

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 12, 1989,  
at 8:05 a.m.

#### ROLL CALL

Members Present: All members were present

Members Excused: None.

Members Absent: None.

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

Announcements/Discussion: None.

#### HEARING ON HOUSE BILL 59

Presentation and Opening Statement by Sponsor: Rep. Spaeth, House District 84 stated that this bill is basically an internal matter for the State Bar of Montana. They are given the responsibility by order of the Supreme Court to investigate applicants to take the State Bar, their character and fitness in becoming practicing attorneys in the State. One of the responsibilities of the State Bar Committee is to check out the criminal history of applicable attorneys whereas a legislative allowance is needed to obtain this investigative information. Rep. Spaeth proposed amendments to HB 59 which are listed as EXHIBIT 1.

List of Testifying Proponents and What Group They Represent:

Annie Bartos, State Bar of Montana

List of Testifying Opponents and What Group They Represent:

Peter Funk, Department of Justice

Testimony:

Annie Bartos, in favor of HB 59 stated that in 1986 the Montana Supreme Court established by order the Committee on Character and Fitness which acts on behalf

of the Supreme Court to investigate the moral character and fitness of each applicant who wants to be licensed in the State of Montana. The committee has attempted to use the FBI to process fingerprints through the national crime information center which records all individuals offenses and convictions within the country. The FBI would not permit the State Bar to use this procedure because there was not a statute in the State which permitted those fingerprints to be processed. House Bill 59 would permit the FBI to use this procedure. Ms. Bartos requested the committee DO PASS House Bill 59 and that it would certainly promote the integrity of our legal profession in Montana.

Peter Funk appearing before the committee, not in opposition to HB 59, but asking the committee to request a fiscal note on this legislation because of the impact it will have on the Dept. of Justice due to the fingerprinting procedures. He asked that the fiscal implication of this bill be investigated for the benefit of the Dept. of Justice before the bill is passed.

Questions From Committee Members: Rep. Gould questioned Mr. Funk as to the attorneys giving the Dept. of Justice \$5.00 for each request for fingerprints and wanted to know if that amount sufficiently covers the cost. Mr. Funk responded by admitting that he was not aware that the State Bar was paying that amount. He said it was not made clear to him by the Dept.'s Law Enforcement Services Division, but that he could certainly get the information and reply back to the committee.

Rep. Addy asked of Mr. Funk to provide for the committee the cost data of the fingerprinting so as the committee would not have to wait for a fiscal note to be submitted. Mr. Funk stated that he thought he could get the information that same day and would contact John MacMaster with the figures.

Closing by Sponsor: In closing, Rep. Spaeth stated that he had no problem with a fiscal note, but was not sure if there was a need for it. This bill is primarily oriented towards getting information from the FBI. Presently they are getting the information from the Dept. of Justice in which they pay them \$5.00 for every request that they send to them. Rep. Spaeth stated that while this bill may not seem to be a very important bill to a lot of people, it is however an important bill for the regulation of the practice of law in the State to ensure that we don't have people practicing law with a criminal background.

DISPOSITION OF HOUSE BILL 59

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 59.

HEARING ON HOUSE BILL 70

Presentation and Opening Statement by Sponsor: Rep.

Driscoll, House District 92 began by stating that HB 70 changes the procedures for people who wish to obtain a permit for a concealed weapon. The permit system in Montana has been on the books for years, as presently the judge issues the permit. There is no criteria, it is simply upon how that particular judge feels about the person who is applying for the permit. This bill makes it a subjective test of whether or not the applicant is qualified to carry a concealed weapon. Rep. Driscoll stated that the number of people who actually want a permit to carry a concealed weapon is not great, but those people that want it should be allowed to have it.

List of Testifying Proponents and What Group They Represent:

Gary S. Marbut, Vice President of the Montana Rifle and Pistol Association  
Brian Judy, National Rifle Association  
Stan Frasier, Self  
Bill Bigelow, National Rifle Association  
Terry Smith, Montana Rifle and Pistol Assoc.,  
Yellowstone Rifle Club  
Vito Ciliberti, Self  
Duane Curtis, Flathead Valley Training Officer  
Judy Woolley, Judy's Comp. and Carry-Plains  
Alfred Elwell, Montana Weapons Association  
Fred Cougill, Golden Valley County Sheriff  
Charles Woolley, National Rifle Association  
Representative Robert Clark, Ryegate

List of Testifying Opponents and What Group They Represent:

Rick Later, Mont. Sheriffs and Peace Officers Association  
Bill Ware, Helena Chief of Police and Montana Assoc. of Chiefs of Police  
Barry Michelotti, Cascade County Sheriff and Montana

Peace Officers Association  
Gregory Hintz, Missoula County Sheriff's Dept.  
Gary Franklin, Flathead County Undersheriff  
Tim Solomon, Hill County Sheriff  
Captain Bill Fleiner, Lewis and Clark County Sheriff  
Tom Harrison, Montana Sheriff's and Peace Officers

Testimony:

Gary S. Marbut, in favor of HB 70 presented to the committee written testimony (EXHIBIT 2) of his correspondence to Montana Sheriffs, and 10 proposed amendments for the committee to review (EXHIBIT 3).

Brian Judy submitted to the committee a written testimony voicing his support of HB 70 (EXHIBIT 4), accompanied by newspaper clippings which document quotes from Florida and New Hampshire Law Enforcement Agencies.

Stan Frasier, referring to our current system as a "mess", stated that he feels this law is something that the judges don't want to deal or be bothered with. He feels that trying to obtain a permit for a concealed weapon under the current law is a bureaucratic runaround. Generally the judges issuing these permits follow the recommendation of the sheriff or the chief of police who continually keep denying any permits from being issued.

Bill Bigelow, a resident of Big Timber, Montana and employee of the National Rifle Association (NRA) stated that what his job entails is to deal with the 22,000+ members of the NRA who reside in the State of Montana and assess what their needs, desires and wishes are as they relate to firearms and legislation. Mr. Bigelow listed incidents as to people who have been threatened that would benefit from the concealed weapon act if it were passed. Mr. Bigelow also addressed the committee with a letter (EXHIBIT 5) from an issuing judge to an already approved permit holder that was renewing his permit. Mr. Bigelow believes that Montanan's are entitled to equal access under the law. He sees it as an American principle.

Vito Ciliberti stated that he would neither apply for a permit nor have the need to, but that the concept of "need" must be looked at, at what constitutes good government. He feels that the concept of arbitrary and capricious application of the law is one aspect of poor government in Montana, especially in this specific instance. Mr. Ciliberti referred to an article he had read by Judge Arnold Olson, stating that his perception

of the law, is that it was written as such that an honest average citizen could get a permit without a lot of undue hassle. Mr. Ciliberti stated that in practice this has not been the case. Some means is necessary for people to be able to defend themselves should the need arise as a last resort.

Judy Woolley, in favor of revising the concealed weapon law, feels that the only way to protect herself as a woman would be with a gun. The only socially acceptable manner to carry a gun and have it available should there be a need for it is through concealment. She stated that women are more often victims of crime and therefore have a greater need for the revision of this law. She feels that a gun is the only means of equalizing the physical difference between an unsuspecting female and an aggressive man. Mrs. Woolley stated that when a woman can walk with confidence knowing that she can take care of herself in most situations, she will look less like a target and greatly decrease her risk of becoming a victim. Mrs. Woolley continued by stating that we all have a right to protect ourselves, but no one of us can predict when we will need to do so.

Terry Smith, Duane Curtis, Alfred Elwell, Fred Coughill, Charles Woolley, and Rep. Robert Clark all spoke briefly in favor of HB 70 as amended and agreed with the above mentioned proponents.

Walter Hammermeister submitted a written testimony in which he wanted to be listed as a proponent of HB 70 (EXHIBIT 6).

Speaking in opposition to HB 70, Rick Later of Beaverhead County in Dillon, Montana stated that the people of his county felt that this bill would be quite a liability for the counties. His concern was that if an innocent victim was injured as a result of an offender with a concealed weapon permit, the innocent victim would sue the county.

Bill Ware, on behalf of the city of Helena requested to go on record in opposition to HB 70, submitting a written testimony shown as EXHIBIT 7.

Barry Michelotti stated that he opposes HB 70, even in its modified form for the reason of the discretion of law enforcement officers. Under this particular bill, law enforcement agencies would be mandated to give a concealed weapons permit to people that are considered mentally incompetent, or that have been adjudicated as

a drug or alcohol abuser or dealer. Mr. Michelotti asked that the bill be amended so as to give law enforcement the discretionary method that is needed to enforce all state laws as well as apply it to this particular statute.

Greg Hintz stated that issuing a concealed weapons permit is of as much concern to him as issuing a Montana drivers license. There is no provision in this particular bill which would provide for a written test or mandatory qualifications reducing the liability for those people who would be issued these permits as well as the safety of those people who may be in the vicinity.

Captain Bill Fleiner spoke of the concealed weapon act as it stands in the states of Washington and Florida and the difficulty in which they have encountered due to the passing of the law. He feels that if Florida is going to be used as an example, then it would be beneficial to take Florida's situation, improve upon it, take the time to work with the local jurisdictions, find out what the particulars of the problems are and improve upon what they have. Consequently, this will better what the State of Montana is trying to do. Captain Fleiner feels, however, if that option is not acceptable he recommends that the bill be killed. One other alternative would be to repeal the entire statute and make a listing of those people who would not be allowed to apply for or obtain a permit. He feels that serious consideration should be taken into account from the perspective of intelligence information that is gathered by law enforcement agencies. Especially in the larger cities of the State. First, the way the process is set up in this existing statute, it is better than the freedom of information act because all a person has to do is go to the District Court and he is either approved or denied. Secondly, adjudicated. On a regular basis in Lewis and Clark County, people are put into protective custody and they do not go through the court process. Captain Fleiner commented that in high risk situations should the discharge of a firearm occur, who all is going to be affected by that?

Tom Harrison began by stating that he hoped a fiscal note would be requested. He expressed his concern was regarding people with mental disabilities. This bill provides that a person on a voluntary commitment to Warm Springs, serving a 90 day evaluation can obtain a permit upon their release. This bill has no provision for denial.

Gary Franklin and Tim Solomon expressed to the committee their opposition to HB 70 as is discussed in the above testimonies.

Questions From Committee Members: Rep. Hannah stated that several of the sheriffs and peace officers indicated that they were concerned about drug dealers and other offenders. He questioned Mr. Harrison if the peace officers seriously think this bill will have any effect on somebody who is knowingly violating the law? Mr. Harrison answered that he suspected a known or actual violator would probably not be effected.

Rep. Daily questioned Mr. Marbut if he would still support the bill if they inserted a clause in the bill that gave the peace officers some professional discretion to deny a permit. Mr. Marbut responded that he could not answer yes or no to that question. He stated that they do have a lot of faith in law enforcement, however, they have also been burned on discretion.

Rep. Eudaily referring to the bottom of Page 2 of the bill, questioned the term "legally possessed firearm". Does this apply to a sawed-off shot gun or machine gun then? Mr. Marbut stated that if you could conceal a shot gun underneath your coat then it would be acceptable under this proposal. As far as sawed-off shot guns, they are illegal in Montana. Machine guns are also illegal unless the person has been issued a special permit. The intent was to make sure that it was for any lawfully possessed weapon and wasn't exclusive to any particular type of weapons.

Rep. Knapp asked if it was the intention of this bill to grant a concealed weapon permit to a person that has had no training in self defense or safety? Mr. Judy stated that there are two different aspects that come into play: 1.) The safety use of handling firearms, and 2.) Accuracy. He stated that he would be willing to discuss and possibly address this subject into the bill if so desired.

Rep. Aafedt pointed out when issuing the original permit to carry a concealed weapon it is valid for a 5 year period. His concern is if there are any precautionary measures taken if within this 5 year period should the individual have a problem and there be a need to revoke his permit. How would they go about rescinding this persons license? Mr. Marbut responded by pointing out that the initial issuing period is 2 years. This period gives law enforcement officials an opportunity

to evaluate the performance of an individual under the permit system before they go to a longer renewal. He continued by stating that any offense that is committed by a permittee that is grounds for denial is also grounds for revocation. Also, in order to make sure that law enforcement is familiar with the permittee, if he decides to reside in the county where the permit was originally issued, he can get a renewal assuming that law enforcement people have a chance to review his past activities. If this person moves to a new county he must get another initial background check, pay the \$75.00 fee and go through the entire process again for the first 2 year issuance.

Rep. Eudaily questioned Mr. Ware how professional as compared to a full time chief of police can the people of a small community be with the challenge that is put before them in the proposed bill. How would they possibly find the time to do the background checks that are necessary to make this program a success? Mr. Ware stated that the small town chiefs would probably have to depend quite heavily on the local county seat chief or sheriff. Regarding the issue of time, it would be difficult for them to accomplish the background check on their own.

Closing by Sponsor: Rep. Driscoll stated that the opponents seem to insinuate that the only people that have guns on them are people with permits. Do all criminals go into the police station and say "please give me a permit", the police say no, and therefore the criminal throws away his gun? What is wanted is a subjective test to avoid judges who personally do not believe that no one should have a gun. Law abiding citizens should have the privilege of a permit if they so desire one, and that same privilege denied to criminals.

#### DISPOSITION OF HOUSE BILL 70

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 70.



ADJOURNMENT

Adjournment At: 10:59 a.m.

  
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REP. DAVE BROWN, Chairman

DB/je

1008.MIN

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 12, 1989

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

Amendments to House Bill No. 59  
Introduced Copy

Requested by Rep. Spaeth  
For the Committee on the Judiciary

Prepared by John MacMaster  
January 11, 1989

1. Page 2, lines 4 and 5.

Strike: ". To" on line 4 through "agency" on line 5

Insert: "and"

2. Page 2, line 8.

Following: "federal"

Insert: "(to the extent allowed by federal law)"

# Gary S. Marlett

August 16, 1988

ENCL 2  
DATE Jan. 12, 1989  
HB 70-Rep. Driscoll

To All Montana County Sheriffs

Dear Sheriff:

The Montana Rifle and Pistol Association is the Montana arm of the National Rifle Association, which has 22,000+ members in Montana. The MRPA represents gun owners and shooters in Montana. The MRPA has established a firm legislative agenda for the 1989 legislative session. A description of the issues in our legislative agenda is enclosed for your consideration.

We would be pleased to receive any comment you may have to offer about any of these issues, but we want to actively solicit your comments on our intent to restructure the process for obtaining permits to carry concealed firearms in Montana.

Currently, as you may know, Montana law gives total discretion to district court judges about whether or not a permit is issued. Some judicial districts do not issue permits for any reasons. Many require a variety of tests, qualifications or reasons before they will issue permits. A few will issue permits, upon request, to most any honest, law-abiding citizen.

We are aware that law-enforcement personal would prefer known violent people, criminals, and other undesirables not be carrying concealed weapons, with or without permits. We agree. However, the current process, which is set up to restrict access to permits by undesirables, sweeps in many responsible, law-abiding citizens.

We believe that if a criminal or intended criminal wants to carry concealed, he will not seek a permit - he will just stuff a gun behind his belt and walk out the door. Conversely, a responsible, law-abiding citizen may be forced to go unarmed and without protection because he or she cannot obtain a permit and he or she respects the laws enough to comply with them. This places the law-abiding citizen at a disadvantage and at the mercy of the would-be criminal.

The states of Washington and South Dakota have laws which basically allow any law-abiding citizen to obtain a permit to carry a concealed firearm, as a simple administrative procedure. There are about 280,000 permits issued in Washington. There is reason to believe that this fact is known among career criminals, and that career criminals actively avoid Washington for fear of accidental and costly confrontation with an armed citizen.

I would like to list the major features of our proposal for a new permit law in Montana. I hope you will take time to think through these provisions and comment on the concept, the provisions, and about how the MRPA's proposal can be compatible with the goals of the Montana law-enforcement community.

1. We propose that adult Montana residents, without a history of substance (alcohol and controlled substances) abuse, without a felony record, without a history of violence, and not adjudicated mentally incompetent should be able to obtain a permit to carry a concealed firearm, as an administrative procedure under a statewide, uniform process, with no other justification than the desire for personal protection.
2. We propose that the applicant sign an application form stating his/her compliance with these terms and that false representation on the form carry a stiff penalty.
3. We propose that local law enforcement agencies conduct a "background check" of the applicant. We are undecided whether this check should be a simple NCIC computer scan, or a thorough FBI fingerprint check. We lean towards the easier NCIC check, coupled with the stiff penalty for false representation on the application form. Perhaps the Sheriff should have authority to check the fingerprints of any applicant with the FBI, without delaying issuance of the permit while awaiting fingerprint check results.
4. We propose that the applicant should pay a standard fee that would cover the entire cost of processing the initial application, so the applicant pays - not the general taxpayers. A renewal would have only a minor fee.
5. We propose that the permit should be valid for a period of two years, and renewable for five-year terms.
6. We are willing to agree to local maintenance of fingerprints and photos of applicants.
7. As is currently the case, we assume that permits would be valid throughout Montana.
8. We propose that someone obtaining a permit be required to carry written proof of permit (wallet card) at any time he or she should be exercising their permit (perhaps with a provision that the person is not "permitted" unless they are also carrying the permit proof, but that having been issued a permit is an affirmative defense for not having been in possession of the permit while carrying).
9. We propose that, if any person exercising a permit (carrying a firearm with a permit) is accosted or individually approached by any uniformed law-enforcement officer (i.e., traffic stop, etc.), the permitted and carrying person has an affirmative responsibility, perhaps under penalty for failure, to inform the law-enforcement officer that he or she is exercising their permit (carrying).
10. We are undecided whether these permits should be issued by the Sheriff, District Judge, Clerk of the Court or some other authority.
11. We propose that current permit holders be "grandfathered" in and only need sign an application form for renewal and pay a renewal fee.

12. We are willing to discuss a residency requirement for permit application if such a requirement can be legally defended (perhaps simply reference the 6-month residency requirement for a resident hunting license found at M.C.A. 87-2-102).

13. We think it desirable that every applicant have a minimum understanding of the Montana laws relating to allowable use of lethal force, if such knowledge can be delivered and tested without undue complication and with statewide uniformity.

14. As a practical and philosophical matter, we believe that permits should supercede local ordinances and resolutions, and local judicial orders, that prohibit bringing firearms into local public buildings or onto public property.

15. We are aware of the current requirement that each applicant for a permit produce one or more letters of reference indicating the applicant's good moral character and peaceable disposition. We have some concern about who would be acceptable authors of such letters if this provision were retained. We propose that the applicant simply list two personal references, residing in the county where application is made, who the issuing authority may contact.

16. We are willing to discuss excluding from permits any class or group of people who are "undesirables" from a law-enforcement perspective, and who can be described with a legally-defensible definition and exclusion (dishonorable military discharge, commitment to a mental institution, etc.).

17. We support revocation of permits for "cause", but are undecided what circumstances should warrant sufficient cause (Conviction of a violent crime, DUI, conviction of controlled substance possession, adjudicated incompetent, committed to a mental institution, etc.). Generally, we support revocation for causes that would preclude original issuance of a permit. We believe that a person whose permit is revoked for cause must be notified of the revocation and cause.

18. We propose that any denial of issuance of a permit must contain a statement from the issuing authority specifying the cause for which the permit was denied.

19. We propose that if a permit holder should lose his or her permit, or should change residence, that he or she should be required to notify the permit issuing authority within 30 days.

20. We are willing to discuss the possibility that applicants without firearms experience be required to demonstrate knowledge of safe firearm use.

21. Some question has been raised about any potential liability of the issuing authority for acts or omissions of the permit holder. We believe

this would not be a problem in a legislatively-mandated permit program; however, if there is sufficient concern about this issue, we would consider seeking statutory exemption from personal liability of the issuing authority for any acts or omissions of the permit holder.

22. We believe that any permits should be valid for any lawfully-possessed weapon or firearm.

23. We propose that an applicant MUST be issued a permit OR given written notification of denial, together with cause for denial, within 30 days of complete application. An appeal of denial should be designated, but we are undecided what form or direction an appeal should take.

24. We believe strongly that a permit or written notification of denial must be issued to an applicant within 30 days of completed application.

We understand that many of the terms used in this description can benefit from further definition. We ask for your help in defining terms and concepts like "history of violence", "history of substance abuse", "Montana resident", and others.

The MRPA does not have the administrative resources to query every District Judge, County Attorney, and Police Chief in Montana about this issue. If you desire, please feel free to consult these officials in your county about our proposed revision of the permit issuance process. We welcome comment from anyone who has positive or constructive ideas.

We are determined to press this measure in the 1989 legislative session, but we want the final measure to be as responsible, well-reviewed and suitable as possible. We need your critique.

Thank you very much for your assistance.

Sincerely yours,

Gary S. Marbut, Vice President  
Montana Rifle and Pistol Association  
Chairman, Public Relations Committee

Enclosure, MRPA 1989 Legislative Agenda

cc: All Montana County Sheriffs  
Various Legislators

*Gary S. Marbut*

EXHIBIT 2  
DATE 1-12-89  
HB 70

December 5, 1988

TO: All Montana County Sheriffs and others.

Dear Sheriff,

As Vice President of the Montana Rifle and Pistol Association, I sent you a letter last August 16th, informing you that the MRPA intends to seek legislative revision of the process by which citizens obtain permits to carry concealed weapons in Montana. I asked then, and I ask now, for your comment on this proposal.

As I mentioned before, the current process to obtain permits is only the same in those many counties that flat do not issue permits, for any reason. Otherwise, every county or judicial district has a different process and procedure.

We seek a standardized process that is the same in every county, that weeds out the "bad guys", and that allows the "good guys" to obtain permits after due scrutiny. After a lot of discussion about such a process, after considerable input from law enforcement personell and judges, and after considerable work with the bill drafters at the Montana Legislative Council, we have come up with a near-final proposal which, we believe, meets the needs of all concerned. A copy of that proposal is enclosed for your review and comment.

Let me mention some of the features of the proposal. Persons would not be eligible to even apply for a permit if they were not citizens of the U.S., Montana residents of 6 months or more, and of age; or if they had been convicted of a federal or state felony in any state, if they had been convicted of assault, resisting arrest, domestic abuse, disorderly conduct or DUI within three years of application; if they were a known or adjudicated drug or alcohol abuser; or if they were adjudicated mentally incompetent. A person's permit could be revoked if they later met any of these conditions or if they were using their permit in a public place and met criteria of intoxication sufficient to meet DUI criteria.

We prefer Sheriffs and Chiefs of Police to issue the permits - we support, respect and trust law enforcement officials - while leaving district court judges as an appellate route. Sheriffs and Chiefs of Police ("issuing authorities") would be exempted from liability for any results of having issued a permit as long as they had checked state and local records to see that the applicant met the criteria for issuance. Issuing authorities would be authorized to check federal records for applicant compliance.



Sheriffs and Chiefs of Police would get \$50 for each new application to cover their processing costs (we think the applicant should pay all processing costs, not the issuing department or the general taxpayer). Issuing departments could conceivably accrue some income from issuing permits, if their costs of processing were less than \$50 each.

The final permits would be issued in card form, with photograph and signature, like a driver's license, and the permittee would be required to carry the permit on his person and to show the permit to any law enforcement officer on demand. In addition, anyone exercising a permit who is detained by a law enforcement officer (traffic stop, etc.) would be required under penalty to inform the officer that he is a permit holder and exercising his permit.

Permits would be valid for two years, on first application. This is intended to give law enforcement personnel a short period to evaluate the performance of the permittee. Renewals would be good for five years. Permits would be valid throughout the state, and valid for any lawfully possessed firearm. The Identification Bureau of the Department of Justice would keep a copy of all approved applications.

Our proposal would give Montana a law and process like that in several other states, including the state of Washington where 270,000 permits are issued. Washington law enforcement authorities report that their numerous issuance of permits has simply not been a problem because the "undesirables" will not apply - will not submit to the scrutiny of the permit application process.

This is a general overview of the proposal. Please look over the enclosed, detailed proposal and let us know if there are any major flaws in the measure, or any ways it can be improved. We want this to be a good measure, and we need your input.

Once again, we do not have the resources to circulate this proposal to every District Judge, County Attorney and Chief of Police in Montana. Feel free to copy this material and route copies to those officials in your area for further comment. You may be aware that the 1989 Legislative Session begins on January 2nd, so time grows short. This measure should be introduced early in the session.

Thanks for your interest and help. Please call or write if you have any comment or questions.

Cordially yours,

Gary S. Marbut, Vice President  
Montana Rifle and Pistol Association

Enclosure, Draft Bill  
cc: Various legislators  
Others

3  
AMENDMENT 3  
DATE Jan. 12, 1989  
HB 70-Driscoll

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered at the suggestion of the Sheriff Barry Michelotti of Cascade County (per phone call with G. Marbut).

Amendment # 1: On page 2, in Section 1, subsection (7), after line 5, add a new subsection (8) that would read: "(8) while in possession of a valid hunting license and actively hunting during an official hunting season in undeveloped areas where hunting is allowed."

Effect: The effect of this amendment is to exclude persons actively hunting from the need for a concealed weapon permit in order to be legal with a firearm "wholly or partially covered by clothing or wearing apparel" (45-8-315). It is common for hunters to hunt under circumstances where a handgun is in a hip holster and partially or wholly covered by a coat, or where a handgun is worn inside a coat in a shoulder holster in order to protect the firearm from cold, moisture, dirt and brush.

It is the intent of the MRPA and the Cascade County Sheriff that this exception would not apply during hours of darkness (disallowed hunting), in a structure (no valid hunting), in a municipality (discharge/hunting disallowed), or in an area sufficiently urbanized so as not be suitable for hunting.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered at the suggestion of the Sheriff Barry Michelotti of Cascade County (per phone call with G. Marbut).

Amendment # 2: On page 9, on line 17, after the last word "fingerprints." in, Section 2, subsection (12), add the following new sentence: "A chief of police issuing a permit shall also mail a copy of the record to the sheriff of the county."

Effect: County sheriffs would like to be able to keep track of permits issued within their jurisdiction. This amendment would insure that sheriffs are fully informed about permits issued in their counties.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is to correct a typographical error in the text of the bill printed as LC 0072/1.

Amendment # 3: On page 5, in Section 2, subsection (5), in line 15, the words "sheriff of chief" should read "sheriff or chief".

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered pursuant to the recommendation of Helena Police Chief Bill Ware (per phone conversation with G. Marbut).

Amendment # 4: On page 9, in Section 2, subsection (12), following Amendment # 2, add the following sentence: "A sheriff issuing a permit shall also mail a copy of the record to a police chief within who's jurisdiction an applicant resides."

Effect: This amendment would inform a chief of police of any permits issued by a sheriff to any persons residing within the jurisdiction of the chief's department.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered pursuant to the recommendation of Helena Police Chief Bill Ware (per phone conversation with G. Marbut).

Amendment 5 : On page 5, in Section 2, subsection (5), in line 16, in the phrase "check the appropriate local and state", the word "local" should be changed to "municipal, county".

Effect: Some concern exists among both sheriffs and chiefs of police that one might not check with the other concerning an applicant's possible record. This change would insure that each will check with the other concerning an applicant, and not just the records of his own agency.

- End -

EXHIBIT 3

DATE 1-12-89

HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered pursuant to the recommendation of the Billings City Attorney (per phone conversation with MRPA Secretary Terry Smith)

Amendment # 6: On page 8, in Section 2, subsection (11), in line 19, after the words "expiration date of the permit" and before the period, add the following new language, "on a form prescribed by the identification bureau of the department of justice".

Effect: Without this amendment, the form for a permit renewal is not specified. It is desired that a specific form be specified.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered pursuant to the recommendation of the Billings City Attorney (per phone conversation with MRPA Secretary Terry Smith)

Amendment # 7: On page 8, in Section 2, subsection (11), in line 17, after the words "A permitholder may renew a permit", add the words "if he resides in the county where the permitholder's current permit was issued and".

Effect: This amendment would require a permittee who has moved to a different county to make an initial application, instead of seeking a simple renewal. A local record check and a \$25 fee is appropriate for renewal of a permittee who has maintained residence in the county of original issuance. If a permittee is located in a different county from original issuance, let him reapply for initial issuance again so local law enforcement have an opportunity to conduct a background investigation and become acquainted with the applicant's history.

- End -



EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered at the suggestion of the Missoula Police Chief, Don Millhouse (per phone conversation with G. Marbut).

Amendment # 8: On page 8, in Section 2, subsection (10), in line 6, after the words "The fee must be collected by the", strike the words "authority issuing the permit.", and replace these words with the following: "issuing authority to which applied, upon application. The fee may be refunded upon order of the district court, at the option of the court, after a failed appeal of permit denial."

Effect: This amendment will require that the fee is payable in advance to pay for background check and application processing, but can, conceivably, be refunded if the District Court feels that refund is warranted, after permit denial and failure of appeal to the Court. The presumption is that the fee would not be refunded because it has been expended in processing the application, but refund by the Court is allowed if unusual conditions warrant. The burden is placed on the applicant to seek a Court order requiring refund.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered at the suggestion of the Missoula Police Chief, Don Millhouse (per phone conversation with G. Marbut).

Amendment # 9: On page 3, in Section 2, subsection (3)(d), after (vi), renumber (vii) to (viii) and add a new (vii) which will read as follows: "(vii) obstructing a peace officer;"

Effect: This amendment will add the offense of "obstructing a peace officer" to the list of convicted offenses within three years that will be grounds for denial of a permit.

- End -

EXHIBIT 3  
DATE 1-12-89  
HB 70

MONTANA RIFLE AND PISTOL ASSOCIATION

AMENDMENT TO HB 70

FOR HOUSE JUDICIARY COMMITTEE

NOTE: The following amendment is offered to clarify a possibly confusing provision, at the suggestion of several members of the law enforcement community (per phone conversations with G. Marbut).

Amendment # 10: On page 8, in Section 2, subsection (10)(b), on line 11, after the words "to be used exclusively for", add the words "administration of this section and".

Effect: This amendment would allow the Justice Department's \$25 share of the application fee to be used for ALL of the services they provide under the proposal, instead of just the pamphlet.

- End -

TESTIMONY FOR H.B. 70  
CONCEALED WEAPON PERMIT REFORM  
Submitted By

Brian A. Judy, NRA Northwest State Liaison

My name is Brian Judy. I am the NRA Legislative Liaison for the Northwest Region as well as a life member of the National Rifle Association. On behalf of the 20,000+ NRA members in the State of Montana, I would like to thank the Chairman and members of this committee for the opportunity to speak in support of House Bill 70, the Montana Rifle and Pistol Association's concealed weapon permit reform legislation.

House Bill 70 is a very important measure to all law-abiding Montana residents who desire the legal means to protect themselves and their families and I urge your support for the bill. There is a growing movement in this country toward providing for law-abiding citizens the ability to carry a firearm for self-defense. I am sure that each member of this committee is aware that the State of Florida recently passed legislation along the lines of House Bill 70.

In my testimony, I would like to convey to you the effects of changes similar to HB 70 in Florida and other states. Before I explain those results, let me point out the two primary reasons that law-abiding gun owners all over the United States are seeking the ability to carry concealed firearms for self-protection or, in states such as Montana which already have a permit issuance process, seeking revision of the process to provide statewide uniform and equitable issuance and to alleviate arbitrary and capricious denial of permits.

The first reason is the increasing crime problem and the unfortunate budgetary constraints under which most law enforcement agencies find themselves. Law-abiding gun owners have considerable admiration and respect for members of the law enforcement community but we also recognize the simple fact that peace officers can't be all places at all times and that more often than not, the first line of defense to avoid becoming a crime statistic will be up to the individual. In fact, a recent U.S. Supreme Court decision ruled that the responsibility of law enforcement agencies is not to protect the individual but rather to protect society as a whole.

The second reason law-abiding citizens are seeking the ability to carry concealed firearms for self-defense even in states such as Montana which already allow open carry, is increasing population and expansion of urban areas and the fact that more people are choosing to live in these densely populated areas. In many cases, it isn't realistic to require a person to strap a firearm on to their hip before going out and in population centers it is actually more responsible to carry concealed in a fashion which will not cause social alarm and intimidation.

On to real world experiences. I previously mentioned the recent legislative change in Florida and commented that most of you are probably aware of that change. Actually, every person who read a newspaper during 1987 was aware that Florida made that change because of the outrageous sensationalism that the media whipped up and their predictions that Floridians would take to the streets packing guns and get into shoot outs over every minor traffic incident.

In response to the whole Florida media flap, Hillsboro, New Hampshire Police Chief Charles Kowalski said, "Ridiculous, our permissive gun law is a great crime deterrent." New Hampshire has a concealed weapon permit issuance process almost identical to the one passed in Florida which is almost identical to House Bill 70, essentially allowing any law-abiding citizen to obtain a permit to carry. According to the 1986 FBI Uniform Crime Report, New Hampshire, with a population of about 1 million and about 40,000 outstanding gun permits, was the third safest state in the nation preceded only by North Dakota and South Dakota, both of which have permissive regulations similar to New Hampshire and Florida. Vermont, the fourth safest state according to the FBI has no gun regulation; any law-abiding citizen can carry anywhere, concealed or open, loaded or unloaded.

So what was the outcome in Florida? In the first ten months after Florida's law took effect, only one holder of a new state gun permit is known to have shot anyone. That was a cab driver who shot a would-be robber in self-defense. Police ruled the shooting a justifiable homicide -- one incident when over 34,000 permits had been issued. Law-abiding citizens who go through the trouble to secure a permit are not the people who misuse firearms; and reasonable laws allowing law-abiding citizens to obtain concealed weapon permits do not cause problems.

Florida Police Chiefs Association official Willis Booth stated, "It would appear the law is working very well." John Fuller, General Counsel for the Florida Sheriff's Association, agreed. "I haven't seen where we have had any instance of persons with permits causing violent crimes, and I'm constantly on the lookout," he added.

Experience shows that where law-abiding citizens are armed, there is a real deterrence to crime. In 1966, the police in Orlando, Florida, responded to a rape epidemic by embarking on a highly publicized program to train 2,500 women in firearm use. The next year, rape fell by 88% in Orlando (the only major city to experience a decrease that year) although not one of the 2,500 women actually ended up firing her gun.

During a 1974 police strike in Albuquerque, New Mexico, armed citizens patrolled their neighborhoods and shop owners publicly armed themselves and felonies dropped significantly.

The Montana Rifle and Pistol Association has done extensive research on the issue, acquired language from all the aforementioned states and put together very good language. After mailing drafts to law enforcement throughout the State of Montana on two different occasions, numerous comments and concerns were addressed and changes made. In fact, additional amendments will be offered today to address points that have been raised by law enforcement subsequent to the introduction of House Bill 70.

House Bill 70 has been responsibly drafted, it is good legislation, and law-abiding citizens of Montana deserve to have it passed. I urge your support for House Bill 70.

+FLA.  
Guns

# Law officials praise NH gun law call Florida uproar groundless

By June Cooper

A lot of handgun owners found it difficult to swallow the media flap a couple weeks ago about Florida's relaxed gun law.... the law is almost identical to the one New Hampshire has used for years.

"Our permissive gun law is a great crime deterrent," said Hillsboro Police Chief Charles Kowalski. "A person is a damned fool to break in or attack someone when he doesn't know whether they have a gun. He can be signing his own death warrant."

The national concern

whipped up by TV and press media was that thousands of Floridians may suddenly take to the street packing firearms and encouraging street shoot outs.

"Ridiculous," said Kowalski. "Law abiding citizens carry guns for self protection. The only time I'm worried about facing a gun is when I'm tracking a criminal. Law abiders will never be a threat."

Safety Department Commissioner Dick Flynn agreed that although New Hampshire residents are allowed to walk the streets wearing guns they don't

feel the need because there's psychological security in knowing they can.

"I'd hate to see a day like that," said Flynn, "but it's never happened here. Many people have permits which allow them to carry guns....but they don't carry them....or if they do, they're

concealed."

New Hampshire, where anyone who's 18 years old with no criminal record can get a handgun permit for \$2 a year, is the third safest state in the nation, preceded only by North and South Dakota and followed by Vermont and Maine, all of which also

Gun Law Page 13

EXHIBIT 4  
DATE 1-12-89  
HB 70

## Law officials praist NH gun law, call Florida uproar groundless

From Page 1

have permissive or no gun regulations.

The national average for gun-related assaults is 21%....New Hampshire's is only 11%. For gun-related robberies, the national average is 34%....New Hampshire's is only 17%.

While the national homicide rate, gun-related, is 9.5 per 100,000 people, New Hampshire's is 6.7.

Across the states, gun laws are basically in three categories. The first is 'easy to carry,' which includes N.H. Maine, Vt., Conn., Georgia, Alabama, Washington, Indiana, the Dakotas, Utah and now Florida.

The second category is, "open permits difficult to get." The third is so strict that almost no one can obtain a permit.

All the way through, the lenient states have much

lower rates than states in the third category. In the lenient states, gun related street robberies average 56.9 per 100,000 people....in the strictest states, they average 155.9 per 100,000 people. (Those are FBI statistics.)

In Hooksett, former Sen. Richard Riley, who owns Riley's Sport Shop, called the Florida flap, "Hokum! It's rare that a criminal goes to buy a gun to commit a crime," he said. "A criminal already has a gun or he steals it."

Riley guessed that 95% of New Hampshire's homeowners have handguns. "I don't expect Florida's problems will increase because of the new gun law....they should slowly diminish," he predicted.

Paul Blackman, statistician at the National

Rifle Association, said the National Safety Council figures show there are three times more people every year who die from choking on their food than there are people who die from gun accidents.

Over the past few years the NRA safety courses have pulled their weight as statistics show fewer accidents because the public is more aware of how to handle its guns.

Chief Kowalski was adamant about the right to bear arms. "Every citizen has the right to NOT be beaten, NOT be robbed and NOT be killed," he said. It's ridiculous for anyone to NOT be able to protect their life and property. As police we carry guns to save our heads....the citizen should have the same right."

Manchester Journal - Advertiser  
Oct. 14, 1987

# Police say concealed-weapon law has not brought rise in violence

EXHIBIT 4  
DATE 1-12-89  
HB 70

Palm Beach Post-Cox News Service

MIAMI — In the 18 months since Florida's controversial concealed-weapon law took effect, only one holder of a new state gun permit — a Miami taxi driver — is known to have shot anyone.

The solitary incident, in which the caddy killed an alleged robber in self-defense, falls far short of the fears of the gun law's critics. They had warned that the law would lead to an increase in gunplay and violent crime.

Police who have watched the law since it went into effect Oct. 1 have concluded, sometimes reluctantly, that concealed weapon permits alone have caused no noticeable increase in crime or violence.

"The minute the bill was passed, we asked all our chiefs in the state particularly alert for any cases in their jurisdiction that would give us knowledge of the fact that there was some abuse," said Willis Booth, executive director of the Florida Police Chiefs Association. "At this point, it would appear the law is working very well. There

are no horror stories that can be attributed to the passage of the law."

John Fuller, general counsel for the Florida Sheriff's Association, agreed.

"I haven't seen where we have had any instance of persons with permits causing violent crimes, and I'm constantly on the lookout," he said. "And I want the sheriffs to report any cases so we can have some ammunition if we come back

and want the law changed."

Florida International University Professor William Wilbanks, a gun control advocate, questioned whether the information gathered by the state police associations is complete.

"Unless it was collected in a routine, standard way, it is possible some incidents may have gotten lost," he said. "While I'm sure (the chiefs and sheriffs) are sincere in wanting to know what's going on ... we don't know how effectively that sincerity has been communicated to the officer on the street. There is a great danger that some of those officers don't see this as an important issue and won't ask the question about whether someone involved in a shooting had a permit."

Booth and Fuller said the information was not collected from police reports but gathered by police officials who alerted street officers across the state to report any incidents involving permit holders.

People seeking a state permit must undergo fingerprinting, submit a notarized application that has 12 questions designed to weed out people unfit to carry a gun and demonstrate their proficiency in handling a firearm. The fee is \$146.

Before the law, state licensing officials had predicted that 100,000 applications would be received by the end of the first year. Through July 14, however, Florida issued 34,122 permits, according to Marilyn Thompson, chief of the bureau of concealed weapons licensing.

Nearly 3,100 applications are pending. Only 117 people who applied for a permit have been denied — mainly because they had a criminal history or did not properly complete the paper work.

"The thing to keep in mind is a \$146 fee that is non-refundable," Thompson said. "People who know they don't meet the requirements won't apply."

The lone permit holder to shoot someone was Mark Steven Yuhr. In the early morning hours of March 4, he used his .45-caliber Colt to kill an armed ex-convict who got in his cab in Coconut Grove and allegedly tried to rob him. Police later ruled the death of Orlando Hernandez Barroso, 29, a justifiable homicide.

The killing was one of 251 gunshot deaths in Dade County between Oct. 1 and the end of June, said Veronica Melton, a forensic records supervisor at the Dade County Medical Examiner's Office. That's a 16 percent increase over the same period last year, she said.

"The fact that the crime rate murder rate has gone up is indicative of the growing drug problem, not a problem with the concealed weapons law," said National Association spokesman Mario Hammer, who received the first permit issued by the state. "The persons committing those crimes are not license holders."

FIFTH JUDICIAL DISTRICT

BEAVERHEAD COUNTY  
DILLON, MONTANA  
406-683-5841



FRANK M. DAVIS  
DISTRICT JUDGE  
P.O. BOX 149  
DILLON, MONTANA 59725

DEBBIE CASEY  
COURT REPORTER  
406-683-6137

November 5, 1986

Mr. George Michael Phelan  
Gruber Estates  
Box P  
Clancy, Montana 59634

Dear Mr. Phelan:

Since Sheriff Dawson approved your application for a permit to carry a concealed weapon, I feel compelled to issue it, contrary to the existing policy.

In December of 1985, with the approval of law enforcement in the District, the Court concluded to issue no further permits to carry concealed weapons. This policy was consistent with that adopted by most of the other judicial districts.

While there is an old statute which apparently authorizes a District Judge to issue such permits, it is contrary to Article II, Section 12, of the State Constitution, which grants a citizen the right to bear arms, but adds the phrase, "but nothing herein contained shall be held to permit the carrying of concealed weapons." Thus in issuing you a permit, I'm violating a specific provision of the Constitution which I took on oath to uphold.

The fact is, we have never found even one application which would justify carrying a weapon concealed on one's person, nor could we conceive of any reason therefor.

You can carry the weapon in your car, or your briefcase, and, in fact, carry it on your person if not concealed.



5  
DATE 1-12-89  
HB 70

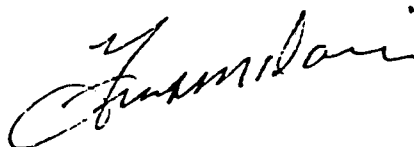
Mr. George Michael Phelan  
November 5, 1986  
Page Two

As a practical matter, if I felt that a concealed gun afforded me some sense of security, I'd carry one -- law or no law! I've never known anyone prosecuted for doing so, except some criminal using it in the commission of a felony.

In any case, you have a one-year permit for what it's worth. It will not be renewed, in the absence of a change of existing policy.

I'm sending a copy of this letter to the respective Sheriffs.

Very truly yours,



je

cc: Sheriff Tom Dawson  
Sheriff Richard Later  
Sheriff Johnny France

DATE Jan. 12, 1989

HB 70-Rep. Driscoll

Jan 9, 1989

Honorable chairman & members. of the  
House Judiciary Committee:

I am Walter Hammermeister, I  
am retired as Sheriff of Pondera County,  
after nearly 24 years with that Dept. I am  
a graduate of the F.B.I National Academy, and  
I have shot an official perfect score with  
a 4" revolver at the F.B.I shoots. On the job  
I rarely ever carried a Firearm, probably putting  
a firearm on my hip less than 6 times in 24  
years. I am NOT a member of the NRA, or any other Firearm organization.

I respectfully request your support  
for HB 70.

HB 70 is a big step in the right  
direction. It is putting the issuing of a  
concealed weapon permit where it should be,  
with Law enforcement, & it is provide for a  
central depository of records as to who  
has permits.

There may be a few places in this  
BILL that may need some clarification.

Page 3 Line 21 "No charge may be  
made for the Filing of the petition.", the  
on Page 8 Line 5 thru 7 it states, "(10) the  
fee, for the original issuance of a permit  
is \$75.00."

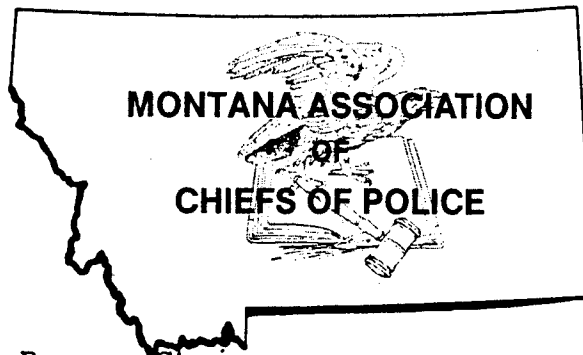
"This may be alright, I assume it means, you can file a petition for the concealed weapon permit, without charge, after a thorough investigation by law enforcement, if they can issue the permit, then you must pay \$75.00 to get the permit. However if your background check is such that a permit cannot be issued, then the law-enforcement agency has done their work, checking you out, without the ability to recover their expenses.

Page 8 Line 24 + 25 on to Page 9 Line 1 + 2. I suggest a specific ~~time~~ minimum time limit of 3 month (or whatever minimum time that you want) as a grace period for the \$10.00 late renewal of the permit, before the issuing authority has full discretion as whether to allow the late renewal or to require you to apply for a new permit, as is specified on Page 9 Line 2 thru Line 5.

I Thank You, For your consideration  
of HB 70.

Walter Hammermeister  
P.O. Box 1153  
Conrad, Mont 59425  
278-3163

January 11, 1989



Representative Dave Brown, Chairman  
Montana House Judiciary Committee  
State Capitol Building  
Helena, MT

Dear Representative Brown:

The Montana Association of Chief of Police wishes to go officially on record as opposing House Bill 70 (entitled "AN ACT REVISING THE REQUIREMENT FOR OBTAINING A PERMIT TO CARRY A CONCEALED WEAPON; PROVIDING FOR THE FORM OF A PERMIT CARD; PROVIDING FOR ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR FEES AND LATE RENEWAL FEES; PROVIDING FOR THE DISTRIBUTION OF FEES; PROVIDING FOR RECORDKEEPING REQUIREMENTS; PROVIDING FOR REVOCATION OF A PERMIT; AND AMENDING SECTIONS 45-8-317, 45-8-319, AND 45-8-351, MCA.")

We oppose the bill as presented for the following reasons:

- 1) The bill fails to require a Concealed Weapons Permit applicant to demonstrate a need to carry a concealed weapon. The bill mandates approval based solely on criminal record and does not allow for professional discretion.
- 2) The bill creates an additional liability on Chiefs and Sheriffs and the corresponding governmental entity.
- 3) The bill fails to specify that both criminal justice agencies in each jurisdiction (when applicable) approve permit applications.
- 4) The bill fails to allow the criminal justice agencies to deny the permit without violating the Privacy and Security Act of 1979 to wit; providing criminal justice intelligence and investigatory information. Could open opportunity for civil liability against police departments and sheriff's departments for slander if disclosed (as in cases where an individual is a suspect in a pending investigation i.e., long term narcotics investigation where the suspect(s) have not yet been arrested and convicted).

5) Criminal Justice agencies are unable to obtain history/information (dispositions) on adjudicated drug or alcohol abusers or adjudicated mentally incompetent persons as indicated on page 3, lines 16 and 17 to be used as disqualifying factors.

6) We expect that this bill will create a proliferation of Concealed Weapons Permits within the State of Montana based upon number and types of current applications.

7) Functioning as the "issuing authority" will create undue hardships, financially and in using current staff, to criminal justice agencies because of the additional burden required for the application, permit issuing and tracking processes. Management and tracking of the application details (application process, issuing the temporary permit and permit, locations where permit is valid, change of address, assessing the proper fees, etc.) will be overly cumbersome for criminal justice agencies. Please keep in mind Montana's small communities which have limited funds, equipment and manpower to accomplish these mandates.

8) The language in this bill (may, must, shall, should, etc.) is unclear, ambiguous, and contradictory to the layperson.

11) Page 5, lines 21 - 25, Chiefs and Sheriffs immune from liability is unclear and ambiguous and probably unconstitutional.

12) Page 14, lines 1 - 2 appears to conflict with federal law concerning carrying a firearm in an airport - and page 13, lines 11, 19 - 21, prohibits local government regulation on firearms. Is this appropriate in this bill?

13) Page 11, lines 18-25 - many legal questions arise regarding custody, and alcohol testing applicability of the implied consent forms.

14) Page 12, Sections a & b, cause legal concerns regarding impounding the firearm for evidence (the time limitation could be a problem) and the returning of the firearm.

LETTER OPPOSING HOUSE BILL 70

FROM: MONTANA ASSOCIATION OF CHIEFS OF POLICE

PAGE 3

EXHIBIT 7

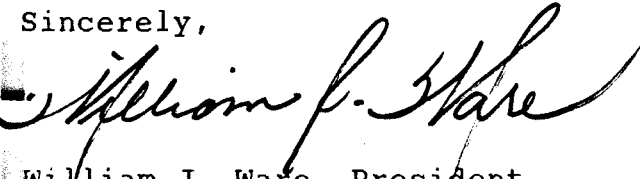
DATE 1-12-89

HB 70

Montana Association of Chiefs of Police Recommendations:

1. Leave the law as it currently is allowing District Court Judges to issue permits.
2. Modify existing law to allow District Judges to issue permits only within their district to residents of the district with the endorsement of local Chief of Police and Sheriff (where applicable). Add an appeal process at District Court level if desired. Notify appropriate Chief of Police and/or Sheriff when resident of their jurisdiction has been issued a Concealed Weapons Permit.
3. Repeal entire 45-A-316 and 45-A-319(MCA) and have no state law on concealed weapons, allowing local governments to create law/ordinance.

Sincerely,



William J. Ware, President

Montana Association of Chiefs of Police

Chief of Police

Helena Police Department

cc: House Judiciary Committee Members (17)  
MACOP Executive Committee (5)

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 59DATE JANUARY 12, 1989SPONSOR REP. SPAETH

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Annie BARTOS	STATE BAR OF MT	X	
Allen Chronister	State Bar	✓	
Peter Funk	Dept. of Justice		
Michael Sherwood	MTLA	✓	
Kurt Boone	MNA		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO.

70

1 of 2

DATE

JANUARY 12, 1989

SPONSOR

REP. DRISCOLL

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bill Kernal F	City of Helena		✓
A. M. Elwell	WCSM	✓	
Bill Begelow	NRA	✓	
DUANE CURTIS	Training Officer		
H. Terry Smith	MRPA/Yellowstone Park Club	X	
BRIAN JUDY	NRA	X	
Shelly Laine	City of Helena		✓
Ralph Lloyd	Clancy	X	
ROBERT CHARRK	RYEGATE	X	
Fred Coughill	Golden Valley Co. Sheriff	X	
Bill WARE	CITY OF HELENA AND MT. ASSN. of Chiefs of Police		✓
Judy Woolley	Judy's Camp & Carry - Plains	✓	
CHARLES WOOLLEY	MOUNTAIN ACTION SHOOTING COUNCIL	✓	
Vito Gilbert	11150 N. Rockledge MSLA 59801 Self	✓	
M. PHELAN	SGT	✓	
Gordon Morris	MA Co.		
Star Fragier	Self	X	
Tim Solomon	Hill County Sheriff		X
Rick Later	Mont. Sheriff's Peace Officer Assn		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

Judiciary

COMMITTEE

BILL NO. 70 2062DATE Jan 12, 1989SPONSOR Rep. Driscoll

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<del>BARRY MICHELOTT</del>	Montana SHERIFFS & Peace Officers Assn		✓
Gary Franklin	Flathead County Undersheriff		X
T. GREGORY HINTZ	MISSOULA CO. SHERIFF DEPT / MSA		✓
Cap. J. HARTZ	M.S.P.A	✓	
Vito Liberto - Missoula	Self	✓	
Judy Woolley Plains	Judy's Comp & Carry	✓	
CHARLES WOODLEY PLAINS	MT. ACTION SHOOTING COUNCIL	✓	
REP. ROBERT CLARK	SELF	✓	
Fred Bugill	Golden Valley Co. Sheriff	X	
Ralph Lloyd	Clancy	✓	
Bill Fleiner	Mont Sheriff's Expt. Assoc		✓
Nancy Clark	Self	✓	
Aaron Turk	Self		
H.O. Mathiasen	Self	✓	
Aurell Keller	Self		
Eric Gustafson	Self	✓	
Don Keller	Self	✓	
Wallace Wheeling	Self	✓	
Rep M Susan Good	Self		

FRED VALITON MT Assoc Private Investigations & Security  
 IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Tom Harmon

mt Sheriff &amp; Peace Officers