

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 15, 1991,
at 8 A.M.

ROLL CALL

Members Present:

Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #128 CLARIFY CRIME OF UNLAWFUL POSS. OF INTOX. SUBSTANCE

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE FAGG, HOUSE DISTRICT 89, stated this bill is to
try to clean up the law. It will make it clear that anyone under
21 with those exceptions still in the law, can't be in the
possession of intoxicating substance and changes "alcoholic

beverage" to "intoxicating substance". Intoxicating substance means alcohol and any controlled substance.

Proponents' Testimony:

John Conner, Montana County Attorney Association, stated they support this bill for the reasons Rep. Fagg delineated to the committee. It clears up the ambiguities by various county attorneys throughout the state. This appears to be a piece of legislation for prosecutors to look at as they are trying to figure out how to deal with this problem.

Pat Bradley, Montana Magistrates Association, gave written testimony in favor of HB #128. EXHIBIT 1

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked Ms. Bradley if she could explain what the vagaries are in the language as it is written now? Ms. Bradley said the difference between the 19 and 21 years. Also the possession of an intoxicating substance if he knowing had it in his possession. REP. MEASURE asked Ms. Bradley is she feels this expands the scope of the events or limits it? Ms. Bradley said she feels it expands the scope of events.

Closing by Sponsor:

REP. FAGG stated when a car load of kids are picked up for drinking, the innocent person who wasn't drinking needs to have each of the other passengers give a signed statement to that effect and all charges will be dropped for the innocent bystander.

HEARING ON HB #129

IMPOUND VEHICLE OF PERSON DRIVING WHILE LICENSE SUS. OR REVOKED

Presentation and Opening Statement by Sponsor:

REP. FAGG stated this was a bill that was introduced to try and put some teeth into the problem of a person driving of a suspended or revoked driver's license. At this time, we can only arrest the offender and put them in jail, but as soon as they are released they will end up driving anyway. This bill also addresses the issue of impounding the automobile the person was operating. The car can be forfeited to another person with interest in the car if they are willing to pay the fine to get it out of impound.

Proponents' Testimony:

John Conner, Montana County Attorney's Association, stated the MCAA experience frustration to the situations where there are

repeat offense of driving under the influence of alcohol and driving while their license are suspended or revoked. The two frequently go hand-in-hand. We support the concept of this type of bill because the CAA has believes that forfeiture of vehicles, particularly for repeat offenses, is one of the few means of direct approach in dealing with the problem. This kind of legislation is born out of frustration in trying to deal with a problem. We support this concept.

Pat Bradly, Montana Magistrates Association, gave written testimony in favor of HB #129. EXHIBIT 2

Opponents' Testimony: none

Closing by Sponsor:

REP. FAGG stated he would like for John MacMaster to write up the amendment to include in this bill before you vote on it. I think the two amendments I mentioned, a designated agent and forfeiting the vehicle to another person with security in the vehicle to pay the fine and get the vehicle out of impound.

HEARING ON HB #130

INCREASE LICENSE SUS. PERIOD FOR REFUSAL OF ALCOHOL CONTENT TEST

Presentation and Opening Statement by Sponsor:

REP. FAGG stated this bill is more of a policy decision. If this bill passes the suspension period for a person who refuses either the breath test would be increased from 6 months to 1 year for first offense, increased from 1 year to 2 years for second offense. The reason we are asking for this change is because the breath test is the best evidence for prosecution of a DUI.

Proponents' Testimony:

John Conner, Montana Attorneys Association, stated they support the concept of any legislation that attempts to address the problems of DUI. As far as the County Attorneys are concerned, we recognize that problems with alcohol consumption or chemical dependency are not something to be treated appropriately with punishment. A medical problem needs to be treated medically. Until you get the person's attention to do that, this bill gives us the means to get that person informed of treatment for his/her problem. We don't support jail sentences. We want to get them to informed so treatment can be appropriately implemented.

Opponents' Testimony:

Mark Staples, Montana Taverns Association, stated the conviction rate of DUI's in the state of Montana is very high. I don't think the intrusive penalty we are imposing is warranted or justified. Ninety days is enough that it would take anyone out

of a job situation a long time to be afoot. We should restrict the judges who give those passes and work permits to the DUI offender. I do not care about the second offense, it is the state's problem. There is a battery of tests for DUI. They are given to the offender twice. Once in the field and once in the station. It seems we have plenty of mechanisms in place to convict DUI offenders. To take one's vehicle away on the first offense, for a year, seems very unreasonable. People who only have one or two drinks will not be going out or socialize because they are scared of all the stories of getting arrested for a DUI. I think 90 days is a fair punishment for the first offender and the law is plenty tough as it is at this time.

Questions From Committee Members:

REP. BOHARSKI asked Mr. Staples will this include the people who refuse to take the blood test? Mr. Staples said yes.

REP. KELLER asked Mr. Staples if the .10 on a DUI conviction the main point of conviction or is it the combination of all the tests? Mr. Staples said the combination is the main point.

Closing by Sponsor:

REP. FAGG, stated that as a fall back position, if the committee doesn't like this bill, we could take out the increase on the first offense but keep the increase on the second offense. The point is not to prevent people from going out and having a good time. The point is to keep people from drinking and driving.

EXECUTIVE ACTION ON HB #128

Motion: REP. DARKO MOVED HB 128 DO PASS.

Motion: REP. BROWN moved HB 128 be amended by striking page 2, line 2 from the word "the" through line 4 in the subsection.

Discussion:

REP. BROWN stated he doesn't have any great problems with the rest of the bill, but I will still vote against it as a reaction to 21 vs. 18. If we are going to make that change, we should allow the law to conform where ever possible. What we are doing on page 2 is unduly shifting the burden on the individual instead of on the rest of authority.

REP. BROOKE stated she would speak against the amendment because we worked last session on getting the scope broadened for the age of 19 in on the bill and is an important clause for the law as it stands now. To delete it from this bill and then have this bill pass, we would not have that language at all.

REP. MEASURE asked what the next step would be after this piece of legislation. Would we then arrest people who know people who smoke marijuana or if you know someone who is a burglar. A person is innocent until proven guilty and this bill absolutely defies that concept.

REP. BOHARSKI asked REP. BROWN if they covered this in the last session? REP. BROWN said they did not.

REP. BOHARSKI asked REP. BROWN if we could replace 19 with 21 each place it appears in the bill? REP. BROWN said no. I want to strike out the entire language and propose new language.

REP. BOHARSKI asked REP. BROWN if he would have a problem with leaving the language in subsection 1 line 16-18. REP. BROWN stated if someone wanted to move to put that back in, he wouldn't object to it. I would rather leave the law as is.

Motion/Vote: REP. BROWN MOVED HB 128 DO NOT PASS. Motion failed 9 to 11. EXHIBIT 3

Motion/Vote: REP. BROWN MOVED HB 128 BE TABLED. Motion carried 11 to 9. EXHIBIT 4

EXECUTIVE ACTION ON HB #129

Motion: REP. DARKO MOVED HB 129 DO PASS.

Discussion:

REP. BOHARSKI asked John MacMaster if it was legal to take a vehicle away from someone if they are not the only owner? John MacMaster said he thinks it is. There is one other statute now that has the same kind of language. It is from that statute that I modeled the language for this bill.

REP. WHALEN stated felt a vehicle shouldn't be impounded for a DUI first offense. This would put a burden on most families that have only one vehicle and both parents are working. I object to this bill.

Vote: Motion failed 14 to 6 with Rep's: Clark, Messmore, Brown, Strizich, Lee and Johnson voting yes.

Motion: REP. BROWN MOVED HB 129 DO NOT PASS. Motion carried.

EXECUTIVE ACTION ON HB #130

Motion: REP. TOOLE MOVED HB 130 DO NOT PASS.

Discussion:

REP. BROWN stated, "we have sufficient penalties for DUI offenders. We do not need this kind of increase. The offenders that come back time and time again, have a disease called alcoholism. You do not treat a disease by throwing people in jail."

REP. GOULD stated, "There is a much better way in handling this situation than this bill. We don't need to make criminals out of Montanans who have probably made a isolated mistake of over indulging in alcohol."

Motion/Vote: REP. BOHARSKI moved substitute motion that HB 130 be amended. Motion carried 8 to 11 with Rep. Measure going on record as not voting.

Motion/Vote: REP. BOHARSKI MOVED HB 130 DO PASS AS AMENDED. Motion failed 12-8. EXHIBIT 5

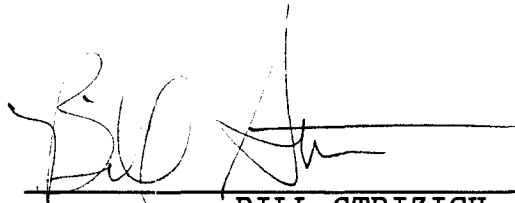
Motion/Vote: REP. BROWN MOVED HB 130 DO NOT PASS. Motion carried.

The committee adjourned for a 15 minute recess before meeting with the Attorney General.

Attorney General Marc Racicot gave the Judiciary Committee members a handout of the Department of Justice Organizational Chart. He explained each aspect of the many departments of the Attorney General's office and answered any questions from the committee. He also introduced his immediate staff.
EXHIBIT 6 & 7

ADJOURNMENT

Adjournment: 10:30 A.M


BILL STRIZICH, Chair


JEANNE DOMME, Secretary

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

January 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 129 (first reading copy -- white) do not pass .

Signed: Bill Strizich
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

January 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 130 (first reading copy -- white) do not pass as amended.

Signed: [Signature]
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "PERIODS"

Insert: "PERIOD"

Following: "FOR"

Insert: "A SECOND OR SUBSEQUENT"

2. Page 2, line 25, and page 3, line 1.

Strike: "6 months"

Insert: "90 days"

Montana Magistrates Association

EXHIBIT 1
DATE 1-15-91
HB 128

January 15, 1991 HB 128, an act to clarify the offense
of unlawful possession of an
intoxicating substance by a person
under 21.

Before the House Judiciary Committee

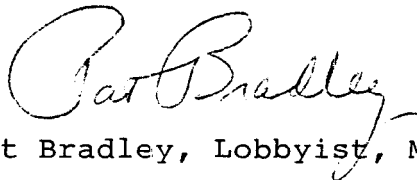
Mr. Chairman and Committee Members:

The Montana Magistrates Association is a proponent
of this legislation.

This statute as it now stands is vague and interpreted
with inconsistency across the state by prosecutors and
courts alike, probably to the disservice of minors.

This clarification of participation along with the
consuming or possessing of an intoxicating substance
will help the courts of limited jurisdiction in
adjudicating these matters.

We ask that you do pass this legislation.



Pat Bradley, Lobbyist, MMA

Jan 15, 1991 HB 129 Impounding Vehicles

EXHIBIT 2

House Judiciary Committee

DATE 1-15-91

HB 129

Testimony by Pat Bradley Mt. Magistrate Assn

MMA supports this bill with the proposed amendments to include "a designated agency" along with the law enforcement agency; and the inclusion of a forfeiture clause to dispose of unclaimed vehicles.

Pat Bradley MMA

EXHIBIT 3
DATE 1-15-91
HB 128

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-15-91 BILL NO. HB#128 NUMBER

MOTION: Rep. Brown moved Do NOT PASS

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	9	11

EXHIBIT 4
DATE 1-15-91
HB 128

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-15-91 BILL NO. HB #128 NUMBER

MOTION: Rep. Brown moved to TABLE.

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	11	9

EXHIBIT 5
DATE 1-15-91
HB 130

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-15-91 BILL NO. HB #130 NUMBER _____

MOTION: Rep. Boharski moved Do Pass AS
AMENDED.

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		—
REP. ARLENE BECKER		—
REP. WILLIAM BOHARSKI	—	
REP. DAVE BROWN		—
REP. ROBERT CLARK	—	
REP. PAULA DARKO		—
REP. BUDD GOULD		—
REP. ROYAL JOHNSON	—	
REP. VERNON KELLER	—	
REP. THOMAS LEE	—	
REP. BRUCE MEASURE		—
REP. CHARLOTTE MESSMORE	—	
REP. LINDA NELSON		—
REP. JIM RICE	—	
REP. ANGELA RUSSELL		—
REP. JESSICA STICKNEY		—
REP. HOWARD TOOLE		—
REP. TIM WHALEN		—
REP. DIANA WYATT		—
REP. BILL STRIZICH, CHAIRMAN	—	
TOTAL	8	12