

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 19, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser, presiding. All committee members were present except Rep. Hannah, and Rep. Curtiss, who were both excused. Jim Lear, Legislative Council, was also present.

HOUSE BILL 162 REP. GOULD, chief sponsor of the bill, stated this was a simple bill. In previous law if a person was arrested on private property, a drunken driving charge would stick. Legislation as it currently stands does not allow a charge of drunken driving to hold if the person is on private property. GOULD handed out a piece of testimony from Jim Nugent, Missoula City Attorney, to committee members. EXHIBIT 1

MIKE MCGRATH, Department of Justice, is for this piece of legislation. As the law now stands, in order for a charge of DWI to be effective, the person has to be on the highway. This bill would include parking lots and private property. A person has to have actual control of the automobile, as the law now stands, which means the person has to be behind the driver's seat, keys in the ignition. The statute does not apply to people in recreational vehicles.

CAPTAIN WALT MILLER, Highway Patrol, supports this bill. MILLER stated in reckless driving cases they do have the authority to take action. The Highway Patrol has to investigate accidents involving drunk drivers, but because of 1979 legislation, they cannot do anything about it since the person is on private property.

TOM HONZEL, County Attorneys Association, supports this bill. HONZEL noted it creates problems for attorneys when they try to prosecute but because of the location the charges must be dropped. This type of situation is hard to explain to the public. Attorneys have had problems since the 1979 enactment.

There were no other proponents.

There were no opponents.

In closing, GOULD noted there is nothing in case law where a judge has convicted a person where he is at a bar in a shopping center and on his way out hits five cars before he can make it out to the highways.

No questions were asked by committee members.

HOUSE BILL 164 REP. GOULD, chief sponsor of the bill, handed to committee members a sample of what a handicapped parking permit looks like. The handicapped parking bill was brought forth in legislation in 1977 placing a penalty on anyone who parks in the handicapped parking spots. GOULD really wanted to give this bill a chance to see if people would honor the handicapped spots. However, it has been well shown that everyone is using the spots.

REP. GOULD stated (facetiously) although he is opposed to the idea of penalties, he is for this legislation.

The first time a person applies for a permit they would need a statement from a doctor stating the person is handicapped. The person sends in the statement along with one dollar. The statement is kept on file and a dollar is sent in each year to renew the permit.

There were no proponents.

There were no opponents.

REP. EUDAILY asked if these permits would be issued by the state. REP. GOULD replied they would.

REP. EUDAILY stated there should be uniformity in the permits. In Missoula a card is given to the handicapped person for their wallet. REP. GOULD stated currently the Senate has a bill, that if passed, would have signs where people receive their drivers licenses or plates that handicapped permits could be purchased there. That should be of some help to the situation. GOULD stated it is hard to make people listen. There have been many radio spots and newspaper articles concerning the cost of the permits and how to obtain them. Hopefully these signs will help.

REP. EUDAILY noted he has seen the handicapped signs in front of parking places and some which were painted on the street. GOULD noted each parking space which is designated for handicapped parking should have both the sign and the painted sign on the parking space. REP. EUDAILY further stated that snow often covers the painted sign on the parking space and often there is no actual upright sign. Therefore, a citizen does not know he is parking illegally in a handicapped parking space. All the signs should be uniform. GOULD agreed with the statement.

There was no further discussion on House Bill 164.

HOUSE BILL 165 REP. GOULD, chief sponsor, noted this bill is to repair the mandatory liability insurance bill. Currently the maximum fine is \$25.00 The average cost of insurance is \$300.00 a year and a person can actually receive 12 tickets and break even as the law now stands. A lot of people are going to an insurance company taking out an insurance policy paying for one month premium and letting the policy lapse, or they are taking out insurance and cancelling the check. The person then has proof of insurance and thereby satisfies the present law.

GOULD stated ex-representative Scully supports this bill.

This bill allows up to \$1,000 fine if a person is caught without insurance. In an accident where property is damaged, \$250-\$1,000 fine is given that cannot be suspended or deferred. If there is bodily and property injury a one year in jail sentence is given. The first 30 days cannot be deferred.

REP. GOULD handed to committee members from Jim Nugent, Missoula City Attorney, a letter which supports this bill. EXHIBIT 2.

Proponent JERRY BAKER, representing himself, is in favor of this bill. He noted he has three sons who are in the age group that is penalized for insurance. The sons have each been involved in an accident which has caused BAKER's insurance rates to go up considerably. BAKER told the committee members of the incidents involving each of his sons accidents. BAKER totally supports the bill.

BEVERLY GIBSON, Montana Association of Counties, supports this bill with the amendment proposed. Mandatory sentencing of 30 days in the county jail should be eliminated. Many county jails do not have room for these people.

JIM MANION, Montana Auto Association, told committee members in a recent poll of the 57,000 members of the Association, 76% felt a stiffer fine other than \$25.00 should be in order. MANION feels their membership is what the people want, that being a stricter fine.

REP. PISTORIA told committee members the thing that bothers him is that all insurance bills are not within one committee.

There were no further proponents.

There were no opponents.

In closing REP. GOULD stated the one thing that would not be possible would be to have an insurance company notify the Department of Vehicles, who would then notify the sheriff's department when a policy had lapsed or been cancelled. There are no funds to do that. Approximately 82% of the Attorney General's budget goes to the Department of Highway Patrol. The people are already taxed to the limit.

REP. GOULD stated he believes as Thomas Jefferson once said, that the government that governs least governs best. Unfortunately, in Jefferson's day there were no automobiles that killed people.

Questions included REP. KEEDY's remark that GOULD might not be aware the bill provides for escalation of punishment if property is damaged that does not apply if the person is not at fault.

REP. GOULD stated there would not be any problem in that. If the person were involved in an accident and not insured, even though it was not his fault, it would make him more aware to carry liability insurance.

REP. YARDLEY inquired if the damage has to be a certain amount before the charges would hold. GOULD stated really a person should have \$250.00 as it is now. When you look at the cost of insurance if there is property damage there should be \$250.00. Bodily injury there could be an amendment. GOULD's own personal opinion is it should be left alone.

REP. SEIFERT asked if GOULD was aware of any litigation that is pending on this statute that it is not constitutional. GOULD noted he knew of a case.

REP. EUDAILY asked how this would help the fender benders in parking lots. GOULD stated this was a different situation. Many farm vehicles only cross the road to get to other property. Drunken driving in a parking lot is a different situation than having insurance.

There was no further discussion on House Bill 165.

HOUSE BILL 171 REP. PISTORIA, chief sponsor, told a brief history of the bill from the last legislative session. The bill was passed in the House as amended, but drastically cut in the Senate. This bill gave the power to the judges whether the names should be published of people under the age of 18. PISTORIA handed out a copy of an editorial from June 21, 1979 in which the editor asked the public's opinion of whether or not the juveniles names should be printed. In another article PISTORIA handed out, June 28, 1979 edition, showed 94 out of 99 people who responded to this editorial were in favor of this type of legislation. EXHIBITS 3 and 4.

PISTORIA noted since this bill has been passed there has never been a youth's name published. PISTORIA feels some of the judges feel they rule the roost. The judges should obey the laws of what the people say. PISTORIA doesn't see anything wrong with the bill. He cannot understand why the judges would appeal this bill. PISTORIA noted many probation officers in counties throughout Montana are in favor of this bill. Their hands are tied, though, because they work for the judges.

BARBARA ROBURESON, a teacher in Helena, is in support of this legislation. Her concern is basically from teaching in a classroom atmosphere where the attitudes of the youth are expressed. She is concerned with the damage that is caused in town. Publishing the student's name will not have any peer pressure; most of the students already know who did what anyway. Many parents when they see the

name in the paper and when their friends see the name they will be shocked into reality. It will make some of the parents more conscious. ROBURESON feels life will be easier to live and better if pressure was placed on these students.

WALTER HODGSON, owner of Knox Flowers, told committee members his shop was broken by three 16 year old juveniles in December. He feels this on the road to becoming a professional criminal. None of the names were published. HODGSON feels it is high time the bill be passed. Parents should be made aware that they are responsible. By getting their names in the paper it will help them to realize the massive concern of what these youths are doing. This bill will be a small step to a large problem.

HARRY LYLE, representing himself, stated he has lived in Helena all his life. He is in favor of this bill. Parents should be held responsible. Names should be published as this will help slow down this type of harm.

JACKIE MASSENGALE, representing herself, stated the names should be published because if the parents see the names in the paper it might shock them into making them care.

EVELYN JOPPA supports this bill 100%.

GLADYS INMAN stated her personal property has been vandalized recently including windows broken and tires slashed. She was appalled about all the windows recently that were broken resulting in \$20,000 worth of damage.

There were no further proponents.

There were no opponents. A telex from Sandra Kelley was shown to Committee members. EXHIBIT 5.

In closing, REP. PISTORIA stated some of the parents who testified today show the need for this bill. REP. PISTORIA urged the committee not to weaken the bill with amendments. He noted the first name of a youth was published on January 8. It was the only name. REP. PISORTIA stated it just goes to show how judges work behind the scene. REP. PISTORIA noted there will be some people for the bill and some against it. Regardless of how the committee feels, REP. PISTORIA urges the committee not to kill the bill but to bring it to the Committee of the Whole for discussion.

There was no further discussion on House Bill 171.

HOUSE BILL 173 REP. BURNETT, chief sponsor, stated this bill would include fire fighting and medical assistance. The obstruction of these would be a public nuisance, making this a misdemeanor. Normally under the present law only law enforcement agencies are covered.

There were no other proponents.

There were no opponents.

In closing REP. BURNETT stated this bill was simple to understand.

REP. MATSKO asked if the sponsor would object to the bill stating "any qualified person rendering a service." REP. BURNETT stated who is to say who is qualified in an emergency. Most people have had first aid. If you are administering first aid and someone interferes with you, you have a civil suit against you any way.

REP. MATSKO stated he has been to a number of accidents where the friend is trying to take care of the injured party and when the ambulance comes they refuse the help. REP. BURNETT replied when an ambulance crew comes most people back off to let them help.

REP. EUDAILY inquired the need for subsection (C) in this bill. REP. BURNETT stated where you have a voluntary fire group the person in the city does not realize the need as those who live in the rural area. REP. BURNETT is satisfied with the way the bill is. REP. EUDAILY asked aren't rural fire departments part of the government. REP. BURNETT noted most rural fire departments are voluntary and it is felt it is a private function and not a government one. REP. EUDAILY stated the word prevention should not be in subsection (C). REP. BURNETT stated it may be just the way the researches wrote it up.

REP. YARDLEY asked for an explanation of subsection (4). REP. BURNETT explained some years back there was a rumble of disrupting persons. The city deputed just about everyone. The disrupting people did stop in the city. The judge made it a public nuisance. There was property damage and personal injury.

REP. SEIFERT asked EVELYN JOPPA her opinion. JOPPA stated she was a professional volunteer who teaches CPR and first aid classes. Many times people who are trying to perform a voluntary first aid act are obstructed and hindered by the crowd. She feels this legislation will provide help.

Regular session ended at 9:15 a.m.

EXECUTIVE SESSION

The Executive Session of the Judiciary Committee met at 9:30 a.m.

HOUSE BILL 10

Exhibit 4 was given to committee members. (See attached sheet). JIM LEAR, Legislative Council, explained the first five amendments were a type of housecleaning measure to clean up the bill for the rest of the amendments.

Amendment six was explained to committee members. This is making it clear that a person who commits an offense and has not committed any other offense may be entitled to have it deferred if he is eligible. If he has committed a prior felony and had the sentence deferred it may not be deferred for other sentences.

REP. KEEDY stated if the person has committed a prior offense he is not eligible whether that prior case is deferred. JIM LEAR stated if any previous felony was committed, a subsequent misdemeanor or felony would not be deferred.

REP. YARDLEY opposed the amendment stating the amendment doesn't express a certain period of time. Forty years may be between deferred sentences. A person could have written a bad check and then 40 years later committed some type of homicide. The amendment makes no distinction of time. REP. YARDLEY offered a substitute motion to delete first prior felony and not make it impossible to have a deferred sentence.

REP. HUENNEKENS noted that the term felony is so broad that we do not have enough explanation of the past felonies. It is giving a violent act the same violation as a nonviolent one.

REP. MATSKO stated the subcommittee worded the amendment feeling the wording would be adequate to cover the situation. Any person found guilty of a felony would be ineligible for a deferred sentence if it was the second felony. However, a judge could suspend the sentence. Multiple deferred sentences would not be allowed. The intent was to tighten up the deferrment of sentences.

REP. BENNETT inquired if the subcommittee addressed the length of time since a prior felony was committed. REP. KEEDY noted it was discussed. It was the feeling if someone committed a second offense he should not be eligible for deferred sentence for a second time, and since he would be eligible for a suspended sentence 46-18-222, that would be enough.

JIM LEAR stated unless a person commits a felony he would not have any deferrment problem until he commits another felony.

REP. KEEDY stated it should be amended to say a person committing a misdemeanor or first felony.

REP. HUENNEKENS stated by this amendment if there was a preceding deferral action the whole process would be removed from the record. The person would be found innocent. REP. KEEDY said if a prior felony sentence was deferred and served by the person it would be wiped clean. The record of the court would show a request of the past deferral.

REP. MATSKO stated there has been in the past cases that have come to court where a person had completed a deferred sentence. The judges may or may not have the expertise to read into a court record the actual deferred sentence. REP. MATSKO thinks this would address REP. YARDLEY's problem if a person kept his nose clean long enough. If it came up before the same judge and the judge remembered it, it would be a judicial type of thing and judge's prerogative.

REP. HUENNEKENS stated as he reads the law, there would be a previous felony. It did solve part of his problem.

REP. YARDLEY stated it is important to know the difference between a felony and a misdemeanor. A felony is a more serious crime of which one year or more normally is spent in the state prison. A misdemeanor is usually six months to a year in jail or \$1,000 fine. There are a lot of felonies that you would not think are felonies. The person is not treated as a major criminal. In the case of actual deferred sentence that is given, basically the person does not serve it. The person can have the court erase it from his record.

REP. KEEDY does not feel it is actually given.

REP. YARDLEY stated there is no time period involved. REP. IVERSON stated there is no sentence given until the judge brings the person back in. REP. YARDLEY stated some judges like deferred sentences and some liked suspended sentences. This would apply against a deferred sentence and not a suspended one.

REP. TEAGUE asked if someone becomes good how does the court know of a second time. REP. MATSKO stated the record shows the person was arrested for the offense. The verdict was not guilty.

REP. IVERSON felt the memory of the judge would not matter. If it is off the books there is no record therefore there is no prior offense.

REP. EUDAILY offered a substitute motion that the committee accept the proposed amendment #6 omitting the word "first" on line 13 and inserting felony or misdemeanor, so long as he has not committed a prior felony. REP. ANDERSON asked if that would include the line to read misdemeanor or first offense. JIM LEAR stated if the word "first" was stricken that would probably be sufficient. REP. KEEDY

was in agreement.

REP. DAILY stated judges abuse this power. If a person has committed a prior felony he cannot have a deferred sentence. He still cannot. REP. YARDLEY stated that was one of the difficulties in the bill. It does not permit you to receive a second deferrment.

REP. MATSKO noted that during that time period the person is ineligible for a deferred sentence. If that time passed and the person is trying not to foul up again, then ten years down the line he commits a homicide, the judge does not have to give a deferred sentence. He can rule him ineligible. REP. HUENNEKENS stated the judge cannot just blankly hand out a deferred sentence but must be under 46-18-222.

REP. DAILY wishes that was not true. Judges abuse deferred sentences to not fill up the prisons. REP. DAILY knows of a case where a person committed armed robbery and finished a deferred sentence. Then the person committed negligent homicide and the judge gave him another deferred sentence. They could not use the first felony for anything. REP. DAILY feels this is terrible.

REP. KEEDY stated the flaw in House Bill 10 is deferred impositions. The fact is a deferred period is wiped clean after sentencing. REP. IVERSON stated after there is no record, there is no record. He suggested the period of time be extended from 3 years to 5, 8 or 10 years. The real problem is there is no record.

REP. EUDAILY's substitute motion was voted on. The amendment passed with REP. YARDLEY, REP. DAILY, REP. TEAGUE and REP. SHELDEN voting no. REP. DAILY was opposed to the amendment because the language was not strong enough.

REP. EUDAILY moved amendments 1-4 do pass. The amendments passed. REP. EUDAILY moved amendment 5 do pass. The amendment passed.

Amendment 7 was explained to committee members. REP. EUDAILY moved do pass on amendment 7. The amendment passed.

REP. DAILY moved to amend page 2, line 16 changing 3 years to 10 years. The amendment passed.

Amendment 8 was read to the committee. REP. EUDAILY moved do pass. REP. YARDLEY asked why the change from 20 years to 8. REP. EUDAILY responded that 20 years was quite a jump from what it was before. REP. YARDLEY noted this was a problem with the bill. The last negligent homicide was a man who had a few beers and killed another person while he was driving. In 46-18-222 if that person were over 18 years old there would be no deferrment. This person was not under any mental distress. Mitigating circumstances at most would apply.

The judge or jury would have a choice of 18 years or 20 years or nothing. Even as the law presently is, 90% of negligent homicide cases don't serve time. You are not accomplishing what you intend to do by this act. You are giving the person eight years or find him innocent or reduce the sentence.

REP. HUENNEKENS stated he finds himself agreeing that the net result will be reduced sentencing. He does not feel juries will sentence this type of person for eight years because he could not qualify himself as deferred.

REP. EUDAILY stated the subcommittee tried to direct this bill in the best way they could.

REP. DAILY had a substitute motion to eliminate section 11, page 12, line 2 down to line 8. A roll call vote resulted. The outcome was 11 yes and 5 no. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, MATSKO, DAILY, HUENNEKENS, SHELDEN, TEAGUE, YARDLEY and BROWN. Those voting no were: EUDAILY, IVERSON, ANDERSON, ABRAMS, and KEEDY. The substitute motion passed.

REP. YARDLEY moved any changes made that affected the title, the title be so amended. All were in favor of this motion.

REP. EUDAILY moved page 19, line 17 be changed to "a" following "for". The motion passed.

REP. EUDAILY moved amendment 10 be passed. All were in favor of this amendment.

REP. EUDAILY moved that amendment 11 be passed. All were in favor of this amendment.

REP. EUDAILY so moved that amendment 12, inserting section 31, do pass.

JIM LEAR explained that the subcommittee felt these two sections address crimes which should be addressed by a mandatory sentencing structure. This included sale of dangerous drugs, and possession of a dangerous drug with intent to sell the dangerous drug.

REP. SEIFERT inquired what tetrahydrocannabinols was. It was replied it is the active ingredient in marijuana.

Section 31 of amendment 12 passed with REP. YARDLEY voting no.

REP. EUDAILY so moved section 32 of amendment 12 do pass. After a brief discussion the amendment passed unanimously.

REP. EUDAILY moved amendment 13 do pass. REP. HUENNEKENS inquired if there was not already an effective date. REP. MATSKO stated this would give the intent of the legislature to give time to the

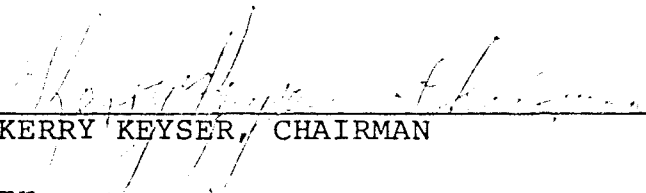
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judges and lawyers to become familiar with the act.

The amendment passed unanimously.

It was noted by CHAIRMAN KEYSER final executive action on House Bill 10 would be taken at a later meeting.

The executive session adjourned at 11:08 a.m.



KERRY KEYSER, CHAIRMAN

mr

TO: LEGISLATORS
FROM: JIM NUGENT, MISSOULA CITY ATTORNEY
RE: HOUSE BILL NO. 162
DATE: JANUARY 15, 1981

Dear Legislators:

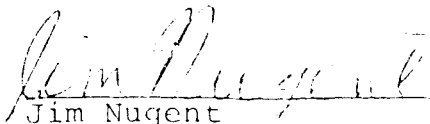
The City of Missoula supports House Bill No. 162 which is intended to clarify that it is unlawful for a person to drive or be in actual physical control of a motor vehicle anywhere within this state while under the influence of alcohol.

This bill recognizes that the danagerous menace imposed by the driver under the influence of alcohol exists whether the property on which he or she is driving or in control of a motor vehicle is publicly owned or privately owned. House Bill No. 162 allows law enforcement officials to prosecute drivers under the influence of alcohol who are operating a motor vehicle on all property, including the following properties: parking lots, shopping centers, service stations, drive-in banks, drive-in title insurance companies, drive-in fast food services, etc.

Pursuant to existing law, as a result of a 1979 legislative amendment, law enforcement officials may only prosecute drivers under the influence of alcohol who are driving upon the highways of this state. Thus, pursuant to existing law, if a driver under the influence of alcohol is discovered with his vehicle in the ditch, or in someone's yard, or crashed into someone's house or other building, or in a parking lot, etc., the driver cannot be prosecuted for driving under the influence of alcohol unless there are witnesses who saw the individual operating the vehicle on the highway or the driver admits operating the vehicle upon a highway.

House Bill No. 162 is a good bill because it allows the regulation of drivers under the influence of alcohol who are operating their motor vehicles on property other than a public highway. Individuals under the influence of alcohol who are either operating or who are in control of a motor vehicle are a serious threat to life and property no matter where they are operating the motor vehicle. Therefore, I strongly urge each of you to support and vote for House Bill No. 162.

Yours truly,



Jim Nugent
City Attorney

TO: LEGISLATORS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: HOUSE BILL NO. 165

DATE: JANUARY 15, 1981

Dear Legislators:

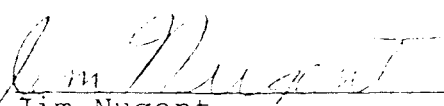
The City of Missoula supports legislation increasing the severity of the penalty that may be imposed against an individual operating a motor vehicle without liability insurance. Pursuant to existing law, the maximum penalty that may be imposed is \$25.00.

The maximum fine is far less than the cost of liability insurance. Thus, some individuals may believe it is worth their while to not have liability insurance; because even if apprehended, the individual would be fined far less than the cost of the insurance. Further, there have been allegations made to this Office that individuals can easily circumvent the law either by purchasing liability insurance in order to register or license their motor vehicle and then canceling the insurance after the motor vehicle is licensed for the next year, or by issuing a bad check for the purchase of the liability insurance, in which case the insurance company may cancel the insurance, but the individual has already been able to license their motor vehicle for the next year before the insurance company learns that the check was bad. Insurance companies do not always pursue prosecution on bad checks, because they can simply cancel the insurance policy.

Practically speaking, the only time local law enforcement officials in Missoula have an opportunity to issue a citation to an individual for not having liability insurance in effect is as part of an accident investigation wherein the operator either remains at the scene for questioning or is located later for questioning. Many hit and run drivers are never located, and one can't help but suspect that one reason they may have left the scene of an accident is because they did not have automobile liability insurance in effect.

Hopefully, increasing the severity of the penalty for this offense will discourage individuals from electing not to purchase liability insurance for their motor vehicles. Therefore, I urge each legislator to support legislation that will increase the severity of the penalty that may be imposed against an individual operating a motor vehicle without liability insurance. House Bill No. 165 is a piece of legislation now before you which would increase this penalty.

Yours truly,



Jim Nugent
Missoula City Attorney

JN/jd

Law without teeth

Rep. Paul Pistoria, D-Great Falls, thought that the names of juvenile offenders should be public record. So, during the recent session of the Legislature he introduced a bill amending current law that prevented publication of proceedings in youth court involving a delinquent youth or youth in need of supervision.

The only current exception is a hearing involving an alleged felony by a youth.

The problem with Pistoria's bill, and it has raised some doubts in his mind, is that it is up to the judge to determine whether youth court proceedings will be open or closed. If a judge decides that a closed hearing will be in the youth's best interest it will be closed.

That's it, plain and simple.

Pistoria said he is skeptical whether the judges will open many of the proceedings and allow publication of the names.

Pistoria's skepticism is understandable.

Under the so-called "Loble Law," pioneered by the late Judge Lester H. Loble of Helena, a youth could be cited into district court and tried as an adult. Loble used the law a lot. Other district judges tended to ignore it and keep the youngsters in juvenile court where the proceedings were closed.

We expect the same thing is going to happen when Pistoria's bill goes into effect on July 1.

When a juvenile breaks the law his or her name should be part of the public record. Barring that, disposition of the case

should at least be public record.

It doesn't seem right that a juvenile can break into a home and ransack it, causing thousands of dollars of damage and all we read is that an unnamed individual was arrested and remanded to the custody of his parents.

No one ever knows if that person had to make restitution, or was sent to the Pine Hills School in Miles City for a couple of years to cool his heels. Everything is a deep, dark secret and only the judge knows if justice was served.

Kids make mistakes and maybe in some instances their names should not be published. But we fear that the judges are going to decide that the names of all juvenile delinquents should be shrouded in secrecy and in effect nullify the new law.

What do you think. Check one of the following and mail your response to:

Juveniles
P.O. Box 4249
Helena, Mont. 59601

☐ I think names of juveniles who commit a crime should be made public.

☐ I think that the names of juveniles who commit a crime should not be made public.

Comments

Public says publish names of juveniles

Last Thursday we published an editorial regarding publication of the names of juveniles who commit a crime.

At the conclusion of that editorial we asked you whether you thought the names of juvenile delinquents should or should not be published.

We were surprised by the fact that of the 99 responses we received, 94 people said that the names of juveniles who commit a crime should be published and people said the names should not be published.

A total of 99 responses is not bad. In fact it's more than we expected to receive. It must be noted that this type of questionaire is not valid from a statistical standpoint since there is no way we can insure that the responses represent a true random sample of The Independent Record's readership. But it does serve the purpose of finding out what many Helena people think about a given issue.

This is what those who thought the names of juvenile delinquents should not be published or a part of the public record had to say.

"A juvenile may already be proceeded against as an adult in serious crimes, at the discretion of the judge. The 'Loble Law' was evil."

"Paul Pistoria (sponsor of the bill to make names of

juvenile delinquents public record) is a conservative redneck to say the least. He would have never received my vote. The concept of making a juvenile's name public record is not half-bad though. The situations should be weighed carefully—considering police history, the effect of the crime on the party offended, etc. Publishing a name should not be an automatic response to an act, but should be carefully decided. In some cases it should be done. 'Parent prestige' should not be part of the decision."

Many of those who thought the names of juvenile delinquents should be published expressed the following statement, although not in identical language as the answer we are quoting.

"If juveniles know they will have to face publicity for their misbehavior and crimes most will think twice before committing an illegal act. Furthermore, parents should be held responsible for the acts of their juvenile children. If they are required to pay some large damages they will be more interested in what their children are doing."

Here are some other comments.

"U.S. Attorney David Marston says there is already a law which would deter juvenile crime if we would enforce it."

"It is part of a child slavery law which has been on the books for 100 years. It was used in the 1880s to put a stop to child beggars in New York City."

"It is a law which says that when an underage child commits any crime, his parents must face trial."

"Why incriminate all juveniles just to hide the guilty. Our laws are very shortsighted."

"Parents may then have better supervision and be afraid of publicity. Wouldn't you like to know what kind of neighbors you have?"

"We own a retail business, and would like to see the names of juvenile shoplifters published so that we can watch out for them."

"We have a teen-ager and a pre-teen, and if we saw in the paper the names of juvenile offenders appearing frequently, we would probably not want them as the close friends of our children."

"We know some parents who don't seem to care what their children do, but perhaps if they knew the names would be published in the paper, they would not want to risk the embarrassment so would keep better track of their children."

"Juveniles get away with so much they think they are free to do it again. I know one lad who forged his folks' checks and the folks even paid them off. He's free to do it again."

"I also think the parents' names should be published."

"I am the mother of five children. It is my opinion that if a juvenile commits a crime, he or she should be treated and punished as an adult. And yes, their names should be made public."

"I work in a retail store and aids have even shoplifted items while with their parents."

"My son was only 15-years-old and his name was printed under the Loble Law. I was angry at the time but since have realized the names should be printed."

"I honestly feel that young criminals are protected by the courts and all this rehabilitation is a bunch of you know what."

"We agree with those who favor publication of the names of juveniles who commit crimes. Their names and punishment should be public record."

Exhibit 4

Exhibit 5

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Exhibit 5



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PMS CHAIRMAN AND ALL MEMBERS OF THE JUDICIARY COMMITTEE
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INCREASED DISGRACE WILL HINDER REAFFIRMATION OF USE WITH POOR SELF
IMAGE POSITIVE SUPORT NEEDED VOTE NO HB 171.
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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 162
 SPONSOR GOULD

Date 1/19/81

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ILL 164

Date 1/19/81

SPONSOR Gould

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ILL	165
SOR	Gould

Date 1/19/81

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

173
Burnett

Date 1/19/81

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Given at 1/19/81
Executive Session.

EXHIBIT 4

PROPOSED AMENDMENTS TO HB 10 RECOMMENDED BY SENTENCING SUBCOMMITTEE

1. Title, line 10.

Following: "45-5-625"

Strike: "45-6-101"

Insert: "45-6-102"

2. Title, line 11.

Following: "45-6-204"

Insert: "45-9-101, 45-9-103,"

3. Title, line 12.

Following: "MCA;"

Strike: "AND"

4. Title, line 13.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

5. Page 2, line 12.

Following: "for"

Strike: "persons"

Insert: "a person"

6. Page 2, line 13.

Following: "first"

Strike: "offense"

Insert: "felony or misdemeanor, so long as he has not committed a prior felony,"

Following: "and"

Strike: "who are"

Insert: "is"

7. Page 5, line 15.

Following: "committed"

Insert: ", known by the defendant to exist, and considered by the defendant in the commission of the offense"

8. Page 12, line 8.

Following: "of"

Strike: "20"

Insert: "8"

9. Page 19, line 17.

Following: "for"

Insert: "a"

10. Page 19.

Following: line 19

Insert: "(4) If the victim's lack of consent is based solely upon his incapacity to consent because he was less than 16 years of age, a person convicted of sexual intercourse without consent of such victim shall be imprisoned in the state prison for a term of not less than 2 or more than 20 years."

Renumber: all subsequent subsections

EXHIBIT 4

11. Page 23, line 25 through line 23 on page 24.

Strike: section 28 in its entirety

Renumber: all subsequent sections

12. Page 26.

Following: line 20

Insert: "Section 31. Section 45-9-101 MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101 (18), shall be imprisoned in the state prison for a term of ~~not less than 2~~ 10 years ~~or more than life~~, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of ~~not less than 5~~ 20 years ~~or more than life~~, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of ~~not less than 10~~ 40 years ~~or more than life~~, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor or a person who is mentally defective, the sentence shall be increased by 5 years and include the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. A sentence imposed under this section may not be increased by the aggravating circumstances listed in subsections (a) and (c) of [section 5].

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 32. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101 (18), with intent to sell

EXHIBIT 4

shall be imprisoned in the state prison for a term of ~~not-less-than-2-years-or-more-than-20~~ 5 years, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of ~~not-more-than-20~~ 5 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section." "

Renumber: all subsequent sections

13. Page 27.

Following: line 2

Insert: "Section 35. Effective date. This act is effective
January 1, 1982."