

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 13, 1989, at
9:05 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON HOUSE BILL 310

Presentation and Opening Statement by Sponsor:

Rep. Schye stated that HB 310 was brought to him by the County Attorney from Glasgow. Rep. Schye explained the bill to the committee.

Testifying Proponents and Who They Represent:

David Nielson, County Attorney for Glasgow
John Connor, Montana County Attorney's Association

Proponent Testimony:

David Nielson stated that HB 310 amends the current statute so as probable cause hearings that are held for juveniles within 24 hours, it allows the Justice of the Peace and City Judges to hold that hearing. Under the current law, only a District Court Judge could hold that hearing and that becomes a problem if they don't have a judge available in that 24 hour period. HB 310 addresses the filing of a petition. This bill amends the time for filing a petition from five working days to seven working days.

John Connor stated that there have been expressions of concern by a number of county attorney's. This causes frustration by the county attorney because he can't get the petition filed within the time limit specified by statute if the judge isn't available. This proposal to the Justice of the Peace and city magistrate to conduct these initial detention hearings expedited the juveniles appearance before some type of judicial officer and would eliminate the problem.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Brooke asked Mr. Connor where the language was changed on page 5, is there any prioritizing that you would do or how would that work? Mr. Connor stated that it would be whoever was available. If there was a Justice of the Peace available in the Courthouse, if not to a city magistrate. One reason for the additional language with respect to municipal or city judges is to provide for the situation where there may not be a Justice of the Peace available.

Closing by Sponsor:

Rep. Schye stated that there wasn't an effective date put on this and they would like an effective date if the committee would see to passing the bill.

DISPOSITION OF HOUSE BILL 310

Motion: Rep. Darko moved HB 310 DO PASS, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved to put an effective date on HB 310 of July 1, 1989. Motion seconded by Rep. Knapp.

A vote was taken on the proposed amendment and CARRIED unanimously.

Recommendation and Vote: Rep. Gould moved HB 310 DO PASS AS AMENDED, motion seconded by Rep. McDonough. Motion CARRIED with a unanimous vote.

DISPOSITION OF HOUSE BILL 404

Motion: Rep. Nelson moved to TABLE HB 404. Rep. Wyatt seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion to TABLE HB 404 and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 495

Motion: Rep. Strizich moved HB 495 DO PASS, motion seconded by Rep. Darko.

Discussion: Rep. Daily asked what is going to happen to the insurance rates when there is evidence that a kid consumed alcohol. Their insurance could double even though it was just one beer. Rep. Darko stated that right now under the statutes they can't touch them if they don't have it in their hands. The officers need this in order to arrest. Right now unless the kid has the beer in his hand, they can't do anything to him.

Rep. Eudaily stated that in the situation in the bill was described where the kid was at school and was no doubt intoxicated and when he was picked up he didn't have it in his hand at the time. Under this bill, what would be the penalty in that case? Rep. Strizich stated that it would be just as it is currently, he would go to the Justice of the Peace Court and he could face up to a \$50 assessment and his license taken if he was driving.

Rep. Nelson stated that she is concerned about the language on page 2, starting with "it is efficient if proved that he possessed". This is too vague, because we are talking about the difference between one can of beer and being totally smashed. This leaves too much discretion to the judge.

Rep. Mercer stated that if you have one beer in your hand whether you haven't even put it in your mouth that is a crime. Could the committee put on page 1, line 21 after the word "knowingly" insert consumes or. This will say that the officers will bring in all types of evidence. On page 2, take out "it is sufficient" and you also take out the sentence "amount of evidence that he consumed it . . ." That would give the officers the authority to charge somebody with either consumption or possession. The safeguard on consumption is that it will be difficult to prove unless the kid has had quite a bit of alcohol.

Amendments, Discussion, and Votes: Rep. Strizich moved to amend page 1, line 17 following the word "knowingly", insert consumes or. On page 1, line 21 following "knowingly", insert consumes or. On page 2, line 1 following "section" strike the balance of lines 1 - 5 through "possession".

Recommendation and Vote: No further action was taken.

DISPOSITION OF HOUSE BILL 497

Motion: Rep. Daily moved to TABLE HB 497, motion seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A Roll Call Vote was taken on the motion to TABLE HB 497 and CARRIED with 10 voting aye, and 7 voting nay.

DISPOSITION OF HOUSE BILL 414

Motion: A motion to TABLE HB 414 was made by Rep. Daily, seconded by Rep. Eudaily.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Question was called for on the TABELING motion and CARRIED with Rep. Addy voting Nay.

DISPOSITION OF HOUSE BILL 369

Motion: A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Aafedt.

Discussion: Rep. Mercer stated that he opposes the bill.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Daily moved to TABLE HB 369, motion seconded by Rep. Hannah. Motion CARRIED with Rep.'s Rice and McDonough voting against the motion.

ADJOURNMENT

Adjournment At: 10:00 a.m.



REP. DAVE BROWN, Chairman

DB/je

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 13, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 13, 1989

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Mr. Speaker: We, the committee on Judiciary report that House Bill 310 (first reading copy -- white) do pass as amended .

Signed: *Dave Brown*
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 12.

Following: "RECORDING;"

Insert: "PROVIDING AN EFFECTIVE DATE;"

2. Page 9.

Following: line 3

Insert: "NEW SECTION. Section 3. Effective date. This section is effective on July 1, 1989."



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE: (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
LOCAL GOVERNMENT
RULES

TO: John Vincent, Speaker of the House
FROM: Dave Brown, Chairman, House Judiciary Committee
DATE: Feb. 13, 1989
SUBJECT: House Bill's 369, 404, 414, 497

The House Judiciary Committee has TABLED HB's 369, 404,
414, 497.

DB/je

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE FEB. 13, 1989

BILL NO. HB 497

NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE		X
REP. FRITZ DAILY	X	
REP. PAULA DARKO		X
REP. RALPH EUDAILY	X	
REP. BUDD GOULD	X	
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON		
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH		X
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

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Julie Empe
Secretary

Dave Brown
Chairman

Motion: Rep. Daily moved to TABLE HB 497, Seconded
by Rep. Hannah. Motion CARRIED.