MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 23, 1981

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

HOUSE BILL 209 REP. KEEDY, chief sponsor, stated this bill grants to district courts the flexibility in terms of handling a case where there is a great number of witnesses where the trial would take a long period of time and that a fair trial could not be held because of adverse public. This would allow to change the trial to another jurisdiction to select a jury to bring back. It is not requiring the court to do this but it is giving the court the option to bring in a jury from outside the county.

TOM HONZEL, County Attorneys Association, supports this bill. HONZEL noted the problem does occur but not very often. The most recent case was in Conrad where they moved to Great Falls for the trial. Presently the judge has only one option to change everything to a county where he thinks a fair trial can be held. It is proposed to go to one place to pick the jury and house them in a hotel back in the county where the trial was to originally take place. The attorneys and judge would then have the benefit to work with their staff, research, etc. as it would all be there.

There were no further proponents.

There were no opponents.

REP. EUDAILY asked if there would be any type of fiscal impact on the bill. REP. KEEDY stated there would probably be a savings if the bill was enacted. REP. SEIFIERT asked if the courts didn't already have the authority to do this. HONZEL replied they can move the trial to another county but currently cannot bring a jury in. REP. HANNAH inquired if the expenses for food, travel and lodging would be picked up by the trial. HONZEL said yes.

There was no further discussion on House Bill 209.

HOUSE BILL 210 REP. KEEDY, chief sponsor, stated this bill adds some restriction to the statute dealing with nondangerous and dangerous offenders. The court is instructed to give a felony offender a nondangerous classification if he has a clean record within the last five years and the evidence in the trial does not substantiate as dangerous. The statute provides that immediate nondangerous classification will be attached if the judge does not make the distinction. One-fourth of a sentence must be served, less good time, before a nondangerous offender is considered for parole.

KEEDY stated some cases that you would think are dangerous are often

classified as nondangerous. There was a case tried in Montana to a plea of guilty. The man was charged with deliberate homicide was changed to negligent homicide. The judge classified the man as nondangerous because of this section of law.

REP. KEEDY noted the fiscal note attached to the bill. He did not feel the fiscal notes was actual to what expenses would be.

There were no proponents.

Opponent, DAN RUSSELL, Administrator of the Department of Institutions, is opposed to the bill because of the possible impact the bill will have on the prisons. RUSSELL gave the committee testimony. EXHIBIT 1.

There were no other opponents.

In closing, REP. KEEDY stated repeat offenders are not entitled to nondangerous classification. REP. KEEDY felt RUSSELL's objections would refer to repeat offenders.

REP. IVERSON asked if any felonies were not included on page 2. REP. KEEDY replied he selected only dangerous ones he felt were appropriate. The committee might want to add others.

REP. HUENNEKENS stated if someone were drunk driving and killed someone he would probably be considered as nondangerous because it was not his intention to kill. REP. KEEDY contends someone who is drunk and commits homicide is dangerous.

REP. BENNETT questioned if the bill will do any good considering the money needed to inforce it. REP. KEEDY said it will require the judges to look more closely at what is dangerous.

REP. CONN asked if inmates were treated differently if they were dangerous as opposed to nondangerous. REP. KEEDY stated there is probably different degrees of security.

There was no further discussion on House Bill 209.

HOUSE BILL 212 Chief sponsor, REP. KEEDY, stated this bill dealt with clarifying the procedure when mental competency of the accused is at issue. The period of time is changed from when a patient convicted hearing is held from 50 days to 180 days. Fifty days is not enough time to have a hearing or treatment in most cases. Line 20-23, page 2, clarifies the statute which court has jurisdiction and allows the committing court to transfer jurisdiction to the local court near the prison or hospital.

TOM HONZEL, County Attorneys Association, supports the bill. The language acquited is changed to "not guilty for the reason." This clarifies that the jury can find the defendant not guilty under a lesser included offense such as negligent homicide.

The change from 50 days to 180 days is a good change. The 50 days is not enough time for treatment. The public always thinks when a person is committed to the hospital he will be there for a period of time. They are surprised to find out he is free after only 50 days. The change would let the hospital still review the case and come up with proper treatment. The court can then determine if he should be kept or let out after the 180 days.

Sometimes the committing court wants to hear the results of the hospital in a particular case. Other times it might be appropriate for the judge to transfer the case to the courts in the area of the hospital.

There were no further proponents.

There were no opponents.

In closing, KEEDY stated there was some concern after the 1979 legislative session as to the constitutionality of eliminating the insanty provision. REP. EUDAILY asked the fiscal impact from 50 to 180 days. REP. KEEDY replied there would be some impact but it would probably be minimal.

There was no further discussion on House Bill 212.

HOUSE BILL 213 REP. KEEDY, sponsor of the bill, told committee members House Bill 213 is to broaden the discovery of witnesses and defenses in criminal cases. Prior notice is required now in cases of defense, alibi, or defect but not for enactment. This bill will clarify that.

TOM HONZEL, County Attorneys Association, supports the bill as far as the first amendment. The second change of the bill would require the defense to give the prosecution a list of all the defendants. This gives the prosecution the opportunity to do some discovery on its own before the hearing. Present law does not require the prosecution to give notice of who he will call to the stand. The prosecution may have a key witness against what the defendant may say. The defendant should have notice of who the prosecution witnesses will be. This bill provides an effort to take care of alot of problems before the trial, which would make the trial more meaningful.

There were no further proponents.

There were no opponents.

The committee did not ask any questions.

HOUSE BILL 214 REP. KEEDY, chief sponsor, stated House Bill 214 is to remove the authority of defense counsel to request immunity from prosecution for a person in exchange for testimony.

Under present law, the witness if often granted immunity regarding the material he has testified. That can have serious consequences if a person is granted immunity and then confesses to the crime. The defendant would be free to go because not guilty was the verdict.

This bill is intended to put the right and authority where it belongs.

TOM HONZEL, County Attorneys Association, supports this bill. This section of law gives prosecutors nightmares that this will happen. The prosecution or defense can ask for immunity, although it is usually the prosecution. HONZEL noted the court does not grant immunity just because the person has something to say. The court does check it out to make sure the request is a valid one. The problem is usually the defense calls the witness to the stand. The witness refuses to testify because of the 5th amendment. The person is given immunity and proceeds to confess to the crime. When that happens even if the person has lied, the most the court can use against him is perjury. HONZEL feels this bill should be given consideration by the committee.

There were no further proponents.

There were no opponents.

REP. DAILY asked if the judge has the authority for immunity. HONZEL stated yes.

There was no further discussion or questions on House Bill 214.

HOUSE BILL 215 REP. KEEDY, chief sponsor, stated this bill is to provide district courts and justices' courts with concurrent original jurisdiction in all criminal cases amounting to misdemeanors. It can happen that several matters arise out of the same transaction have to be filed out of the same crime. It is wasteful and inefficient. The courts should be flexible that felonies and misdemeanors in the same crime be placed in the same court level.

TOM HONZEL, County Attorneys Association, supports this bill. The Supreme Court has ruled that district courts do not have the

authority to try felony and misdemeanor cases both. Justice of the Peace Courts have the authority for misdemeanors and district courts cannot interfer.

HONZEL noted a case where the defendant ransacked a home. The woman who lived there was home at the time. The defendant slapped her around. The defendant was found guilty of burglary and assault. The Supreme Court ruled the jury could not even consider the assault because that should have been handled in the Justice of the Peace Court. In State v. Campbell the Supreme Court stated district courts could not try misdemeanor cases. EXHIBITS 2 & 3.

It is appropriate to give district courts the ability to handle misdemeanor cases. If there was a case where the jury found a person guilty not only of burglary but of criminal trespassing, which is a misdemeanor, it would be dismissed and go to a lower court. HONZEL feels it is appropriate for the district court to handle both cases.

HONZEL noted there maybe some concern of the district judges where someone wants to file everything in district court when that person is mad at the Justice of Peace. HONZEL does not feel the district judges would accept all misdemeanor cases, accepting only cases which would have both felony and misdemeanor charges.

MIKE MELOY, Montana Trial Lawyers Association, noted this bill is trying to address a problem of the system. MELOY stated it does not make sense to have a trial in district court for a felony and after that trial go to Justice of Peace and tell the same information and facts over again for the misdemeanor involved.

MELOY, although in support of this bill, feels it might be too broad. He gave the committee his suggestions. EXHIBIT 4.

There were no further proponents.

There were no opponents.

In closing, REP. KEEDY stated he would like to look over the amendments MELOY gave before they were incorporated into the bill.

REP. HUENNEKENS stated since this is an immediate problem why not make it effective on passage and approval. REP. KEEDY agreed to the statement.

REP. HUENNEKENS was concerned with flooding district courts with misdemeanors. He questioned if it would be possible to send cases back to the Justice of Peace Court if the district court determined it should be handled there. REP. KEEDY felt that was possible. HONZEL stated most district courts would not let lawyers get away with pulling that very much.

CHAIRMAN KEYSER questioned the language MELOY suggested. HONZEL stated the language would help solve the problem. KEYSER questioned reinstating language on line 21. MELOY replied he had intended to strike all of 2.

There was no further discussion on House Bill 215.

EXECUTIVE SESSION

The House Judiciary Committee went into Executive Session at 9:35 a.m. on January 23, 1981.

HOUSE BILL 5 REP. EUDAILY stated the subcommittee's recommendation was do not pass, and so moved it.

REP. HUENNEKENS asked why the motion since there is so much plea bargaining. REP. DAILY noted approximately 90% of the cases involved some type of plea bargaining. REP. EUDAILY stated the committee felt there was so much that would have to be amended in the bill that it would not reflect the sponsor's intent.

REP. CONN moved a substitute motion of reassigning the bill back to the subcommittee for amending and allowing REP. YARDLEY, sponsor, to be included in the subcommittee. The motion passed unanimously.

HOUSE BILL 159 REP. DAILY moved do pass. JIM LEAR told committee members the definition of the crime arson includes setting fire to an automobile or attaching an explosive device to it. In instances of most automobiles that are set on fire it would be seldom that a person would not be placed in a death or bodily injury situation. Most automobile fires could be placed under the arson law.

REP. IVERSON asked what the maximum penalty for criminal mischief was. JIM LEAR replied under 45-6-101 if the damage is less than $150 the penalty is $500 or six months in jail. If the damage is over $150 the penalty is up to, but not to exceed, ten years in jail. REP. IVERSON noted if burning a haystack would be criminal mischief. JIM LEAR stated yes. IVERSON noted if this bill was needed.

REP. MATSKO stated arson is the offense of knowingly and purposely burning someone else's property. It is not needed to prove you are trying to hurt someone. The fire itself is something that cannot be controlled quickly. REP. MATSKO feels there is a need for this law.

REP. CURTISS moved to amend line 13 and 14 striking "or other property" and inserting "personal property of another which is designed for human entry whether or not used for lodging, occupancy,

or habitation."

REP. HANNAH questioned if human entry would include the old junk car out in the field. Would that solve the problem of some kids with a can of gas lighting the car on fire? JIM LEAR stated the language proposed is broad. It was his intent to come up with language that would address the automobile situation.

REP. CONN stated suppose a 19 year old lite the neighbor's playhouse, would the 19 year old receive ten years in prison? CHAIRMAN KEYSER stated the county attorney would probably not do that.

REP. HUENNEKENS read the definition of negligent arson. He felt there was an overlap of the two statutes.

REP. YARDLEY stated the vagueness of the statute would allow an appeal.

REP. SEIFERT felt the proposed amendment would clutter the bill. Intent of the bill was to include other than occupied structure. The amendment would say human entry for occupant structure. REP. KEEDY stated in trying to broaden the definition, it was actually narrowing it to personal property.

The amendment failed with only REP. CURTISS and REP. DAILY voting for the amendment.

REP. HANNAH made a substitute motion of do not pass. The motion of do not pass passed 9 to 8. Those voting yes were: KEYSER, BENNETT, HANNAH, IVERSON, MATSKO, ANDERSON, HUENNEKENS, SHELDEN, and YARDLEY. Those voting no were: SEIFERT, CONN, CURTISS, EUDAILY, DAILY, KEEDY, BROWN and MCLANE.

HOUSE BILL 209 REP. IVERSON moved do pass. REP. YARDLEY stated he had no objection to the bill. The motion passed 16 to 1. The only no vote was REP. EUDAILY.

HOUSE BILL 212 REP. CONN moved do pass.

REP. ANDERSON asked if 180 days on line 18, page 2 was a little lengthy. REP. KEEDY replied under present statute once a person is committed he is eligible to apply for release only after six months. If he is denied, he has to wait one year. The 180 days gives the staff time to treat the patient.

REP. EUDAILY stated line 10, page 2 "found not guilty for the reason" really means the person is not guilty no matter what the reason. REP. KEEDY replied it did not mean a general acquital. On the records of the court, it would state not guilty by reason

of mental disease or defect.

The motion of do pass carried 14 to 3. Those voting yes were: BENNETT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, ANDERSON, DAILY, HUENNEKENS, SHELDEN, KEEDY, YARDLEY, BROWN, and MCLANE. Those voting no were: SEIFERT, EUDAILY and KEYSER.

HOUSE BILL 213 REP. SEIFERT moved do pass. There was no discussion. The bill passed unanimously.

HOUSE BILL 214 REP. DAILY moved do pass.

REP. MATSKO informed the committee the information he passed out during an earlier meeting for a possible committee bill concerns immunity that this bill did not cover.

REP. KEEDY stated when a person testifies under immunity the defense knows about it ahead of time. REP. EUDAILY wondered if immunity could backfire where someone at the hearding did the crime and an innocent party was found guilty. REP. KEEDY replied that would be up to the jury. REP. EUDAILY continued to state without the evidence brought out the true facts of the case would probably not be heard without immunity.

The motion of do pass passed 13 to 4. Those voting yes were: KEYSER, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, ANDERSON, DAILY, HUENNEKENS, SHELDEN, KEEDY and MCLANE. Those voting no were: BENNETT, SEIFERT, BROWN and YARDLEY.

The meeting adjourned at 10:50 a.m.

KERRY KEYSER, CHAIRMAN

mr

Dept of Institutions
Div. of Corrections
Dan Russell

Exhibit 1

HB 210 (Keedy) Extends dangerous offender bill.

1. Intent: Revises 46-18-404 to make designation of dangerous offender automatic upon conviction for a second felony offense within a five year period (regardless of offense). Also makes certain specified offenses automatically dangerous.

2. Legal Problems: There are two parts of this bill. The first specifies certain felony crimes which are considered dangerous for parole purposes. This is intended to ensure inmates who are incarcerated for these crimes serve at least one-half of their prison sentence and moves in the direction of other bills intended to lengthen stay in prison.
The bill also applies dangerous designation to all individuals convicted of a second felony offense within a five year period without regard to type of offense or aggravating circumstances.

3. Population Impact: Under the provisions of this bill incarceration for selected offenses would require spending at least 50% of sentence before reaching parole eligibility. During the period January 1979 through December 1980, 143 felons were sentenced to prison for offenses listed as dangerous under this bill:

Deliberate Homicide	23
Mitigated Deliberate Homicide	8
Negligent Homicide	15
Aggravated Assault	62
Kidnapping	5
Aggravated Kidnapping	8
Robbery	12
Sexual Intercourse w/o Consent	1
Criminal Sale of Dangerous Drugs	5
Criminal Possession of Dangerous Drugs	1
Criminal Possession of DD with Intent to Sell	3

Based on a sample of 275 inmates currently incarcerated at MSP, 24% are repeat offenders and would serve 50% of their sentence under this bill. The current average length of incarceration is 18.2 months and inmates spend about 20% of their sentence in prison. If the average sentence stayed at about 91 months and 24% of inmates increased their stay from

20% to 40% of sentence, then the average length of prison stay would increase by 4.55 months (from 18.2 to 22.75).

Currently there are 643 inmates physically present at MSP (as of January 19, 1981). About 154 of these are repeat offenders who under this bill would be serving additional time. With no change in sentence or parole patterns from current intake and release numbers, the prison population can be expected to increase about 12.5% (80 inmates) in 18 months (or about 53 inmates per year.)

4. Program Impact: The prison would have the same inmates under this bill, but at least 24% of them would be staying longer. Program impact would vary depending upon capacity and availability of required staff. Eighty additional inmates would exceed MSP design capacity and additional housing would be required.

5. Fiscal Impact: Attached.

6. Department Comment: There is a difference between dangerous offenders and recidivists. Dangerous offenders should not be confused with, or placed in the same category as, non-dangerous repeat offenders. This bill mixes the two.

Automatically designating all second time offenders (within a five year period) dangerous creates several problems:

a) Labels non-dangerous offenders as dangerous.
b) Reduces usefulness of this designation for separating and penalizing violent inmates.
c) Makes placing of repeat offenders in community correctional facilities (life skills, etc.) extremely difficult because they will be classified as dangerous.

There are a lot of individuals within the Montana probation, parole, and prison system who are not dangerous, but do persistently commit crimes and resist changing their habits. If repeat offenders are to be selected for special penalties this should be addressed in a persistent offender or recidivist bill.

E Lowe

Exhibit 2

State ex rel. Rasmussen, Relator, v.
District Court, Respondent
37 St. Rep. 1498

Mr. Justice Daly delivered the Opinion of the Court.

Relator has filed an application for a writ of supervisory control to review and reverse the District Court's denial of his motion to dismiss Count II of an information charging him with assault, a misdemeanor, in violation of section 45-5-201(1)(a), MCA. Count I of the information charges burglary, a felony, in violation of section 45-6-204(1), MCA.

The two charges in the information indicate that relator entered the apartment of Robin Lessley in Bozeman, Montana, for the purposes of ransacking it, and while in the apartment, he hit Robin Lessley in the face three times with his hand.

Relator contends the District Court has no jurisdiction to try him for a misdemeanor, simple assault. The State contends that the District Court has jurisdiction to try a felony and a misdemeanor together where the two are connected together in their commission. The question in this case, therefore, is whether the District Court has jurisdiction to try relator for simple assault, a misdemeanor.

Jurisdiction of the District and Justice Courts over criminal matters depends on the maximum sentence that can be imposed for committing the crime. Under Section 3-5-302(1), MCA, the District Court is given original jurisdiction in all felony criminal cases and "all cases of misdemeanor not otherwise provided for." The Justice Court, on the other hand, is given criminal jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding six months or both. Section 3-10-303(1), MCA. The maximum sentence for a person convicted of assault is a fine not exceeding $500 or imprisonment not exceeding six months or both. Section 45-5-201(2), MCA.

Under section 46-11-404(1), MCA, "[a]n . . . information . . . may charge two or more different offenses connected together in their commission." This section is not a grant of jurisdiction but simply a permissive joinder statute for offenses within the jurisdiction of a given court. It is provided that jurisdiction for misdemeanor assault lies with the Justice Court.

We, therefore, reverse the District Court's denial of dismissal of Count II and remand to the District Court for further proceedings on Count I.

Exhibit 3

No. 80-25

IN THE SUPREME COURT OF THE STATE OF MONTANA

1980

THE STATE OF MONTANA,

Plaintiff and Respondent,

-vs-

MERRILL CAMPBELL,

Defendant and Appellant.

Appeal from: District Court of the Eighteenth Judicial District, In and for the County of Gallatin, The Honorable Joesph Gary, Judge presiding.

Counsel of Record:

For Appellant:

Christopher G. Miller, Butte, Montana

For Respondent:

Hon. Mike Greely, Attorney General, Helena, Montana
Donald White, County Attorney, Bozeman, Montana

Submitted on Briefs: September 17, 1980

Decided: 1/7/81

Filed:

Thomas J. Kearney
Clerk

Mr. Justice Gene B. Daly delivered the Opinion of the Court.

On July 26, 1979, an information was filed in the Eighteenth Judicial District of the State of Montana, County of Gallatin, charging defendant, Merrill Campbell, with theft, a felony, in violation of sections 45-6-301 and 53-2-107, MCA, and endangering the welfare of children, a misdemeanor, in violation of section 45-5-622, MCA.

After several continuances, defendant filed motions to dismiss the information for not stating a public offense and for lack of jurisdiction over the misdemeanor. Defendant also requested an election between the two charges of felony. The motions were denied. Subsequently, on August 6, 1979, defendant entered pleas of not guilty to Counts I and II of the information.

On September 7, 1979, after substitution of counsel, defendant made a motion to reconsider the previously presented consolidated motions. The District Court denied the motion on September 20, 1979.

On October 11, 1979, this Court denied without prejudice defendant's request for writ of supervisory control to dismiss the misdemeanor count for lack of jurisdiction in the District Court.

Once again, defendant's motion for severance of the two counts was made and denied. This was followed by a motion in limine which, among other things, requested a ruling on the admissibility of prior applications of welfare assistance made by defendant in the State of Wyoming and an order directing the State to refrain from calling Lilly Campbell, one of defendant's wives, as a witness at trial.

On November 7, 1979, the District Court denied the motion in limine but ordered that the testimony of Lilly

Campbell be limited to the misdemeanor charge, endangering the welfare of children, and not include testimony on the felony charge of theft. Trial began on November 20, 1979, and concluded November 21, 1979. Defendant was found guilty by the jury on Counts I and II of the information.

On December 10, 1979, defendant was sentenced to ten years in the Montana State Prison on Count I, the felony, and to six months on Count II, the misdemeanor. The sentences were to run concurrently. Defendant filed a notice of appeal on December 10, 1979.

In mid-May of 1979, defendant, along with his two wives, Lilly and Cheryl, and his five children, arrived in the Bozeman, Montana, area after a long period of itinerant traveling. Defendant and his family, traveling in their converted 1968 Cadillac camper, stopped at the KOA campground at Four Corners, Gallatin County, Montana.

Neither defendant nor his wives were employed. In an attempt to obtain food and money, defendant devised a plan. Defendant would go to Butte to try to sell the Cadillac camper, and Lilly would go to the welfare office in Bozeman, give false information and obtain welfare money.

Defendant took his wives and children to the Thrifty Scot Motel in Bozeman. After paying for two nights of lodging and moving the family and belongings into a room, defendant went to Butte, leaving the family with approximately six dollars, no housing provisions beyond the two nights' lodging, little or no food, and no transportation. Two of the younger children were running high temperatures and had serious ear infections. Defendant knew of their illnesses but did not consider them serious enough to warrant medical attention.

The next day Lilly Campbell went to the Bozeman welfare office and made an application for emergency benefits under the name of Janet Brown. She was given $227 worth of food stamps and was aided in getting an apartment in Bozeman, to which she moved the family.

On May 23, 1979, defendant returned to the family's apartment in Bozeman. He spent only a few minutes there and returned to Butte. One week later, on May 30, 1979, defendant returned to the Bozeman apartment. At this time, defendant's wife Cheryl had gone to the unemployment office to apply for work. While there she was arrested and charged with forgery. Meanwhile, the Gallatin County authorities had determined that Lilly Campbell had given false information to the welfare office and arrived at the apartment to arrest her. She was subsequently charged with welfare fraud and forgery. A search of the apartment revealed defendant hiding in the closet, and he too was arrested. The five children were placed in foster care.

After lengthy investigation, defendant's part in the welfare fraud came to the attention of the Bozeman authorities and charges were filed. Defendant was charged with theft, a felony (sections 45-6-301 and 53-2-107, MCA), and endangering the welfare of children a misdemeanor (section 45-5-622, MCA). After a trial by jury, defendant was found guilty as charged and sentenced to confinement in the Montana State Prison.

The two charges in the information indicate that on May 23, 1979, defendant solicited Lilly Campbell to knowingly obtain, by making false statements, welfare assistance in the amount of $227 from the Gallatin County Department of Social and Rehabilitation Services. Also, on May 23, 1979,

defendant left his children and their mothers in Bozeman, Montana, without proper food, shelter or medical care.

Defendant contends the District Court has no jurisdiction to try him for a misdemeanor, endangering the welfare of children. The State contends that the District Court has jurisdiction to try a felony and a misdemeanor together where the two are connected together in their commission, pursuant to section 46-11-404(1), MCA, which provides: "An . . . information . . . may charge two or more different offenses connected together in their commission . . ."

The first of three issues raised on appeal, therefore, is whether the District Court had jurisdiction to try defendant for the misdemeanor offense of endangering the welfare of children.

We recently held in State ex rel. Rasmussen v. District Court (1980), ____ Mont. ____, 615 P.2d 231, 37 St.Rep. 1498, that section 46-11-404(1), MCA, is not a grant of jurisdiction but simply a permissive joinder statute for offenses within the jurisdiction of a given court. Rasmussen stated that section 45-1-201(1), MCA, provides that a court's jurisdiction over criminal matters depends upon the maximum sentence which may be imposed for committing the crime. Under section 3-5-302(1), MCA, the District Court is given original jurisdiction in all felony criminal cases and "cases of misdemeanor not otherwise provided for." The Justice Court, on the other hand, is given criminal jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding six months or both.

The maximum sentence which may be imposed upon a person convicted of first offense endangering the welfare of chil-

ren is a fine not exceeding $500 or imprisonment not exceeding six months, or both. Section 45-5-622(3), MCA. Jurisdiction in this matter, therefore, lies with the Justice Court.

The second issue is whether the jury was properly instructed on the issues peculiar to the charge of soliciting or aiding and abetting in the commission of a crime. After reviewing the instructions given, we find that the jury was properly instructed and that appellant's contentions are without merit.

The final issue raised by appellant is whether he was entitled to a jury instruction that no inference be drawn from the county attorney's reference to the husband/wife privilege. During the State's cross-examination of defendant, the county attorney asked him if he was aware of the husband/wife privilege in Montana. Defendant's attorney objected to the question, and the objection was sustained by the court. Cross-examination of defendant then continued.

The record here contains no evidence that defendant requested the court to give an instruction that no inference be drawn from the county attorney's reference to the husband/wife privilege. In fact, this issue is raised for the first time on appeal.

It is a well-settled rule that on appeal this Court will consider for review only those questions raised in the trial court. Spencer v. Robertson (1968), 151 Mont. 507, 445 P.2d 48; Clark v. Worrall (1965), 146 Mont. 374, 406 P.2d 822; State Highway Comm'n v. Milanovich (1963), 142 Mont. 410, 384 P.2d 752. Therefore, we decline to address defendant's final issue.

Accordingly, the felony conviction is affirmed, and the misdemeanor conviction is reversed and dismissed.

Justice

We concur:

Chief Justice

Justices

Mr. Justice Daniel J. Shea concurs and will file a specially concurring opinion later.

Keedy's suggestion

LC 1097/01

HOUSE BILL NO. 215

INTRODUCED BY Keedy

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE DISTRICT COURTS AND JUSTICES' COURTS WITH CONCURRENT ORIGINAL JURISDICTION IN ALL CRIMINAL CASES AMOUNTING TO MISDEMEANOR; AMENDING SECTION 3-5-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-302, MCA, is amended to read:

"3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity; and

~~(d) all cases of misdemeanor not otherwise provided for; and~~ RESTORE

(d) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in all criminal cases amounting to misdemeanor.

~~(2)~~(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

~~(3)~~(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

~~(4)~~(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days."

-End-

(e) ALL CRIMINAL CASES OF MISDEMEANOR CONNECTED TOGETHER IN THEIR ~~NATURE OUT OF ACTS WHICH FORM~~ COMMISSION WITH A ~~RESULT AND~~ FELONY ~~CHARGES~~;

(f) ALL CRIMINAL CASES IN WHICH A ~~JURY~~ RETURNS A VERDICT ON A ~~FELONY CHARGE~~, OF A LESSER INCLUDED OFFENSE AMOUNTING TO A MISDEMEANOR;

(g) ALL CRIMINAL CASES IN WHICH A FELONY IS CHARGED AND WHICH IS LATER REDUCED TO A MISDEMEANOR UPON WHICH A PLEA OF GUILTY

Exhibit 4

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 215 Date 1/23/81

SPONSOR KEEDY

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Tom Honzel	Helena	County Attys	✓	
MIKE McGrath	HELENA	County MTCA	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

LL 212

ONSOR KEEDY

Date 1/23/81

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Tom Hamel	Helena	County Atty	✓	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

210

L

Date 1/23/81

NSOR KEEDY

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Dan Russell	Helena	D.i. of Corrections		✓

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

214

LL

Date 1/23/81

SOR KEEDY

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Tom Hamel	Helena	County Attys	✓	

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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

213

L

Date 1/23/81

NSOR KEEDY

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

LL 209 Date 1/23/81

SOR KEEDY

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Tom Hoyt	Helena	County Attys	✓	

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