

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on January 18, 1991,  
at 8:05 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 Legislative Council Staff Attorney  
Jeanne Domme, Committee Secretary

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

#### **HEARING ON HB #92 AUTHORIZE IGNITION INTERLOCK DEVICES FOR DUI OFFENSES**

#### **Presentation and Opening Statement by Sponsor:**

**REP. DOLEZAL, HOUSE DISTRICT 34,** stated that this bill deals with authorizing judges to use ignition interlock devices as a means of caution for those people who have been convicted of a DUIs. This is one of several bills put together by the Interim Sub-Committee on Adult & Juvenile Detention.

**Proponents' Testimony:**

**Jim Manning, AAA,** stated that AAA supports the concept of this bill, particularly that it just authorizes a judge to add this sentencing option to DUI offenders. He felt this might be one way that the judge can use to attack the repeat offender problem.

**Dean Roberts, Administrator - Motor Vehicle Division,** stated that the Motor Vehicle Division has a couple of concerns. The cost of the device is between \$600 and \$1000 per person who uses it and if the person cannot afford it, the money would come out of the reinstatement fees. He stated that the Division is worried about the liability aspect of the bill. "If someone where unable to get their car started in 40 below 0 weather and ended up dying, who would be responsible for such an incident?"

**Opponents' Testimony:**

**George Bacalli, Helena DUI Task Force,** stated that the bill as written, causes no problems with him. His concern is where the money will be coming from to pay for the bills. The cost of the system, for someone who is considered indigent, will come from state funds. These state funds will be taken away from the DUI Task Force, which means no additional people on the road protecting the public from drunk drivers.

**Mike Ruppert, Executive Director of Boyd Andrews Chemical Dependence Center,** stated that he is not opposed to the concept of this bill he is opposed to the funding. The funding base for the DUI Task Force is currently consisted of 50% State Grant money and 50% money coming from driving reinstatement fees. The center has been told there is a good chance the State money will be totally exhausted as we go into the next fiscal year. That leaves the Center with the money from driving reinstatement fees for its funding.

The funding is necessary to issue extra shifts for police forces to give out DUI's. "If we lose the money from driving reinstatement fees, we will have a 75 or 80% cut in the amount of things a DUI Task Force can do."

**Blake Wordal, Lewis and Clark County Commissioner,** stated that he is not opposed to the program of the bill, he is concerned about the funding. "We have looked to our local DUI Task Force to determine the funding priorities. Our funding priorities are our law enforcement and help with the legal process within the County Attorney's Office."

**Barbara Moy, Coordinator DUI Task Force Lewis and Clark County,** stated she reiterates what the other opponents stated. If a portion of the driving reinstatement fees go into the interlock devices it will effect the DUI Task Force.

**Mark Staples**, represent **Montana Tavern Association**, stated that he opposes the concept of the bill particularly in relationship to first time offenders. "I feel the penalties a first time offender goes through is sufficient. To add a \$600 to \$1000 fine from the interlock device, would be absolutely unnecessary." Those who are going to repeat offend, tend to be chemically dependant and disregard this type of measure. He feels the people that will be punished are the people that will realize the experience of that first arrest isn't something they want to get into again. He stated that this is an invasion of privacy and over-reaching by law enforcement. "If the penalties as present were not working then this would be fair. But, in respect to first offense, this is absolutely unnecessary."

**Jim Nugent**, **Missoula City Attorney**, gave written testimony in favor of HB 92. EXHIBIT 1

**Questions From Committee Members:**

**REP. MESSMORE** asked **REP. DOLEZAL** if he would consider dropping the device being place with a first offense DUI defendant? **REP. DOLEZAL** said that as the bill stands now, it gives the option to the judge to issue the device on a first offender. It isn't mandatory.

**REP. TOOLE** asked **REP. DOLEZAL** since this is a non-mandatory approach, would he have any objection if the counties could find other sources of revenue? **REP. DOLEZAL** said he would have no objections to seeking alternative funding devices.

**REP. STICKNEY** asked **REP. DOLEZAL** if he now how effective these devices have been thus far? **REP. DOLEZAL** said he didn't have any hard facts as to how substantial it is.

**REP. STRIZICH** asked **Mr. Roberts** what the purpose of the DUI reinstatement fund. **Mr. Roberts** stated that the money goes into the county DUI Task Forces. **Barbara Moy** stated that their goal is to reduce alcohol related accidents.

**REP. STRIZICH** asked **Ms. Moy** if the reinstatement funds are spent at the local level or are some of those reverted to the general fund in the Department of Highway Safety? **Ms. Moy** stated that they get two sources of funding. Federal Funding and reinstatement fees. Reinstatement fees go into local projects in our county. No DUI funds in our county go back to the Dept. of Highway Safety.

REP. MESSMORE asked Mr. Roberts if a county could buy multiple devices like this and disperse as needed for first or second offenders? Mr. Roberts said that yes they would. The device is leased from a private company. We would go out and get a bid on them from three different companies. Most companies said, unless mandatory, they couldn't afford to come into the state. It costs about \$40,000 to setup a service center. Once the judge tells a county to get this device the county would get it from a service center and get it calibrated. He stated the county would then have to go back every six weeks and have it recalibrated to make sure the accuracy is still there. He felt a county could do this, but that it would take a large county.

REP. STRIZICH asked Mr. Roberts if it is greatly different from calibrating a breathalyzer? Mr. Roberts said he wasn't sure. The big difference is having to take this device in to be serviced to make sure it hasn't been tampered with by the offender.

REP. BROWN asked Mr. Roberts if each county would have to have a service center for these devices. Mr. Roberts said, "No, a smaller county would have to go to a larger county to get the device serviced".

REP. MEASURE asked Mr. Roberts how much is the fee collected from a driving reinstatement fee? Mr. Roberts said it is \$50 for each individual. REP. MEASURE then asked if his department is responsible for distributing those funds? Mr. Roberts said no, it is the responsibility of Highway Traffic Safety. REP. MEASURE asked if he knew how they were distributed? Mr. Roberts stated he did not.

REP. MEASURE asked Mr. Rupert how much funding is received and where is it spent? Mr. Rupert said currently their total funding is \$35,000. In the past, we fund extra shifts to enforce DUI law. We have hired an intern to work with the City-County Prosecutors to help with the DUI caseload. We have funded Montana Teen Institute. We have also purchased a new video system for the jail. It is all focused towards stopping DUI or alcohol related deaths.

REP. BOHARSKI asked why the DUI task force is giving such a big outcry for these funds? Barbara Moy said they will have no Federal funds after June of this year. My salary is totally Federally Funded. We will have to resort to the funding from law enforcement.

REP. BROWN asked Ms. Moy what is the reason for the discontinuing of Federal Funds for DUI task forces? Ms. Moy said she wasn't sure.

Closing by Sponsor:

REP. DOLEZAL stated he thought the questions by the committee were valid. There are alot of unknowns about this device because we have never used one. I would not want to see this device interfere with the intentions of the DUI prevention program, but this is something that you will have to take up in your executive session. The purpose of this device is to prevent someone who has had too much to drink from getting behind the wheel and driving home and possibly taking the life of an innocent person.

**HEARING ON HB #100**  
**GARNISHMENT AND ATTACHMENT OF PROPERTY**  
**FOR FAILURE TO PAY MINOR TRAFFIC OFFENSES**

**Presentation and Opening Statement by Sponsor:**

REP. RUSSELL, HOUSE DISTRICT 99, that stated this bill deals with jail overcrowding. Many of Montana's jails are overcrowded beyond capacity. Jail overcrowding is not limited to old jails it is a problem in most all jails. She stated that this bill provides for garnishment and attachment of property for persons who fail to pay fines for minor traffic offenses, eliminating incarceration. "This means that instead of issuing a warrant for arrest, a judge would direct a sheriff to deliver and return a writ garnishing wages of that person." REP. RUSSELL stated that in a case in which an individual cannot pay this fine, that person would be required to do community work with the exceptions laid out in the bill. "The full intention of this bill is to provide some option to the jail overcrowding problem in Montana."

**Proponents' Testimony:**

Chris Christiaens, Community Service Center, Great Falls, stated that the Center supports this bill particularly in the area that addresses community service projects. He stated there are a number of people who cannot pay a fine and can do community service in lieu of sentence by the discretion of the judge.

**Opponents' Testimony:**

Pat Bradly, Lobbyist, Montana Magistrates Association, gave written testimony opposing HB #100. EXHIBIT 2

Nancy Luth, Great Falls City Judge, stated she sees many chronic minor traffic offenders. They do all the things that this bill would allow them to do. "If you take away our ability to put these people in jail, you are taking the teeth out of the Judicial System if you pass this bill. I believe this bill would back fire on you." She felt this would allow people to run amuck with minor traffic offenses and asked the committee to not take away the judges ability to impose incarceration. The amount of time it would take the court to find someone who was a crime traffic offender and determine if they have anything that is not

excluded from the garnishment statutes, means the court will end creating a deficit for the city.

Judge Brent Light, Justice of the Peace for Cascade County, stated his comments will be directed to two points. He felt that it is necessary, if the judge is to enforce anything, to have contempt power. How are we going to enforce the repayment of fines if I do not have my contempt power? It is very important to keep contempt of court if we are going to collect these fines.

My second concern is garnishment. Under this bill, if I am to collect fines on behalf of Cascade County, I must go through the garnishment execution statutes that are provided civilly. It is very difficult to garnish successfully. Most people that do not pay are usually people who do not work. If the person doesn't work, then you must serve that garnishment on them. Who will serve the process? It will be a very time consuming. If this bill is passed, you will see a drop in revenue for the smaller courts.

#### Questions From Committee Members:

REP. TOOLE stated Judge Luth that on page 2 of the bill gives you the right for incarceration. This bill doesn't do what you say it does and are complaining bitterly about. Judge Luth felt that it does do what she stated and the courts have limited revenue to hunt down the person who has a warrant out.

REP. BROOKE asked Mr. Christians if he knows how many of the communities have community service projects similar to the one in Great Falls? Mr. Christians stated that there is a very active program in Dillon and Missoula is just getting one going at the present time.

REP. MEASURE asked Ms. Bradley if the bill were amended to get rid of the garnishment procedure and instruct the courts to collect the fine by community service and not incarcerate them, would it then be acceptable to you? The last ditch would be to incarcerate them. Ms. Bradley stated that it is already a last ditch measure. She felt unsure as to whether the amendment would satisfy the Magistrates.

REP. CLARK asked REP. RUSSELL what the bill means by the word "inappropriate" in relationship to community service? REP. RUSSELL stated that when a person is talking about "inappropriate" that person would not fit into that community service program.

REP. BROWN asked Judge Light how all the costs will be covered for reducing the prison load in the jails so you can afford to renovate the jail you have? Also, how do you meet the standards that are required and where does the money come from to help meet these standards? Judge Light stated that it is a difficult balance and that the problem of overcrowding of jails is always

an important issue to her. She said she has never sentenced anybody to jail on first, second or third traffic offense. The court does have to address how the courts can pay for everything.

Closing by Sponsor:

REP. RUSSELL stated that jail overcrowding is a problem for many communities and this bill is one way that might have a small impact in helping that problem out.

HEARING ON HB 101

SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS

Presentation and Opening Statement by Sponsor:

REP. RUSSELL, HOUSE DISTRICT 99, stated that this bill deals with the problem of jail overcrowding. HB 101 gives an option for serving time of DUI offenders. She stated that she will ask the committee to remove the word "secure" from the bill in executive session because it limits the options.

Proponents' Testimony:

Chris Christiaens, Director - Great Falls Pre-Release Center, stated that this is a sentencing option that helps relieve jail overcrowding. There is a savings to the county, directly, for the time the defendant would be spending in jail. The individual has been paying that but the Center has felt that it might be discriminatory in being able to serve only those with the ability to pay. For that reason, the Pre-Release Center Board has worked out a special arrangement where an individual who might be indigent would be able to come in ahead of time and work off community service at the rate of \$4.00 for the cost of their DUI incarceration. He felt this bill was very necessary because there are judges who feel community pre-release centers do not fit the criteria for jail. Centers are more restrictive than jails. When an individual goes to a pre-release center to serve their time they can bring reading and writing material only. There is no television or radio. Mr. Christiaens stated that this is an excellent bill and asked the committee to look on it favorably.

Opponents' Testimony:

Mark Staples, Montana Taverns Association, stated that the concept of the bill is a great idea. He felt this should be an option for the defendant. The bill gives this as permissive sentence for the judge, but it might be unconstitutional and cause tremendous problems if a judge would only sentence a DUI offender to a 30 day treatment program. He felt if the defendant says he would prefer a pre-release center to incarceration in a

jail then it would be fine. The defendant should have the option if the judge has the option.

**Craig L. Hoppe, Western Vice President - Montana Magistrates Association, gave written testimony opposing HB 101. EXHIBIT 3**

Questions From Committee Members:

REP. MESSMORE asked REP. RUSSELL if she be willing to accept an amendment in regards to Mr. Staples testimony, in getting the consent of the defendant as to whether he would want to go to the pre-release center? REP. RUSSELL stated that she would be willing to discuss that in executive session.

REP. BROOKE asked Mr. Christiaens if he could describe what now exists in his program and what type of percentage of the funds does he receive? Mr. Christiaens stated that the defendant pays the \$28.50. The pre-lease center receives the entire \$28.50 to pay for meals and counseling.

CHAIRMAN STRIZICH asked Mr. Christiaens if it is understood that the counseling is required when they accept an offender into his program? Mr. Christiaens stated that it is something the center does as a benefit for anyone who is sent to the center. It is not understood.

REP. MEASURE asked Mr. Christiaens if it is the intent of the centers to house the individual that needs to be incarcerated for 6 months? Mr. Christiaens stated that pre-release centers are not a chemical dependency treatment program. He stated that if a judge wants to sentence someone to the center for 6 months and they had the ability to pay and were willing to do so, the center might work out some other type of opportunity through community service or work release. REP. MEASURE asked Mr. Christiaens if his center does chemical dependency counseling? Mr. Christiaens stated that they have counselors who talk about chemical dependency and the majority of their residents are chemically dependant. He stated that the center's counselors are not certified chemical dependency counselors but they understand the problems.

Closing by Sponsor:

REP. RUSSELL stated that this bill does give the state an option to jail overcrowding and hoped the committee could support it.

HEARING ON HB 148

ALLOW HOME ARREST IN LIEU OF INCARCERATION--MISD. & FELONY

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this is a bill dealing with home arrest and makes possible a new way of dealing with



incarceration. The method of incarceration, home arrest, is already in place in Montana. The Department of Institutions operates an intensive supervision program for certain inmates that are released from the Montana State Prison. The program consists of an electrical device that insures the inmate stays in his or her place of residence instead of in prison. REP. TOOLE handed out amendments suggested by the Department of Institutions. EXHIBIT 4

Proponents' Testimony:

James Pomeroy, Chief - Corrections Bureau, Department of Institutions, state that the Department of Institutions is in support of this bill once the amendments have been adopted by the committee. He stated that home arrest has been demonstrated to be a useful correctional tool and is growing in popularity in use throughout the country. The bill, as amended, will have some impact on the corrections division which will be revenue neutral. He felt that home arrest will impact the Department's probation and parole case loads.

Opponents' Testimony: none

Questions From Committee Members:

REP. WHALEN asked Mr. Pomeroy if the bill creates a situation where there is an increase of demand to place people in these places? Mr. Pomeroy stated that this is only an alternative and it goes along with the Department's fight to help the overcrowding problem the state is facing in our prison system.

Closing by Sponsor:

REP. TOOLE stated that this bill is a good alternative to prison sentencing and will aid in the problem of prison overcrowding. "I would urge the committee to support this bill."

EXECUTIVE ACTION ON HB 26

Motion: REP. DARKO MOVED HB 26 DO PASS.

Motion: REP. RICE moved to amend HB 26. EXHIBIT 5

Discussion:

REP. RICE stated that he had a concern about this bill during the hearing. There are different types of options that are authorized in the State. Those that are processed by the Department of Family Services, Private Adoption Agencies and those that come together without and intermediary. He stated that the later are considered private adoptions and they need to be separated from private adoption agencies. Private adoptions

make up about 80% of adoptions that go on in the state of Montana. He stated that his concern is that all the proponents were from Private Adoption Agencies and they proposed a bill that did not apply to them. He felt that they were proposing regulations that the private adoption process they were very strict and a burden to the private adoption process. "We may need to tighten up the regulations somewhat, but the extent that was proposed seems extreme."

REP. MEASURE asked if at this point the Department of Social Rehabilitation Services contract out the investigation of to a private agency and if the private agency determines counseling is necessary for any of the three individuals that enter into this agreement, they can request that?

REP. RICE stated that is correct.

REP. MEASURE stated that he liked the amendments. He stated that one of the reason the home study was done by a state agency because the state has a strong interest in these cases. He stated that he was a little leery of giving the authority to a private agency for counseling.

REP. RICE asked REP. MEASURE if he wanted the judge to make the decision in regard to counseling? REP. MEASURE said "yes". REP. RICE stated that it was his intent that the investigator would make the recommendation and the judge would make the decision to order counseling. He asked REP. MEASURE if that was agreeable to him? REP. MEASURE stated that it was and didn't realize it was in the bill.

REP. WHALEN stated that the home study is needed in a great many adoptions. The state needs to have a judge look over the home study and make the decision for counseling. He felt it was an important part of adoption.

REP. RUSSELL asked REP. RICE if the private adoptions he his referring to is primarily done by lawyers? REP. RICE stated that is correct.

Vote: Motion carried unanimously.

Motion/Vote: REP. RICE MOVED HB 26 DO PASS AS AMENDED. Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 148

Motion: REP. TOOLE MOVED HB 148 DO PASS.

Motion: REP. TOOLE moved to amend HB 148. EXHIBIT Motion carried.

Motion: REP. GOULD MOVED HB 148 DO PASS AS AMENDED.

Discussion:

CHAIRMAN STRIZICH stated that John MacMaster has some clean up amendments.

John MacMaster stated that the first amendment is in section 2 of the bill, subsection 2c. The court may set conditions which may include but doesn't say limited conditions. He stated that he changed it so say "these are the only conditions they may set". He felt REP. TOOLE should decide on page 6 whether he wants these to be the only conditions or if the court may set other conditions.

REP. TOOLE stated that the conditions should be specifically set out and implemented and that on page three to delete subsection c on lines 21 and 21.

Motion/Vote: REP. DARKO moved to amend HB 148 with the clean-up amendments explained by John MacMaster and Rep. Toole. Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 148 DO PASS AS AMENDED. Motion carried.

EXECUTIVE ACTION ON HB 72

Motion: REP. RICE MOVED HB 72 DO PASS.

Motion: REP. RICE moved to amend HB 72. EXHIBIT (get amendments from jan. 17th meeting.)

Discussion:

REP. RICE stated the amendments restricts the application of the bill to misdemeanors only.

Vote: Motion carried.

Motion/Vote: REP. RICE MOVED HB 72 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 70

Motion: REP. BROWN MOVED HB 70 DO PASS.

Motion: REP. MEASURE moved to amend HB 70 with the first amendment by the Montana Technical Council. EXHIBIT

Discussion:

**CHAIRMAN STRIZICH** stated that the first amendment by the Council amends the language referring to design standards. He stated that the council suggested to use semantics. He was concerned that program standards have a specific meaning in the realm of jail standards and he would modify it to say "environmental standards". "I would suggest that as a possible amendment to Rep. Measure's amendment."

**REP. MEASURE** stated that he would have no problem with adding that into my amendment.

Vote: Motion carried 18 to 2 with Rep's: Stickney and Boharski voting no.

Motion: **REP. STRIZICH** moved to amend HB 70 with the third amendment by the Montana Technical Council but with the removal of the state architect being involved in any approvals. **EXHIBIT**

Discussion:

**REP. STRIZICH** stated that he talked with the people proposing the bill and they agreed the state architect wants to be out of that process. He stated that he would leave the language to John MacMaster.

Vote: Motion carried unanimously.

Motion: **REP. MEASURE** moved to amend HB 70 with the last amendments by the Montana Technical Council.

Discussion:

**REP. STRIZICH** stated that he has a problem with the modification of the statement of intent. The intent may include things that are different than codes and may conflict with the building codes.

**REP. MEASURE** stated that his amendment would include that is not intended that the standards would supersede existing building codes, however, "may" add to those codes.

**REP. STRIZICH** stated that it may still conflict to a degree. Normal building codes don't address the unique situation where a person's freedom of movement is being removed. He felt that the committee is running into problems with this amendment and he would resist the motion as far as the statement of intent.

Motion/Vote: **REP. MEASURE MADE A SUBSTITUTE MOTION** to amend HB 70 to adopt the definition of programs currently. Motion carried 17 to 3 with Rep's Nelson, Boharski and Clark voting no.

Motion: **REP. STRIZICH MOVED HB 70 DO PASS AS AMENDED.**

Motion: REP. BOHARSKI moved to amend HB 70 by "shall" to "may" in section 12.

Discussion:

REP. MEASURE inquired as to whether there would be a fiscal impact to that?

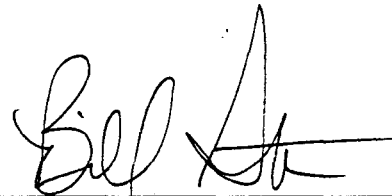
REP. STRIZICH stated that he felt it doesn't enhance or detract from the obvious fiscal impact of this bill.

Vote: Motion carried 18 to 2 with Rep's: Measure and Nelson voting no.

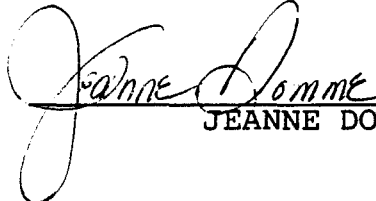
Motion/Vote: REP. BOHARSKI MOVED HB 70 DO PASS AS AMENDED.  
Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:10 pm



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 18, 1991

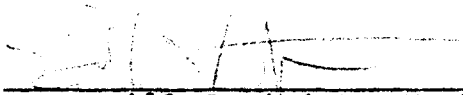
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
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 21, 1991

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Mr. Speaker: We, the committee on Judiciary report that House Bill 26 (first reading copy -- white) do pass as amended.

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 5 through 8.

Strike: "REQUIRING" on line 5 through "HOME;" on line 8

2. Title, lines 11 through 14.

Strike: "REQUIRING" on line 11 through "PARENTS;" on line 14

3. Page 3, line 12.

Strike: "as required by 40-8-122"

4. Page 3, line 14.

Following: "state"

Insert: "whether counseling for the birth parents is recommended and"

5. Page 4, line 1.

Following: "and"

Insert: "and"

6. Page 4, lines 2 and 3.

Strike: lines 2 and 3 in their entirety

7. Page 4, line 4.

Strike: "(f)"

Insert: "(e)"

8. Page 4, line 24.

Strike: "(a)"

Renumber: subsequent subsections (i) through (iii) as (a) through (c).

9. Page 5, line 6

Strike: "or home study"

10. Page 5, line 7.  
Strike: "[section 2]"  
Insert: "subsection (3)"

11. Page 5, line 8.  
Following: "received"  
Insert: "any"

12. Page 5, lines 8 and 9.  
Strike: "in accordance" on line 8 through "[section 3]" on line 9  
Insert: "recommended by the report required by subsection (3) and ordered by the court"

13. Page 5, line 10 through line 16  
Strike: subsection (b) in its entirety

14. Page 6, line 6 through page 8, line 4.  
Strike: sections 2 and 3 of the bill in their entirety  
Renumber: subsequent sections

15. Page 9, line 2.  
Page 10, line 11.  
Strike: "or home study"

16. Page 11, line 21 through page 12, line 1.  
Strike: subsection (9) in its entirety  
Renumber: subsequent subsections

17. Page 12, line 13.  
Strike: "4"  
Insert: "2"

18. Page 12, line 16.  
Strike: "Sections"  
Insert: "Section"  
Strike: "through 4"  
Strike: "are"  
Insert: "is"

19. Page 12, line 19.  
Strike: "sections"  
Insert: "section"  
Strike: "through 4"




11:30 AM  
121-77  
TOD

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

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Mr. Speaker: We, the committee on Judiciary report that House Bill 148 (first reading copy -- white) do pass as amended .

Signed: 

Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 17.

Strike: "Approved monitoring"

Insert: "Monitoring"

2. Page 1, lines 18 and 19.

Following: "apparatus" on line 18

Strike: remainder of line 18 through "institutions," on line 19

3. Page 1, line 22 through page 2, line 2.

Following: "intrusive." on line 22

Strike: remainder of line 22 through "home." on page 2, line 2

4. Page 2, line 5.

Following: "area"

Insert: "approved by the supervising authority"

5. Page 2, lines 5 through 8.

Following: "area."

Strike: remainder of line 5 through "." on line 8

6. Page 2, line 15.

Following: "means"

Insert: ", in the case of an adult felon,"

7. Page 2, lines 15 and 16.

Following: "means the" on line 15

Strike: remainder of line 15 through "bureau of the" on line 16

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8. Page 2, line 17.

Following: "institutions"

Insert: "; in the case of an adult misdemeanor, a court-approved entity other than the corrections division of the department of institutions;"

9. Page 3, lines 15 through 17.

Following: "(a)" on line 15

Strike: remainder of line 15 through "officer;" on line 17

Insert: "refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral."

10. Page 3, lines 20 and 21.

Strike: subsection (c) in its entirety

Renumber: subsequent subsections

11. Page 3, line 22 through page 4, line 1.

Following: "(d)" on line 22

Strike: remainder of line 22 through "determines" on page 4, line 1

Insert: "order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison"

12. Page 4, line 7.

Strike: "reimprisonment"

Insert: "imprisonment"

13. Page 4, line 23.

Strike: "supervising authority"

Insert: "clerk of the sentencing court"

14. Page 4, line 25 through page 5, line 1.

Following: "(1)" on line 25

Strike: remainder of line 25 through "include" on page 5, line 1

Insert: "A home arrestee must be confined to his home under conditions imposed by the sentencing court, which may include but are not limited to"

15. Page 5, line 13.

Strike: "or"

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Page 3 of 4

16. Page 5, line 15.

Strike: "."

Insert: "; or"

17. Page 5, lines 16 and 17.

Strike: subsection (b) in its entirety

18. Page 5, line 18.

Strike: "(c)"

Insert: "(vii)"

Strike: "The home arrestee shall conform"

Insert: "conforming"

19. Page 5, line 22.

Strike: "(d)"

Insert: "(b)"

20. Page 5, line 24.

Strike: "(e)"

Insert: "(c)"

21. Page 6, line 2.

Strike: "(f)"

Insert: "(d)"

22. Page 6, line 5.

Strike: "(g)"

Insert: "(e)"

Strike: "Any other reasonable conditions may be"

Insert: "Conditions"

23. Page 6, line 6.

Strike: ", including"

Insert: "may include"

24. Page 6, line 16.

Following: line 15

Insert: "(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to prosecution under 45-7-306."

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Page 4 of 4

25. Page 22, lines 14, 15, 22, and 24.  
Page 23, line 10.  
Following: "~~ja~~il"  
Insert: "imprisonment"

26. Page 22, line 17.  
Page 23, line 1.  
Page 25, line 22.  
Page 26, line 2.  
Strike: "Except as provided in subsection (7), on"  
Insert: "On"

27. Page 22, lines 21 and 22.  
Strike: "Except" on line 21 through "3" on line 22  
Insert: "Three"

28. Page 23, lines 6 and 7.  
Strike: "Except" on line 6 through "notwithstanding" on line 7  
Insert: "Notwithstanding"

29. Page 25, line 13.  
Page 27, line 13.  
Following: "served"  
Insert: "by imprisonment"

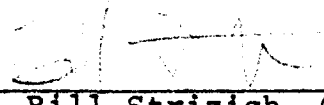
30. Page 25, lines 17 and 18.  
Strike: "Except" on line 17 through "a" on line 18  
Insert: "A"

HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 72 (first reading copy -- white) do pass as amended.

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 18.

Page 8, lines 19 and 21.

Strike: "6"

Insert: "5"

2. Page 1, line 21.

Following: "defendant"

Insert: "charged with a misdemeanor"

3. Page 4, line 20.

Following: "custody"

Insert: "on misdemeanor charges"

4. Page 5, line 1.

Strike: "Except as provided in [section 6], a"

Insert: "A"

Following: "defendant"

Insert: "charged with a misdemeanor"

5. Page 5, line 13 through line 23 of page 6.

Strike: section 6 of the bill in its entirety

Renumber: subsequent sections

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 70 (first reading copy -- white) do pass as amended .

Signed: Bill Strizich  
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 7.

Strike: "DESIGN"

Insert: "ENVIRONMENT"

2. Page 1, line 15.

Page 2, lines 15 and 24.

Page 10, line 22.

Strike: "design"

Insert: "environmental"

3. Page 1, line 21.

Following: "minimum"

Insert: "environmental standards and"

Strike: "of"

4. Page 1, line 22.

Strike: "design,"

Insert: "for the"

Following: "maintenance"

Strike: ", "

Strike: "for"

Insert: "of"

5. Page 1, line 24.

Page 4, line 22.

Page 5, line 5.

Page 7, lines 21 and 22.

Page 10, line 20.

Strike: "design"

Insert: "environment"

6. Page 2, line 16.

Strike: "design"

Insert: "environmental plan"

7. Page 2, line 18.

Following: "architect,"

Insert: "and"

8. Page 2, lines 18 and 19.

Strike: ", and" on line 18 through "architect" on line 19

9. Page 2, line 25.

Following: "the"

Strike: "design"

Insert: "environmental"

Following: "because"

Strike: "design"

10. Page 3, line 1.

Strike: "involves"

Insert: "environmental standards involve"

11. Page 3, line 8.

Strike: "standards of design, maintenance,"

Insert: "environmental standards and standards of maintenance"

12. Page 3, line 20

Following: line 19

Insert: "(3) "Environmental standards" means specific standards  
for the jail or lockup environment, including but not  
limited to the number of square feet per inmate and the air  
temperature in cells and other rooms."

Renumber: subsequent subsections

13. Page 7, line 20.

Strike: "Design"

Insert: "Environmental"

14. Page 11, line 7.

Strike: "may"

Insert: "shall"



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614

EXHIBIT 1

DATE 1-18-91

91-022

HB 92

January 17, 1991

House Judiciary Committee Members  
Capitol Station  
Helena, Montana 59620

RE: OPPOSITION TO HB-92 PERTAINING TO IGNITION INTERLOCK DEVICES  
FOR DUI OFFENDERS

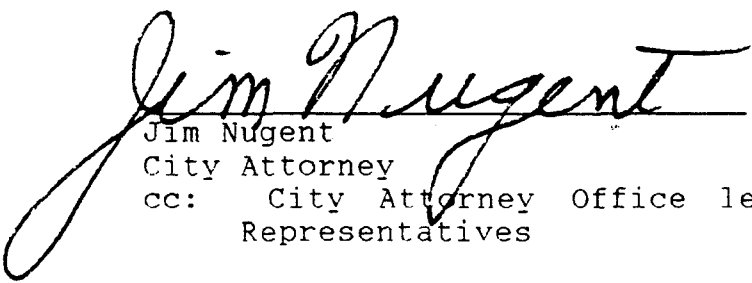
Honorable House Judiciary Members:

The purpose of this letter is to express concern and opposition to House Bill-92 pertaining to ignition interlock devices for driving under the influence of alcohol offenders for the reason that the funding for indigent ignition interlock devices on motor vehicles will be utilizing and competing for the same funds that fund programs to prevent or reduce drinking and driving a motor vehicle while under the influence of alcohol.

Utilizing these funds for indigent interlock devices on motor vehicles will cause a reduction in availability of funds for DUI task force programs and special DUI staffing and sobriety checkpoints.

Further, the effectiveness of an ignition interlock device is dubious at best. The offender could utilize a different motor vehicle, have a sober friend blow into it, disconnect it once the car is operating, consume alcohol while sitting in or operating the motor vehicle and as a defense to a DUI charge allege that the device indicated it was okay for him/her to drive, etc.

Yours truly,

  
Jim Nugent

City Attorney

cc: City Attorney Office legislation file; Missoula County  
Representatives



# Montana Magistrates Association

HB 100 January 18, 1991 In the House Judiciary Committee

Testimony by Pat Bradley, Lobbyist for the MMA

Mr. Chairman and Committee Members:

The Montana Magistrates Association opposes this bill.

In Montana persons held for misdemeanor traffic offenses account for 10% of all inmates in jail (page 65, Adult & Juvenile Detention Report) Approximately 8% of all persons in Montana jails are incarcerated for warrant arrests (pg. 67 A & D Report) for disobeying a law or lawful order. But more than 107,000 Highway Patrol citations and some 18,000 sheriff citations were written in Montana last year.

It is a safe guess <sup>a portion</sup> that ~~many~~ of these citations would fall under the penalty statutes you are considering in HB 100, which include speed restrictions, basic rule, special speed restrictions such as school and urban zones, passing vehicles, no passing zones, following too closely, turning and yield and stop sign violations, etc. The other penalties address vehicle equipment, proper lights, brakes, mufflers and so forth.

We contend that Justices of the Peace and City Judges rarely, if ever, incarcerate people for convictions of these types of offenses, on 1st to 3rd convictions. I never once did in my 14 years on the bench.

If traffic misdemeanants in jail account for 10% of the population, we contend they are chronic or repeat offenders who at some point become a risk to the public safety. If those arrested on warrants account for 8%, we contend they have disobeyed a lawful court order after having been given previous courtesy by the court. These are people for whom the jail option is necessary or they simply walk away.

Montana's correctional policy in Sec. 46-18-101 states that the legislature finds that individuals are responsible and must be held accountable for their actions and that punishment must be certain, timely and consistent. Defendants should be dealt with in accordance with their individual characteristics. Justice and city courts follow this policy. Jail options are very useful for chronic offenders when used as suspended sentences, such as in altering behavior of ~~wild young~~ drivers; in deferred sentences, such as <sup>perhaps</sup> giving a truck driver with a 3rd offense speed ticket a chance to avoid points on his DL; as an opportunity to provide restitution to a traffic victim; and in many cases the only recourse judges can use to collect fines or enforce time-pay agreements, <sup>delinquent</sup>. But most importantly, for chronic offenders, the possibility of jail protects the public interest.

We believe jails are not crowded by traffic offenders who should not be there, but by traffic offenders who abuse the very simple system.

We ask that you consider these points in making your decision on HB 100.

Post Script: Judge Wallace Jewell appeared before the

Pat Bradley MMA A

The Honorable Bill Strizich, Chairman, Judiciary Committee:

Re: HB 100 and HB 101

The Honorable Strizich and Respected Members of the Judiciary Committee:

As the Western Vice President of the Montana Magistrates Association, I would like to address some of our concerns regarding HB 100 and HB 101. I have spoken with a number of the judges in the Western District and we feel that jail is a useful tool:

- 1) We normally use the threat of jail as a last resort in an effort to assure compliance with the payment of a fine.
- 2) We use it as leverage for compliance for additional conditions that we may impose in addition to a fine.
- 3) We some times use jail as an option in sentencing, ie, community service or time in jail.

We feel if we lose this tool, our effectiveness as judges will be greatly diminished and our ability to enforce the traffic laws of the State of Montana will suffer as well as the general funds of the counties and cities we serve.

The Legislature has already provided civil procedures to collect money owed on fines. Title 46 of the Criminal Procedure, Part 6, Procedure After Sentencing, states in:

46-18-601. Judgment in writing - lien. (1) The judgment shall be reduced to writing and signed by the judge.  
(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

The recently enacted Montana Justice and City Court Rules of Civil Procedure, Rule 23 (B) provides for execution "At any time within 6 years from the entry of judgment or within the time extended pursuant to 25-13-102,..."

We feel that we have adequate civil remedies to collect on fines owed the courts. We do not want to lose the tool that makes the collection of fines and the compliance with court orders effective. We do not want to bog down an already busy docket with additional civil procedures where none are needed.

Other than the mandatory jail time, statutorily required for certain traffic offenses; ie, DUI's, driving while revoked and or suspended, etc. very few of the traffic offenders spend any time in jail. It is the knowledge that jail is a possibility for those who don't pay their fines, obey additional sentencing

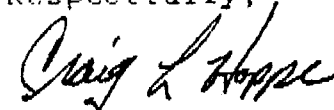
conditions or comply with community service that the system works as well as it does.

We realize that perhaps there are a few judges who seem to be a little more heavy handed in the issuance of jail time. I can not second guess these judges or their motives, some times they may be justified and some times not. The Montana Magistrates Association has taken great strides in an effort to standardize justice across the State of Montana. Our members have worked hard to establish a bond schedule that is uniform across the State. And from that schedule there has evolved a standardization of fine and sentences. It is the judge's duty in handing down any sentence to take into consideration certain criteria in formulating a meaningful sentence: 1) Is this the defendant's first, second, offense? 2) Is there by statute a minimum sentence required? 3) Is the defendant a juvenile? 4) Is the defendant or will the defendant be able to pay a fine? 5) Is there some alternative sentencing that will bring about a desired change in the defendant rather than a jail sentence? 6) Is there an obligation by the court to protect society from continued actions by the defendant that can be best served by a jail sentence?

These are just a few of the factors that we as judges weigh in fitting a sentence to an individual and the offense. To take away the use of a jail sentence would cause great harm to the effectiveness in the courts of the State of Montana, not only in their abilities to collect fines, but in compliance with additional conditions of sentencing or alternative sentencing involving community service or work release programs.

I would like to thank you for your time and consideration in this matter before us today.

Respectfully,



Craig L. Hoppe

Western Vice President, Montana Magistrates Association

Amendments to House Bill No. 148  
White Reading Copy

Requested by Representative Toole  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 17, 1991

1. Page 1, line 17.

Strike: "Approved monitoring"

Insert: "Monitoring"

2. Page 1, lines 18 and 19.

Following: "apparatus" on line 18

Strike: remainder of line 18 through "institutions," on line 19

3. Page 1, line 22 through page 2, line 2.

Following: "intrusive." on line 22

Strike: remainder of line 22 through "home." on page 2, line 2

4. Page 2, line 5.

Following: "area"

Insert: "approved by the supervising authority"

5. Page 2, lines 5 through 8.

Following: "area."

Strike: remainder of line 5 through "." on line 8

6. Page 2, line 15.

Following: "means"

Insert: ", in the case of an adult felon,"

7. Page 2, lines 15 and 16.

Following: "means the" on line 15

Strike: remainder of line 15 through "bureau of the" on line 16

8. Page 2, line 17.

Following: "institutions"

Insert: "; in the case of an adult misdemeanor, a court-approved  
entity other than the corrections division of the department  
of institutions;"

9. Page 3, lines 15 through 17.

Following: "(a)" on line 15

Strike: remainder of line 15 through "officer" on line 17

Insert: "refer the case to the appropriate supervising authority"

for approval and acceptance into the home arrest program.  
The supervising authority may accept or reject any  
referral."

10. Page 3, line 22 through page 4, line 1.

Following: "(d)" on line 22

Strike: remainder of line 22 through "determines" on page 4, line  
1

Insert: "order a term of home arrest in lieu of a sentence of  
imprisonment in the county jail or state prison"

11. Page 4, line 7.

Strike: "reimprisonment"

Insert: "imprisonment"

12. Page 4, line 23.

Strike: "supervising authority"

Insert: "clerk of the sentencing court"

13. Page 4, line 25 through page 5, line 1.

Following: "(1)" on line 25

Strike: remainder of line 25 through "include" on page 5, line 1

Insert: "A home arrestee must be confined to his home under  
conditions imposed by the sentencing court, which may  
include but are not limited to"

14. Page 5, line 13.

Strike: "or"

15. Page 5, line 15.

Strike: "."

Insert: "; or"

16. Page 5, lines 16 and 17.

Strike: subsection (b) in its entirety

17. Page 5, line 18.

Strike: "(c)"

Insert: "(vii)"

Strike: "The home arrestee shall conform"

Insert: "conforming"

18. Page 5, line 22.

Strike: "(d)"

Insert: "(b)"

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19. Page 5, line 24.

Strike: "(e)"

Insert: "(c)"

20. Page 6, line 2.

Strike: "(f)"

Insert: "(d)"

21. Page 6, line 5.

Strike: "(g)"

Insert: "(e)"

Strike: "Any other reasonable conditions may be"

Insert: "Conditions"

22. Page 6, line 6.

Strike: ", including"

Insert: "may include"

23. Page 6, line 16.

Following: line 15

Insert: "(3) Violation of the provisions of any condition of  
home arrest may subject the home arrestee to prosecution  
under 45-7-306."

*Proposed by Rep. Rico*

HOUSE BILL NO. 26

INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE, NONAGENCY ADOPTIONS; ~~REQUIRING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING THE REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE ADOPTIVE HOME; REQUIRING EXECUTION OF RELINQUISHMENT OR PARENTAL RIGHTS BY A BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE IN THE PRESENCE OF A DISTRICT COURT JUDGE AND THE PROSPECTIVE ADOPTIVE PARENTS; INCREASING THE MAXIMUM PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-8-109, MCA, is amended to read:

"40-8-109. Placement for adoption by parents parent -- adoption by nonrelative -- requirements before

1 relinquishment of parental rights. (1) No A parent may make  
2 a placement of who proposes to place a child for adoption  
3 with an individual who is not a the child's stepparent or a  
4 member of the child's extended family unless--the--parent  
5 files shall file with the district court for the county in  
6 which the prospective adoptive parent or the parent making  
7 the placement resides:  
8 (a) a notice of parental placement; and  
9 (b) a relinquishment of parental rights to the  
10 prospective adoptive parents, executed voluntarily and in  
11 accordance with 40-6-335(2)-through-(4) subsection (8); and  
12 (c) the report of agreements and disbursements required  
13 under 40-8-136.  
14 (2) (a) The---notice--of--parental--placement--and--the  
15 relinquishment--shall--be--filed--prior--to--a--parent's--placement  
16 of--the--child--with--an--individual--who--intends--to--adopt--the  
17 child. The notice of parental placement shall must be signed  
18 by the parent making the placement and must contain the  
19 following information:  
20 (a)(i) the name and address of each birth parent, if  
21 known, and if unknown, the steps taken to ascertain the  
22 whereabouts of the parent or parents;  
23 (b)(ii) the name and address of each prospective  
24 adoptive parent;  
25 (c)(iii) the name and address or expected date and

1 place of birth of the child; and

2 ~~(d)(iv)~~ the name and address of counsel, guardian ad  
3 litem, or other representative, if any, for each of the  
4 parties listed in ~~(e)~~ through ~~(e)~~ of ~~subsection~~ ~~(2)~~  
5 subsections (2)(a)(i) through (2)(a)(iii).

6 (b) The district court shall provide a copy of the  
7 notice to the parent making the placement.

8 (3) Upon receipt of a notice of parental placement and  
9 ~~a~~ ~~relinquishment~~, the court shall require that the  
10 department examine the child and conduct interviews with the  
11 birth parents and prospective adoptive parents to conduct an  
12 investigation ~~as required by 40-8-136~~ and report to the  
13 court within 30 days but not earlier than 5--days 72 hours  
14 whether counseling for the birth parents is  
15 after the birth of the child. The report must state whether  
16 the following requirements for placement have been met: and  
17 recommended

16 (a) that the decision to place was voluntarily made by  
17 the birth parents;

18 (b) that the department has no temporary authority to  
19 investigate or provide protective services to the family  
20 under 41-3-402;

21 (c) that the birth parents or, prospective adoptive  
22 parents, and their representatives have provided the court  
23 with the report required by 40-8-136;

24 (d) that the prospective adoptive parents have been  
25 provided a medical and social history of the child and birth

1 parents; and and

2 ~~(e) that the requirements of sections 2 and 3 have~~

3 ~~been met and~~

4 ~~(e)(A)~~ that the proposed placement is in the child's  
5 best interest.

6 (4) The department may contract with licensed social  
7 workers and licensed child-placing agencies to conduct the  
8 investigations and prepare the report to the court ordered  
9 pursuant to subsection (3).

10 (5) The department may charge the prospective adoptive  
11 parents a fee, commensurate with costs, for the  
12 investigation and report.

13 (6) Within 45 days of filing of the notice of parental  
14 placement ~~and the relinquishment and the report required by~~  
15 40-8-136, the court shall schedule a hearing to consider the  
16 proposed adoptive placement.

17 (7) (a) At least 5 days' notice of the time and place  
18 of the hearing must be given to the birth parents, the  
19 prospective adoptive parents, any named guardian ad litem,  
20 and the department.

21 (b) The hearing ~~shall~~ be is closed to all persons  
22 except those persons entitled to notice and their  
23 representatives or counsel.

24 ~~(8) A parent may not execute a relinquishment of~~  
25 parental rights to an individual who is not the child's



recommended by the report  
required by subsection (3) and  
ordered by the court

1 stepparent or a member of the child's extended family until  
2 the following criteria have been met:

(3) (a) ~~the~~ not less than 72 hours has elapsed since the birth  
4 of the child, if the person relinquishing parental rights is  
5 the child's birth mother;

(6) ~~the~~ investigation ~~or home study~~ required by <sup>subsection (3)</sup>  
7 subsection (1) has been performed; and

(8) ~~the~~ parent has received counseling <sup>in accordance</sup>  
9 with subsection (3).

10 ~~(b) A relinquishment of parental rights by a birth~~  
11 ~~mother under subsection (8) must be executed in district~~  
12 ~~court in the presence of the district court judge and the~~  
13 ~~prospective adoptive parents. A relinquishment under~~  
14 ~~subsection (8) by any person other than a birth mother may~~  
15 ~~be executed before a notary public. A relinquishment must~~  
16 ~~comply with 40-8-125(3) and (4).~~

17 (8)(9) If the court finds that all requirements for  
18 adoptive placement have been met, the court may issue an  
19 order or schedule a hearing for the purpose of terminating  
20 parental rights and granting temporary custody to the  
21 prospective adoptive parents or it may issue a final decree  
22 if a petition for adoption has been filed under 40-8-121.  
23 The prospective adoptive parents must shall file their  
24 petition to adopt within 30 days of the order.

25 (9)(10) If the court finds that all requirements for the

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1 adoptive placement have not been met, the court may issue  
2 any order appropriate to protect the child.  
3 (11) The court shall send a copy of the final  
4 determination made by the court under this section to the  
5 central office of the department."

6 NEW SECTION. Section 2. Placement for adoption by  
7 parent -- adoption by nonrelative -- preplacement  
8 investigation or home study required of prospective adoptive  
9 parent. (1) A prospective adoptive parent who wishes to  
10 adopt a child under 46-8-109 shall initiate the nonagency  
11 adoption process by requesting an investigation or home  
12 study by the department or a licensed child-placing agency.  
13 During the investigation or home study process, the  
14 department or agency shall provide the prospective adoptive  
15 parent information regarding the nonagency adoption process  
16 and a copy of (section 3) and this section.

(2) The prospective adoptive parent and the home of the  
18 prospective adoptive parent must be studied and evaluated  
19 according to the department's or child-placing agency's  
20 standards for placement of a child.

(3) The department or child-placing agency that  
22 conducts the investigation or home study shall prepare a  
23 written report containing the results of the investigation  
24 or home study. The report must be attached to and made a  
25 part of the report required by 40-8-109(3).

NEW SECTION. Section 3. Placement for adoption by

parent -- adoption by nonrelative -- birth mother counseling required. (1) In an adoption subject to 46-8-109, counseling of the birth mother is required. Counseling must also be offered to the birth father, if he is known and available.

(2) Counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of alternatives to adoption that are available to birth parents to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section;

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption; and

(d) the completion of birth parent social and medical history forms.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be

completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(2).

NEW SECTION. Section 4. Placement for adoption by

parent -- adoption by relative -- requirements. A parent may relinquish parental rights for the purposes of adoption of a child to the child's stepparent or a member of the child's extended family. The relinquishment must be executed voluntarily and in accordance with 40-6-135(2) through (4). The relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

Section 5. Section 40-8-135, MCA, is amended to read:

"40-8-135. Adoption placement for adoption by parent -- adoption by nonrelative -- fees -- violation -- penalty.

(1) Reasonable adoption fees may be charged by the child's birth--parent,--birth--parents,--or--guardian paid by the adoptive parent for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

1 (e) foster care; or

2 (f) investigation ~~on home study~~;

3 (g) counseling; or

4 (h) other reasonable costs.

5 (2) A person who knowingly offers, gives, agrees to  
6 give, solicits, accepts, or agrees to accept from another  
7 person anything of value greater than that allowed under  
8 subsection (1) commits the offense of paying or charging  
9 excessive adoption process fees.

10 (3) A person convicted of the offense of paying or  
11 charging excessive adoption process fees may be fined an  
12 amount not to exceed \$17,000 \$10,000."

13 Section 40-8-136, MCA, is amended to read:

14 "40-8-136. Report Placement for adoption by parent --  
15 adoption by nonrelative -- report of agreements and  
16 disbursements. (1) Prior to a hearing under 40-8-109, the  
17 birth parents or, prospective adoptive parents, and their  
18 representatives shall file with the court a report of  
19 agreements and disbursements, and they shall serve a copy of  
20 the report on the central office of the department.

21 (2) The report must contain:

22 (a) all oral and written agreements between the parties  
23 that relate to the future conduct of a party with respect to  
24 the child. If an oral agreement is reported, the substance  
25 of the agreement must be contained in the report and a copy

1 of the report must be served on each party to the oral  
2 agreement. Copies of all written agreements must be attached  
3 to the report.

4 (b) a full accounting of all disbursements of anything  
5 of value made or agreed to be made by or on behalf of the  
6 identified adoptive parents in connection with proceedings  
7 under this chapter. This accounting must include any  
8 expenses related to:

9 (i) the birth of the child;

10 (ii) placement of the child with the identified adoptive  
11 parents, including an investigation ~~on home study~~;

12 (iii) counseling or medical or hospital care received by  
13 the birth parent or child prior to or after the child's  
14 birth; and

15 (iv) services relating to the petition for adoption or  
16 the placement of the child that were received by or on  
17 behalf of a birth parent or any other person.

18 (c) a statement by each person furnishing information  
19 contained in the report, attesting to the correctness and  
20 truthfulness of the information furnished by that person."

21 Section 40-8-103, MCA, is amended to read:

22 "40-8-103. Definitions. As used in this chapter, unless  
23 the context otherwise requires the following definitions  
24 apply:

25 (1) "Adoption" means the act of creating the legal

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1 relationship between parent and child when it does not exist  
2 genetically.

3 (2) "Adoptive parent" means an adult who has become the  
4 mother or father of a child through the legal process of  
5 adoption.

6 (3) "Agency" means a public or voluntary agency  
7 licensed by any jurisdiction within the United States and  
8 expressly empowered to place children as a preliminary to a  
9 possible adoption.

10 (4) "Birth parent" means the mother or father of  
11 genetic origin of a child but does not include a putative  
12 father of a child.

13 (5) "Child" means any person under 18 years of age.

14 (6) "Court" means a Montana district court or a tribal  
15 court of any Montana Indian reservation.

16 (7) "Department" means the department of family  
17 services, as established and provided for in 2-15-2401.

18 (8) "Extended family member" means an adult who is the  
19 child's grandparent, aunt or uncle, or brother or sister,  
20 niece-or-nephew, or first-cousin.

21 ~~(9) "Home study" means the process of assisting the~~  
22 ~~prospective adoptive parent or family to assess its own~~  
23 ~~readiness to adopt and a determination by the department or~~  
24 ~~a licensed child-placing agency of the compliance of the~~  
25 ~~parent or family and its residence with applicable~~

# standards

2 +9+(10) "Parent" means the birth or adoptive mother or  
3 the birth, adoptive, or legal father whose parental rights  
4 have not been terminated.

5 +10+(11) "Placement for adoption" means the transfer of  
6 physical custody of a child with respect to whom all  
7 parental rights have been terminated and who is otherwise  
8 legally free for adoption to a person who intends to adopt  
9 the child.

10 +11+(12) "Relinquishment" means the informed and  
11 voluntary release in writing of all parental rights with  
12 respect to a child by a parent to an agency or individual  
13 pursuant to 40-6-135, or 40-8-109, or [section 4], whichever  
14 is applicable."

## NEW SECTION. Section 6. Codification instruction.

15 (Section 2 through 4) <sup>is</sup> intended to be codified as an  
16 integral part of Title 40, chapter 8, part 1, and the  
17 provisions of Title 40, chapter 8, part 1, apply to  
18 [section 2 through 4].

19 NEW SECTION. Section 7. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.  
25

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NEW SECTION. Section 1A Effective date. [This act] is

effective July 1, 1991.

-End-

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