MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 15, 1989, at 8:10 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 558

Presentation and Opening Statement by Sponsor:

Rep. Tom Kilpatrick, House District 85 stated that this is a bill that will allow for cities and towns to declare punitive damages. One of the main factors is the net worth and the ability to pay along with a number of additional considerations. These include: nature and responsibility, extent, intent, profitability, amount of damages and net worth.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Kilpatrick closed.

DISPOSITION OF HOUSE BILL 558

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

Discussion: None.

Amendments, Discussion, and Votes: None.

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

HEARING ON HOUSE BILL 571

Presentation and Opening Statement by Sponsor:

Rep. Dave Brown, House District 72 stated that under this bill a prisoner may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 24 months remain before he is eligible for parole.

Testifying Proponents and Who They Represent:

Dan Russell, Department of Institutions

Proponent Testimony:

Dan Russell, appearing as a neutral body commented that when an individual is eligible for parole, they are screened thoroughly by a number of means. Treatment, education, and training are three kinds of criteria they look at along with the institutional adjustment, nature of the offense, work habits of the individual, the positive support systems they might have in the community, their drug and alcohol history, community risk, escape risk and so on. Once they pass that grid the individual develops a program from one of the three criteria; treatment, education, or training. They then submit that to a probation and parole officer who does the investigation in the community and submits it with a recommendation to the Board of Pardons, which is then acted upon. Mr. Russell stated that there are many safe guards built into this program, which include the above mentioned grid and it is a very difficult program to get through. Additionally, every individual that is on the program is subject to revocation as well as if they try to walk away from the program he can be charged with escape with an additional 10 years sentence that will be served consecutive.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Gould stated to Mr. Russell that the majority of the people participating in this program would be in larger communities where the parole and probation officers most likely are carrying a heavier case load. Therefore, if there was a stronger force of parole and probation officers, wouldn't the program be looked upon with more favoritism? Mr. Russell responded that Rep. Gould was correct and that there is more of an impact in the larger communities, mainly because that is where the post secondary educational programs and the major mental health centers are located. Mr. Russell also agreed with Rep. Gould that there is a need for additional parole and probation officers; however, more importantly he is concerned with the overcrowding of the Montana State Prison.

Rep. Wyatt questioned pursuant to the code, what has been happening to the judges in terms of when they're sentencing the more dangerous felons? Are they excluded often, most of the time or 100% of the time up front? Mr. Russell referred to the statute that allows the court to indicate that the person is not eligible for supervised release. Less than 5% of the time does that occur.

Closing by Sponsor: Rep. Brown closed.

DISPOSITION OF HOUSE BILL 571

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

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that HB 571 DO PASS.

HEARING ON HOUSE BILL 593

Presentation and Opening Statement by Sponsor:

Rep. Angela Russell, House District 99 stated that HB 593 in

essence is requiring that there be counseling available for a batterer in a domestic abuse situation. The definition of a batterer, primarily speaking of women who are battered (90% of battered victims are women), is a women who is repeatedly subjected to any forceful, physical or psychological behavior by a partner in order to coerce her. Rep. Russell commented that many communities offer counseling, either individually or in a group atmosphere for victims of domestic abuse. However, there still remains a need for programs, especially in small rural areas, for victims of domestic abuse. Approximately 90% of batterers are men and there is not the preponderance of counseling programs for these men, or for batterers in general. The question is why isn't there counseling for these men? Rep. Russell stated that the focus has primarily been on the emergency needs of the victim and the services provided for these victims. Additionally, batterers have been resistant to counseling. Since passage of the domestic abuse law, data on the incidence of conviction is only beginning to formulate. Rep. Russell versed caseload statistics from the Montana State Judicial Information System that indicated under domestic abuse, 6 temporary restraining orders were issued in 1985. There has been a steady increase up until the year 1988 as 221 temporary restraining orders were issued. Rep. Russell stated that the cost of domestic abuse to society, excluding prison cost is substantial. It includes private, state and federal dollars for such things as welfare, medical care, shelters, counseling, child care and of course, the psychological and physical injuries to families. Counseling to the batterer is essential if there is to be any impact on behavioral changes of the batterer and stop the continuing cycle of violence that seems to be pervasive with so many families.

Testifying Proponents and Who They Represent:

Wally Jewell, Former City Judge of Havre
Brenda Nordlund, Montana Womens Lobbyist Fund
Sharon Hanton, Director, National Association of Social Directors
Andree Larose, Self and Dennis Duncan, Counselor
Joan Rebich, Montana Mental Health Counseling Association
Dee Dee Yates, Self, YWCA Gateway House
Christie Marron, Montana Mental Health Center

Proponent Testimony:

Wally Jewell, appearing as the former City Judge from Havre submitted before the Committee written testimony expressing his support of HB 593 (EXHIBIT 1).

Brenda Nordlund stated that HB 593 is a necessary treatment program. Research and information leads her to believe that unless treatment is compelled often times it will not be sought. Ms. Nordlund read an excerpt from a recent technical bulletin from the American College of Obstetrics

and Gynecologists talking about the personality of the male batterer. This article is to help clarify the reasoning for seeking compelled treatment rather than seeking suggested treatment only. Most studies show that male batterers refuse to take responsibility for their behavior, blaming their victims for violent acts. These individuals often have strong controlling personalities and cannot tolerate autonomy in their partner. They are rigid in their expectations of marriage and sexual behavior. They often make unrealistic demands and have low tolerance for stress. They may appear depressed or even make suicidal gestures. Their basic behavior pattern is aggressive and assaultive and they often use violence to handle their problems throughout their lives. They can be charming and manipulative especially during their relationships outside the marriage. At the same time they frequently exhibit low self esteem, feelings of inadequacy and a sense of helplessness that is accentuated by the possibility of loosing their wife. It is often necessary to utilize the courts to get the batterer into a therapeutic situation. Ms. Nordlund commented that because of concerns of manipulation or denial, she believes this bill is a necessary solution to the problem. Additionally, Ms. Nordlund stated concerns regarding appropriate treatment that could be substituted for alcohol or substance abuse counseling.

Sharon Hanton expressed to the Committee that as a social worker she knows the people involved in domestic violence as either victims or perpetrators that are trapped in a cycle of behavior that often repeats itself. Victims frequently return to abusive relationships and perpetrators repeat their behavior towards the victim time and time again. Through counseling the perpetrator can learn to recognize signs of tension and anger that is built up. He or she can learn different ways of dealing with anger which follow the build up of stress. Ms. Hanton stated that she has found in her own personal practice as well as talking with other social workers that counseling is very helpful in dealing with the problem of domestic violence. She also suggested that the bill read, programs set up for domestic violence or counseling, or licensed professional persons be a part of this bill in order to allow for the counseling sessions in rural community areas. Ms. Hanton also emphasized the mandatory aspect of this bill because many of these people will not go in for personal counseling. They do not see that they have a serious problem and are out of control. For the above mentioned reasons, Ms. Hanton urged the Committee to modify the wording of the bill, but to pass it primarily as it currently stands.

Andree Larose, as an attorney representing many women who have been victims of domestic abuse voiced her personal support of HB 593. Additionally, Ms. Larose read to the Committee written testimony from Dennis Duncan, Licensed Professional

Counselor from Flathead County (EXHIBIT 2).

Joan Rebich stated that in her private practice she specializes in working with abused victims. In working with these victims, she has become aware of the continuing cycle that occurs with domestic abuse. Ms. Rebich commented that it is very important to offer counseling in order for these victims to stop be victimized as well as for the children of the batterers to not learn to identify with the aggressor and continue in the next generation to become batterers themselves.

Dee Dee Yates, a former battered wife, submitted before the Committee a written testimony expressing her strong support of HB 593 (EXHIBIT 3).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Hannah questioned Mr. Jewell as to if the courts currently have the authority to mandate counseling. Mr. Jewell responded that the court could probably take it upon themselves under 46-18-201, but that there is nothing specifically outlined for domestic abuse offenses.

Rep. Eudaily, referring to Page 2, Lines 20-21, asked what the court would do if there was an indigent person or a person who did not have the funds to pay for the counseling program? Would they hold them in content? Rep. Russell responded that she too has similar concerns regarding that issue and if the Committee wished to alter that language she would not be opposed to that suggestion.

Rep. Eudaily continued by stating that he understood the program to used for a first or second offense. He also understood someone to say that if it were on a voluntary basis that no one would take advantage of the program. Is this the reason for making it on a first offense as well as a second offense? Rep. Russell commented that information currently available indicates that no one will participate in this program voluntarily. Only in very rare instances will a person voluntarily seek counseling.

Rep. Addy questioned as to what the expected cost for the counseling program would amount to and who would be responsible for the cost? Rep. Russell responded that as the bill has been written, the individual who is required to take the counseling, also be required to pay for that

counseling. Rep. Addy asked if there was an estimate of the costs that would be involved? Mr. Jewell responded based upon his experience in Havre that the program cost anywhere from $25.00 - $100.00 for the entire 26 week program. However, if the individual was unable to pay for the counseling program, it was then given to the abuser for nothing.

Rep. Brown, restating Rep. Russell's preference to leave the language regarding the licensed person as it stands on Line 12, questioned what Mr. Jewell said about that severely limiting the number of places that people can go for this counseling? Rep. Russell commented that the amendments suggested by Ms. Nordlund would take care of that problem. Specifically on Line 11, giving the specific language a specialized domestic violence intervention program, or licensed persons.

Closing by Sponsor: Rep. Russell, in closing, stated that it is very important that keeping within this bill, the counseling be directed to the violent conduct of the convicted person. She commented as to the amendments offered by Ms. Nordlund and expressed her approval and stated that it is important to utilize the groups that are currently being offered within the community that are interested in further development. Additionally, she expressed that it is equally important to keep within the bill licensed professional persons as well as mandate counseling. Rep. Russell commented that she does not think there will be an end to this continuing cycle of violence until such time that programs are mandated for the perpetrator.

DISPOSITION OF HOUSE BILL 593

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

Discussion: Council suggested that on page 2, line 10, following 2, insert pay for and.

Amendments, Discussion, and Votes: Rep. Wyatt moved the above mentioned amendments, seconded by Rep. Darko.

Rep. Eudaily asked how the amendment would benefit the person who is not able to pay for the counseling? Rep. Brown commented that a previous testimony stated that with most of these programs, it is absorbed in overhead if the individual cannot pay. If the person is indigent the court will not order the person to pay.

Rep. Rice was concerned with the definition of a counselor or licensed person. He perceived the J.P. having a tough time thinking that it is even possible to have a local minister do the counseling.

A vote was taken on the amendment and CARRIED unanimously.

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

HEARING ON HOUSE BILL 568

Presentation and Opening Statement by Sponsor:

Rep. John Mercer, House District 50 stated that initially, he would like to focus the Committee in as to what this bill is about. HB 568 is dealing with pre-dispositional detention of juveniles. That is from the time the juvenile would be taken into custody prior to the time that a judge would make a determination that the youth may be a delinquent. Currently, there is a Montana statute that takes effect as of July 1, 1989 which states that no juvenile in this pre-dispositional setting can be held in an adult jail. This raises a significant problem for Montana, as there will need to be some sort of alternative settings in which to hold these particular youths. As a result of that problem, the State Youth Advisory Council in connection with the Board of Crime Control set up a youth detention task force which did a study bringing this bill before the Committee. This bill attempts to set up a provision (which would delay the current project for an additional 2 years) where dollars would be collected at the State level and presented to the local governments for local decisions. Decisions to be made are as to what is the best placement for the youths that are in this pre-dispositional status. Rep. Mercer commented that there were a number of different entities that participated in the preparation of this study and he believes that the conclusions that they have come up with are the best in order to deal with this particular situation. He also asked that the Committee pay close attention to the fiscal note. The current law, as it is on the books, is going to put a fiscal impact of approximately 1 million dollars on local government. If this bill is passed, however, that fiscal impact will be avoided for a couple of years. Rep. Mercer feels that in order to have sufficient time to prepare for the mandates that are being required in connection with the detention for the juveniles pending disposition, it is important to try and avoid that impact.

Testifying Proponents and Who They Represent:

Rep. Bill Strizich, Great Falls Deputy Probation Officer
Steve Nelson, Board of Crime Control
Robert Mullen, Director, Dept. of Family Services
John Connor, Dept. Justice, County Prosecutors Services Bureau
Howard Gipe, Flathead County Commissioner
Dave Demmons, Missoula Chief Probation Officer
Mona Jamison, Montana Juvenile Probation Association

Geoff Birnbaum, President Montana Childcare Assoc., Missoula

Proponent Testimony:

Rep. Bill Strizich expressed to the Committee that over the past several years he has worked very hard to try and find solutions in Great Falls that adequately deal with the problem of youth detention in the judicial district that he works in. Rep. Strizich stated that the goal of the removal of youth from adult jails is essentially derived from a collection of sources which are not only perceived to be mandatory, but a reflection of matured society. Removal of youth from adult facilities finds us primarily in several areas: 1.) In 1987 the legislature recognized that youths held past a detention hearing must be placed in a juvenile facility. 2.) The federal mandate of the Juvenile Justice Delinquency Prevention Act called for a total removal of all juveniles from adult facilities by December 1988. The reauthorization of this act and the flow of grant funds to our state from that act does build in some discretion to allow states to continue participating as long as they make an unequivocal commitment to removal. Rep. Strizich stated that what brought this problem to focus for many of those involved in the business is a case that arose in Oregon, referred to as the Tooksbury Decision. This decision states that there is no adult facility that can meet the needs of these kids. What this decision found, is that the people that placed these kids in jail were acting irresponsible and were being found personally liable for the things that happened to those kids while they were placed in adult jails. Rep. Strizich stated that none of the jails in the state, whether they were constructed in recent years or are of some vintage are capable of meeting the needs of providing the separation required under the law. To provide this separation under law and proper practice we need not only to physically separate the cells, but also to insure that these children who are under custody awaiting disposition are not subjected to dangerous situations. Even though most jails currently try to maintain a separation, the environment found in the jails is just not conducive to supervision of youth. Alternatives for the detention of children are not only needed from an ethical or moral stand point, but from a basis that in order to impact delinquency problems we need to focus on these special needs. Rep. Strizich expressed that continuing to detain kids in adult jails is not good public policy and he feels personally as well as professionally that it is barbaric.

Steve Nelson commented that a great deal of research has been done over the last decade regarding jail population. The juvenile detention problem tends to be very dynamic and is not a static issue. The decisions about whether or not a youth is placed in jail is not a hard and fast decision, it is very subjective. Consequently, they have seen great fluctuations on the practices of using jails for holding

kids. Mr. Nelson stated that over 15 years ago, one in four youth that appeared before the Juvenile Justice System spent time in jail. Over the course of time they have seen a number of shelter care resources, foster care facilities and resource care centers that have had a tremendous impact on the juvenile detention problem. In the last 5 years there has been a 75% reduction of the number of youths that have been held in jail; therefore, the population of the State Correctional Facilities has virtually gone up by equal amounts. The conclusion of the study was that the counties were more reluctant to probation officers and reluctant to use county jails for the detaining of youth. Mr. Nelson stated that the average population of youth undergoing 45 day evaluations at the correctional facilities is 29. Based on the number of youth that are in jail and in evaluations they came up with a need for a little over 22 secure beds at any given time in the State of Montana.

Bob Mullen stated that the plan that was developed by the Juvenile Jail Removal Committee is for removal of juveniles from jail by providing secure detention through a temporary arrangement with the State Juvenile Correction Schools while counties developed their own resources. The Board of Crime Control has committed to assisting local governments plan and implement community based programs. The Committee felt that local decision making is imperative and essential to successful detention planning. To plan for removal will also provide the funding source to counties to provide secure detention or detention alternatives. The Committee's recommendation that development of the alternative programs, such as hold overs and attended care programs is of utmost importance. This recommendation is consistent with the philosophy of the Department of Family Services and other human service providers who believe in providing youth with care as close to home as possible and in the least restrictive environment. Mr. Mullen continued that providing services in the community is also seen as being less costly than a holding a youth in a secured facility. Because of the numbers of youth that require secure detention or evaluation are so few, changes in how youth are dealt with locally could reduce the need for secure beds state wide. The Committee's approach will allow the time needed to begin developing or using community options and to continue to quadify the needs for secure beds in the future. Under the proposal developed by the Committee, Mountain View will continue to offer detention and evaluation services to girls, as will Pine Hills located in Miles City continue to offer the same services for boys. On a fee for service basis, for a two year period following the implementation of this legislation, the Committee feels that it is imperative that a fee for service be charged in an effort to encourage the development of community based alternatives. At the end of this two year period the State Institutions intend to be out of the business providing pre-dispositional detention and evaluation services. Counties are encouraged to develop

multi-county or regional detention facilities to provide for their long term detention needs. This can be accomplished through interlocal agreement between counties or by contracting with the private service. Additionally, Mr. Mullan stated that it is the intent of the Committee to seek a state wide nonproperty tax funding mechanism that would generate just over 1 million dollars. 90% of the funds collected will be distributed through the Dept. of Family Services, whereas the counties will provide for the pre-dispositional needs of the youth having contact with the justice system. The remaining 10% of the fund will be retained by the Dept. of Family Services for a grant to assist those communities experiencing activities above the normal level. The distribution formula will be based on youth population within the counties. Mr. Mullen stated that the counties will access their funds by developing a plan for the provision of pre-dispositional services and submitting it to the local Youth Service Advisory Council for review. As local Youth Service Advisory Council's are responsible for planning for the provision of youth services in Montana, it is considered essential that they are kept informed and involved in the process. The Dept. of Family Services will release each counties allocation providing the plans meet minimal requirements. Funds thus distributed can then be used by the youth courts for buying services, either community based, regional, or during the transition period from state correctional schools.

John Connor informed that the County Attorney is the legal advisor to the county as well as to the elected officials within that county. As such, there is much concern with the liability of the county and those people who are elected or employed to represent the county. Mr. Connor stated that the area of juvenile detention has been one in which recent years has created considerable concern on the part of local officials and is well directed toward alleviating this threat of liability to the counties.

Howard Gipe, stating some concerns and difficulties that Flathead County has recently come across involving the sheriff and the District Court commented that as of 1989 they have no options. He stated that Flathead County has probably as good a facility or juvenile detention center as anywhere in the state. At the present, they are operating a juvenile detention center that they are having funding problems with. Mr. Gipe stated that he is full support of this bill; however, having one problem with the evaluations on Page 14, Line 15. He asks that the State assume the cost of evaluations as they have in the past.

Dave Demmons, speaking of a recent case where a 13 year old girl was transferred from Mountain View to Missoula County where they refused to take her due to the fact that they had two juvenile males at the time and they didn't have room for her. The two main issues that Mr. Demmons wanted to stress

are: 1.) What kind of effect do we have on youths that are in fact placed in jail, and 2.) What do you do with the youths that cannot be placed in an appropriate facility. These youths are dangerous and present a probability of running away.

Mona Jamison of the Montana Juvenile Probation Association stood in support of HB 568 and urged the Committee's favorable consideration.

Geoff Birnbaum spoke of the impacts that juvenile detention centers have on his program, which is an open shelter program for other youngsters who are in crisis and need a place to stay. Detention is not allowed under a number of laws and case analysis in county jails. The reluctance to use the resources that can currently be identified in Montana brings pressure onto the other community centers that are available. The attention homes and shelter facilities can be an effective alternative, and there are other more restrictive alternatives in the proposal. Namely; holdover, which are programs of small local detention; youth attendant programs, where probation hires a person to sit with the youth for the period of time necessary to hold them over, and home detention where the youth is ordered home and placed on detention there. The previous mentioned alternatives are all very important as well as being contained within this bill, but it is equally as important that there is going to be the need for simple straight forward detention. This bill allows for development alternatives and serves to clean up the system so that youngsters who don't belong in open settings can be put in appropriate secure settings while their case can be resolved and they can be placed more permanently.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Mercer handed out amendments (EXHIBIT 4) dealing with the effective date that did not properly get put into the bill in the beginning. He stated that we must remember what a unique and unusual situation this is due to the low number of children that are being dealt with, as it is hard to think of having a detention facility in every community because of the cost. The idea behind this bill is to put the money in the hands of the people who have to deal with these kids and let them determine what may work best for them. Also, on the concept of the county commissioners

being responsible for evaluation, it is the intention of this bill that when the money becomes available in two years, they want that money to become their responsibility rather than the states responsibility so there can be an incentive to do more evaluations locally, or at least closer to where the youth is. Rep. Mercer handed out for the Committee's review the Juvenile Jail Removal Initiative which explains in full the intent of the program (EXHIBIT 5).

DISPOSITION OF HOUSE BILL 568

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

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved amendments dealing with the delayed effective date (EXHIBIT 4). He also addressed the issue that is raised on page 14, section 7 regarding the County Commissioners being responsible for the cost of evaluation. He requested that it also be a delayed effective date. Motion seconded by Rep. Aafedt.

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

HEARING ON HOUSE BILL 621

Presentation and Opening Statement by Sponsor:

Rep. Tom Nelson, House District 95 stated that HB 621 represents some technical amendments to the Uniform Health Care Information Act that was adopted by this legislature in 1987. The Act was adopted to protect the confidentiality of health care information while simultaneously providing the procedures necessary for an orderly and uniform process of disclosure. HB 621 addresses various provisions of the Uniform Health Care Information Act which have proven in practice to be unduly burdensome, restrictive, unnecessary and in some instances in potential conflict with the existing Montana law. The proposed amendments to the Uniform Health Care Information Act will remove some of the perceived problems in the application of the Act which have arisen in the last two years while continuing to preserve the confidentiality of health care information.

Testifying Proponents and Who They Represent:

Steve Browning, Montana Hospital Association
Larry Akey, Montana Health Network

Proponent Testimony:

Steve Browning presented before the Committee a written testimony voicing his support of HB 621 which reviewed thoroughly the six main sections of the bill in relation to the Uniform Health Care Information Act (EXHIBIT 6).

Larry Akey, representing the Montana Health Network as a group of 10 hospitals in Eastern Montana stood before the Committee in support of HB 621 and urged the Committee's favorable consideration.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Brown questioned Section 4, as to what kind of situation arises when a person would get an investigative subpoena in the hospital? Mr. Browning stated that it comes from the County Attorney's Office.

Closing by Sponsor: Rep. Nelson closed.

HEARING ON HOUSE BILL 592

Presentation and Opening Statement by Sponsor:

Rep. Jerry Driscoll, House District 92 stated that HB 592 was introduced at the request of the Firemans Union in Billings. This bill deals with people who are found guilty of arson and whether or not the city can recover their cost for fighting those fires.

Testifying Proponents and Who They Represent:

Tim Bergstrom, Montana State Firemans Association
Lonnie Larson, Billings Fire Department
Ray Blehm, State Fire Marshal
Lyle Nagel, Montana State Volunteer Firefighters Association
Edward Flies, Montana State Council of Professional Firefighters, City of Helena Fire Department

Proponent Testimony:

Tim Bergstrom stated that HB 592 seeks to provide local government entities with a redress to recover their increasing cost associated with the suppression and investigation of arson fires. These arson fires create an extreme hazard to firefighters in that arsonists often employ sophisticated techniques in setting these fires. They might use explosives, large volumes of flammable liquids and sometimes they even create breeches in building construction to enhance the rapidness of which a fire is

burned. These components are the arsonists methods have the potential to impact not only property losses, but can also do such things as impact firefighter pension funds and solvency due to firefighter deaths and disabilities related to these arsons. Additionally, local government costs in the investigation to determine the exact cause of a fire are method employed and these fired can be quite extensive. For example, those arsonists that employ the use flammable liquids on buildings that burn rapidly can collapse and force what is necessarily a meticulous and time consuming procedure to sift through the rubble while all the while trying to preserve any evidence of arson that may be present. This bill is essentially aimed at those who impact all of us in Montana who use arson for profit and motives. Mr. Bergstrom commented that it is a vehicle for local government to recover their cost associated with arson and creates a strong deterrent to potential arsonists by applying a heavy monetary penalty to the convicted perpetrator in addition to the criminal penalties involved.

Lonnie Larson commented that the state, the cities and the fire service in general has been fairly proactive in fire prevention. They have instigated programs of learn not to burn teaching and helping people learn what happens in fires and how to prevent them. As a general rule, they have been fairly reactive to the arson situation; not because they have wanted to be that way, but it is hard to fund and justify funding for a process that takes a lot of time. Mr. Larson stated that there are three basic types of fires:

1.) Natural - lightening
2.) Mechanical Failure - electrical or misuse of equipment
3.) Incinerary Fires - fires set intentionally by man

Model legislation concerning arson by the National Association of Insurance Commissioners developed a bill based on the insurance premiums. Local taxes had to be paid to their jurisdiction prior to a settlement. It has been reported that this type of legislation does help deter people from burning properties for profit.

Ray Blehm stated that Montana's statistics for 1987 showed that there were approximately 170 incinerary fires and 217 suspicious fires. Mr. Blehm stated that this bill is not particularly going to help them do a better job of being able to prove arson, but he does believe there may be a situation that may occur with the prosecution of arson as a crime. Often times, arson for profit does not seem too threatening to a lot of people; however, the threat to firefighters and other people is very real. Hopefully, this legislation will help curb those threats. Mr. Blehm continued, that currently one of the ways they take the profit out of arson is by the fact that when they can get enough evidence to go to a civil case with the insurance

company as the main complainant, they are able to keep the person who has committed arson from collecting the insurance money. An average year in Montana there is about $20 million in instructional fire losses. By normal estimates in the country that comes to about $5 million worth of arson. In recent years it has run as high as $3 million in Montana for fire losses due to arson.

Lyle Nagel, in support of HB 592 as well as with the above mentioned proponents stated that there was an additional point that he wanted to address for the Committee. Under the new section of the bill dealing with the taxes having to be paid before the arsonist could collect the insurance money, not only is it a deterrent, but it will also prevent the firemen from loosing that portion of their budget. The Municiple Fire Dept., Fire Districts and Fire Service areas, their money is collected at the time taxes are collected. That budget is normally lost when the people burn their property and don't pay their taxes. Mr. Nagel urged the Committee's support of HB 592.

Ed Flies stood in support of HB 592 and urged the Committee's favorable consideration.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Addy questioned Section 2 of the bill which states "an insurance company may not pay a claim if taxes on the property are unpaid". What is the purpose for that section? Rep. Driscoll responded that it is to keep people from not paying their property taxes. A person could burn their place down, walk away with the insurance money and never have to pay their property taxes. Rep. Addy asked if the place burned down would they then have to pay their property taxes before they could get their insurance money? Rep. Driscoll stated yes, if they were due. These are delinquent property taxes that they are concerned with and this bill would not effect those people that are current on their taxes.

Rep. Aafedt questioned if there was proof of arson, does the insurance company automatically pay-off regardless of the situation? Mr. Blehm responded, no. Often times, however, when they have an arson case they are really dealing with circumstantial evidence. When they can prove that the fire was set for profit reasons, the person cannot collect the insurance, thus, taking the profit out of setting the fire.

Rep. McDonough questioned Mr. Blehm if under current law does an insurance company look at whether or not property taxes are paid as a motive? Mr. Blehm responded that it is investigated by the insurance company as well as the person involved with the investigation.

Closing by Sponsor: Rep. Driscoll closed.

DISPOSITION OF HOUSE BILL 592

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

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved to strike section 2 from the bill, motion seconded by Rep. Hannah.

Recommendation and Vote: Rep. Brown recommended to HOLD HB 592 for further consideration while amendments were being drafted.

HEARING ON HOUSE BILL 606

Presentation and Opening Statement by Sponsor:

Rep. Ed Grady, House District 47 stated that the intent of HB 606 is to clearly allow parents to provide their own children with moderate amounts of alcohol, such as a glass of wine at dinner. He submitted before the Committee a written testimony explaining the full intent, effects, and rationale of HB 606 (EXHIBIT 7). Additionally, Rep. Grady supplied the Committee with a letter from Mike Males who helped with the drafting of the bill clarifying the intent of HB 606 (EXHIBIT 8).

Testifying Proponents and Who They Represent:

Rep. Dorothy Bradley, House District 79

Proponent Testimony:

Rep. Dorothy Bradley stated that this parental consent bill puts responsibility exactly where it should be. She feels it is necessary to clean up a lot loose ends that have been left hanging in the law besides being a good philosophical concept. We need something like this to clear up that problem and get the law in line with commonly accepted practices. Rep. Bradley commented that it has been a problem for her to watch the treatment of youth and drinking in the last number of years. The statistics show that when left to their own devices in dealing with the issues of alcohol, young people have done very well, if not better than adults. They have really cleaned up their act when they were left on their own to stop the intoxicated driving, to put on peer pressure for non drinking drivers, and they

have had exemplary behavior in the youth levels; yet we persist in punishing them when it has not been deserved. To Rep. Bradley, this brings a happy compromise. It brings families, parents, guardians, etc. into the act, which is exactly how it should be.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Nelson questioned if there was any minimum age established? Rep. Grady responded, no. This applies to anyone under 21 years of age.

Rep. Daily in reference to page 2, line 10 questioned why .05 was chosen instead of .01 as it currently stands? Mike Males addressed Rep. Daily's question by stating that it is a more conservative standard to reflect the age group. .05 is the standard of impairment used under the drunk driving statutes that they used as a guideline.

Closing by Sponsor: In closing, Rep. Grady stressed to the committee that the full intent of this bill is to try to keep children from becoming alcoholics. This bill helps to clarify that you can still give children a glass of wine without the intention of making them become alcoholics.

DISPOSITION OF HOUSE BILL 606

Motion: Rep. Addy made a DO PASS motion, seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Wyatt moved to add section 45-5-624, subsection 1 of Rep. Darko's HB 393 to the statute, motion seconded by Rep. Gould. Motion CARRIED.

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

DISPOSITION OF HOUSE BILL 495

Motion: Rep. Strizich motioned DO PASS, seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Strizich moved amendments (EXHIBIT 9), seconded by Rep. Darko. Motion

CARRIED.

Rep. Hannah questioned if this solves the constitutional problem? What does this bill accomplish? Rep. Strizich addressed Rep. Hannah's concern by stating that this bill tries to allow some intervention where there currently is none. It comes down to a practical matter.

Recommendation and Vote: A DO PASS AS AMENDED motion was made by Rep. Strizich, seconded by Rep. Darko. Motion CARRIED with a Roll Call Vote of 10-ayes, 8-nays.

DISPOSITION OF HOUSE BILL 393

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

Discussion: None.

Amendments, Discussion, and Votes: Rep. Daily moved amendments (EXHIBIT 10), motion seconded by Rep. Darko. Motion CARRIED.

Recommendation and Vote: Rep. Darko motioned DO PASS AS AMENDED, seconded by Rep. Boharski. A vote was taken and CARRIED unanimously that HB 393 DO PASS AS AMENDED.

DISPOSITION OF HOUSE BILL 422

Motion: Rep. Eudaily moved HB 422 DO PASS, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved the proposed amendments (EXHIBIT 11), motion seconded by Rep. Stickney. Motion CARRIED.

Recommendation and Vote: Rep. Eudaily motioned DO PASS AS AMENDED, motion seconded by Rep. Aafedt. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 493

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

Discussion: None.

Amendments, Discussion, and Votes: Rep. Strizich moved the proposed amendments (EXHIBIT 12), motion seconded by Rep. Brooke. Motion CARRIED.

Rep. Knapp commented that his objection to this bill is that it is a surtax bill and that they don't like to administer the

pay-as-you-go plan and have time installments set up to pay off the fines.

Rep. Strizich, in response to Rep. Knapp's concern stated that it is an objection that he has heard before. To an extent, he feels it is a legitimate concern, but people must remember that what they are doing is imposing a fee on those people that are using it. The real problem that needs to be taken into consideration is that the counties are strapped and want to do a good job with their jails but are not able to; largely due to financial problems. This bill will go a long way to help that and he feels this bill is an appropriate way to take care of that problem.

Recommendation and Vote: Rep. Strizich moved DO PASS AS AMENDED, motion seconded by Rep. Darko. A Roll Call Vote was taken and the motion FAILED on a tie vote. Rep. Daily changed his vote to nay and Rep. Hannah moved to reverse the vote. Motion CARRIED unanimously. HB 493 is recommended DO NOT PASS.

DISPOSITION OF HOUSE BILL 103

Motion: Rep. Addy moved to TABLE HB 103, motion seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that HB 103 be TABLED.

DISPOSITION OF HOUSE BILL 473

Motion: Rep. Addy moved to TABLE HB 473, motion seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that HB 473 be TABLED.

DISPOSITION OF HOUSE BILL 548

Motion: Rep. Daily moved to TABLE HB 548, motion seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken to TABLE HB 548 and

CARRIED with Rep. Gould voting No.

DISPOSITION OF HOUSE BILL 528

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

Discussion: Rep. Addy requested the Committee wait for another day to take action on this bill as he received informational material that he was unable to review dealing with the subject matter of HB 528. The Committee agreed to hold final action on the bill; however, continued discussion.

Amendments, Discussion, and Votes: Rep. Eudaily moved to delete section 3 in its entirety, motion seconded by Rep. Wyatt.

Rep. Boharski pointing out to the committee, that the last time this was tried was when Montana's Liability Insurance Law became effective. Secondly, he pointed out the increase of the fines. He stated the biggest problem with noncompliance is that the people are not aware that there is actually a fine. He feels that if people were made aware of the fine then we wouldn't see nearly as many people out there not carrying that liability insurance on their vehicle.

Recommendation and Vote: Rep. Brown recommended the committee HOLD any further action on HB 528.

ADJOURNMENT

Adjournment At: 12:00 noon

Dave Brown

REP. DAVE BROWN, Chairman

DB/je

3908.MIN

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 15, 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 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 558 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 571 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 593 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 2, line 10.
Following: "required to"
Insert: "pay for and"

2. Page 2, line 12.
Following: "23"
Insert: ", or in a specialized domestic violence intervention program"

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 568 (first reading copy -- white), with statement of intent attached, do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 17.
Following: "MCA"
Insert: "; AMENDING SECTION 16, CHAPTER 475, LAWS 1987; AND PROVIDING AN EFFECTIVE DATE"

2. Page 23, line 6.
Following: "of"
Strike: "the"
Insert: "a written"

3. Page 23, line 23.
Following: line 22
Insert: "NEW SECTION. Section 14. Section 16, Chapter 475, Laws of 1987, is amended to read:

"Section 16. Effective dates--termination date.
(1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.
(2) The bracketed language in subsection (5) of section (1) is effective July 1, ~~1989~~ 1991.
(3) The bracketed language in subsection (3) of section (9) terminates July 1, ~~1989~~ 1991.""
Renumber: subsequent sections

4. Page 24.
Following: line 6
Insert: "NEW SECTION. Section 17. Effective date. [Sections 5 and 7 of this act] are effective on July 1, 1991."

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 606 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 11.
Following: "45-5-623,"
Insert: "45-5-624,"

2. Page 7, line 3.
Following: line 2
Insert: "Section 5. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance -- interference with sentence or court order.

(1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except as provided in 16-6-305, and except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed $50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these

penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both." "

Renumber: subsequent sections

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 495 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 8.
Strike: "OR ACCEPTANCE"

2. Page 1, lines 17 and 21.
Following: "knowingly"
Insert: "consumes or"

3. Page 1, line 22.
Following: "offense"
Insert: "if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or "

4. Page 1, line 24.
Following: "not be"
Insert: "consuming or"

5. Page 2, lines 1 through 5.
Strike: "It is" on line 1 through end of line 5

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 393 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, lines 5 through 7.
Strike: "CLARIFYING" on line 5 through "SUBSTANCE;" on line 7
Insert: "INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE;"

2. Title, line 10
Strike: "SECTIONS 45-2-101 AND"
Insert: "SECTION"

3. Page 1, line 13 through line 3 on page 18.
Strike: section 1 of the bill in its entirety
Renumber: subsequent section

4. Page 18, line 22.
Strike: "$500"
Insert: "$50 for a first offense, $100 for a second offense, and $200 for a third offense. For a fourth or subsequent offense a person may be fined an amount not to exceed $300"

STANDING COMMITTEE REPORT

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 422 (first reading copy -- white), with statement of intent included, do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 1, line 11.
Following: the title
Insert: "STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services."

2. Title, line 9.
Following: "PROVIDER;"
Insert: "GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL;"

3. Page 1, line 19.
Following: line 18
Insert: "(2) "Board" means the Montana state board of medical examiners."
Renumber: subsequent subsections

4. Page 1, line 21.
Following: line 20
Insert: "(4) "Department" means the department of health and environmental sciences."
Renumber: subsequent subsections

5. Page 1, line 22.
Strike: "police, paramedics"
Insert: "law enforcement officers, first responders"

6. Page 1, line 23.
Strike: "rescue squads"
Insert: "emergency services personnel"

7. Page 2, lines 7 and 8.
Strike: "and includes" on line 7 through "personnel" on line 8

8. Page 2, line 9.
Following: line 8
Insert: "(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-202 by emergency medical service personnel."
Renumber: subsequent subsections

9. Page 2, line 15.
Following: line 14
Insert: "(11) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient."
Renumber: subsequent subsection

10. Page 3, line 4.
Following: "communicated."
Insert: "A health care provider or emergency medical services personnel witnessing a revocation may act upon the revocation and must communicate the revocation to the attending physician at the earliest opportunity."

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

12. Page 4, line 2.
Following: "physician"
Insert: "or who on receipt of reliable documentation follow a living will protocol"

13. Page 4, line 3.
Following: line 2
Insert: "(d) emergency medical services personnel who after a good faith attempt to do so are unable to find reliable documentation of a declaration and proceed to provide life-sustaining treatment to a qualified patient; and"
Renumber: subsequent subsection

14. Page 4, line 8.
Following: line 7
Insert: "NEW SECTION. Section 4. Authority to adopt rules. The department may adopt rules to implement this chapter.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [section 4]."
Renumber: subsequent section

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 493 (first reading copy -- white) do not pass .

Signed: _____
Dave Brown, Chairman

2-15-89

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. 15, 1989

SUBJECT: House Bill's 548, 473, 103

The House Judiciary Committee has TABLED HB's 548, 473, and 103.

DB/je

EXHIBIT 1
DATE 2-15-89
HB 593

15 February 1989

Testimony given before the House Judiciary Committee with reference to HB593, a bill for an act entitled: "An act requiring counseling for a person convicted of domestic abuse for the first or second time;" given by Wallace A. Jewell.

First of all let me state that I am presenting this testimony NOT as the lobbyist for the Montana Magistrates Association but rather as a former city judge who knows this type of counseling does work, and does, in my estimation, reduce the number of repeat offenders.

First I should explain the program with which I am somewhat familiar. The Human Resources and Development Council in Havre, has put together an outstanding program structured around the very successful program first started in Duluth, Minnesota. The Havre program consists of a brief intake by a staff member, followed by a 26-week course which addresses issues of physical violence, intimidation, denial, and sexual and emotional abuse. Attendance is mandatory with a maximum of only 2 excused absences per 26 week period. The course is held 1 night per week. The cost of the program, because it is staffed primarily by volunteers, is from $25 to $100 for the entire 26 week program. The actual amount paid by the defendant who attends the program is based upon his or her ability to pay. There are very few defendants that cannot pay $1 per week.

In addition to the program offered for the defendants convicted of domestic abuse, there is also a program offered by HRDC that addresses the problems faced by their victims, both male and female. This program offers to the victim methods of dealing with an abuser; not in a physical sense but in an emotional and psychological sense. It is offered the same night as the course for the abuser; they even have free babysitting for those victims with children.

The sentence imposed by the court upon a defendant convicted of domestic abuse always included attendance in this counseling program.

In the 4 years between 1985 and 1988 the Havre City Court dealt with approximately 75 cases of domestic violence; of course not all the defendants in these cases were adjudicated guilty and in many instances, for 1 reason or another, the case never reached the trial stage. So, in 4 years the Havre City Court had approximately 50 cases in which the defendant was finallly adjudicated guilty. Of those 50 cases, I can remember only 2 repeat offenders.

EXHIBIT 1
DATE 2-15-89
HB 593

Perhaps not all this success can be attributed to the counseling program but I am confident that a great deal of it is directly related to the availabilty of this treatment program.

I do however have some concerns with the legislation as proposed.

1) Does the reference on page 2, line 12, to Title 37, mean that programs such as the one that is so successful in Havre will not qualify under this bill? The closest thing to a licensed person with the program in Havre is a person who holds a Master's degree in social work.

2) The volunteer program I have described in Havre is directed to the violent conduct of the defendant but it is a volunteer program. In such an instance, what is the "other appropriate treatment" referred to on lines 15 and 16 on page 2?

3) If the court determines that there is a treatment program available that is directed to the violent conduct of the defendant, do lines 14 through 18 on page 2 prohibit the court from also ordering drug and/or alcohol treatment?

4) I would suggest to the committee that a clarification is needed of the language on page 2, lines 16 and 17, by further defining the meaning of the term "available treatment program." As the bill is now worded it seems that if there is only 1 program in the state that has a licensed person as described on line 12, then all the defendants in the state convicted of domestic abuse would be required to attend that program.

5) If the program in Havre meets the licensing requirement found on page 2, line 12, and does not need to hire a licensed person, then there will not be a necessity for lines 20 and 21 on page 2. In 4 years there was never anyone who could not afford to pay. If these counseling programs are required to hire a licensed person, then the fees will undoubtedly go up and this may make such counseling unavailable to the truly indigent folks who need it. In that case the $100 fine for civil contempt will be laughable because these people will not be able to afford that either.

6) Again with reference to page 2, lines 20 and 21, if a defendant is reluctant to obtain counseling, then the 1 day in jail provided as the punishment for civil contempt is not

EXHIBIT 1
DATE 2-15-89
HB 593

going to provide any real incentive to do so. I would suggest that the courts threatening to revoke a suspended 6 month jail sentence may provide more incentive to a defendant to obtain counseling. In this light it appears there is no real need for lines 20 and 21 on page 2.

By this testimony, I do not mean to suggest to the committee that I do not approve of counseling for defendants convicted of domestic abuse; on the contrary it is a very useful and usually successful sentencing option. What I do mean to suggest is that some attention needs to be given to counseling programs already in existence and to the success rates that they have achieved.

Merely ordering the defendant to counseling is of little value though if there is not some procedure in place whereby the court involved can follow up on it's sentence by in some way monitoring attendance and imposing further sanctions upon those defendants who fail to comply with the original order of the court. Without such follow up and "teeth in the order of the court," mandatory counseling for defendants guilty of domestic abuse should not be expected to accomplish its intended purpose.

Wallace A. Jewell

DENNIS DUNCAN, M.A.
Licensed Professional Counselor
Certified Chemical Dependency Counselor

EXHIBIT 2
DATE 2-15-89
HB 593

2-13-89

Dear Committee Member:

I am writing to express my support for HB #593 requiring counseling for those convicted of domestic violence. Research indicates that one out of every two women will experience some effects of domestic violence either directly or indirectly. Of further concern, is the fact that the pattern of violence is cyclic, and without a significant intervention, will likely occur again and again. The fact that limited interventions by the legal system is ineffective is borne out by the number of repeat offenders we see in the system.

My experience in providing counseling to this population is that unless mandated to receive counseling, the likelihood of remaining in counseling is minimal. I believe that this bill is a positive step in addressing a significant social problem. Please carefully consider the importance of your decision as one that could possibly prevent violence and the victimization of family members in this and future generations.

Thank You

Dennis Duncan

Dennis Duncan, M.A.
Licensed Professional Counselor

BOX 493, BIGFORK, MT 59911

EXHIBIT 3
DATE 2-15-89
HB 593

February 14, 1989

To the Honorable Members of the Judiciary Committee;

I believed that living with violence was a normal way to live. My value system said I was to maintain a family structure at all costs.

Many times I would flee the relationship in hopes of changing my partner, only to return because he would promise to:

Change: "I won't do it again" or "I will go to marriage counseli
Where I was told to become a more understanding wife

Listen to: Churches, ministers -
I was told to be more forgiving to keep the family unit

Get alcohol treatment: "That's why I do
After treatment the violence escalted to include physic abuse of myself and children

Each time I returned home on the strength of one or more of the above promises. My situation worsened Not one of the treatment programs addressed the anger and abuse that was part of our daily existence.

For safety, I left the relationship

EXHIBIT 3
DATE 2-15-89
HB 593

believing that somehow I had failed, that I had violated my moral values by breaking up my home and my self esteem suffered each time.

My abuser was arrested, treated for chemical dependency, counseled by ministers and professional marriage counselors. I feel that all of this dealt with symptoms and not the problems in my home.

I feel strongly that the man I loved did not understand what motivated his anger or how to control it. He did try the usual avenues and I think he felt as defeated as I did. I feel if he had the proper intervention there would have been a better chance for us all.

As it is now, while I am no longer a victim, I know the abuser has just moved on to other women to victimize.

Dee Dee Yates
formerly battered women
Billings, MT.

EXHIBIT 4
DATE 2-15-89
HB 568

Amendments to House Bill No. 568
First Reading Copy

Requested by Rep. Mercer
For the Committee on the Judiciary

Prepared by John MacMaster
February 14, 1989

1. Title, line 17.
Following: "MCA"
Insert: "; AMENDING SECTION 16, CHAPTER 475, LAWS 1987; AND PROVIDING AN EFFECTIVE DATE"

2. Page 23, line 23.
Following: line 22
Insert: "**NEW SECTION.** **Section 14. Section 16, Chapter 475, Laws of 1987, is amended to read:**

"Section 16. Effective dates--termination date.
(1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.
(2) The bracketed language in subsection (5) of section (1) is effective July 1, ~~1989~~ 1991.
(3) The bracketed language in subsection (3) of section (9) terminates July 1, ~~1989~~ 1991.""
Renumber: subsequent sections

3. Page 24.
Following: line 6
Insert: "**NEW SECTION.** **Section 17. Effective date.** [Section 5 of this act] is effective on July 1, 1991."

4. Page 23, line 6.
Following: "(d)"
Strike: "the"
Insert: "a written"

EXHIBIT 5
DATE 2-15-89
HB 568

JUVENILE JAIL REMOVAL INITIATIVE

The Montana Board of Crime Control, through a grant from the Office of Juvenile Justice and Delinquency Prevention has supported the work of a subcommittee of the Youth Service Advisory Council with the task of studying the juvenile jail removal issue. The subcommittee representing youth courts, law enforcement, prosecutors, county commissioners, youth advocates and legislators, was charged with developing a plan to remove juveniles from adult jails for presentation to the 1989 legislature.

The goal statement adopted by the committee at their first meeting was:

> "To define detention and develop a statewide detention plan, for presentation to the 1989 Legislature, which addresses the service care needs and protection of those youth requiring detention, the economic and public safety needs of the communities and the legal responsibilities mandated by Federal and State law."

The goal of total removal of youth from adult jails is derived from a collection of sources which are perceived to be not only mandatory but a reflection of a matured society. Removal of youth from adult facilities finds its roots primarily in these areas:

I. **Juvenile Justice and Delinquency Prevention Act** (JJ&DPA) - The JJDP Act, originally passed in 1974 providing funds to improve state and local juvenile justice programs. The Act was amended in 1980 and 1984 to require the total removal of juveniles from adult facilities by December 8, 1988. The act provided the state with $225,000 in grant funds annually for the purpose of reducing the number of youth held in adult ails. It further prescribed precise detention target levels for each state to maintain their eligibility for federal funds. The act was reauthorized in 1988 and the funding was increased to $325,000 per year. Believing that urban areas have other options available, the Act allows exceptions for "rural areas". Significantly, the act specifically allows for a 24 hour intake hold prior to the Youth Court detention hearing in rural areas. Yellowstone and Cascade Counties do not have the 24 hour hold provision as do other Montana communities. The most recent amendments to the Act allows the Administrator to make exceptions to the 1988 deadline for states who have made significant progress towards removal.

II. **Federal Case Law** - There has been case law that has assisted in the removal of youth from adult facilities. The most often cited case is the Tewksbury case in Oregon (9th Circuit). The Tewksbury case held that jailing juveniles was in and of itself, a violation of their due process. The general finding of fact in these cases is that youth do not belong with adult prisoners, regardless of sight and sound separation.

III. **National Jail Standards** - The National Sheriff's Association and the American Bar Association have adopted jail standards which prohibit holding juveniles in adult facilities. A 40 member National Coalition for jail reform, which includes the National Association of Counties, have adopted the policy of not holding juveniles in adult jails.

EXHIBIT 5
DATE 2-15-89
HB 568

IV. Montana Legislation - The 1987 Montana Legislature passed legislation (MCA 41-5-305,306) that requires that juveniles held past their detention hearing must be placed in a juvenile facility. Implementation of this law was delayed until July 1, 1989.

Defining and Quantifying the Problem:

"Detention" in the context of this study refers to that period during which a youth is being held in the physical custody of law enforcement awaiting his final dispositional placement.

Complicating the development of a statewide plan is the fact that careful screening of youth has resulted in an infrequent need to detain juveniles. A recent survey of city and county jails revealed that only about 7.4 youth are being held at any one time statewide and that only 3 of those youth are held longer than 24 hours. A closer look at the data and trends in youth placement indicate a significant increase in the number of youth awaiting a final disposition being placed in state institutions for 45 day evaluations. It is the belief of the committee that this increase in evaluation population is directly related to the reduction in youth being held in jail and are, in fact, the same population; i.e., youth requiring some level of security prior to their final dispositional placement. Including the average daily population of youth receiving evaluations with those youth being held in jails increases the number of youth to 36 daily.

Having quantified the present population, the committee began to try to project the future need for secure beds. The committee agreed that many placements made at the state institutions, ostensibly for evaluations were really made because adequate alternatives did not exist. The fact that the state has backed into practice of providing evaluations to pre-dispositional youth has provided an incentive to send youth out of the community rather than establish services closer to home.
That practice has also added to the serious overcrowding of our two state institutions threatening the quality of service to committed youth.

Although most of the committee's attention was focused on providing a solution to the for long term detention needs, it was realized that providing affordable community based services could greatly affect the number of youth requiring services in a secure facility.

THE PLAN

Several strong philosophical beliefs guided the decisions made by the committee in developing the final recommendations for detention and are important to it's understanding. The committee believes:

a. There should be clear lines of authority for both the administration and financial responsibility of providing detention.

b. The responsibility for operation of detention services should be a close to the delivery of services as possible.

c. The financial responsibility should rest as close to those making the decision to place a youth in detention as possible.

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d. Youth should be served as close to home as possible and in the least restrictive environment.

e. That extreme care be given to not invest in unnecessary construction of new facilities.

LOCAL GOVERNMENT:

To this end, the committee believes that authority for youth detention should remain a local government responsibility and should be supported by a dedicated revenue source established by the legislature.

NO CONSTRUCTION:

A variety of options requiring the immediate development of new secure detention facilities were discarded in the final product of the committee. This due to a concern that using historical data on the use of jails and state institutions for holding youth was not an accurate reflection of future needs once affordable care was made available in the communities.

USE MOUNTAIN VIEW AND PINE HILLS SCHOOLS:

The plan developed by the Jail Removal Committee will remove juveniles from jails by providing secure detention through a temporary arrangement with Mountain View to provide predispositional secure care for girls and Pine Hills to provide the same services for boys while counties develop their own resources. It will also provide a funding source to counties to provide for their detention and detention alternatives.

PROVIDE REVENUE SHARING:

The committee has recommended that development of the alternative programs such as staff secure shelter care, holdovers and attendant care programs is of utmost importance in pursuit of the philosophy of providing care for youth as close to home as possible and in the least restrictive environment. Providing services in the community is also generally seen as being less costly than serving a youth in a secure facility. Because the numbers of youth requiring secure detention or evaluation are so few, changes in how youth are dealt with locally could reduce the need for secure beds statewide. The committee's approach will allow time needed to begin developing, or using, community options and to quantify the need for secure beds.

Under this proposal, Pine Hills and Mountain View will hold the predispositional youth and continue to hold evaluation youth on a fee for service basis for two to three years after implementation of the law. The committee feels it is imperative that a fee be charged in an effort to encourage the development of community based alternatives. At the end of a three year period, the state institutions intend to be out of the business of providing predispositional detention and/or evaluation services. Counties are encouraged to develop multi-county or "regional" detention facilities to provide for their long term detention needs. This can be accomplished through interlocal agreement or by contracting with the private sector.

The Department of Family Services will also begin charging for evaluations provided through the Youth Evaluation Program in Great Falls. At present, youth being

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evaluated through that program are paid for by the department. Funding which supports the Y.E.P. program will be diverted to the Counties to enable them to purchase the same services.

FUNDING

It is the committee's intent to seek a state-wide, earmarked funding mechanism. which would generate just over $1 million. Ninety per cent of the collected funds will be distributed through the Department of Family Services to counties to provide for the predispositional needs of youth having contact with the justice system. The remaining ten per cent will be retained by the D. F. S. for a grant in aid program to assist those communities experiencing activity above the norm. The distribution formula will be based on juvenile population.

Counties will access their funds by developing a plan for the provision of pre-dispositional services and submitting it to the Local Youth Service Advisory Councils for review. As the Local Youth Service Advisory Councils are responsible for planning for the provision of youth services in Montana, it is considered critical they be kept informed and involved in this process. The director of the Department of Family Services will release each county's allocation providing the plans meet minimal requirements. Funds thus distributed can then be used by Youth Courts for buying services, either community based, regional, or during the first three years, from the state correctional schools.

EXHIBIT 6
DATE 2-15-89
621

TESTIMONY OF THE MONTANA HOSPITAL ASSOCIATION
IN SUPPORT OF HB 621
Amendments to the Uniform Health Care Information Act
Before the House Judiciary Committee
Wednesday, February 15, 1989

House Bill 621 addresses various provisions of the Uniform Health Care Information Act (hereinafter "Act") which have proven in practice to be unduly burdensome, restrictive, unnecessary, and in some instances, in potential conflict with existing Montana law. The testimony presented here will discuss the suggested amendments to the Act, the underlying rationale for the changes, and where necessary, the relationship of the amendments to existing law.

Section 1

As it currently reads, § 50-16-522, MCA, authorizes release of a deceased patient's health care records upon consent of the personal representative, or if none, "by persons who are authorized by law to act for him." As set forth in the comments to the Act, "this section recognizes the possibility of substantial harm or embarrassment to the family, estate, or reputation of the deceased patient by the release of health care information. Therefore, this Act gives representatives of deceased patients the authority to exercise all of the deceased patient's rights under the Act." However, under Montana law, there does not appear to be a person "authorized by law to act for the deceased patient," in the absence of a personal representative. The proposed amendment would identify a class of relatives who would be entitled to act in the decedent's place in the absence of such a representative.

Section 2

When Montana adopted the Act it amended certain portions, including that portion found at § 50-16-525(2), MCA. Strictly construed, this section requires that each time a physician (not an agent or employee of the provider) consults a hospital chart, a record of such consultation complying with the Act must be made. The current requirements are unduly burdensome and serve no useful purpose in protecting the confidentiality of health care information. By returning to the original language of the Act, a health care provider will still be required to maintain a record of those individuals granted access to a patient's recorded health care information. However, where such person is providing health care to the patient, § 50-16-529(1), MCA, or otherwise allowed access to such information pursuant to § 50-16-529(2), MCA, no record will be required.

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HB 621

Section 3

The proposed amendment will allow for the release of health care information to third party health care payors. Consent to the release of medical records, primarily to third party payors, are frequently signed by relatives. However, the Act itself does not provide for such authorization. To allow the release of a patient's health care record to third party payors will streamline the procedures for releasing such information to third party payors while not otherwise affecting the confidentiality rights of the patient.

Section 4

Section 50-16-535, MCA, identifies when health care information may be made available by use of compulsory legal process. Subsection 9 provides that such information may be released where "a court has determined that the particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest." This section fails to address whether health care information must be disclosed pursuant to an "investigative subpoena" issued in accordance with the requirements of § 46-4-301, MCA as there is an uncertainty as to whether investigative subpoenas constitute an "order of court". Additionally, investigative subpoenas do not include a finding that the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest. The suggested amendment to § 50-16-535, MCA, clarifies that health care information must be disclosed when requested pursuant to an investigative subpoena issued in accordance with the requirements of § 46-4-301, MCA.

Section 5

Section 50-16-542, MCA, provides that a health care provider may deny access to health care information requested by a patient under a number of specifically enumerated circumstances. This section does not authorize a refusal to produce health care information in response to compulsory process or discovery even though some of the reasons articulated in § 50-16-542, MCA, might suggest to the health care provider that such information should not be furnished. The proposed amendments to § 50-16-536, MCA, provide health care providers with the discretion to deny access to health care information requested by compulsory process or pursuant to discovery, for any of those reasons articulated in § 50-16-542, MCA. However, as the court retains control over compulsory legal process, it appears appropriate that the health care provider submit to the

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court by affidavit or other reasonable means, an explanation as to why the health care provider believes the information should be protected from disclosure. The court may order disclosure, with whatever restrictions on use it deems necessary.

The addition of subsection (5) will allow the health care provider to recover its cost where disclosure is required by compulsory process.

Section 6

Section 50-15-206, MCA identifies the only circumstances in which health care information which might disclose illegitimacy of birth may be released. By amending the Act to provide that health care information which might disclose illegitimate birth may only be released in accordance with § 50-15-206, MCA, any question which has arisen as to whether records of illegitimate births must be released to the child, as a "written request from a patient to examine or copy all or part of his recorded health care information" pursuant to § 50-16-541 will be eliminated.

OHG/srg

EXHIBIT 7
DATE 2-15-89
HB 606

HOUSE BILL 606 -- effects:

- Provides that a parent or guardian may provide alcoholic beverages in less than intoxicating quantity to his/her own child under age 21.
- Defines "intoxicating quantity" to mean that amount of alcohol which produces significant mental or physical impairment, or a blood alcohol content of .05 or greater.
- Provides that a person over 21 who provides alcohol in intoxicating quantity to a person under 21 is civilly liable for any tortious act judicially determined to be the result of that intoxication.
- Clarifies and cross-references current contradictory laws. Sections 45-5-622 and -623 appear to ban parents from giving any alcohol to their own children due to the vagueness of whether the phrase, "contributes to the delinquency of a child" refers to the giving of the alcohol itself, or some other delinquent act caused by the alcohol provision. Conversely, 16-6-305 allows parents to give alcohol to their children for "beverage" purposes without limit on quantity. HB 606 attempts to strike middle ground between these two extremes.

- Does not extend the authority of parents to give alcohol to their children beyond present law; in fact, it sets limits.
- Does not allow adults other than parents to give alcohol to their children, except doctors or pharmacists for prescribed medical uses, or ordained priests or ministers in connection with religious rituals.
- Does not extend the liability of tavern owners beyond present law.
- Does not change present law with respect to public drinking by minors.

Intent of HB 606:

- To clearly allow parents to provide their own children with moderate amounts of alcohol, such as a glass of wine at dinner.
- To prohibit parents from getting their children drunk.
- To allow early intervention into family situations where parents get their children chronically or substantially drunk, or allow them out in public while drunk, before more serious offenses occur.
- To extend the liability of persons over 21 who get underaged persons drunk to specifically include parents and members of the public.

Rationale for HB 606:

- Studies have consistently shown that (a) youths who learn to drink in family settings have fewer alcohol problems than youths who learn to drink with peers, and (b) family settings promote more moderate use of alcohol by both youths and adults than peer-only settings. HB 606 promotes both moderation and family context for alcohol use.
- Parents need clear and reasonable guidelines covering alcohol provision, rather than the contradictory mismash of present law that makes no distinction between parents who provide a glass of wine at dinner and parents who throw keggers for their children.
- There is no medical evidence that light or moderate drinking by youths promotes alcoholism, but there is evidence that heavy, chronic drinking impairs minors more than adults. HB 606 separates these practices.
- HB 606 is likely to be enforced only in clear cases in which parents get their children repeatedly or very drunk. If a youth refuses to take a BAC test, conviction can occur from the impairment standard.

EXHIBIT 8
DATE 2-15-89
HB 606

Rep. Ed Grady 14 Feb. 1988

Dear Ed --

Attached is a letter to Dave Brown clarifying HB 606 and its intent, which is first of all to cross-reference and clarify current law, and second to provide reasonable limits and liability standards. What HB 606 seeks to do is let parents know what they can do by separating the provision of a glass of wine at dinner from the provision of alcohol in large quantity to their children.

My understanding is that the tavern owners have no problem with the bill, nor do the probation officers. The probation officers would like an amendment to clarify how intoxication is determined, which could be accomplished by adding, after "impairment" on page 2, line 17, the words: "AS DETERMINED BY A STANDARD FIELD TEST OF SOBRIETY USED BY LAW ENFORCEMENT OFFICERS." I believe their lobbyist will testify on the bill; they seem to feel it would be useful in extreme cases of parental irresponsibility, and there is no sentiment to ban parents from giving their kids alcohol altogether. I am also told that the BAC of .05 provision cannot be enforced unless the suspect agrees to take the test. I see it as useful as a guideline, as a scientific method of proving or disproving the offense where the suspect agrees to the test, but I wouldn't be upset if it was deleted.

If their is opposition, it is likely to be from the alcoholism crowd or the magistrates. They might argue that no parent should ever give their kid alcohol no way, no how, and that the standards of "intoxicating quantity" are unenforceable. If the gist of their argument is that an Italian parent in Butte who gives his child a glass of wine at dinner, or a parent who gives his kid even a sip of beer, should be subject to $500 fine, 6 months in jail, loss of custody, and other penalties, then they are welcome to make that argument. I can't see the committee buying it. In any case, some limit should be preferable to them over current law, which provides no limit on how much booze parents can give their kids. They should also like the liability.

This bill would allow some expanded law enforcement. For example, under current law, a youth who is drunk in public is in legal condition if the booze was supplied by his parents, but not under HB 606. If parents give their kid a case of beer, and he goes out and drives drunk and kills someone, the parents could not be held liable under current law (at least, it's unclear), but could be under HB 606. Finally, officers could intervene in family situations where parents are getting their kids severely or repeatedly drunk, before more serious offenses occur, which they could not now do.

If some flaw surfaces I'm not aware of, I would be happy if HB 606 passes with merely Sections 3 and 4 intact to provide cross-reference and clarity to present law. That would transform it into a still very useful housekeeping bill, though I prefer it in its current form.

As a member of the press, I can't testify for or against bills. When I asked you to sponsor the bill, I didn't know I'd be sent up to report on the session. I will be on hand at the hearing to answer questions, and if you like, direct them to me. Dorothy Bradley has said she'll testify. I really appreciate your sponsoring this bill, and if there's more I can do, please let me know.

Mike Males

EXHIBIT 9
DATE 2-15-89
HB 495

Amendments to House Bill No. 495
First Reading Copy

Requested by Reps. Mercer and Strizich
For the Committee on the Judiciary

Prepared by John MacMaster
February 13, 1989

1. Title, line 8.
Strike: "OR ACCEPTANCE"

2. Page 1, lines 17 and 21.
Following: "knowingly"
Insert: "consumes or"

3. Page 1, line 22.
Following: "offense"
Insert: "if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or "

4. Page 1, line 24.
Following: "not be"
Insert: "consuming or"

5. Page 2, lines 1 through 5.
Strike: "It is" on line 1 through end of line 5

EXHIBIT 10
DATE 2-15-89
HB 393

Amendments to House Bill No. 393
First Reading Copy

Requested by the Judiciary Committee
For the Committee on the Judiciary

Prepared by John MacMaster
February 13, 1989

1. Title, lines 5 through 7.
Strike: "CLARIFYING" on line 5 through "SUBSTANCE;" on line 7
Insert: "INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE;"

2. Title, line 10
Strike: "SECTIONS 45-2-101 AND"
Insert: "SECTION"

3. Page 1, line 13 through line 3 on page 19.
Strike: section 1 of the bill in its entirety
Renumber: subsequent section

4. Page 18, line 22.
Strike: "$500"
Insert: "$50 for a first offense, $100 for a second, and $200 for a third. For a fourth or subsequent offense a person may be fined an amount not to exceed $300"

EXHIBIT 11
DATE 2-15-89
HB 422

Amendments to House Bill No. 422
First Reading Copy

Requested by Rep. Eudaily
For the Committee on the Judiciary

Prepared by John MacMaster
February 13, 1989

1. Page 1, line 11.
Following: the title
Insert: "STATEMENT OF INTENT

A Statement of Intent is needed for this bill because section 4 grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health, and emergency medical services."

2. Title, line 9.
Following: "PROVIDER;"
Insert: "GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL;"

3. Page 1, line 19.
Following: line 18
Insert: "(2) "Board" means the Montana state board of medical examiners."
Renumber: subsequent subsections

4. Page 1, line 21.
Following: line 20
Insert: "(3) "Department" means the department of health and environmental sciences."
Renumber: subsequent subsections

5. Page 1, line 22.
Strike: "police, paramedics"
Insert: "law enforcement officers, first responders"

6. Page 1, line 23.
Strike: "rescue squads"
Insert: "emergency services personnel"

7. Page 2, lines 7 and 8.
Strike: "and includes" on line 7 through "personnel" on line 8

EXHIBIT 11
DATE 2-15-89
HB 422

8. Page 2, line 9.
Following: line 8
Insert: "(8) "Living will protocol" means a locally developed, community-wide method, or a standardized state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-402 by emergency medical service personnel."
Renumber: subsequent subsections

9. Page 2, line 15.
Following: line 14
Insert: "(11) "Reliable documentation" means a standardized, state-wide identification card or form, or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient."
Renumber: subsequent subsection

10. Page 3, line 4.
Following: "communicated."
Insert: "A health care provider or emergency medical services personnel witnessing a revocation may act upon the revocation and must communicate the revocation to the attending physician at the earliest opportunity."

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

12. Page 4, line 2.
Following: "physician"
Insert: "or who on receipt of reliable documentation follow a living will protocol"

13. Page 4, line 3.
Following: line 2
Insert: "(d) emergency medical services personnel who after a good faith attempt to do so are unable to find reliable documentation of a declaration and proceed to provide life-sustaining treatment to a qualified patient; and"
Renumber: subsequent subsection

14. Page 4, line 8.
Following: line 7
Insert: "**NEW SECTION. Section 4. Authority to adopt rules.** The department may adopt rules to implement this chapter.

NEW SECTION. Section 5. Codification instruction. [Section 4 of this act] is intended to be codified to Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [section 4]."

EXHIBIT 11
DATE 2-15-89
HB 422

Renumber: subsequent section

EXHIBIT 12
DATE 2-15-89
HB 493

Amendments to House Bill No. 493
First Reading Copy

Requested by Rep. Strizich
For the Committee on the Judiciary

Prepared by John MacMaster
February 13, 1989

1. Page 2, line 8.
Strike: "Ten dollars of the"
Insert: "All"

2. Page 2, lines 9 and 10.
Strike: "(a) and 44.5% of the charges collected under subsection (1)(b)"

3. Page 2, line 25, and page 3, line 5.
Following: "retain"
Insert: "50% of"

4. Page 3, line 13.
Strike: "Ten dollars"
Insert: "50%"
Strike: "collected"
Insert: "deposited with a city or town finance officer or treasurer"

5. Page 3, line 14.
Strike: "(1)"
Insert: "(5)"

6. Page 3, lines 14 through 16.
Strike: "and 55.55" on line 14 through "court," on line 16

7. Page 3, line 17.
Following: "used"
Insert: ", along with 50% of the money deposited with him by the district court under subsection (5)(a),"

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 558 DATE Feb. 15

SPONSOR REP. KILPATRICK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kilpatrick		✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 571 DATE FEB. 15, 1989

SPONSOR REP. DAVE BROWN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Dan Russell	Dept of Inst	✓	

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 593 DATE FEB. 15, 1989

SPONSOR REP. RUSSELL

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Ted J. Davey	MT. Mental Health Counselors Assn.	✓	
Angela Russell	Self	✓	
Brenda Nordlund	MT Women's Lobby	✓	
Jan Rehbein	Mt. Mental Health Cons.	✓	
Christie Marron	MT Council of Mental Health Centers	✓	
Wally Jewell	[redacted]	X	
Sharon Hanton	Mt Chapter NASW	✓	
Mary Ann Roberts	YWCA Gateway Home	✓	
Dee Dee Lyotas	YWCA Gateway House	✓	
Andree Larose	Self & Dennis Duncan Counselor	✓	
Jill Kennedy	Friendship Center	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 568 DATE FEB. 15, 1989

SPONSOR REP. MERCER

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
EARL W. BENNETT	Flathead County	X	
Herman W Cope	" "	✓	
W. P. WARNECKE	" "		
John Connor	Mt. County Attys Assn	X	
Jo Acton	Youth Services Center	X	
Steve Nelsen	Crime Control	X	
DOROTHY McCARTER	ATTORNEY GENERAL	X	
[illegible]	Probation	X	
GEOFF BIRNBAUM	MT ICES CHILD CARE ASSN	✓	
Robert Mullen	dfs	✓	
Allen Jacobson	Flathead Cty	✓	
Alfred Kaschube	Roosevelt Co.	✓	
Chas Cantzon	Lake Co Youth Guidance Hm	✓	
Jani Lambson	Volunteers of America	✓	
Rita Dis Pasquelli	Volunteers of America	✓	

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 621 DATE FEB. 15, 1989

SPONSOR TOM NELSON

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Steve Browning	MT Hosp Assn	X	
Larry Akey	Mt Health Network	X	
Jerry Loendorf	Mt. Med Assn	Denied	

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 592 DATE FEB. 15, 1989

SPONSOR REP. DRISCOLL

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Tim BERGSTROM	MT. STATE FIREMENS ASSOC	X	
Lonnie Larson	Billings Fire Dep.	X	
Lyle Nagel	Mt. St. Vol. Firefighters Assn	X	
Henry E Lohr.	Mt. St Vol. Firefighters Assn	X	
Ray Blehm	St Fire Marshal	X	
Edward Aires	Mt State Council of Retired Firefighters	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE FEB. 15, 1989 BILL NO. HB 495 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

Chairman

Motion: DO PASS AS AMENDED by Rep. Strizich, seconded by Rep. DARKO. MOTION CARRIED.

Form CS-31
Rev. 1985

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE FEB. 15, 1989 BILL NO. HB 493 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: Rep. Strizich moved DO PASS AS AMENDED, seconded by Rep. DARKO. MOTION FAILS on a tie vote.

Form CS-31
Rev. 1985

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE FEB. 15, 1989 BILL NO. HB 493 NUMBER 2

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO	X	
REP. RALPH EUDAILY		X
REP. BUDD GOULD		X
REP. TOM HANNAH		X
REP. ROGER KNAPP		X
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	
TALLY	8	10

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Daily changed his vote from the previous ROLL CALL to Nay & Rep. Hannah moved to reverse the vote. Motion CARRIED unanimously. HB 493 recommended DO NOT PASS.

Form CS-31
Rev. 1985