

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 18, 1997, at 8:07 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: Sen. Charles "Chuck" Swysgood, Chairman (R)

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 100, 3/14/97; HB 208,
3/14/97; HB 559, 3/14/97
Executive Action: None

HEARING ON HB 100

Sponsor: REP. LOREN SOFT, HD 12, BILLINGS

Proponents: Dave Ohler, Department of Corrections

Opponents: None

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, BILLINGS (EXHIBIT #1) handed out. Many of us may have had a philosophy change since last session. The primary purpose of the criminal justice system is to punish the offender, that punishment should be consistent, swift and fit the crime. The system will not rehabilitate anyone, we provide the tools for the offenders to help rehabilitate themselves. HB 100 is a step in that direction, it provides for incarceration and treatment. REP. SOFT explained the bill. HB 100 provides truth in sentencing, increases the mandatory minimum term to 6 months without parole and decreases the maximum term from 1-10 years to 6-13 months. This is still a felony offense. This bill makes post-release community supervision mandatory. Under the current law the average supervised release is 1.6 years, the bill makes this 1-2 years and makes it clear that if there is a violation during this supervisory time the offender would return to prison to serve out the sentence.

{Tape: 1; Side: A; Approx. Time Count: 8:15; Comments: None.}

Proponents' Testimony:

Dave Ohler, Department of Corrections (DOC) We support HB 100. We think this bill provides a balance between punishment of 4th offense DUI offenders along with a treatment component. There is a mandatory term of imprisonment of at least 6 months in HB 100. This is a way to get the 4th offender's attention. We think it is important to have mandatory supervised release after the offender is released in the community. HB 100 makes this mandatory for 1-2 years. We think this combination is a good balance. This bill is for 4th offense DUI offenders who drive drunk not those who kill or maim. We ask that you support HB 100.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 8:19; Comments: None.}

Questions From Committee Members and Responses:

SEN. J.D. LYNCH I have a neighbor who gets a DUI in 1990, 2000, 2010 and 2020. He will be treated the same as a person who had 4 DUI's in the last 3 years, why is that right? It seems to me the judge should have some discretion on this. Mr. Ohler Under current law the judge cannot suspend the 6 months sentence, some term of incarceration would have to be served, the minimum is 1½ months. With HB 100, the offender will have to serve 6 months. The decision as to whether this is right is for the committee to decide.

SEN. DALE MAHLUM There is a medication a person can take that will them sick if they take a drink, can we make something

parallel to chemical castration for DUI offenses? **Mary Craigle, DOC** Under current law the judge can use Antibuse as a sentencing recommendation. One of the primary problems with Antibuse is that it has severe side effects in some individuals. Therefore, judges are cautious about using it.

SEN. ARNIE MOHL How many drinks does it take to get to .10? **Brenda Nordlund, Department of Justice (DOJ)** It depends on the size of the individual, how much has been eaten, when they last ate, etc. 8 drinks in 1 hour will get you there.

SEN. KEN MILLER If I understand this right, we have eliminated probation completely for these offenses, is that right? **Mr. Ohler** No, we have made probation mandatory. Currently, it is not mandatory. Under HB 100 there is a mandatory term of imprisonment of 6-13 months then a mandatory term of supervised release which is, essentially, probation for 1-2 years.

SEN. LARRY BAER Not long ago the Senate passed a SB 303 which requires the installation of an interlock device on certain DUI convictions. How do you anticipate this will affect the problem and how will it fit in with what is proposed here? **Mr. Ohler** I see the two working together, ignition interlock is another tool for a judge to use. The ignition interlock applies to other DUI's not just 4th offense DUI's.

{Tape: 1; Side: A; Approx. Time Count: 8:30; Comments: None.}

CHAIRMAN KEATING The alcohol treatment program the state offers in Butte has an 84% success ratio on mandatory treatment. Is there mandatory treatment in this bill? In current law they can ask for an evaluation of a first time offender and if the offender is confirmed by the evaluation that they have a chemical dependency, treatment can be required. Is that still in this bill? **REP. SOFT** There is no change in the current law.

CHAIRMAN KEATING Does this increase the workload in the courts? **REP. SOFT** No.

SEN. TOM BECK Is there some way to clear the record of someone who has a problem with this every 10 years or so? **REP. SOFT** We may be able to change the bill.

CHAIRMAN KEATING How many are in Deer Lodge as a result of this? **REP. SOFT** As of February 1, 1997 there were approximately 132 4th offense DUI offenders in the system. **Ms. Craigle** Graph handed out and explained. **(EXHIBIT #2)**

SEN. LYNCH Is there a way to erase this from the person's record, perhaps a time limit? **Ms. Nordlund** The change would have to be made in this bill. The lifetime count was established during the 1995 legislative session. There are different ways to deal with this. From DOJ's perspective the least desirable way to deal with it is by expungement of a record. If the desire is

to cap the period then say that rather than to expunge the record because the record contains information about an individual's criminal history. The committee could set a 10 year window for 4 DUI's.

SEN. LYNCH Why do you require this question on a drivers license application? **Ms. Nordlund** I don't believe our drivers license application inquires into a DUI conviction, it inquires whether or not you are under suspension or revocation.

SEN. LOREN JENKINS If a person committed murder, went to jail and was released from jail, his record would be clean at the time he was released, wouldn't it? **Ms. Nordlund** His record is not expunged. **SEN. JENKINS** But you cannot use anything from a previous record in any future trial because he has served his time. **Ms. Nordlund** That is not true, judges always have the ability, as part of the pre-sentence investigation, to do a full history of the individual's past criminal activity. Yes, he or she has served their punishment under the law and cannot be punished again for that offense but it can be taken into consideration if he re-offends in the future.

SEN. JENKINS According to our constitution, once they have served their sentence their full rights are returned to them, is that correct? **Ms. Nordlund** It is my concept that there is a full restoration once your punishment has been served, that is correct. **SEN. JENKINS** With DUI, even if he has served his term, his full rights are not restored, is that what you are saying? His next offense would be his 5th, 6th, etc.? **Ms. Nordlund** The full rights being restored are the rights of liberty and whatever property would have been lost as a result of punishment, a loss of voting rights, the ability to perform certain occupations, etc. It doesn't change records which are the historical documentation of what happened with that individual in a particular criminal incident. **SEN. JENKINS** In this case, are you not using the previous record as part of the current sentencing? **Ms. Nordlund** They are not being punished because of their past crimes, they are being punished because they were put on notice in the beginning that if they commit another crime the punishment will be enhanced. We can't change the punishment for the prior, but if they commit a new criminal act this legislative body has the right to set the parameters for punishment for that.

SEN. MIGNON WATERMAN To me the whole purpose of DUI laws is to tell people they shouldn't drink and drive. It doesn't matter if a person kills a person with a gun or with a car, they are just as dead. We don't expunge the record for someone who has raped or murdered, why would we do that for someone who killed someone with a car? Is this any different in the eyes of the law? **Ms. Nordlund** No, a DUI's that do and do not result in personal injury to another can be compared to our domestic violence law. With this law the penalty is enhanced based on prior incidence of domestic violence committed by a particular offender. It is not

an alien concept to the criminal justice system that recidivism brings a different consequence than the initial offense.

SEN. EVE FRANKLIN When does supervised treatment start in this process? **Ms. Nordlund** This bill only deals with the 4th offender. There is mandatory treatment components for 2nd or subsequent offenders in law. **CHAIRMAN KEATING** Page 3, subsection 5 gets into that. The required testing was initiated in 1985.

SEN. FRANKLIN I looks like the supervised release is fairly limited for the 4th offense with a maximum of 2 years. Is 2 years enough? **Mr. Ohler** If a person has an alcohol problem they would have 6 months in prison and 2 years of supervised release, we hope they will have the problem under control after 2½ years. These people can be supervised for life and they can still decide to have a drink and drive.

SEN. BECK If HB 100 passes, what will this do to the prison projections? Could it drop as much as 300-400 beds? **Ms. Craigle** We should see a decrease in prison numbers. The bed number is in the fiscal note.

SEN. BECK In the institutions budget do you reflect this bill passing in the ending fund balance? **Ms. Craigle** We looked at the projections for first offense DUI when coming up with our projections. At that point, we only had 41 DUI offenders and that was a negligible amount.

SEN. MOHL The anticipated increase is between 12%-13% per year. Are you saying the percentage will be the same through 1999 and this bill will not change that? **Ms. Craigle** That is correct. The number we took the projections from was only 41 and when looked at against the total number of inmates we based the projections on, over 5 years this made about a 5 bed difference in the projections. **SEN. MOHL** We were just told there is 140 of these offenders in the system. **Ms. Craigle** We did the projections in May 1996, at that time there were 41 DUI offenders in the system. As of February 1, 1997 we have 132 in the system.

{Tape: 1; Side: B; Approx. Time Count: 8:58; Comments: None.}

Closing by Sponsor:

REP. SOFT The 4th offense DUI offender is probably a person with a very, very serious drinking problem and has probably been driving drunk hundreds of times. This bill allows the judge to put the offender in a pre-release center so he can still work, etc. There may be the option of a plea bargain for the offender who gets caught every 10 years. This bill may open some beds at Montana State Prison because of the other options that are available. This expands the options to more than imprisonment. I would appreciate your support of this bill.

{Tape: 1; Side: B; Approx. Time Count: 9:00; Comments: None.}

HEARING ON HB 208

Sponsor: REP. ROD MARSHALL, HD 28, BOZEMAN

Proponents: Colonel Craig Reap, Department of Justice
Brenda Nordlund, Department of Justice

Opponents: None

Opening Statement by Sponsor:

REP. ROD MARSHALL, HD 28, BOZEMAN HB 208 is a preventative measure that requires a large mandatory cash fine instead of incarceration. In 1995, 43% of the drivers killed on the highways had been drinking, 29% of all the passengers killed had also been drinking. There is a large group of people that need some type of stimulant to get them to quit driving drunk. (EXHIBIT #3) is a letter from Colonel Reap that addresses the cost to process a drunk driver and a letter from Christine Valentine of the Northern Cheyenne Tribe. (EXHIBIT #4) is amendments put on the bill in the House Select Committee on Corrections. I'd like to make it so people simply cannot afford to drink and drive.

{Tape: 1; Side: B; Approx. Time Count: 9:11; Comments: None.}

Proponents' Testimony:

Colonel Craig Reap, Department of Justice (DOJ) The Highway Patrol supports this legislation. We see this as another tool that may cause people to think before they drink and drive. This bill probably won't have much of an impact on the hard core drunk driver. We find the higher fines for a certain percentage of DUI's have no impact at all because they don't have any money anyway. This bill mainly addresses those 21-35 year old's that are a frequent DUI offender. Typically, a blue collar worker who goes out for a few beers after work, maybe if the fine is higher there would be second thoughts before drinking and driving. We urge your support of HB 208.

Brenda Nordlund, Department of Justice Ms. Nordlund explains how this bill would work with the other legislation that has passed this session.

Opponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 9:18; Comments: None.}

Questions From Committee Members and Responses:

SEN. WATERMAN Regarding the tie with SB 303, the interlock, it seems to me that on the 1st offense the judge has the authority

to order the interlock; 2nd offense, they have to order the interlock; and with this bill on the 3rd offense, they take the license. Is that how they would work together? **Ms. Nordlund** I believe that is an arguable interpretation but the alcohol ignition interlock device is discretionary at all levels.

SEN. LYNCH Why not get the white collar people too, why are you only hitting the blue collar workers? **Col. Reap** I used that as an example, I didn't mean to imply anything. This won't take care of all the problems but is another tool. **REP. MARSHALL** It isn't just the 21-35 year old hit by this bill. That happens to be the group that is most prevalent in these cases. I've done nothing to change exiting law except to make a higher fine.

SEN. MIKE TAYLOR Have you done any studies on how many times a person has to drive drunk before getting caught? **Col. Reap** We have not done a study, I've heard everything from a couple hundred to a couple thousand.

SEN. TAYLOR How will this bill affect tribal courts? **Ms. Nordlund** This bill does not affect tribal courts because they have the ability to set their own laws within the boundaries of their reservations. Currently, the Confederated Salish and Kootenai and the Blackfeet tribes incorporate sections of Montana's traffic code.

SEN. TAYLOR Has the community service idea been used and if so, what type of service was done? **REP. MARSHALL** Community service has been done in Texas and on the Northern Cheyenne reservation. This will be a new program in Montana.

SEN. GREG JERGESON Who provides supervision for community service? **REP. MARSHALL** My understanding is that the judge could designate that supervision to whomever he wanted, the city, county or himself.

SEN. JERGESON What happens if there are no community service projects available? **REP. MARSHALL** They can always be put back in jail.

SEN. BECK Should there be some tie in between this bill and SB 303, the ignition interlock bill? **Ms. Nordlund** It is possible to put the two bills together as they sit right now. The committee needs to decide if that is the policy you intend. If HB 208 and SB 303 are put into law as is, I will advise the division that they are not authorized to give any driving privileges for 5 years to an individual who has had 3 DUI's within a 5 year period. This will comply with HB 208. If an individual doesn't fit within that category they can fall under SB 303 and the normal driver improvement program which allows an individual with a revocation to obtain probationary driving privileges after at least 3 months of a 1 year revocation have been served. **SEN. BECK** If we want to comply with SB 303 and

give the judge some discretion we should put an amendment in this bill. **Ms. Nordlund** That is correct.

SEN. MOHL If I have 4 DUI's, can I get a drivers license again after completing my sentence? **Ms. Nordlund** Yes, depending upon the time period within which your DUI's were committed, you will be treated as a second or subsequent offender or a first offender for drivers license purposes. You have to finish your treatment if you are a second or subsequent offender before we give you full reinstatement. You also have to, at least, complete 3 months of a 1 year revocation. Then we can give you a probationary drivers license and you must pay the reinstatement fee of \$100.

SEN. CHRIS CHRISTIAENS How does workers' compensation work for community service? **REP. MARSHALL** I was told the judge collects enough from the client to pay for workers' compensation. **SEN.**

CHRISTIAENS How is that distributed to the agency or organization that is providing the supervised community service?

REP. MARSHALL The fine goes to the jurisdiction. **SEN.**

CHRISTIAENS The reason I asked the question is that when you are talking about a \$1,500 fine that will be worked off in community service you are talking about a lot of hours at minimum wage that has a huge exposure for a worker's compensation claim.

SEN. LYNCH Would you have an objection if we made the fine 5% of their previous years net income so we hit everyone equally? **REP.**

MARSHALL I don't think I could object to anything you suggested.

Closing by Sponsor:

REP. MARSHALL I am trying to make it too expensive for people to drink and drive. I tried not to infringe on any other rules. I hope you look on this bill with approval.

{Tape: 2; Side: A; Approx. Time Count: 9:39; Comments: None.}

HEARING ON HB 559

Sponsor: **REP. DUANE GRIMES, HD 39, CLANCY**

Proponents: Brenda Nordlund, Department of Justice
Dave Ohler, Department of Corrections
Mike Grouper, Boyd Andrew Chemical Dependency Care
Center
Charles Brooks, State DUI Task Force

Opponents: **REP. GEORGE HEAVY RUNNER, HD 85, BROWNING**

Opening Statement by Sponsor:

REP. DUANE GRIMES, HD 39, CLANCY Last session we were faced with an increasing DUI problem and, in trying to figure out how to

solve the problem, we implemented year long monitoring after mandatory counseling. Currently, people convicted on a 6-month suspended sentence go for 6 months of monitoring and then quit. HB 559 closes that loophole by having the suspended sentence reapplied. The bill also opens up records past 5 years and recodifies items in the law. This will give law enforcement another tool to do their job.

{Tape: 2; Side: A; Approx. Time Count: 9:43; Comments: None.}

Proponents' Testimony:

Brenda Nordlund, Department of Justice This is one of four DUI task force bills that was introduced this session and should be the least controversial of them. (EXHIBIT #5) handed out and explained.

Dave Ohler, Department of Corrections The department supports HB 559.

Mike Grouper, Boyd Andrew Chemical Dependency Care Center I am a member of the state DUI task force and a recovering alcoholic with 18 years of continuous sobriety. I'd be happy to answer any questions you may have.

Charles Brooks, State DUI Task Force I'm representing the task force and Harold Hanzer. Letter from Mr. Hanzer (EXHIBIT #6) and Gregory Mohr (EXHIBIT #7) handed out. I encourage the passage of HB 559.

Opponents' Testimony:

REP. GEORGE HEAVY RUNNER, HD 85, BROWNING I rise in reluctant opposition to HB 559. I know the intent of this bill but I think we are putting the cart before the horse. This is another example of the necessity of working something out between the tribe and the state. Just because language is inserted in a bill doesn't necessarily mean that the tribe is obligated to follow it. State law only prevails if the tribe allows it. We need to look at when state and tribal laws start and stop to make this a mutually beneficial agreement. We might want to strike the language referring to the tribal courts. I would like my reservation to sit down with DOJ and work on these issues to develop a model for this application to occur on the reservation. This would be a way to address the jurisdictional issues.

{Tape: 2; Side: A; Approx. Time Count: 10:00; Comments: None.}

Questions From Committee Members and Responses:

SEN. LYNCH You said this bill is a great tool for the defense, what does it do for the insurance company? **Ms. Nordlund** Title 33, which governs insurance companies, prohibits them from using information that is older than 3 years for purposes of rate

setting and determining premiums. This bill does not affect Title 33.

SEN. LYNCH Is this new stuff on page 9? **Ms. Nordlund** It is not new, it is the consolidation of current law language.

SEN. TAYLOR What is the cost per day for treatment? How long do you think it would take, on an average, to get someone off drugs or alcohol? **Mr. Grouper** The average daily cost is based on income, we charge by the session. The least we charge is zero. In-patient treatment, usually of 1 month duration, is the most effective, followed with aftercare, usually for 3 months. Multiple offenders would follow up with monthly monitoring. Generally anything worthwhile will be done in a 4 month period.

SEN. TAYLOR How does the Blackfeet Nation handle a 3 DUI offender? Do they send them away and pay for treatment? **REP.**

HEAVY RUNNER As I understand it, part of the judgement is remanding the individual to a treatment center, depending on availability. I'm trying to find out when the tribe legislatively recognized state DUI's. It might be unclear as to whether the DUI occurred off or on the reservation. If that legislative process is not in place an individual could argue that the past records of something that happened off the reservation cannot be recognized. I can get that information to you. **SEN. TAYLOR** I would like to know what the Blackfeet Nation does with their own people who have been convicted of driving under the influence of alcohol or drugs and how many there have been. **REP. HEAVY RUNNER** I'd be glad to try and get that information. As you know, the rates of alcoholism on the reservation are quite high. The services that are available to address those frequently have waiting lists and repeat people.

SEN. WATERMAN Do a number of courts recognize the booking period as part of the 24 hours referred to on page 9? **Ms. Nordlund** On a first offense, that is correct if they are going to consider the aggregated loss of liberty. On a second offense, the 48 hours must be served consecutively.

{Tape: 2; Side: A; Approx. Time Count: 10:11; Comments: None.}

SEN. CHRISTIAENS I'm confused with your answer to **SEN. WATERMAN** regarding the 24 hour service. I ran a DUI program and ours was 24 hours, not anything less. **Ms. Nordlund** The minimum requirement is 24 hours. The person who is going to determine whether that 24 hours has been met is the court. If the court wants to credit the time spent in booking or overnight, that may be within the courts prerogative for the first offense. It cannot be used for the 48 hour consecutive requirement for second or subsequent offense.

SEN. MAHLUM Can you give me the percentage between DUI and DUD? **Ms. Nordlund** I don't have that information off the top of my head. I suspect it is fairly negligible in terms of actual

prosecutions as a DUID, which is driving under the influence of drugs. Approximately 40% of our coroners fatalities are individuals who showed drug positive and 39% of those individuals whose blood has been sent to the lab for alcohol will also show a positive drug presence. **SEN. MAHLUM** Do you have a test for drugs? **Ms. Nordlund** Under current law, we have to give an alcohol test first. If they register less than 1.0 on that test then we are able to request a drug test. We take them to the hospital for a blood test which is sent to the lab for analysis. Urine can be used as a means of detecting presence of drugs in the body. However, law enforcement does not use urine specimens as it is not a good sample for the prosecution of this particular offense.

SEN. LYNCH I'm a little confused about your objections. Page 15 states a tribal court may report. It seems to me that gives you the discretion you would like to negotiate with the state or local law enforcement. **REP. HEAVY RUNNER** My opposition is to the inclusion of the tribal courts. I would hope this would be done through a process where they sit down and discuss how the reporting will be done. **SEN. LYNCH** The word may rather than must or shall gives you that latitude. Why would I oppose this bill on your behalf, if I think you have the latitude in it? **REP. HEAVY RUNNER** That is your call. I think it is interesting that the state gives their blessing for the tribe to "may report". With a government to government relationship it would be nice if they sat down to work out the reporting. I would like to have the references to tribes removed until we can get individual cooperative agreements in place.

{Tape: 2; Side: A; Approx. Time Count: 10:20; Comments: None.}

SEN. CHRISTIAENS The new language on page 17, lines 8-11 may be another area of concern for **REP. HEAVY RUNNER**. **Ms. Nordlund** I see this language as essential for the policy makers of the State of Montana, to define what we are going to count for purposes of our prosecution of DUI's. There might have been a better way to phrase the language on page 15. We never intended to usurp authority from the tribal nations. We want to work with those tribes who want us to record their traffic convictions, not all report to us. I'd be happy to draft an amendment to deal with the record keeping section. I urge the committee not to change the conviction count because that serves a different purpose. I agree that we can work government to government on these issues.

SEN. LYNCH I don't like section 13 that states we live without any amendments to HB 100. Is the way I am reading that correct? That if this passes HB 100 doesn't matter, blue collar will get the business. **Ms. Nordlund** When the House heard this bill, it was my task to try and coordinate all the bills. The style of this bill is radically different than current law. Section 13 is for coordination purposes. The substance of section 13 & 14 is no different than HB 100 as it was brought to you today. It merely reorganizes it in a fashion that comports with the recodification of HB 559. Whatever you change in HB 100 will

have to have commensurate changes in the coordination language.

SEN. LYNCH If we pass HB 100 amended and pass this as is; would the code commissioner codify them so they all got together in the end? **Susan Fox, Legislative Services Division** If you amend HB 100 you probably should amend the coordination instructions accordingly to make them work together. If you didn't, **Greg Petesch** would have to.

SEN. TAYLOR Can an individual who has lost their drivers license in one state because of DUI's come to Montana and not have a record? **Ms. Nordlund** No. We have interstate compacts that allow the reporting and recognition of other states records. (EXHIBIT #8) handed out.

{Tape: 2; Side: B; Approx. Time Count: 10:27; Comments: None.}

Closing by Sponsor:

REP. GRIMES I would prefer that you consider **REP. HEAVY RUNNER'S** amendments. I ask the committee to help make this work so we can see if year long monitoring does some good for the State of Montana.

ADJOURNMENT

Adjournment: 10:29 a.m.


SEN. THOMAS F. KEATING, Chairman


SHARON CUMMINGS, Secretary

TK/SC