

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 8, 1991,
at 8:13 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (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 SB 57

ALLOW CERTAIN CRIMINAL PROC. TO BE CONDUCTED BY TELECOMMUNICATION

Presentation and Opening Statement by Sponsor:

SEN. YELLOWTAIL, SENATE DISTRICT 50, stated that SB 57 relates to audio/visual court appearances. He stated that the bill provides that the defendants procedural court appearances be done by audio/visual video communication for the initial appearance, the bail section, presentation of evidence and the arraignment. He stated that the bill requires that a simultaneous two-way communication must be provided, both audio and visual, between the judge and the defendant. The bill guarantees that the

defendant and his or her council may communicate privately.

Proponents' Testimony:

Dan Walker, U.S. West Communications, stated that U.S. West Communications supports the bill as amended.

Ed Hall, Administrator - Montana Board of Crime Control, stated that the Board of Crime Control supports SB 57 and he felt the bill was worthy of the committee's support.

Cal Cumin, Yellowstone County Commissioner, stated that he is in support of SB 57.

Pat Bradly, Montana Magistrates Association, stated that her association is in support of SB 57.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

SEN. YELLOWTAIL stated that SB 57 is a simple bill and he asked the committee for a do concur.

HEARING ON HB 319 & 320

PROVIDE STATE AID FOR LOCAL JAILS, USING GEN. OBLIG. BONDS

PROVIDE STATE AID FOR LOCAL JAILS

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that HB 319 and 320 create a program for regional jails and that the funding mechanism is the difference between the two bills. HB 319 uses general obligation funds as where HB 320 uses local revenue funds.

He stated that the concept of regional jails is set forth in section 2 of both bills which is a new section. The state provides grants for planning, construction and renovation of regional jails. He stated that the State provides the grants for these facilities. Regional jails would be the facility where state prison inmates would be placed with reimbursement costs from the state. He stated that the committee will need to decide which funding mechanism they prefer and send the bill to the floor.

Proponents' Testimony:

Ed Hall, Administrator - Montana Board of Crime Control, stated that both of the bills are very similar that set up a program for state aid for regional jails. The legislative council took a

survey of the jails in Montana. **EXHIBIT 1.** He felt that the survey shows how important jail renovation and rebuilding is in the state of Montana. He stated that a large percentage of the jails are in poor condition and do not have good facilities for housing inmates. These jails need assistance in bringing the facilities up to current jail standards to provide a safe environment to house inmates.

The Grant Aid program deals with the Board of Crime Control. He stated that the program is designed to give, to regional facilities, the resource assistance to bring their jails up to current standards through reconstruction or renovation. He stated that the bill requires local governments, when going into a regional situation, fund 75% of the grant and 25% will come from the state. Another funding source would create a 1 time bond that would take 20 years of debt service to pay it off. The funding of regional jails would be decided by a board of 18 members.

Mr. Hall stated that the Board of Crime Control had one amendment they would suggest to the committee which would be on page 4, line 22 the words "probation or" be deleted because probation, even though are supervised, are not under the control of the courts.

J. Michael O'Hara, Missoula County Sheriff, stated that the new jail in Missoula has projected a cost of 12 million dollars. He stated that the issue of paying for parole violation, life servers, and the probation violators has been touchy in Missoula. He stated that he concurs with the amendment proposed by the Board of Crime Control.

Dan Russell, Administrator - Divisions of Corrections, stated that in many respects HB 319 and HB 320 are consistent with the directions of the intentions of both the Department of Criminal Justice and Corrections Advisory Council. He felt that the bill operates the use of jail and helps parole violators as inmates as the Department of Institutes expense. It requests funding for these purposes and these requests have been preliminarily approved by the Appropriations sub-committee. Mr. Russell stated that the only part of the bill that he isn't free to address is the funding mechanism for regional jails.

Tom Harrison, Montana Sheriff's and Peace Officers Association, stated that the association would like to request the committees consideration of one amendment that would pay medical costs. He felt that the problem foreseen is if the county of the jail facility is going to have to pick up the tab for those medical expenses. He stated that the practical problem of leaving medical expenses unaddressed a real stumbling block is in the way of an agreement.

Pat Bradly, Montana Magistrates Association, gave written testimony in favor of HB 319 and HB 320. **EXHIBIT 2**

Ron Johnson, Justice of the Peace - Roosevelt County, City Judge - Wolf Point, gave written testimony in favor of HB 319 and HB 320. EXHIBIT 3

Nancy Sabo, Montana Magistrates Association, gave written testimony in favor of HB 319 and HB 320. EXHIBIT 4

Opponents' Testimony: none

Questions From Committee Members:

REP. BROOKE asked Mr. Hall if the term "jail" had been changed to "detention center" and recently it was returned to "jail"? Mr. Hall stated that at one point the word "jail" was stricken and replaced by "detention center". He stated that the word "detention center" was selected by people who worked in the arena of operating these centers to try and look at themselves in a more professional manner. He stated that it is still detention center.

REP. JOHNSON asked Mr. Hall why have a 10 million dollar bond that would never be used to cover any of the facility costs? Mr. Hall stated that the bill requires that amount be matched 75% by local governments.

REP. BOHARSKI asked Dan Russell why the decision was made that the state will not cover medical costs? Mr. Russell stated that the state did not make that decision. He felt that the state has an obligation to pay for medical costs for parolees that is placed in jail.

Closing by Sponsor:

REP. TOOLE stated that the funding mechanism is a complex issue. He stated that the committee would have to choose between the two funding mechanism concepts and he would leave that factor for the consideration of the committee.

HEARING ON SB 39

ELIMINATE INCARCERATION IN JAIL FOR MINOR TRAFFIC OFFENSES

Presentation and Opening Statement by Sponsor:

SEN. HALLIGAN, SENATE DISTRICT 29, stated that SB 39 was a product of the interim committee. He stated that in the committee's efforts to deal with jail overcrowding, the committee went out and did a survey of who is in Montana's jails. He stated that those who were in jails serving a sentence or convicted of a crime, 26% were for drunk driving, 18% were for misdemeanor traffic offense. He felt that in order to help the jail overcrowding problem, the state should look at getting the

people out of jail for non-moving offenses. These people could be fined but not jailed. Usually these offenses are so minor, the jail term is usually not incurred anyway.

Proponents' Testimony: none

Opponents' Testimony:

Pat Bradly, Montana Magistrates Association, gave written testimony opposing SB 39. EXHIBIT 5

Nancy Sabo, Montana Magistrates Association, gave written testimony opposing SB 39. EXHIBIT 6

Questions From Committee Members:

REP. JOHNSON asked SEN. HALLIGAN how repeat offenders will be dealt with under this bill? SEN. HALLIGAN stated that the non-moving offenses that this bill deals with are so small that there usually isn't repeat offenders.

REP. BROOKE asked SEN. HALLIGAN if he would be agreeable to an amendment regarding community service in section 2 of SB 39? SEN. HALLIGAN stated that community service has to be mandatory alternative sentencing for people that cannot pay their fines. He stated he would be agreeable to that amendment.

Closing by Sponsor:

SEN. HALLIGAN stated that the cost of keeping the non-moving offender in jail is prohibited and if there is a way to make sure they will be kept out of jail, instead of spending \$30-\$50 a day, a serious look should be taken at the situation.

EXECUTIVE ACTION ON HB 391

Motion: REP. DARKO MOVED HB 391 BE RECONSIDERED.

Discussion: REP. DARKO stated that Rep. Rice had some concerns that she felt she cleared up with the proposed amendment.

Vote: Motion passed with Rep. Brown voting no.

Motion: REP. DARKO MOVED HB 391 DO PASS.

Motion: REP. DARKO moved to amend HB 391. EXHIBIT 7

Discussion: REP. DARKO stated that her amendment would replace a previous amendment made to HB 391.

REP. BROWN stated that the previous discussion on the bill centered around what the definition of "confessional" was and

what constituted that in any of the religions. He stated that he felt the amendment said there isn't a difference between the "confessional" and "Mr. Routine doing business" because professional capacity is a 24 hour, 7-day a week job. He asked how that distinction is made?

REP. DARKO stated that if REP. BROWN would like to tighten up the word professional she would be agreement with that.

REP. BROOKE stated that she opposes "professional capacity" because that phrase makes the bill far too broad because it includes counseling. She stated that many of the clergy people testified that they were not in a profession but rather in a vocation. She felt the phrase would conflict with what the clergy's intent is.

REP. WHALEN asked REP. DARKO if the main reason she wants to get this into statute is to get clergy to report any child abuse or related crimes unless it falls into this area?

REP. DARKO stated that the word "professional" could be substituted for something else. She stated that she had trouble with professional but could not come up with a better word at the time she wrote her amendment.

REP. RICE stated that the term "professional capacity" was not changed and that it was referenced in the original amendment.

REP. DARKO stated that she felt that the word "spiritual" should be added for the phrase to read "spiritual professional capacity".

Motion/Vote: REP. DARKO moved to amend HB 391 by adding the word "spiritual" to her amendment and add the words "or neglect", after the words "abuse". Motion carried 18 to 2 with Rep's: Gould and Brooke voting no.

Motion/Vote: REP. DARKO MOVED HB 391 DO PASS AS AMENDED. Motion carried 15 to 5 with Rep's: Whalen, Gould, Boharski, Nelson and Measure voting no.

EXECUTIVE ACTION ON SB 57

Motion: REP. JOHNSON MOVED SB 57 BE CONCURRED IN.

Discussion: REP. MEASURE stated that SB 57 is probably a really good bill for felonists. He felt that the bill is no good for the defendant. He stated that the defendant needs protection from the judge and he will have more self-esteem by being able to stand before the judge and plead his case.

REP. JOHNSON stated that Sen. Yellowtail said that this is an option and is going to take a lot of money and that whatever area uses this option will have to come up with the money themselves. He felt that the committee should give those areas that want to try the option a chance to see if it will work for them.

REP. BROOKE stated that she is in support of the bill because it provides a lot of options for the judge to order the defendant's physical appearance in court and she felt the bill doesn't eliminate that possibility.

Motion/Vote: REP. LEE moved to amend SB 57. (Refer to Standing Committee Report) Motion carried 16 to 4 with Rep's: Johnson, Toole, Rice and Strizich voting no.

Motion/Vote: REP. LEE MOVED SB 57 BE CONCURRED IN AS AMENDED. Motion carried 13 to 7 with Rep's: Wyatt, Nelson, Measure, Whalen, Russell, Clark and Brown voting no.

EXECUTIVE ACTION ON SB 39

Motion: REP. BROOKE MOVED SB 39 BE CONCURRED IN.

Discussion:

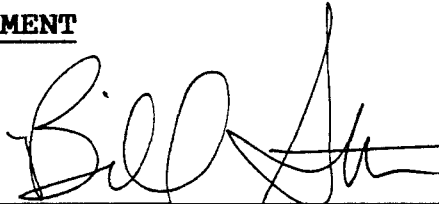
REP. CLARK stated that he had many problems with the bill. He felt that the state needs to keep that type of sentencing to prison for non-moving offenders to keep them in line and to keep them paying their fines.

Motion/Vote: REP. CLARK moved to amend SB 39 by striking section 2, line 39 from the bill. Motion carried 11 to 10 with Rep's: Nelson, Whalen, Becker, Russell, Brooke, Strizich, Brown, Measure, Darko and Boharski voting no.

Motion/Vote: REP. BOHARSKI MOVED SB 39 BE CONCURRED IN AS AMENDED. Motion carried.

ADJOURNMENT

Adjournment: 11:21 a.m.


BILL STRIZICH, Chair


JEANNE DOMME, Secretary

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-8-91

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

February 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 57 (third reading copy -- blue) be concurred in as amended .

Signed: 
Bill Strizich, Chairman

CARRIED BY:

And, that such amendments read:

1. Page 2, line 8.

Page 3, line 20.

Page 5, line 7.

Page 7, line 8.

Strike: "court"

Insert: "defendant"

2. Page 3, line 2.

Following: "may"

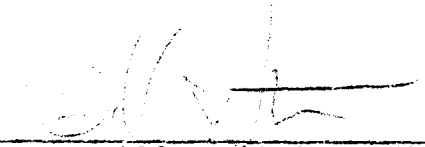
Insert: ", in the discretion of the defendant,"

HOUSE STANDING COMMITTEE REPORT

February 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 39 (third reading copy -- blue) be concurred in as
amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: "61-8-711, 61-8-716, 61-8-720,"

2. Page 1, line 19 through page 3, line 4.

Strike: sections 2 and 3 in their entirety

Renumber: subsequent sections

3. Page 5, lines 17 through 21.

Strike: section 9 in its entirety

Montana Jail Facts 1990

- ✓ 45% of jails were built 50 or more years ago
 - the oldest in 1875
- ✓ 19% of jails have been built since 1981,
- ✓ 19% of jails have law suits pending
- ✓ 19% of jails rate overall conditions as poor
- ✓ 55% of sheriffs and chiefs responding to the survey support regionalization or consolidation of jails.
 - 24% were undecided
- ✓ \$27.50 is the average expenditure per inmate per day for jails surveyed (47)

Montana Magistrates Association

EXHIBIT 2
DATE 2-8-91
HB 319 & 320

February 8, 1991

HB 319 and 320, House Judiciary Committee

Testimony by Pat Bradley for the MMA

Mr. Chairman and Committee Members:

The Montana Magistrates Association does not oppose HB 319 and HB 320. We endorse and commend the work of the Interim Committee and all the agencies who have contributed so greatly to solving the serious problem of substandard and overcrowded jails. The judges of the courts of limited jurisdiction recognize this problem because they deal with it daily.

The courts understand the need for funding called for in HB 319 and 320, but what they do oppose is the method by which to finance the necessary million dollars for servicing bonds, namely to assess a \$10 tax on every person convicted of a misdemeanor.

The judges contend that courts should not be a tax collection agency for the government. This should not be the function of any court.

Most people who will be paying this tax will not be using the jails. Justice and city courts handled about 300,000 cases last year, about 2/3 of which were traffic-related. Most traffic offenders do not go to jail--they are average people who pay fines or forfeit bonds. Minimum fines of \$20 or \$25 would be doubled under this legislation, and are harsh for most people who will never go to jail.

It is difficult now to collect some fines. Courts must already levy a \$10 surcharge. Mandatorily imposing another \$10 tax will increase this difficulty. In hardship cases, courts may be forced to decide to forego a fine and collect only the tax, creating revenue shortfalls for government entities. Courts are already carrying thousands of dollars in time-pay agreements. And all this added bookkeeping would place more work on already overloaded court caseloads.

A first tax or surcharge on fines and forfeitures was passed in the 1985 legislative session. Judges fought it but the county attorneys' lobby prevailed. HB 493 in the 1989 session called for a surcharge of \$20 to be collected by courts to fund county jails, but it was tabled by the House Judiciary committee on Feb. 18, 1989. It seems every legislative session, some special interest tries to use the courts to fund its proposals.

Something as important as proper jails for Montana should be perhaps funded by state appropriations.

JUSTICE OF THE PEACE
RON JOHNSON
WOLF POINT, MONTANA 59201

EXHIBIT 3
DATE 2-8-91
HB 319 & 320

TO: Judiciary Committee
SUB: Testimony on H/B 319 and 320
BY: Ron Johnson, Justice of the Peace, Roosevelt County
City Judge, Wolf Point

O U T L I N E

I do not oppose the two bills proposed to you per se --
I only wish to speak as to the method of funding the bills.

A). The method originally proposed was to increase the surcharge from \$10.00 to \$20.00, and I would like to bring to your attention some of the problems this raises.

- 1). It would require a complete overhaul of the bookkeeping system which was just adjusted and simplified for us;
- 2). Cities at the present time do not send monies to the state, the \$10.00 surcharge goes to pay City Attorney salary;

I am not sure how these bookkeeping problems would be solved.

- 3). As the statute now reads, a judge may forgive the surcharge if he finds the defendant to be unable to pay it;
- 4). Surcharges tend to be inequitable. As an example: A person stopped for being 10 MPH over the speed limit would be required to pay a \$20.00 fine and then pay a \$20.00 surcharge on top of the fine, and I am sure that \$40.00 for this ticket would be considered excessive by most citizens, as well as judges. On the other hand \$20.00 for 2nd offense DUI would seem a very small amount;
- 5). Most judges must explain the surcharge to violators that appear before them.

Ex. 3

2-8-91

HB 319 & 320

B). I would suggest that the necessary funds could be raised to fund these bills a lot more painlessly than adding an additional surcharge by raising the daytime speeding ticket from \$5.00 to \$20.00.

- 1). I believe the day speed limit was brought in to law in 1974, requiring a fine of \$5.00;
- 2). The fine has remained \$5.00 for the past 16 years. I don't know the rate of inflation, but I feel that it would take twenty 1991 dollars to buy what \$5.00 bought in 1974;
- 3). From a bookkeeping standpoint, the cities would be totally left out, as no daytime speeding tickets are issued into city courts;
- 4). I see no problem in bookkeeping with the 55 MPH daytime ticket, as it would only require counting the number of tickets and multiplying by \$15.00, that amount would then be sent to the state;
- 5). Judges would not have the ability or desire to forgive a day speeding ticket, as \$20.00 would still be very reasonable in comparison to most other states;
- 6). I would guess that 90% of the daytime speeding monies are collected on the highway, the defendants do not appear in court and thus, it is forfeited. So it only becomes a bookkeeping matter;
- 7). Everyone would pay the same, and, therefore you have equity.

HB 319
HB 320

JOINT INTERIM SUBCOMMITTEE

OVERALL, THESE TWO BILLS ARE ACCEPTABLE. HOWEVER, IN EACH BILL, SECTIONS 16 AND 17 ARE OF SIGNIFICANT CONCERN TO MYSELF AND OTHER JUSTICE COURT JUDGES.

SECTION 16 OF EACH OF THESE BILLS CALLS FOR AN ADDITIONAL SURCHARGE AMOUNT TO BE IMPOSED EVERY TIME A PERSON IS CONVICTED OF ANY OFFENSE IN ~~THE~~ ^{THE} COURTS (DISTRICT, JUSTICE, CITY, AND MUNICIPAL) ~~OF MONTANA.~~
Court,

THE CONCEPT OF IMPOSING ADDITIONAL CHARGES TO THE "USER" OR OFFENDER IS NOT UNACCEPTABLE. HOWEVER, THE BILL AS IT IS WRITTEN WOULD REQUIRE A DRASTIC CHANGE IN THE ACCOUNTING PROCEDURE USED IN JUSTICE COURTS. WE FOUGHT AND FINALLY WON A LONG ON-GOING BATTLE 2 LEGISLATIVE SESSIONS AGO TO STREAMLINE OUR ACCOUNTING PROCEDURE AND TO INSURE THE PROPER COLLECTION AND DISTRIBUTION OF ALL FUNDS COLLECTED IN JUSTICE COURTS.

IMPLEMENTATION OF SECTIONS 16 AND 17 OF ~~THIS~~ ^{THESE} BILLS WILL DRASTICALLY AFFECT OUR BOOKKEEPING PROCESS. IF THE BILL ~~IS~~ ^{IS} PASSED AS WRITTEN, IT WILL AGAIN ENCUMBER THE ACCOUNTING PROCEDURE AND MAKE IT CONFUSING TO THE JUDGES AND ~~THE~~ ^{THE} COUNTY TREASURERS.
to

WE WILL BE FORCED TO DISCARD OUR PRESENT FORMS, MOST OF WHICH ARE BOUGHT AND PAID FOR. ~~THAT~~ ^{THAT} COSTS MONEY.
in advance

IT WILL REQUIRE REDRAFTING OUR UNIFORM ACCOUNTING MANUAL. THAT COSTS MONEY.

IT WILL REQUIRE RETRAINING THE JUDGES TO USE THE NEW FORMS. THAT COSTS MONEY.

IT WILL REQUIRE REDRAFTING THE FORMS EACH COUNTY TREASURER USES, MOST OF WHICH ARE BOUGHT AND PAID FOR. THAT COSTS MONEY.
in advance

IT WILL REQUIRE RETRAINING THE TREASURERS TO USE THE NEW FORMS. THAT COSTS MONEY.

EACH OF THESE CHANGES ARE COSTLY, AND WILL HAVE TO PAID FOR BY COUNTY GOVERNMENT.

THESE BILLS, IN THE PRESENT FORM, WILL NOT ADDRESS THE CITY OR MUNICIPAL COURTS IN THIS STATE.

SECTION 3-10-601, ONLY ADDRESSES JUSTICE COURTS. MOST CITIES IN THIS STATE USE COUNTY JAILS. THOUGH THE CITIES MAY BE REQUIRED TO ASSESS THE ADDITIONAL SURCHARGE UNDER 46-16-236, THEY ARE NOT INCLUDED UNDER SECTION 3-10-601. ANY SURCHARGE ASSESSED REMAINS WITHIN THE CITY.

The bills in their present form will not address the city or municipal courts in this state.

IN ADDITION, ADDING A NEW SURCHARGE, INSTEAD OF ADDING TO THE EXISTING SURCHARGE, ~~NOR~~ AMENDING THE DISPOSITION OF THE EXISTING SURCHARGE WILL ONLY ADD TO THE PROBLEMS IN JUSTICE COURTS. MOST OF OUR COURTS DO NOT HAVE THE LUXURY OF ANY CLERICAL STAFF. WE CERTAINLY DON'T HAVE ACCOUNTANTS ON STAFF, NOR ARE WE TRAINED AS SUCH. *We currently have a system that is working and money is properly allocated and properly disbursed - because* CREATING A SURCHARGE SEEMS TO BE THE MOST POPULAR SOLUTION EVERY TIME WE NEED TO RAISE MONEY TO FUND A PROJECT. THAT DOESN'T MEAN, I DON'T AGREE THAT WE HAVE TO RAISE FUNDS SOMEHOW FOR WORTHWHILE PROJECTS, LIKE JAILS.

*the if
it
been
simply*

BUT, EACH TIME A NEW SURCHARGE IS ADDED, IT CHANGES THE BOOKKEEPING PROCEDURES IN OUR COURTS AND MAKES OUR FORMS OBSOLETE.

< > *If a surcharge is the only answer, then let's look at the surcharge currently in effect.*

IF THE SURCHARGE, ALREADY IN PLACE, IS INCREASED AND ~~SECTION~~ (6) a AND b ARE AMENDED, IT WOULD NOT REQUIRE NEW FORMS. IT MAY REQUIRE SOME RETRAINING FOR JUDGES AND TREASURERS, BUT WOULD NOT ADD TO THE PROCESS NOR BE AS COSTLY.

Elim

Bookkeeping

I WOULD RECOMMEND THAT THE EXISTING SURCHARGE BE INCREASED BY \$10 (OR DOUBLED) AND THAT THE DISPOSITION OF THE ~~CURRENT~~ SURCHARGE ~~(SUBSECTION (6) a AND b)~~ BE DELETED AND PROPOSED SECTION 7 BE CHANGED TO READ, THAT ONE-HALF OF THE AMOUNT COLLECTED UNDER 46-18-236 BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT IN THE JAIL BOND ACCOUNT, *and 1/2 to remain in the city or county officer fund.*

THIS AMENDMENT WOULD *then* ONLY REQUIRE THAT JUDGES AND TREASURERS OR CITY FINANCE OFFICERS MUST INDICATE ON THE PRESENT FORMS THE AMOUNT OF MONEY COLLECTED FOR THE JAIL BOND ACCOUNT AND TO BE FORWARDED TO THE STATE TREASURER FOR THAT PURPOSE. *(to page 3)*

* *Further, it is a puzzle to me why traffic offenders are the main source of revenue for the collection of the surcharge. Since these bills add to all misdemeanors, that automatically includes traffic offenses, except for day speed violations and seat belt violations. Most of our city courts handle approximately 1000 cases per year. Approximately 90% of these cases are traffic related. If 90% of these offenders are over 18 years old, then to < >*

I know all of you have worked long and hard on the problems of jail funding and I appreciate your dedicated efforts.

But before you pass these bills - please consider the ^{prosecuting} effects on the motoring public and the added burden to an already overloaded court system.

If we must have a surcharge, please allow our input to effectively and efficiently implement the changes.

Thank you!

Montana Magistrates Association

February 8, 1991

SB39, an act removing imprisonment for minor traffic offenses.

Before the House Judiciary committee.

Testimony by Pat Bradley, Lobbyist for the MMA

Mr. Chairman and Committee Members:

The MMA supports and commends the excellent work of the Interim Study committee on Adult and Juvenile Detentions. Of the some 23 bills that were born of this labor about half directly or indirectly affect the courts of limited jurisdiction.

We appreciate the clarification of statutory language for laws we already use such as SB 38, HB 72 and HB 148. We appreciate the possibility of alternate facilities and facilitators provided by HB 101 and HB 102. ~~And~~ we appreciate the potential for improvement in all the other bills, *of jail facilities.*

We do, however, oppose the removal of the sentencing option of jail called for in SB 39. About 2/3 of justice and city court case loads are traffic related. Judges do not sentence the average traffic offender to jail.

For persons who will not follow court orders of sentences for community service, fine payments or time-pay agreements, the possibility of jail is oft times the only force the court has to make them comply.

Sometimes the only way restitution can be ordered is with this aid of possible jail time.

If there is no jail possibility, jurisdiction can be lost in the above-mentioned cases.

Multiple or chronic traffic offenders, especially young adult drivers, cannot be dealt with on a behavioral-altering approach without jail possibility. At some point these types of drivers become a public risk.

I will leave with my testimony some 8 pages of about 125 violations of traffic law that fall under the penalty sections of SB 39. This will show you how many statutes are affected by the proposed changes in SB 39. I might call your attention to HB 597, which will require that a person ~~may not~~ move or permit to be moved certain vehicles without first equipping them with flaps, fenders or aprons. *Pat Bradley*
Penalty is addressed in Section 6, page 4.
It may be a minor traffic violation, but a whole bill is addressing it, and about 20 legislators have signed onto the bill.

SB 39

HALLIGAN
REMOVE JAIL FROM MINOR TRAFFIC OFFENSES

EXHIBIT 6

DATE 2-8-91

98

39

OVER 300,000 CASES ARE HEARD IN JUSTICE AND CITY COURTS IN MONTANA EACH YEAR.

THE MAJORITY OR AN ESTIMATED 70% OF THOSE CASES ARE TRAFFIC, INCLUDING DUI'S.

A VERY SMALL PERCENTAGE (APPROXIMATELY 8%) ARE EVER INCARCERATED AS PART OF THE ORIGINAL SENTENCE. INSTEAD, JAIL TIME IS SUSPENDED FOR PERIOD OF TIME BASED ON CONDITIONS THAT ARE IMPOSED BASED ON THE DEFENDANT'S ABILITY TO PAY, PAST RECORD, EMPLOYMENT, AND MANY OTHER FACTORS.

~~BUT~~ JAIL SERVICE IS ONE OF THE MOST EFFECTIVE TOOLS WE HAVE TO ENFORCE OUR JUDGMENTS AND COURT ORDERS.

THE MAJORITY OF OFFENDERS FOR TRAFFIC OFFENSES ARE JUST ORDINARY PEOPLE THAT COMMIT A MINOR INFRACTION. JAIL IS NOT USED IN THOSE CASES ~~ANYWAY~~. HOWEVER, THE POSSIBILITY OF SERVING JAIL TIME IS USED TO ENFORCE COMPLIANCE WITH THE SENTENCE IMPOSED. EVEN THEN, ONLY A SMALL PORTION ARE EVER ACTUALLY INCARCERATED.

IF WE HAVE A REPEAT OFFENDER OR AN UNUSUALLY SERIOUS OFFENSE IS BEFORE THE COURT, WE DO NEED TO HAVE THE SENTENCING POWER TO IMPOSE JAIL TIME. SPECIFICALLY, I AM REFERRING TO SECTIONS 2 AND 3 OF THIS BILL THAT WOULD AMEND 61-8-711 AND 61-8-720 OF THE PRESENT STATUTES. FOR EXAMPLE, IF WE HAVE SOMEONE CONVICTED OF A VIOLATION COVERED UNDER THESE SECTIONS SUCH AS SPEEDING OR BASIC RULE, AND THERE IS AN ACCIDENT INVOLVED WITH PROPERTY DAMAGE, OR SERIOUS INJURY, OR IT IS A REPEAT OFFENSE, WE NEED TO HAVE THE FLEXIBILITY TO IMPOSE JAIL SERVICE AS A PART OF THE PENALTY AND FOR REHABILITATION PURPOSES.

JUST HAVING THE ABILITY TO IMPOSE JAIL TIME AND THEN TO SUSPEND THAT TIME BASED ON CERTAIN CONDITIONS TO BE FOLLOWED BY THE DEFENDANT ENHANCES THE POWER OF THE COURT TO HAVE AN OFFENDER PAY HIS OR HER JUST PENALTY TO THE PEOPLE OF THIS STATE.

IF SOMEONE IS ARRESTED FOR FAILURE TO COMPLY WITH A COURT ORDER OR FOR FAILING TO APPEAR ON A CITATION, THEY USUALLY POST BOND AND ARE NEVER TAKEN INTO CUSTODY. BUT FOR THOSE FEW THAT SEEM TO THINK THEY DO NOT HAVE TO OBEY THE SAME SET OF LAWS WE ALL DO, THE THREAT OF JAIL IS EFFECTIVE.

2-8-91

SB 39

GENERALLY, THE MONEY OWED, OR MORE IMPORTANTLY, OTHER COURT ORDERS WILL BE COMPLIED WITH ONCE THE OFFENDER REALIZES THAT JAIL IS IMMINENT. IT IS ESSENTIAL THAT WE HAVE THE ABILITY TO IMPOSE JAIL TIME ON THOSE OFFENSES COVERED UNDER 61-8-711 AND 61-8-720 IN ORDER TO EFFECTIVELY ADMINISTER THE TRAFFIC LAWS OF THIS STATE.

TO TAKE AWAY OUR MOST EFFECTIVE TOOL IN SENTENCING WILL CLOG THE COURT SYSTEM BEYOND BELIEF. WE MIGHT AS WELL SPIT IN THE WIND EVERY TIME WE ISSUE AN ORDER BECAUSE THE OFFENDER WILL SOON FIND OUT THAT TO ENFORCE THE JUDGMENT WITH CIVIL PENALTIES, INSTEAD OF WITH IMMEDIATE JAIL TIME, WILL TAKE FOREVER TO ACCOMPLISH, IF EVER.

THE COURTS OF LIMITED JURISDICTION ARE PROFESSIONAL, WELL-TRAINED AND CERTIFIED TO DO THEIR JOBS. WE ALL KNOW THAT JAIL IS NOT THE ONLY SOLUTION IN SENTENCING. WE USE THAT POWER WITH DISCRETION. WE ALL UNDERSTAND THE PROBLEMS OF JAIL OVERCROWDING AND TAKE GREAT CARE TO NOT ADD TO THE BURDEN.

Frankly, it is the policy of the state to overcrowd our jails.
MOST COURTS ARE USING ALTERNATIVES SUCH AS COMMUNITY SERVICE, HOME ARREST, AND OTHER OPTIONS IN LIEU OF JAIL. BUT WE NEED TO HAVE THE "MUSCLE" OF POSSIBLE JAIL TIME TO BE EFFECTIVE IN ENFORCING COURT ORDERS AND JUDGMENTS.

IN ADDITION, IF SOMEONE DISOBEYS A COURT ORDER BY FAILURE TO COMPLY WITH THE JUDGMENT OR FAILS TO APPEAR AND ANSWER A CHARGE, WE ALSO HAVE BEGUN TO ASSESS THE COSTS OF ANY INCARCERATION IN THOSE CASES, UTILIZING SECTION 46-18-201, WHICH IS THE GENERAL SENTENCING STATUTE. ~~ANOTHER SOLUTION WOULD BE TO GIVE THE COURTS THE ABILITY TO SUSPEND DRIVING PRIVILEGES.~~

~~There is only a small percentage of people that clog the jails in the state of Montana, for minor traffic offenses. If we, as city and justice court judges, utilize the sentencing power of assessing the non-compliant offender costs in traffic cases for their use of jails and misuse of the system, we would have accomplished much more than if our power to assess jail time is deleted altogether.~~
THERE IS ONLY A SMALL PERCENTAGE OF PEOPLE THAT CLOG THE JAILS IN THE STATE OF MONTANA, FOR MINOR TRAFFIC OFFENSES. IF WE, AS CITY AND JUSTICE COURT JUDGES, UTILIZE THE SENTENCING POWER OF ASSESSING THE NON-COMPLIANT OFFENDER COSTS IN TRAFFIC CASES FOR THEIR USE OF JAILS AND MISUSE OF THE SYSTEM, WE WOULD HAVE ACCOMPLISHED MUCH MORE THAN IF OUR POWER TO ASSESS JAIL TIME IS DELETED ALTOGETHER.

WE ALL KNOW THE JAIL PROBLEM IS IMMENSE. BUT LET'S NOT PULL THE TEETH OF JUSTICE BY TAKING AWAY ONE OF OUR MOST EFFECTIVE SENTENCING TOOLS. INSTEAD, LET'S PENALIZE THOSE PEOPLE WHO DO NOT THINK THEY ARE SUBJECT TO THE LAWS OF THE LAND. ~~POSSIBLY FOR SOME~~

PLEASE, DO NOT PASS SECTIONS 2 AND 3 OF SB 39.

VIOLATIONS OF THE OTHER SECTIONS IN THIS BILL RARELY, IF EVER, HAVE JAIL TIME IMPOSED NOR, IN MY OPINION IS JAIL WARRANTED. I WOULD NOT OPPOSE ~~MODIFICATION~~ OF THE REMAINDER OF THE BILL.

adoption
Thank you for your consideration!

(b) A clergy person or priest is not required to make a report under this section if:

- i) the knowledge or suspicion of the abuse came from a statement or confession made to the clergy or priest in his/her professional capacity;
- ii) canon law, church doctrine or established church practice requires the clergy or priest to keep the statement or confession confidential; and
- iii) the person who made the statement or confession does not consent to the disclosure by the clergy or priest.

applies

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#57
DATE 2-8-91 SPONSOR(S) Sen. Yellowstone

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAN WALKER Helena	U S WEST	X	
CAL CUMIN	YELLOWSTONE CO.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

HB# 320

DATE 2-8-91

SPONSOR(S)

Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAT BRADLEY	MT MAGISTRATES ASSOC	X	
Ron Johnson w/Point	" " "	X	
J. Michael O'Hara	Missoula Co Sheriff	X	
Nancy Leabo	MM A	X	
Gordy Morris	MACo.	Amend	
Ed Hall	MBCC	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB#319
DATE 2-8-96 SPONSOR(S) Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Johnson WFOUNT	MAA	✓	
Pat Bradley	MAA	✓	
J. Michael Ollara	MISSOULA CO. SHERIFF	✓	
Nancy H. Gato	ONMA	✓	
London Morris	MAA	Amend	
Ed Hall	MBCC	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#39
DATE 2-8-91 SPONSOR(S) Sen. Halligan
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Pat Bradley	MMA		X
For Johnson w/ Port	"		X
Nancy L. Dabo	MMA		X
Tom Hannon	Mt Sheriff + Peace Officers	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.