

## MINUTES

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

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on January 31, 1989, at 8:00 a.m.

#### ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

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

Announcements/Discussion: None.

#### HEARING ON HOUSE BILL 168

#### Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that this bill will reverse the current statute that, unless so ordered, if there are two or more sentences, they will be automatically merged and served concurrently. Unless the judge took specific action the sentences would be served consecutively. It principally addresses justice both for the offender and the victim and also for society. There is no rationale in most instances for an individual to be allowed to have two or more crimes for the price of one sentence and this bill addresses it.

#### Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

#### Proponent Testimony:

Mr. Keedy stated that the Legislature's statement of policy found in Sec. 46-18-401 says that the correctional policy is to protect society by preventing crime through punishment and rehabilitation of the convicted. The Legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and

that punishment of the convicted is certain, timely and consistent. By law in Montana today any time an offender is convicted of and sentenced for multiple offenses even if they occur involving completely unrelated victims in different parts of the state and different times his sentences for those offenses will be merged by statute. The net effect is that the sentences for these various crimes will be served by him concurrently or simultaneously rather than consecutively. The people of the state are concerned first and foremost with accountability, retribution and public safety rather than pure economics and too often the Legislature has been beset by considerations of cost effectiveness and economics rather than prevention and public safety. Rep. Lee's bill is an attempt to change the law in this area to make it consistent with what the people want and expect and what the Legislature has already said about its corrections policy.

Testifying Opponents and Who They Represent: None.

Opponent Testimony: None.

Nick Rotering, Department of Institutions, testified as a neutral party.

Mr. Rotering stated that his department did a fairly detailed study of this bill and that study is contained in the fiscal note. With a lot of assumptions based upon the types of individuals that they have been receiving over the last several years, if this bill passes they assume a 20% increase in population by 1995 at the state prison. With no new construction this would put them at 156% of capacity. Again, that is the fiscal impact on the bill.

Questions From Committee Members: Rep. Addy told Mr. Keedy that he assumed that judges knew the net effect of their sentencing. Mr. Keedy stated that in most cases judges that are sentencing an offender for multiple offenses committed within their jurisdiction, otherwise, they probably don't know the net effect. If someone in his court is convicted of forgery and robbery and comes to him for sentencing for two offenses on the same date he will be aware of the full picture and make a conscious choice whether the sentences imposed against him should be served concurrently or consecutively. He thought it was fair to say that virtually every judge in the state could say the same. The trouble comes with the other sections of existing law, sub-paragraph a and b, in which one judge sitting in one part of the state has no particular reason to be aware of offenses that may have been committed by the defendant who is appearing before him for sentencing or the disposition of those cases and doesn't take them into account. Most particularly in his jurisdiction, when Judge Erickson sentenced Danny Arledge in 1986 for attempted deliberate homicide, robbery and aggravated burglary, all offenses which were committed on a

crime spree in Flathead County and then one of the judges in the Fourth district in Missoula County in 1987 sentenced Mr. Arledge for arson and forgery and didn't take into account the sentences which Mr. Arledge had received from Judge Erickson. On appeal the Supreme Court, in light of section 46-18-401 was obliged to merge the sentences which meant in practical terms that Mr. Arledge was able to commit the offenses of arson and forgery without consequence.

Rep. Gould asked Mr. Keedy, in light of his experience as a legislator and a judge, if the increase is due to the length of stay, was not due so much to the harshness of sentencing as the sentences befitting the crime. Mr. Keedy responded that at any sentencing hearing the judge looks for ways to justify enabling an offender to avoid incarceration, at least at Montana State Prison. He goes out of his way whenever it's reasonably consistent with the demands of public safety to place an offender on probation under deferred or suspended sentence and to give him an opportunity to prove that faith in him is not misplaced. So it is fair to say, that for the most part, the men at Deer Lodge and the women at the Correctional Center have earned have earned their way there. They have committed serious crimes, probably repeated these crimes over a long period of years and in one sense, the sentencing practices of judges are partly responsible for the inmate population problem at the prison. He couldn't think of anyone at Deer Lodge that doesn't deserve to be and the principle behind Rep. Lee's bill is to assure that when someone has committed a serious crime involving the threat or use of physical violence that he receives his just deserve for that rather than having the crime automatically melted into a sentence imposed for a completely separate offense.

Rep. Eudaily asked Mr. Keedy if he thought the end result of this bill was truly reflected in the fiscal note. Mr. Keedy did not know but he thinks it is fairly drawn and didn't think it was alarmist, reasonably conservative and an attempt to be as accurate as possible in projecting the economic impact of this bill. No one can really say because it depends entirely on sentencing practices of judges throughout the state. He thought the time had come and gone for the Legislature to address the questions of crime, justice and public safety not in economic terms but in terms of what is called for under the circumstances and that is consecutive sentencing for separate crimes unless the judge thinks otherwise. Rep. Eudaily asked if the pattern of sentencing by judges will change a great deal because of this bill. Mr Keedy thought it probably will since by force of law, sentences are consecutive instead of concurrent unless the judge orders otherwise. Defense counsel will bring to the judge's attention the question of merger or non-merger out of concern for the length of total sentences which their clients are going to be faced with. Too often today in his experience, judges are unmindful of sentences that other

judges have imposed or which may be pending for disposition in other jurisdictions in the case of an offender who has moved around the state committing one crime here and another crime there. This will have a tendency to make judges more alert to all of the circumstances involved with a particular offender when they make a decision with respect to concurrent or consecutive.

Rep. Boharski asked Mr. Keedy if the reason for bringing this bill had anything to do with the fact that judges aren't doing an adequate job of sentencing. Judges have always had the discretion to require those sentences to be served consecutively. Mr. Keedy responded that was true and that in a number of cases judges just simply are ignorant of all of the circumstances involved. The fact the other charges may be pending in another jurisdiction and then later when those charges are disposed of in that jurisdiction the follow-up judge is not attentive to what happened in the case before him. Judges are like every other human being and sometimes gloss over the practical effect of what they do.

Closing by Sponsor: Rep. Lee closed.

#### DISPOSITION OF HOUSE BILL 168

Motion: Rep. Gould moved HB 168 DO PASS. Rep. Brooke seconded.

Discussion: Rep. Addy spoke in favor of the motion because it provides for the true impact of the judge's determination. Rep. Brown stated that this bill deals with policy matter and not fiscal impact.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 168 DO PASS CARRIED unanimously.

#### HEARING ON HOUSE BILL 169

Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that HB 169 is an act providing when an imposition of a sentence is deferred the deferral period has passed and the charges are dismissed the defendant's record may not be expunged. This bill reverses the current situation regarding the expungement upon successful completion of deferred sentences. After a person has successfully completed serving a deferred sentence his record concerning that crime is expunged. The Department of Justice has an amendment to offer to this bill to which he does not object. From prior experience in law enforcement as a federal narcotics agent in Chicago, it is clear how valuable access to criminal records are in the course of

developing an investigation, determining criminal behavior, and the absence or presence of such a record is often an indicator of the degree of caution that law enforcement personnel exercise toward a particular defendant. These records are also an important consideration for judges in their pre-sentence investigation and considerations. For these reasons they should be maintained and retrievable for these interested parties. He urged favorable consideration.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

John Connor, Department of Justice and Montana County Attorney's Association

Wally Jewell, Montana Magistrates Association

Proponent Testimony:

Michael Keedy supports the bill and does not oppose the amendment suggested. There are a number of ways that a judge can place an offender on probation when he has been convicted of a felony at the district court level. One is to impose a sentence against him and then suspend it wholly or in part, placing him on probation for a period of time. The court also has the authority to defer the imposition of sentence which is to postpone the day of reckoning for an offender - place him on probation with certain conditions on his activities during that probationary term with the understanding that if he completes it successfully then the charges pending against him can be dismissed. Under present law the record of his conviction can be erased or expunged. The 1987 session added the language to Sec. 46-18-204 that provides upon dismissal of the charges the court shall send an order directing the Department of Justice to expunge the defendant's record. The practical difficulty with this is well illustrated by the opinion of Montana Attorney General last summer who construed this new language to mean that literally, physically the record of an offender's conviction in these circumstances would have to be annihilated - destroyed by clerks of court, law enforcement agencies and the Department of Justice and all courts so that in future cases when an offender who had successfully completed a deferred sentence came before the court for subsequent offenses the court would be ignorant of his criminal history in fashioning an appropriate sentence for him. This is completely in conflict with the Legislature's decision in 1981 that one who has been convicted of a felony is not entitled to a deferred imposition of sentence. There is no way that a judge is going to know that an offender is a former felon if the record of his conviction has been wiped off the books as the current statute provides. He personally would be much more reluctant to impose deferred sentences in his court in future felony cases knowing that there will be no record for the future should the person commit additional felony crimes. Law enforcement needs to

be aware of a felon's past and the information should be available to the court of record.

John Connor stated that the Montana County Attorneys Association supports the concept of this bill and had requested a similar bill be introduced by Rep. Rice. The amendments mentioned previously might make it unnecessary to go forward with that bill if additional amendments were made to this bill. The county attorneys have had considerable problems with this law since it was passed in 1987. The problems are practical ones resulting from the construction of that statute by the AG's opinion last summer. This opinion said that when a deferred imposition of sentence results in a dismissal of charges, the expungement of the defendant's record (mandated by 46-18-204) requires that all documentation and physical or automated entries concerning the expunged defense be physically destroyed or obliterated. However laudable the concept of trying to give someone another chance by expunging their record might be, the practical effect of the construction of this statute is that upon successful completion of deferred sentence, all police reports, all fingerprint records, all booking sheets, jail roster records, docket entries by the clerk of court must be destroyed. This has produced some incredible practical problems. One or two of them were articulated by Judge Keedy. To begin with there is a statute (46-18-2016) which states that you cannot receive a deferred sentence if you have been convicted of a prior felony. The construction of this expungement statute is in conflict with that and allows people who have been convicted of a felony offense to receive many deferred sentences. He makes application for a job and somehow the employer gets wind of the fact as often happens within communities of the fact that this person was in trouble and asks him to explain the nature of the trouble and more importantly the subsequent development with it legally. He can't even prove that because the record is expunged including the order of expungement. Everything is wiped out. The person is in a position where he can't explain to this prospective employer what his situation is with this offense. Further, when state and local governments destroy records as they are mandated to do now, they are put in a position of having to defend against subsequent civil suits that may be filed by a person who was charged with an offense if something happened to that person while in jail and he decides to sue the county. He has completed his deferred sentence and so all the records are destroyed and the county is put in a bad position and its' insurer is in a very bad position because they do not have the necessary records to reconstruct what happened when that person was in jail. It is also not clear whether the 1987 amendment to the statute is prospective or retroactive. There is case law to the effect that when punishment is lessened by a statute it is supposed to be applied retroactively so that a person convicted previously should have this expungement occur as far as his record is

concerned also. This has resulted in some inconsistent application of this statute. The Department of Institutions has problems with this because probation and parole officers have to maintain records for adequate supervision of these people. It is not clear from the statute or from the Attorney General's opinion what happens with their records. The Department has to take the position that those records ought to be expunged. Conceivably the court reporter's notes have to be destroyed as it relates to that person's sentencing. Another problem is that the records that are destroyed often contain important data regarding other offenders and in some instances, intelligence information relating to other crimes. You either have to try and reconstruct that without using those reports or you have to painstakingly go through police reports and obliterate information relating to a particular defendant while preserving information pertaining to a co-defendant. The manpower that is required to go through and expunge records in the sheriff's office relating to offenders especially if it were applied retroactively would just be incredible. In many cases what is happening since July, 1988 when the Attorney General's opinion came out is that this just isn't being done. Local governments are being exposed to potential liability for not completing the requirements of the statute and the mandates of the opinion. A change is in order in this statute and as previous testimony shows, the proposed amendments address some of the concerns of the Department of Justice as a record keeping agency while allowing to some degree the intent of the original bill in 1987 to be maintained. One of the problems that the state experiences is that as a record keeper, the I.D. bureau of the Department of Justice has to maintain fingerprints and criminal history records of people who are charged with offenses. They are made available to law enforcement agencies and to sentencing courts for purposes of dealing with an offender. The records that they maintain now are part of the impetus for this change in 1987. The Department of Justice wasn't getting any information about what happened after someone completed the deferred imposition of sentence. Their records would show that he was charged with a felony offense and in some instances that he received a deferred sentence but nothing was ever given to the Department of Justice thereafter to indicate what happened. So these records were open-ended and the Department wanted something done that would allow them to receive information that would indicate what happened. As it turned out, the expungement statute resulted. The Department's position is that it should be amended. (EXHIBIT 1). This amendment would give direction to the person when applying for a job.

Testifying Opponents and Who They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Opponent Testimony:

Michael Sherwood stood in opposition to House Bill 169. EXHIBIT 3.

Questions From Committee Members: Rep. Eudaily asked Mr. Connor about the suggested amendments and about the circumstances where a person applies for a job and the potential employer checks for a criminal record. Mr. Connor responded that one of the major concerns that people have is that the offender needs to have an opportunity to be able to convince the prospective employer that nothing has ever happened to him. The employer may have a right to know that the offender committed an offense, given a deferred sentence and completed that deferred sentence.

Rep. Hannah asked Mr. Connor if this law applies to felonies only. Mr. Connor responded that the statute applies to both district and justice court action. Rep. Hannah asked if there has been discussion if concerns were focused on felonies rather than misdemeanors. Mr. Connor stated that the actual expungement problem is more dramatic in the misdemeanor side because there are more of them. Rep. Hannah asked if this affected youth court records. Mr. Connor stated the records are specifically youth court records and are confidential by statute and cannot be opened without a court order.

Rep. Daily asked Mr. Connor for clarification that once a person receives a deferred sentence and they petition the court to have their record expunged, can that information ever be used again against that person. Mr. Connor explained that the law says that if you receive a deferred imposition of sentence and you successfully complete the terms of that sentence, you can come back and petition the court to change your plea from guilty to not guilty and then the court enters an order dismissing the charge. There is no statute except for the one referred to today where the information can be used against the defendant.

Rep. Brooke asked Mr. Connor about the last part of the amendment Mr. Connor stated that the person is given the opportunity to take advantage of the deferred imposition of sentence. The language is taken from a similar statute in the state of Utah. It is proposed only because he is trying to address some of the concerns from 1987 when the statute was first passed.

Rep. Boharski stated that he did not see how the proposed amendment has any affect. Mr. Connor responded that he



tried to address the major concerns from 1987 as related to employment inquiries.

Closing by Sponsor: Rep. Lee stated that he did not disagree with Mr. Sherwood's motive in opposing this bill; however, the issues brought up by Mr. Connor are valid. He urged the committee's favorable consideration.

DISPOSITION OF HOUSE BILL 169

Motion: Rep. Addy moved that HB 169 DO NOT PASS. Rep. Wyatt seconded.

Discussion: Rep. Addy stated that if a person is given a deferred sentence and after completing the conditions, the record is not expunged, then the person is still stuck with a record. This is a plea bargaining tool. People should only be eligible for this after making only one mistake and only a very minor mistake. Administrative hardship is a poor reason for such a bill.

Rep. Aafedt felt that it might be a serious problem to have employers knowing about a person's guilt. Employers that is contemplating hiring a person to handle money or merchandise has a right to know if a person has been convicted or stealing or robbing in the past. Rep. Addy stated that in such circumstances the judge should not give a deferred imposition of sentence.

Rep. Daily spoke against the motion because the objective is prevent more than one deferred sentence. The only way it is known that the person has previous deferred sentences is if the record is retained. The bill should be amended to read that only an employer could not have that record.

Rep. Brooke asked that further executive action be deferred until a later time. Rep. Brown agreed to hold further action until their meeting this afternoon or 24 hours. His preference is to hold only until after the lunch break.

Rep. Gould commented that he agreed with the Department of Justice's proposal that employers be given a form that says the person has completed a deferred imposition of sentence.

Rep. Addy expressed concern over the procedure suggested by Mr. Connor because the person is given a mixed signal that possibly he should lie on job applications when responding to criminal record questions.

Rep. Boharski commented that the amendments are confusing and liked the bill the way it is.

Rep. Boharski made a substitute motion of DO PASS. Rep. Hannah seconded.

Amendments, Discussion, and Votes: Rep. Daily gave copies of suggested and moved the amendments in Exhibit 8. Rep. Addy seconded. Rep. Daily felt that information on deferred sentences is important to law enforcement people. A person should not be denied a job because of such a sentence.

Rep. Hannah asked if there might be a case where it might be to a person's advantage to get the information out. Rep. Daily thought the person could get the information to the employer.

Rep. Gould stated that Mr. Connor explained that since the 1987 law took effect, there is a problem with people knowing about an incident and an employer questions a potential employee, the employee then is prevented from giving the proof because the records have been destroyed.

Rep. Daily did not think this amendment would prevent a person from giving that information to a potential employer if he wanted to. The amendment is attempting to prevent employers from checking. The bill is a good bill if the employment factor is taken care of.

Rep. Eudaily asked if these records are public records. John MacMaster responded negatively. Rep. Eudaily said that the last sentence prevents the information from being given. Mike Sherwood clarified for the committee that court records are public records. Rep. Daily said that the only reason the last sentence is included is to prevent employers from forcing a person to sign a waiver.

The motion to amend CARRIED with Reps. Eudaily and Gould opposing.

Recommendation and Vote: Rep. Daily moved HB 169 DO PASS AS AMENDED. Rep. Hannah seconded.

Rep. Addy stated his opposition to the bill because there is no assurance to a person receiving a deferred sentence cannot be assured that a prospective employer does not get their record is by expungement.

Roll call vote was taken. The motion FAILED 6 - 12.

Rep. Addy moved to TABLE HB 169. Rep. Darko seconded. Rep. Hannah made a substitute motion to reconsider the previous action. He objected to tabling the bill and felt the law as it is presently creates problems and should be dealt with. The bill should not be hidden in committee. Rep. Mercer did not agree that a tabling motion is a method of hiding the bill in committee in this instance. Vote reversal will take 60 people on the floor to overturn. If it is tabled, it will only take a majority of this committee to move it if it was deemed appropriate. Tabling makes more sense. Rep. Daily seconded Rep. Hannah's motion.

Rep. Hannah withdrew his substitute motion.

Rep. Addy's motion to TABLE was then considered. The motion CARRIED with Reps. Daily, Aafedt, Boharski, Hannah, Gould and Knapp opposing.

#### HEARING ON HOUSE BILL 179

##### Presentation and Opening Statement by Sponsor:

Rep. Tom Lee, District 49, stated that this bill would remove the two year limitation in modification in a dissolution of marriage or legal separation that does not contain provisions relating to maintenance or support. The intent is to correct the current situation that occurs in a divorce decree or separation decree in which after the two years have passed there may be no further changes or amendments made or changes in the decree. The advantages to the children or the custodial parent are obvious.

##### Testifying Proponents and Who They Represent:

Mike Keedy, Kalispell

##### Proponent Testimony:

Mr. Keedy stated that the Montana Legislature enacted the Uniform Marriage and Divorce Act in the mid-1970's. In the 1979 session a bill was introduced to clarify that under the act a decree of divorce could be modified by a court to provide child support and/or maintenance in cases where the original decree did not contain such provisions. The bill was amended to provide for a two year statute of limitations on a custodial parent's ability to receive child support or maintenance.

##### Testifying Opponents and Who They Represent:

None.

##### Opponent Testimony:

None.

Questions From Committee Members: Rep. Darko asked Mr. Keedy if the converse would be true where child support could be decreased as well. Could the father petition to have support lowered because his circumstances have changed adversely? Mr. Keedy stated that if there is a provision in the decree for child support then the custodial parent can petition at any time for a modification to increase or the non-custodial parent could petition to decrease the support.

Rep. Eudaily asked Mr. Keedy about an exception in subsection 1, 40-4-201-6. Mr. Keedy explained that it is a feature of the marriage and divorce act that allows parties to agree in advance that the terms of their agreement cannot be modified by a court. If the court incorporates this into the agreement then that would be honored.

Rep. Boharski asked Mr. Keedy for clarification of child support and maintenance. If there are no children involved, would this allow the ex-wife to ask for an increase much later. Mr. Keedy responded that theoretically that would be correct. The court would look at all of the circumstances of that request and deny or grant it depending on those circumstances. He doubted that a court would award maintenance where it had not done so before but the opportunity ought to be available to it. The ex-husband could also request maintenance from his ex-wife.

Rep. Gould asked Mr. Keedy if the husband had started another family, would that be considered. Mr. Keedy responded that that would be up to the individual judge.

Closing by Sponsor: Rep. Lee closed.

#### DISPOSITION OF HOUSE BILL 179

Motion: Rep. Mercer moved DO PASS. Rep. Gould seconded.

Discussion: Rep. Boharski stated that he was not comfortable with this bill and moved an amendment that would make this only apply to child support payments.

Rep. Mercer stated that the bill is presently written to only apply to child support payments. Under current law, maintenance cannot be changed after two years if it is not written in the decree.

Rep. Daily did not agree with Rep. Mercer and cited line 12, page 1.

Rep. Brooke deferred to Judge Keedy's comments that the court would have all the facts before them and could make a legitimate judgment. Rep. Brown added that there are currently protections under the property side.

Rep. Addy spoke in favor of the bill. The law as it stands presently attempts to limit the judge's discretion and to decide the case without a hearing.

Rep. Boharski asked if such cases are decided only by a judge or by a jury. Rep. Addy responded that only a judge can decide.

Rep. Daily responded to Rep. Brooke's comments. If the judges made fair and honest decisions on every occasion, none of these bills would be needed.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 179 DO PASS CARRIED with Rep. Daily and Boharski opposing.

#### HEARING ON HOUSE BILL 286

#### Presentation and Opening Statement by Sponsor:

Rep. Tom Lee, District 49, stated that this bill provides that a judge and justice may impose a sentence with the condition that the defendant not use or carry a dangerous weapon. The bill extends to municipal and justice courts the authority to forbid an offender to carry a dangerous weapon as a condition of his sentence. An amendment is being offered. EXHIBIT 4.

#### Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge  
John Connor, Montana County Attorneys Association  
Wally Jewell, Montana Magistrates Association

#### Proponent Testimony:

Mike Keedy stated that present law authorizes a district court to forbid a criminal offender to own or carry a dangerous weapon. The act as presently written prevents lesser courts from doing the same. This bill eliminates that deficiency.

John Connor stated that many of the cases in justice court deal with domestic abuse and violence and often weapons are involved. This bill makes good practical sense to allow the judge the discretion to remove weapons from the offender during the probationary period. The restriction only applies during this period.

Wally Jewell concurred with previous testimony and urged passage of this bill. EXHIBIT 5.

#### Testifying Opponents and Who They Represent:

None.

#### Opponent Testimony:

None.

Questions From Committee Members: Rep. Brown asked Mr. Keedy about the proposed amendment and the loss of rehabilitation

- efforts. In the original bill there is a reference to rehabilitation and the amendment does not mention this. Mr. Keedy felt that the language of subparagraph 1 of section 202 should be preserved in its entirety. More was cut out of the existing law than is necessary with the amendment.
- Rep. Mercer asked Mr. Keedy if it is a felon when someone uses a weapon. Mr. Keedy responded that it potentially was but experience shows that often the charge is reduced to a misdemeanor and then the justice of the peace would have control. Mr. Mercer then asked if this bill would then take away one of the reasons that someone might be properly prosecuted. Mr. Keedy stated that that could happen but the judge has some latitude.
- Rep. Hannah asked Mr. Keedy who proposed these amendments. Mr. Keedy responded that they came from Gary Marbut in Missoula and he thought the group he represented was the Montana Rifle and Pistol Association. Rep. Hannah asked what other areas of sentencing a judge required to review a sentence upon petition of the defendant and could this potentially create a problem for the courts since there is no limit on the number of petitions to the court. Mr. Keedy responded that it is unusual but it is not unheard of that a district court would consider a petition for modification of a sentence imposed in a felony case. So as a practical matter, a sentence can be modified even without this bill.
- Rep. Gould asked Mr. Jewell to expound on Rep. Hannah's question on whether that would create problems in a court of limited jurisdiction. Mr. Jewell responded that in limited jurisdiction courts, usually the person who is charged with an offense and possibly used a weapon or had a weapon available and was threatening to use it, is also the type of person who is going to be required to go to the mental health center or something similar and that would be the type of person who would abuse this language and repeatedly petition the court for modification of sentence. He felt that this particular language would be a headache for limited jurisdiction courts.
- Rep. Hannah asked Mr. Jewell if there was another means to petition the court in those courts like there is in the district court. Mr. Jewell responded that Mr. Keedy answered that well in stating that at any time you can petition the court for a review hearing.
- Rep. Lee stated that the central concern from the Rifle & Pistol Association in offering the amendments was that for some misdemeanor violations a person's gun collection could be confiscated. That is their main thrust of their concern.
- Rep. Brown asked Mr. Keedy if as a result of all of the aftermath of these questions would he give a quick review of why the bill was requested. Mr. Keedy stated that courts of limited

jurisdiction lack the authority (expressly taken from them), to impose this condition or restriction as part of any sentence for a misdemeanor even where it is indicated for the protection of the past victim or society. Rep. Brown asked if he had an antique gun collection and is brought before Mr. Keedy's court for a violation that would make him think that he should not own guns for a period of time or forever, and he petitioned the court by saying that he had this collection, what kind of response or resolution to that situation would there be. Mr. Keedy's inclination would be to allow you to retain ownership of the collection, but you may have to surrender it for a time while you are under supervision.

Rep. Daily asked Mr. Keedy how a rule such as this would ever be enforced. Mr. Keedy responded that an offender is generally assigned a probation or parole officer who talks and meets with the offender and can search his residence. The court, through its' designees, can keep track of an offender. Limited jurisdiction courts do not have that luxury. Rep. Daily then asked how those lower courts could ever enforce such a law. Mr. Keedy responded that if an offender is placed on probation with certain conditions and those conditions are violated in the course of committing another crime, then the court has the authority to try and convict for the later crime and also to revoke the probation. Possession of weapons would be such a crime.

Mr. Jewell added that many times a person comes before a court and is charged with an offense such as this, the person had the weapon in his possession at the time the offense was committed. Presently, limited jurisdiction courts do not have the authority to keep the weapon until the hearing is over. If the offender makes bail, then he can request his weapon from the officer and they have to give it back to him.

Rep. Brooke asked Mr. Keedy about the first part of the amendment where "own" will be changed to "use". Mr. Keedy responded that he felt the net effect of this bill as amended would be to authorize a justice court or city judge to prohibit an offender from having in his possession or using a weapon. The proposed amendments would restrict the JP's authority to forbid the offender to own a weapon but he could still require that the weapon be impounded or held by a third party, while the offender still retains the ownership of it. The restriction would prohibit him from possessing a gun thus would prohibit him from purchasing another gun.

Closing by Sponsor: Rep. Lee closed.

DISPOSITION OF HOUSE BILL 286

Motion: Rep. Brooke moved HB 286 DO PASS. Rep. Wyatt seconded.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend as proposed by Rep. Lee but adopting only the first sentence. Strike everything after the word "sentence." This would say that a justice, city or municipal court does have the authority to restrict an individual's right to carry or use a dangerous weapon as a condition of a sentence. The advantage to that amendment is that it takes out the language of owning a gun and also does not adopt an unnecessary procedure for reviewing the sentence. Rep. Boharski seconded the amendments.

Rep. Brooke asked why "owning" was being struck from the lower courts authority. Rep. Mercer stated that he understood the proponents to say that owning the gun was not the concern but using the gun was a concern.

Rep. Eudaily asked if the current statute provides for a periodic review referred to in the second sentence. Rep. Mercer stated that he understood, and testimony was made to that effect, that you can petition any judge at any time to review any sentence.

The motion to amend per Rep. Mercer's request CARRIED with Reps. Brooke and Eudaily opposing.

Recommendation and Vote: Rep. Boharski moved that HB 286 DO PASS AS AMENDED. Rep. Knapp seconded. The motion CARRIED unanimously.

#### HEARING ON HOUSE BILL 312

Presentation and Opening Statement by Sponsor:

Rep. Mary Ellen Connelly, District 8, stated that this bill would clarify the law relating to modification of child custody, specifically, a prior custody decree. The judge would have some leeway in determining the custody and the best interests of the child. This is a result of a case in the Supreme Court. It allows the judge to look at who had the custody when the family separated before the divorce became final.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

Proponent Testimony:

Michael Keedy rose in support of this bill with some hesitation because there is a real potential for confusion and presented EXHIBIT 6 for clarification. The first part of the bill defines the best interests of the child which



courts are supposed to look at in making custody decisions. Section 2 sets forth the criteria in determining whether to modify an existing decree. Ordinarily, a court will consider the questions of a child's best interests and determine custody. Once custody has been determined, the benefits of custody must outweigh the disadvantages of disruption in a child's life by virtue of a change of custody. The reason for the bill is to correct a mistake on the part of Montana Supreme Court which decided a divorce case which said that in any case where there is a de facto determination of custody (where the parents have gotten together and decided temporarily where the children should be), then that temporary custody is elevated to the status of a prior decree.

Testifying Opponents and Who They Represent:

Bill Riley, self

Opponent Testimony:

Mr. Riley stated that he is a divorced father and a licensed social worker. His understanding of this bill is that if de facto means that both divorcing parents agree on custody arrangement, then this bill is favorable. If de facto means that one parent can manipulate a temporary agreement out of the other parent, and then the temporary agreement does not come under the scrutiny of the best interest of the child, then he is opposed to the bill. He would like further clarification.

Questions From Committee Members: Rep. Brown asked Mr. Keedy to respond to Mr. Riley's concerns. Mr. Keedy responded that he understood the Supreme Court in this area, de facto means whatever the prevailing conditions are, whether they are the result of an agreement between the parties or otherwise.

Rep. Hannah told Mr. Keedy that last session there was considerable discussion over the presumption of joint custody and asked how this law relates to joint custody. Mr. Keedy responded that he did not think it did. Typically, a court will award joint custody unless there are prevailing conditions which indicate against it. As a practical matter, the court is then going to have to make a decision as to where the child will physically live and that is when this statute would kick in. Rep. Hannah asked for clarification that if the father moves out of the house and takes up residence somewhere else and the children and the mother residing in the home, would that become a de facto arrangement? Mr. Keedy responded that would be true and the case would move into the secondary level because of that arrangement.

Rep. Eudaily asked Mr. Keedy if the serious endangerment section is eliminated as proposed, would that still be a serious

consideration in determining the best interest of the child. Mr. Keedy responded that if the court is concerned that a child's physical welfare might be seriously endangered if he remained in the custody or awarded to the custody of his father, then the court, in applying the child's best interest, probably would not do it. Rep. Eudaily asked how that would be discovered. Mr. Keedy stated that the court would conduct a custody hearing with testimony from a variety of witnesses including the parents and possibly the children, would be taken and the court would make an informed determination as to what would serve the child's best interests. The bill only affects cases without a prior decree and does not affect cases with a decree seeking a modification.

Rep. Mercer added that this is a clarification of an existing statute. Any time custody is being determined prior to a final divorce decree, then the child's best interest would be looked at. After that decree has been entered, changes can be made by proving endangerment. This bill says that the de facto agreement prior to the final decree, then the court is not to treat that as a decree and still looks at the best interests of the child and does not treat it as a modification of a decree.

Closing by Sponsor: Rep. Connelly stated that in all cases of divorce in which a child is involved then the child's best interests should be first and foremost and the courts do not always do that.

#### DISPOSITION OF HOUSE BILL 312

Motion: Rep. Darko moved HB 312 DO PASS. Rep. Stickney seconded.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 312 DO PASS CARRIED unanimously.

#### HEARING ON HOUSE BILL 454

##### Presentation and Opening Statement by Sponsor:

Rep. Mary Ellen Connelly, District 8, stated that this bill would prohibit a defendant who voluntarily entered a guilty plea in a lower court from appealing to a district court. Under present law a criminal defendant is free to plead guilty to an offense in a lower court and immediately appeal his conviction to the district court if he is dissatisfied with the sentence that he received in the lower court. When that happens then the district court is put through the time

and expense of a new trial even though the original conviction was based upon his own guilty plea. This is a waste of time and money to the county. The person could still go to the district court but it would have to be before they confessed to the lower court that they were guilty.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge  
Wally Jewell, Montana Magistrates Association  
John Connor, Department of Justice & Montana County Attorneys Association

Proponent Testimony:

Mr. Keedy stated that presently there is an abuse of both the justice court and the district court for someone who admits his own guilt to enter a plea of guilty in the lower court, and then merely out of dissatisfaction with the sentence imposed against him, request a new trial which starts the whole process over again. There is no question about the defendant's guilt or innocence but he is unhappy with the sentence that he received in the lower court.

Mr. Jewell expressed support for this measure. The last section (page 2, line 8-13) sets out some of the conditions under which the appeal would be denied. EXHIBIT 7.

Mr. Connor spoke in support of this bill and concurred with the previous testimony.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Brown asked Mr. Keedy if a person is before a justice court and plead guilty to a major misdemeanor with a potentially heavy penalty, there is a possibility that the person would not fully understand all of the ramifications of the guilty plea, how would that type of concern be addressed. Mr. Keedy stated that some of the fears are misplaced regarding the training and fairness who are not trained as lawyers. The District Court would be in a position to review sentences. Mr. Jewell added that judges that are lawyers make mistakes also.

Closing by Sponsor: Rep. Connelly stated that with the courts cluttered the way they are and the costs to the counties, this bill would clarify the law and save time and money in

the long run. The person can still appeal but the whole case would not have to be reviewed but only the sentence.

DISPOSITION OF HOUSE BILL 454

Motion: Rep. Aafedt moved HB 454 DO PASS. Rep. Addy seconded.

Discussion: Rep. Daily stated that the person is going to be informed of the waiver but the person should also be informed of the penalties possible.

Rep. Addy responded that unless a person knows and understands the maximum penalty to which they are subjected, their guilty plea is not considered free, knowing and voluntary and is therefore not a valid plea of guilty.

Rep. Hannah thought the problem would be covered on page 2, subsection b, lines 4-7.

Rep. Brown felt this bill would prevent pleas and plea bargain if the judge did not want you to do that.

Rep. Mercer stated there is a serious problem regarding that in his county where a justice of the peace is hard on defendants and has aggravated the district court. If this law is passed the justice court and the defendant for the expense of a trial in order to be able to appeal, while presently they are saving that expense knowing that they will appeal the sentence. This bill will not save the district court any time except to the extent that those who cannot afford a lower court trial will be denied this right.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 454 DO PASS CARRIED with Reps. Wyatt, Hannah, Eudaily and Brown.

COMMITTEE RECESSED UNTIL 1:30 P.M.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 70

Action on HB 70 was begun on January 30 and continues. Rep. Brown stated that all amendments were added except for page 11.

Motion: HB 70 was moved previously. Some of the amendments were moved previously also.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved to amend HB 70, page 11, line 6 following "patrol station", add "public grade school, high school, college, university or vocational

technical school". Rep. Darko asked for a friendly amendment to add "hospital" to that list. Rep. Wyatt seconded.

- Rep. Mercer asked about including catholic schools, parochial school, day care, head start programs, churches, malls, etc. If school are going to be set forth then all should be included as well as all hospitals, doctors' offices, clinics. He felt it would be better to make a more general statement as to what the local government authority might be rather than try to specify everything.
- Rep. Addy asked if Rep. Mercer intended that it be amended to say that a permit issued in accordance with this section does not authorize a person to carry a concealed handgun into any place where that act has been prohibited by the county commission, city council or school board. Rep. Mercer did not want to go that far but his concern is that standards be set rather than start a list. Say nothing or put in some kind of general standard dealing with safety of children, government can make a decision or leave it blank. Rep. Addy stated that he would not vote for any legislation that would allow people to carry weapons into public school. Rep. Mercer asked why parochial school should not be included. Rep. Addy said if such an amendment is offered he will vote for it.
- Rep. Hannah asked Rep. Darko why hospitals should be included. Rep. Darko said she could not think of any reason why a person would ever want to take a gun into a hospital. She expressed reservations about someone wanting to help a suffering relative.
- Rep. Hannah asked the issues be divided. The line should be drawn somewhere and he is not willing to draw the line to include hospitals. Someone with a legitimate permit would go to a hospital for a variety of reasons - to visit, emergencies - and then would be in violation of the law. This bill is not going to make it easier for someone to commit an act of euthanasia in a hospital. Rep. Darko responded that Rep. Strizich told her that deputy sheriffs are employed in the emergency room on weekends because it is such a crazy place.
- Rep. Daily asked if general terms could be used such as schools, churches, day care centers and health care facilities. Rep. Addy said he would withdraw his amendment. He then moved to amend HB 70, page 11, line 7 following "a" insert "school". Rep. Hannah seconded.
- Rep. Boharski asked if that would include anywhere on a college campus.

Rep. Gould asked if that would also include the police academy. Rep. Addy thought they would be excluded under an earlier provision of the bill.

Rep. Mercer asked Rep. Addy to look at page 13, lines 9 - 18 (the existing law concerning public safety purposes), and asked why that cannot be the general rule. Rep. Addy said that if the new language is struck, then the same thing would be accomplished. Rep. Mercer thought that would be better (page 13 of the gray bill, line 9-18). This bill attempts to eliminate that provision. Rep. Addy thought that subsection b on page 11 should be struck also since they are inter-related.

Rep. Addy offered that lines 5-13, page 11 and page 13, new language on line 11, reinsert "a" on line 10 as a substitute motion. Also, page 13, strike lines 19-21 should also be struck because it refers directly back to the subject. Rep. Eudaily seconded.

Rep. Rice asked if the paragraph beginning on line 25 of page 10 would also have to be struck (18a). Rep. Addy agreed and made that a part of the substitute motion. That would essentially strike sub 18. With the permission of the committee any other language changes will be caught by staff.

The motion CARRIED unanimously.

Rep. Strizich moved that HB 70 be amended on page 8, subsection 10 of section 2 and sub a. The fee that is charged will be set by the issuing agency to cover the actual cost of the issuance of the permit up to a maximum of \$200 and also include the \$25 that is mentioned below. The reason is simply to insure that the taxpayers are not assessed for the issuance of these permits. Law enforcement agencies have told him that costs range from \$25 to \$200 to get all the necessary clerical work done. Rep. Addy seconded the motion.

Rep. Hannah asked Rep. Strizich to explain why the taxpayer should not view this in part as a general responsibility of a law enforcement agency. Rep. Strizich responded that any time the law enforcement agencies are asked to pull their services from other more critical areas, then costs should be covered.

Rep. Mercer stated that the purpose of the bill is to create uniformity. Fees could vary. Rep. Strizich stated that the bottom line is that it will not cost more than \$200 anywhere. Rep. Rice said he was sympathetic to the cost issue but make it standardized throughout the state. Rep. Brooke responded to Rep. Mercer's concern by saying that

background checks are not equal and some are going to take

longer than others to research. Rep. Boharski agreed with Rep. Rice and look for a figure and make it uniform.

Roll call vote was taken. The motion FAILED on a tie vote.

Rep. Strizich moved that section 10, strike \$75 and insert \$150 and the \$25 would come out of the \$150. Rep. Darko seconded.

Rep. Hannah made a substitute motion to make it \$125. Rep. Daily seconded. Rep. Brooke said it bothers her that there is opposition to raising this price and that a fee is being charged unjustly. Rep. Hannah explained that law enforcement's responsibilities are reasonable and responsible and should be done out of the general tax base and that the taxpayers ask for law enforcement to be done out of that base. Secondly, \$125 is a fine compromise between the beginning \$200 and \$75 in the bill.

Rep. Daily stated that line 6 needed to be changed to \$125 and 8a needs to be changed to \$110 and b stays at \$25. He also felt that \$125 is a reasonable compromise.

Rep. Darko commented that the Legislature passes more responsibilities to local government and not provide any funds to perform these additional duties.

Rep. Aafedt asked how the original figure was arrived at. Rep. Addy responded that was the figure that some on the committee thought would cover the cost.

Rep. Gould commented that \$75 may have been too much in light of what it costs for lawyers for a background check.

Roll call vote was taken on Rep. Hannah's substitute motion that the level be \$125. Motion CARRIES 11-7.

Rep. Mercer moved to amend line 19, page 1 that says any officer of the U.S. government authorized to carry a concealed handgun. When the President or others visit, perhaps that reference should remain as "weapon" instead of "handgun". Rep. Boharski seconded. The motion CARRIED unanimously.

Rep. Mercer expressed his concern about placing a severability clause because there is a balance contained in this bill concerning who can have these concealed weapons and who can't. It is his desire that the severability clause be struck so that if one part of the act is determined unconstitutional then the whole act is void. He then made a motion to strike the severability clause (line 14, section 6) and let the whole act rise or fall together. Rep. Brown suggested a non-severability clause to be sure that the whole thing is thrown out if the whole thing does. The clause is not the usual but it is possible. It was used on the stream access legislation. Rep. Mercer then changed his

motion to a non-severability clause. Rep. Boharski seconded.

Rep. Boharski stated that the clause might help the bill in passage through the rest of the legislative process. Rep. Hannah asked Rep. Mercer what the standard would be if the court through out the entire bill. Rep. Mercer said that the law would return to its present state because this bill seeks to amend an existing statute.

Vote was taken on the motion to add a non-severability clause. The motion CARRIED with Reps. Hannah, Gould, Daily and Addy opposing.

Rep. Knapp stated that testimony showed that people carry concealed weapons for defensive purposes such as stopping rape, robberies, etc. If this is true, the proficiency issue of firearms is still valid.

Rep. Nelson thought that Rep. Knapp's concern was valid.

Rep. Knapp offered an amendment that proficiency on how to load and knowledge of what happens if a weapon is drawn during a robbery, then a patrolman arrives. There is a potential for confusion. Rep. Brown suggested that the hunters' safety program might be useful. Rep. Hannah stated that it would be difficult to amend that into this bill.

Rep. Mercer suggested that, in the section where the publication of the pamphlets is mentioned, perhaps excess funds from that could be used in assisting local governments in a handgun safety program. It would encourage people to take the course and would assist in setting up the program. Rep. Mercer then made the suggestion into a motion. Rep. Knapp withdrew his previous motion in light of Rep. Mercer's motion. Rep. Daily seconded Rep. Mercer's motion.

The motion CARRIED unanimously.

Recommendation and Vote: Rep. Gould moved that HB 70 DO PASS AS AMENDED. Rep. Aafedt seconded.

Rep. Hannah asked Rep. Addy about the availability of mental health information and what happened to the language in the bill relating to those with a mental health problem; and secondly, if it is still in the bill, are there any provisions for making that information available to those issuing the permit. Rep. Addy responded that when the application is made you have to consent to the release of any relevant information. On page 3 the broadest standard that will exclude most people is if you have been diagnosed to have a mental disorder or serious mental illness as defined in 53-21-102.

Rep. Brooke spoke in opposition to this bill. She worked on the



subcommittee primarily because she was concerned about the Missoula Chief of Police's concerns. The bill as amended does not allow permitting authorities to show any discretion. The bill approaches permits as though everyone has a right to a permit unless they are designated unfit. The person presently must show need. There is still concern for the liability incurred. She will vote against the bill unless the word "concealed" is deleted throughout the entire bill.

John MacMaster explained an amendment that was adopted in the subcommittee that he inadvertently omitted from the copies he handed out. The subcommittee agreed that on page 8, line 4, the record of the appeal is limited to the application and to the denial of the permit and the appellant issuing authority may add to the record. The theory behind that was that the information would only be seen by the appealing authority. Rep. Addy moved the amendments. Rep. Nelson seconded.

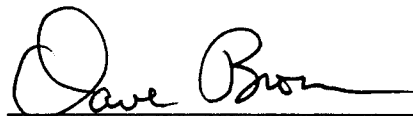
The motion CARRIED unanimously.

The motion presently being considered is DO PASS AS AMENDED by Rep. Addy and seconded by Rep. Gould.

Voice vote was taken that HB 70 be recommended DO PASS AS AMENDED. The motion CARRIED with Rep. Brooke opposing.

#### ADJOURNMENT

Adjournment At: 3:00 p.m.



REP. DAVE BROWN, Chairman

DB/je

2608.min

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 31, 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		

STANDING COMMITTEE REPORT

January 31, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 168 (first reading copy -- white) do pass.

Signed:   
Dave Brown, Chairman

2-18-89  
145  
85

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 169 (first reading copy -- white) do pass as amended .

Signed: [Signature]  
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "EXPUNGED;"

Insert: "PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS;"

2. Page 1, lines 19 and 20.

Following: "dismissed." on line 19

Strike: "Upon dismissal of the charges,"

3. Page 1, lines 21 and 22.

Following: "~~expunge~~" on line 21

Strike: "the defendant's record may not be expunged."

4. Page 1, line 25.

Following: "~~expunged.~~"

Insert: "A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed all records and data relating to the charge are confidential criminal justice information as defined in 44-5-103 and public access to the information can only be obtained by district court order upon good cause shown."

STANDING COMMITTEE REPORT

January 31, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 179 (first reading copy -- white) do pass .


Signed: \_\_\_\_\_  
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 31, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 286 (first reading copy -- white) do pass as amended .

Signed:   
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 6.

Strike: "OWN"

Insert: "USE"

2. Page 2, lines 12 and 13.

Strike: "(a), 1(c) through (1)(e),"

3. Page 2, lines 13 through 16.

Strike: "impose" on line 13 through "society" on line 16

Insert: "restrict an individual's right to carry or use dangerous weapons as a condition of sentence."

STANDING COMMITTEE REPORT

January 31, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 312 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_  
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 31, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House  
Bill 454 (first reading copy -- white) do pass .

Signed: \_\_\_\_\_  
Dave Brown, Chairman

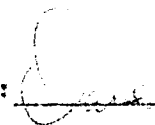


STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 8

Mr. Speaker: We, the committee on Judiciary report that House Bill 70 (first reading copy -- white) do pass as amended .

Signed:  Dave Brown, Chairman

And, that such amendments read:

1. Title, line 6.

Strike: "WEAPON"

Insert: "HANDGUN"

2. Title, lines 7 and 8.

Following: "FEES"

Strike: "AND LATE RENEWAL FEES"

3. Page 1, Following: line 25.

Insert: "(6) a person in possession of a valid hunting license  
and actively hunting during an official hunting season in an  
area where hunting is allowed;"

Renumber: subsequent sections.

4. Page 2, line 1.

Following: "person"

Strike: "authorized by"

Insert: "with a valid permit under 45-8-319"

5. Page 2, lines 2 and 3.

Following: "~~state~~"

Strike: "the sheriff" on line 2 through "weapon" on line 3.

6. Page 2, line 7.

Following: "45-8-319."

Strike: "Permits"

Insert: "Permit"

Following: "carry"

Insert: "a"

Following: "concealed"

Strike: "weapons"

Insert: "handgun"

7. Page 2, line 10.  
Following: "issuing"  
Strike: "permits"  
Insert: "a permit"

8. Page 2, line 11.  
Following: "carry"  
Insert: "a"  
Following: "concealed"  
Strike: "weapons"  
Insert: "handgun"

9. Page 2, line 14.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

10. Page 2, line 16.  
Following: "The sheriff of"  
Strike: "a"  
Insert: "the"  
Following: "county"  
Insert: ", "

11. Page 2, line 17.  
Following: "police of a"  
Strike: "municipality in the county"  
Insert: "city of the first or second class,"

12. Page 2, lines 20 and 21.  
Following: "~~otherwise, a~~"  
Strike: "pistol or revolver"  
Insert: "handgun"

13. Page 2, line 21.  
Following: "years."  
Insert: "If the authority to which application is made cannot adequately check the appropriate records and process the application in 30 days, the authority may inform the applicant in writing that an additional 30 days is necessary. There must not be more than one 30 day extension."

14. Page 2, line 22.  
Following: "possessed"  
Strike: "firearm"  
Insert: "handgun"

15. Page 3, line 1.

Following: "resident of"

Strike: "Montana"

Insert: "the jurisdiction of the authority to which application is made"

16. Page 3, line 2.

Strike: ","

Insert: " . There is no residency requirement for a person who makes a subsequent application in another jurisdiction after the first application is granted;"

17. Page 3, line 9.

Following: "concealed"

Strike: "weapon"

Insert: "handgun"

18. Page 3.

Following: line 12.

Insert: "(vi) obstructing a peace officer;"

Renumber: subsequent subsections.

19. Page 3, line 16.

Following: "(e)"

Strike: the SUBSECTION in its entirety.

Insert: " has been convicted of any combination of two or more offenses under 61-8-401 and 61-8-406 or of a possession offense under chapter 9 of this title;"

20. Page 3, line 17.

Following: "(f) is"

Strike: "adjudicated mentally incompetent."

Insert: "detained pending hearing or trial, has been adjudicated to be seriously mentally ill under Title 53, chapter 21, part 1, or has been diagnosed by a professional person, as defined in 53-21-102, MCA, and hired by the person in a private setting, to have a chronic mental disorder or chronic serious mental illness, as defined in 53-21-102, MCA; or"

21. Page 3.

Following: line 17.

Insert: "(g) is under prosecution for an offense referred to in subsections (3)(c) through (3)(e)."

22. Page 3, line 21.

Strike: "No charge" through "petition."

23. Page 3, line 22.

Following: "application"

Strike: "shall"

Insert: "must"

24. Page 3, line 23.

Following: "prescribed by"

Strike: "the identification bureau of"

25. Page 4, line 10.

Following: "who"

Insert: "are not relatives and who"

26. Page 4, line 15.

Following: "part 3"

Insert: ", "

27. Page 4, line 16.

Following: "3"

Insert: ", "

28. Page 4, line 23.

Strike: "weapon"

Insert: "handgun"

29. Page 5, line 15.

Following: "the sheriff"

Strike: "of"

Insert: "or"

30. Page 5, line 16.

Following: "appropriate"

Strike: "local"

Insert: "municipal, county,"

31. Page 6, line 5.

Following: "prescribed by"

Strike: "the identification bureau of"

32. Page 6, line 6.

Following: "justice"

Strike: ". The identification bureau"

Insert: ", which"

33. Page 7, lines 12 and 13.

Following: "prescribed by" on line 12

Strike: "the identification bureau of"

34. Page 7, line 14.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

35. Page 7, line 17.  
Strike: "weapon"  
Insert: "handgun"

36. Page 8, line 1.  
Following: "without"  
Strike: "cost"  
Insert: "taxation of pre-hearing costs"  
Following: "applicant,"  
Insert: "and the grant of a permit may be appealed by another  
authority authorized to grant the applicant a permit,"

37. Page 8, lines 3 and 4.  
Following: "resides"  
Strike: ", under" through "7" on line 4.  
Following: "." on line 4  
Insert: "The record on appeal is limited to the application, the  
denial if an application was denied, and information an  
appellant issuing authority adds to the record. The court  
shall decide the appeal as quickly as possible and in any  
event within 6 months."

38. Page 8, line 6.  
Strike: "\$75" on line 6.  
Insert: "\$125"

39. Page 8, lines 6 and 7.  
Following: "collected"  
Strike: "by the authority issuing the permit"  
Insert: "when the application is made"

40. Page 8, line 8.  
Following: "(a)"  
Strike: "\$50"  
Insert: "\$100"

41. Page 8, line 9.  
Following: "enforcing"  
Strike: "[This act]"  
Insert: "45-8-351, MCA, and this section"

42. Page 8, line 10.  
Following: "in"  
Insert: "an account in"

43. Page 8, line 11.

Following: "for"

Insert: "the administration of this section,"

44. Page 8, lines 13 and 14.

Following: the first "firearms" on line 13

Strike: "/"

Insert: "and on"

Following: "safety, and"

Strike: "the preemptive" on line 13 through "law" on line 14.

Insert: "to operate or to grant funds to private entities for the operation of programs teaching handgun safety and when firearms may be legally used in defense of persons and property"

45. Page 8, line 17.

Following: "if"

Strike: "he"

Insert: "the permitholder resides in the jurisdiction of the authority that issued the permit and the permitholder"

46. Page 8, line 19.

Following: "of the permit"

Insert: "on a form prescribed by the department of justice"

47. Page 8, line 22.

Strike: "[This act]"

Insert: "45-8-351 and this section"

48. Page 9, line 17.

Following: "fingerprints."

Insert: "A sheriff or chief of police, if the applicant resides in a city of the first or second class, who issues a permit shall also mail a copy of the record to the other authority authorized to issue a permit to the person granted a permit."

49. Page 9, line 19.

Following: "concealed"

Strike: "weapon"

Insert: "handgun"

50. Page 9, lines 22 and 23.

Strike: "an" on line 22 through "subsection" on line 23.

Insert: "a mitigating factor"

51. Page 9, line 25.

Following: "permitholder"

Insert: "who is carrying a concealed handgun"

52. Page 10, line 4.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

53. Page 10, lines 6 and 7.  
Strike: "the provisions of" on line 6  
Following: "subsection" on line 6  
Strike: "constitutes" on line 6 through "misdemeanor" on line 7  
Insert: "is a criminal offense"

54. Page 10, line 11.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

55. Page 10, line 12.  
Strike: "constitutes"  
Insert: "is"  
Strike: "fine"  
Insert: "penalty"

56. Page 10, line 17.  
Strike: "constitutes"  
Insert: "is"

57. Page 10, line 18.  
Strike: "fine"  
Insert: "penalty"

58. Page 10, line 25 through page 11, line 13.  
Strike: subsection (18) in its entirety.  
Renummer: subsequent subsections

59. Page 11, line 20.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

60. Page 12, lines 2, 8, 10, 13.  
Following: "the"  
Strike: "weapon"  
Insert: "handgun"

61. Page 12, line 7.  
Following: "subsection"  
Strike: "(19)"  
Insert: "(18)"

62. Page 12, line 18.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

63. Page 12, line 20.  
Following: "permit" on line 19  
Strike: "shall" on line 20  
Insert: "must"

64. Page 12, lines 23 and 24.  
Following: "authority and"  
Strike: "the identification bureau of"

65. Page 13, line 11.  
Strike: "Except" through "a"  
Insert: "A"

66. Page 13, lines 19 through 21.  
Strike: subsection (b) in its entirety.  
Renumber: subsequent subsections

67. Page 14, line 4.  
Following: "concealed"  
Strike: "weapon"  
Insert: "handgun"

68. Page 14, lines 12 through 17.  
Strike: section 6 in its entirety  
Insert: "Section 6. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional, all other parts are invalid."



1/31/89  
169

AMENDMENTS TO HOUSE BILL NO. ~~84~~ 169

Requested By The Montana County Attorneys Association  
Offered By John Connor, Department Of Justice

1. Title, line 7.  
Following: "Expunged;"  
Insert: "PROVIDING FOR NOTICE OF DISMISSAL AND  
ALLOWING THE DEFENDANT TO DISCLAIM THE CHARGE FOR  
PURPOSES OF EMPLOYMENT INQUIRIES."
2. Page 1, line 19.  
Following: "dismissed."  
Strike: Remainder of line 19 and line 20.
3. Page 1, line 22.  
Strike: "defendant's record may not be expunged."
4. Page 1, line 25.  
Following: "expunged-"  
Insert: "A copy of the order of dismissal shall be  
sent to the prosecutor and to the department of justice  
accompanied by a form prepared by the department of  
justice containing identifying information about the  
defendant. After the order of dismissal has been  
entered, the defendant may answer employment inquiries  
as though the charge did not occur."

2  
1/31/89  
HB 169

# Montana Magistrates Association

31 January 1989

Testimony offered in support of HB 169, a bill for an act entitled: "An act providing that when imposition of a sentence is deferred, the deferral period has passed, and the charges are dismissed, the defendant's record may not be expunged."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports HB 169.

Under current statute and in light of the recent Attorney Generals opinion "to expunge " means to destroy even the original citation. Limited jurisdiction courts have followed the letter of the law and have had difficulty explaining to the auditors the existence of certain moneys.

It is especially difficult to explain where the money came from when even the original order mandating the expungement must be destroyed. The limited jurisdiction court has money in the ledger but no original citation to show why the money was collected and no order to explain why that citation was destroyed.

This particular statute has created some bookkeeping headaches for our courts. We urge you to give it a favorable recommendation and to vote for its adoption into law.

*Wallace A. Jewell*

Testimony of Michael Sherwood regarding House Bill 169.

January 31, 1989

OPPOSED

Representing MTLA

Montana law currently provides for two types of probationary sentences: (1) Suspended ; and (2) Deferred. A suspended sentence means that the defendant is actually sentenced to a particular period of imprisonment and the execution of that sentence is in whole or part suspended upon certain conditions. In the event that a defendant should fail to perform those conditions, he may be brought back into court and the sentence that he originally received may be imposed. Upon the lapse of the period of time for which the defendant was originally sentenced (whether he completes probation or imprisoned) , his probation or imprisonment is ended. The conviction stays upon his record regardless of his performance.

A deferred sentence means that the judge does not sentence upon a finding of guilty, but, instead, postpones sentencing for a period of years during which the defendant is on probation subject to certain terms and condtions. If the defendant successfully completes his probation he enjoys the rewards of doing so in that he can then withdraw his plea of guilty, enter a plea of not guilty and the charges are dismissed.

A deferred sentence is a two-edged sword, however, because failure to complete the terms of probation means that a defendant may be brought back into court and sentenced to anything allowable by law up to the maximum sentence for the crime. This could result

in a more severe sentence than the violation of a suspended sentence.

The whole purpose of a deferred sentence is to allow a young or first time offender the opportunity to clear his record and avoid the label of "felon" or "criminal" for the rest of his life. This purpose is defeated if his record is not expunged. Prior to the enactment of the amendments in 1987 which allow expungment of the record, the practice of law enforcement was to simply record that a deferred sentence had been handed out, that the defendant had completed the terms and conditons of that sentence and the charges had been dismissed.

The whole purpose of a deferred sentence was, therefore, defeated. This type of sentence is an excellent rehabilitation tool and should not be abandoned or rendered ineffective by a return to prior law.

Amendments to House Bill No. 286  
First Reading Copy

Requested by Representative Lee  
For the Committee on Judiciary

Prepared by Lee Heiman  
January 27, 1989

1. Title, line 6.

Strike: "OWN"

Insert: "USE"

2. Page 2, lines 12 and 13.

Strike: "(a), 1(c) through (1)(e),"

3. Page 2, lines 13 through 16.

Strike: "impose" on line 13 through "society" on line 16

Insert: "restrict an individual's right to carry or use dangerous weapons as a condition of sentence. The restriction is subject to periodic review by the court upon application by the defendant. The restriction may be imposed only if the court makes a written statement of the reasons for the imposition of the restriction that includes findings that:

(a) for the necessary protection of society there is a rational basis for imposing the restriction; and

(b) the restriction is imposed for the conviction of domestic abuse or other offense involving violence directed against another person and that the threat of force or a weapon was used in the course of the offense."

# Montana Magistrates Association

31 January 1989

Testimony offered in support of HB286, a bill for an act entitled: "An act to provide that a judge in a Justice's, City, or Municipal Court, may impose on a sentence the condition that the defendant not own or carry a dangerous weapon."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association favors this legislation because all too often when an assault or a domestic abuse has been committed, the lower court can not impose such a sentence, even in the interests of justice or when such a sentence would be in the best interests of society and for the protection of the victim. Having the jurisdiction to impose such a sentence would greatly enhance the sentencing ability of the limited jurisdiction courts when crimes against persons are committed.

We strongly urge you to support this legislation and to give it a do pass recommendation from committee.

*Wallace A. Jewell.*

\* 2. Section 40-4-219(1), M.C.A. lays out the criteria which must be meant before a court may modify a "prior custody decree," and provides essentially that it must find that a child's circumstances have changed in the meantime <sup>Exhibit 6</sup> and that "the child's present environment endangers seriously his physical, mental, moral, or emotional health..." As you can tell, this standard is different from and far more difficult to satisfy than the so-called "best interest" test provided in §40-4-212, M.C.A., and which is the standard applied by courts in making a custody decision for the first time. Recently, the Montana Supreme Court ruled that the tougher burden of proof contained in §40-4-219, M.C.A. must be met in all cases in which the parties themselves have determined which of them should have custody, even temporarily, and even though their decision was not reviewed or endorsed by the court. The practical effect of this decision, if I'm interpreting it correctly, will be to force courts to turn away from the "best interest" test, §40-4-212, M.C.A., and to apply instead the "serious endangerment" test, set forth in §40-4-219, in the vast majority of divorce cases involving children, whether or not a particular court is considering the question of custody for the first time. Since §40-4-219 contemplates the existence of a "prior custody decree," the Supreme Court's decision seems a curious one, and one that is destined to create havoc for parents and their children whenever the parents have determined between themselves who should have custody for the time being. To correct this problem, a bill may be needed to clarify that the phrase, "prior custody decree," as contained in §40-4-219, means exactly what it says--as absurd as that may sound. 11/31/89 286

# Montana Magistrates Association

EXHIBIT 7  
DATE 1/31/89  
HB 454

31 January 1989

Testimony offered in support of HB454, a bill for an act entitled: "An act to prohibit a defendant who voluntarily enters a guilty plea in a lower court from appealing to a district court."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The judges of the limited jurisdiction courts favor the enactment of this legislation. If the plea of the defendant is voluntary and if the judge in the limited jurisdiction court does his or her job correctly and advises the defendant of the consequences of his plea; of his constitutional rights; of the maximum penalty that may be imposed for the offense charged; if these procedural steps are followed and the judge in the limited jurisdiction court determines that the plea is knowing and voluntary, then the defendant should have no reason to appeal.

The judges of the limited jurisdiction courts know that the appeals from their courts to district courts are costly and time-consuming both for the county attorneys and the counties. Any attempt to eliminate the frivolous and unneeded appeal should be considered. If the judges of courts of limited jurisdiction were not so well schooled by the Supreme Court's Commission on Courts of Limited Jurisdiction then we would not support this measure. However, we must pass a certification test every four years and go to two weeks of schooling every year. We feel we are qualified enough to determine a knowing and voluntary plea of guilty.

We urge the support of this committee to this measure and hope you give it a do pass recommendation.

*Wallace A. Jewell*



EXHIBIT 8  
DATE 1/31/89  
HB 169

Amendments to House Bill No. 169  
First Reading Copy

Requested by Rep. Daily  
For the Committee on the Judiciary

Prepared by John MacMaster  
January 31, 1989

1. Title, line 7.

Following: "EXPUNGED"

Insert: "AND MAY BE USED ONLY BY COURTS AND CRIMINAL JUSTICE AND  
LAW ENFORCEMENT AGENCIES AND ONLY FOR CRIMINAL JUSTICE  
PURPOSES"

2. Page 1, line 22.

Following: "expunged"

Insert: "; however, the record may be used only by courts and  
criminal justice and law enforcement agencies and only for  
criminal justice purposes. The defendant may not waive his  
right to this limited use, and a waiver by the defendant may  
not be honored by any person or entity holding or having  
access to the record."

HB 70

Adopted Amendments  
of Jan. 31

original

1 BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE  
5 REQUIREMENTS FOR OBTAINING A PERMIT TO CARRY A CONCEALED  
6 ~~WEAPON~~ <sup>handgun</sup>; PROVIDING FOR THE FORM OF A PERMIT CARD; PROVIDING  
7 FOR ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR FEES ~~AND~~  
8 ~~LATE RENEWAL FEES~~; PROVIDING FOR THE DISTRIBUTION OF FEES;  
9 PROVIDING FOR RECORDKEEPING REQUIREMENTS; PROVIDING FOR  
10 REVOCATION OF A PERMIT; AND AMENDING SECTIONS 45-8-317,  
11 45-8-319, AND 45-8-351, MCA."

12

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

14 Section 1. Section 45-8-317, MCA, is amended to read:

15 "45-8-317. Exceptions. Section 45-8-316 does not apply  
16 to:

17 (1) any peace officer of the state of Montana;

18 (2) any officer of the United States government

19 authorized to carry a concealed ~~weapon~~ <sup>handgun</sup>; <sup>Ignore.</sup>  
<sup>Not an amendment</sup>

20 (3) a person in actual service as a national  
21 guardsman;

22 (4) a person summoned to the aid of any of the persons  
23 named in subsections (1) through (3);

24 (5) a civil officer or his deputy engaged in the  
25 discharge of official business;

(6) a person in possession of a valid  
hunting license and actively  
hunting during an official  
hunting season in an area where

- (7)
- (1) ~~(6)~~ a person authorized ~~by a judge of a district court~~  
 (2) ~~of this state the sheriff of a county or the chief of police~~  
 (3) ~~of a municipality to carry a weapon;~~ <sup>with a valid permit under 45-8-319</sup> or  
 (4) ~~(7)~~ <sup>(8)</sup> the carrying of arms on one's own premises or at  
 5 one's home or place of business."

6 Section 2. Section 45-8-319, MCA, is amended to read:

- (7) "45-8-319. Permits <sup>handgun</sup> to carry concealed ~~weapons~~ --  
 8 records -- fees -- revocation. (1) The legislature finds and  
 9 declares as a matter of public policy that it is necessary  
 (10) to establish statewide uniform standards for issuing <sup>a</sup> permits  
 (11) to carry <sup>a</sup> concealed <sup>handgun</sup> weapons. The legislature intends that a  
 12 law-abiding citizen of this state who qualifies under the  
 13 provisions of this section may not arbitrarily or  
 (14) subjectively be denied a permit to carry a concealed <sup>handgun</sup> ~~weapon~~.  
 15 ~~(1)~~ (2) Any judge of a district court of this state may  
 (16) grant permission <sup>the</sup> The sheriff of a county, or the chief of  
 (17) police of a <sup>city of the first or second class,</sup> ~~municipality in the county~~ in which the  
 18 applicant resides shall, within 30 days after the filing of  
 19 an application, issue or deny a permit to the applicant to  
 (20) carry or bear, <sup>handgun</sup> a concealed or otherwise, a pistol or  
 (21) ~~revolver~~ for a term not exceeding ~~1~~ year of 2 years. A  
 (22) permit is valid for any lawfully possessed <sup>handgun</sup> ~~firearm~~ and is  
 23 valid throughout the state.

24 (3) A permit may not be issued to a person who:

25 (a) is not a citizen of the United States or who has

Insert (A) on page 2, line 21:

" If the authority to which application is made cannot adequately check the appropriate records and process the application in 30 days, the authority may inform the applicant in writing that an additional 30 days is necessary. There must not be more than one 30-day extension. "

There is no residency requirement for a person who makes a subsequent application in another jurisdiction after the first application is granted ~~or denied~~ <sup>the jurisdiction of the authority to which application is made</sup> LC 0072/01

① not been a resident of Montana for the 6 months immediately  
② preceding the date of the application

3 (b) is less than 18 years of age;

4 (c) has been convicted of a felony under federal law  
5 or the law of any state;

6 (d) has been convicted, within a 3-year period prior  
7 to the date of the application, of:

8 (i) assault;

9 (ii) a first offense for carrying a concealed ~~weapon~~; <sup>handgun</sup>

10 (iii) resisting arrest;

11 (iv) domestic abuse;

12 (v) disorderly conduct;

13 (vi) obstructing a peace officer;  
(vii) voter coercion, as provided under 13-35-218; or

14 (viii) ~~(vii)~~ accountability for any of these offenses under

15 the provisions of Title 45, chapter 2, part 3;

16 ~~(e) is an adjudicated drug or alcohol abuser;~~ <sup>Insert (A) from back of this page</sup>

17 ~~(f) is adjudicated mentally incompetent;~~ <sup>Insert (B) from back of this page</sup>

18 (2)(4) All---applications---for---such---permission An

19 application for a permit must be made by petition filed with

20 the clerk-of-the-district-court sheriff or chief of police.

21 ~~No charge may be made for the filing of the petition. The~~

22 application shall be completed, under oath, on a form

23 prescribed by the identification bureau of the department of

24 justice and must contain the following information:

25 (a) the applicant's name, date and place of birth,

Insert (A), on page 3, line 16:

"has been convicted of any combination of two or more offenses under 61-8-401 and 61-8-406 or ~~any combination of two or more~~ possession of offenses under chapter 9 of this title"

Insert (B), on page 3, line 17:

"detained pending hearing or trial, or has been adjudicated to be seriously mentally ill, under Title 53, chapter 21, part 1, or has been diagnosed to have a mental illness or disorder or serious mental illness, as defined in 53-21-102, that is chronic by a professional person, as defined in 53-21-102, hired by the person in a private setting"

Insert as subsec. (g) on page 3, following line 17:

"(g) is under prosecution for an offense referred to in subsections (3)(c) through (e)"  
(3)

occupation, height, weight, sex, race, and color of hair and eyes;

(b) the applicant's residential and occupational addresses;

(c) the applicant's fingerprints, which must be placed on the application by the law enforcement officer receiving the application;

(d) a list of any arrests or convictions of the applicant for criminal offenses;

(e) the names of two personal references who are not relatives and who reside in the county where the application is made and who may attest to the applicant's good moral character and peaceable disposition;

(f) a statement that the applicant has been furnished a copy of Title 45, chapter 8, part 3, and Title 45, chapter 3, and is knowledgeable of the provisions contained therein;

(g) a conspicuous warning that the application is executed under oath and that a false answer to any question or the submission of any false document by the applicant subjects the applicant to a criminal prosecution under 45-7-202; and

(h) a statement that the applicant desires a concealed handgun permit as a means of lawful self-defense.

(3)--The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral

1 character-and-peaceable-disposition-

2 (4)--No--such--permission---shall-be-granted-any-person  
3 who-is-not-a-citizen-of-the-United-States-and--who--has--not  
4 been--an--actual--bona-fide-resident-of-the-state-of-Montana  
5 for-6-months-immediately-next-preceding--the--date--of--such  
6 application-

7 (5)--A--record--of--permission-granted-shall-be-kept-by  
8 the-clerk-of-the-court--The-record-shall-state-the--date--of  
9 the-application, the-date-of-the-permission, the-name-of-the  
10 person--to-whom-permission-is-granted, the-name-of-the-judge  
11 granting-the-permission, and-the-name-of-the-person, if-any,  
12 by-whom-good-moral-character-and-peaceable--disposition--are  
13 proved--The--record--must--be--signed--by-the-person-who-is  
14 granted-such-permission-

15 (5) Before a permit is issued, the sheriff <sup>or</sup> ~~of~~ chief of  
16 <sup>MUNICIPAL, COUNTY,</sup> police shall check the appropriate ~~local~~ and state law  
17 enforcement records and may check national law enforcement  
18 records for information relating to the applicant. The  
19 sheriff or chief of police may consider any information  
20 received in relation to the applicant's qualifications and  
21 the protection of society. The sheriff or chief of police  
22 may not be held liable for any damages resulting from  
23 granting a permit if the sheriff or chief of police  
24 requested information from local and state law enforcement  
25 records and considered any information received.



(6) The clerk sheriff or the chief of police shall thereupon issue ~~under his hand and the seal of the court a~~ certificate, a permit in a convenient card form so that the same it may be carried in the pocket, stating: The card form must be prescribed by the identification bureau of the ~~department of justice, which~~ <sup>department</sup> ~~The identification bureau~~ shall make available to the issuing authority any equipment required to comply with this subsection. The permit card shall:

(a) show a full-face photograph of the permitholder;

(b) state the date of issuance and the date of

expiration of the permit; and

(c) list the permitholder's name, date of birth, address, height, weight, sex, race, and color of hair and eyes.

"Permission--to-----authorizing-him-to-carry-or-bear,  
concealed-or-otherwise,-a-pistol-or-revolver-for-the--period  
of-----from--the--date-hereof-has-been-granted-by---a  
judge-of-the-district-court-of-the---judicial-district-of  
the-state-of-Montana,-in-and-for-the-county-of--.

Witness-the-hand-of-the-clerk--and--the--seal--of--said  
court-this-....-day-of-....,19..

elerek

(7) ~~The--date--of--the--certificate--shall--be--the--date--of~~  
~~the--granting--of--such--permission.~~ The certificate permit card

1 shall bear upon its face the signature of the person  
 2 receiving the same permit. A permit card is not valid unless  
 3 it has been signed by the permitholder.

4 (8)--Upon--good--cause--shown--the--judge--granting--such  
 5 permission--may,--in--his--discretion--without--notice--to--the  
 6 person--receiving--such--permission,--revoke--the--same--The--date  
 7 of--the--revocation--shall--be--noted--by--the--clerk--upon--the  
 8 record--kept--by--him--

9 (9)--All--permissions--to--carry--or--bear--concealed--weapons  
 10 granted--before--March--31--1919--are--hereby--revoked--

11 (8) The issuing authority shall issue a temporary  
 12 permit to an approved applicant, on a form prescribed by ~~the~~  
 13 ~~identification bureau of the~~ <sup>KEEP</sup> department of justice,  
 14 permitting the applicant to carry a concealed <sup>hand gun</sup> ~~weapon~~, until  
 15 the permanent card is issued. A temporary permit must be in  
 16 a person's immediate possession while carrying a concealed  
 17 <sup>hand gun</sup> ~~weapon~~. A temporary permit is invalid when the applicant's  
 18 permit card has been delivered to the applicant.

19 (9) (a) Denial of an application for a permit must be  
 20 based solely on the ground that the applicant fails to  
 21 qualify under the criteria listed in subsection (3). Denial  
 22 of an application for a permit must be accompanied by a  
 23 written statement from the issuing authority stating the  
 24 reason for denial.

25 (b) Denial of an application for a permit may be

and the grant of a permit may be appealed by ~~another authority~~ another authority authorized to grant the applicant a permit,

LC 0072/01

Insert (C) from back of this page

(1) <sup>taxation of pre-hearing costs</sup> appealed by the applicant, without ~~cost~~ to the applicant, to  
2 the district court of the county in which the applicant  
3 resides, ~~under the procedures specified in Title 27, chapter~~  
4 ~~7. The court shall~~ decide the appeal as quickly as possible and in any event within 6 months.

Insert (A) from back of this page

5 (10) The fee for the original issuance of a permit is ~~\$125~~  
6 ~~\$75~~. The fee must be collected by the authority issuing the  
7 permit. The fee must be distributed as follows:

8 (a) ~~\$50~~ <sup>\$100</sup> must be paid to the issuing authority for the  
9 purpose of enforcing <sup>this section and 45-8-351</sup> ~~this act~~; and

10 (b) \$25 must be deposited in the state special revenue  
11 fund to be used <sup>the administration of this section</sup> exclusively for the printing and  
12 distribution of a pamphlet on the legal limits of the use of  
13 firearms, <sup>and on</sup> firearms safety, <sup>keep</sup> ~~and the preemptive nature of~~

Insert (B) from back of this page

14 ~~state law~~. The pamphlet must be prepared by the department  
15 of justice and must be given by the issuing authority to  
16 each applicant for a permit.

17 (11) A permitholder may renew a permit if he applies  
18 for renewal not more than 90 days before the expiration date  
19 on a form prescribed by the department of justice of the permit. The fee for the renewal of a permit is \$25.

20 The fee must be collected by the authority renewing the  
21 permit and must be paid to the issuing authority for the  
22 purpose of enforcing <sup>this section and 45-8-351</sup> ~~this act~~. A renewed permit must take

23 effect on the expiration date of the prior permit and is  
24 valid for a term of 5 years. A permitholder who applies for  
25 a renewal after the expiration date of the permit shall pay

~~is a resident of~~

resides in the jurisdiction of the authority that issued the permit

Insert (A), on page 8, line 7:

"when the application is made" ~~if the~~  
~~applicant unsuccessfully appeals~~  
~~denial of a permit the court may~~  
~~order a refund of all or part of the~~  
~~fee if warranted by the circumstances.~~

Insert (B), on page 8, line 14:

"and to operate or grant funds to  
private entities for the operation  
of programs teaching handgun  
safety and use and when  
firearms may be legally used  
in defense of persons and  
property"

Insert (C), on page 8, line 4:

"The record on appeal is limited to  
the application, the denial if an application  
was denied, and information an  
appellant issuing authority adds  
to the record."

1 a late renewal penalty of \$10 in addition to the renewal  
 2 fee. If the permitholder applies for a renewal within 1 year  
 3 of the expiration date, the issuing authority may require  
 4 him to apply for a new permit under the provisions of this  
 5 section. If the permitholder applies for renewal more than 1  
 6 year after the expiration date, the issuing authority shall  
 7 require him to apply for a new permit under the provisions  
 8 of this section.

9 (12) A record of the application and permit must be  
 10 kept by the issuing authority. The record must contain the  
 11 date of the application, the date the permit was issued, the  
 12 name of the permitholder, the name of the person issuing the  
 13 permit, and a copy of the application. The record must be  
 14 signed by the permitholder. A copy of the record must be  
 15 mailed to and kept by ~~the identification bureau of the~~  
 16 department of justice and must contain an original set of  
 17 fingerprints.

18 (13) (a) A permitholder shall carry the permit card  
 19 when carrying a concealed <sup>handgun</sup> ~~weapon~~.

20 (b) A permitholder who carries a concealed <sup>handgun</sup> ~~weapon~~  
 21 without a valid permit card in his possession is subject to  
 22 prosecution under 45-8-316. It is ~~an affirmative defense~~  
 23 <sup>a mitigating factor</sup> ~~under this subsection~~, that the defendant has a current  
 24 permit issued pursuant to this section.

25 (14) A permitholder <sup>who is carrying a concealed handgun</sup> shall inform any uniformed law

A sheriff, or chief of police if the applicant resides in  
 a city of the first or second class,  
 who issues a permit <sup>(9)</sup> must also mail a copy of the  
 record to the other authority authorized to

Reinstate, Ignore line out  
 Not an amendment

1 enforcement officer or any person who identifies himself as  
 2 a law enforcement officer, upon being stopped or detained by  
 3 such officer, ~~that~~ he is exercising his permit to carry a  
 4 concealed ~~weapon~~ <sup>hand gun</sup>. The permit holder shall also exhibit the  
 5 permit upon the demand of any law enforcement officer. A  
 6 violation of the provisions of this subsection ~~constitutes a~~  
 7 ~~misdemeanor~~ <sup>is a criminal offense</sup>, punishable by a fine of not more than \$100.

8 (15) Within 30 days after changing his permanent  
 9 address, a permit holder shall notify the issuing authority  
 10 in his new area of residence that he is permitted to carry a  
 11 concealed ~~weapon~~ <sup>hand gun</sup>. Failure to comply with this subsection  
 12 ~~constitutes~~ <sup>is</sup> a civil violation punishable by a ~~fine~~ <sup>penalty</sup> of not  
 13 more than \$25.

14 (16) Within 30 days after a permit card is lost or  
 15 destroyed, the permit holder shall notify the authority  
 16 issuing the permit of the loss or destruction of the permit  
 17 card. Failure to comply with this subsection ~~constitutes a~~ <sup>is</sup>  
 18 civil violation punishable by a ~~fine~~ <sup>penalty</sup> of not more than \$25.

19 (17) In the event that a permit card is lost or  
 20 destroyed, the permit is automatically invalid. The  
 21 permit holder may obtain a duplicate upon payment of a \$5 fee  
 22 to the issuing authority and upon furnishing a notarized  
 23 statement to the issuing authority that such permit card has  
 24 been lost or destroyed.

25 ~~(18) (a) Except as provided in subsection (18)(b), a~~

Strike  
 Sub sec. (18)

1 permitholder may not be prohibited by a local judicial order  
 2 or by local ordinance or resolution enacted pursuant to  
 3 45-8-351(2)(a) from carrying a concealed <sup>handgun</sup> weapon in  
 4 particular places.

5 (b) A permit issued in accordance with this section  
 6 does not authorize a person to carry a concealed <sup>handgun</sup> weapon into  
 7 a police, sheriff's, or highway patrol station; a detention  
 8 facility, prison, or jail; any courtroom or judge's chamber;  
 9 or any public meeting of an elected board, council, or  
 10 commission provided that such board, council, or commission  
 11 has adopted an ordinance or resolution that prohibits the  
 12 bringing of a firearm into its meeting and has posted notice  
 13 of the ordinance or resolution in a conspicuous place.

14 <sup>18</sup> ~~(19)~~ A permit issued under this section must be revoked  
 15 if the permitholder:

16 (a) becomes ineligible under the criteria set forth in  
 17 subsection (3); or

18 (b) is determined to be under the influence of an  
 19 intoxicating substance in a public place while carrying a  
 20 concealed <sup>handgun</sup> ~~weapon~~. For the purpose of this subsection, the  
 21 presumptions of whether a person is under the influence are  
 22 the same as those specified in 61-8-401. Chemical, blood,  
 23 breath, or urine tests may be administered by a law  
 24 enforcement officer under the provisions set forth in  
 25 61-8-402.

1           (20) (a) A law enforcement officer may temporarily  
 2           <sup>handgun</sup>  
 3           impound the ~~weapon~~ of a permitholder if he believes in good  
 4           faith that the permitholder is under the influence of an  
 5           intoxicating substance.

6           (b) If the permitholder is found not to be under the  
 7           influence of an intoxicating substance by a test  
 8           administered under the provisions of subsection (19)(b), the  
 9           law enforcement officer shall return the <sup>handgun</sup> ~~weapon~~ immediately  
 10          to the permitholder.

11          (c) In no case may the <sup>handgun</sup> ~~weapon~~ be impounded for a  
 12          period longer than 10 days, and it must be returned to the  
 13          permitholder within that time unless the law enforcement  
 14          officer can prove the <sup>handgun</sup> ~~weapon~~ was obtained illegally by the  
 15          permitholder.

16          (21) A county attorney, upon application of a law  
 17          enforcement officer, may apply to the district court for an  
 18          order to show cause why a person's permit to carry a  
 19          concealed <sup>handgun</sup> ~~weapon~~ should not be revoked. Upon order of the  
 20          court, after notice and opportunity for hearing, the permit  
 21          <sup>must</sup> ~~shall~~ be revoked and the permitholder shall immediately  
 22          surrender the permit to the issuing authority for the area  
 23          in which he resides. The date of the revocation must be  
 24          noted upon any records kept by the issuing authority and ~~the~~  
 25          identification bureau of <sup>KFP</sup> ~~the~~ department of justice."

Section 3. Section 45-8-351, MCA, is amended to read:



1 "45-8-351. Restriction on local government regulation  
 2 of firearms. (1) Except as provided in subsection (2), no  
 3 county, city, town, consolidated local government, or other  
 4 local government unit may prohibit, register, tax, license,  
 5 or regulate the purchase, sale or other transfer (including  
 6 delay in purchase, sale, or other transfer), ownership,  
 7 possession, transportation, use, or unconcealed carrying of  
 8 any rifle, shotgun, or handgun.

9 (2) (a) For public safety purposes, a city or town may  
 10 regulate the discharge of rifles, shotguns, and handguns. A  
 11 ~~Except as provided in subsection (2)(b), a~~ county, city,  
 12 town, consolidated local government, or other local  
 13 government unit has power to prevent and suppress the  
 14 carrying of concealed weapons, the carrying of weapons to a  
 15 public assembly, publicly owned building, park under its  
 16 jurisdiction, or school, and the possession of firearms by  
 17 convicted felons, adjudicated mental incompetents, illegal  
 18 aliens, and minors.

19 ~~(b) Except as provided in 45-8-319(18)(b), a local~~  
 20 ~~government may not regulate a person who has a valid permit~~  
 21 ~~to carry a concealed weapon issued pursuant to 45-8-319.~~

22 (b) ~~(b)~~ Nothing contained herein shall allow any  
 23 government to prohibit the legitimate display of firearms at  
 24 shows or other public occasions by collectors and others,  
 25 nor shall anything contained herein prohibit the legitimate

1 transportation of firearms through any jurisdiction, whether  
2 in airports or otherwise."

3       **Section 4. Existing permits.** A permit to carry a  
4 concealed <sup>hand gun</sup> ~~weapon~~ issued prior to [the effective date of this  
5 act] is valid until the expiration date of the permit. A  
6 person holding such a permit is eligible for permit renewal  
7 under the provisions of 45-8-319(11).

8       **Section 5. Codification instruction.** [Section 4] is  
9 intended to be codified as an integral part of Title 45,  
10 chapter 8, part 3, and the provisions of Title 45, chapter  
11 8, part 3, apply to [section 4].

12       **Section 6. ~~Severability.~~** ~~If a part of [this act] is~~  
13 ~~invalid, all valid parts that are severable from the invalid~~  
14 ~~part remain in effect. If a part of [this act] is invalid~~  
15 ~~in one or more of its applications, the part remains in~~  
16 ~~effect in all valid applications that are severable from the~~  
17 ~~invalid applications.~~

-End-

Nonseverability. It is the  
intent of the legislature that each part of  
[this act] is essentially dependent upon every  
other part, and if one part is held  
unconstitutional or invalid, all other parts are  
invalid.

HB 70  
ADOPTED AMENDMENTS  
Jan. 31

HB 70  
1-31-89

pg 1468

1. Title, line 6.

Page 2, lines 7, 11, and 14.

Page 3, line 7.

Page 7, line 23.

Page 7, lines 14 and 17.

Page 9, lines 19 and 20.

Page 10, lines 4 and 11.

Page 11, line 20.

Page 12, lines 2, 3, 10, 13, and 18.

Page 14, line 4.

Strike: "weapon", "weapons", "weapon", or "weapons"

Insert: "handgun"

2. Page 3, line 23.

Page 6, line 5.

Page 7, lines 12 and 13.

Page 9, line 15.

Page 12, lines 23 and 24.

Strike: "the identification bureau of"

3. Title, lines 7 and 8.

Strike: "AND" on line 7 through "RENEWAL FEES"  
on line 8

4. Page 1.

Following: line 25

Insert: "(6) a person in possession of a valid  
hunting license and actively hunting during an  
official hunting season in an area where hunting  
is allowed;"

Renumber: subsequent subsections

5. Page 2, line 1

Strike: "authorized by"

6. Page 2, lines 2 and 3.

Strike: "the sheriff" on line 2 through "weapon" on line 3

Insert: "with a valid permit under 45-8-319"

7. Page 2, line 7.

Strike: "Permits"

Insert: "Permit"

8. Page 2, line 10.

Strike: "permits"

Insert: "a permit"

9. Page 2, line 11.

Following: "carry"

Insert: "a"

10. Page 2, line 16

Strike: "a"

Insert: "the"

Following: "county"

Insert: ", "

11. Page 2, line 17.

Strike: "municipality in the county"

Insert: "city of the first or second class,"

12. Page 2, lines 20 and 21.

Strike: "pistol" on line 20 through "revolver" on line 21

Insert: "handgun"

13. Page 2, line 21.

Following: "years."

Insert: "If the authority to which application is made cannot adequately check the appropriate

records and process the application in 30 days, the authority may inform the applicant in writing that an additional 30 days is necessary. There must not be more than one 30-day extension.

14. Page 2, line 22.

Strike: "firearm"

Insert: "handgun"

15. Page 3, line 1.

Strike: "Montana"

Insert: "the jurisdiction of the authority to which application is made"

16. Page 3, line 2.

Strike: " ; "

Insert: "There is no residency requirement for a person who makes a subsequent application in another jurisdiction after the first application is granted."

17. Page 3.

Following: line 12

Insert: "(vi) obstructing a peace officer; "

Renumber: subsequent subsections

18. Page 3, line 16.

Strike: subsection (e) in its entirety

Insert: "(e) has been convicted of any combination of two or more offenses under 61-8-401 and 61-8-406 or <sup>or</sup> a possession offense under chapter 9 of this title; "

19. Page 3, line 17.

Strike: "indicated mentally incompetent "

Insert: "detained pending hearing or trial, has been adjudicated to be seriously mentally ill under Title 53, chapter 21, part 1, or has been diagnosed to have a mental disorder or serious mental illness, as defined in 53-21-102, that is chronic by a professional person as defined in 53-21-102, hired by the person in a private setting; or"

20. Page 3.

Following: line 17

Insert: "(g) is under prosecution for an offense referred to in subsections (3)(c) through (3)(e)."

21. Page 3, line 21.

Strike: "No charge" through "petition."

22. Page 3, line 22.

Strike: "shall"

Insert: "must"

23. Page 4, line 10.

Following: "who"

Insert: "are not relatives and who"

24. Page 4, line 15.

Following: "part 3"

Insert: ", "

25. Page 4, line 16.

Following: "3"

Insert: ", "

26. Page 5, line 15.

Strike: the first "of"

Insert: "or"

5 days

27. Page 5, line 16.

Strike: "local"

Insert: "municipal, county,"

28. Page 6, line 6.

Strike: ", The identification bureau"

Insert: ", which"

29. Page 8, line 1.

Strike: "cost"

Insert: "taxation of pre-hearing costs"

Following: "applicant,"

Insert: "and the grant of a permit may be appealed by another authority authorized to grant the applicant a permit,"

30. Page 8, lines 3 and 4.

Strike: ", under" through "7" on line 4

Following: "." on line 4

Insert: "The record on appeal is limited to the application, the denial if an application was denied, and information an appellant issuing authority adds to the record. The court shall decide the appeal as quickly as possible and in any event within 6 months."

31. Page 8, lines 6 and 7.

Strike: "\$75" on line 6

Insert: "\$125"

Strike: "by the" on line 6 through "permit" on line 7

Insert: "when the application is made"

32. Page 8, line 8.

Strike: "\$50"

Insert: "\$100"

33. Page 8, line 9.

Strike: "[this act]"

Insert: "45-8-351 and this section"

34. Page 8, line 10.

Following: "in"

Insert: "an account in"

35. Page 8, line 11.

Following: "for"

Insert: "the administration of this section,"

36. Page 8, lines 13 and 14.

Following: the first "firearms" on line 13

Strike: "2"

Insert: "and on" <sup>the preemptive</sup>

Strike: "and" on line 13 through "law" on line 14

Insert: "and to operate or grant funds to private entities for the operation of programs teaching handgun safety and when firearms may be legally used in defense of persons and property"

37. Page 8, line 17.

Following: "he"

Insert: "resides in the jurisdiction of the authority that issued the permit and he"

38. Page 8, line 19.

Following: "of the permit"

Insert: "on a form prescribed by the department of justice"

39. Page 8, line 22.

Strike: "[this act]"

Insert: "45-8-351 and this section"



40. Page 9, line 17.

Following: "fingerprints."

Insert: "A sheriff, or chief of police if the applicant resides in a city of the first or second class, who issues a permit shall also mail a copy of the record to the other authority authorized to issue a permit to the person granted a permit."

41. Page 9, lines 22 and 23.

Strike: "an" on line 22 through "subsection" on line 23.

Insert: "a mitigating factor"

42. Page 9, line 25.

Following: "permitholder"

Insert: "who is carrying a concealed handgun"

43. Page 10, lines 6 and 7.

Strike: "the provisions of" on line 6

Strike: "constitutes" on line 6 through "misdemeanor" on line 7

Insert: "is a criminal offense"

44. Page 10, line 12.

Strike: "constitutes"

Insert: "is"

Strike: "fine"

Insert: "penalty"

45. Page 10, line 17.

Strike: "constitutes"

Insert: "is"

46. Page 10, line 18.

Strike: "fine"

Insert: "penalty"

47. Page 10, line 25 through page 11, line 13.

Strike: subsection (18) in its entirety

Renumber: subsequent subsections

48. Page 12, line 20.

Strike: first "shall"

Insert: "must"

49. Page 13, line 11.

Strike: "Except" through "a"

Insert: "A"

50. Page 13, lines 19 through 21.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

51. Page 14, lines 12 through 17.

Strike: section 6 in its entirety

Insert: "Section 6. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional, all other parts are invalid."

# VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 168

DATE JAN. 31

SPONSOR REP. LEE

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 169

DATE JAN. 31, 1989

SPONSOR REP. LEE

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 179

DATE JAN. 31, 1989

SPONSOR      REP. LEE

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 286DATE JAN. 31, 1989SPONSOR REP. LEE

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
MICHAEL KEEDY	SELF	X	
Wally Jewell	MT MAG Assoc	X	
Thamesdale	Bugfork	X	
John Corner	MT County Atty Assn	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY COMMITTEE

DATE JAN. 31, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 454DATE JAN. 31, 1989SPONSOR REP. CONNELLY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MICHAEL KEEDY	KALISPELL	X	
WALLY Jewell	MT MAG ASSOC	*	
Thomas D. Hill	Bigfork	✓	
John Connor	MT. County Atty's Assn	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 31

BILL NO.

HB 169

NUMBER

1

NAME	AYE	NAY
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

TALLY

6

12

Julie Empe  
Secretary

Dave Brown  
Chairman

Motion: DO NOT PASS AS AMENDED by Rep. Daily,  
seconded by Rep. Hannah. Motion FAILED.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 31 BILL NO. HB 70 NUMBER 1.

NAME	AYE	NAY
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

TALLY

9 9

Julie Emge  
Secretary

Dave Brown  
Chairman

Motion: Amendment moved by Rep. Strizich on page 8,  
Sub 10, Section 2 & Sub A. Motion FAILS.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 31

BILL NO. #B 70

NUMBER 2

NAME	AYE	NAY
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	

TALLY

11 7

Julie Brge  
Secretary

Dave Brown  
Chairman

Motion: Rep. Hannah's substitute motion that the  
level be \$125.00. Motion CARRIES.