MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on February 10, 1989, at 8:08 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: Rep. Brown announced the committee would hear HB 390, HB 491, HB 492, HB 493, HB 495, HB 422, HB 480 and HB 489 and then begin executive action.

HEARING ON HOUSE BILL 480

Presentation and Opening Statement by Sponsor:

Rep. Knapp opened the hearing saying that HB 480 is a bill to clean up an oversight. He said he would allow Don MacDonald to explain the content of the bill and the amendments.

Testifying Proponents and Who They Represent:

Don MacDonald, Missoula citizen
Janan Jones, First Interstate Bank of Missoula

Proponent Testimony:

Don MacDonald told the committee the reason for the bill is that the existing legislation isn't broad enough to cover old escrow files. The problem is that through the years the banks accumulate escrow files. In the case of First Interstate Bank of Missoula, many thousands of these files had accumulated through the years. It creates a problem. Therefore, this bill would provide a procedure for abandoning old escrow files. Mr. MacDonald also distributed the current amendments to HB 480. (See EXHIBIT 1)

Janan Jones rose in support of HB 480.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Aafedt asked Rep. Knapp to explain what an item held in escrow would be. Rep. Knapp said he would refer the question to Mr. MacDonald. Mr. MacDonald said the item held in escrow is usually a contract for deed.

Closing by Sponsor: Rep. Knapp closed.

DISPOSITION OF HOUSE BILL 480

Motion: Rep. Knapp moved HB 480 DO PASS. Rep. Darko seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Knapp moved amendments to clarify language in section 5. Rep. Eudaily seconded the motion.

The motion CARRIED with Rep. Hannah voting nay.

Recommendation and Vote: Rep. Darko moved HB 480 DO PASS AS AMENDED, motion seconded by Rep. Knapp. The motion CARRIED with Rep. Hannah voting against the motion.

HEARING ON HOUSE BILL 489

Presentation and Opening Statement by Sponsor:

Rep. Rice opened the hearing saying that the purpose of this act is to make a bomb threat offense a felony offense. Currently in the codes the act of making a bomb threat is listed under the intimidation statutes as a felony and listed under the disorderly conduct statute. These kinds of threats cause a great deal of fear and they are serious offenses. The purpose in proposing this bill is to make an important statement that with terrorism at our door and the disruption this causes, this really should be treated as a felony offense. We do realize that the county attorney will still have the authority to plea bargain these things to a misdemeanor if he so chooses. However, by taking them out of the misdemeanor statutes, they are making a statement that this is an important offense and these kinds of plea bargains will be less likely if this language is deleted.

Testifying Proponents and Who They Represent:

Bruce Moerer, Montana School Board Association
Marvin Carter, Laurel School District
Richard Webb, Superintendent of Sweet Grass High School
John Connor, Department of Justice and Montana County Attorneys Association

Proponent Testimony:

Bruce Moerer spoke in favor of HB 489 saying that the bill is the product of a resolution to the Montana School Board Association by the Laurel School District which has suffered two bomb threats in the last four years. We would like to impress upon people the seriousness and the danger of this type of offense. While we speak of it in the education context, it is not necessarily limited to the education context. There are all sorts of problems with actual bombs and bomb threats in many arenas. Hopefully this bill will teach students that they are responsible for the consequences of their actions.

Marvin Carter told the committee that last April the Laurel school had a bomb threat. This has traumatic effects of people. The students were scared as they ran out of the building. The parents and residents around the school also experience trauma. As far as the financial concerns of taxpayers, there are significant costs involved. The city fire department and the police department is tied up the whole time. It is not students calling in an attempt to get out of school. They believe it is adults. They need to know how serious the offense is.

Richard Webb spoke in favor of HB 489. (See EXHIBIT 2)

John Connor expressed support for the concept articulated in HB 489. The County Attorneys Association recognizes the severity of the problems that can occur when a bomb threat is called in. They recognize the potential for injury and emotional trauma. It is a serious situation and they urged a Do Pass recommendation.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Nelson asked what percentage of the cases of people who call in threats are ever caught. John Connor said he doesn't know, but considering the nature of the situation on the

whole, it's probably a small minority of people who actually get caught.

Rep. Boharski asked John Connor what the maximum and minimum penalties would be for a juvenile and for an adult convicted of this offense if it is changed from a misdemeanor to a felony. Mr. Connor replied that if an adult was prosecuted there is a subsection under the law of intimidation that would cover this kind of situation. The maximum penalty for intimidation is 10 years and/or a $50,000 fine. If a juvenile was prosecuted, under current law he could be committed to the Department of Institutions until he was 21 years of age. Effectively, that means that he could, at the worst, be sent to Pine Hills School. The length of his stay would be determined by the administration while he's there. It normally runs about nine months. The minimum for either an adult or a juvenile would be probation.

Rep. Gould said presently telephone harassment is a high misdemeanor. If this bill was amended to make a first conviction a high misdemeanor and subsequent convictions a felony, the county attorneys might be more apt to go forward with the prosecution. He asked if Mr. Moerer would object to that. Bruce Moerer responded that it would fit within the context of the intent which is to drive home the seriousness of this offense to both people who call it in and the students who get caught in the middle and watch it happen.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 489

Motion: Rep. Gould moved HB 489 DO PASS. Rep. Daily seconded the motion.

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 390

Presentation and Opening Statement by Sponsor:

Rep. Spaeth opened the hearing saying that HB 390 does two things; it sets a mandatory minimum sentence of two years for possession and sale of a dangerous drug, primarily cocaine derivatives and it establishes a minimum two year mandatory sentence for the sale of such drugs to minors. Rep. Spaeth outlined changes in the bill.

Testifying Proponents and Who They Represent:

John Connor, Department of Justice, County Prosecutor Services and Montana County Attorneys Association

Proponent Testimony:

John Connor spoke in support of HB 390. The Montana County Attorneys Association strongly supports this bill because they think they need to bolster the kind of legal tools necessary to deal with the increasing drug problem Montana is experiencing. The law now provides for mandatory minimums in many areas. It provides them for violent crime, property crime, sex crime, and in some respects for drug crime. The problem is that these mandatory sentences can be deferred or suspended under the statutes unless it falls within the provision of 46-18-201-4 where it says that for these sub-statutes, you can't suspend or defer the sentence. The law does not currently allow for suspension or deferment of the two year mandatory minimum for possession of an opiate and it does not allow for deferment for sale of an opiate. It does not allow for a suspended or deferred sentence for a repeat offender. All this bill does is to allow this same kind of restriction for the most common street drug that they find now, cocaine.

Testifying Opponents and Who They Represent:

Dan Russell, Administrator of Division of Corrections

Opponent Testimony:

Dan Russell told the committee that HB 390 will probably not affect the prison population as it results to those people who are currently sentenced to prison for the criminal sale of dangerous drugs because those admissions are now receiving sentences that average longer than a two year minimum. However, they are averaging about 60 admissions per year to probation. Of those 60 admissions for the criminal sale of dangerous drugs, 24% of those are for the sale of cocaine. That indicates that there will be at least 14 new admissions to Montana State Prison each year of the biennium. This is over and above those numbers that have been predicted to fill the new 96 bed unit that is before the Long Range Building Program and the 50 additional intensive supervision program beds. The committee needs to be aware of what this bill would do in terms of prison population.

Questions From Committee Members:

Rep. Boharski asked Rep. Spaeth if he is aware that the way this bill is written a 16 year old could be sentenced to a two year mandatory prison stay if the county attorney petitioned the court to have him tried as an adult. He asked if that

was part of the intent in drafting the bill. Rep. Spaeth responded that he doesn't have a problem with that because that is consistent with the existing law if he were to sell heroin. He said cocaine or crack is not any less serious than heroin.

Rep. Gould said that 46-18-222 was put into a bill of his that dealt with mandatory sentencing using a dangerous weapon in the commission of a crime. He said he has never liked 46-18-222. He asked Rep. Spaeth if he would object to taking the reference to 46-18-222 out of this bill. Rep. Spaeth said that he is not sure if that could be done easily because what he has done with this bill is insert it along with heroin. He said he's not sure if could be extracted unless it was abstracted generally in its application to the statute to the other provisions. If it were to be removed from the provisions of this bill, it would essentially be repealed because these are the primary provisions that it is referred to.

Rep. Aafedt asked in reference to page 3, section 2 and going on through page 4, line 1 dealing with driving under the influence of alcohol and drugs, if this should be included since the committee is already working on a bill dealing with driving under the influence of alcohol and drugs. Rep. Spaeth said the reason that is in the bill is because the sections they're dealing with have to be included. HB 390 is not changing that.

Closing by Sponsor: Rep. Spaeth closed the hearing saying it is an important bill because it would bring their legislation consistent with the way they deal with heroin. He urged the committee to adopt HB 390.

DISPOSITION OF HOUSE BILL 390

Motion: Rep. Daily moved HB 390 DO PASS. Rep. Darko seconded the motion.

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 491

Presentation and Opening Statement by Sponsor:

Rep. Spaeth opened the hearing saying that they have one of the most liberal joint custody laws in the nation. HB 491 is a proposal that would require the court to take into account the affect of the time allotment on the stability and continuity of the child's education when granting joint

custody. The bill arises because one judge in the state of Montana has interpreted that to mean that stability of education is not a consideration in establishing joint custody. What they find coming from this particular court is that he will allow the child to be with one parent for one year and go to the school in that parent's district and be with the other parent the next year and go to a different school. He is not the only one that is now looking at this approach. There is not a problem with the child moving from one house to another if he stays in the same school district and can attend the same school without interruption. Rep. Spaeth gave an example of a child whose parents received joint custody and the mother moved to California. The child goes to school in Absorakee, Montana one year then goes to school in California the next and then comes back to Montana and so on. This is an aberration we should avoid. This was not agreed to by anyone. Rep. Spaeth talked to the child (nine years old) and she said that she liked to live with her mom and she liked to live with her dad but she didn't like leaving her friends and always having to try to make new friends. The stability and continuity of a child's education should be considered as a factor in this instance. It's a problem that should be addressed before it grows much larger. Rep. Spaeth said that the Office of Publication is in favor of this bill. HB 491 is a good bill and a good change in the joint custody provision.

Testifying Proponents and Who They Represent:

Brenda Nordlund, Montana Womens Lobby

Proponent Testimony:

Brenda Nordlund spoke in favor of HB 491. She said she has five years of legal experience in Kalispell and the bulk of her practice was in family law. This bill is a very important improvement in their joint custody statutes. What they've seen because of language in 40-4-224 regarding the allocation of time being equal or as practical as possible in the best interest of the children has become tension filled because of cases such as the one Rep. Spaeth described. When they are giving the judge the edict from the legislature that they should concentrate on equality to the exclusion of other factors like stability and continuity in schooling, they create a problem. They create expectations in parents that can't be fulfilled, and they create real problems for children in terms of how they grow up, what their schooling is like and what their support system is like with friends. Ms. Nordlund asked the committee to support HB 491.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 491

Motion: Rep. Brooke moved HB 491 DO PASS. Rep. Gould seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved to amend page 2, lines 9-12. Rep. Darko seconded the motion.

Rep. Eudaily said the amendment would put stricken language back in the bill. Also, on line 10, page 2, following "however", a colon and an a in parenthesis would be inserted and at the end of line twelve a semicolon and the word "and" would be inserted. At the beginning of line 13 a "b" would be inserted. Thus, the stricken language would be reinserted with the last part of it becoming subsection a and the new language on lines 13-16 would become subsection "b". On line 14, after the word "consider", the comma and the rest of the line would be stricken.

The motion CARRIED unanimously.

Rep. Hannah asked what this bill would solve. Rep. Knapp said it was pointed out by Rep. Spaeth that one of the problems is that we are seeing more of a mobile society so there are more instances where one parent may live in Montana and one in California and the child may go to school one year in Montana and one in California. That is not in the best interest of the child.

Recommendation and Vote: Rep. Daily moved HB 491 DO PASS AS AMENDED, motion seconded by Rep. Gould. Motion CARRIED with Rep. Hannah voting No.

HEARING ON HOUSE BILL 492

Presentation and Opening Statement by Sponsor:

Rep. Spaeth commented that what they are trying to do is, when they have problems that deal similarly to the way other states do, they try to adopt a uniform law. The advantage of having a uniform law is that even though the instances of applicability may be minimal, if it's adopted in other states, you can find some law somewhere on the point in

question. That is important in the legal profession in order to advise clients and also for the courts to help render decisions. HB 492 is a uniform law that has been adopted in most every state that has a uniform disposition of community property rights at death.

Testifying Proponents and Who They Represent:

Robert Sullivan, Commissioner appointed to the National Conference of Commissioners on Uniform State Laws

Proponent Testimony:

Robert Sullivan provided written testimony which was submitted to the committee by Rep. Gary Spaeth. (See EXHIBIT 8)

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 492

Motion: A DO PASS motion was made by Rep. Addy, motion 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 422

Presentation and Opening Statement by Sponsor:

Rep. Eudaily stated that this bill is intended to bring emergency medical services within the provisions of the Living Will Act so that a person who has made a living will and is dying at home will not be revived by Emergency Medical Service (EMS) personnel. Secondly, the bill restricts revocation of a declaration when it is made to someone other than the attending physician or health care provider. Specifically, the bill provides that a revocation made to a third party will not be effective unless

revocation is communicated to the attendant physician before the qualified patient is in need of the life sustaining procedures. Thirdly, the bill adds EMS personnel to the community section along with doctors, hospitals and others. Rep. Eudaily provided the committee with copies of proposed amendments. (See EXHIBIT 3)

Testifying Proponents and Who They Represent:

Ira Byock, physician practicing in Missoula
Drew Dawson, Chief of Emergency Medical Services Bureau within Department of Health and Environmental Sciences
Connie Westby, private citizen
Tim Bergstrom, Montana Fireman's Association
Owen Warren, American Association of Retired Persons

Proponent Testimony:

Ira Byock spoke in support of HB 422 saying that this bill is a very important measure which seeks to correct what appears to have been an oversight in the initial Living Will Act. He said he is in a unique position to be interested in this bill because he practices full time emergency medicine. As an emergency physician he deals with life threatening illnesses as a course of daily practice. He also supervises emergency medical technicians in the stressful positions that they are in, including recessitation in out of hospital situations. For the last eight years he has been connected with hospice programs. There has been great confusion in the past as to what emergency medical technicians are supposed to do. There is a need to further develop communication and cooperation between emergency medical technicians and hospice workers. The history of emergency medicine is that when CPR was developed, initially it was felt to be appropriate only and was developed for unsuspected cardiac arrests, the sort of thing that happens during anesthesia or when somebody collapses at a football game. It has been found to be very appropriate and very effective in that regard. It was never intended to be provided to the terminally ill. It is an inappropriate procedure in those instances. However, our emergency medical protocols have never caught up to that recognition. Emergency medical protocols will talk about the need to institute CPR, except in obvious death situations such as decapitation. Other than that, the emergency medical technicians are bound to start recessitation procedures. The living will, as it was codified by the legislature, was clearly intended to preserve our own sovereignty over our bodies at a time when we were no longer able to speak for ourselves. It did so very effectively in the context of patients in a nursing home or in a hospital. More and more these days the trend is toward home care of patients. In these cases, if emergency is called for transport or some other reason, the emergency medical technicians need to know whether or not they are supposed to recessitate that

patient, should in the context of that transport or in the context of their evaluation and treatment, if a cardiac arrest occurs. What this bill tries to make provision for is the arrest situation that happens out of hospital in a patient who is well prepared and knows that his prognosis is terminal and has gone so far as to execute a living will. There is broad agreement within the hospice community and the emergency medical services community for this kind of provision.

Drew Dawson spoke in support of HB 422 (See EXHIBIT 4). Mr. Dawson also presented the committee with proposed amendments to the bill (See EXHIBIT 5).

Connie Westby spoke in favor of HB 422 (See EXHIBIT 6).

Tim Bergstrom spoke in support of HB 422. He told the committee that the Montana Fireman's Association received a call from the fire chief of the City of Missoula, Chief Charles Gibson, representing the Montana State Fire Chief's Association who wanted Mr. Bergstrom to indicate that his association strongly supports HB 422. The Montana Fireman's Association also supports the bill. It's members respond routinely on emergency medical incidents. HB 422 seeks to provide additional coverage in this area that is very necessary.

Owen Warren, representing the American Association of Retired Persons, spoke in support of HB 422 (See EXHIBIT 7)

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Brown asked Ira Byock if he had a reaction to the Health Department's proposed amendments giving the Health Department a heavier role in the process. Dr. Byock said he has no objection to that. He said he had talked to Mr. Dawson and suggested that as part of that process, the Montana Hospice Association be asked for their energies in developing such a protocol and that Home Health Association also be notified. He said the idea of a state protocol is an excellent idea. In general, it's an advance and a good approach and the Department of Health and Environmental Sciences is the logical place to develop such a protocol.

Closing by Sponsor: Rep. Eudaily said that Mr. Dawson's proposed amendments can probably be taken care of in a statement of intent and that is probably the direction the committee

should go on that issue. He said the language in the bill needs more clarification as far as "qualified patient" is concerned. He stated that the protocol was developed in the state of Maryland and he provided a handout from the Maryland EMS News for the committee's perusal (See EXHIBIT 9).

HEARING ON HOUSE BILL 493

Presentation and Opening Statement by Sponsor:

Rep. Strizich opened the hearing saying that this bill is introduced on behalf of the Montana Sheriff's and Peace Officer's Association and provides that the charge currently applicable to criminal convictions be increased in both felonies and misdemeanors. The disposition of these charges is the important part of this bill. It is then amended to provide that these funds will be applied to the financing of the operation of county jails including staff salaries, repair and maintenance and operational costs. Two thirds of the money raised would provide for this while the balance could be used for jail expansion, construction and remodeling. There is a jail crisis across the state and much of what needs to be done requires money.

Testifying Proponents and Who They Represent:

Tom Harrison, Montana Sheriff's and Peace Officer's Association
Mike Schafer, Montana Sheriff's and Peace Officer's Association

Proponent Testimony:

Tom Harrison spoke about the problems of housing prisoners and the costs of running jails and how it has been exacerbated by the decision which resulted in Great Falls from the Deaconess Medical Center case that went to the Supreme Court that now has the county liable for all of those prisoner costs. This is a bill that attempts to address that. It needs to be put in perspective of the state's infrastructure and the counties' infrastructure which, regrettably, over a long period of time was not attended to in the manner it should have been. In many of the counties they are now seeing newer, more modern facilities built. In Lewis and Clark county they have a very adequate new facility including dispatch as well as jail facilities, at a cost of about $4.2 million which the taxpayers of the county were willing to buy. When there is forced expansion of jail facilities, it blows operating costs way out of proportion. Since the onset of the new facility in Lewis and Clark County, the operating budget has increased from $80,000 to $300,000.

Mike Schafer, Sheriff of Yellowstone County, told the committee the counties need financial help to continue to maintain efficient jails. They can no longer have a system where

they just throw people in jail, slam the door and walk off. They must provide what is reasonable in a county jail if they are going to lock people up. They must provide adequate space, adequate sanitary conditions, security protection, reasonable health and dental care, wholesome dietary meals and other necessities. Yellowstone County built a new jail at a cost of $10.2 million. The operating cost to maintain one prisoner in that jail is $38 per day. That is just the ongoing cost. That does not include any capital improvement. Counties are in a position where it is difficult to operate county jails on just county budgets. The counties need assistance to help with this operation.

Testifying Opponents and Who They Represent:

Wally Jewell, Montana Magistrate's Association
Chuck Stearns, City of Missoula

Opponent Testimony:

Wally Jewell spoke in opposition to HB 493 (See EXHIBIT 10).

Chuck Stearns submitted written testimony in opposition to HB 493 (See EXHIBIT 11).

Questions From Committee Members:

Rep. Brown asked if there is a present split of funds at the county level and if this bill would change that split. He said the fiscal note doesn't tell anything. Rep. Strizich said he has a request to have the fiscal note redone for precisely that reason. That's why he has not signed the fiscal note.

Closing by Sponsor: Rep. Strizich closed saying this bill provides at least a partial solution to the current problem. He urged the committee to strongly consider the bill.

HEARING ON HOUSE BILL 495

Presentation and Opening Statement by Sponsor:

Rep. Strizich opened the hearing saying that HB 495 has been introduced at the request of several groups in Great Falls that are concerned with the problems of our children and chemical abuse. This bill simply expands the definition of possession of an intoxicating substance by minors to include acceptance and consumption, in other words, it includes both the acceptance of the alcohol or intoxicating substance for consumption and the consumption itself. This section of the law has been narrowly construed by many county attorneys. What this narrow construction has done is preclude arrests of youths who are clearly intoxicated or youths who are suspected of physically accepting an intoxicating substance from another person. The problem affects our schools, and

it affects the way law enforcement is able to effectively put pressure on keggers. Many times dangerous situations are presented to law enforcement people with regard to intoxicated kids and there is nothing they can do in terms of exerting any kind of control over that situation.

Testifying Proponents and Who They Represent:

Mike DaSilva, Helena Stop DUI Task Force
Barbara Moy, Coordinator of Stop DUI Task Force
Captain Bill Fleiner, Lewis and Clark County Sheriff's Department and Montana Sheriff's and Peace Officer's Association
Wally Jewell, Montana Magistrate's Association
Jill Polette, Stop DUI Task Force
Representative Paula Darko, House District 2

Proponent Testimony:

Mike DaSilva, on behalf of the Helena Stop DUI Task Force, spoke in support of HB 495. He said one of the problems they have is demonstrated by a recent case where a police officer stopped an automobile and cited everyone in the automobile for possession. One of the minors in the car was in the back seat and had an open can of beer clenched firmly between his feet. When the case went to court, the judge threw that out as possession because the beer was on the floor, not in his hand. Logic tells us that he was probably drinking it. The point is, some judges construe the law as it currently exists to say that is not possession of alcohol. This bill would clear that up. Mr. DaSilva urged the committee to give this bill a Do Pass recommendation.

Barbara Moy spoke in favor of HB 495 (See EXHIBIT 12).

Captain Bill Fleiner spoke in support of HB 495. He said this particular bill, from the enforcement standpoint, would be very instrumental and very crucial to the success of the Stop DUI Task Force and law enforcement people. It was about 1978 when law enforcement officials began to realize the magnitude of the problem that was developing with juveniles and intoxicating substances. They have had difficulty combatting the problem because of the loopholes in the system. It is difficult to combat the problems under the current system. On behalf of the Montana Sheriff's and Peace Officer's Association he urged the committee's support of HB 495.

Wally Jewell, representing the Montana Magistrate's Association, asked to be included as a proponent of HB 495 for the record.

Rep. Darko requested to be registered as a proponent to HB 495.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. McDonough said she does not see how this bill will help the problem to which it refers. Rep. Strizich said this bill was drafted at the request of the Cascade County DUI Task Force and they conferred with the county attorney. The intent is to expand the scope of the issue. The legal advisor from the Legislative Council feels this is constitutionally acceptable. He said he can share Rep. McDonough's concerns but the current problems are frustrating enough to demand some action.

Rep. Eudaily asked what the time limit for "prior possession" would include. Rep. Strizich responded that the duration of time would depend upon what a police officer could prove in court. The intent of the bill is to handle situations such as those existing at keggers. The typical situation at a kegger is there are about 50 kids and one keg. When the sheriff's deputy shows up if nobody has a cup, nobody gets arrested. That doesn't make sense and that is what this is designed to deal with.

Closing by Sponsor: Rep. Strizich closed the hearing saying that the intent of this bill is not to increase the punitive nature of our laws, it is simply to allow us to impact children who are in dangerous situations and get them services and education with regard to their use and abuse of chemicals.

DISPOSITION OF HOUSE BILL 450

Motion: Rep. Mercer moved HB 450 DO PASS. Rep. Daily seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend the bill to strike section 2, the unlawful discharge of firearm penalty section. Rep. Daily seconded the motion.

Rep. Mercer said that there are two problems with this bill. On one side there are people who believe cities should be able to regulate outside their boundaries and therefore they don't like the bill. On the other side there are people who don't like the language in the unlawful discharge penalty section. We have laws on the books right now that will take care of the penalties.

The motion to amend CARRIED with Rep.'s Darko, Brooke, Wyatt and Strizich voting nay.

Rep. Eudaily moved to amend line 3, page 2 after the word "town" to insert "and upon any property owned or leased by the city or town". Rep. Addy seconded the motion.

Recommendation and Vote: Rep. Daily moved HB 450 DO PASS AS AMENDED, motion seconded by Rep. McDonough. Motion CARRIED with 10 voting aye, and 8 voting nay (See attached Roll Call Vote).

ADJOURNMENT

Adjournment At: 11:07 a.m.

REP. DAVE BROWN, Chairman

DB/je

3508.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		

STANDING COMMITTEE REPORT

February 10, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 480 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 3, line 17.
Following: "property"
Insert: ", tangible or intangible,"

2. Page 3, line 19.
Following: "the"
Insert: "instrument held in"
Following: "escrow"
Strike: "agreement"

3. Page 3, line 22.
Following: "the"
Insert: "instrument held in"
Following: "escrow"
Strike: "agreement"

STANDING COMMITTEE REPORT

February 10, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 489 (first reading copy -- white) do pass .

Signed: _____

Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 10, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 390 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 10, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 491 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, line 13.
Strike: "When"
Insert: "The allotment of time between the parents must be as equal as possible; however:
(a) each case shall be determined according to its own practicalities, with the best interest of the child as the primary consideration; and
(b) when"

2. Page 2, line 14.
Strike: ", in addition to the factors set forth in 40-4-212,"

STANDING COMMITTEE REPORT

February 10, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 492 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

5:45 pm
JV

STANDING COMMITTEE REPORT

February 10, 1989

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

Signed: Dave Brown
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

BV

EXHIBIT 1
DATE 2-10-89
HB 480

Amendments to House Bill No. 480
Introduced Copy

Requested by Representative Knapp

Prepared by Dave Cogley
February 9, 1989

1. Page 3, line 17.
Following: "property"
Insert: ", tangible or intangible,"

2. Page 3, line 19.
Following: "the"
Insert: "instrument held in"
Following: "escrow"
Strike: "agreement"

3. Page 3, line 22.
Following: "the"
Insert: "instrument held in"
Following: "escrow"
Strike: "agreement"

EXHIBIT
DATE 2-10-89
HB 489

Sweet Grass County High School

P.O. Box 886
Big Timber, Montana
59011

OFFICE OF THE PRINCIPAL

February 9, 1989

House Judiciary Committee
Capitol Building
Helena, MT 59620

Committee Members:

Regarding: HB 489

On Monday, May 16, 1988, Sweet Grass County High School received a telephone call stating the presence of a bomb in the building. The Sheriff and Fire Chief were notified, the building was evacuated, and searched. The students returned to their classes following a one (1) hour disruption.

The people involved with the bomb threat were apprehended. There were three students (all juveniles) and a former student (adult).

Our Sheriff's office and fire department were called in on a hoax. They could have been injured while responding. In addition our students' educational process was interrupted for at least one (1) hour.

The threat of a bomb is a serious offense and should be treated as such. I would encourage you to vote for HB 489 which would make a bomb threat a felony.

Sincerely,

Richard L. Webb
Superintendent

EXHIBIT 3
DATE 2-10-89
HB 422

Amendments to House Bill No. 422
First Reading Copy

Requested by Representative Eudaily
For the Committee on Judiciary

Prepared by Greg Petesch
February 8, 1989

1. Title, line 8.
Following: "PHYSICIAN"
Insert: ", EMERGENCY MEDICAL SERVICES PERSONNEL,"

2. Page 2, line 25.
Following: "physician"
Insert: ", emergency medical services personnel,"

3. Page 3, line 2.
Following: "the physician"
Insert: ", emergency medical services personnel,"

4. Page 3, line 5.
Following: "physician"
Insert: ", emergency medical services personnel,"

5. Page 3, line 8.
Following: "."
Insert: "A health care provider or emergency medical services personnel to whom a revocation is communicated may honor the revocation. The health care provider or emergency medical services personnel must inform the attending physician of the revocation at the earliest opportunity."

6. Page 4, line 1.
Following: "procedures"
Insert: ",whenever reliable documentation of the declaration is available at the location of the qualified patient in the form of a written document or a necklace or bracelet worn by the qualified patient, or other recognized evidence of the declaration, or"

EXHIBIT 4
DATE 2-10-89
HB 422

HOUSE BILL 422

TESTIMONY OF DREW DAWSON, CHIEF
EMERGENCY MEDICAL SERVICES BUREAU
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Mr. Chairman and members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences. My office is responsible for the training and certification of emergency medical services personnel and for the licensing of ambulance services. I am pleased to testify as a proponent of House Bill 422 with some suggested amendments.

At the request of Representative Eudaily, I solicited, by a conference call, the comments and recommendations of various emergency medical services personnel throughout Montana. This included the Montana Emergency Medical Services Association (representing Montana EMTs) and the Montana Private Ambulance Operators Association (representing Montana's private ambulance services).

Everyone was in agreement that some modifications to the Living Will Act are necessary to clarify the role of the pre-hospital emergency medical care provider. In the current law, it is not clear that the Living Will applies to situations occurring outside of the hospital.

Emergency medical care personnel must, in an instant's time, make a decision about whether to begin Cardiopulmonary Resuscitation for a person in cardiac arrest, or about the type and level of care administered to a terminally ill patient. They simply don't have the ability to contact the person's personal physician and are often faced with conflicting information from family members. The situation is often emotionally charged; it is very difficult for the emergency care provider to know what to do. In an emergency situation, it is nearly impossible for them to review a legal document, such as a living will, or to sort through several different types of documentation. Just because a patient has executed a living will does not necessarily mean he is a qualified patient (i.e. terminally ill). I can declare a living will right now, but not be a qualified patient unless I were to become terminally ill. I certainly would want all possible emergency care administered to me now. Evidence of a living will is not sufficient for emergency care providers; they must <u>also</u> have evidence that they are dealing with a qualified patient.

Because of the uncertainty in the law, emergency responders now are generally considered obligated to render all emergency care necessary to every patient including those who have executed living wills even though this is often at odds with the wishes of the family and of the patient.

The Montana Emergency Medical Services Association, the Montana Private Ambulance Operators Association and my office are very much in favor of the <u>intent</u> of House Bill 422. In its current wording, we think it is still a bit confusing and would place the emergency care provider in an untenable situation. However, we have proposed some amendments which we feel will make it much more workable from a state-wide perspective and make it much better for all emergency care workers. These amendments are patterned after a similar program developed in the state of Maryland.

EXHIBIT 4
DATE 2-10-89
HB 422

Following is a summary of the amendments:

1. To clarify what actions the emergency care providers should take, we recommend that my office develop a standard, state-wide protocol. This would clearly state the actions the providers should take with a qualified patient, and would provide consistency across Montana. This would be developed in cooperation with medical associations, emergency medical associations, hospice organizations, home health organizations and others. This protocol would then be submitted to the Montana Board of Medical Examiners for their review and approval. I have visited with Doctor Malee of the Board and this approach is acceptable to them.

2. We would develop a standard, state-wide identification for qualified patients. A qualified patient in one who has declared a living will and who has been declared terminally ill by a physician. This form, which could also be reduced to a wallet card, would be signed by both the patient and the physician.

   If the emergency responders were shown this card or form at the scene, they would then follow the living will protocol. If they were not shown the card, they would render all possible emergency care. It would take the emergency responder out of the middle and be very clear cut for them.

   This would not preclude an individual community from doing other types of identification of these patients, but would still require the use of the standard form. Emergency care providers could still be provided liability protection for following the specific orders of a physician.

   Statewide standardization has a number of advantages including implementing training, allowing the same treatment if the qualified patients are outside of their community, and providing <u>one method</u> to be followed by all emergency responders in the state.

3. Liability protection would be extended to emergency care providers who follow the living will protocol. If, because of uncertainty at the scene or other problems, the emergency care provider did not follow the protocol and rendered emergency care, they would still be provided liability protection.

4. My office would develop a standardized training program for emergency medical services personnel in the use of the protocol. This could easily be incorporated into many existing training programs as well.

5. We would take the responsibility to notify Montana physicians and emergency care providers of the existence of the protocol and the standard identification.

With these amendments we feel that House Bill 422 will be of tremendous

EXHIBIT 4
DATE 2-10-89
HB 422

assistance in clarifying the role and responsibility of emergency medical services personnel. The responsibilities outlined would not have any additional financial impact on my office. It is important enough that it would fall within the scope of our existing training duties.

We understand there are other folks with suggested amendments to House Bill 422. While we have had some preliminary conversations with them, we would be pleased to sit down and see if we could work out some mutually agreeable amendments to the bill which you could consider in executive session.

Thank you for the opportunity to testify. I will be pleased to answer any questions.

EXHIBIT 5
DATE 2-10-89
HB 422

AMENDMENTS TO HOUSE BILL 422
RECOMMENDED BY
MONTANA EMERGENCY MEDICAL SERVICES ASSOCIATION
MONTANA PRIVATE AMBULANCE OPERATORS ASSOCIATION
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Section 1.

Add the following definitions:

"Department" means the department of health and environmental sciences"

"Board" means the board of medical examiners, department of commerce"

"Living will protocol" means a method, developed by the department and approved by the board, of providing palliative care and withholding life-sustaining procedures by emergency medical service personnel to a qualified patient in accordance with 50-9-202. "

"Patient identification" means a state-wide, uniform form, developed by the department, for identification of a qualified patient which shall contain patient identifying information and which shall be signed by the attending physician and by the patient."

Amend the following definitions:

(3) "Emergency medical services personnel" means paid or volunteer firefighters, police,**law enforcement** paramedics, emergency medical technicians,**first responders** or other ~~rescue-squads~~**emergency services personnel** acting within the ordinary course of their profession."

(5) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process ~~and-includes-first-response-procedures administered-by-emergency-medical-services-personnel.~~

New section.

When emergency medical services personnel are presented with a patient identification and there is reasonable assurance the person indicated on the patient identification is that patient, the emergency medical services personnel shall follow the living will protocol except as provided in 50-9-202 (1) . The presentation of a patient identification shall constitute evidence of a qualified patient whether or not the patient has actually revoked the declaration.

New section.

The department shall, in consultation with medical associations, emergency medical associations, home health organizations, hospice organizations and other emergency medical services providers:

(1) Develop a suggested living will protocol for presentation to the board;

DATE 2-10-89
HB 422

(2) Develop a patient identification;

(3) Develop a training program for emergency medical services personnel based on the living will protocol;

(4) Notify Montana physicians and emergency medical services personnel of the living will protocol and of the patient identification.

The board shall adopt a living will protocol and shall consider the recommendations of the department.

Amend Section 3 (c):

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician;or who follow the living will protocol with patient who has a patient identification.

Add another subsection to Section 3:

emergency services personnel who provide life-sustaining treatment to a qualified patient.

EXHIBIT 6
DATE 2-10-89
HB 422

HB 422

I believe that every person has the right to die with dignity. Being hooked up to machines is not dignified.

It is each person's right to choose whether he/she wishes to life support in a life threatening situation.

As a nurse, I know that once a person is hooked up to life sustaining machines it is nearly impossible to "pull the plug"

Connie Westby

EXHIBIT 7
DATE 2-10-89
HB 422

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

VICE CHAIRMAN
Mr. Fred Fetter
1700 Knight
Helena, MT 59601
(406) 443-3690

SECRETARY
Mr. John C. Bower
408 West Story Street
Bozeman, MT 59715
(406) 587-7535

February 10, 1989

TO: House Judiciary

FROM: Owen Warren, American Association of Retired Persons

RE: In support of HB 422 - An act to amend the Living Will Act.

The Montana State Legislative Committee of AARP supports this bill for the following reason:

St. Peters emergency room personnel explained to me that people with a Living Will should give the patient's doctor one copy and one copy should remain with the patient at home. Often the patient would have a terminal disease, such as cancer, and would not want any life sustaining support. In this case if "Emergency medical services personnel" arive - the patient's copy of the Living Will can be shown to them and they would be covered by law to honor the patient's wishes and not be obligated to administer their usual life support services.

The American Association of Retired Persons strongly urge your passage of this bill.

EXHIBIT 8
DATE 2-10-89
HB 492

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE GARY SPAETH

HOUSE DISTRICT 84

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620-0144
PHONE: (406) 444-4800

HOME ADDRESS:
SILESIA, MONTANA 59080
PHONE: (406) 962-3266 or 3230

STANDING COMMITTEES:
APPROPRIATIONS
SUBCOMMITTEE ON
NATURAL RESOURCES

PERMANENT COMMITTEES:
ADMINISTRATIVE CODE
COMMITTEE, CHAIRMAN
RESERVED WATER RIGHTS
COMPACT COMMISSION

February 10, 1989

HONORABLE COMMITTEE MEMBERS:

I have received this written testimony in favor of HB 492. Robert E. Sullivan is a member of the National Conference of Commissioners on Uniform State Laws. I would appreciate your consideration of his views.

Thank you.

GARY SPAETH, Representative

GS/eb

DATE 2-10-89
HB 492

FEBRUARY 10, 1989

TESTIMONY
HB 492

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT.

MY NAME IS ROBERT E. SULLIVAN. I AM ONE OF THREE COMMISSIONERS FROM MONTANA APPOINTED BY THE GOVERNOR TO THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. OUR DUTIES ARE PRESCRIBED BY STATUTE:

> SECTION 1-12-104 MCA "...TO PROMOTE UNIFORMITY IN STATE LAWS UPON ALL SUBJECTS WHERE UNIFORMITY MAY BE DEEMED DESIRABLE AND PRACTICABLE."

THE CONSTITUTION OF THE UNIFORM LAWS CONFERENCE IS MORE EXPLICIT:

> "(IT IS) THE OBLIGATION OF COMMISSIONERS FROM EACH STATE TO ENDEAVOR TO PROCURE CONSIDERATION BY THE LEGISLATURE OF THE STATE (OF UNIFORM OR MODEL ACTS PROMULGATED BY THE CONFERENCE) UNLESS THE COMMISSIONERS DEEM THE ACT UNSUITABLE OR IMPRACTICABLE FOR ENACTMENT IN THEIR STATE."

AT THE END OF EACH EVEN-NUMBERED YEAR, THE MONTANA COMMISSIONERS REPORT AND RECOMMEND TO THE GOVERNOR SEVERAL UNIFORM OR MODEL ACTS PROMULGATED BY THE MONTANA LEGISLATURE. AMONG THE ACTS RECOMMENDED

FOR THE 1989 SESSION IS THE UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT WHICH HAS BEEN INTRODUCED IN THE HOUSE AND IS HB 492.

THE IDEA OF COMMUNITY PROPERTY COMES FROM THE CIVIL LAW AND NOT THE ENGLISH COMMON LAW. IT WAS INTRODUCED INTO THE UNITED STATES THROUGH THE FRENCH INFLUENCE IN WHAT IS NOW THE STATE OF LOUISIANA AND THE SPANISH INFLUENCE IN MEXICO AND WHAT ARE NOW SEVERAL WESTERN STATES. IT IS BASED UPON "A SPECIES OF PARTNERSHIP WHICH A MAN AND WOMAN CONTRACT WHEN THEY ARE LAWFULLY MARRIED TO EACH OTHER". UNDER THE COMMUNITY PROPERTY DOCTRINE, PROPERTY ACQUIRED DURING MARRIAGE WITH COMMUNITY FUNDS BECOMES THE PROPERTY OF BOTH THE HUSBAND AND WIFE AND NOT THE SOLE PROPERTY OF THE ONE IN WHOSE NAME THE PROPERTY WAS BOUGHT. AMONG THE WESTERN STATES THAT HAVE ADOPTED SOME FORM OF THE COMMUNITY PROPERTY DOCTRINE ARE IDAHO, WASHINGTON, CALIFORNIA, ARIZONA, NEVADA, NEW MEXICO, AND TEXAS.

HOUSE BILL 492 HAS A VERY LIMITED SCOPE. IT ADDRESSES THE PROBLEM OF MARRIED COUPLES MOVING TO MONTANA FROM A COMMUNITY PROPERTY STATE. THE PURPOSE OF THE ACT IS TO PRESERVE THE RIGHTS OF EACH SPOUSE IN PROPERTY WHICH WAS COMMUNITY PROPERTY PRIOR TO THE CHANGE OF DOMICILE TO MONTANA, AS WELL AS PROPERTY THAT MAY BE SUBSTITUTED FOR COMMUNITY PROPERTY WHERE THE SPOUSES HAVE NOT INDICATED AN INTENTION TO SEVER OR ALTER THEIR "COMMUNITY" RIGHTS. IT FOLLOWS THE TYPICAL PATTERN OF COMMUNITY PROPERTY WHICH PERMITS THE DECEASED SPOUSE TO DISPOSE OF "HIS HALF" OF THE COMMUNITY PROPERTY, WHILE CONFIRMING THE TITLE OF THE SURVIVING SPOUSE IN "HER HALF". IT IS INTENDED TO HAVE NO EFFECT ON THE RIGHTS OF CREDITORS WHO BECOME SUCH BEFORE

THE DEATH OF THE SPOUSE; NEITHER DOES IT AFFECT THE RIGHTS OF SPOUSES OR OTHER PERSONS PRIOR TO THE DEATH OF THE SPOUSE.

THE FIRST THREE SECTIONS ARE THE HEART OF THE ACT. SECTION 1 DEFINES PROPERTY COVERED BY THE ACT. SECTION 2 IS TO ASSIST A COURT IN APPLYING THE DEFINITIONS IN SECTION 1 THROUGH A PROCESS OF TRACING THE PROPERTY TO A COMMUNITY PROPERTY ORIGIN. SECTION 3 DEALS WITH THE DISPOSITIVE RIGHTS AT DEATH, OF (1) A MARRIED PERSON DOMICILED IN MONTANA AS TO PERSONAL PROPERTY AND (2) OF ANY MARRIED PERSON, INCLUDING A NON-DOMICILARY OF MONTANA, AS TO REAL PROPERTY LOCATED IN MONTANA; IT ALSO SETS FORTH RULES FOR INTESTATE SUCCESSION TO PROPERTY THAT IS COVERED BY THE ACT. THE REMAINING SECTIONS HAVE BEEN ADDED TO CLARIFY SITUATIONS THAT MIGHT ARISE FROM APPLYING THE FIRST THREE SECTIONS.

IF THE STATES THAT HAVE COMMUNITY PROPERTY LAWS ARE EXCLUDED, THIS ACT HAS BEEN PASSED IN ALMOST HALF OF THE STATES. IT HAS BEEN ENACTED IN ALASKA, ARKANSAS, COLORADO, CONNECTICUT, HAWAII, KENTUCKY, MICHIGAN, NEW YORK, NORTH CAROLINA, OREGON, VIRGINIA AND WYOMING.

ROBERT E. SULLIVAN, PROPONENT

EXHIBIT
DATE 2-10-89

Hospice Protocol Developed

Until recently, the interaction between hospice patients and the EMS community has been a source of potential conflict. While both EMS providers and hospice providers perceive themselves to be acting in the patient's best interest, there was a perceived conflict between the prehospital provider's duty to sustain life and the hospice patient's expressed wish to die naturally. Although discussions have taken place on this issue for many years, it was not until nearly a year ago that a group of hospice providers and EMS providers met to further discuss the issues, grapple with the medical and ethical issues, and work toward common guidelines. In January of 1988, a draft protocol was distributed to EMS jurisdictions, Regional EMS Advisory Councils, and the Regional Medical Directors throughout the state. Following input and modification, the protocol was approved by the Board of Medical Examiners on March 17, 1988.

Although the protocol was adopted many months ago, it was felt unwise to distribute the protocol without a firm educational program. Therefore, MIEMSS has been working with the Hospice Network of Maryland to develop educational programs to train EMS providers and hospice families and their care providers in the use of the protocol. Training programs were piloted in Frederick and Harford counties during October. Since the protocol is a short, straightforward document, EMS providers can be oriented to its use during November and December. The training will be offered both as ALS and BLS continuing education and during the 10-hour local option in the 110-hour EMT-A courses.

As an approved ALS protocol, the Hospice/EMS Palliative Care Protocol which appears on page 2, will be included in the July 1, 1989 edition of the *Maryland Medical Protocols for CRTs and EMT-Ps.* As an approved BLS update, it will also appear in the next reprinting of the *Maryland Way.* This protocol, however, will go into effect January 1, 1989, before it appears in the upcoming documents referenced above.

A key portion of the training for hospice patients and their families includes education as to the appropriate use of 911. The intent of the training is to reduce the number of 911 calls. However, a few 911 calls may still take place. In such cases, the protocol addresses the problem of identification of hospice patients by requiring a two-step procedure. The first step requires that a hospice patient or his care provider present to the responding ambulance personnel a hospice identification card (shown on page 2) which includes a brief description of the patient and other pertinent information. These cards are available only through Maryland Hospice Programs, are numbered sequentially, and are issued only by the hospice programs after the patient and the patient's family have received counseling and have explicitly selected hospice care. The card, which indicates that the patient does not wish resuscitation and does want the hospice protocol followed, is signed by the patient as well as by the patient's physician.

The second step in the process requires independent confirmation of the patient's identity by an individual present at the site of the call. This individual may be the patient himself; a doctor, nurse, hospice program provider, family member, or other care provider; or an EMS provider on the scene who knows the patient. Only after the identification is confirmed by this second step will the Hospice/EMS Palliative Care Protocol be implemented. This two-step procedure is simple and rapid and should avoid conflicts which have arisen in some past situations.

With respect to transport, it was agreed that, when feasible, hospice patients should be transported to their hospice hospital where hospice care which they have opted for can be implemented. In almost every case, this will be the nearest hospital. In the few occasions when this may not be the case, it is understood that the crew would transport to the nearest hospital if their services were needed elsewhere. In either case, the emotional welfare of the patient and family should be attended to by thoughtfully explaining the situation and where possible by trying to accommodate the patient's needs.

The Maryland Institute for Emergency Medical Services Systems wishes to acknowledge the contributions of Dr. P. Gregory Rausch of Frederick, who has been a pioneer in the development of this protocol in Maryland. Additionally, Robin Dowell, RN, of St. Agnes Home Care, and Dottie Arnold, RN, CRT, of Harford County, have devoted many hours in working with MIEMSS staff in the development of this protocol and the associated educational programs.

For additional copies of the protocol, questions about the protocol, or to schedule training opportunities, please contact your MIEMSS Regional EMS Office. Region I —(301) 895-5934; Region II — (301) 791-2366; Region III — (301) 328-3996; Region IV —(301) 822-1799; and Region V — (301) 474-1485.

— Ameen I. Ramzy, MD
State EMS Director

Maryland EMS NEWS

Vol. 15, No. 5, NOVEMBER 1988

Montana Magistrates Association

9 February 1989

EXHIBIT 10
DATE 2-10-89
HB 493

Testimony offered in opposition to HB493, a bill for an act entitled: "An act imposing a charge on convicted persons, to be used to fund county jails."

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

The Montana Magistrates Association opposes this measure. We do acknowledge the problem that is facing the counties with regard to a lack of funding and jails that are being required to hold increasing numbers of prisoners while the jails get more delapidated. We know the problem.

However we do not feel that the courts should be the tax collection agency for government. In the last legislature HB740 was passed. It greatly simplified the bookkeeping system for the justice courts. A bookkeeping manual that used to encompass 24 pages was eliminated, 64 statutes dealing with fines and forfeitures in Justice Courts were amended or repealed. Now the justice courts basically give their funds to the county treasurer who splits these funds in half, 50% to the state treasurer and 50% to the county. As a result, a great deal of time and money is saved because the county treasurer and the justice of the peace now do a great deal less bookkeeping. As the statutes now stand with regard to city courts, all the fines and forfeitures collected by a city court stay in the city treasury. ~~we can see no reason for it to be otherwise~~.

We are of the position that if the surcharge or user fee or abuser fee bandwagon is not derailed and derailed soon, then in the near future the city courts will have the bookkeeping nightmare that used to be found in justice courts. If the state wants the city courts to perform this function of government, if they want the city courts to collect another tax or user fee or surcharge, then at the very least we feel the state should provide the personnel, another clerk per city judge, the bookkeeping expertise, and the ledgers and journals, to get the job done. Without this assistance this measure places another burden on the already overworked city courts.

It should also be pointed out that the person who will be paying this surcharge is not the person who will be using the county jails; at least I hope none of you ever become a guest of the county motel. The person that is most apt to be paying this surcharge or user fee or abuser fee is the

average person who gets a speeding ticket; only now the speeding ticket will be worth $20 more. What used to be a $30 bill for speeding will now be worth $50. The prisoners in the jails will, for the most part, not pay this surcharge. From my experience as city judge the people who eventually end up in the County Jail are not in a financial situation that would allow them to pay a surcharge. Also, the $45 surcharge imposed upon felons, this is on page 1, line 18 of the bill, will not raise that much money. I give you for example the fees raised in the district court in Gallatin County; from July of 1988 to January of 1989, only $1,561.00 was accumulated. On the other hand, in the first year the present $10.00 surcharge for the county attorneys was a law, Havre City Court raised over $15,000.00. As you can see, it is going to be the average citizen who is going to be paying this fee, not the truly criminal element of our society.

This bottomless pool of wealth that is supposed to exist in the limited jurisdiction courts is rapidly drying up; it is hard enough now to collect the fines that are imposed in the limited jurisdiction courts. Mandatorily raising them by another $20 will just make it that much more difficult. It will be especially difficult when a fine is imposed and the defendant must pay the fine in installments. The court will first have to keep track of the $10 to the county, which might be paid in different installments; then the next $10 to the city attorney fund, also perhaps made in different installments; and finally the balance to the city treasury, undoubtedly again made in installments. As you can see we are starting down the same road once traveled by the justice courts in terms of a bookkeeping nightmare. All this would have to be done presumably with existing staff and presumably without expanding the hours of the city courts. If otherwise and the time spent on accounting and the collection of this increased surcharge necessitated the direct expenditure of funds by the city governments, then I would refer this committee to 1-2-112, MCA.

Yesterday this committee heard testimony on HB351. In his testimony before this committee, Mr. Tom Harrison stated that the need for a bill to outlaw sawed-off weapons was brought about, in part, because the federal courts were too busy to prosecute a minor offense like possession of a sawed-off weapon in Montana. We would present to Mr. Harrison that the limited jurisdiction courts of Montana are just as understaffed as the federal courts, and just as busy with "minor" misdemeanor offenses as the federal courts are with "major" federal actions.

EXHIBIT 10
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HB 493

Also yesterday this committee heard and took executive action on HB330, a bill to raise District Court filing fees. In his remarks to the committee during executive action, Representative Gould stated that he felt HB330 was an attempt to circumvent I105 and that passage of HB330 would not be living up to the spirit of I105. We agree with Representative Gould and present the argument that mandating that another fee be charged to the defendants in limited jurisdiction courts is similar in nature to adding a fee to the costs incurred by parties in district court; it is an attempt to circumvent the true spirit of I105.

I will close by quoting to you from a letter written by Gallatin County Justice of the Peace Butch Goan in Bozeman. This letter was written last November 10 to Jack Wiseman, Administrator of the Law Enforcement Academy in Bozeman. At the time Mr. Wiseman was contemplating a similar surcharge to fund the Academy.

The Montana Magistrates Association urges you to give HB493 a do not pass recommendation from the committee.

Wallace A. Jewell

State of Montana

County of Gallatin

Bozeman

H. P. GOAN, JUSTICE OF THE PEACE
LAW AND JUSTICE CENTER, 615 South 16th
Bozeman, MT 59715 (406) 585-1370

EXHIBIT 10
DATE 2-10-89
HB 493

November 10, 1988

Jack Wiseman, Administrator
Montana Law Enforcement Academy
620 South 16th
Bozeman, MT 59715

Dear Mr. Wiseman:

I have just read an article in the October issue of "Informant" regarding a penalty assessment system. I wish to comment on the third paragraph in your article:

> "The way it works is simple. A fixed assessment is added to all fines and forfeitures (excluding parking tickets) in city and justice courts. The revenue generated is earmarked specifically to fund criminal justice training."

What may seem "simple" in theory becomes much more complex in "actuality". As you may or may not know, the accounting system for the Justice Courts in the State of Montana was amended and improved significantly last session to provide for a more feasible way to disburse fines and forfeitures. Basically, the fines generated in the course of a month are paid to the County Treasurer; the county keeps one half and the balance goes to the State to be disbursed according to the various law enforcement agencies. Prior to that time, the Justice Court had an unworkable disbursement system. What I sense from this article is an attempt to move back to the former system; having the Court earmark and disburse.

Please do not misunderstand my concern. As an instructor with the Montana Law Enforcement Academy, I certainly believe in the concept of assessing a "user fee" to those who commit crimes. I strongly believe in training for those involved in criminal justice. What does concern me is two-fold. First, the physical accounting of such an assessment as I previously discussed, and, secondly, a staffing problem with local courts. The legislature,

EXHIBIT 10
DATE 2-10-89
HB 493

over the last number of years, has continued to increase the jurisdiction of courts of limited jurisdiction, which has resulted in increased caseload to the individual courts. What the legislature has not done, and what the local county officials and city officials have not done, is to provide for and guarantee increased support staff to handle the increased caseload. If such a system is to be proposed, it must also include mandatory funding for the individual court to be used specifically for additional staff. I underline the word additional so that the local officials could not simply use this money to support existing staff.

The Limited Jurisdiction Court is the workhorse of the judicial branch of government. Those who are looking for funding believe this level of court provides an untapped financial resource. Maybe that is true. However, what is consistently overlooked is an already understaffed Court which continues to get more work. A Court is a Court whether the Supreme Court or Justice Court. These courts represent a forum where the theory of justice becomes a reality in the eyes of the public. The Court is not primarily a "money mill" extracting funds from the convicted to fund worthy programs.

However, your idea deserves careful consideration. As a member of the Supreme Court Commission on Courts of Limited Jurisdiction, and as Chairman of the Legislative and Law Improvement Committee for the Montana Magistrates Association, I would be happy to offer my help in developing the idea of a user fee.

From reading your article, it does not appear that this penalty assessment system is going to be concretely proposed this session. If my conclusion is incorrect, I would appreciate hearing from you immediately.

In closing, let me underline to you that I feel consideration of such a system has merit. The mechanics of administering such a system needs to be addressed at the outset guaranteeing funding for support staff. I am anxious to discuss this matter further and will await your reply.

Best regards,

H. P. GOAN
Justice of the Peace

HPG/sat

cc: Honorable Wallace Jewell
Honorable Bernard McCarthy

MISSOULA FINANCE/CITY CLERK OFFICE
201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

FINANCE AND DEBT MANAGEMENT
BUDGET AND ANALYSIS
ACCOUNTING
CITY CLERK
UTILITY BILLING
RISK MANAGEMENT

EXHIBIT 11
DATE 2-10-89
HB 493

CITY OF MISSOULA
CHUCK STEARNS TESTIMONY ON HOUSE BILL #493

The City of Missoula opposes HB493 because our experience has been that as court surcharges are increased, the likelihood of judges to dismiss the entire surcharge and even the fine increases. The City of Missoula did a survey of the court revenues of the major cities in Montana last year and the average amount of surcharge received per state violation during a ten month period in FY88 is listed below:

Average surcharge revenue received during 7/1/87 - 4/30/88

Helena	$ 4.12
Great Falls	$ 2.41
Bozeman	not tallied separately from fines
Billings	$ 0.00
Missoula	$ 3.65

Also, as countywide property taxes are levied to support county jails, there is no justification for diverting municipal or city court revenues to fund county jails. As this bill is written, cities would probably lose revenue as more surcharges are dismissed.

The City of Missoula respectfully requests that you oppose House Bill #493.

EXHIBIT 12
DATE 2-10-89
HB 495

City-County Building
P.O. Box 1723
Helena, Montana 59624
Telephone 406/443-1010

LEWIS AND CLARK COUNTY

STOP-D.U.I. Task Force — Health Department

The Helena/Lewis and Clark County STOP-DUI Task Force supports HB 495 for these reasons:

* Teenagers are more prone to becoming alcoholic/chemically dependent than adults because their bodies simply are not developed physiologically, psychologically, or emotionally. The younger youth are when they begin to drink, the greater their risk of developing the disease of alcoholism.

* The following statistics point to the importance of passing legislation which will provide help to our youth so as they will not become adult offenders of DUI and related offenses:

- Juniors and Seniors in high school who drink on a regular basis have 1 out of 5 chances of becoming alcoholic.

- Sophomores and those in lower grades who drink on a regular basis have 1 out of 2 chances of becoming alcoholic.

- Drug and alcohol counselors in the Helena area are seeing youth who have 4,5, and 6 MIP charges!

- 32.8% of students in 11th & 12th grades, Helena School District 1, are "at risk" from alcohol use. "At risk" refers to students who are at risk for becoming involved in accidents, having diminished potential, and incurring social and psychological developmental problems due to chemical use.

- 60% of students in 11th & 12th grades, Helena School District 1, have reported drinking while driving.

- Helena Police Department Statistics:

  1986: 106 MIP violations
  4 DUI violations (juveniles)

  1987: 181 MIP violations
  16 DUI violations (juveniles)

HB 495 provides for stricter enforcement and handling of persons under the age of 21 who unlawfully use intoxicating substances.

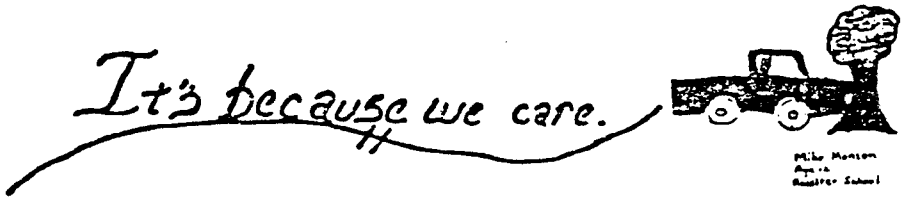

EXHIBIT 13
DATE 2-10-89
HB 495

WITNESS STATEMENT

NAME Jill Polette BILL NO. 495

ADDRESS 1689 Larson Drive

WHOM DO YOU REPRESENT? Stop DUI TASK FORCE

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: I see students at Mountain View School as the Educational Vocational Counselor daily. These youth come from allover the State for 45 day Evaluations and Committments. In most cases Drugs & Alcohol have influenced their life and their parents lives. This deprives youth of their opportunity to work and develop their full potential educationally and emotionally.

When I register these girls for school they typically are ½-2 years behind in education, are not involved in extracurricular activities and have hopes of being Child Psychologist, Juvenile Probation Officer, Lawyers, Police Officers and score high interest in high adventure activities on the Strong Interest test.

I would support anything we can do to stop drinking and driving under the influence of drugs & alcohol.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34
Rev. 1985

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 480 DATE FEB. 10, 1989

SPONSOR REP. KNAPP

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JANAN B. JONES	4319 LARKSPUR DR MISLA	✓	
DONALD MAC DONALD	7611 Ridge Ct Msla	✓	
Roger Knapp	House District 37	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 489 DATE FEB. 10, 1989

SPONSOR REP. RICE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Richard L. Webb	Big Timber, MT	✓	
MARVIN CARTER	LAUREL, MT.	✓	
Bruce W. Moore	MSBA	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 390 DATE FEB. 10, 1989

SPONSOR REP. SPAETH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Dept of Justice Mt. County Attys Assn	✓	
MARK STALEY	Havre, MT.	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 491 DATE FEB. 10, 1989

SPONSOR REP. SPAETH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Brenda Nordlund	909 5th Ave Helena	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 422 DATE FEB. 10, 1989

SPONSOR REP. EUDAILY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Drew Dawson	Dept Health	X	
Owen Warren	AARP	X	
Chuck Stearns	City of Missoula	✓	
Tim BERGSTROM	MT. STATE FIREMENS ASSOCIATION	X	
Earl J. Reilly			X
Connie Westby	Box 656 Helena	X	
IRA R. BYOCK	341 UNIVERSITY, MISSOULA	?	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 493 DATE FEB. 10, 1989

SPONSOR REP. STRIZICH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Wally Jewell	MT MAGIS. ASSOC		(X)
Chuck Stearns	City of Missoula		✓
Chuck O'Reilly	Mt. Sheriffs & Peace Officers	X	
Bill Fleiner	Mt Sheriffs & Police Off.	X	
Mike Schaefer	Mt. Sheriffs & Peace Off	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 495 DATE FEB. 10, 1989

SPONSOR REP. STRIZICH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jill Polcyn	1689 Lawson Dr	X	
Wally Jewell	MT MAG Assoc	X	
Barbara Moy	Lewis & Clark Co. Stop-DUI T.F.	X	
Chuck O'Reilly	Mt. Sheriffs & Police Off.	X	
Bill Fleiner	Mt Sheriffs & Police Off	X	
Mike Schafer	Mt Sheriff & Police Off	X	
Mike Daguin	Stop DUI Task Force	X	
Jon Hedges	Anaconda MT		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 2-10-89 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 10 8

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Motion made by Rep. Daily DO PASS AS AMENDED, seconded by Rep. McDonough. Motion CARRIED.

Form CS-31
Rev. 1985