

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 9, 1989, at
8:00 a.m.

ROLL CALL

Members Present: All members were present

Members Excused: None.

Members Absent: None.

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

Announcements/Discussion: None.

HEARING ON HOUSE BILL 330

Presentation and Opening Statement by Sponsor:

Rep. Jan Brown, House District 46 stated that the purpose HB 330 is to increase certain fees of the District Court, requested by the county commissioners.

Testifying Proponents and Who They Represent:

Dave Fuller, Chairman of the Lewis and Clark County Board of Commissioners

Proponent Testimony:

Dave Fuller stated that the increases that would result from this bill would go directly into the District Court fund. As the Committee is most likely aware, certain fees currently go to various places including the State, the judge retirement fund and some to the county general fund. This would be earmarked specifically for the District Court. Mr. Fuller stated the reason they want this bill is because district courts in most counties are not funded sufficiently under the statutory six mills. Quite simply, HB 330 is a revenue generating device for district courts.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Addy questioned where they came up with the numbers (filing fees, appearance fees, liens, marriage licenses, etc), and that they are a very big jump from what the current numbers are. Mr. Fuller stated that he cannot give the Committee specific rational as he didn't have the figures to justify the precise amount. They did; however, go through and give their best judgement as to what it would cost the county to provide that service.

Closing by Sponsor: Rep. Brown closed.

DISPOSITION OF HOUSE BILL 330

Motion: Rep. Gould motioned to TABLE HB 330, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A voice vote was taken on the motion to TABLE HB 330 and CARRIED unanimously.

HEARING ON HOUSE BILL 459

Presentation and Opening Statement by Sponsor:

Rep. Jan Brown, House District 46 stated to the Committee that the purpose of HB 459 authorizes the use of juries consisting of 12 persons or less in felony criminal actions.

Testifying Proponents and Who They Represent:

Dave Fuller, Chairman, Lewis and Clark County Board of Commissioners
John Connor, Attorney Generals Office, Dept. of Justice

Proponent Testimony:

Dave Fuller stated that the attempt and motivation of HB 459 is to strictly provide the option of the judge to reduce juries from 12 to 6 in criminal trials. As he understands it, currently this is being done in civil trials. Mr. Fuller commented that in appropriate cases a judge could use that discretion and save them some money.

John Connor of the Attorney General's Office, stated that they are taking no position on the bill one way or the other, but pointed out to Rep. Brown that there is a couple of statutes which suggest that it is possible to have a jury of less

than 12 persons in criminal cases if the parties agree to that number. That is contained in Title 46 of Chapter 16 (46-16-102), as well as 46-16-305. These titles do not conflict with the provisions of the bill, they are just consistent with it.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Addy questioned Mr. Connor if during a trial in a felony criminal prosecution, is there a unanimous jury verdict required? Mr. Connor responded that he was correct and there were no further questions.

Closing by Sponsor: Rep. Brown closed.

DISPOSITION OF HOUSE BILL 459

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep. Wyatt.

Discussion: Rep. Knapp stated that his concern with the bill is the fact that it takes the parties to agree. If he was a strong prosecuting attorney he would just as soon have the 6 person jury. He feels there are going to be a lot of appeals for inadequate defense.

Amendments, Discussion, and Votes: Rep. Addy moved to amend Page 1, Line 13, Following "or", Insert , with the approval of the court ,. Motion seconded by Rep. Boharski and CARRIED unanimously.

Recommendation and Vote: Rep. Addy motioned HB 459 DO PASS AS AMENDED, motion seconded by Rep. Strizich. A vote was taken and CARRIED with Rep.'s Knapp, Wyatt, Gould, Eudaily, Boharski, Hannah and Brown voting No.

HEARING ON HOUSE BILL 349

Presentation and Opening Statement by Sponsor:

Rep. Bill Strizich, House District 41 stated that as most are aware, law enforcement agencies have the power to seize property which is determined to be involved in the marketing of dangerous drugs in conjunction with an arrest and conviction. When this occurs under current law the police department of cities and towns are required to dispose of the seized property through the sheriff of the respective county. This bill simply allows for the property seized by the police department to be disposed of by

their respective city government. Rep. Strizich stressed that this will simplify the handling of the seized property and remove the burden from the sheriff. Furthermore, both the sheriff officers and the respective police department stand to benefit from allowing this to occur.

Testifying Proponents and Who They Represent:

Detective Sergeant Larry Renman, Great Falls City Police
Department

Proponent Testimony:

Detective Renman stated that a portion of his duties consist of controlling the narcotics investigations within the city of Great Falls. Detective Renman commented that they have encountered some real problems with the disposing of property with the current statute as it is now. The seizure statute allows for the seizure of money, property, personal property, and vehicles as well as vessels and aircrafts. He stated that the only time they run into a basic problem is when they are dealing with the seizure and disposal of vehicles. The law as it currently stands, Section 44-12-103, indicates that the minute property is seized the sheriff of that county must immediately be notified. Mr. Renman stated that they do not even bother with that and it is not being followed. When they seize property, after the courts file a seizure notice and they receive the property, that property goes to the Department for their use. At that point they must decide whether have any use for it or whether they want to dispose of it. When the time comes to dispose of the property, they must then contact the sheriff. At that time, the sheriff must set up an auction and the Dept. is at the mercy of the sheriff as to whenever he decides he wants to dispose of the property. Mr. Renman expressed that they would like to see that the statute change so as any agency that seizes any property will be responsible for its own disposal.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Aafedt questioned Detective Renman as to where the money goes when a vehicle or property is disposed of. Detective Renman stated that the money that is received due to the disposal of a vehicle or property is brought into the agency drug investigative fund that seized the vehicle.

Rep. Stickney asked if this is a statewide problem or if it is a

local problem within the Great Falls area. Detective Renman responded that it is a problem throughout the State and that Montana is one of the few states that has that incumbrance on the cities.

Rep. Gould commented that he had concerns regarding the possibility of a person in the police department taking a special liking to the proposed vehicle and would be able to buy it at a much reduced price. He questioned Rep. Strizich as to if he would be opposed to amending the bill so as the vehicles could not be purchased by members or family members of the police department. Rep. Strizich stated that he would not have a problem with that.

Closing by Sponsor: Rep. Strizich closed.

DISPOSITION OF HOUSE BILL 349

Motion: Rep. Strizich made a DO PASS motion, seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Gould moved to amend the bill so as persons related to an officer or employee by blood or marriage are prohibited from purchasing any property that may be sold (see attached standing committee report). Motion was seconded by Rep. Aafedt. A vote was taken on the amendment and passed with Rep. Hannah voting against the amendment.

Recommendation and Vote: Rep. Strizich moved DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 112

Motion: Rep. Gould motioned HB 112 DO PASS, motion seconded by Rep. Hannah.

Discussion: Rep. Brown commented that he feels the in terms of ability to appeal the screws have been tightened down too tight. He feels the court ought to have more discretion and there should be more discretion on the side of the person receiving the sentence.

Rep. Strizich stated that he has similar concerns about the bill. He feels they are removing a lot of the discretion of the judge and that it is a real important part of the system that they have that the judge has some discretion in his deferral of these cases. There is a certain amount of forgiveness that has to be allowed for the judge to work with. Rep. Strizich expressed that if they want to do it that way, then they may as well remove the judges, plug a computer into the wall, have a data entry operator and have

the computer decide what the sentence should be. Somewhere they need to leave the human element in the system. That's what's important, that's what gives it balance, and that's what gives it fairness.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Wyatt motioned to TABLE HB 112, motion seconded by Rep. McDonough. A vote was taken and CARRIED with Rep.'s Gould, Hannah, Boharski, Eudaily and Afafedt voting No.

DISPOSITION OF HOUSE BILL 295

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep. Nelson.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved to amend Page 2, Line 11, Following "writing ,", Insert by any party to a civil action arising from the accident,. Motion on the amendment was seconded by Rep. Eudaily. A vote was taken and PASSED unanimously.

Recommendation and Vote: Rep. Addy moved HB 295 DO PASS AS AMENDED, motion seconded by Rep. Darko. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 291

Motion: Rep. Hannah motioned to TABLE HB 291, motion seconded by Rep. Boharski.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that HB 291 be TABLED.

HEARING ON HOUSE BILL 350

Presentation and Opening Statement by Sponsor:

Rep. Strizich, House District 41 stated that HB 350 is in response to a request by the Montana Probation Officers Association. This bill is designed to allow that part of the costs of the Administration of Restitution Programs will be paid by the offender owing restitution in a case involving property damage. Currently, no such fee is specified, which means that most jurisdictions receive no assistance. Restitution is a very important means of allowing an offender the opportunity to make amends while providing that their victim receives what is rightfully owed

to them. Restitution is quite demanding, in terms of operational aspects as well as time and effort. To be done effectively, insurance coverage must be researched, payment schedules established and detailed records must be kept. Jurisdictions where restitution efforts enjoy a greater degree of staffing and support, collections of restitution resulting benefit to victims is much greater. Rep. Strizich pointed out that under HB 350, fees would be collected after the restitution is made to the victim. The fee specified in the bill amounts to 10% of the amount ordered by the judge, within limits. EXHIBIT 1 shows examples of fees on restitution collected in 1988. As shown, it is not a great impact, but it will help off-set some of the costs and hopefully encourage the use of restitution. Restitution is demonstrated across the country in that it provides a valuable tool in dealing with an offender, and an opportunity to pay attention to an often forgotten party . . . the victim.

Testifying Proponents and Who They Represent:

Dick Boutileer, Chief Probation Officer of Cascade County
Mona Jamison, Montana Juvenile Probation Association

Proponent Testimony:

Dick Boutileer stated that he is in support of this bill for the fact that restitution is a very important part of probation. Without restitution, we are lacking in dealing with the victim. Currently, in Cascade County they do not have a restitution officer; therefore, each deputy is dealing with victims trying to collect restitution from the person that they may have on the case load. This creates a conflict for the probation officer in dealing with the victim, who is in most cases, very upset. HB 350 will hopefully give the courts more incentive to order restitution and make the different judicial districts around the state more aggressive in trying to collect restitution. Mr. Boutileer expressed that the most important aspect is trying to make the youth aware of the costs of damage.

Mona Jamison stated that there are a couple of points that she would like to make concerning HB 350. The administrative restitution fee that would be raised, would also apply to adult offenders where restitution has been ordered for the court. Many times the court will not impose restitution because they're aware of the lack of personnel and the costs associated with it. She believes that the authority in this bill to collect 10% will actually facilitate or encourage the court to require restitution where it's appropriate. This bill is reasonable. The victims are compensated first, and the cost of collection is placed where it belongs, on the perpetrator of the crime.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski questioned if the fee collection of the amount of restitution would be part of the initial amount that the court determined. Rep. Strizich stated that in a case where there is a restitution officer involved, they would make a recommendation to the court as to what the restitution owed would be. When the restitution is completed, then the fee would be collected. The restitution to the victim would be paid and then the appropriate fee would be collected and placed in the proper account.

Closing by Sponsor: Rep. Strizich closed.

DISPOSITION OF HOUSE BILL 350

Motion: A DO PASS motion was made by Rep. Strizich, motion was seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 351

Presentation and Opening Statement by Sponsor:

Rep. Strizich stated that HB 351 was brought about at the request of the Great Falls Police Department. HB 351 will bring the Montana Criminal Law in line with federal laws regarding sawed-off rifles and shot guns. This came to his attention after talking with law enforcement people in the Great Falls area about their frustration with dangerous offenders who are not being prosecuted by federal authorities when presented with arrests based upon the federal law. Rep. Strizich stated that he was shocked to hear this from two stand-points. First, that these prosecutions were not being vigorously pursued. Secondly, that our state law does not address these dangerous weapons which are designed but for one purpose, to kill human beings.

Testifying Proponents and Who They Represent:

Lieutenant Jim Sharp, Great Falls Police Department
Tom Harrison, Montana Sheriffs and Peace Officers Association

Proponent Testimony:

Lieutenant Jim Sharp stated that currently, there is no provision under State Criminal Law to address the problems of sawed-off rifles and shot guns. It has been his experience with the Great Falls Police Dept., that they run into these types of weapons maybe a half a dozen times a year. Normally, in the case of drug users, drug dealers or the more career criminal types. Often times they are found upon execution of a search warrant or a vehicle search that has to do with a misdemeanor arrest. It has also been his experience that when they have attempted to contact the federal authorities for prosecution, they have had less than vigorous responses from them. Normally, they are interested in full automatic weapons or if the individual is on federal parole. Usually the person is let go on a misdemeanor offense, and the weapon charge is never filed as there is none under state law. Additionally, the type of weapon that they are talking about serves no real legitimate sporting or self defense purpose. It is not going to impinge upon the rights of the legitimate hunter or sportsman. Lieutenant Sharp presented to the Committee letters from Sheriff Barry Michelotti of Cascade County, and Cascade County Attorney, Patrick L. Paul stating their support of HB 351 (EXHIBITS 2 and 3).

Tom Harrison stated that he feels part of the problem comes from the workload of the federal court system and the problems that we've had traditionally in getting prosecutions in what is perceived to be within that judicial system, a minor area. We have gone from two federal district judges in Montana up to five. That has helped to alleviate some of the problem, but the two systems, the state and federal, should certainly be coincident on this and prosecution possible under either one.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski stated that these types of guns can be tucked away real comfortably into a backpack. Many hikers like to use these types of sawed-off guns with a slug in them in grizzly bear country while hiking. Are they going to be subject to a fine of not less

than \$200 if they are caught with one of these guns in their backpack? Rep. Strizich replied that there are some commercially produced weapons that are more adequate for a hiker to use while in the back country, and yes, they would be subject to the said fine.

Closing by Sponsor: Rep. Strizich stated that he has one small amendment that has been suggested and will explain the amendment during executive action.

DISPOSITION OF HOUSE BILL 351

Motion: A DO PASS motion was made by Rep. Strizich, motion seconded by Rep. Aafedt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Strizich moved to amend, see EXHIBIT 4, motion seconded by Rep. Stickney. A vote was taken on the amendment and CARRIED.

Recommendation and Vote: Rep. Strizich made a DO PASS AS AMENDED motion, seconded by Rep. Darko. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 316

Motion: Rep. Hannah made a motion to TABLE HB 316, motion was seconded by Rep. Strizich.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the TABLING motion and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 450

Motion: Rep. Daily made a DO PASS motion, seconded by Rep. Aafedt.

Discussion: None.

Amendments, Discussion and Votes: None.

Recommendation and Vote: A Roll Call vote was taken on the DO PASS motion and FAILED on a tie with 9 voting aye and 9 voting nay. Rep. Brown suggested to the Committee to hold further action on HB 450 so as amendments could be drafted.

DISPOSITION OF HOUSE BILL 445

Motion: Rep. Hannah made a motion to TABLE HB 445, motion was seconded by Rep. McDonough.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion to TABLE and CARRIED with Rep.'s Daily, Mercer, Aafedt and Gould voting No.

DISPOSITION OF HOUSE BILL 512

Motion: Rep. Rice made a DO PASS motion, seconded by Rep. Aafedt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Rice introduced proposed amendments (see attached standing committee report), motion seconded by Rep. Nelson. A vote was taken on the amendments and PASSED with Rep. Boharski voting No.

Recommendation and Vote: Rep. Rice moved DO PASS AS AMENDED, motion was seconded by Rep. Boharski. A Roll Call Vote was taken and the motion CARRIED with 10 voting aye and 8 voting nay.

DISPOSITION OF HOUSE BILL 313

Motion: A DO PASS motion was made by Rep. Gould, motion was seconded by Rep. Boharski.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend page 2, line 3, strike "frivolous lawsuits", insert claims based on damages resulting from risks inherent in the sport (Exhibit 5). Motion was seconded by Rep. Brooke. A vote was taken on the amendment and PASSED unanimously.

Rep. Mercer moved to amend page 6, line 6. Strike "include but" and "not limited to", and page 7, lines 2-6. Strike "and" on line 3 through "duties" on line 6 (EXHIBIT 5). Motion was seconded by Rep. Knapp and CARRIED unanimously.

Rep. Mercer moved to amend page 7, line 1, following "operator;" insert and. Motion was seconded by Rep. Brooke. A vote was taken and CARRIED with Rep. Gould voting No.

Rep. Addy expressed concern as to the clarity of the language of the bill and moved to amend page 6, line 4 following "suffers", insert extent. Motion seconded by Rep. Strizich. This amendment was suggested by the Montana Trial Lawyers Association during the testimony. Rep. Addy stated that he feels this amendment clarifies the meaning of the statute.

Rep. Mercer asked Rep. Addy what the reason for the amendment was. What difference would it make if the language was or was not inserted into the bill? Rep. Addy stated that the difference is the clarity of the guidance that they give to the judges. If there is no difference in his mind (Rep. Mercer's) between the outcome of the bill with or without the language, then why not accept it?

Rep. Mercer stated that that is an insufficient argument for him. He wants to know what the difference of the language makes. If there is no difference, then he opposes putting it into the bill. Rep. Addy commented that he is simply saying what is buried in the language more clearly.

A Roll Call Vote was taken on the amendment proposed by Rep. Addy and CARRIED with 9 voting aye, and 8 voting nay.

Recommendation and Vote: Rep. Boharski moved DO PASS AS AMENDED, motion seconded by Rep. Knapp. A vote was taken and CARRIED with Rep. Addy voting No.

DISPOSITION OF HOUSE BILL 336

Motion: A DO PASS motion was made by Rep. Addy, motion was seconded by Rep. Darko.

Discussion: Rep. Hannah stated that this bill is a good idea, but does not feel that it will work. Practically speaking, what they are doing is penalizing people who are in fact trying to live their lives without being involved in too many controversies. They are not out there trying to discriminate against somebody in one fashion or another, but they have standards that they have laid down for their apartment or duplex, etc and this bill will not accomplish anything. What the proponents want to do is to provide housing for single parents and their children and this will not accomplish that particular goal.

Amendments, Discussion, and Votes: With the Committee's permission, Rep. Brown asked Anne MacIntyre from the Human Rights Division to explain the proposed amendments (EXHIBIT 6). Ms. MacIntyre also handed out for the Committee's review copies of the federal law language (EXHIBITS 7 and 8).

Rep. Darko moved the amendments proposed by Anne MacIntyre (EXHIBIT 6), motion seconded by Rep. Nelson.

Rep. Hannah stated that as he remembers correctly, the federal housing standards that they deal with in the real estate business and the rental business, there is an exemption for personally owned property for many other areas of discrimination. Particularly in relationship to race. Is that exemption included in the proposed provisions? Ms. MacIntyre replied that it is not. Continuing, Rep. Hannah

questioned if it was true then that the exemption for property for a four-plex and under are still in place for other areas of discrimination? Ms. MacIntyre commented that in the federal law there is an exemption for housing providers that have fewer than four units.

Rep. Mercer moved a substitute motion to delete in the first amendment, the provision of putting familial status in line 18. He does not want somebody to refuse or discriminate against someone on the grounds that they may have family.

A vote was taken on the amendments and CARRIED with Rep. Hannah voting No.

Rep. Gould feels that if he owned a duplex and was forced to rent to someone that he did not approve of is simply un-American. His only suggestion would be to either table the bill or make it a pilot project in Gallatin County.

Rep. Addy stated that the problem with leaving it to the private sector is that the single parents with small children end up, as Rep. Driscoll pointed out in his closing, living on busy streets and next to ditches. They are the ones that end up in having fewer options than anybody else as to where they are going to live. Rep. Addy expressed that he doesn't consider that to be particularly American either. With this bill they are just going to have to decide what kind of Americans they are.

Rep. Mercer stated that he wanted to remind the Committee what Anne MacIntyre pointed out on page 2, lines 2-3 where it says "except where the distinction is based on reasonable grounds".

Recommendation and Vote: Rep. Darko moved HB 336 DO PASS AS AMENDED, motion seconded by Rep. Brooke. A vote was taken and CARRIED with Rep.'s Hannah, Gould, Boharski, Aafedt and Eudaily voting No.

DISPOSITION OF HOUSE BILL 232

Motion: A DO PASS motion was made by Rep. Darko, motion was seconded by Rep. Nelson.

Discussion: Rep. Brown stated that this is the bill he carried for the clerk's of the court to basically revise fees that have not been revised for a long time. The point is to reflect actual cost. Additionally, he has an amendment to coordinate this bill with HB 70. Should HB 70 fail to pass, the \$25.00 permit fee would be levied as this bill indicates for a concealed weapon permit. Should HB 70 pass, district court would still receive a portion of that amount.

Amendments, Discussion, and Votes: Rep. Gould offered the amendments proposed by Rep. Brown. Motion seconded by Rep.

Brooke. A vote was taken and CARRIED unanimously.

Rep. Gould moved to amend under the concealed weapon section the fee left the way that it currently is for all local elected officials and/or officers of the court. There is currently no fee at all and he would like to see it left at that. Motion was seconded by Rep. Aafedt. A vote was taken and FAILED.

Recommendation and Vote: Rep. Wyatt motioned DO PASS AS AMENDED, seconded by Rep. Stickney. A vote was taken and CARRIED with Rep. Hannah voting No.

DISPOSITION OF HOUSE BILL 425

Motion: A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved Rep. Vincent's proposed amendments on page 5, line 1, strike "may", insert shall. Page 5, line 2, strike "or both if", insert unless. Following considered strike "necessary", insert unnecessary. Motion was seconded by Rep. Knapp.

Rep. Hannah stated that it appears to him that what they are saying is that every person that gets picked up, the vast majority of them will end up being required to take the treatment course. He feels that is wrong. The presumption is that every kid that gets picked up has got a drinking problem. This is the wrong direction to go and they have a wrong relationship with diagnosis and treatment.

Rep. Aafedt agreed with what was said by Rep. Hannah. If a person that does not normally drink gets picked up for a DUI, automatically they are considered an alcoholic and must go to a treatment center. That is not right.

Rep. Brown stated that his main concern is that they are trying to treat a disease for someone that has three or four or more DUI convictions on their record. Personally, Rep. Brown stated that he is committed to believing that if a person has more than one conviction, they most likely have a problem. Since 1981, particularly 1981 and 1983, when the legislature passed Montana's first DUI laws, the reduction in drunk driving accidents has reduced substantially. What they are trying to do with the DUI laws is reduce drunk driving and treat a disease. There is no question that this bill is the best vehicle for the treatment of alcoholism. However, Rep. Brown's concern is that they essentially set up a counselor in a community based drug treatment program to do not only an assessment but to additionally recommend treatment. Recommending treatment is a much longer and more heavily involved process. Aside from that, try to find in

the code books what the statutory requirement is for the counselors. The question is, who makes that decision. Should it be a relatively lesser trained counselor in an alcohol treatment program, who may or may not have some advanced degrees, or should it be someone else?

Rep. Darko stated that on the issue of alcoholism, she feels if a person has had 2 or 3 glasses of wine and gets behind the wheel of a vehicle and been picked up and convicted of a DUI, then maybe that person needs some education. Any counselor that has any common sense, given the circumstances, is going to put a person in treatment. However, that education process will teach those people a lot. Those people that don't think that they have a problem and have not been educated, are the ones that really need to be educated on the disease.

Rep. Mercer commented that he would like to draw the Committee's attention back to the amendment for a minute, as he feels they are debating over something that is entirely different. The current law states that if a person commits a DUI offense, they shall complete an alcohol information course. The counselor may then include alcohol or drug treatment, or both, if he considers it necessary. If the counselor assumes something is either necessary or unnecessary and there is nothing in between those two concepts, then all they are doing is flip-flopping it. It shifts the burden from the counselor making a determination one way rather than the other. Rep. Mercer pointed out one technical problem that he sees with the amendment. The old law says that they may have alcohol or drug treatment or both. With the proposed amendments, they can only give them alcohol treatment or drug treatment. They cannot give them both. It seems to him that if they leave the law as it currently is, then they must take the course and the counselor determines if they need alcohol or drug treatment. Whereas with the amendment, the counselor determines if treatment is needed, and if he thinks it is unnecessary then they don't go to treatment. If the law is left as it currently stands, the counselor can decide if the person needs drug or alcohol treatment or both. If they go with the amendment, the counselor can only do one or the other. Rep. Mercer suggested to leave the bill as it is.

A vote was taken on the Vincent amendments moved by Rep. Darko and FAILED with Rep. Addy voting aye.

Rep. Brooke moved to amend as shown as 10 and 11 of the attached committee report. Motion seconded by Rep. Mercer. Motion CARRIED with Rep.'s Hannah, Wyatt and Brown voting against the amendment.

Rep. Boharski moved to amend page 4, line 25, strike "approved by the Dept. of Institutions", and page 7, lines 10 and 11, strike "approved by the Dept. of Institutions".

Rep. Hannah spoke against the amendment and expressed that he feels they should leave it as it is. The whole question of licensing and certification is unsolved and he would be more comfortable leaving it as it is rather than trying to vote on something that is unclear.

Rep. Boharski stated that he would also like the amendment to read "certified". They are leaving up to the counties an extra burden of making sure that they keep enough of the dept. approved programs out there.

A vote was taken on Rep. Boharski's proposed amendments and FAILED with Rep. Boharski voting aye.

Rep. Brown stated that if the Committee looked at the statistics, drunk driving accidents and fatalities have been substantially reduced in Montana. Essentially, what they are doing is throwing the book at people instead of trying to treat the disease; thus, resulting in loss of job, costing cash flow, and not helping the individual that is having a real alcohol related problem. In the persay statute where somebody has already pled guilty on a second or third offense, does the Committee want to put those people in jail, fine them \$1,000 to \$5,000, and take away their economic livelihood? What the Committee needs to do is mandate an assessment for alcoholism and judicial determination and a court supervised treatment program. The priority should be treating these people's disease. The court needs to control this and set standards and do a better job of monitoring this type of a situation.

Rep. Mercer moved to amend for driving under the influence on a second or third or subsequent conviction, as well as driving with excessive blood alcohol concentration, they shall complete an alcohol information course approved by the department. That information course shall include alcohol or drug treatment or both. The option of the counselor is taken out. Motion was seconded by Rep. Gould.

Recommendation and Vote: Rep. Hannah made a substitute motion to TABLE HB 425, motion seconded by Rep. Aafedt. A Roll Call Vote was taken and FAILED with 8 voting aye, and 9 voting nay.

Amendments, Discussion and Votes: Rep. Gould suggested they leave the first offense penalty as it currently is (requiring court school attendance). A second, third or subsequent offense would result in mandating treatment. He does not; however, like the idea of taking away the license on the first DUI offense.

Rep. Mercer offered a friendly amendment in addition to the above proposed amendment to add on page 6 on a second or subsequent offense. Additionally, strike the penalty

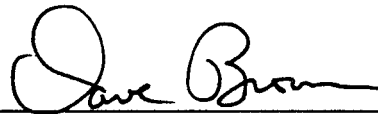
increases that are set forth in section 3 of the bill so that the penalty for persay would remain the same. Motion was seconded by Rep. Strizich and CARRIED unanimously.

Recommendation and Vote: Rep. Darko moved HB 425 DO PASS AS AMENDED, motion was seconded by Rep. Rice. A vote was taken and CARRIED unanimously.

ADJOURNMENT

Recessed at 10:40 a.m. and reconvened at 6:55 p.m.

Adjournment at 9:15 p.m.



REP. DAVE BROWN, Chairman

DB/je

3408.MIN

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 9, 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		



2-9-89

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE: (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
LOCAL GOVERNMENT
RULES

TO: John Vincent, Speaker of the House
FROM: Dave Brown, Chairman, House Judiciary Committee
DATE: Feb. 9, 1989
SUBJECT: House Bill's 330, 112, 291, 316, 445

The House Judiciary Committee has TABLED HB's 330, 112, 1, 316, 445 on Thurs., Feb. 9, 1989.

STANDING COMMITTEE REPORT

February 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 459 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 6.
Following: "PARTIES"
Insert: "WITH THE COURT'S APPROVAL"

2. Page 1, line 13.
Following: "or"
Insert: ", with the approval of the court,"

STANDING COMMITTEE REPORT

February 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 349 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "LAWS;"

Insert: "PROHIBITING CERTAIN PERSONS FROM PURCHASING THE
PROPERTY;"

2. Page 3, line 18.

Following: "auction."

Insert: "The property may not be sold to an officer or employee
of the law enforcement agency that seized the property or to
a person related to an officer or employee by blood or
marriage."

STANDING COMMITTEE REPORT

February 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 295 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, line 11.

Following: "writing,"

Insert: "or by a party to a civil action arising from the
accident,"

STANDING COMMITTEE REPORT

February 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE
BILL 350 (first reading copy -- white) do pass.


Signed: _____
Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 351 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, line 5.
Strike: "or"

2. Page 2, line 7.
Strike: "."
Insert: ";"

3. Page 2, line 8.
Following: line 7
Insert: "(f) by a person who has a valid federal tax stamp for the firearm issued by the bureau of alcohol, tobacco, and firearms; or
(g) by a bona fide collector of firearms if the firearm is a muzzle loading sawed-off firearm manufactured before 1900."

STANDING COMMITTEE REPORT


February 10, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 450 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendments read:


1. Title, lines 10 through 13.
Strike: "CREATING" on line 10 through "OFFENSE;" on line 13
2. Page 2, line 3.
Following: "town"
Insert: "and upon any property owned or leased by the city or town"

3. Page 2, line 17 through line 2 on page 3.
Strike: section 2 of the bill in its entirety

STANDING COMMITTEE REPORT

February 10, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 512 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 5.

Following: "PRODUCT"

Strike: ", "

Insert: "OR"

Following: "STRUCTURE"

Strike: ", OR"

2. Title, line 6.

Strike: "SERVICE"

3. Page 2, lines 5, 7, and 12.

Strike: the first comma in each line

Insert: "or"

4. Page 2, lines 5 and 12.

Strike: ", or service"

5. Page 2, line 7.

Strike: ", or rendering of the service,"

6. Page 2, line 8.

Following: "with"

Insert: "relevant".

7. Page 2, line 11.

Strike: "performance,"

STANDING COMMITTEE REPORT

February 10, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 313 (first reading copy -- white) do pass as amended.

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, lines 5 and 6.

Strike: "PROVIDE THAT THOUGH LIABLE FOR NEGLIGENCE,"

Insert: "STATE THE DUTIES OF"

2. Title, lines 6 AND 7.

Strike: "IS NOT LIABLE FOR AN INJURY CAUSED BY A RISK"

Insert: "AND A SKIER; TO PROVIDE THAT A SKIER ACCEPTS
RESPONSIBILITY FOR RISKS"

3. Page 2, line 3.

Strike: "frivolous lawsuits"

Insert: "claims based on damages resulting from risks inherent in
the sport"

4. Page 2, line 24.

Strike: "A"

Insert: "Consistent with the duty of reasonable care owed by a
ski area operator to a skier, a"

5. Page 5, line 15.

Strike: "who is skiing"

6. Page 5, line 25.

Strike: "the skier"

Insert: "he"

7. Page 6, line 4.

Following: "injury"

Insert: "or damage"

Strike: "that he suffers"

Insert: "to the extent"

Following: "that"

Insert: "the injury or damage"

8. Page 6, line 6.

Strike: "include but"

Strike: "not limited to"

9. Page 6, lines 15 through 19.

Strike: "forest growth" on line 15 through "skiing activity" on
line 19

Insert: "skiing in an area not designated as a ski trail"

10. Page 6, lines 20 through 23.

Strike: "," at end of line 20 through "signs" on line 23

Insert: "or equipment"

11. Page 7, line 1.

Following: "operator;"

Insert: "and"

12. Page 7, lines 2 through 6.

Strike: ";" on line 2 through "duties" on line 6

STANDING COMMITTEE REPORT

February 10, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 336 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, lines 10, 13, and 24.

Following: "age," on each line

Insert: "familial status,"

2. Page 3, lines 11 through 24.

Strike: subsection (4) in its entirety

Insert: "(4) The prohibitions of this section against discrimination because of familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3605 (b) (2) (C) and (3) and 24 C.F.R. 100.304, as those sections read on [the effective date of this act].

(5) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

STANDING COMMITTEE REPORT

February 10, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 232 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Page 7, line 23.

Following: "If"

Insert: "House"

2. Page 7, line 24.

Following: line 23

Insert: "70"

3. Page 7, line 25.

Following: "45-8-319"

Insert: "by enacting a fee for the original issuance of a permit"

4. Page 8, line 1.

Following: "void"

Insert: ", the fee for the original issuance of a permit inserted in 45-8-319 by House Bill No. 70 [LC 72] is increased by \$25, and the code commissioner is directed to insert in that part of 45-8-319 that relates to the distribution of the permit fee money a provision stating that: "\$25 must be deposited in the district court fund and, if no such fund exists, then in the county general fund to be used for district court operations"

STANDING COMMITTEE REPORT

February 13, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 425 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 5.
Strike: "AND PER SE PENALTY"
Strike: "RELATING TO"
2. Title, line 6.
Strike: "ALCOHOL- OR DRUG-RELATED DRIVING OFFENSES"
3. Title, line 7.
Following: line 6
Insert: "DRIVER'S LICENSE"
Following: "SUSPENSION"
Insert: "FOR A SECOND OR SUBSEQUENT OFFENSE"
Following: "UNTIL"
Strike: "TREATMENT"
Insert: "AN ALCOHOL INFORMATION COURSE, AND TREATMENT IF TREATMENT IS ALSO ORDERED,"
4. Title, line 9
Following: "CONVICTIONS"
Insert: "FOR PURPOSES OF THE DUI PENALTY SECTION"
Strike: "UNDER ONE"
Insert: "OF A PER SE"
5. Title, lines 10 through 12.
Strike: "OTHER" on line 10 through "SAME" on line 12
Insert: "DUI OFFENSE SECTION"
6. Title, line 12.
Strike: "AN"
Insert: "A DUI"
7. Title, line 13.

Following: "THAT"
Insert: "DUI"

8. Title, line 14.
Following: "61-5-208"
Strike: ", "
Insert: "AND"
Following: "61-8-714,"
Strike: "AND"

9. Title, line 15.
Strike: "61-8-722,"

10. Page 2, line 24 through line 2 on page 3.
Strike: ", except" on page 2, line 24 through "completed" on line
2 of page 3

11. Page 3, lines 8 through 10.
Strike: "person" on line 8 through the end of line 10
Insert: "1-year period passes and the person has not completed an
alcohol information course, or treatment, or both, as
ordered by the sentencing court, the license revocation
remains in effect until the course or treatment, or both,
are completed."

12. Page 5, line 1.
Following: "may"
Insert: ", in the sentencing court's discretion and upon
recommendation of a program counselor,"

13. Page 5, lines 2 and 3.
Strike: ", if" on line 2 through "the program" on line 3

14. Page 5, line 3.
Following: "."
Insert: "On conviction of a second or subsequent offense under
this section, in addition to the punishment provided in this
section, regardless of disposition, the defendant shall
complete an alcohol information course at an alcohol
treatment program approved by the department of
institutions, which must include alcohol or drug treatment
or both."

15. Pages 6 through 8.
Strike: section 3 of the bill in its entirety
Renumber: subsequent section

EXHIBIT 1
DATE 2-9-89
HB 350-Rep. Strizich

House Bill 350
=====

Examples of Fees on Restitution Collected - 1988:

	Restitution	Potential Fees
Helena (Lewis and Clark) -----	100,000.00	10,000.00
Great Falls (Cascade) -----	15,000.00	1,500.00
Missoula -----	30,000.00	3,000.00
Billings -----	10,000.00	1,000.00
Kalispell -----	10,000.00	1,000.00
	=====	=====
	155,000.00	15,500.00



BARRY C. MICHELOTTI

DATE 2-9-89
HB 351

CASCADE COUNTY

325 Second Avenue North
Great Falls, Montana 59401

(406) 761-6842

February 8, 1989

To: Honorable Representatives

Re: House Bill 351

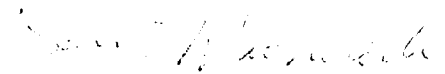
An act creating the criminal offense of possession of a sawed off rifle or shotgun

Current state statute does not address the possession of a sawed off rifle or pistol. The possession of such a weapon serves no legitimate purpose such as hunting or shooting events.

This department has confiscated sawed off shotguns during drug arrests and drug related search warrants.

I support the intent of House Bill 351 and urge passage of this bill.

Sincerely,


Barry C. Michelotti, Sheriff

DATE 2-9-89

HB 351

Cascade County

State of Montana

TELEPHONE: (406) 761-6700



Courthouse
Great Falls, Montana 59401

Office of the County Attorney

PATRICK L. PAUL

February 8, 1989

TO WHOM IT MAY CONCERN:

I support House Bill No. 351. There is no sporting or self-defense purpose for cutting down a rifle or shotgun. The only reason for doing so is to make it more concealable and more menacing in appearance than a handgun.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick L. Paul".

PATRICK L. PAUL
Cascade County Attorney

PLP/nls



Amendments to House Bill No. 351
First Reading Copy

Requested by Rep. Strizich
For the Committee on the Judiciary

Prepared by John MacMaster
Feb. 1, 1989

1. Page 2, line 5.
Strike: "or"

2. Page 2, line 7.
Strike: "."
Insert: ";

3. Page 2, line 8.
Following: line 7

Insert: "(f) by a person who has a valid federal tax stamp for
the firearm issued by the bureau of alcohol, tobacco, and
firearms; or
(g) by a bonafide collector of firearms if the firearm
is a muzzle loading sawed-off firearm manufactured before
1900."

Amendments to House Bill No. 313
First Reading Copy

Requested by Rep. Mercer
For the Committee on the Judiciary

Prepared by John MacMaster
February 8, 1989

1. Page 2, line 3.

Strike: "frivolous lawsuits"

Insert: "claims based on damages resulting from risks inherent in
the sport"

2. Page 6, line 6.

Strike: "include but"

Strike: "not limited to"

3. Page 7, line 1.

Following: "operator;"

Insert: "and"

4. Page 7, lines ~~2~~ through 6.

Strike: "and" on line 3 through "duties" on line 6

Amendments to House Bill 336
First reading copy
Requested by Human Rights Division
For the Committee on the Judiciary

Prepared by Anne MacIntyre
February 9, 1989

1. Page 2, lines 10, 13, 18, and 24.

Following: "age" in each line

Insert: "familial status"

2. Page 3, lines 11 through 24.

Strike: Subsection 4 in its entirety

Insert: (4) The prohibitions of this section against discrimination because of familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. §3605(b)(2)(C) and (3) and 24 C.F.R. §100.304, as those sections read on [the effective date of this act.

3. Page 3, line 25.

Insert: (5) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one which is based on the age of a child or children who live or will live with a person.

receive and process complaints or otherwise engage in enforcement activities under this title.

"(B) Determinations by a State or a unit of general local government under paragraphs (5) (A) and (B) shall not be conclusive in enforcement proceedings under this title.

"(7) As used in this subsection, the term 'covered multifamily dwellings' means—

"(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

"(B) ground floor units in other buildings consisting of 4 or more units.

State and local governments.

"(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

Public health and safety.

"(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."

42 USC 3606.

(b) ADDITIONAL PROTECTED CLASSES.—(1) Section 806 and subsections (c), (d), and (e) of section 804, are each amended by inserting "handicap, familial status," immediately after "sex," each place it appears.

42 USC 3602 note.

(2) Subsections (a) and (b) of section 804 are each amended by inserting "familial status," after "sex," each place it appears.

(3) For the purposes of this Act as well as chapter 16 of title 29 of the United States Code, neither the term "individual with handicaps" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

(c) DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.—Section 805 is amended to read as follows:

"DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

42 USC 3605.

"SEC. 805. (a) IN GENERAL.—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

"(b) DEFINITION.—As used in this section, the term 'residential real estate-related transaction' means any of the following:

"(1) The making or purchasing of loans or providing other financial assistance—

"(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

"(B) secured by residential real estate.

"(2) The selling, brokering, or appraising of residential real property.

"(c) APPRAISAL EXEMPTION.—Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status."

42 USC 3607.

(d) ADDITIONAL EXEMPTION.—Section 807 is amended—

(1) by inserting "(a)" after "Sec. 807."; and

(2) by adding at the end of such section the following:

"(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

"(2) As used in this section, 'housing for older persons' means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

"(B) intended for, and solely occupied by, persons 62 years of age or older; or

"(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

"(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

"(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

"(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

"(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

"(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2) (B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections (2) (B) or (C); or

"(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2) (B) or (C).

"(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)."

(e) CLERICAL AMENDMENT.—The heading of section 804 is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

SEC. 7. ADDITIONAL ADMINISTRATIVE AUTHORITY.

(a) COOPERATION WITH SECRETARY.—Section 808(d) is amended by inserting "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

EXHIBIT 7
DATE 2-9-89
HB 336

Regulations.
Aged persons.

Aged persons.

Drugs and drug abuse.

42 USC 3604.

42 USC 3608.

- (i) An accessible route into and through the covered dwelling unit;
 - (ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and
 - (iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1-1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under

paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and Federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment

complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *Provided That* the housing satisfies the requirements of § 100.304 (b)(1) or (b)(2) and the requirements of § 100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph (b)(2) of this section the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social

needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph (b)(2) of this section—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(iii) The income range of the residents of the housing facility.

(iv) The demand for housing for older persons in the relevant geographic area.

(v) The range of housing choices for older persons within the relevant geographic area.

(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this paragraph (b)(2) of this section.

(vii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) of this section until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph (c)(2) of this section:

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 96 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 900 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988 67% of the Green Meadow's occupied units (600 out of 900)

were occupied by at least one person 55 years of age or older. Under paragraph (d)(1) of this section, Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d) of this section, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) of this section that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (i.e., 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Subpart F—Interference, Coercion or Intimidation

§ 100.400 Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE 2-9-89 BILL NO. HB 450 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: DO PASS motion made by Rep. Daily,
seconded by Rep. Aafedt. Motion FAILS on tie
vote.

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 2-9-89 BILL NO. HB 512 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

10 8

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Motion made by Rep. Rice DO PASS, seconded
by Rep. Aafedt. Motion CARRIED.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE 2-9-89 BILL NO. 313 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		
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 8

Secretary

Dave Brown
Chairman

Motion: Rep. Addy's motion to amend Pg. 6, Line 4,
following "suffers", Insert "extent".

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE 2-9-89

BILL NO. HB 425

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		
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

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Julie Emge
Secretary

Dave Brown
Chairman

Motion: Motion to TABLE made by Rep. Hannah,
seconded by Rep. Aafedt. Motion FAILED.