

MINUTES OF THE JUDICIARY COMMITTEE
February 9, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present with the exception of Representative Kennerly, who was excused. Also present was Brenda Desmond, Staff Attorney for the Legislative Council.

CHAIRMAN BROWN advised the committee that they have seven bills to hear today and he publicly apologized to REPRESENTATIVE HANNAH for putting him in the position of killing his bill when he was gone from the committee and was being interviewed by the newspaper.

HOUSE BILL 664

REPRESENTATIVE CURTISS, District 20, stated that it was her intention to hold this bill until such a time as all the other gambling bills were in and she had not asked anyone to come here today to testify on this bill. This bill is an act to revise the gambling laws by revising the definition of "slot machine" and "authorized card game" and prohibiting simulated or electronic bingo games. She indicated that this bill is a straight-forward effort to clarify what constitutes legal gambling in the state of Montana; since passing of the initiative, there has been increasing difficulty in interpreting what are and are not legal games in Montana and this bill will clarify that.

There were no proponents.

JOHN POSTEN, representing the Montana Coin Machine Operators' Association, stated that his people are the people who distribute these machines; they are located throughout the state; and he pointed out that these devices have not caused any problems as far as he knew. He contended that the county attorneys are not unanimously against this and he does not know of any law enforcement problems that have developed because of these devices.

REPRESENTATIVE CURTISS closed.

There were no questions and the hearing on this bill was closed.

HOUSE BILL 619

REPRESENTATIVE HANNAH, District 67, Billings, stated that he is carrying this bill on behalf of several people in Billings, who are landlords who feel that there is a problem in the landlord-tenant law. This bill allows a landlord to terminate a tenancy on three days' written notice if the tenant damages or removes part of the premises. He testified that, right now, you can have trouble getting someone off a piece of property if they are kicking holes in the walls or destroying property.

RALPH LEWIS, representing the Montana Landlords' Association, made a statement in support of this bill. See EXHIBIT A.

MIKE HARRINGTON, a Helena landlord, testified on the costs that it takes to fix a hole in the wall, to fix a refrigerator that has been damaged; and they need some kind of a mechanism that is less cumbersome than the existing one to protect their property.

LEE PURDY, representing the Association of Students at Montana State University, said that he would like to go on record in support of this bill.

There were no further proponents and no opponents.

REPRESENTATIVE ADDY noted that Mr. Lewis indicated that the landlord has to stand by and watch his property destroyed and they may not even have paid the rent; and to the extent that the tenant has not paid the rent, can they not evict him on a three-day notice for this. MR. LEWIS replied that if it was just three days, it would be simple; the three-day notice is "eye-wash" as far as the law is concerned; and this can really stretch out.

REPRESENTATIVE JAN BROWN asked if another person came in and did the damage, would this still apply. REPRESENTATIVE HANNAH replied that he feels that whoever is kicking holes in the wall that they should have the right to throw those people out of there on a three-day notice; but if the tenant has been a good tenant and he goes to the landlord and offers to fix it up, he did not think the landlord would tell him to get out.

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There was no further questions and the hearing on this bill was closed.

HOUSE BILL 494

REPRESENTATIVE HANNAH, District 67, Billings, stated that this bill provides that if a person is arrested they can allow that person to go before a judge of the county nearest to the county in which the warrant was issued if the issuing judge is absent or unable to act.

MARCEL TURCOTT, representing the Montana Magistrates' Association, stated that they were in support of this bill, but they would like to have it amended on page 1, line 16, by placing a period after "judge" and striking "of the same or nearest county." and also the same thing on line 20 by striking "in the county where the arrest was made". He advised that what has happened is that they could have a warrant in Broadwater County and they come into Lewis and Clark County to pick up two or three people, and they have to haul them all the way back to Broadwater County; what this bill would do is they could stop here in Helena; take them to the judge; and it would save them to have to take them all the way to Broadwater County.

There were no further proponents.

CHUCK O'REILLY, Sheriff of Lewis and Clark County and Vice-President of the Montana Sheriffs and Peace Officers' Association, said that this was a difficult bill for him to get up and oppose because he understood the intent of it; however, in a small county where there is hundreds of miles in distance, there may be just one judge available; if that judge is not present and if surrounding judges are not present, the way they read this law, even with the amendments, that sheriff will be required to take that individual, no matter how far, to the nearest or most accessible magistrate. He indicated that it does not say what the limit would be. He felt that it was not that much of a problem statewide to even change the law.

BILL WARE, representing the Montana Chiefs' of Police Association, testified that he concurred with Sheriff

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O'Reilly and, in addition, he felt that it would affect the police departments in the same way. He hoped they would look very carefully at the ramifications that this could impose by passing this bill.

There were no further opponents.

REPRESENTATIVE HANNAH closed.

REPRESENTATIVE DAILY asked what happens now if you arrest somebody and there isn't a justice of the peace available. SHERIFF O'REILLY replied that if they do not have a J.P. available, they take them to a district judge. He indicated that on weekends, they stay in jail until Monday morning or they call a judge to have bail set.

REPRESENTATIVE DAILY asked if they could detain a person until Monday if they arrested somebody and there was not a justice of the peace available under the law the way it is now. SHERIFF O'REILLY responded yes, that happens all the time.

REPRESENTATIVE DAILY asked if they passed this, would that not happen any more. SHERIFF O'REILLY replied that he thinks it would still happen, because those are considered non-judicial days; and the only time that it might not happen would be in a major case where you have to seek a search warrant or you may have major evidence that you have to go out and get; in that case, you are going to want to see a judge and you are going to dig one up somewhere.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, said that they initially thought this was a good idea, because from their perspective, everybody should be taken before a judge as quickly as possible for this reason - if he is not, any evidence that is discovered during the delay is suppressible, because he is not advised of his rights and from the prosecutor's perspective, we thought it was a good idea because it guarantees no delay in the initial appearance.

REPRESENTATIVE KEYSER asked in cases involving a J.P, when he is going to be gone, don't they usually bring in a person

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that is a qualified substitute, who could act on these matters. MR. TURCOTT responded that whenever there is an extended leave of absense someone can fill in for them. He also indicated that he could sympathize with the sheriff's point of view, but they also have the rights of the individual and that is where they come from.

REPRESENTATIVE KEYSER wondered if there is ever a time in a county such as Yellowstone that there is not a judge available. MR. TURCOTT responded that they did not see that as a problem and the Magistrates' Association is the one who drew this up.

REPRESENTATIVE EUDAILY asked if the amendment he proposed would also apply on lines 24 and 25 at the bottom of the page. MR. TURCOTT responded that he asked the magistrates about that and they said that they wanted to leave that the way it was.

REPRESENTATIVE ADDY advised that if you have an authorized law enforcement officer who makes the arrest, it is probably going to be a better arrest than someone who is not a law enforcement officer and in the second case, they would want to get before a court judge to test the sufficiency of the arrest.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 507

REPRESENTATIVE HANNAH, District 67, Billings, said that this bill amends the laws relating to the office hours and fees of justices' courts and to the commencement of actions in and removal of actions from justices' courts; and the fees are increased from \$5.00 to \$10.00.

MARCEL TURCOTT, representing the Montana Magistrates' Association, said that he concurred with Representative Hannah and went over the changes in this bill.

There were no further proponents and no opponents.

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REPRESENTATIVE HANNAH closed.

REPRESENTATIVE FARRIS asked what are rules of pleading. MS. DESMOND responded that those are rules which govern the way the papers are prepared and the rules are relaxed for pleading in small claims court.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 585

REPRESENTATIVE HANNAH, District 67, Billings, said that this bill and HB 584 deal with a very serious area and they were introduced at the request of the Task Force on Corrections. He stated that this bill decreases the instances in which an offender is designated as a nondangerous offender; this includes deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, arson, possession of a deadly weapon by a prisoner, sale of dangerous drugs, possession of dangerous drugs, possession with intent to sell, and possession of precursors.

There were no proponents.

KARLA GRAY, representing the Montana Trial Lawyers' Association, indicated that she opposes this bill because it interferes substantially with judicial discretion; it interferes with prosecutorial discretion; and it appears to her to walk away from the original purpose of this bill, which is designating non-dangerous offenders.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, testified that the list of offenses pretty much correlate with the list of offenses in the mandatory sentencing law; and the county attorneys have many of the same objections to this bill as they did to the mandatory sentencing bill; and they wish to go on record as opposing this bill.

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CURT CHISHOLM, Deputy Director of the Department of Institutions, said that they want to point out the impact that this bill will have on our prison population; it does not affect the length of the sentence handed down by the courts, but does have the real impact of extending the time served in the Montana State Prison; 33 months from now it will have the impact of keeping 109 inmates in the prison 2.6 years longer; and then year after year, this will have a compounding effect.

There were no further opponents.

REPRESENTATIVE HANNAH indicated that 80 per cent of the people who are committing these serious crimes against people are being designated as non-dangerous offenders; and he felt that this is a serious problem. He felt that it was unfortunate that they have to bring a bill in that tells the courts that a person who commits these crimes is dangerous.

REPRESENTATIVE JENSEN asked if the 80 per cent, who are considered non-dangerous, includes those offenses that were drug-related in addition to those crimes against persons. MR. CHISHOLM answered that it did; and he guessed they were saying that 80 per cent of the current sentences applies to those ten designated offenses and they are designated non-dangerous.

REPRESENTATIVE JENSEN asked if they had any statistics in regard to just those enumerated crimes he addressed that are specific crimes against persons, such as rape, murder, etc., and he wondered what percentage of those people are designated as non-dangerous. REPRESENTATIVE HANNAH replied that he did not have statistics available, but if they were available to the task force, he would be happy to get them.

REPRESENTATIVE BERGENE asked if a person can be considered for parole even though he has been considered dangerous but he has had such a change that the Board of Parole can really speak for that person and would consider him truly non-dangerous then. MR. CHISHOLM responded that that can

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happen; a prisoner can honestly change even though he was considered a dangerous offender at the time of sentence, and that is considered by the Parole Board.

REPRESENTATIVE BERGENE commented that those non-dangerous crimes are really quite dangerous as far as they are concerned. MR. CHISHOLM answered that the Parole Board does take into consideration the crime that was committed regardless of the designation.

REPRESENTATIVE KEYSER noted the fiscal note and asked if there was a discrepancy, because the way the bill reads this would narrow the total figure down that he was talking about as far as the increase in total prison population is concerned. MR. CHISHOLM replied that he was not sure - they might have misinterpreted that; they felt that there were two conditions under which they could lose their eligibility to be designated as non-dangerous; i.e. (1) to commit any of the offences designated and to be sentenced for same and (2) to follow the persistent offender provision if they have committed a felony in the last five years. He indicated that most of the statistical information was based upon inmates being currently sentenced; there is a sentencing pattern and an incident rate for inmates coming into the prison for the designated offenses listed under this bill; now 80 per cent of those people happen to be designated as non-dangerous; therefore, they only serve 1/4 of their time less good time. He continued if this bill goes into effect, that 80 per cent would no longer be eligible for that designation; he presumed they would be designated as dangerous; therefore, they would serve 1/2 of their sentence less good time; so that increases the time spent in prison substantially. He noted that you would not feel this effect immediately; those already in the system would not fall under this provision; and they would start experiencing that impact on those who come into the system within the next 33 months. He stated that they considered both options, but they do not have any statistical information on inmates who were considered dangerous, who happen to have committed a felony offense in the last five years; and they do not know how often that happens.

REPRESENTATIVE KEYSER asserted that it looked like they basically ignored some of the new language, because it says, "except as provided in subsection 4, if the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a non-dangerous offender for purposes of eligibility for parole." except two instances during the five years preceding, he has committed that crime or he is being sentenced for one or more of the offenses enumerated in subsection (1)(c). He contended that this boils the people they are talking about into two categories or both of these together. He stated that he would assume that everybody that falls under the felony conviction do not necessarily conform to these two exceptions; and he thought his figures were off. MR. CHISHOLM replied that the statistical information was based upon only the people who would be affected by this law; and they are not assuming that all those prisoners coming into that prison will have that designation of dangerous.

REPRESENTATIVE KEYSER felt that they had taken everybody from that section relating to the major felonies and they have put them in this category - 80 per cent of them are non-dangerous and 20 per cent of them are dangerous - but there are two exceptions on top of that; and it seems that this would change the statistics. He commented that maybe he is looking at that wrong.

REPRESENTATIVE RAMIREZ wondered how many of the people were included in this if they committed their offenses with a dangerous weapon. MR. CHISHOLM replied that he was not sure.

REPRESENTATIVE RAMIREZ asked if they could get that information, because it seemed to him that that might be another breaking point; there are a lot of people who commit a crime using a dangerous weapon, which is under the mandatory minimum sentencing provisions, and are still being designated as non-dangerous offenders. MR. RACICOT replied that he did not think so and he thought he had some quarrel with these statistics; there are a lot of cases that don't fall into these classifications because it is redundant; and the courts are not placing in there whether they are dangerous or non-dangerous; and in instances, where it is not mentioned, it is going to be assumed.

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REPRESENTATIVE RAMIREZ indicated that what this does in both instances is to require the judge to designate him as a dangerous offender, but by the same token, if he doesn't designate him, he is still a dangerous offender, but the condition for both of those is that he commit one of these offenses against a person; then we go over to the statistics that say that 80 per cent of the convictions that fall within this category are not now being designated as dangerous offenders; and of that 80 per cent how many of those committed those crimes against the person with a dangerous weapon, thereby invoking the mandatory minimum sentencing requirements. He wondered if that would be a possible provocation that would be narrower than the one they have here and more closely related to what really is a dangerous or non-dangerous offender; and he would like to have some statistics that would tell them what impact that would have. MR. RACICOT responded that kidnapping of children usually involves the spouses and very, very rarely involves anyone else, so there is going to be some distortion, so he felt that he was right and this would narrow the category of dangerous offender and would more accurately reflect what is really dangerous.

REPRESENTATIVE FARRIS noted that Mr. Chisholm was shaking his head and wondered if he wanted to say anything. MR. CHISHOLM responded that they can narrow those categories down and get more specific information.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 584

REPRESENTATIVE HANNAH, District 67, Billings, stated that he was carrying this bill for the Task Force on Corrections and it expands the circumstances under which the death penalty may be imposed and he went through and explained the bill.

There were no proponents to this bill.

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CATHY CAMPBELL, representing the Montana Association of Churches, gave a statement opposing this bill. See EXHIBIT B.

WES KRAWCZYK, Representing the American Civil Liberties Union, said that they oppose the death penalty and, therefore, oppose this bill.

KARLA GRAY, representing the Montana Trial Lawyers' Association, said that she was really not an opponent of this bill, but she would like to comment on this bill in regard to some concerns she had on subsection 1; and she also felt that in subsection 7 on page 2, that the language in that subsection has been found to be unconstitutional by the United States Supreme Court, but she could be wrong.

There were no questions and the hearing on this bill was closed.

EXECUTIVE SESSION

HOUSE BILL 494

REPRESENTATIVE RAMIREZ moved that the bill DO NOT PASS. REPRESENTATIVE EUDAILY seconded the motion.

REPRESENTATIVE RAMIREZ indicated that the bill as it is now is confusing and he is not sure what the language, "the nearest county" would mean, i.e. the nearest county from where you are at the time or what; and he felt that it would create more problems than it would solve; and he did not feel that the problem was sufficiently great to show that they need to change things.

REPRESENTATIVE KEYSER commented that he has worked in small counties and he has worked in large counties and never in his life did he have a real problem with finding a judge when he really wanted one; even if a judge was not around, he could make a phone call and get one; and he did not feel that the problem exists to that great of an extent that they really need the bill.

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REPRESENTATIVE BERGENE asked just how fast do they need to find a judge. REPRESENTATIVE KEYSER responded that the need is not normally that great; you have to take that person before a judge in a reasonable time, but it isn't a matter of having to be there right this minute.

The motion passed with REPRESENTATIVE ADDY, REPRESENTATIVE HANNAH and REPRESENTATIVE JENSEN voting no.

HOUSE BILL 507

REPRESENTATIVE HANNAH moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE HANNAH stated that this was a very reasonable bill; it was not a drastic departure from any current laws; and he felt that it should pass.

REPRESENTATIVE JENSEN noted that they are talking about a 100 per cent increase and he wondered where the money goes. REPRESENTATIVE HANNAH replied that he does not know where it goes. REPRESENTATIVE KEYSER answered that some goes to the county.

REPRESENTATIVE JENSEN asked if some of these funds go into the school funds. MR. TURCOTT replied that with all the fines at the county level, \$7.50 would go into the general fund and the balance of the fines would go into the school funds. REPRESENTATIVE JENSEN clarified that these are fees. No one seemed to know.

The motion carried unanimously.

HOUSE BILL 619

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE KEYSER seconded the motion.

REPRESENTATIVE HANNAH commented that he had some notes that indicated that they give them three-days notice; then there is another six days to wait and then another ten days to try and get a person out, who has not paid the

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rent and it is a problem; particularly, if you have a house that some guy is destroying piece by piece.

REPRESENTATIVE ADDY declared that the landlord is suffering in both situations - he is not getting the rent for his property and when his property is being destroyed, he is really suffering.

The motion carried unanimously.

HOUSE BILL 664

REPRESENTATIVE KEYSER requested that they table this bill with Representative Curtiss's permission.

REPRESENTATIVE CURTISS responded that this would be alright, if it was the intent of the committee to take it off the table at the time the other gambling bills come before the committee. REPRESENTATIVE KEYSER commented that that would be his intention.

CHAIRMAN BROWN indicated that the only other bill they have in this area is Representative Pavlovich's, which goes in the opposite direction and it is the chair's desire that they table that and, as he understands it, it is the desire of the committee.

REPRESENTATIVE KEYSER moved that this bill be TABLED. REPRESENTATIVE ADDY seconded the motion.

The motion carried with REPRESENTATIVE HANNAH voting no.

HOUSE BILL 586

REPRESENTATIVE HANNAH moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE HANNAH declared that he felt they should have a means to remove a judge from office; and when you consider the commission that does this type of thing, they are very, very tentative about reviewing the position of a judge; and testimony has shown that they are not very active in saying to a judge that he is wrong and he should be sanctioned. He continued if a judge violates the law, he should be accountable just like any other citizen.

REPRESENTATIVE JENSEN said he wanted to speak in opposition to the motion; his opinion is that the commission can make a determination on willful misconduct in office; that is already in the law; it would seem to him that not abiding by the law is willful misconduct; and he also has a problem with this bill and that is that it may be entirely too narrow. He contended that they were talking about an amendment to the constitution; that the supreme court ought to have authority to remove a judge for more than just this specific violation; and he felt it was a little narrow in the scope of this bill.

REPRESENTATIVE RAMIREZ indicated that he agreed with Representative Jensen; he thought it was too narrow for a constitutional provision; and he felt it was awfully harsh as well, i.e. to be removed from office is quite a serious matter; and he thought there were ways to deal with this either by the electorate or otherwise; and this would be much better than taking one occasion and mandating removal.

REPRESENTATIVE ADDY commented that the last sentence of the new subsection says, "Upon receiving a recommendation under this subsection, the supreme court shall remove the justice or judge." and all of a sudden, they are giving an ultimate decision to the commission; he felt it was a radical departure from past practices; and if judges were elected for life, they might have a greater need for this bill; but this kind of correction can be taken care of by the voters.

REPRESENTATIVE SPAETH agreed with the two previous speakers; and he felt that this was a subtle attack upon the judges of the state; he appreciates where it is coming from and he did not think the people that raised it meant it to be an attack upon the judges; but he thought they had a lot of fine judges in the state; and he does not see the problems out there that this addresses; and he does not see the need for it.

REPRESENTATIVE CURTISS noted that the bill says that the legislature is going to appoint this commission, but it does not say who is going to appoint these people and she wondered who would be doing this.

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REPRESENTATIVE HANNAH responded that the commission is already in operation and he does not know who appoints them.

MS. DESMOND indicated that in section 3-1-1101, the statute that was enacted to carry out the constitutional provision says that there was created a judicial standards commission consisting of five person as follows: two district court judges from two different districts elected by district judges under an elective procedure initiated by and conducted by the supreme court, and certified by the supreme court; one attorney who has practiced law in this state for at least ten years, appointed by the supreme court; and two citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

REPRESENTATIVE KEYSER admitted that this language is very narrow but he sure hopes that he is not hearing what he thinks he is hearing, i.e. that this committee is afraid to put before the voters of the state of Montana a proposal for a constitutional change just because we are dealing with judges; because in the four times that he has been here, he has seen that all attorneys to the letter fully support the supreme court in their actions and will not take actions against them; they just don't - it is a matter of survival and he realizes that; but he sure hopes that they are not saying that they are so sacred that they can't put a constitutional amendment in that would be against them.

REPRESENTATIVE JENSEN answered that he agreed completely with Representative Keyser; it was not his intention to give judges exceptional treatment; the constitution is certainly the appropriate place for them to deal with this kind of thing; but he is concerned with the narrow scope of this bill; and he does believe that they are going to get a bill from the Senate that has a much broader scope and addresses a real problem that the Judicial Standards Commission is having with their findings being absolutely ignored in some cases. He continued that he was not an attorney and he did not know how that would affect him, if he were, but even when he was married to

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a lower court judge, he felt that this legislature should not give any special treatment to the judges.

REPRESENTATIVE EUDAILY asked if it were true that a bill was coming over from the Senate on this subject.

REPRESENTATIVE JENSEN responded that a member of the Judicial Standards Commission is a constituent of his; she has already expressed a great deal of interest in this bill and she believes that it has an excellent chance of coming over here.

REPRESENTATIVE EUDAILY said that if they don't handle Senate bills until after transmittal time, it would not do any good to table this one - they would have to take some action on this beforehand. He made a substitute motion for all motions pending that this bill DO NOT PASS. REPRESENTATIVE ADDY seconded the motion.

REPRESENTATIVE CURTISS commented that she was the last person to do anything irresponsible, but, on the other hand, they hear accounts of cases that go on and on for years and she just wondered where the accountability is and do they not have some responsibility to the people in the state to try and remedy this. She indicated that there was one in Kalispell that has been going on for ten years and it is still not resolved; in the meantime, people lose their property; it goes for attorney's fees and she wondered where is the remedy for people.

REPRESENTATIVE RAMIREZ responded that this bill does not address that problem at all; it deals with a very narrow and entirely different situation; he does not have problems with imposing standards on the supreme court; and he will be quite frank and he would say publicly that he is not all that pleased with a lot of the things that the supreme court does; but this bill is very narrow; if they were to take out the words, "and persistent" out of line 3 (which he did not think they could do in this bill, because it would change the purpose) he felt that that would accomplish almost the same thing; and it would do it in a way that is much more acceptable to him, because if they failed to impose a sentence that they were required to

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under the law and they did so willfully that would fall within that; and other things would fall within it too. He stated that the constitution should be a broad document, setting forth basic principles; it should not get so specific as to do what basically a statute can do; and this bill only addresses a very, very narrow problem, and not the one that Representative Curtiss mentioned.

REPRESENTATIVE HANNAH indicated that he wanted to speak against the substitute motion; they hear of a Senate bill; they don't know what is in it; they don't know if it makes the Judicial Standards Commission stronger or weaker; they don't even know if it is out of committee; they don't know if they will even see it; and he did not know what you have to do around here to get something before the people for a constitutional amendment. He continued that if you bring it in, it is too broad, you are expanding too much and if you expand it too wide, who knows what is going to happen; so you bring one in to deal with a specific area and it is too narrow. He felt that our constitution is so different from what it should be; our constitution is fairly specific; it is not a short, broad document; and he felt that this particular amendment would fit right in. He continued that if you look at the makeup of this commission - you have two judges, one attorney, and two citizens; and you have to prove to this commission that a judge willfully failed to impose a sentence; he did not feel that the fear and the problems these people have with this bill are here; and he feels that it is a good bill.

REPRESENTATIVE IVERSON stated that the problem he has with the bill is that this is a departure from normal procedure and he cannot buy the idea that the Judicial Standards Commission should be able to instruct the supreme court, without review to throw somebody out; this can't work and it can't work properly; these people aren't elected and they do not know who they are.

REPRESENTATIVE HANNAH responded that he would agree with that - that is a problem, but he did not feel that this was a non-amendable problem and this bill could be fixed.

The motion carried with REPRESENTATIVE KEYSER, REPRESENTATIVE HANNAH and REPRESENTATIVE CURTISS voting no.

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HEARING

HOUSE BILL 478

CHAIRMAN BROWN indicated that he just got a note that the gentlemen they were waiting on who wished to testify on this bill was snowed in at Missoula.

REPRESENTATIVE HANNAH, District 67, Billings, said that this was the last of the three bills that deal with the exclusionary rule and this is an act to adopt the exclusionary rule exception of reasonably good faith belief in the legality of a search and seizure. He stated that this bill has the same intent as HB 381 and HB 382 is basically the recommendation of Judge Allen; so the testimony on HB 381 applies very closely to this bill.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Service of the Department of Justice, stated that the county attorneys believe that HB 381 is a better bill than this bill and they felt that they accomplished the same thing. He contended that their view is that, on one hand, you have the present exclusionary rule situation; on the other hand, you have the total abolition of the exclusionary rule, which is HB 382 and that would apply to every single case, and right down the middle you have HB 381 and HB 478, which would simply carve out an exception to the exclusionary rule. He continued that if you look at HB 381, there are other exceptions already carved out by the legislature - the automobile exception and other exceptions, so this is nothing new and out of the ordinary because the courts and the legislature in the past have carved out exceptions to the blanket rule of exclusion.

There were no further proponents.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, said the only reason he rises in opposition to this bill is they stand behind HB 381; that is the one before the supreme court; they feel that it is very likely to pass and if they pass that bill through, then they have a constitutional law. He thought if they start messing with other language, then it could end up back in the supreme court.

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BILL WARE, Chief of Police of Helena and representing the Montana Chiefs' of Police Association, indicated that he also rose in opposition to this bill and they give their support to HB 381 for the same reasons that Sheriff O'Reilly did.

KARLA GRAY, representing the Montana Trial Lawyers' Association, stated that they opposed this bill for all the same reasons of those who testified yesterday and she felt that this bill would be no deterrent at all.

WES KRAWCZYK, representing the American Civil Liberties Union of Montana, said that they rise in opposition to this bill.

CHAIRMAN BROWN noted that MICHAEL KREISBURG from Missoula was snowed in and he wanted to be here to testify against this bill.

There were no further opponents.

REPRESENTATIVE HANNAH said that he knows that there are some real questions in the minds of people as to whether or not this does, in fact, address the intent of the law; but he felt that this was a step in the right direction.

REPRESENTATIVE ADDY indicated that he had some real problems with the exclusionary rule and the effect the exclusionary rule has on the public in regard to justice; under the exclusionary rule, innocent citizens are depending upon accused people to defend their civil rights; to the extent that the good faith exception is adopted, it still is going to be imposed by the criminals, who are using the fourth amendment; criminals are bad and, therefore, the fourth amendment is bad; and he has problems with rules that leave the status quo; and that is the reason he is a strong supporter of civil liabilities as a substitute for the exclusionary rule. He continued that his second point is to the extent that you have reasonable good faith, the law will not be interpreted by judges and it won't be interpreted so much by prosecutors but it will be interpreted by policemen; he suggests that judges are in the best position to receive the information initially; they don't have the pressure and he would like to keep that function in the judicial hands and get it out of the prosecutor's office

to a certain extent and even more so, out of the hands of the police. MR. RACICOT responded that he guessed he would have to disagree on the second one, because you are still going to litigate on what is found reasonable and the officer is still going to be held responsible for reasonable conduct so the judges are still going to be deciding whether or not their conduct was reasonable. He replied in connection with the assertion that there are bad people bringing up the exclusionary rule, that problem has been around for the last eighty years and he wondered how many innocent people complain to anybody about their houses being broken into; he advised that in Bozeman several years ago, a person's house was searched; he sued and he won and he collected a lot of damages; he granted that in larger places a lot more of this goes on, but, in his experience with law enforcement officers, he has never seen an officer deliberately set out to break into somebody's home or to discover evidence in a wrongful manner.

REPRESENTATIVE ADDY indicated that he felt the courts go beyond what the police officer thought was legal and proper and he would like to see that discretion remain in the hands of the courts, and they are taking it away from the courts. MR. RACICOT replied that that is true.

REPRESENTATIVE SPAETH stated that they essentially have three options, i.e. (1) to uphold the exclusionary rule as it now is and do nothing (2) narrowing the exclusionary rule or (3) adopt the exceptions we have carved out with different language than what they have before them today. He wondered if these could be addressed and how it would affect all three of the bills they have.

MR. RACICOT responded that in the late 1960s, the supreme court said that the exclusionary rule is a rule of procedure only; and our constitution allows the legislature to disapprove procedural rules just as they can disapprove the rules of evidence. He stated that he is not too sure if past legislatures have not already done this; in HB 381, he noted that in subsection c, the bill says evidence shall be suppressed if "any irregularities in the proceedings do not affect the substantial rights of the accused"; and he supposed that this could be argued in some fashion that we already have a reasonable good faith exception in reverse.

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REPRESENTATIVE SPAETH asked a question of MR. RACICOT concerning the exclusionary rule. He answered that if you pass HB 381, you are in trouble because you can't make yours more expansive than the United States Supreme Court; but if they say there is no such thing as a reasonable good faith exception than I think we cannot have a reasonable good faith exception. He continued that that doesn't mean that you can't pass HB 382; that may still have a chance of viability, because if the state comes up with a provable plan to be a substitute for the exclusionary rule, that may pass constitutional muster.

REPRESENTATIVE SPAETH asked if they were to pass HB 382 and they upheld the exclusionary rule, would they be involved in fairly extensive litigation. He also commented that another possibility is that there may be more narrow exceptions to the exclusionary rule and he wondered what that would do. MR. RACICOT replied that he can't imagine it being more narrow than HB 381, but if it is narrower than HB 381, then HB 381 would be unconstitutional. He contended that our state court cannot make it more expansive than the United States Supreme Court does.

REPRESENTATIVE SPAETH questioned if they had adopted the good faith exception and the wording is not the same as we have in HB 381, are they going to have to litigate that. MR. RACICOT responded that there is a possibility; he did not think that it was inherently high because Illinois holding goes extensively along the line of Williams; the language has been fairly consistent with reference to the reasonable good faith exception since 1980 - Williams holding through ?
He thought it would be very easy to discern what the intent is.

REPRESENTATIVE SPAETH asked if the Supreme Court adopts Gates or adopts some kind of exception, do we have to take any action or do we have the exception to the exclusionary rule in effect based on this decision. MR. RACICOT replied no, because it is very clear that even though they can't expand, or rather restrict, a decision

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of the United States Supreme Court or the United States Constitution, they can expand on independent state governing. He contended that there is no doubt about that; and without a legislative indication or a decision of the Montana Supreme Court on the reasonable good faith situation, the reasonable good faith exception would not apply in Montana.

REPRESENTATIVE SPAETH queried if he felt that the state of the law in the state of Montana shows that the rule is statutorily or constitutionally based. MR. RACICOT responded that he felt that this was very arguable, but he felt that the court would rule that that was constitutionally based, but they have not specifically said that yet; but judging from his experience, that will be their ruling. He said that there is the possibility that the constituency of the court will change and that will have an effect on their decisions.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

HOUSE BILL 430

CHAIRMAN BROWN appointed a subcommittee to work on amendments to this bill consisting of REPRESENTATIVE ADDY, Chairman, REPRESENTATIVE RAMIREZ and REPRESENTATIVE SPAETH.

HOUSE BILL 238

CHAIRMAN BROWN indicated that this bill, which is Representative Vincent's bill on materials, was tabled; they did not finish the discussion; but Representative Vincent has received authority for a new bill in this area; and he wondered if the committee wants to leave this bill on the table until that bill comes in. It was agreed to leave the bill on the table.

HOUSE BILL 170

MS. DESMOND passed out proposed amendments to this bill. See EXHIBIT D. She noted that there is an amendment to the title, which is not on the handouts; she said that the title is basically stricken and inserted in its place

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is the language, "an act to expand the measures that may be taken to assist an intoxicated person". She indicated that she talked to Representative Pistoria and he said that he would not limit the action that could be taken against another person and he decided not to make that change. She stated that when he requested the bill, he requested a new subsection 7 and she simply did what he asked.

REPRESENTATIVE ADDY moved that the bill DO NOT PASS. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE ADDY commented that this has completely changed the intent of this bill and he did not know what the new language in subsection 7 addresses at all.

REPRESENTATIVE CURTISS asked if it adds anything or does it give police officers any additional protection. MS. DESMOND replied that she thought in a general sense it adds to the places where an intoxicated person can be taken.

REPRESENTATIVE SPAETH said that he was going to oppose the motion as he did not think that it is anything that will hurt.

REPRESENTATIVE RAMIREZ stated that this is so vague as to be almost meaningless; he would like to see them table this bill rather than killing it; and he would like to make a substitute motion to that effect.

REPRESENTATIVE FARRIS said that from the knowledge of Representative Pistoria's personality that he will use the rule to have it out of committee if we haven't acted on it within seven days.

REPRESENTATIVE JENSEN said that they can indefinitely postpone action.

CHAIRMAN BROWN noted that this does not change the rule of getting it out of committee.

REPRESENTATIVE DAILY said that he would like to take this bill and do it right, but they have so many bills in this committee and we are going to have to start working day and night if they don't start killing some of these bills.

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CHAIRMAN BROWN indicated that Representative Pistoria said that whatever the committee decided to do with this one, he would go along with it; he was tired of it and would let it go.

The motion to table the bill was seconded by REPRESENTATIVE JENSEN. The motion carried with REPRESENTATIVE FARRIS, REPRESENTATIVE ADDY, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE CURTISS and REPRESENTATIVE SCHYE voting no.

HOUSE BILL 471

REPRESENTATIVE ADDY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE ADDY moved that the bill be amended on page 1, line 20, by striking "shall" and inserting "may". REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE ADDY moved that this bill DO PASS AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE SPAETH said that he still has problems that they can appoint more than one referee in a particular judicial district.

REPRESENTATIVE ADDY said that on page 2, lines 12 through 14, it states, "one person to serve full time or two or more persons to collectively serve the equivalent of full time" and he felt that they were limited to one full-time equivalent.

REPRESENTATIVE CURTISS stated that they need to look at this carefully because of the large caseload in some districts, because regardless of what happens to redistricting, they still need some relief in Yellowstone County.

CHAIRMAN BROWN indicated that he has had some concern that this bill might cause problems with the passing

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HOUSE BILL 468

REPRESENTATIVE ADDY advised the committee that Mr. Swift asked them to rewrite section 7 on page 6, and he would move that the bill DO NOT PASS. REPRESENTATIVE FARRIS seconded the motion.

REPRESENTATIVE CURTISS asked if they table this bill or they kill it, where is their philosophy about people being entitled to a speedy trial.

REPRESENTATIVE ADDY replied that he did not think that this applies to a speedy trial, because they are talking about the time period after the trial, but he would agree that there is a problem with extended appeals, multiple appeals, etc. He said that he would hate to recommend an interim study, but this is a subject that he thought would take five or six members of the legislature a considerable number of person hours to come up with a workable standard.

REPRESENTATIVE HANNAH indicated that he did not know what was wrong with the bill; are they saying that it is unreasonable to cut the time limit by ten days.

REPRESENTATIVE ADDY said they are making the time periods a little too restrictive.

REPRESENTATIVE HANNAH asked if there was an overall problem with the bill; let's change it to forty days; if there is one problem, let's fix the bill; and he wondered if the bill is fatally flawed in other areas.

REPRESENTATIVE ADDY responded that he felt the bill addresses a significant problem, but he does not know if it comes up with a workable solution. He felt that the legislature should get itself involved with it but he does not think they can do it justice in three minutes in deliberation and a half an hour in a hearing or anything less than a few days. He contended that if you put it on the floor, you are going to hear from the supreme court, the prosecutors, the Montana Trial Lawyers, the A.C.L.U. and all the opponents.

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A vote was taken on the DO NOT PASS motion and it tied with a vote of 8 to 8. The motion failed.

REPRESENTATIVE RAMIREZ moved that they amend the bill by striking the present section 2; in other words leave the law as it is now with 40 days instead of 20 days; he explained that the 40 days has nothing to do with the lawyers or anybody else - it has to do with the court reporters - they have to get the transcript typed etc.; they do it as quickly as they can; they have a lot of work in dictating and then transcribing.

REPRESENTATIVE KEYSER asked if he meant all of section 2. REPRESENTATIVE RAMIREZ replied that he guessed you have to do that so you don't amend 46-20-311. He continued he would strike section 4 and leave it at 30 days as it is right now; he explained that it is exceedingly difficult to draft and have printed a brief in 30 days; in section 6, line 22, strike "shall" and insert "may"; strike section 7, so you leave the law as it is right now rather than trying to come up with some new language and renumber subsequent sections. REPRESENTATIVE ADDY seconded the amendments.

REPRESENTATIVE ADDY asked is the transmission of records in the control of the appealing party. REPRESENTATIVE RAMIREZ replied that ordinarily transmission of the record is pretty easy once you get the transcript because all it is is the court file and he felt that 70 days is not an unreasonable time.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill DO PASS AS AMENDED. REPRESENTATIVE CURTISS seconded the motion.

The motion carried unanimously.

HOUSE BILL 584

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE KEYSER seconded the motion.

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of the judiciary redistricting bill before it gets to the House, but he is fairly convinced that it won't and it is clear that places like Yellowstone County need the interim relief in the next two years even if that bill passes.

The motion carried unanimously.

HOUSE BILL 389

CHAIRMAN BROWN advised the committee that this was Representative Mennahan's bill; they had left this bill previously with a do not pass motion that failed with 10 voting aye and 8 voting no; and in an attempt to reverse the vote, they had some additional discussion and left the bill at that point. He said that it was on the table now for a motion.

REPRESENTATIVE DAILY moved that they table this bill.
REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE DAILY said that the reason he was in the mood to table this bill is that they passed a resolution yesterday on the floor of the House to study the insurance industry and specifically this problem.

The motion carried with REPRESENTATIVE JENSEN, REPRESENTATIVE FARRIS, REPRESENTATIVE DAVE BROWN and REPRESENTATIVE DARKO voting no.

HOUSE BILL 537

REPRESENTATIVE DAILY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE CURTISS.

REPRESENTATIVE EUDAILY indicated that he had a note which said to amend and include aggravated assault, section 45-5-202.

MS. DESMOND said that she did not see any reason why they could not add that to the list on the bottom of page 3

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and top of page 4 by inserting 45-5-202.

REPRESENTATIVE DAILY moved that the bill be amended in this fashion. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE ADDY commented that Charlie Banderob, who is President of the Montana Senior Citizens' Association, was here the day the bill was heard, but did not testify; he talked to him after the hearing and they were concerned that if you set up a special class, then the law may very well be held invalid. He indicated that he would just as soon table this bill until they can get a fuller explanation of this position. He felt that if they took this to the floor and those questions started to come up, he did not know if there was any way to defend their position.

REPRESENTATIVE EUDAILY asked what conditions these would be - they are forever making things apply to certain age groups and for certain people.

REPRESENTATIVE ADDY said that in setting up one class of people who will be punished one way for a crime and another class that is afforded less protection, you are going to have to show reasons to justify the separate classifications for different treatment.

The motion to amend the bill passed unanimously.

REPRESENTATIVE HANNAH said that he had some problems with the bill primarily in relationship to each limit they are putting on there; he believes that in order for a deterrent to be effective, you have to outline definable, easily identified perimeters; and he felt that if somebody snatched a purse from someone, it is not easy to identify if that person is sixty years of age; if a guy breaks into a house, how does he know that the guy who owns the house is sixty years of age; and he just felt that it was a bad bill.

REPRESENTATIVE ADDY moved that the bill be TABLED. The motion was seconded by REPRESENTATIVE JENSEN. The motion passed with REPRESENTATIVE EUDAILY, REPRESENTATIVE CURTISS, REPRESENTATIVE DAILY and REPRESENTATIVE DAVE BROWN voting no.

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REPRESENTATIVE IVERSON said that Karla Gray said that the language on lines 8, 9, and 10 might be unconstitutional and he wondered if anybody knew about that. REPRESENTATIVE RAMIREZ replied that he thought it might be too vague.

REPRESENTATIVE HANNAH said that there are several areas that are vague and it was also pointed out that the language on page 1, lines 19 and 20 were too broad and he agrees with that; he felt that without a great deal of work, they could take those areas and take them out or make them more specific.

CHAIRMAN BROWN offered an amendment to reinsert the old language on page 1, lines 21 and 22, and strike the new language on lines 22 and 23; and to strike subsection 7 and subsection 8 on page 2, lines 8 through 13. REPRESENTATIVE DAILY seconded the motion.

REPRESENTATIVE KEYSER said that he could see striking "cruel" in subsection 7, but was "heinous" and "atrocious" struck in that court decision, but he said it was a good motion and he would accept it.

REPRESENTATIVE HANNAH indicated he had a note that lines 19 and 20 were too broad.

CHAIRMAN BROWN changed the motion to line 19 and line 20, that the old language be reinserted and strike the new language.

REPRESENTATIVE KEYSER asked that they divide the motion. CHAIRMAN BROWN said they could take them section by section.

A vote was taken on the proposed amendments on page 1, lines 19 and 20 and it passed unanimously.

A vote was taken on the proposed amendments on page 1, lines 21, 22, and 23 by striking the new language and reinserting the old. The motion failed.

A vote was taken on the proposed amendments on page 2, lines 8, 9, and 10 to strike this language in its entirety. The motion carried unanimously.

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On the proposed amendment on page 2, lines 11, 12, and 13, subsection 6, REPRESENTATIVE KEYSER indicated that if a governor is killed or an attorney general is killed this would hinder the every-day function of state government.

REPRESENTATIVE EUDAILY noted that this would be any action that would have to do with a governmental function.

REPRESENTATIVE CURTISS asked if this would include a game warden making an arrest. It was agreed that it would and would also include a school board.

A vote was taken on the motion and it passed with all voting aye except REPRESENTATIVE HANNAH.

REPRESENTATIVE KEYSER moved to amend the bill on page 1, line 15, after "correctional facility" by striking "a county jail, or a city jail." REPRESENTATIVE SPAETH seconded the motion

REPRESENTATIVE KEYSER explained that these people could be in there for a misdemeanor charge; in a state correctional facility, they would be in there for a felony, where in the city jail they might not be.

REPRESENTATIVE HANNAH indicated that he wished to speak against the amendment; there are two things that they need to consider; (1) it says "may" and (2) if you look at the situation in Yellowstone County, they have the Coleman murder trial and they are back and forth down there for resentencing hearings and other hearings; that guy is in there; and he doesn't have anything to lose by killing the jailer in Billings than he does in Deer Lodge.

REPRESENTATIVE RAMIREZ responded that he agrees and the other point is that what you are really trying to have is a deterrent for riots and other things no matter wherever they occur, but it is not as serious in the county jail as it is in the prison.

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REPRESENTATIVE ADDY commented that the distinction between the county jail and the prison is how long you are going to be there and how serious the offense was that put you there; he felt there was a big difference between the county jail and the prison; and he felt that it was a good amendment.

REPRESENTATIVE KEYSER indicated that if a person had committed one crime that got him placed in a city jail, then he killed another person in the city jail, then he could be given the death penalty.

REPRESENTATIVE ADDY noted that the Coleman case really doesn't apply as the language is already in the law that if someone has committed a deliberate homicide and commits a second one, he is subject to capital punishment anyway.

REPRESENTATIVE HANNAH responded that Coleman was back and forth in the county jail for quite a period of time.

The amendment passed with 11 voting aye and 5 voting no. See ROLL CALL VOTE.

REPRESENTATIVE KEYSER moved that the bill be amended on page 3, by striking lines 10 through 14 in their entirety.

CHAIRMAN BROWN indicated that they would separate the amendments. REPRESENTATIVE ADDY seconded the proposed amendment on lines 10 and 11, subsection 15.

REPRESENTATIVE KEYSER commented that they are expanding the aggravating circumstances under which the death penalty may be imposed; and he did not feel that this was as aggravating as some of the other things they have had here are.

REPRESENTATIVE FARRIS noted that some poisons cause a very cruel, heinous and atrocious death.

A vote was taken on the amendment and it passed with 9 voting yes and 7 voting no. See ROLL CALL VOTE.

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CHAIRMAN BROWN stated that they would consider the amendment on page 3, lines 12 through 14 by striking the entire subsection 16. The motion was seconded by REPRESENTATIVE FARRIS.

REPRESENTATIVE KEYSER emphasized that if a person is killed because of his race, that that would be pretty hard to prove that this was the motivating force behind what had happened; and he felt that the rest of the sections would pick up anything that is going to be under sex, race, color, religion, or national origin.

REPRESENTATIVE HANNAH asked where is this covered in the rest of the section if a Klu Klux Klan individual shot a black man.

REPRESENTATIVE KEYSER replied that you would have to take each case separately as to whether there was a payment involved in there; was it committed for preventing an arrest; was it part of a scheme operation that would result in the death of more than one person; that would definitely be covered if there was a move to kill off five or six whites or five or six blacks, or whatever. He just felt that they have a section to cover this.

A vote was taken on the amendments and it passed with REPRESENTATIVE HANNAH, REPRESENTATIVE RAMIREZ, REPRESENTATIVE CURITSS, REPRESENTATIVE EUDAILY, REPRESENTATIVE DAVE BROWN and REPRESENTATIVE DAILY voting no.

REPRESENTATIVE KEYSER moved that the bill DO PASS AS AMENDED.

REPRESENTATIVE EUDAILY wondered why on page 2, line 7, they do not have public officials in there instead of just police officers or firefighters; and he asked about all the other people who work for the government agencies.

REPRESENTATIVE ADDY responded that he felt that both of those individuals perform highly essential functions and if you try to broaden it any more than that, it will break up into the same argument they had in subsection 8 concerning any governmental function.

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REPRESENTATIVE EUDAILY asked about subsection 11, wherein it refers to explosive devices.

REPRESENTATIVE HANNAH noted that some of these are coming from problems that have been in other areas such as Washington, D.C., where they have had numerous riots, or Detroit, where they have had racial riots.

REPRESENTATIVE KEYSER indicated that he felt there was a great need for that section to stay there as there is more and more use of destructive devices.

REPRESENTATIVE KEYSER stated that this bill boils down to what a person's personal beliefs are in connection with the death sentence.

A vote was taken on the DO PASS AS AMENDED motion. The motion carried with 10 voting yes and 7 voting no. See ROLL CALL VOTE.

REPRESENTATIVE KEYSER moved that the meeting be adjourned at 11:50 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

February 9, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **494**

~~First~~ reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A PERSON MAKING
AN ARREST TO BRING THE ARRESTED PERSON BEFORE A JUDGE OF THE
COUNTY NEAREST TO THE COUNTY IN WHICH THE WARRANT WAS ISSUED
IF THE ISSUING JUDGE IS ABSENT OR UNABLE TO ACT; AMENDING
SECTION 46-7-101, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **494**

~~DO NOT PASS~~ DO NOT PASS

STANDING COMMITTEE REPORT

February 9, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **507**

~~First~~ reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING
TO THE OFFICE HOURS AND FEES OF JUSTICES' COURTS AND TO THE
COMMENCEMENT OF ACTIONS IN AND REMOVAL OF ACTIONS FROM
JUSTICES' COURTS; AMENDING SECTIONS 3-10-208, 25-31-112,
25-35-601, AND 25-35-605, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **507**

DO PASS

STANDING COMMITTEE REPORT

February 9, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **619**

~~First~~ reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A LANDLORD TO
TERMINATE A TENANCY ON 3 DAYS' WRITTEN NOTICE IF THE TENANT
DAMAGES OR REMOVES PART OF THE PREMISES; AMENDING SECTION
70-24-422, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **619**

DO PASS

STANDING COMMITTEE REPORT

February 9, 19 83

MR. **SPEAKER:**.....

We, your committee on **JUDICIARY**.....

having had under consideration **HOUSE**..... Bill No. **586**.....

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII,
SECTION 11, OF THE MONTANA CONSTITUTION TO REQUIRE REMOVAL
OF A JUSTICE OR JUDGE WHO FAILS TO IMPOSE A CRIMINAL
SENTENCE IN THE MANNER PRESCRIBED BY LAW."

Respectfully report as follows: That..... **HOUSE**..... Bill No. **586**.....

DO NOT PASS

~~DO NOT PASS~~

STANDING COMMITTEE REPORT

February 10, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 471

~~First~~ reading copy (~~white~~)

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE POSITION OF REFEREE IN CERTAIN JUDICIAL DISTRICTS; PROVIDING FOR THE APPOINTMENT, QUALIFICATIONS, TERM, AND SALARY OF A REFEREE; PROHIBITING A REFEREE FROM MEMBERSHIP IN THE JUDGES' RETIREMENT SYSTEM; DEFINING THE PROCEDURE FOR ASSIGNING CASES TO A REFEREE AND THE TYPES OF CASES THAT MAY BE ASSIGNED; PERMITTING LITIGANTS IN CONTESTED CASES TO REQUEST A REVIEW HEARING ON A REFEREE'S RECOMMENDATIONS; REQUIRING A DISTRICT COURT JUDGE TO REVIEW ALL RECOMMENDATIONS OF A REFEREE; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 471

BE AMENDED AS FOLLOWS:

1. Page 1, line 20.

Strike: "shall"

Insert: "may in its discretion"

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

February 10, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **468**

~~First~~ reading copy (white))
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO SPEED THE PROCESS OF FINAL CRIMINAL CONVECTIONS BY REQUIRING THE DISMISSAL OR FELONY CHARGES NOT PROSECUTED IN A TIMELY MANNER, BY REDUCING THE TIME REQUIRED FOR CERTAIN ACTS TO BE TAKEN IN CRIMINAL APPEALS, BY SETTING A LIMIT OF 70 DAYS ON EXTENSIONS GRANTED BY THE SUPREME COURT WHEN A PARTY FAILS TO MEET A PROCEDURAL DEADLINE; AND BY ELIMINATING EXCEPTIONS TO THE WAIVER OF ISSUES NOT RAISED IN PETITIONS FOR POSTCONVICTION RELIEF; AMENDING SECTIONS 46-13-201, 46-20-311, 46-20-312, 46-20-405, AND 46-21-105, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **468**

BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "THE"

Strike: "TIME REQUIRED FOR CERTAIN ACTS TO BE TAKEN"

Insert: "AMOUNT OF TIME BY WHICH THE TIME PERIOD FOR TRANSMISSION OF THE RECORD MAY BE EXTENDED"

2. Title, line 9.

Following: "COURT"

Insert: "AND"

Following: "BY"

Strike: "REQUIRING"

Insert: "PROVIDING THAT"

XXXXXX
DO PASS

(2 of 2)

19.....

3. Title, lines 11 through 13.

Following: "DEADLINE;" on line 11.

Strike: "AND" on line 11 through "RELIEF;" on line 13.

4. Title, line 14.

Following: line 13

Strike: ",46-20-311,"

Insert: "AND"

Following: "46-20-312,"

Strike: "46-20-405 AND 46-21-105"

5. Page 2, line 12.

Strike: Section 2 in its entirety.

ReNUMBER subsequent sections.

6. Page 4, line 18.

Strike: Section 4 in its entirety.

ReNUMBER subsequent sections.

7. Page 5, line 22.

Following "supreme court"

Strike: "shall"

Insert: "may"

8. Page 5, line 24.

Strike: Section 7 in its entirety.

ReNUMBER subsequent sections.

9. Page 6, line 12.

Following: "Sections"

Strike: "5 and 6"

Insert: "3 and 4"

10. Page 6, line 14.

Following: "sections"

Strike: "5 and 6"

Insert: "3 and 4"

AND AS AMENDED

DO PASS

February 10, 19 83

MR. **SPEAKER:**We, your committee on **JUDICIARY**having had under consideration **HOUSE** Bill No. **584**

~~First~~ reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE AGGRAVATING
CIRCUMSTANCES UNDER WHICH THE DEATH PENALTY MAY BE IMPOSED;
AMENDING SECTION 46-18-303, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **584****BE AMENDED AS FOLLOWS:**

1. Page 1, line 15.

Following: "facility"Strike: ", a county jail, or a city jail"

2. Page 1, line 19.

Following "of"

Strike: line 19 through "person" on line 20Insert: "another deliberate homicide"

3. Page 2, following line 7.

Strike: subsection (7) and (8) in their entirety,

Renumber subsequent subsections.

XXXXXX
DO PASS

February 10, 1983

4. Page 3, following line 9.
Strike: subsections (15) and (16) in their entirety
Renumber subsequent subsection.

AND AS AMENDED
DO PASS

	Date: 2/9 No: HB 468 Do Not Pass	Date: 2/9 No: HB 584 Keyser Am. (Pg. 1, Lines 15 & 16)	Date: 2/9 No: HB 584 Keyser Am. Sub-section 15	Date: 2/9 No: HB 584 Do Pass As Amended	Date No:	Date No:	Date: No:
BROWN, Dave	yes	yes	yes	yes			
ADDY, Kelly	yes	yes	yes	yes			
BERGENE, Toni	no	yes	yes	no			
BROWN, Jan	yes	yes	yes	no			
CURTISS, Aubyn	no	yes	no	yes			
DAILY, Fritz	no	no	no	yes			
DARKO, Paula	yes	yes	no	no			
EUDAILY, Ralph	no	no	no	no			
FARRIS, Carol	yes	yes	yes	no			
HANNAH, Tom	no	no	no	yes			
IVERSON, Dennis	no	yes	yes	yes			
JENSEN, James	yes	---	---	no			
KENNERLY, Roland	---	---	---	---			
KEYSER, Kerry	no	yes	yes	yes			
RAMIREZ, Jack	no	no	no	yes			
SCHYE, Ted	---	no	no	yes			
SEIFERT, Carl	---	---	---	---			
SPAETH, Gary	yes	yes	yes	yes			
VELEBER, Dennis	yes	yes	yes	no			
	8-yes 8-no	11-yes 5-no	9-yes 7-no	10-yes 7-no			

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HOUSE BILL 664

DATE Feb. 9. 1983

SPONSOR Curtiss

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

1 HOUSE JUDICIARY COMMITTEE
BILL HOUSE BILL 619 DATE Feb. 9, 1983
SPONSOR Hannah

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA LANDLORD'S ASSOCIATION, INC.

312 MOORE LANE
BILLINGS, MONTANA 59101

Exhibit A
HB 619
2/9/83

Reference House Bill 619

Mr. Chairman-----Members of the Judiciary Committee

I am Ralph Lewis, State Vice President and lobbyist for the Montana Landlord's Association.

First, I would like to state that I am not anti tenant; they are our customers. This bill is aimed at the already bad tenant.

We definitely support this bill. Since the law has been rather hazy in this area, it is our sincere desire to see this tightened up to allow the landlord the swiftest possible eviction.

It has been quite a bone of contention with the landlords that while having a tenant under a notice of eviction, he must stand idly by and watch his property destroyed or stolen by his unhappy tenant, who quite possibly has not even paid his rent.



WITNESS STATEMENT

Name Julio E. Morales Committee On Judiciary
Address 2019 - 9th Ave. Heli. Date _____
Representing Landlords Assn. Support ☒
Bill No. HB 619 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Michael Harrington Committee On Industry
Address 1930 Highland Date 2/9
Representing Self Support ✓
Bill No. HB 619 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Cost of Maint.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

LL HB 494

Date February 9, 1983

ISOR Hannah

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

JUDICIARY

COMMITTEE:

HOUSE BILL 507

Date Feb. 9, 1983

NSOR Hannah

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HOUSE BILL 585 DATE Feb. 9, 1983

SPONSOR Hannah

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

~~JUDICIARY~~

COMMITTEE

ULL HOUSE BILL 584

Date Feb. 9, 1983

NSOR

Hannah

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit B
HB 584
2/9/83

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601



WORKING TOGETHER:

February 9, 1983

MR. CHAIRMAN AND MEMBERS OF THE HOUSE
JUDICIARY COMMITTEE:

I am Cathy Campbell of Helena, representing
the Montana Association of Churches.

We are opposed to House Bill 584 because we
are opposed to the death penalty.

Historically the use of the death penalty
has discriminated against the poor and racial
minorities. There is no conclusive evidence
to show that the death penalty is a deterrent to
crime.

We are opposed to capital punishment and
ask the defeat of this bill.

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls

Roman Catholic Diocese
of Helena

United Church
of Christ
Montana Conference

United Presbyterian Church
Glacier Presbytery

United Methodist Church
Yellowstone Conference

United Presbyterian Church
Yellowstone Presbytery

Exhibit C

2/9/83

CAPITAL PUNISHMENT

Montana Religious Legislative Coalition
(M.R.L.C.)

1981

MONTANA ASSOCIATION OF CHURCHES
Position Paper on
CAPITAL PUNISHMENT

POSITION STATEMENT

The Montana Association of Churches opposes capital punishment and calls upon the Montana Legislature to abolish the death penalty.

SUPPORTING STATEMENT

We believe that laws mandating or permitting the death penalty are often an expression of a society seeking retribution in the face of increasing violence. We feel that compassion and reconciliation are more positive values for the State to promote than are retaliation and rejection, which capital punishment often represents.

We do not wish to ignore violent crime, nor condone it, but we believe that capital punishment sometimes masks desire for retribution and that retribution is not necessarily justice.

Historically the use of the death penalty has discriminated against the poor and racial minorities.

The finality of capital punishment is such that errors and miscarriages of justice are impossible to correct once the sentence has been executed.

There is no conclusive evidence to show that the death penalty is a deterrent to crime.

Therefore, we seek methods of dealing with violent crime which are consistent with the Gospel's vision of respect for life, and Christ's message of God's redemptive love.

Montana Religious Legislative Coalition
(M.R.L.C.)
P.O. Box 1708
Helena, Montana 59624

MONTANA ASSOCIATION OF CHURCHES
POSITION - 1981

CAPITAL PUNISHMENT

Other M.A.C. Position Papers:

Environment and Land Use
Government - Institutions (Us and Them)
Tax Exemption
Victims of Crime Compensation
Released Time for Religious Education
Legislating Morality
Welfare and Financial Support
M.R.L.C. Introduction and History
Energy and Environment
Gambling
Home Health Care
Funding of Conciliation Courts
Pre-marital Counseling for Minors
Pornography
Corrections
Traffic Safety

**Member Units of the Montana Association
of Churches**

American Baptist Church
American Lutheran Church
Christian Church (Disciples of Christ)
Episcopal Church, Diocese of Montana
Lutheran Church in America
Roman Catholic Church -
Diocese of Great Falls
Diocese of Helena
United Church of Christ
United Methodist Church
United Presbyterian Church -
The Presbytery of Glacier
The Presbytery of Yellowstone

Single Member Congregations
(non-voting)

Christ's Church On The Hill, Great Falls
Holy Trinity Serbian Orthodox Church, Butte

Cover design by Marilyn McKibben, Helena

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

478

Date February 9, 1983

NSOR Hannah[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

2/9/83

EXCLUSIONARY RULE

"We should be mindful that while the judge-made sanction supports the right of the individual to be free from wrongful invasion by the State, it tends to deny him protection from grievous invasion by the criminal. For unless we can assume that offenders set free by suppression of patent proof of their guilt will not resume a criminal course, we must recognize that the pain of the sanction of suppression will be felt, not by some abstraction called the 'police' or 'society,' but by tomorrow's victims, by the innocent who more likely than not will be the poor, the most exposed and the least protected among us. Nor can we fail to note that while the sanction supports the high value inherent in freedom from unwarranted search, yet in another aspect it works against public morality because the suppression of the truth must tend to breed contempt for the long arm of the law. Such are the stakes, and it is in their light that the unreasonableness of a search must be measured."

State v. Davis, 231 A.2d 793 (1967).

"I do not profess to know all the reasons, but developments in recent years seem to have led some of us to idealize the defendant in a criminal case and cloak him with attributes which are not his. The grandeur of the common-law protections and those of our Bill of Rights seem to have rubbed off on the accused in some fuzzy process which is emotional rather than intellectual. It is not necessary to make a hero out of every defendant in order to afford him status and dignity as an individual human being entitled to certain rights. The noble aspects of our conception of criminal justice can be maintained without having every defense counsel envisage himself as a white knight in shining armor out to slay fascist-minded prosecutors and their witnesses."

American Criminal Law Quarterly, Fall 1966, "Standards of Conduct for Prosecution and Defense Personnel; A Judge's Viewpoint" by Judge Warren E. Burger, U.S. Court of Appeals, District of Columbia Circuit.

Exhibit D
HB 170
2/9/83

Proposed Amendments to HB ~~100~~ 170

Page 1, Following Enacting clause,

Strike: Section 1 in its entirety

Insert: Section 1. Section 53-24-303, MCA is amended to read:

53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) If the facilities described in subsections (1) through (5) are not readily available, other reasonable measures consistent with the intent of this section may be taken.