it is, in fact, fraudulent, it must be, under federal law, deleted from the credit report altogether.

SEN. JESSE LASLOVICH, SD 43, asked what the Attorney General's Office intended to put on the report and to address the proposed amendments. **Ms. Bucy** said that the passport will more than likely include more information than just a consumer's name and address, and certainly, the ability for credit bureaus to receive more information. Regarding the amendments, **Ms. Bucy** provided a memo addressing the CDIA's potential amendments in terms of the differences between "disputing" and "blocking". She encouraged the Committee to not accept the proposed amendments.

EXHIBIT(jus50a05)

{Tape: 2; Side: B; Approx. Time Counter: 14.9 - 21.8}

SEN. WHEAT asked if a consumer loses his or her wallet and is unsure whether it was stolen or just lost, could the consumer still file a report. **Ms. Bucy** said that the consumer does not

have to wait until he or she becomes a victim. However, that situation would not trigger HB 110. HB 110 is triggered by a report of identity theft to law enforcement, and the consumer would still have to go through the process of canceling all credit cards. A consumer would not receive an identity theft passport until the consumer becomes a victim.

Closing by Sponsor:

REP. FUREY said the identity theft passport is not a get-out-of-jail free card nor is it something that can cancel a consumer's credit history. It is a card that victims can use as a tool to clear up their credit histories. He urged passage of HB 110 without the proposed amendments.

HEARING ON HB 262

{Tape: 2; Side: B; Approx. Time Counter: 21.8 - 30}

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, said that HB 262 would give Montana cities the flexibility needed to properly address the increasing volume of civil and criminal cases being filed in municipal courts. It also sets up criteria for a court to use a Judge Pro Tempore.

Proponents' Testimony:

Jani McCall, City of Billings, provided written comments from the Billings Municipal Court in support of HB 262.

EXHIBIT(jus50a06)

Ms. McCall said that there are five municipal courts--Billings, Kalispell, Missoula, Great Falls, and Bozeman--collectively adjudicating 100,000 cases per year. The 100,000 cases is one-third of the total cases from 170 courts across the state. Billings' annual caseload is approximately 30,000, 94% of which are criminal misdemeanors in which defendants are afforded full constitutional rights, including the right to jury trials and the right of counsel. Six percent are mental health commitments. HB 262 gives Municipal Judges the ability to appoint, with City Council approval, a part-time Municipal Judge to help with the ever-increasing caseloads. She urged the Committee's support of HB 262.

Ted Clack, MT Magistrates Association, urged the Committee's support of HB 262.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. LANGE said that HB 262 is much needed, and he urged the Committee's support.

HEARING ON HB 97

{Tape: 3; Side: A; Approx. Time Counter: 0.9 - 3.5}

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, said that HB 97 addresses DUI and repeat offender issues. Under current Montana DUI laws, it is possible, probable, likely, and actual that a person can be convicted of killing someone and not have it count against the person's DUI count. HB 97 closes the loophole for the repeat offender by making, as a prior conviction, a negligent homicide while operating a vehicle under the influence or negligent vehicular assault.

{Tape: 3; Side: A; Approx. Time Counter: 3.5 - 13.2}

Proponents' Testimony:

Dennis Paxinos, MT County Attorneys Association, said that HBs 97, 98, and 99 is package legislation that targets the hardcore, drinking and drunk professional driver. Under Montana law, a person is not allowed to get into the WATCH program until the person has four DUI convictions. The WATCH program is a long-term, 6-month program, and HB 97 enables the state to get more people into the program quicker. He urged the Committee's support.

Don Hargrove, MT Addiction Services Providers (MASP), spoke in strong support of HB 97 because the prevention aspects of the bill will save taxpayers money.

Pam Bucy, Assistant Attorney General, Office of the Attorney General, said that the amendments to HB 97 adopted in the House

eliminate the option for some people whom the state would have wanted to be eligible for the WATCH program. She supported the amendments because the WATCH program is one of the most successful corrections programs in the state. She urged the Committee's support of HB 97.

{Tape: 3; Side: A; Approx. Time Counter: 13.2 - 18.8}

Michelle Jenicek, Contract Program Manager, Department of Corrections (DOC), said that HB 97 would add very serious drinking and driving offenses to the mix of offenses that are currently considered as priors for the purposes of determining a felony DUI conviction. It is beneficial because some offenders would no longer be permitted to slip through the cracks because they committed previous drinking and driving offenses that do not count toward a felony DUI conviction. HB 97 has also been amended to make these offenders more accountable by allowing the DOC to place the offenders into the felony-DUI, WATCH program which is specifically designed to treat the individual needs of a felony DUI offender. HB 97 also imposes a stiffer penalty upon the 5th-offense, felony DUI offender, specifically if they were sentenced under the 4th-DUI statute and previously placed in a residential, alcohol treatment program. She urged the Committee's support.

David Carter, Deputy Yellowstone County Attorney, said that HB 97 provides a tool to prosecutors, defense counsel, and courts to address what is clearly becoming a problem in front of the District Courts.

Dr. Bill Robinson, Emergency Physician, Bozeman, said that, other than law enforcement, emergency medical personnel encounter the problem of drunk driving more than any other segment of Montana's population. After 30 years in emergency services, he wanted to do something other than be on the receiving end of these injuries. He urged the Committee's support of HB 97.

{Tape: 3; Side: A; Approx. Time Counter: 18.8 - 22.4}

Chris Minard, Self, spoke in support of HB 97 because it addresses drunk driving repeat offenders who kill too many Montanans every year.

Mike Ferriter, Administrator, Community Corrections Division, DOC, said that presently an offender is committed to the DOC for 13 months, and offenders are not automatically sentenced to the WATCH program. He spoke in support of HB 97

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 3; Side: A; Approx. Time Counter: 22.4 - 30.3}

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked, if a person is charged with negligent homicide or vehicular assault involving drunk driving, would a DUI be tacked onto the information. **Mr. Carter** said that currently, there is confusing authority from the Montana Supreme Court as to whether it would be double jeopardy. Negligent homicide requires a "gross deviation". If a DUI driver causes a fatality, the gross deviation is predicated on the fact that they got behind the wheel of a car while under the influence. Sometimes, the DUI is charged and sometimes it is not. If the DUI is charged, there is no problem because there is a finding that the person is under the influence. If, as in the past, a DUI was not charged, HB 97 would work prospectively in that there would always be an unnecessary finding that the person was under the influence.

SEN. WHEAT asked if the Warm Springs and Glendive WATCH programs were at capacity. **Mr. Ferriter** said, yes, and there is a very small waiting list. The DOC does not anticipate HB 97 raising the list to a great degree.

Closing by Sponsor:

SEN. LANGE said that he did not sign the fiscal note because he felt that HB 97 would be a cost savings to the state. He requested that if **REP. JOHN PARKER'S, HD 23**, vehicular homicide bill passes, it would be his preference that HB 97 be added as counting toward felony DUI convictions. He urged the Committee's support of HB 97.

HEARING ON HB 98

{Tape: 3; Side: B; Approx. Time Counter: 2.5 - 16.3}

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, said that HB 98 raises the license suspension penalty to one year for refusing a blood alcohol/drug test (BAC) or field sobriety test, and upon any subsequent refusal, the suspension period is raised from one year to three years. He said that current statute is no deterrent because it is not strong enough; and as a Montana driver and constituent, he

was tired of being subjected to the same people over and over again driving on the roads drunk.

Proponents' Testimony:

David Carter, Deputy Yellowstone County Attorney, said that drinking and driving and driving under the influence has become more detrimental because it affects a person's insurance and the person's ability to do what he or she wants in the future. As a result, there is a concurrent desire to obviously avoid a conviction regardless of what the facts are. He urged the Committee's support of HB 98.

Dr. Bill Robinson, Emergency Physician, said that professional drunks know the system. People who refuse BACs have higher recidivism rates, and the number of refusals has a linear correlation with the number of times they have been arrested for DUI. The 2002 Mothers Against Drunk Driving (MADD) report cited a 30% statewide, refusal rate. Laws, such as HB 98, have been enacted in 37 other states, and has lead to a decrease in refusal rates. He urged the Committee's support of HB 98.

Dennis Paxinos, MCA; Don Hargrove, MASP; Pat Melby, Rimrock Foundation, and Chris Minard, Self, spoke in support of HB 98 because it provides consequences for one's actions.

{Tape: 3; Side: B; Approx. Time Counter: 16.3 - 20.1}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LASLOVICH asked if HB 98 would be applicable to first-time offenders. **Mr. Carter** said, yes. **SEN. LASLOVICH** asked what the current penalty was for a first-time DUI conviction. **Mr. Carter** said that current penalties will range from a $300 to a $600 fine, almost always one day in jail, and there may be treatment depending upon the facts and circumstances of a particular case. Upon a first offense, there is also a 6-month mandatory suspension of a person driver's license upon conviction, and a one-year suspension for a second or subsequent offense from the date of conviction.

{Tape: 3; Side: B; Approx. Time Counter: 20.1 - 23.5}

SEN. CROMLEY asked if the 37 states increased the suspension of licenses from 6 months to one year. **Dr. Robinson** said that his

testimony refers to the principle that the penalty for a BAC refusal is at least as stringent as the penalty for the conviction in 37 other states, and it is proven that the number of BAC refusals has decreased.

SEN. LYNDA MOSS, SD 26, requested a reiteration of who was involved in determining the new timeframes. **REP. LANGE** said that **Mr. Carter** looked at the language when HB 98 was first drafted and said that it would be sufficient. The second step was from the National Conference of State Legislatures (NCLA) information that showed that, in recent years, states have adopted increased penalties for BAC refusals and DUI convictions. The bottom line is the BAC refusal, and if an offender refuses, what should the consequence be? HB 98 would be the least onerous change in the law that would still result in getting more BACs taken which is the goal of HB 98.

Closing by Sponsor:

REP. LANGE urged the Committee's support of HB 98.

ADJOURNMENT

Adjournment: 10:45 A.M.

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SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

_____
LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT(jus50aad0.TIF)