MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 2, 1989, at 8:44 a.m.

ROLL CALL

Members Present: All members were present with the following exceptions:

Members Excused: Rep. Eudaily and Rep. Boharski.

Members Absent: None.

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

Announcements/Discussion: Rep. Brown announced that given the nature of the weather, the committee would allow any proponents or opponents who wish to testify on today's bills sponsored by Rep. Cocchiarella to testify next week when other DUI bills are heard. The record will stay open for that testimony and written testimony will be accepted as well.

HEARING ON HOUSE BILL 368

Presentation and Opening Statement:

Rep. Cocchiarella opened the hearing on HB 368 saying this is a simple bill that straightens out an oversight in the DUI law. This bill asks that negligent vehicular assaults have mandatory revocation of license and that it be included in the habitual traffic offenders section of the law with twelve points assigned to it. Rep. Cocchiarella referred to an article which appeared in the Missoulian on January 12. The article discloses an incident involving a Libby woman who was run over twice in a hit and run accident. The man who hit the woman was faced with charges of negligent vehicular assault, driving while intoxicated, leaving the scene of an accident and driving without insurance (See EXHIBIT 1). In this case, if he were charged with negligent vehicular assault, no points would be assigned as far as being a habitual traffic offender. Negligent vehicular assault has been left out of that part of the law. The people in Missoula County feel that is a loophole and it is important to close that loophole because negligent vehicular assault has left many people with severe and lifetime injuries. If twelve points were assigned it would fit in

naturally with other offenses. DUI has ten points assigned and negligent vehicular assault would have twelve.

Testifying Proponents and Who They Represent:

John Connor, Department of Justice and Montana County Attorney's Association
Chuck Sterns, Finance Director and City Clerk for the City of Missoula

Proponent Testimony:

John Connor told the committee that the statute on negligent vehicular assault was passed by the legislature in 1985. It is a driving related offense and it simply provides that if a person is driving while under the influence of alcohol, if he is negligent in the operation of the motor vehicle and causes bodily injury to another person, he is guilty of negligent vehicular assault. Thus, there are two additional elements beyond driving under the influence of alcohol. The statute recognizes that bodily injury must be suffered by somebody in terms of the penalty. It provides that the offense is punishable by up to a year in jail or a fine of $1000. It is a serious driving offense and this bill proposes to include it within those other serious driving offenses for which revocation of one's license can occur under 61-5-205. That statute includes, for purposes of revocation, DUI, negligent homicide in which a motor vehicle is involved, the commission of any felony in which a motor vehicle is involved and several others. This bill also allows for the accumulation of points toward habitual offender status. It includes twelve points. If thirty points are accumulated within a three year period, one's license is suspended for three years. DUI carries ten points, negligent homicide and felonies committed with a motor vehicle carry twelve points, so this logically fits within the area between those offenses and DUI because it is more serious by statutory recognition of penalty than DUI but less serious than the commission of a felony committed with a motor vehicle. This bill proposes to correct a situation that was not addressed when the statute on negligent vehicular assault was enacted in 1985.

Chuck Sterns expressed to the committee that he was appearing in support of HB 368 on behalf of City Attorney Jim Nugent who could not be present for the hearing (EXHIBIT 2). Mr. Sterns said he could not explain or answer questions on the technical parts of the bill but he would get back to Jim and get an explanation for any questions the committee might have.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing: Rep. Cocchiarella referred once again to the newspaper article (EXHIBIT 1). The kind of legislation proposed in this bill helps make sure the habitual traffic offenders receive punishment that might somehow match the kinds of crimes they commit. Apparently there was a legislative oversight. This is a serious criminal offense that is not now identified in the habitual traffic offender statute. It's important that serious criminal offenses involving the use of a motor vehicle driven by a habitual offender be punished accordingly.

HEARING ON HOUSE BILL 369

Presentation and Opening Statement by Sponsor:

Rep. Cocchiarella opened the hearing on HB 369 saying that this bill asks that the imposition of sentencing not be deferred per se for blood, breath or urine alcohol content of .10 or more. According to the law as it is pertaining to court sentencing authority, the court is prohibited from granting a deferred imposition of sentence if this were to go through. For driving under the influence of alcohol or drugs, it is that way now. The sentencing authority is restricted at this point in time. Rep. Cocchiarella stated that what she is asking for is that the operation of a vehicle by a person with alcohol content of .10 or more (which is called DUI per se) also have prohibit deferred imposition of sentence. The statutory DUI offenses have progressively harsher penalties for subsequent offenses during five years of a prior DUI or DUI per se offense. A deferred imposition of sentence would not be an offense for sentencing purposes for subsequent offenses. In other words, if one received a DUI, per se sentencing would not allow that to be counted in the five years.

Testifying Proponents and Who They Represent:

John Connor, Department of Justice and Montana County Attorney's Association
Representative John Vincent, Speaker of the House
Wally Jewell, Montana Magistrate's Association
Chuck Sterns, Finance Director and City Clerk for the City of Missoula

Proponent Testimony:

John Connor spoke in support of HB 369. Mr. Connor told the committee that section 46-18-201 is the general sentencing statute for criminal offenses. It applies to both misdemeanors and felonies. That is the section which contains the provision relating to the court's power to defer imposition of sentence in criminal offenses. That statute contains a condition, though, as it relates to DUI. It says that a person who has been convicted of DUI cannot get a deferred imposition of sentence. Mr. Connor said he traced the history of that back for a ten year period and found that it has been in there for at least ten years. In 1983 the Legislature passed what is commonly called the per se offense which is in 61-8-406. This statute makes it a crime to operate a motor vehicle with a blood alcohol level greater than .10 which is the presumed level of intoxication in Montana, at least for purposes of driving. This statute requires somewhat less proof to obtain a conviction than is needed for DUI because all that must be proven is that the person had this blood alcohol level. No proof is needed with respect to the operation of the car or field sobriety tests or anything like that. The statute is sometimes used initially for charging purposes because the prosecutor may feel that the evidence is not sufficient to convict on DUI and it is sometimes used for plea bargaining purposes for DUI offenses charged originally but, for any number of reasons the prosecutor feels the lesser offense is more appropriate. This bill tries to put the per se violation in the same stead as DUI for purposes of deferred imposition of sentence and includes, in 46-18-201, language to the effect that one cannot get a deferred imposition of sentence for a per se violation. The benefit of this is that if a person is convicted of a per se violation and that goes on his record, he cannot get that expunged because the deferred imposition of sentence possibility would not be there. So, if he were charged with a subsequent offense, the previous offenses would show up on the driving record whereas under present law a person can obtain a deferred imposition of sentence for a per se violation and have it removed from his record so that it does not show up. The Montana County Attorney's Association wants the committee to be aware that one of the drawbacks of this may be that in some jurisdictions prosecutors don't use the per se statute. Mr. Connor said that when he was a prosecutor he found it easier to charge DUI and the person would plead to DUI or go to trial because he didn't like having to deal with defense attorneys arguing about trying to reduce charges. In larger jurisdictions where there are considerably more offenses, if the prosecutor has no tool available with which to dispose of those offenses, sometimes it may mean that more cases are going to go to trial. However, the Montana County Attorney's Association does support HB 369 and encourages its passage.

Representative John Vincent, Speaker of the House, spoke in favor of HB 369. Speaker Vincent told the committee that he will be presenting a DUI bill of his own next week. He said that more needs to be done in this regard. He said his concern here is relative to a loophole, given the per se statute that the state has. Per se is a different statute than regular DUI but the bottom line is still the same; a person arrested and convicted on a per se was driving drunk. It's as simple as that. When you drive drunk the car and the driver become deadly weapons. Speaker Vincent said that when this legislation was in the press he was struck by the comment that "Everybody deserves one mistake". He said that at some level, in some ways that is absolutely true. The problem in this particular regard, however, is that one mistake often means the end of life for an innocent victim. At that point it is inexcusable and intolerable. Anything that this committee can do to prevent that one mistake should be done because there is no getting that human life back and it can't be written off as a mistake. Rep. Vincent asked the committee to give the bill a favorable consideration.

Wally Jewell spoke in support of HB 369 on behalf of the Montana Magistrate's Association. He commented that in comparing a DUI and an excessive blood alcohol concentration, with both offenses you lose your license for six months if convicted, with both offenses points go on your driving record, with both offenses the insurance companies look at them the same. And so the only real difference between the two offenses other than the burden of proof is this one little loophole. In some jurisdictions judges feel that the legislature intended this loophole to exist and they will defer imposition of sentence on a BAC violation. Thus, some defendants are treated unequally in different parts of the state. Mr. Jewell asked the committee to support HB 369 and close the loophole (See EXHIBIT 2).

Chuck Sterns, on behalf of Jim Nugent, expressed the City of Missoula's strong support for this bill.

Testifying Opponents and Who They Represent:

Representative Kelly Addy, House District 94
Representative Dave Brown, House District 72

Opponent Testimony:

Representative Addy and Representative Brown asked to be listed as opponents for the record.

Questions From Committee Members:

Rep. Brown commented to Mr. Connor that his support was less than enthusiastic and indicated potential problems. He asked Mr. Connor to describe for the committee what the practical

effect out in the countryside will be from this legislation? Mr. Connor responded that the reason he expressed two views is because the County Attorney's Association is made up of 56 different people with about 30 different perspectives relating to this subject and the application of something like this has a different effect on small jurisdictions as opposed to large jurisdictions. While the legislative directive of this organization supports the bill, they felt some obligation to express the concerns that other persons who are not part of that organization may feel. As a practical matter he feels that the bill might make it more difficult for prosecutors in large jurisdictions to handle the DUI workload. They may be put in a position where more people go to trial on DUI because the deferred imposition of sentence is not available to them. In smaller jurisdictions it doesn't have much impact because they don't handle that many cases on a daily basis.

Rep. Brown, addressing Speaker Vincent, stated that in checking on the statistics in Montana (specifically referring to his references on first offenses) they are running between 65 and 70% of offenders being first time DUI offenders. He thinks that is a telling statistic. Rep. Brown stated that he needs to better understand why Rep. Vincent believes that such a stiff penalty should be imposed on first offenders moreso than any other traffic situation that is also liable to cause the same kind of personal injury. It seems to him that they are raising the standard higher here than they are in many other situations. Would you comment on that? Speaker Vincent commented that situations that don't involve drunk drivers are different from other kinds of accidents in that the drunk driver has made a decision to become drunk and to drive drunk. It's almost premeditated. They ought not do it and they ought to know that. A severe first time penalty, if it's known and is in place, will serve as a deterrent. It's also important to know that while Montana is thought to have a stiff first offense penalty, it pales in comparison to other states. California's first offense is four days in jail, Oklahoma's first offense is ten days in jail. These are minimums and they are mandatory. Even Colorado has a five day minimum jail sentence for a first offense. Stiff penalties, in and of themselves, may not be adequate. People have to know that they are in place and they are going to suffer those consequences. If they are properly put before the public, stiff penalties on first offenses do deter.

Rep. Addy asked Speaker Vincent if deferral for per se violations was not the intent of the last legislature. Speaker Vincent responded that his recollection was that that was correct. In some cases deferral might serve a useful purpose. It has become a loophole, however.

Rep. Addy asked Speaker Vincent how a conscious distinction between two statutes becomes a loophole. He asked, "Is it not the conscious decision of the prosecutor and the conscious decision of the judge that results in deferral of sentences under this statute?" Speaker Vincent said that he thinks it would be a conscious decision. There is also a consistency argument in this regard.

Rep. Rice asked John Connor if there would remain a difference between DUI in terms of the jail time that could be imposed even if this bill passed. Mr. Connor said that is correct. The DUI offense penalty now requires a mandatory one day in jail. Per se does not have that requirement. The general penalties, fines and jail time for per se are graduated differently for DUI and they are less severe, although there is a requirement for both offenses that there be alcohol evaluation and counseling.

Rep. Rice asked if there would not still be an incentive to plea bargain. Mr. Connor said yes, there would still be incentive there but it would be less pronounced if the deferred sentence was not available.

Rep. Strizich asked Wally Jewell if the Magistrates are supporting a limit on judicial discretion. Mr. Jewell said it might seem that way but what he means to say is that they want everyone to be treated basically the same way. The way it is now, you can have two JPs in the same building in the same town and one will always grant the deferral and the other won't. That is what the Magistrate's Association wants cleared up.

Rep. Daily stated to Rep. Cocchiarella that it is his understanding that when they talk about per se, basically what they are saying is the person is pleading guilty to avoid going through a trial. His question is, what if a person has some extenuating circumstances such as a death in the family or a wedding and the person is out drinking and they are going home and get picked up for DUI. They haven't been in an accident or anything. Shouldn't that person have the opportunity to have a deferred sentence? He can see her point if there's a serious accident, but they're talking about somebody who's just driving home and gets picked up for DUI. Rep. Cocchiarella said that as far as the decision to drink and drive goes, the decision to drink is a conscious decision. When you make those choices you should suffer the consequences of those choices.

Closing by Sponsor: Representative Cocchiarella said she would like to make a point about something John Connor said. If someone is charged with a DUI, that causes attorneys to work harder to prove the DUI than it does to prove the blood alcohol content of .10. Often, then, they plea bargain down to the per se. Therefore, it makes sense that the per se or the .10 should go on the record because maybe there was

money saved and maybe an attorney didn't feel he had a good enough case so they plea bargain and the person then gets charged with per se which is not recorded on the record. Deferring sentence for per se should be stopped.

HEARING ON HOUSE BILL 291

Presentation and Opening Statement by Sponsor:

Representative Thomas opened the hearing on HB 291 saying this bill is an act establishing responsibility for payment of medical expenses incurred by a prisoner confined to a county jail. The purpose would be to provide that the State of Montana would be obligated to pay the medical expenses for a prisoner incarcerated in any county jail if they are in violation of a state law. In the past, a prisoner's medical expenses have been paid by the local unit of government which arrested the individual. For example, if a city policeman arrested an individual for violating state law and the prisoner needed medical attention at the time of the arrest, the city has been expected to pay for those medical expenses. However, in 1988 the Supreme Court rendered a decision in a case involving Montana Deaconess Medical Center in Great Falls, which resulted in a county having to pay all medical bills incurred by prisoners even if the city had arrested the individual and/or delivered the individual for medical attention. In the past, these medical expenses have been potential budget busters to all units of local government, cities and counties alike. Since the Montana Supreme Court decision, the cities have been alleviated from the problem but now the counties have all the budget buster problems in this area. The place of commission of a crime and the further need for medical expenses is in your county just by chance. These expenses and these problems are clearly a statewide issue. This bill proposes that they be addressed as statewide problems and that the counties be relieved from this area which is most often unexpected, not budgeted for and produces a real financial crisis. The appropriation needed to implement this on a statewide level is a critical issue in allowing this proposal to be implemented. The fiscal note does not specify a particular amount of money as it's impossible to tell how much money will be necessary in the future.

Testifying Proponents and Who They Represent:

Tom Harrison, Sheriffs and Peace Officers Association
Barry Michelotti, Sheriff of Cascade County
Chuck Sterns, Missoula Finance Director and City Clerk

Proponent Testimony:

Tom Harrison spoke in favor of HB 291 saying the problem resulted from a decision that was decided in July of 1988 involving the Deaconess Medical Center. As the Supreme Court set

forth the facts, a man named Johnson was arrested by city police. The officers determined that Johnson's life was in jeopardy because of his ingestion of a quantity of prescription drugs. The city police requested an ambulance which arrived at the scene and transported Johnson to Deaconess Hospital. Deaconess Hospital was advised at that time that Johnson was under arrest by the city police. Johnson incurred medical charges of $2193 in the intensive care unit. Deaconess made demand for payment on the city. The city would not pay. They turned to the county and said the county should pay the bill. The issue was taken to District Court. The judge found that it was the city's problem since the city delivered him never having been delivered to the county people. The county, in effect, incurred the expenses without ever knowing the man was alive or in the hospital or anything. The case then went to the Supreme Court. The Supreme Court concluded that "the county is the largest subdivision of the state. Consequently, the county is vested with the primary responsibility of enforcing the laws of the state and maintaining facilities and the furthurance of that task. Sound reasoning dictates that the performance of the county's task necessarily includes the assumption of the associated financial burden. We therefore hold that the county is financially responsible for medical costs incurred by a detained person ultimately charged with violation of state law but who is unable to pay. Judgment of District Court reversed and remanded consistent with this opinion." Mr. Harrison presented the committee with a copy of the facts of the Supreme Court case which is public record. (See EXHIBIT 3) This decision has exacerbated the problem. Medical expenses were a serious problem for all units of local government until this decision. The decision had the net effect of taking all units of local government and putting that problem that they had shared onto the county budgets. Mr. Harrison told the committee he had some information he secured from Chuck O' Reilly and Lewis and Clark County showing that the county has been particularly hard hit by medical costs.

Barry Michelotti told the committee that Mr. Harrison's testimony just barely touched the surface of all the problems the counties are facing since this Supreme Court decision placed all the burdens on the county. Mr. Michelotti presented an example of a bill for an inmate who suffered a stroke in his county (See EXHIBIT 4). These costs are a terrible burden on the counties.

Chuck Sterns said the City of Missoula rises in support of this bill. The issue that this bill addresses has been a long standing issue between cities and counties. It was always argued that if city policemen arrested and delivered someone to the county jail, the detention at the city's instance ended and at that point it was the county sheriff's and county attorney's instance. At whose instance the prisoner was detained became the basic crux of the issue between

cities and counties. Mr. Sterns cited an example of a man who, in 1987, stole a truck in Great Falls. As he was traveling to Helena he was in an accident and was put in the hospital. Neither the city or county notified anyone that he was being charged. He walked out of the hospital and escaped prosecution (See EXHIBIT 5). Prevalent practice nationwide is to go on the nature of offense test rather than the nature of the delivering agency test. The prevalent doctrine is the nature of offense test and whether it is a violation of state law or municipal law. They have no problem assuming the financial responsibility for medical charges when they arrest someone and detain them on a municipal ordinance. That is clearly their responsibility. However, when they arrest someone in enforcing state law and deliver them to the county jail and that person is no longer detained at their instance, they feel they are not obligated for those medical expenses. It was a unanimous decision of the Supreme Court that if the issue of state law is between the city and the county, the county bears the cost. They feel that is a very important issue to have clarified. The prevalent practice is to use the nature of the offense. It is a very large double taxation issue to the cities and counties because the county jail and the county sheriff is a county wide tax and we end up paying for both, county sheriff and city police. It was a volatile issue between cities and counties for many years. This bill addresses a solution to the cities and counties' problem and is a proper reaction to the Supreme Court decision that if there is a violation of state law this legislature can decide whether it should be a state assumption or county but we feel clearly it should not be a city assumption of the responsibility because of prevalent package of the nature of offense test.

Testifying Opponents and Who They Represent:

Peter Funk, Assistant Attorney General, Dept. of Justice

Opponent Testimony:

Peter Funk was not present at the hearing but submitted written testimony February 6, 1989 (See EXHIBIT 6).

Questions From Committee Members:

Representative Hannah asked Tom Harrison if these are indigent prisoners? Mr. Harrison responded affirmatively.

Representative Hannah asked if somebody is charged with an offense under state law and is placed in the county jail and it's a person with insurance, would that insurance pick that up? Mr. Harrison said yes, the issue deals with last resort payments.

Representative Brown asked Tom Harrison with regard to the fiscal note which references four counties (Cascade, Gallatin, Lewis & Clark and Yellowstone) and excludes the other 52 counties. Is there any estimate as to what those other 52 counties would cost? Mr. Harrison said they estimate a minimum cost of $750,000.

Closing by Sponsor: Representative Thomas closed the hearing on HB 291 asking the committee to allow this bill to progress through the system. This burden should not be left on the county.

DISPOSITION OF HOUSE BILL 291

Motion: None.

Discussion: Rep. Hannah said there is a system for indigent court costs that has a large amount of money in it. There is no funding for it. If there was time to look into some funding the bill might be able to pass.

Rep. Brown agreed that the idea might pass the House, but at this point it would disappear into the Approriations Committee and never be seen again.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Brown said the bill would be held for further consideration. No further action taken.

HEARING ON HOUSE BILL 292

Presentation and Opening Statement by Sponsor:

Representative Thomas stated that HB 292 is an act to increase the rate of which a fine is paid off by imprisonment in lieu of payment of the fine. That change is being raised from $10 to $25 per day. That is the sole purpose of this bill. The present $10 amount was established in 1967 and any value, including fines established by judges, have increased over that 23 year period. Accordingly, this would keep up with the time frame being dealt with.

Testifying Proponents and Who They Represent:

Tom Harrison, Montana Sheriffs and Peace Officers Association
Barry Michelotti, Cascade County Sheriff

Proponent Testimony:

Tom Harrison said this bill tries to keep up with the times. Sheriff Michelotti informed him that in his jail the actual cost to maintain a prisoner is $38 per day. There is no direct relationship between that and this bill at $10 or

$25. Many of the fines over the past few years have taken off as far as amount is concerned. Many fines that were $50 ten years ago are now $250. For the indigent person, there is a vast difference between $10 and $25. Serving out a fine is tough time and the facilities are such that many of them indicate they'd rather be in a prison than in the county jail. Yet, they are faced with serving fines that are vastly more money than they were a few years ago. At $10 per day a $250 fine would be 25 days for a true indigent person who has to serve it. Many JP's in different places are supportive of this bill because they have no problem about how long it will take the person to serve the fine because if they think the person should have 10 or 25 days in prison they can fine him accordingly but what they can't do is reduce the fine down so they think it's a fair fine at $10 knowing he'll have to serve it.

Barry Michelotti rose in support of HB 292 saying not only will it help the counties, but it will make a fair justice system for the indigent offender.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Representative Thomas closed.

DISPOSITION OF HOUSE BILL 292

Motion: Rep. Darko moved HB 292 DO PASS, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Question was called on the bill and CARRIED with Rep. Gould voting Nay. HB 292 recommended DO PASS.

ADJOURNMENT

Adjournment At: 11:27 a.m.

REP. DAVE BROWN, Chairman

DB/je

2808.min

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 2, 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		

CS-30

STANDING COMMITTEE REPORT

February 2, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 292 (first reading copy -- white) do pass .

Signed: Dave Brown
Dave Brown, Chairman

Exhibit No 1

2-2-89

HB 369

Missoulian Jan. 12, 1989

Libby woman run over twice in hit-and-run

By DON SCHWENNSEN
of the Missoulian

A well-known Libby woman underwent surgery for a broken pelvis Wednesday, and a Libby man faces four charges for running over her twice with his car in a bizarre hit-and-run accident Monday night.

Gerald W. Johnson, 30, faces charges of negligent vehicle assault, driving while intoxicated, leaving the scene of an injury accident and driving without insurance.

According to Lincoln County Attorney Susan Loehn, Johnson was driving on U.S. 2 Monday night when he passed the victim, 66-year-old Ethel Faye Lisle, who was walking along the four-lane highway with her husband, Emmett.

Johnson thought he recognized them and backed up to offer them a ride, but he allegedly struck Lisle and drove over her, Loehn said. When her husband screamed at Johnson to stop because his wife had been hit, Johnson instead said he'd go for help and allegedly drove over her again.

Instead of getting help, he allegedly fled, but witnesses identified the car and Johnson was quickly found and arrested. He initially was charged only with driving while intoxicated and released without bond.

Johnson had his driver's license suspended for six months last June from a previous offense of driving while intoxicated, according to Loehn.

Lisle was taken to St. John's Hospital in Libby, then transferred to Kalispell Regional Hospital where she was in stable condition Wednesday following surgery.

Montana Magistrates Association

EXHIBIT 2
DATE 2-2-89
HB 369

2 February 1989

Testimony offered in support of HB369, a bill for an act entitled: "An act to prohibit the deferral of a sentence for a person who is found guilty of or who enters a guilty plea for the offense of operating a vehicle while the alcohol concentration in his blood, breath, or urine is 0.10 or more."

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

We support the proposed legislation because the offenses of driving under the influence of alcohol and driving with an excessive blood alcohol concentration are basically one and the same. The civil penalties imposed in terms of driver license revocation/suspension are the same. The insurance companies look at the two offenses in the same way in terms of increasing insurance rates.

Nearly everything is the same except that in some limited jurisdiction courts in the state, certain judges have adopted the opinion that an excessive blood alcohol concentration violation may be deferred. It is the position of the Montana Magistrates Association that when the language now found in 46-18-201(1)(a) was drafted, the legislature also meant to prohibit the deferral of a BAC violation. The proposed legislation would make uniform the sentencing provisions and the sentences imposed by limited jurisdiction judges of Montana. All defendants would be treated equally under the law because the proposed legislation would close a loop-hole, if you will, in the current sentencing provisions.

The Montana Magistrates Association encourages you to give this measure a do pass recommendation from committee and to support its passage into law.

Wallace A. Jewell

No. 88-91

IN THE SUPREME COURT OF THE STATE OF MONTANA

1988

MONTANA DEACONESS MEDICAL CENTER,
a non profit corporation,
Plaintiff and Respondent,
-vs-

CARL E. JOHNSON,
Defendant and Respondent,
and
CITY OF GREAT FALLS, MONTANA,
Defendant, Third-Party Plaintiff
and Appellant,
-vs-
COUNTY OF CASCADE, MONTANA,
Third-Party Defendant and Respondent.

APPEAL FROM: District Court of the Eighth Judicial District,
In and for the County of Cascade,
The Honorable Joel Roth, Judge presiding.

COUNSEL OF RECORD:

For Appellant:
David V. Gliko, City Attorney, Great Falls, Montana
For Respondent:
Sharon M. Anderson, Great Falls, Montana
Patrick L. Paul, County Attorney, Great Falls, Montana
For Amicus Curiae:
David J. Patterson, (MACO), Missoula, Montana
James T. Harrison, Jr., (Sheriffs), Helena, Montana
Jim Nugent, (MT League of Cities & Towns), Missoula, Montana

Submitted on Briefs: May 26, 1988

Decided: July 7, 1988

Filed:
JUL 7 - 1988

Ethel M. Harrison
Clerk

Ex. # 3
2-2-89

Mr. Justice John C. Sheehy delivered the Opinion of the Court.

In this case we are asked to determine whether the City of Great Falls (City) or the County of Cascade (County) is ultimately responsible for medical costs incurred by a person in the custody of City Police Officers as a result of a felony arrest. The District Court of the Eighth Judicial District, Cascade County, determined that the controlling factor was the City's custody over Johnson at the time the medical expenses were incurred and issued an order dismissing the City's third party complaint against the County. We reverse.

The facts, as stipulated by the parties, are as follows:

1. On January 4, 1987, Johnson was arrested by City Policemen.

2. The officers immediately determined Johnson's life was in jeopardy as a result of his ingestion of a quantity of prescription pills.

3. The officers requested an ambulance which arrived at the scene of the arrest and transported Johnson to Montana Deaconess Medical Center (Deaconess).

4. Deaconess was advised Johnson was under arrest when Johnson arrived.

5. Johnson incurred reasonable medical charges from January 4, 1987, until his release on January 5, 1987, in the amount of $2,193.13, after two days in Deaconess's Intensive Care Unit.

6. Deaconess made demand for full payment to Johnson and Third Party Plaintiff City, and to Third Party Defendant County.

7. The City and County have refused to pay said bill.

Ex. #3
2-2-89

8. Johnson admits liability for Deaconess's claim but he is indigent and has no present or future means to pay the charges.

9. Johnson was "booked in" in absentia at the Police Department on January 4, 1987.

10. Johnson was released by Deaconess on January 5, 1987, and transported to the City Police Department.

11. Johnson was detained at the City Police Department until his initial appearance on January 6, 1987, before the County Justice of the Peace and subsequently detained in the County Jail. The County Jail is operated and managed by the County Sheriff's Department.

12. Initial charges of aggravated assault, aggravated kidnapping and sexual intercourse without consent, all felony offenses under the Montana Criminal Code, were filed in the County Justice of the Peace Court (later transferred to the District Court) and accepted by the County Attorney. No misdemeanor or felony charges of any kind were filed with the City Court.

Generally, persons under official detention have a constitutional right to adequate medical care, regardless of their ability to pay. City of Revere v. Massachusetts General Hospital (1983), 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (due process demands that persons detained by government agencies receive adequate medical care; responsibility for costs is a matter of state law). Consistent with the mandate of the United States Supreme Court, the Montana Legislature has adopted legislation providing for the care of prisoners. Section 7-32-2222, MCA, provides:

> Health and safety of prisoners. (1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff, jail administrator, or private party jailer must remove

them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff, jail administrator, or private party jailer to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.

(3) If in the opinion of the sheriff, jail administrator, or private party jailer any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

Although the City contends that § 7-32-2222(3), MCA, when viewed in its entirety, indicates that persons charged with violations of state law occurring within a county are the financial responsibility of that county, we do not find the statute to be controlling. By its terms, § 7-32-2222(3), MCA, is not triggered until such time as "the sheriff, jail administrator, or private party jailer" determines that a detained person requires medical care. In addition, the statute, when read as a whole, assumes incarceration in the county jail at the time the need for medical care arises. Such is clearly not the situation in the instant case.

Ex. #3

2-2-89

Moreover, § 7-32-2222(3), MCA, is obviously designed to fix financial responsibility for medical costs on the agency for which the prisoner is being detained in the county jail. This section recognizes that frequently county jails in Montana are used to house federal prisoners or persons held for violations of municipal laws.

When confronted with the issue now before us, the courts of other jurisdictions have split along two lines of reasoning. Under the minority "custody and control" approach, the financial responsibility for medical costs is determined on the basis of which agency had custody at the time the treatment is provided. See e.g. Sisters of the Third Order of St. Francis v. Tazewell County (Ill.App. 1984), 461 N.E.2d 1064. "[If] physical control is [subsequently] transferred [during the course of the treatment] the responsibility is transferred along with it and the cost of care [is] prorated." Cuyahoga County Hospital v. City of Cleveland (Ohio App. 1984), 472 N.E.2d 757, 759. Few jurisdictions have followed the lead of the Ohio and Illinois courts, however.

The majority "nature of the crime" approach determines financial responsibility not on the basis of which agency first takes a person into custody, but rather on the basis of the crime ultimately charged. See Wesley Medical Center v. City of Wichita (Kan. 1985), 703 P.2d 818; L. P. Medical Specialists v. St. Louis County (Minn. App. 1985), 379 N.W.2d 104; Zieger Osteopathic Hospital v. Wayne County (Mich. App. 1984), 363 N.W.2d 28; Albany General Hospital v. Dalton (Or. App. 1984), 684 P.2d 34; St. Mary of Nazareth Hospital v. City of Chicago (Ill. App. 1975), 331 N.E.2d 142; Washington Township Hospital District of Alameda County v. County of Alameda (1968), 263 Cal.App.2d 272, 69 Cal.Rptr. 442. After

Ex. #3
2-2-89

carefully considering the arguments and authority supporting both positions, the Supreme Court of Kansas recently held:

> . . . We have concluded that a city is not responsible for the payment of medical expenses incurred by an indigent person who is arrested by city police and subsequently charged with a violation of state law and who, before being physically transferred to the county jail, is taken to a hospital for necessary medical treatment. We hold that so long as an offender is arrested for violation of a state law and in due course is charged with a state crime and delivered to the county jail for confinement, the medical and other incidental expenses incurred as a consequence of and following his arrest, and until his transfer to such facility, are chargeable to the county. We further hold that a county's liability for charges and expenses for safekeeping and maintenance of the prisoner, including medical expenses, does not depend on which police agency happens to be called to the scene of the alleged crime or whether such expenses were incurred before or after he is placed in a county jail. The controlling factor is that the prisoner was arrested and subsequently charged with violation of a state law.

Wesley Medical Center, 703 P.2d at 824. We agree.

A county is the largest subdivision of the state. Section 7-1-2101, MCA. Consequently, the county is vested with the primary responsibility of enforcing the laws of the state and maintaining facilities in furtherance of that task. See, §§ 7-4-2716, 7-32-2201, MCA. Sound reasoning dictates that the performance of the county's task necessarily includes the assumption of the associated financial burden.

We, therefore, hold that the county is financially responsible for medical costs incurred by a detained person ultimately charged with a violation of state law but who is unable to pay. The judgment of the District Court is reversed and remanded for proceedings consistent with this Opinion.

Ex. #3

2-2-89

John C. Sheehy
Justice

We Concur:

L. A. Turnage
Chief Justice

John Conway Harrison

L. C. Gulbranson

W. C. McDonald

William Edmondson
Justices

EXHIBIT 3A
DATE 2-2-89
HB 291

Testimony on House Bill 291
Montana Department of Justice

Prepared by Peter Funk
Assistant Attorney General
February 6, 1989

The Montana Department of Justice is opposed to House Bill 291 in its introduced form. At present, there are no funds within the budget of the Department of Justice to pay these expenses. As the fiscal note indicates, no estimate of the total yearly expense is available. The Department has received information that these expenses are approximately $25,000 per year in Lewis and Clark County alone. If this is the case, the total state-wide expense could constitute a severe drain on the resources currently used to fund ongoing programs within the Department.

We would suggest that if the proposed legislation is approved, it include language on Page 2 lines 17-20 that makes clear that the Department's responsibility for payment is contingent upon a specific statutory appropriation for this purpose.

Our apologies for missing the hearing held on this bill on February 2, 1989.

BARRY MICHELOTTI
SHERIFF
Coroner

CASCADE COUNTY
SHERIFF'S DEPARTMENT
(406) 761-6842
326 THIRD AVE. NORTH
GREAT FALLS, MT
59401

BARRY C. MICHELOTTI

EXHIBIT 4
DATE 2-2-89
291

CASCADE COUNTY
325 Second Avenue North
Great Falls, Montana 59401
(406) 761-6842

September 20, 1988

Harrison, Loendorf & Poston, P.C.
Attorneys at Law
Suite 21, Professional Center
2225 Eleventh Avenue
Helena, Montana 59601

RECEIVED
SEP 21 1988
HARRISON, LOENDORF & POSTON, P.C.

Attention: Mr. Tom Harrison

Dear Tom,

Attached is medical information regarding the death of a county jail inmate in October of 1986, due to a severe stroke he suffered while in custody.

This particular medical charge created severe problems, not only for the budget year of 86/87, but for 87/88, as well, due to the cost of treatment and our limited budget.

Cuts in operating expenses of the jail and the Sheriff's budget were required to make final payment of the bill in 1987/88 budget year.

A breakdown of charages are as follows:

$193.50	- Ambulance
$1,157.00	- Montana Radiology Group
$25.00	- Montana Radiology Group
$8,220.00	- Dr. Finney, neurosurgeon
$334.75	- Dr. R. D. Blevins
$650.00	- Dr. Cowgill
$744.00	- Dr. E. J. Anderson
$25,992.10	- Columbus Hospital

$37,316.65 - Total expense which was borne by the Sheriff's budget. ***Columbus Hospital did reduce their bill by $1,992.10 through an agreement we made in payment, so the total cost was $35,324.55.

Not included is a generous contribution of services made by four doctors which did not submit charges for their services.

I hope this information will be useful. If anything else is needed, please do not hesitate to let me know.

EXHIBIT 4
DATE 2-2-89
HB 291

Also in the envelope is some additional information on other unrelated charges for medical treatment.

Respectfully,

BARRY C. MICHELOTTI
Cascade County Sheriff/Coroner

BCM:jbs

Enclosures

MISSOULA
OFFICE OF THE CITY ATTORNEY
201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

EXHIBIT 5
DATE 2-2-89
HB 291

January 24, 1989

89-47

State Representative
Dave Brown, Chairman
House Judiciary Committee
State Capitol
Helena, Montana 59620

State Representative
Kelly Addy, Vice Chairman
House Judiciary Committee
State Capitol
Helena, Montana 59620

State House Judiciary Committee Members
State Capitol
Helena, Montana 59620

RE: SUPPORT FOR HOUSE BILL NO. 291 PROVIDING FOR DEPARTMENT OF JUSTICE TO PAY INDIGENT PRISONER MEDICAL EXPENSES OF STATE CRIMINAL LAW VIOLATORS

Dear Representative Brown, Addy and House Judiciary Committee Members:

The purpose of this letter is to urge your support for House Bill 291 and to also express the City of Missoula's support for House Bill 291 providing for the Montana Department of Justice to pay indigent prisoner medical expenses of inividuals charged with and incarcerated for a violation of Montana State law.

House Bill 291 is a much needed piece of state legislation that is needed in order to eliminate the uncertainty among various Montana law enforcement agencies as to what government entity is responsible for the payment of indigent prisoner medical expenses for those individuals charged and incarcerated for a violation of Montana state law. Further, HB-291 places the financial liability for medical expenses of indigent prisoners violating Montana state law with the state of Montana where it belongs since it is a state law violation.

Montana law enforcement agencies are often reluctant to place individuals under arrest in some instances so that they are not burdened with the medical costs of an indigent prisoner, charged with a violation of Montana law.

EXHIBIT 5
DATE 2-2-89
HB 291

The enclosed copies of November 24 and 25, 1987 Montana newspaper articles indicate what may happen pursuant to current Montana law, when law enforcement agencies refuse to place an individual under arrest while he is in a hospital.

Yours truly,

Jim Nugent

Jim Nugent
City Attorney

JN:es

cc: State Representative Fred Thomas
Missoula County Representatives
Alec Hansen, Executive Director, Montana League of Cities & Towns
Gordon Morris. Executive Director, Montana Association of Counties
City Attorney legislation file

GOOD AFTERNOON: November 24, 1987 Helena, Montana

Crossed wires let suspect slip away

Counties were afraid of paying hospital bill

By TAD BROOKS
IR Staff Writer

The man whose traveling companion was killed Nov. 1 when a truck they allegedly stole from Great Falls crashed on I-15 has left Montana without receiving so much as a traffic ticket.

The man, who told authorities his name is Fausto Rivas, 21, of Lathrop, Calif. was discharged from St. Peter's Hospital Nov. 10 and has since left the state, officials said.

Rivas was never arrested and no law enforcers requested they be notified before his hospital release, according hospital spokesperson Loretta Lindell.

However, Paul Hayes, deputy director of the U.S. Immigration and Naturalization Service, said his agency considered Rivas a potential illegal alien and had asked for hospital notification before his release.

Meanwhile, the identity of Rivas' traveling companion, also a possible illegal alien, continues to elude County Coroner M.E. "Mickey" Nelson, who said he is still waiting for a Federal Bureau of Investigation records report.

Facts uncovered in Nelson's investigation show that Rivas only knew his traveling companion by the name "Carlos." Rivas, Carlos and a third man left Stockton, Calif. Oct. 15, were questioned by police in Pocatello, Idaho Oct. 29, spent Oct. 30 in Butte, and Oct. 31 in Great Falls.

Nov. 1 the men allegedly stole a 1964 Chevrolet Suburban-type truck owned by Sharry Honeycutt

EXHIBIT 5
DATE 2-2-89
HB 291

EXHIBIT #1

Continued from Page 1A

and were traveling toward Helena on I-15 when the accident occurred just north of Helena.

Law enforcement officials investigating the case appear to have gotten their signals crossed regarding which agency would charge Rivas.

Two county attorneys have said they were reluctant to file charges because the agency that would have arrested Rivas would have had to pay for his hospital expenses.

Lindell declined to comment how much was spent on doctoring Rivas, who, according to sources, sustained a broken pelvis and facial lacerations in the 5:15 a.m. crash just north of the Lincoln interchange on I-15.

Rivas' physical condition was one reason Highway Patrolman Lynn Buchanan didn't cite him immediately for a routine traffic violation.

According to the Patrol, Rivas had apparently fallen asleep at the wheel, awoke and overcorrected twice when the truck brushed the median, causing the vehicle to flip.

"He was going to be charged, probably with careless driving," said Buchanan.

But a Great Falls Police spokesman said the Cascade County Attorney's office was handling the case because the alleged truck theft is a felony offense.

But Cascade County Attorney Patrick Paul said he was waiting for the U.S. Immigration Service to act on its investigation.

"We never charged him here," said Paul.

"We weren't in a rush to file against him and have any medical bills filed against the county," he said.

"Well, if (INS) is just going to kick him out of the country, I'm not sure what the point would be" of filing auto theft charges, Paul said.

Lewis and Clark County Attorney Mike McGrath said he was waiting for Cascade County to file the charges. He said the only charge his county could have filed was a traffic law violation.

Rivas wasn't drunk at the time of the accident, he said, so there were no grounds for filing negligent homicide charges.

McGrath also noted that the agency who would have taken Rivas into custody would have

According to Hayes, the Immigration Service was considering investigating Rivas as an illegal alien, but never had a chance to interview him before his hospital release.

"I guess in the red tape or whatever somebody turned him loose without calling," Hayes said.

"We never did take him into custody. We never knew who he was for sure. We never could identify him."

Hayes said his office wanted to talk to Rivas before continuing its investigation because of the possibility that he is a legitimate U.S. citizen.

"We have to be very careful that we don't deport citizens," he said.

But since Rivas was never arrested by anyone, who now pays his hospital expenses?

"I think that the hospital is going to have to eat that unfortunately," said Hayes.

But hospital spokesperson Lindell said it is unclear who will pay Rivas' expenses.

"I don't know whose responsible for the bill," she said, adding that the release of such information is protected by law.

"For us the patient's privacy is

EXHIBIT 5
DATE 2-2-89
HB 291

GREAT FALLS TRIBUNE November 25, 1987

Discharge from hospital brings freedom for potential defendant

11-25-87

HELENA (AP) — A man hospitalized after a fatal traffic accident in a stolen truck was discharged and left Montana, in part because none of the five law enforcement agencies looking at the case told the hospital he might be a wanted man, authorities say.

The agencies said it was a case of crossed signals — and fears by the various counties that they would be stuck with his hospital bill if they claimed him.

The man, who told authorities his name is Fausto Rivas, 21, of Lathrop, Calif., was discharged from St. Peter's Hospital Nov. 10 and has left the state, officials said.

He was under investigation, to greater or lesser degrees, by the Montana Highway Patrol, the Great Falls police, the Cascade County attorney's office, the Lewis and Clark County attorney's office and the Immigration and Naturalization Service.

None of them asked to be notified when he could be released, hospital spokeswoman Loretta Lind II said.

Early the morning of Nov. 7, Rivas was driving a truck stolen in Great Falls on Interstate 15 north of Helena when he apparently fell asleep. A traveling companion was killed in the accident, and Rivas suffered multiple injuries, including a broken pelvis.

According to the Highway Patrol, Rivas would have been charged, probably with careless driving.

"We didn't charge him right away because Great Falls (police) had a hold on him," Patrolman Tom Buchanan said, but a Great Falls police spokesman said the Cascade County attorney's office was handling the case because truck theft is a felony.

Lewis and Clark County Attorney Mike McGrath said he was waiting for Cascade County to file the charges. He said the only charge the county could have filed was a misdemeanor violation.

McGrath also noted that the agency also would have taken [illegible] no charges would have had to [illegible] his medical expenses.

Cascade County Attorney Patrick Paul said, however, that he was waiting for the INS to act on [illegible] investigation.

And Paul Hayes, INS deputy district director, said the agency was conducting investigating Rivas as a [illegible] alien, but never had a chance to interview him before he became [illegible].

But since Rivas was never arrested by anyone, who now pays his hospital expenses?

"I think that the hospital is going to have to eat that, unfortunately," Hayes said.

EXHIBIT #2