

MINUTES OF THE JUDICIARY COMMITTEE
January 19, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:00 a.m. in Room 224A of the Capitol. All members were present. Brenda Desmond, Legislative Council, was present.

HOUSE BILL 235

REP. NILSON, sponsor, stated House Bill 235 would repeal sections 53-30-107 and 52-30-109 concerning establishment of an intensive rehabilitation center for adult offenders at the state prison. According to REP. NILSON, the center has never been established and funds to establish such a center have never been allocated. REP. NILSON stated the Department of Institutions requested the bill.

CURT CHISHOLM, Department of Institutions, was in favor of the bill. This statute was passed in 1979. Since the center has not been established, the statute is not needed. Attorneys for the Department of Institutions have stated that inmates may be able to sue the state under this statute because no center has been established.

There were no further proponents.

There were no opponents.

The hearing on House Bill 235 closed.

HOUSE BILL 251

REP. SALES, sponsor, stated this bill will remove the county residency requirement for obtaining a marriage license by Montana state residents. The Clerks of the District Court have requested the bill. REP. SALES stated a nonresident can apply for a marriage license in Montana without having to wait five days. A Montana resident, however, must wait five days

REP. JENSEN was a proponent of the bill.

There were no further proponents.

There were no opponents.

The committee did not ask the sponsor or the witness questions.

The hearing on House Bill 251 closed.

HOUSE BILL 178

REP. D. BROWN, sponsor, stated House Bill 178 would make it a felony for the driver of a motor vehicle to attempt to elude a pursuing police vehicle. The bill would attempt to deter high speed police chases by subjecting any driver who flees a pursuing police vehicle to felony punishment. The proposed law presently exists in 32 other states and has proven to be an effective deterrent.

COLONEL R.W. LANDON, Chief Administrator of the Montana Highway Patrol, was in favor of the bill. The beginning of the movie, "Police Pursuit" was shown to the committee. The movie emphasized that although a car is considered less dangerous than a gun, a police car can be a lethal weapon when driven at high speed.

LANDON stated Montana law provides felony offenses for aggravated assault when an individual purposely or knowingly causes reasonable apprehension or bodily injury of another by use of a weapon. EXHIBIT A details LANDON's testimony and reports from officers involved in the pursuit of drivers attempting to elude a pursuing officer.

LANDON further stated that Arizona and Washington presently have legislation of this type. In both states, this legislation has been a deterrent to the problem. LANDON felt if the bill were passed, it would have a psychological effect on the state's drivers not to attempt to elude an officer. When an officer is involved in high speed chase, the officer does not know if the driver is intoxicated, has committed a crime, is a juvenile, etc. When a driver crashes while being pursued by the officer, usually the officer gets the blame in the eyes of the public.

The case of a juvenile arrested for failure to comply with this bill would be handled in youth court.

LANDON did not feel this would increase the workload of the courts. The county attorney would still be able to plea bargain.

WILLIAM WARE, Helena Chief of Police and the Montana Chiefs of Police Association, was in favor of the bill. WARE stated police officers experience the same problem. All law enforcement officers experience a high speed chase at one time or another during their career. The public knows there is not a deterrent at this time from fleeing from an officer. WARE also stated, today our highway patrol officers have more compact cars with smaller engines. Thus, it is difficult to chase the offender.

The offender does have the right to the court system under this bill. WARE further stated that cars can kill; why the people of Montana feel this is acceptable he does not know. A car moving at a high speed is fatal. WARE noted that high speed chases happen on a weekly basis in Helena. This bill should pass to protect the rights of innocent people.

STEVE JOHNSON, Assistant Attorney General - Highway Patrol, was in favor of the bill. JOHNSON noted the bill is meant to protect the public's safety, and it is not meant to be a burden. He felt sometimes people think they can outrun an officer.

JOHNSON felt that if the bill were passed expenses involved in lawsuits would be saved.

The group that causes the most problems in this type of situation is not the juvenile but the 20 to 30 age group. The bill would not have an adverse impact on juvenile offenders. A youthful offender would appear in Youth Court. A youth can only be treated as an adult and brought to district court if he has committed felonies such as arson, burglary, possession of explosives or criminal sale of drugs. A juvenile found to be a delinquent in Youth Court could be placed on probation, placed in a foster home or under the care of an agency or be sent to Pine Hills. The court is given discretion on how to treat the youth on a case by case basis.

There were no further proponents.

There were no opponents.

REP. KEYSER asked what the present fine and jail sentence are for eluding a police vehicle. LANDON replied the charge would be reckless driving, a penalty of 10 days to 6 months in jail and a fine of \$300 to \$500. Subsequent violations would be at an increased rate. REP. KEYSER further asked if there have been many charges under reckless driving. LANDON did not know the exact number. It is not uncommon for a highway patrolman to file reports on this, however. REP. KEYSER did not feel an 18 year old that had been in trouble and tried to elude an officer should be charged with a felony. LANDON replied it would depend on the circumstances. The option of charging under the reckless driving statute is still available. The patrol wants to preserve life. Under the circumstances there is the discretion of the officer and of the prosecuting attorney. There are many checks and balances. REP. KEYSER stated the law as written does not set any degrees or criteria as to the seriousness of the crime. If there is any latitude to the bill only the two different

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statutes would apply. LANDON replied there would be discretion concerning which statute to apply in a particular case.

REP. DAILY stated the bill states "shall be punished"; he felt that the option would, therefore, be taken away from the courts as to which statute to apply. JOHNSON replied as the bill exists it does not require that anyone eluding a police vehicle must be charged and punished under this bill. If the person is charged under this bill, the county attorney must file information that the person is being charged with a felony. The charge does not mean he must be punished under the bill; the regular criminal process would still exist. This would be a felony under the criminal code. If in the officer's view the flee is not serious, the officer can charge the person under Title 61 as a misdemeanor complaint. If it is a serious offense, it will be referred to the county attorney. The county attorney then has the second screening process. If he feels it is a serious offense that the person committed knowingly and purposely, he can charge the person with a felony. Plea bargaining may come into effect and reduce the charge again. The "shall" language is in the bill because that is the standard procedure for drafting criminal statutes. If the person goes to trial and is found guilty, then he shall be punished after the conviction. The person would have the right to a trial by jury.

REP. RAMIREZ asked what language in the present law makes this a misdemeanor. JOHNSON replied section 61-8-301, Reckless driving. REP. RAMIREZ felt a higher standard of conduct was being required for the misdemeanor, reckless driving, than for the felony, eluding a police vehicle. JOHNSON replied under the criminal code, there are three mental states: purposely, knowingly or negligently. The prosecution is required to prove with which mental state a person committed an offense. Negligently, under the criminal code is the lowest mental state and supposedly the easiest to prove.

REP. RAMIREZ asked about the 32 states that have this type of law. LANDON replied this bill is similar to Washington and Arizona statutes in content. The bill, as drafted, is acceptable to the criminal code in Montana. The sponsor stated that 30 other states follow in some degree to this statute. JOHNSON stated 30 other states have provisions making it an offense to flee from a police car. Most of those states used the Model Uniform Vehicle Code. Only two states have it as a felony.

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REP. ADDY noted that in other felony statutes the language "a person commits the offense of" but it was not in this bill. JOHNSON replied the Legislative Council suggested not using redundant phrases such as that.

REP. HANNAH asked about the power of the police vehicles. LANDON replied the police market for vehicles is less than 1% of all cars sold. Therefore, the police must purchase vehicles that the manufacturers produce. As more and more citizens are keeping their old cars, many times the engine power is stronger than that of the police car.

REP. JENSEN asked if this would apply to offroad vehicles. LANDON replied it was not restricted to the highway. REP. JENSEN asked if the vehicle on an offroad would still be considered a weapon. It was replied yes. REP. JENSEN asked if the Fish and Game would be able to use this type of law. LANDON replied it would depend on the definition of a police officer.

The hearing on House Bill 178 closed.

HOUSE BILL 215

REP. RAMIREZ, sponsor, stated the purpose of House Bill 215 is to adopt the revised uniform principal and income act as promulgated by the National Conference of Uniform Laws Commissioners. EXHIBIT B, a letter from Howard E. Vralsted, Vice President and Trust Office Manager of the Northwestern Union Trust Company, states the purpose of and reasons for the bill.

Montana adopted the 1931 draft of the Uniform Principal and Income Act on March 17, 1959. In 1962 the act was revised; Montana, however, has not revised its statutes to reflect the revision. This has created some problems for the people who work with trusts. The bill will govern the allocation of trust income between the beneficiary and remainder man. The problem is that it is impossible when a trust is created to anticipate all the financial transactions that will arise. The bill, therefore, will give guidelines to the trustee as to how to allocate trust income.

HOWARD E. VRALSTED, Northwestern Union Trust Company, was in favor of the bill. He noted there were five major changes the 1962 Revised Act covered:

1. Allocation of distributions relating to mineral interests.
2. Provision for allowance of depreciation on depreciable property.
3. Allocation of trustee fees between income and principal.
4. Allocation of income earned in an estate.
5. The Act applies to all estates and trusts regardless of their effective date from the date of adoption of the Revised Act forward.

VRALSTED further stated there are changes in the 1962 that would treat the beneficiary more equitably.

VRALSTED offered an amendment to the bill. EXHIBIT C. The amendment would delete lines 10 through 16 on page 2; inserting "inventory value means the adjusted basis for federal income tax purposes". Line 25 would be amended to read; "Not less than 20% nor more than 50% of the net receipts, to be determined in the discretion of the trustee, shall be added to principal as an allowance for depletion. The balance of the net receipts is income."

VRALSTED stated the percentage would be based on the amount they are receiving. He stated the Bankers Trust Committee is in favor of the bill.

ANGUS FULTON, Montana Bar Association, was in favor of the bill. The 1931 act provides many difficulties for the administering of the trust due to the fact that many investments that existed in 1931 do not exist today and vice versa. The 1962 act provides clear uniform standards that trustees can apply to decisions they have to make to allocate income between income and principal. FULTON felt the adoption of the bill would make it easier for the trustee to carry out the wishes of the person who established the trust.

FULTON stated the Bar Association and the Bankers Association are in favor of the bill as it would be useful to trustees.

There were no further proponents.

There were no opponents.

REP. J. BROWN asked why it took Montana so long to adopt the 1962 law. It was not known.

REP. ADDY asked if the changes in the 1962 act would give the trustee more discretion to administer the trust. It was answered yes.

REP. ADDY further asked if the changes would decrease the cost of administering the trust. It was answered the trustee would have more responsibility in administering the trust and, therefore, there would not be a decrease in expenses. Almost every trust has reasonable compensation for the trustee. It was stated that the trustee is the person who administers the trust; the trustor is the person who establishes the trust and the beneficiary is the person who will receive the money or objects in the trust.

There were no further questions. The hearing on House Bill 215 closed.

The committee then went into executive action.

EXECUTIVE SESSION

HOUSE BILL 139

REP. EUDAILY stated the subcommittee on House Bill 139 was considering the adopting of some amendments. The amendments would be ready for the committee at the next Executive Session.

HOUSE BILL 130

A subcommittee was appointed to review the bill and draft appropriate amendments. REP. JENSEN was appointed to be Chairman of the subcommittee with REP. FARRIS and REP. RAMIREZ as members.

HOUSE BILL 215

REP. RAMIREZ moved the bill DO PASS, seconded by REP. SPAETH.

REP. RAMIREZ moved the amendments as presented at today's hearing be adopted. REP. DARKO seconded the motion. (See EXHIBIT C). REP. RAMIREZ stated the amendments make the bill clearer. As all were in favor of the amendments, the amendments were adopted into the bill.

REP. RAMIREZ moved DO PASS AS AMENDED. REP. SPAETH seconded the motion. All were in favor of the motion DO PASS AS AMENDED.

HOUSE BILL 235

REP. KEYSER moved the bill DO PASS, seconded by REP. BERGENE. Brenda Desmond read to the committee Section 52-30-107 - Establishment of intensive rehabilitation center authorized; Section 53-30-108 - Standards of admission to intensive rehabilitation center; and Section 53-30-109 - Management and control of intensive rehabilitation center. Title 53, part 3 of Chapter 6 details Galen State Hospital, which would not be affected by the bill.

The question being called, the motion of DO PASS carried unanimously.

HOUSE BILL 251

REP. JENSEN moved DO PASS, seconded by REP. KEYSER.

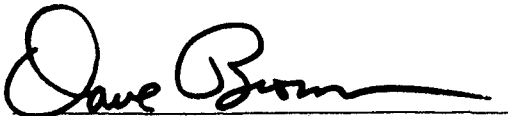
REP. JENSEN stated the bill would allow couples to apply for marriage licenses without waiting the five days. The bill was requested so that marriages without solemnization would be avoided. Therefore, the Clerk of the Court would be able to obtain the license fee, a portion of which goes to the Battered Spouse Program.

All were in favor of the motion DO PASS.

HOUSE BILL 178

CHAIRMAN BROWN appointed REP. KEYSER, himself and BRENDA DESMOND as a subcommittee to obtain additional information in regard to House Bill 178.

The meeting adjourned at 9:45 a.m.


DAVE BROWN, Chairman


Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

January 19, 1983

SPEAKER:

MR.

JUDICIARY

We, your committee on

HOUSE

having had under consideration Bill No. 215

First reading copy (White)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105, MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH 72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

HOUSE

215

Respectfully report as follows: That Bill No.

BE AMENDED AS FOLLOWS:

1. Page 2, lines 10 through 16.

Following: "the"

Strike: remainder of subsection (2) through "tax" on line 16

Insert: "adjusted basis for federal income tax purposes"

2. Page 13, line 25.

Following: "200"

Strike: "but not"

Insert: "or"

3. Page 14, lines 1 through 2.

Following: "receipts"

Strike: remainder of line 1 and line 2 through "depletion"

Insert: ", to be determined in the discretion of the trustee"

XXXXXX
DO PASS

DAVE BROWN,

Chairman.

4. Page 14, line 4.

Following: "the"

Strike: "gross"

Insert: "net"

5. Page 14, lines 4 through 5.

Following: "receipts,"

Strike: remainder of line 4 through "indirect," on line 5

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

January 19, 1983

MR. **SPEAKER**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **235**

First reading copy (**White**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTIONS 53-30-107
THROUGH 53-30-109, MCA, CONCERNING AN INTENSIVE REHABILITATION
CENTER FOR ADULT OFFENDERS."**

Respectfully report as follows: That **HOUSE** Bill No. **235**

DO. PASS


DAVE BROWN,

Chairman.

STANDING COMMITTEE REPORT

January 19,

19 **83**

MR. **SPEAKER**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **251**

First reading copy (**White**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE COUNTY RESIDENCY
REQUIREMENT FOR OBTAINING A MARRIAGE LICENSE; AMENDING SECTION
40-1-201, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **251**

DO-PASS

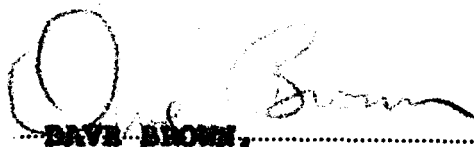

DAVE BROWN,

Exhibit A
HB 178
1/19/83

T E S T I M O N Y

OF

COLONEL R. W. LANDON

CHIEF ADMINISTRATOR

OF THE

MONTANA HIGHWAY PATROL

JANUARY 19, 1983

BEFORE THE HOUSE JUDICIARY COMMITTEE

HOUSE BILL 178

ATTEMPTING TO ELUDE PURSUING POLICE VEHICLE

ATTEMPTING TO ELUDE PURSUING POLICE VEHICLE

FILM (1 MINUTE 33 SECONDS)

RELATING FIREARMS TO AUTOMOBILES.

MONTANA STATE LAW PROVIDES FELONY OFFENSES FOR AGGRAVATED ASSAULT WHEN AN INDIVIDUAL PURPOSELY OR KNOWINGLY CAUSES REASONABLE APPREHENSION OF SERIOUS BODILY INJURY OF ANOTHER BY THE USE OF A WEAPON AND MCA 45-3-101 DEFINES A "FORCIBLE FELONY" AS ANY FELONY WHICH INVOLVES THE USE OF THREAT OF PHYSICAL FORCE OR VIOLENCE AGAINST ANY INDIVIDUAL OR FORCE LIKELY TO CAUSE DEATH OR SERIOUS BODILY INJURY OR THE FIRING OF A FIREARM IN THE DIRECTION OF A PERSON EVEN THOUGH NO PURPOSE EXISTS TO KILL OR INFLICT SERIOUS BODILY HARM OR THE FIRING OF A FIREARM AT A VEHICLE IN WHICH A PERSON IS RIDING.

I WOULD SUBMIT TO YOU THAT DRIVING AN AUTOMOBILE AT HIGH SPEED ON A PUBLIC HIGHWAY PURPOSELY AND KNOWINGLY FLEEING FROM A POLICE OFFICER IS AKIN TO A FORCIBLE FELONY DESCRIBED UNDER OUR LAW IF YOU CONSIDER THE PERSON IS USING THE AUTOMOBILE AS A WEAPON DISREGARDING THE SAFETY AND LIVES OF THOSE PEOPLE WHO WOULD BE UNLUCKY TO BE IN THEIR PATH.

ENCLOSED IN YOUR PACKET OF INFORMATION ARE SEVERAL EXAMPLES THAT HIGHWAY PATROL OFFICERS HAVE HAD IN DEALING WITH THE PROBLEMS OF DRIVERS ATTEMPTING TO ELUDE THEM.

IN 1981 THERE WERE 40 HOMICIDES IN MONTANA. DURING THE SAME PERIOD OF TIME THERE WERE 338 TRAFFIC FATALITIES. I DRAW NO

CONCLUSIONS FROM THESE DEATH REPORTS EXCEPT TO EMPHASIZE THAT AUTOMOBILE-RELATED DEATHS ARE A MAJOR PROBLEM. ANYONE DRIVING AN AUTOMOBILE WHO KNOWINGLY ENDANGERS OTHER PEOPLE ON THE HIGHWAY BY WILFULLY AND WANTONLY OPERATING A MOTOR VEHICLE AT HIGH SPEED DOES SO AGAINST THE PEACE AND DIGNITY OF THE STATE OF MONTANA AND SHOULD BE PUNISHED ACCORDINGLY.

TWO STATES, ARIZONA AND WASHINGTON, HAVE ENACTED LEGISLATION WHICH MAKE IT A FELONY TO ATTEMPT TO ELUDE A PURSUING POLICE OFFICER. IN BOTH OF THESE STATES THE INCIDENCE OF PURSUITS HAS DECLINED. IT IS FOR THAT REASON THAT I WOULD ENCOURAGE YOU TO PASS SIMILAR LEGISLATION IN MONTANA, TO HELP MAKE MONTANA'S HIGHWAYS SAFER. THE REASON THAT THE LAW WORKS IS THE PSYCHOLOGICAL EFFECT THAT IT HAS ON A POTENTIAL ELUDER, THEY REPORTEDLY REASON THAT "THE PENALTY FOR RUNNING IS REALLY SERIOUS, IT IS MUCH BETTER IF I STOP FOR THE OFFICER."

A QUESTION THAT SEEMS TO ARISE IS WHAT DO YOU DO WITH THE JUVENILE OFFENDER? THE JUVENILE OFFENDER WOULD GO BEFORE THE DISTRICT JUDGE THAT WAS DESIGNATED AS THE JUVENILE JUDGE. THEY WOULD BE PROCESSED BY THE JUVENILE OFFICERS WORKING FOR THE COURT IN EXACTLY THE SAME WAY THAT THEY WOULD BE CHARGED AND PROCESSED IF THEY HAD USED A FIREARM TO ENDANGER MEMBERS OF SOCIETY.

ONE COUNTY ATTORNEY INDICATED THAT MAKING THIS A FELONY WOULD INCREASE THE WORKLOAD. BASED ON THE EXPERIENCE OF ARIZONA AND WASHINGTON THIS IS NOT THE CASE BECAUSE THE NUMBER OF POLICE PURSUITS DECREASED. IT DOES, HOWEVER, GIVE THE COUNTY ATTORNEY ANOTHER PLEA BARGAINING TOOL THAT HE DOES NOT NOW HAVE.

THIS PROPOSAL IS ENDORSED BY THE MONTANA ASSOCIATION OF CHIEFS OF POLICE AND THE HIGHWAY PATROL OFFICERS WHO URGE ITS PASSAGE TO MAKE THEIR JOB EASIER AND TO PLACE A REALISTIC PENALTY FOR FLAGRANT WILFUL AND WANTON OPERATION OF A MOTOR VEHICLE BY A SMALL SEGMENT OF OUR POPULATION.



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: CAPTAIN KENNETH HOEFNER
From: PATROLMAN STEVE APGAR 167
Subject: PURSUIT INCIDENTS 1982

Date DECEMBER 29, 1982

File No. _____

THIS OFFICER WAS INVOLVED IN THREE PURSUIT SITUATIONS THAT I CAN RECALL DURING 1982. THE FIRST INCIDENT INVOLVED A SPEEDING PICKUP TRUCK WHICH ACCELERATED INTO A TRAILER PARK AFTER THE DRIVER SAW THE PATROL CAR TURNING AROUND ON THE HIGHWAY. THE DRIVER THEN PROCEEDED THROUGH A 15 MPH ZONE WITH HIS VEHICLE LIGHTS TURNED OFF IN THE DARKNESS. THE DRIVER WAS STOPPED AFTER A SHORT DISTANCE AND CITED. HIS ACTIONS CONSTITUTED AN EXTREME HAZARD TO PEDESTRIANS AND OTHER MOTORISTS IN THE AREA.

ANOTHER RECENT INCIDENT INVOLVED A SUB-COMPACT CAR WHICH WAS OBSERVED RUNNING A RED LIGHT IN A RESIDENTIAL AREA AT NIGHT. THIS OFFICER GAVE CHASE AND THE VIOLATOR TURNED INTO AN ALLEY AND KILLED HIS LIGHTS. THE VEHICLE PROCEEDED DOWN THE ALLEY AT HIGH SPEEDS AND CROSSED FOUR STREETS PROCEEDING OUT OF A BLIND ALLEY EACH TIME. THE VEHICLE THEN TRAVELED ABOUT EIGHT BLOCKS ON A MAJOR STREET RUNNING TWO STOP DEVICES. THIS OFFICER TERMINATED THE CHASE AFTER IT BECAME TOO GREAT OF A RISK TO MYSELF AND OTHER MOTORISTS AND PEDESTRIANS IN THE AREA. HAD THE VEHICLE BEING PURSUED BEEN INVOLVED IN A COLLISION AT THE SPEEDS INVOLVED SERIOUS INJURY OR DEATH COULD HAVE EASILY RESULTED. IT WAS DURING THIS INCIDENT THAT I BEGAN THINKING ABOUT THE PATROL'S VIDEOTAPE PROGRAM ON PURSUIT POLICY AND IT DID HELP TO ALLEVIATE SOME OF MY FRUSTRATION AT TERMINATION OF AN UNSUCCESSFUL PURSUIT. THE DRIVER OF THE VEHICLE BEING PURSUED DID NOT SEEM TO TAKE ANY OF THE HAZARDS INTO CONSIDERATION. MY OWN FEAR OF AN ACCIDENT INVOLVING MY VEHICLE WAS CERTAINLY A FACTOR IN MY INABILITY TO GET CLOSER TO THE VIOLATOR. IN ADDITION MY VEHICLE IN MANY PURSUIT SITUATIONS DOES NOT HAVE THE POWER REQUIRED TO OVERTAKE A FLEEING VEHICLE, ESPECIALLY FROM A STOPPED POSITION.

ANOTHER INCIDENT OCCURED IN DAYLIGHT WHEN I RADARED A SPEEDING PICKUP TRUCK PROCEEDING TOWARDS ME ON A NARROW BRIDGE. I WAS NOT ABLE TO MAINTAIN A VISUAL ON THE VIOLATOR AT ALL TIMES, BUT I FEEL CERTAIN THAT DUE TO THE TIME AND DISTANCE INVOLVED BEFORE STOPPING THE VIOLATOR THAT HE HAD TO HAVE RAN TWO STOP SIGNS, ONE OF WHICH ENTERED A BLIND INTERSECTION. I AM CERTAIN THERE HAVE BEEN OTHER PURSUIT TYPE SITUATIONS THAT I CANNOT RECALL.

App'd

Disapp'd

Date

Remarks

Captain: _____

Lt.: _____

Sgt.: _____

Supervisor: _____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: CAPTAIN HOEFNER

From: PATROLMAN APGAR

Subject: PURSUIT INCIDENTS 1982 PAGE 2

Date _____

File No. _____

IN ALL OF THE INCIDENTS THAT I HAVE BEEN INVOLVED WITH IT IS CLEARLY APPARENT THAT THE VIOLATORS ONLY CONCERN IS TO OUT RUN THE PATROL VEHICLE(S) AND ANY CONCERN FOR OTHER PERSONS USING THE ROADWAY IS NOT SHOWN BY THEIR ACTIONS. THE VIOLATORS IN MY INCIDENTS SEEM TO DEVELOP A TUNNEL VISION DRIVING STYLE AND SPEND A GREAT DEAL OF TIME LOOKING INTO THE REARVIEW MIRROR TO CHECK FOR EMERGENCY LIGHTS AND THEN DRIVING WITHOUT PERCEPTION OF HAZARDS APPROACHING FROM THE SIDES OF THEIR ESCAPE ROUTE.

IN SUMMARY I AM VERY SUPPORTIVE OF SOME FORM OF FELONY PURSUIT LAW SINCE MANY OF THE PURSUIT SITUATIONS HAVE RESULTED IN DEATH OR INJURIES TO PERSONS INVOLVED.

PERHAPS A MORE SERIOUS CHARGE AND PUBLIC AWARENESS OF THE SERIOUSNESS WOULD BE A DETERRENT TO THE FLEEING VIOLATOR, ESPECIALLY THOSE WHO ARE FLEEING DUE TO A MINOR TRAFFIC CODE VIOLATION OR WARRANT.

STEVEN L. APGAR
PATROLMAN 167 M.H.P.

App'd

Disapp'd

Date

Remarks

Captain: _____

Lt.: _____

Sgt.: _____

Supervisor: _____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Capt. K. Hoefner
From: Patrolman J.N. Dalbec
Subject: Felony persuits

Date Jan. 9, 1983

File No. _____

On March 13, 1982, at approximately 2120 hours the Police In Laurel advised they were in persuit of a pickup which was being driven by a subject that they wanted for assaulting one of thier officers.

At the time the call came in, I was at the Billings Patrol office and immediately left the office and headed to the west end of Billings in the event the subject headed towards Billings. Shortly after getting on I90, Laurel advised they were east bound towards Billings on I-90 and in persuit.

County Deputy Seth Weston and my self set up a Hasty roadblock near mile pole # 444 apprxx; 2 miles west of Billings in an attempt to stop the subject, however, as he approached the roadblock, he slowed down, went into the median, bypassing the roadblock and continued east on I_90 at a high rate of speed with three or four police vehicle behind him.

I got back into my car to join the chase as I still had a 1978 Plymouth with a 440cu in. engineand the other cars apparently were having trouble keeping up with the subject.

Before the pickup had gone 2 or 3 miles, I had passed the other police vehicles and was behind the pickup and travelling a speeds around 100 mph.

At mile post #450, the subject left the interstate at the 27th street exit, but the Billings Police Dept. had a car on top of the overpass so the subject continued across 27th st and took the on ramp back to I-90. I followed the pickup and when it returned to I-90, I was close behind and attempted several times (3 or 4) to pass the subject on the left but was stopped each time as the pickup swerved into the left lane to block me.

On the last attempt to pass at approximately mile post # 453, I struck the left rear corner of the bumper of the pick up with my right front bumper which caused the driver to partially lose control as we were still going approximately 100 mph. The driver then pulled to the right side of road way suddenly and stopped as I pulled around him on the left and slid to a stop approximately 50 feet in front of him. I exited my car with my shot gun and approached the pick up as Deputy Weston pulled up to the left rear of the pick up .

	App'd	Disapp'd	Date	Remarks
Captain: _____	_____	_____	_____	_____
Lt.: _____	_____	_____	_____	_____
Sgt.: _____	_____	_____	_____	_____
Supervisor: _____	_____	_____	_____	_____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Capt. K. Hoefner
From: Patrolman J.N. Dalbec
Subject: Felony pursuits

Date Jan. 9, 1983
File No. _____

As we approach the drivers door, he put his ^{HANDS} ~~hand~~ up to the window indicating he was all done. By this time, approximately 2130, a total of 10 police units had arrived, including the Laurel Police Dept, Yellowstone County Sheriffs office, Billings Police Dept. and Montana Highway Patrol.

Subject, Brian R. Stabelfeldt, d.o.b. 3/11/58 was charged by me with Reckless Driving by eluding. The Laurel Police Dept. also charged him with reckless, and the Co. Atty. dismissed ^{my} ~~his~~ citation to eliminate a situation of double jeopardy.

J. Dalbec

	App'd	Disapp'd	Date	Remarks
Captain: _____	_____	_____	_____	_____
Lt.: _____	_____	_____	_____	_____
Sgt.: _____	_____	_____	_____	_____
Supervisor: _____	_____	_____	_____	_____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Capt. K. Hoefner

Date Jan 9, 1983

From: Patrolman J. N. Dalbec

File No. _____

Subject: Felony persuits

At 0145 a.m. on Jan. 9, 1983, I observed a small foreign station wagon as it entered the Old Hardin Road near the Emerald Hills road intersection and went west for about $\frac{1}{2}$ mile and then pulled off the road at the Glentana trailer court. As I passed the car I saw a young, blond male look at me as he shut out the vehicle lights.

Expecting that the driver was a carrier for the Billings Gazette, I was not overly concerned with his presence at that hour of the morning, however I did run a 10-28 in the event we were to get any complaints on the car later on. The 10-28 was returned and indicated that the vehicle was owned by an artificial insemination business which I knew to be located near Laurel, so I turned around to go back to the car to question the driver, but the car was empty and I was unable to locate the driver after a search of the area. A short time later I again saw the car, this time about $\frac{1}{2}$ mile farther west of the Trailer court. I turned around to check the car and as I approached the driveway where it was parked, the driver pulled out onto the highway, without stopping and without driving lights. The car then headed back toward the east and as I turned on my pursuit lights (New light bar) Red/Blue white strobes and wig-wag headlights, the driver accelerated and attempted to elude me. I was in pursuit for 1.4 miles at speeds of up to 75 mph in a 35 zone. All the time I was in pursuit, the other car was on the wrong side of the roadway and was without headlights. I was following the car with lights and siren at about 100 feet as it passed two other cars which were also east bound. At this time 0153, I advised the Sheriff's office that I was in pursuit. As we neared the junction with the Emerald Hills road, I realized the other driver was using the illumination from my headlights to see where he was going so I turned off my headlights. As I did this, the other driver turned on his lights and immediately swerved from the left side of the road to the right, losing control and striking the end of the guardrail which protects the overpass structure for I-90. The vehicle flipped onto its left side and slid to a stop in the center of the roadway facing toward the west. Before leaving my vehicle, I called for an Ambulance and a wrecker and then went to the car to check on the driver. At first,

	App'd	Disapp'd	Date	Remarks
Captain: _____	_____	_____	_____	_____
Lt.: _____	_____	_____	_____	_____
Sgt.: _____	_____	_____	_____	_____
Supervisor: _____	_____	_____	_____	_____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Capt. K. Hoefner
From: Patrolman J.N. Dalbec
Subject: Felony persuits

Date Jan. 9, 1983

File No. _____

the driver appeared to be unconscious, but shortly after wards, was able to climb out of the car through the passenger door.

Driver of the car was David Benjamin Hinthier age 14, and a runaway from the Yellowstone Boys Ranch. The vehicle, a 1981 Puegeot had been stolen from the residence of the owner, however the theft had not yet been reported. Owner;Big Sky Genetics (James Drayson) The Driver stated he had been distracted by the brightness of my lights and was unable to see well enough to turn on the headlights.

J. Dalbec

	App'd	Disapp'd	Date	Remarks
Captain: _____	_____	_____	_____	_____
Lt.: _____	_____	_____	_____	_____
Sgt.: _____	_____	_____	_____	_____
Supervisor: _____	_____	_____	_____	_____



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Colonel R. W. Landon

From: Officer Thomas E. Rieger, #214

Subject: FELONY PURSUIT

Date January 3, 1983

File No. _____

I was involved in a felony pursuit run on Sunday the 20th day of September.

I was called by a Carbon County Deputy #45 that a tractor trailer would not stop for his pursuit lights. I was at Fromberg, Montana and the vehicle was coming north out of Bridger. When I saw the vehicle I pulled out in front with all lights on. It would not stop and proceeded down the road (U.S. 310). I called ahead to the Laurel Police and told them what was going on. They wanted to put up a roadblock but I called it off since the vehicle was loaded with an explosive flammable. We followed the vehicle identifying driver and tractor and trailer and had Billings Sheriff call ahead for additional units to follow. I also had the Sheriff's office call the Captain of the Billings Region. He told us to keep following until it stopped. I went to Custer, Montana where another patrol unit took over. It ran out of gas at Miles City; tractor/trailer were stolen and also a pistol was in the vehicle. There were no complications.

TER:sam



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Colonel R. W. Landon

From: Officer Glenn M. Stoner, #279

Subject: _____

Date January 10, 1983

File No. _____

On October 17, 1981, at approximately 0100 hours I was stopped on Tronstad Road waiting to enter Highway #93 South when I noticed a Camero, yellow in color, headed north. I turned north to follow and identify vehicle and after closing on it I made out plate number 7-63250, the one with the ATL pickup and hold broadcast from 999 Kalispell Police Department. In the area of the "S" curves near the dump I asked 999 if it was still active, and after conversation I was informed he was D.W.I. and should be stopped and brought in to Kalispell Police Department.

I activated my top lights - red/blue - in an attempt to stop the vehicle. His speed continued at about 55 m.p.h. for about another 1/4 mile then he accelerated; we were nearing Hodgson Road Junction. I continued my pursuit at a distance of about 0.2 mile to 0.3 mile; initial acceleration brought me to 100 m.p.h. but then dropped to the area of 75 - 95 m.p.h., varying as to the ability of the subject being followed; his driving at that speed reflected possible D.W.I. As we continued I requested assistance and W-9 Whitefish and #226 M.H.P. set up at the junction of Highway 40 well on either side of Highway 93, not blocking the road. I then backed off the speed not knowing if the subject was going to attempt to turn.

At the time he went through the intersection he appeared to accelerate and the distance at that time had opened to about 0.4 mile between us. He then passed another north bound vehicle in the area just north of the Shangrila Night Club. This vehicle had just stopped as I went by it. The vehicle then appeared to just drive off the right edge of the road into the ditch. It then hit an approach, went air-borne and stopped in the ditch just beyond the approach.

FATALITY!

GMS:sam



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Captain Hoefner
From: Officer Ted Saurman, #156
Subject: PURSUIT

Date January 3, 1983

File No. _____

At 0400 a.m. April 10, 1982 I received a phone call from the Hardin Sheriff's Office. The dispatcher informed me that their deputies were in a high speed pursuit of a vehicle north bound on MT 47 and would like my assistance. I got out of Custer on the old road and set up a road block one mile south of I-94 on MT 47. My red and blue top lights were on. As suspect approached, he was headed toward me and at about fifty feet away he swerved around my vehicle to the rear and proceeded north. The Hardin deputy was behind the suspect but slowed, so I could get back into my vehicle and proceed to pursue the suspect. The suspect turned west on old Highway 10, and myself and the deputy did also. When the suspect was out of sight he turned his vehicle around and as I came around a curve he was partially in my lane coming at me. I swerved and warned the deputy behind me. Myself and the deputy turned around and headed back toward the direction the suspect had gone. Again the suspect turned around and repeated the first act. Again we turned around and followed the suspect toward Custer. The suspect turned off his headlights one mile from Custer and we lost him in town. We found out two days later the suspect took the Interstate toward Forsyth with his lights out for a number of miles. This information was gained when I found the suspect hitchhiking two days later and arrested him.

TS



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Colonel R. W. Landon

Date January 13, 1982

From: Gordon J. Hage

File No. _____

Subject: _____

I was westbound on U.S. #2, approximately twenty miles west of Havre when I saw an approaching eastbound car that I clocked on radar at 89 m.p.h. I turned and attempted to stop the out-of-state vehicle. The violator accelerated rapidly in an attempt to elude this stop. I accelerated to 130 m.p.h., but the violator pulled steadily away at an estimated speed of 140 to 150 m.p.h. At one point during the chase I observed three other motorists forced into the barrow ditch to avoid the violator's vehicle. I made radio calls for assistance from Havre area to stop this vehicle.

After a twelve mile chase involving five police officers, the violator was apprehended and charged with two misdemeanors. The violator was assessed a \$280.00 fine.

GJH:sam



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Colonel R. W. Landon

From: Officer George Kostelecky, #299

Subject: _____

Date September 22, 1982

File No. _____

At approximately 1640 hours on September 22, 1982 I was on Highway #3 at milepost 09, a woman flagged me down to tell me that there was a pickup-camper outfit coming my way and the driver had almost run her off the road and was driving erratically. I then proceeded north to look for this outfit. Also, this woman told me the outfit had a 2-? county plate. I had gone north approximately 1½ miles and saw the outfit coming my way and it was straddling the center line. It passed me and bootlegged to check this driver for possible D.U.I. I got behind it and turned on my lights and it would not stop or even slow down. I then followed with my siren on and it still would not stop. At 1645 I notified Highway Patrol dispatcher that I had a vehicle that would not stop and had him check 10-29's on 2T25466. As we went past Zimmerman Trad I spotted a city P.O. car headed in the same direction; this was Officer Crockett, and he observed what was happening and turned on his pursuit lights. This pickup then tried to run Officer Crockett off the road.

We passed the city car and the driver of the pickup ran the two stop signs at the airport and headed down 318 toward Main, our speed then was approximately 75 m.p.h. The pickup cut through the parking area at 318 and Main and proceeded back west into 6th Avenue North. The pickup turned right off 6th Avenue North into North 18th and struck a red Volkswagen; it continued up north and went through the Burnstead Subdivision coming down 18th Street. The vehicle then went right onto 6th Avenue North and struck another vehicle at approximately 30th or 31st Street and went south, then at approximately 1st Avenue North I saw it collide with a city P.O. vehicle.

The pickup then turned west on 1st Avenue North and struck at least two more vehicles going onto the sidewalk and stopping into the Archie Cochrane showroom. Both occupants were then taken into custody by Billings P.D.

Driver: Darryl Ray Smith
D.O.B. 3-15-67
Possibly lives at 1221 1st So., Blgs.

Occupant: Kevin Alan Gordon
D.O.B. 8-1-66
Address unknown.



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Col. R. W. Landon

Date 12-22-82

From: Sgt. Howard W. Gipe

File No. _____

Subject: Inadequate laws(Fail to stop For Police Officer)

Talking to Capt. Harvy Olson about vehicles that didn't stop for a patrol car the following incident came to my mind.

On 9-20-80 at about 2140 Patrolman Henry Jacobson attempted to stop a vehicle west of Kalispell. The subject refused to stop. The sheriffs Officers set up a road block, the driver ran the road block. Doing damage to one of the sheriffs cars. The subject continued toward Kalispell driving at a high rate of speed and in a reckless manner.

The Kalispell Police were set at the city limit with the shotguns, they were not going to allow this driver into the city.

Patrolman Jacobson ran the subject off the road just west of the Kalispell city limits doing damage to the patrol car and totaling the other vehicle.

There was many dollard spent and a great risk of someone being injured or killed. We need better laws to combat situation like this.

[Handwritten signature]

Captain: <i>Harvey Olson</i>	App'd <input checked="" type="checkbox"/>	Disapp'd <input type="checkbox"/>	Date <i>1-13-83</i>	Remarks <i>Report on file at Hdqtrs</i>
	<i>Tom Sanford</i>	<input checked="" type="checkbox"/>	<i>12-22-82</i>	
Sgt.:				
Supervisor:				



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Capt. H. Olson
From: Sgt. R.C. Chase
Subject: Eluding Incidents

Date 1-7-83
File No. _____

The following is the incident report you requested regarding a vehicle which was attempting to elude a police vehicle and was involved in an accident.

On Sept. 9, 1982 at 1731 hours, I radared a 1968 Ford Mustang westbound on U.S. #2 west of Libby on a four lane highway in a 45 m.p.h. speed zone. The vehicle was traveling 68 m.p.h. on radar. As the vehicle approached the patrol car, I ~~turned~~ on my top lights and at that moment I could hear and see the westbound vehicle accelerate.

The vehicle traveled only a short distance of about three-fourths of a mile when the driver attempted to cut across a Drive Inn parking lot onto a side road to elude me. In doing so, the driver lost control and slammed into the rear of a parked vehicle. The impact knocked the Mustang around the Drive Inn island, knocking over trash barrels, and came to rest just short of hitting a young girl who had just walked out of the Drive Inn. A number of other vehicles were parked at the Drive Inn, but escaped being hit.

When the driver was apprehended, he was very unconcerned about what he had just done, and made an attempt to resist arrest. Very extensive damage was done to both vehicles, and the owner of the parked vehicle was quite concerned as the Mustang was not insured.

Sgt. R. C. Chase

Captain: <i>[Signature]</i>	App'd <input checked="" type="checkbox"/>	Disapp'd <input type="checkbox"/>	Date <u>1-11-83</u>	Remarks
Sgt.:				
Supervisor:				



Inter Office Communication
MONTANA HIGHWAY PATROL
(Servitum Cum Humilitate)

To: Captain Harvey E. Olson
From: Sergeant Howard Gipe
Subject: Incident - Patrolman #283

Date September 13, 1980

File No. _____

Enclosed you will find the first report of an incident Patrolman #283 and several other law enforcement people were involved in. There was no injury to anyone, but there was about \$500.00 or \$600.00 damage to vehicle #2830; one Sheriff's car driven by Sergeant Brennan about \$1,000.00 to \$1,200.00 damage. Very minor damage to #248's car, just hit corner of his bumper.

There were three Highway Patrol cars, three sheriff's cars and two police cars involved. The City Police were going to stop the vehicle at the west city limits. They were ready to stop the vehicle at the west city limits with the shotgun. They felt no way could they let him get into town; as it turned out, it all came to an end about 100 yards east of the Sheriff's home.

We have fully documented the incident with pictures and have blood from the driver involved. He was not injured; a 17 year old from Libby. The 1974 Ford pickup was totaled. His vehicle was insured by Farmers Insurance of Libby.

I will have a complete report for you on Wednesday. I feel that this was handled about as well as could be expected under the circumstances. We are very lucky that we didn't have one or more officers hurt or killed.

I don't see where we have any liability to anyone.

I believe I told you Friday that everything was going along fine, and bang, something happens. Anyway it is 2140 Saturday night and I think we are lucky someone wasn't killed.

HG

NORTHWESTERN UNION TRUST CO.

First Northwestern Bank Center
175 North 27th Street, P.O. Box 30058
Billings, Montana 59117
406/248-7344



January 7, 1982

Exhibit B
HB 215
1/19/83

MR JACK RAMIREZ
MINORITY WHIP
HOUSE OF REPRESENTATIVES
STATE CAPITOL BUILDING
HELENA MT 59601

Re: Uniform Principal and Income Act

Dear Jack:

The purpose of this letter is to serve as an explanation of the proposed legislation to adopt the Revised Uniform Principal and Income Act of 1962.

First let me say that the legislation is proposed by both the Montana Bar Association Legislative Committee and the Montana Bankers Association - Trust Division Legislative Committee. It is recognized by both committees that our present laws on this subject are outdated and inadequate.

Montana adopted the 1931 draft of the Uniform Principal and Income Act on March 17, 1959. It lacks among other things, adequate provisions as to allocation of distributions relating to mineral interests, depreciation and does not apply to estates. Further, this Act does not apply to any trust with an effective date prior to March 17, 1959, (even as to transactions occurring after March 17, 1959).

A solution to this Act's limitations seems to be adoption of the 1962 Revised Uniform Principal and Income Act. Some twenty other states have adopted this 1962 Revised Act. This later Act deals with issues which are not adequately covered by the 1931 Act. Among other things, the Revised Act covers such topics as:

- 1) Allocation of distributions relating to mineral interests.
- 2) Provision for allowance of depreciation on depreciable property.
- 3) Allocation of trustee fees between income and principal.
- 4) Allocation of income earned in an estate.
- 5) The Act applies to all estates and trusts regardless of their effective date from the date of adoption of the Revised Act forward.

The Commissioner's Prefatory Note to the 1962 Act further explains its background and purposes as follows:

"In 1959 the National Conference of Commissioners of Uniform State Laws created a committee of its members to prepare a revision of the Uniform Principal and Income Act which had been approved by the Commissioners in 1931. Early in its deliberations the committee proposed to submit a revised Act rather than a series of correcting amendments to the existing Act. The committee submitted three different drafts of an Act to three separate annual conferences from 1960 to 1962. In the latter year the final draft of the Uniform Revised Principal and Income Act was approved by the Commissioners and later was approved by the American Bar Association.

Request for revision of the old Act came from several sources, particularly from trustees who found it difficult to administer trusts under the old Act due to the development of new forms of investment property for trustees. This new development was especially true in the field of corporate distributions and also in the holding of mineral resources as a trust investment. The revised Act provides as did the original Act that the settlor's intent is the guiding principle which should control the disposition of all receipts. But settlors have not always foreseen the multitude of problems which may have to be faced and even draftsmen have found it difficult to foresee all the possible kinds of receipts and disbursements. It is important, therefore, to set forth some clear and uniform standards to assist those to whom the power of decision has been committed, that is, the trustees, and this Act attempts to provide these standards.

The aim of the revised Act is simplicity and convenience of administration of the estate. Of course, fairness to all beneficiaries both present and future has also been considered. Because simplicity and convenience were a primary aim of the revised Act, the revised Act unlike the original Act is made applicable to all trusts and estates whether in existence at the time the revised Act becomes law or not. A trustee who administers several trusts, it was thought, would have difficulty attempting to administer the various trusts under different rules for distribution of receipts and allocation of disbursements and it was thought better, therefore, to make the Act applicable to all trusts. The original Act had no section treating with income earned during administration of a decedent's estate. Several years before it was decided to revise the Uniform Act the Commissioners had promulgated an amendment to the original Act dealing with this problem and this amendment is in substance carried forward into the revised Act.

The original Act followed the so-called "Massachusetts Rule" of awarding cash dividends on corporate stock to income and stock dividends to principal, thereby rejecting the Pennsylvania Rule or some variation of it requiring apportionment between the two funds. The revised Act continues to follow the Massachusetts Rule but provides for some new problems which have arisen since the original Act was promulgated. Thus provision is now made for corporate distributions pursuant to a court decree such as a divestiture order in an antitrust suit. Provision is also made for treatment of the distributions of a regulated investment company or real estate investment trust. Since the original Act was promulgated development has occurred in methods of issuing bonds, notably the discount type of bond such as the Series E bond of the United States Government and provision has been made for allocating the increment in value between principal and income. When the various states considered and adopted the original Act there was a lot of changes made in the section concerning disposition of natural resources. The revised Act attempts to collect the most common of these variations and provides for an allocation of natural resources substantially different from that provided in the original Act but not substantially different from the rules adopted in many of the states producing natural resources. Because of the difficulty of apportioning receipts from extraction of natural resources among the income and principal beneficiaries it is provided in the revised Act that an arbitrary allocation should occur, that is, 27-1/2% of the gross receipts shall be added to principal as a "depletion reserve," and the balance should be payable to the income beneficiary. Attempts to apportion the receipts on the relation of the amount of minerals extracted to the amount of minerals remaining in the ground have proved difficult of calculation and this method of allocation was accordingly rejected in favor of simplicity.

While the revised Act continues to deal specifically with a number of subjects as did the original Act, the revised Act also contains a "catch-all" providing for disposition of receipts where there is no specific section in the Act dealing with the allocation. A form of "prudent man" rule has been adopted to handle this situation.

The Act, therefore, sets forth simple and workable rules of administration which are believed to be consistent with the wishes of settlors upon the subject treated unless the settlor specifically provides for a different treatment in his own trust instrument."

The following lists the main differences between the 1962 Act and the 1931 Act (also, see George G. Bogerts' article published in Trusts and Estates which is enclosed):

Section 2 of the 1962 Act does not apply to legal life estates as did the 1931 Act. It provides that the question of allocation of receipts and expenditures shall be governed first by the trust instrument, in the absence of contrary terms in the trust instrument, in accordance with the provisions of the Act; and if neither the instrument or Act apply, then the "prudent man" rule shall apply.

Section 3 of the 1962 Act provides that payments for the cancellation or renewal of a lease and for prepayment of a loan are income.

Section 5 includes provisions for distributions of income earned during probate. It further specifies which expenses during probate will be paid from income and which will be paid from principal. The old Act was silent with regard to such provisions.

Section 6 provides that stock dividends shall be principal unless the directors declare it to be in lieu of a cash dividend, in which event it shall be income. Provisions concerning allocation of income from investment trusts are also included (the 1931 Act was silent as to investment trusts).

Section 7 is basically the same except the 1962 Act includes provisions as to discount bonds which do not bear interest. Here the appreciation on the bond is treated as income and paid from principal which ultimately receives the appreciated value.

Section 8 of the new Act is generally the same as Section 7 and 8 of the 1931 Act. It does, however, apply generally accepted accounting practices to the determination of net profits and losses from business and farming operations and provides that losses in one year shall not be carried back.

Section 9 of the new Act covers minerals only whereas the 1931 Act covered all natural resources. Under the old Act, all production payments and royalties were principal. Under the 1962 Act, all but 27-1/2% is income.

Section 10 is a new section specifically dealing with timber. It provides that receipts from timber are to be allocated under such reasonable and equitable practices as would be used by an ordinary prudent man. Under the 1931 Act (Section 9) all such receipts would be principal.

Section 11 is unlike Section 10 of the 1931 Act in that it provides in the event of a sale of assets subject to depletion (other than minerals and timber) 5% will be income, the balance principal. The 1931 Act provided that an allocation was dependent upon whether the trustee was under a duty to sell such assets. If under a duty to sell, 5% was treated as income and the balance principal. If not, all the receipts were treated as income.

Section 12 of the 1962 Act provides where unproductive property is sold, a portion of the net proceeds will be treated as income and the balance principal. Under the 1931 Act, a portion of the net proceeds was treated as income only if the trustee was under a duty to sell.

Section 13 of the 1962 Act differs from Section 12 of the 1931 Act in that it provides for establishing a depreciation account to protect principal, except where the beneficiary himself occupies the real property. The section also provides for allocating court costs, attorney fees, trustee fees, etc. one-half to income and one-half to principal.

Section 14 contains a retroactive provision. That is, the 1962 Act applies to all trusts and estates, whether created prior to or after the effective date of the Act.

As you know, almost without exception, every state adopting the 1962 Revised Act has modified it. Some are minor changes, some are substantial. Our Joint Committees also are recommending changes (please refer to the enclosed draft which incorporates our proposed eight changes). Jack, please note that changes 1 and 3 have been revised somewhat from the draft initially delivered to you.

Change 1

This change is proposed to make "inventory value" consistent with trust accounting practices. Trustees utilize the income tax basis as the "inventory value" in recordkeeping.

Change 2

The intent of this Act is to have it apply to both trusts and estates. In several sections of the Act, reference is made to the "trustee" of a trust while no reference is made to a Personal Representative of an estate. It was the Committee's thought to include a Personal Representative of a decedent's estate in the definition of a "trustee". By so doing, there would be no question that all provisions of the Act apply to both.

Change 3

Under the 1962 draft, 27-1/2% was utilized for purposes of a depletion allowance. This was the amount allowed in 1962 as a deduction for income taxes. In latter years, this percentage has been reduced by the Internal Revenue Service. Our committees concluded there really should not be any direct correlation between the amount set aside by a trustee to conserve principal and the amount of depletion allowed by the Internal Revenue Service as an income tax deduction.

The Committees further recognized that some attempt should be made to apportion the receipts on the relation of the amount of minerals extracted to the amount of minerals remaining in the ground. Further, the trustee's intent to favor an income beneficiary or remainderman should be considered. Thus, it was concluded to give discretion to the trustee in determining the amount of depletion allowance to be utilized.

Also, since a trustee receives a check for the net receipts (not gross receipts), the percentage should be applied against that amount.

Change 4

"Inventory value" often differs substantially from market value. When such assets are sold, the Committees concluded the amount to be paid an income beneficiary should be based on net receipts, not inventory value.

Change 5

Unproductive property, when held in a trust, usually is at the trustor's desire. It is generally contemplated by the trustor that it will produce little or no income. Further, a trust agreement usually contains provisions for discretionary principal payments to a beneficiary. Thus, it is not advisable to pay an income beneficiary an amount (perhaps a substantial amount) when such property is sold. It was therefore concluded that the section should be deleted. If a trustor desired such an allocation, it should be specifically recited in the trust agreement.

Change 6

In some trusts there is no principal cash available. Further consideration should be given to the fact that while the trustee's duties are on behalf of both the income beneficiary and remainderman, most time is generally devoted to the current (income) beneficiary.

Page 7

Change 7

Same rationale as change 6. Further, court direction should also be made available as to this allocation also.

Change 8

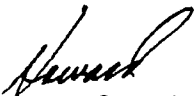
The committees wanted no question as to the Act's application to a Personal Representative of a decedent's estate as well as a trustee of a trust.

As I indicated, changes 1 and 3 are revised from the copy you initially received and which the Legislative Council is drafting. Should we simply wait to receive the draft before these are incorporated? As for the committee hearing, I will plan to attend representing the Trust Division of the Montana Bankers Association. Either Angus Fulton or Jim Thompson will attend representing the Montana Bar. Obviously, as much advance notice as possible would be greatly appreciated.

Hopefully, Jack this information is useful to you. If you would like any additional information, please let me know. Your continued cooperation is very much appreciated.

Best wishes.

Sincerely,



Howard E. Vralsted
Vice President
& Trust Office Manager

HEV:df

AMENDMENTS TO HOUSE BILL 215

Lines 10 THROUGH 14, Page 2. Delete all and insert:

" 'Inventory Value' means the adjusted basis for Federal income tax purposes. "

Lines 25, Page 13 and lines 1 THROUGH 5, Page 14. Delete all and insert:

"... established. Not less than twenty percent, nor more than FIFTY percent of the net receipts, ~~to~~ to be determined in the discretion of the trustee, shall be added to principal as an allowance for depletion. The balance of the net receipts is income. "

EXHIBIT C

HB 215

1/19/83

WITNESS STATEMENT

NAME ARGUS FULTON BILL No. 215
ADDRESS 330 BEVERLY HILL BLVD BILLINGS DATE 1/19/83
WHOM DO YOU REPRESENT MT BAR ASSOC. - ⁵⁴¹⁰¹Legislative Comm.
SUPPORT X as amended OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

see letter dated Jan 7, 1983 from
Howard Vindsted to Jack Ramsey,
a copy of which has been distributed
to all committee members.

WITNESS STATEMENT

NAME Howard E. VRAISTED BILL No. 215
ADDRESS 1829 S. Mariposa, Billings, MT 59102 DATE 1/19/83
WHOM DO YOU REPRESENT MONTANA Bankers Association - TRUST
Division Legislative Action Committee
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Urge passage of House Bill 215 TO Enable TRUSTEES
IN MONTANA TO BETTER SERVE THEIR BENEFICIARIES,
SEE MY LETTER TO REPRESENTATIVE RAMIREZ dated
1/7/83

JUDICIARY

COMMITTEE

DATE January 19, 1983

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 215

DATE January 19, 1983

SPONSOR Rep. Ramirez

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 235

DATE January 19, 1983

SPONSOR Rep. Nilson

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.