

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on February 18, 1991,  
at 7:13 a.m.

**ROLL CALL**

**Members Present:**

Bill Strizich, Chairman (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)  
Diana Wyatt (D)

**Members Excused:** Rep. Brooke and Rep. Whalen

**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.

**EXECUTIVE ACTION ON HB 473**

**Motion:** REP. TOOLE MOVED HB 473 DO PASS.

**Discussion:** REP. JOHNSON stated that if it isn't broken then the  
committee shouldn't change it.

REP. TOOLE stated that the purpose of the bill is to deal with a  
problem that is becoming more prevalent. He felt that the bill  
was an effort by the people concerned about the problem.

REP. LEE stated he sympathizes with REP. TOOLE on the subject of public hazard. However, he said he was not certain about the bill because it is very broad.

REP. RICE stated that the committee should remember that the all information being discussed comes out of the discovery process and is public information. He felt that REP. TOOLE'S concern relates to the fact that if you feel that, for some reason of confidentiality, you don't want some of this information to be public information, you can ask the judge to put a lid on it and not let it out. He stated that is the balancing test that we currently operate under. "If this bill passes, we are chucking that whole balancing process in order to say, all this information is public. We would open the doors and have no way of keeping anything under wraps." REP. RICE states he believed the committee would invite serious consequences that was done.

Vote: Motion failed by a tie vote. EXHIBIT 1

Motion/Vote: REP. TOOLE MOVED HB 473 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 426

Motion: REP. RICE MOVED HB 426 DO PASS.

Discussion: REP. STICKNEY asked REP. TOOLE if the committee could define an emergency situation pertaining to this bill? She felt that this should be limited to precisely the situation where a women is seen for the first time, at delivery time, in an emergency room or in the office of a physician, particularly in a rural area.

REP. TOOLE stated that this is what the committee has to do to in order to have it pertain to just that type of emergency situation.

REP. WYATT stated that she was not sure there is a need for this bill and didn't think it was good public policy.

REP. MEASURE emphasized he doesn't believe the committee would resolve either the health providers problem or anyone else's problem by absolving liability for the hospitals and doctors. "They have a responsibility if they are negligent. If the real intent of this bill is to get obstetrical care in small communities in Montana, we might as well get good obstetrical care instead of sub-standard obstetrical care." He felt that is what you get when you release people of liability of negligence.

REP. STICKNEY stated that this bill is trying to address those geographical areas which do not have an OB/GYN on staff on call. "We are talking about most of Eastern Montana. In Miles City, there is only one doctor who is doing obstetrics. If the one OB/GYN is out of town, I suppose my husband certainly could

deliver the baby, but he is no longer insured for that kind of delivery. " This bill speaks to small areas who do not have those doctors.

REP. BECKER stated that this bill is so widely written it doesn't just apply to Eastern Montana and that is a real problem. She said she would love to have this bill pass, because then she wouldn't be liable for anything she did in her profession. That is not the real world.

Vote: Motion fails by a tie. EXHIBIT 2

Motion: REP. LEE MOVED HB 426 DO PASS.

Motion: REP. LEE MOVED to amend HB 426 on page 2, line 8, after the word "emergency" insert the word "child birth".

Discussion: REP. MEASURE asked REP. LEE what exactly does his amendment do?

REP. LEE said that it narrows "emergency situation" to include almost anything and "emergency childbirth" narrows it down.

Motion/Vote: REP. MEASURE MOVED HB 426 BE TABLED. Motion fails on a tie vote. EXHIBIT 3

Discussion: CHAIRMAN STRIZICH said that if any of the committee members want to work on this outside of committee they are welcome to do that. If REP. LEE will withdraw his motion the bill will be held in our committee for reconsideration at another time.

Motion: REP. LEE WITHDREW HIS MOTION OF DO PASS.

HEARING ON HB 697  
ALLOW JP & JUDGES OF COURTS OF LIMITED JURISDICTION  
TO SUMMON JURORS BY MAIL

Presentation and Opening Statement by Sponsor:

REP. MCCAFFREE, HOUSE DISTRICT 27, stated that this bill came at the suggestion of the Justices of the Peace and allows the JP to notify the juror by mail. He felt that the bill gives them the option of allowing the law enforcement people to notify them or else they can notify them by mail.

Proponents' Testimony:

Pat Bradley, Montana Magistrates Association, gave written testimony in favor of HB 697. EXHIBIT 4

Opponents' Testimony: none

Questions From Committee Members:noneClosing by Sponsor:

REP. MCCAFFREE stated that he hoped the committee will support this bill. He felt that the bill is something that is needed, particularly in the rural areas.

HEARING ON HB 691  
REMOVING GOVERNMENT IMMUNITY FOR ENVIRONMENTAL DAMAGE

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this bill addresses the immunity problem for governmental actions in the state in a very limited way. "As you may know, approximately 2 years ago, the Montana Supreme Court found a provision of our statutes that found immunity for actions of governmental entities where no one really thought it existed." He stated that the courts agreed and the Montana Supreme Court began issuing decisions in this area. He stated that there have been a number of cases and in almost every case, without exception, the Supreme Court has said, no the city or county is not liable for this wrongful act because the legislature did not give up immunity. "For the last 2 years, the only entity that has been liable for negligence has been the University System." He felt that this is a small bill that addresses environmental damage. The statute that is involved is the government immunity statute.

Proponents' Testimony:

Carl Hatch, Attorney - Helena, stated that he is currently represents some clients whose well was contaminated by toxic waste flowing from a landfill district. "In the action that was brought, the case was dismissed from court of the basis of sovereign immunity. The acts of the managers of the landfill district are simply an agency relationship or an extension of the county commissioners and therefore, there is no cause of action taken upon this immunity." He felt that this statute will correct the situation and allow recovery for the kind of damage to homeowners whose ground water was polluted by those kinds of operations. Mr. Hatch urged the committee to pass this bill.

Joanne Newcomb, self, stated that she is a member of a loosely knit group called Citizens for Responsible Landfill. This group was formed 18 months ago. "When there is a groundwater contamination there is no one who is accountable for the wrong doing." She urged the passage of the bill so the responsible party will be held accountable for recovery of the damages incurred by homeowners.

Jim Jenson, Executive Director - Environmental Information

Center, stated that he wanted to re-enforce the importance of this legislation. He stated that throughout Montana a change is being made as to the way garbage is dealt with and that there are all types of potential problems associated with landfills. "One of those problems is the concern of people who are faced with a potential problem next door. Often times proposals by local governments to build these new landfills and people call our organization because they hope we can help them." He stated that in the cases that something does go wrong, the homeowners have no access to recovery. "We urge your do pass consideration."

Sue Neinjaiter, Montana Solid Waste Contractors, stated that the Montana Solid Waste Contractors are in support of HB 691.

Ted Doney, Mountain Water Company, stated that he represents the entity that owns and operates the private water system in Missoula. "We support this bill not because we intend to sue the city, but to encourage the city to move more rapidly and take care of problems in the future."

Michael Sherwood, Montana Trial Lawyers, stated that he didn't think this legislature intentionally did this to the people who have suffered the damages. "I think the Montana Supreme Court did this." He stated that in 1977 the legislature passed a law saying we are going to grant immunity to legislative acts. The courts somehow decided that legislative acts meant virtually anything a governmental body of powers did do. "We are in support of this bill and ask for your do pass consideration."

Steve Gross, Helena Farmer, stated that he is in support of HB 691 and asked the committee to give it a Do pass.

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:

REP. TOOLE stated that the bill addresses a problem that has been created by court decisions that fill the moat up around the castle. The moat was drained 15 years ago and the legislature said the castle should be as available and responsible as the people who lived outside of it. He felt that when the Supreme Court began the decisions, based upon the language that you see on the first page of the bill, it determined governments of all shapes were immune from all claims.

HEARING ON HB 581  
ALLOW ALL LAW ENFORCEMENT AGENCIES TO  
USE CERTAIN RECORDS OF YOUTHS

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that this bill allows any law enforcement agency, within a judicial district, to use

finger prints and photographs of youths for identification purposes. Under the Youth Court Act, a youth may be finger printed and photographed for felonies. What has happened is an administrative problem. The current law says an originating agency is the agency responsible for those finger prints and photographs to the exclusion of other law enforcement within a given district. This only relates to those unlawful acts that are a felony if committed by an adult.

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON HB 275

PROVIDE A FINE FOR FRAUDULENTLY OBTAINING DANGEROUS DRUGS

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that there was an oversight in the original drafting of this particular provision. In most areas that relate to dangerous drugs there is allowed a fine in addition to or in lieu of incarceration. He felt that this bill simply places in the law the alternative to jail sentences and though the fine level is high, it is the one that is used in the other similar areas of the law. "Hopefully, it will allow some strong punishment deterrents in terms of that fine and also the opportunity to allow individuals, faced unnecessarily with jail, an alternative."

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON HB 276

CONTINUING CRIMINAL ENTERPRISE

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that this bill creates a new approach to looking at career criminals and those that benefit from patterns of criminal activity over a long course and was intended to link with another bill that is still in drafting down stairs but HB 276 can stand alone. The bill focuses on people who are involved in criminal activities that are involved with 5 or more people and are gaining substantial income and

resources through their continued criminal enterprise.

Proponents' Testimony:

Sgt. Larry Renman, Great Falls Police Department, stated that HB 276 is much needed legislation that deals with career criminals. He felt that career criminals were growing in population and were a great threat to Montanans. He stated that he was in support of HB 276 and asked the committee for a do pass consideration.

Barry Michelotti, Cascade County Sheriff and Coroner, gave written testimony in favor of HB 276. EXHIBIT 5

Patrick L. Paul, Cascade County Attorney, gave written testimony in favor of HB 276. EXHIBIT 6

Opponents' Testimony: none

Informational Testimony:

Dan Russell, Administrator - Division of Corrections, stated that it is very difficult to tell what the prison overcrowding would be from this bill. "These kind of offenders are not the kind of people who get prison sentences."

Questions From Committee Members: none

Closing by Sponsor: none

EXECUTIVE ACTION ON HB 697

Motion: REP. BROWN MOVED HB 697 DO PASS.

Discussion: REP. BOHARSKI asked if other courts send certified letters? John MacMaster said he doesn't think it has been a law for awhile.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 691

Motion: REP. BROWN MOVED HB 691 DO PASS.

Motion/Vote: REP. CLARK moved to amend HB 691 by striking section 2 from the bill. Motion fails.

Vote: Motion carried 16 to 4 with Rep's: Clark, Johnson, Boharski and Keller voting no.

EXECUTIVE ACTION ON HB 581

Motion: REP. GOULD MOVED HB 581 DO PASS. Motion carried

unanimously.

EXECUTIVE ACTION ON HB 275

Motion: REP. BROWN MOVED HB 275 DO PASS.

Discussion: REP. TOOLE stated that \$50,000 is high for first offense. How would the committee feel about changing it to \$20,000?

CHAIRMAN STRIZICH said the reason we put it at \$50,000 is because it conforms with other fines of the same penalty. I have no objection to a lower fine.

Motion/Vote: REP. TOOLE moved to amend HB 275 by changing \$50,000 to \$20,000 for the first offense. Motion failed.  
EXHIBIT 7

Vote: Motion carried 18 to 2 with Rep's: Wyatt and Whalen voting no.

EXECUTIVE ACTION ON HB 276

Motion: REP. GOULD MOVED HB 276 DO PASS.

Discussion: REP. MEASURE stated that the concept of this bill is terrific and needed for a long time. Criminal enterprises have continued to go on and are more prevalent in this state than most people would be willing to believe. "While this is true, we shouldn't get in a position with this bill, or another bill, where we start coming after citizens that are maybe not our best citizens and calling that a criminal enterprise. The problem that I perceive of this, is that I am not sure that any of our police forces in the state have the resources, manpower or money, to prosecute these kinds of things. For the most part, I support this bill."

REP. TOOLE asked if the bill would apply to a ring of bicycle thieves, as well as the drug industry? CHAIRMAN STRIZICH said no it doesn't because it relates to drug offenses.

John MacMaster said by striking "by 45-9-101", on page 1, line 13, it would cover the problem stated by Rep. Toole. "The reason is that the element of the offense of engaging in continuing criminal enterprise that you have violated any above offense law in chapter 9, title 45. Also, at the end of line 5, page 2, strike the word "by" and at the beginning of line 6, strike "45-9-101 and insert the words "for the underlying offenses"."

Motion/Vote: REP. RICE MOVED to amend HB 276 using the amendment by John MacMaster. Motion passed unanimously.

Motion/Vote: REP. GOULD MOVED HB 276 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 364

Motion: REP. WHALEN MOVED HB 364 DO PASS.

Discussion: REP. WHALEN stated that the sub-committee met and began by meeting with the people that brought the bill into the legislature. He stated that the sub-committee came up with the final result in the form of a gray bill. EXHIBIT 8. Mr. and Mrs. Hargrove and another dude ranch owner wanted some clarification of the law as to when they are liable and when they are not liable. These people did not want immunity from liability. In fact, they specifically told us that if they are not careful they expect to be liable. That is what governed the proceedings of the sub-committee. What they were concerned about is the fact that horses sometimes do unexpected things and they didn't feel they should be liable for things that are exclusively in the control of the rider, especially if they have been properly forewarned that these are the things that are indigenous of horses.

We defined when a rider is going to assume the risk of his own injuries and we also defined what instances there would be negligence on the part of the rider. It says that to the extent that the sponsor of the equine activity gives an effective notice to the rider that they assume the risk of their own injuries that come out of unexpected movements of the horse. The bill places liability where it should be in certain circumstances.

Motion/Vote: REP. DARKO moved to amend HB 364. (Refer to Standing Committee Report) Motion carried unanimously.

Motion: REP. BROWN MOVED HB 364 DO PASS AS AMENDED.

Discussion: REP. MEASURE stated that he is still opposed to the bill. You are talking about a class of people that are willing to spend \$400 to several thousand dollars per horse, \$15,000 on a trailer, \$30,000 for a heavy duty pick-up to pull the trailer, then buy a spot out in the country after making all their money in Los Angeles. Now, they are coming in here and asking us to make sure they don't have to buy insurance. It takes about 4 or 5 years to learn how to sit a horse properly and not get yourself killed on one. These places attract riders from all over the country with little or no knowledge of what they are getting into. This bill still absolves the provider of the service of liability for accidents these people have on their horses and it seems absurd. Everybody else has to pay their insurance premium. These people are trying to absolve themselves of being insured against natural accidents that are going to happen. He didn't see any reason to lift their liability whatsoever.

REP. WHALEN stated on the bottom of page 2, these individuals riding these horses only assume the risks that are numerated on page 3. They assume the risk only to the extent that they have been effectively warned.

REP. MEASURE stated he agreed. "But, you know as well as I do, what that informative effective warning of the risks is that they are going to have some type up a logo and post it up in their park." He felt that they will also have them sign a little waiver and would end up a mess. "Those people don't deserve a waiver of liability."

REP. WHALEN stated that is precisely what was wanted and the sub-committee told them it wouldn't give that to them. Because depending on the specific circumstances of each specific situation, that posting, may or may not be an effective warning that a reasonable person is going to understand. The sub-committee agreed that the facts are different in each particular case.

Vote: Motion passed 18 to 2 with Rep's: Measure and Russell voting no.

#### EXECUTIVE ACTION ON HB 631

Motion: REP. TOOLE MOVED HB 631 BE RECONSIDERED. Motion carried unanimously.

Motion: REP. TOOLE MOVED HB 631 DO PASS.

Motion: REP. TOOLE moved to amend HB 631. EXHIBIT 9

Discussion: REP. TOOLE stated this amendment adds a new section to the bill and changes the law that is not a part of this bill. It is a sentencing statute that will have an additional provision.

Vote: Motion carried unanimously.

Motion/Vote: REP. TOOLE MOVED HB 631 DO PASS AS AMENDED. Motion carried 16 to 4 with Rep's: Brown, Rice, Russell, and Measure voting no.

#### EXECUTIVE ACTION ON 284

Motion: REP. RICE MOVED HB 284 BE RECONSIDERED. Motion carried. EXHIBIT 10

Motion: REP. JOHNSON MOVED HB 284 DO PASS.

Motion/Vote: REP. WHALEN moved to amend HB 284. (Refer to Standing Committee Report) Motion carried 18 to 2 with Rep's: Darko and Measure voting no.

Motion/Vote: REP. RICE moved to amend HB 284. EXHIBIT 11.  
Motion carried 14 to 4. EXHIBIT 12

Motion/Vote: REP. RICE MOVED HB 284 DO PASS AS AMENDED. Motion carried 13 to 7 with Rep's: Whalen, Wyatt, Becker, Russell,

Darko, Keller, Measure and Brown voting no.

EXECUTIVE ACTION ON HB 466

Motion: REP. BROWN MOVED HB 466 BE RECONSIDERED. Motion failed.

EXECUTIVE ACTION ON HB 412

Motion: REP. RICE MOVED HB 412 BE RECONSIDERED. EXHIBIT 13  
Motion passed.

Motion: REP. RICE moved HB 412 be amended.

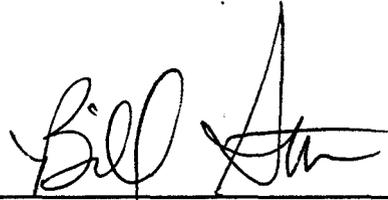
Discussion: REP. BROWN stated he is opposed to this bill.

REP. MEASURE said the amendments will not make me want to support this bill.

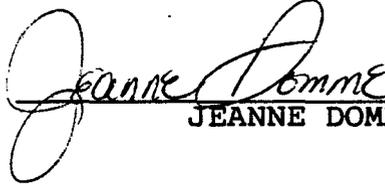
Motion/Vote: REP. BROWN MOVED HB 412 BE TABLED. Motion carried  
12 to 7. EXHIBIT 14

ADJOURNMENT

Adjournment: 11:10 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-18-91

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	/		

2:25  
2-18-91  
JDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991  
Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 697 (first reading copy -- white) do pass.

Signed:   
Bill Strizich, Chairman

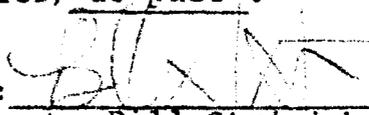
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HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 691 (first reading copy -- white) do pass.

Signed:   
Bill Strizich, Chairman

2:25  
2-18-91  
TDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 581 (first reading copy -- white) do pass .

Signed:   
Bill Strizich, Chairman

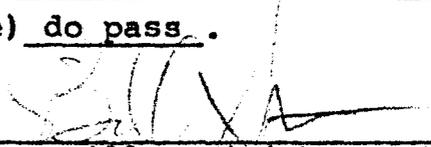
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HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 275 (first reading copy -- white) do pass.

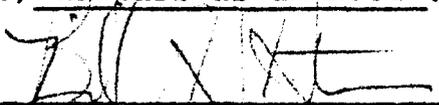
Signed:   
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 276 (first reading copy -- white) do pass as amended .

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 13.

Strike: "by 45-9-101"

2. Page 2, lines 5 and 6.

Strike: "by" on line 5 through "45-9-101" on line 6

Insert: "for the underlying offense"

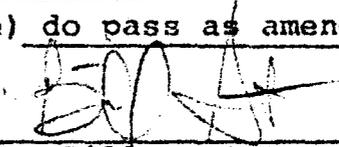
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HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 364 (first reading copy -- white) do pass as amended .

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 4.

Strike: "EXTEND"

Insert: "DEFINE THE"

2. Title, line 5.

Strike: "LIMITS ON"

Insert: "FOR NEGLIGENCE IN"

3. Page 3, line 7.

Strike: "limitations"

4. Page 3, lines 7 and 8.

Strike: "Except" on line 7 through "an" on line 8

Insert: "An"

5. Page 3, line 8.

Following: "professional"

Insert: "has the duty to exercise due and reasonable care with respect to equine activities and participants in such activities and"

6. Page 3, line 9.

Strike: "not"

Following: "liable"

Insert: "in negligence"

7. Page 3, line 10.

Following: "activity"

Insert: "proximately caused by failure of the equine activity sponsor or equine professional to reasonably and prudently exercise that duty"

5:10  
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8. Page 3, line 11, through page 4, line 10.

Strike: subsections (2) and (3) in their entirety

Insert: "(2) If an equine activity sponsor or equine professional gives a participant an informative, effective warning of the following that a reasonable person would fully understand, the participant assumes the risk of the following:

(a) the fact that an equine, irrespective of its training and usual past behavior and characteristics, may act or react unpredictably at times to such things as sounds, sudden movement, and unfamiliar objects, persons, and animals;

(b) variations in or hazards related to terrain and steepness of terrain, snow and ice, forest growth, stumps, rocks, manmade structures, and unforeseeable weather conditions; and

(c) the possibility and risk of collisions with other participants or equines or other persons, objects, or animals.

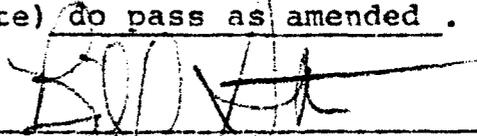
(3) If a participant fails to adequately advise an equine activity sponsor or equine professional of the participant's skill and abilities with respect to equine activities or fails to engage in an equine activity within his level of skill and abilities, an equine activity sponsor or equine professional whose negligent acts or omissions are a proximate cause of injury to or death of a participant toward whom the equine activity sponsor or professional has a duty to exercise due and reasonable care is liable only in the percent that his negligence caused the injury or death."

HOUSE STANDING COMMITTEE REPORT

February 19, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 631 (first reading copy -- white) do pass as amended.

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "PROVIDING"

Insert: ", WITH AN EXCEPTION,"

2. Title, line 9.

Strike: "AND"

Insert: ", "

Following: "46-18-201,"

Insert: "AND 46-18-222,"

3. Page 5.

Following: line 14

Insert:

"Section 3. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another,

February 19, 1991

Page 2 of 2

and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

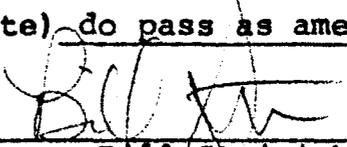
(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant at the local level affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in which case the court shall include in its judgment a statement of the reasons for its determination."

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 284 (first reading copy -- white) do pass as amended .

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "LATER"

Insert: ", BUT IN NO EVENT LATER THAN THE CHILD'S 19TH BIRTHDAY"

2. Page 1, line 9.

Insert:

"Statement of Intent

A statement of intent is not required for this bill because it does not grant rulemaking authority. However, a committee may by a two-thirds vote agree to attach a statement of intent to a bill not requiring one. The legislature finds that it would be unconscionable to have child support terminate prior to the graduation of a child from high school if the child is still living at home with the other parent, is still in need of support, and there has been no change in living circumstances prior to high school graduation."

3. Page 3, line 2.

Strike: "but not by"

Insert: "but in no event later than the child's 19th birthday.

Whenever necessary, proof of enrollment in high school must be provided. Provisions for the support of a child do not terminate upon"

EXHIBIT 1  
DATE 2-18-91  
HB 473

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18-91 BILL NO. HB#473 NUMBER \_\_\_\_\_

MOTION: DP by Toole

*FAILS*

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN		/
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	10

EXHIBIT 2  
DATE 2-18-91  
HB 426

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18-91 BILL NO. HB 426 NUMBER \_\_\_\_\_

MOTION: Rice: 3 DP

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	10	10

EXHIBIT 3  
DATE 2-18-91  
HB 426

HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18-91 BILL NO. HB 426 NUMBER \_\_\_\_\_

MOTION: Rep. Measure - Table

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	10

EXHIBIT 4  
DATE 2-18-91  
HB 697

# Montana Magistrates Association

February 18, 1991

HB 697, An act allowing a judge to summon jurors by mail

Testimony before the House Judiciary Committee by Pat Bradley for the Montana Magistrates Assn.

Mr. Chairman and Committee Members:

This legislation was requested by the Montana Magistrates Association.

It will expedite juror selection for courts of limited jurisdiction by allowing the court itself the option of summoning jurors for trial duty, rather than having to order a middle agency, a sheriff or policeman, to do so. It will allow the court the option of notifying jurors orally or by mail, whichever process is more efficient and cost-effective.

These changes would conform procedure for justice and city courts to that procedure used by district courts. District court clerks serve notice to prospective jurors by telephone or by mail, and it makes sense that courts of limited jurisdiction should use this process as well.

We ask that you pass H B 697. Thank you.

A handwritten signature in cursive script that reads "Pat Bradley". The signature is written in dark ink and is positioned in the lower right quadrant of the page.



BARRY C. MICHELOTTI

EXHIBIT 5

DATE 2-18-91

HB 276

**CASCADE COUNTY**

325 Second Avenue North  
Great Falls, Montana 59401

(406) 761-6842

February 15, 1991

Honorable Representatives,

I am in full support of House Bill 276, an act creating the offense of continuing a criminal enterprise.

House Bill 276, will be a major tool for law enforcement in combating organized drug organizations that are operating within our state.

I respectfully solicit your support for House Bill 276.

Respectfully,

Barry Michelotti  
Sheriff/Coroner Cascade County

bm/tp

EXHIBIT \_\_\_\_\_  
DATE 2-18-91  
HB 276

# Cascade County

*State of Montana*

TELEPHONE: (406) 761-8700



Courthouse  
Great Falls, Montana 59401

*Office of the County Attorney*

PATRICK L. PAUL

February 15, 1991

House Judiciary Committee  
Montana State Legislature  
Helena, MT 59601

RE: House Bill No. 276

Honorable Members of the Committee:

I wish to express my support for House Bill No. 276 and strongly urge its passage by your committee.

House Bill No. 276 injects into the law a recognition of those who are major drug dealers as opposed to those who are an occasional seller or a street-seller. I believe those who have exhibited the economic motivation to put together an organization for drug trafficking, distribution and sale are a greater detriment to society and should be subject to and pay a greater price for their criminal enterprise. Thank you for your consideration of this bill.

Sincerely,

PATRICK L. PAUL  
Cascade County Attorney

PLP/nls



EXHIBIT 7  
 DATE 2-18-91  
 HB 275

HOUSE OF REPRESENTATIVES  
 JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18-91 BILL NO. 275 NUMBER \_\_\_\_\_

MOTION: Took: \$50,000 to \$20,000

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

LGLCOR14 02-17-1991 13:57:21  
Your TextDBMS Requests Were:  
Bill: HB 0364/01  
-----

THIS IS A GRAY BILL. IT WAS DRAFTED FOR THE EQUINE ACTIVITIES HB 364 SUBCOMMITTEE OF THE HOUSE JUDICIARY COMMITTEE. THE INTRODUCED FIRST READING WHITE COPY OF THE BILL CONTAINS ALL NEW MATERIAL AND HAS NOTHING BUT NEW SECTIONS. THEREFORE, IN THIS GRAY BILL, ANYTHING STRICKEN IS MATERIAL STRICKEN FROM THE BILL BY THE SUBCOMMITTEE (AND NOT FROM CURRENT LAW) AND ANYTHING UNDERLINED IS MATERIAL ADDED TO THE BILL BY THE SUBCOMMITTEE.

HOUSE BILL NO. 364 INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~EXTEND~~ DEFINE THE LIABILITY LIMITS ON FOR NEGLIGENCE IN EQUINE ACTIVITIES; REPEALING SECTION 27-1-733, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Engages in an equine activity" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted. The phrase does not mean activity by a spectator at an equine activity or a person who participates in the equine activity but does not ride, train, drive, or ride as a passenger upon an equine.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including but not limited to dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;

(b) equine training or teaching activities;

(c) boarding equines;

(d) riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or permits a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and

(e) rides, trips, hunts, or other equine activities of any type, however informal or impromptu, that are sponsored by an

Ex. 8  
2-18-91  
HB 364

equine activity sponsor.

(4) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for an equine activity. The phrase includes but is not limited to pony clubs; 4-H clubs; hunt clubs; riding clubs; school- and college-sponsored classes and programs; therapeutic riding programs; operators, instructors, and promoters of equine facilities; stables; clubhouses; pony ride strings; fairs; and arenas.

(5) "Equine professional" means a person engaged for compensation in:

(a) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or

(b) renting equipment or tack to a participant.

(6) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

NEW SECTION. Section 2. Equine activity liability limitations. (1) ~~Except as provided in subsections (2) and (3),~~ an equine activity sponsor or an equine professional has the duty to exercise due and reasonable care with respect to equine activities and participants in such activities and is not liable in negligence for an injury to or the death of a participant engaged in an equine activity proximately caused by failure of the equine activities sponsor or equine professional to reasonably and prudently exercise that duty.

~~(2) Subsection (1) does not apply to the horseracing and mule racing industry as regulated in Title 23, chapter 4.~~

~~(3) Subsection (1) does not apply:~~

~~(a) if the equine activity sponsor or the equine professional:~~

~~(i) provided the equipment or tack and the equipment or tack caused the injury;~~

~~(ii) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely engage in the equine activity, determine the ability of the equine to behave safely with the participant, and determine the ability of the participant to safely manage the particular equine;~~

~~(iii) owned, leased, rented, or otherwise was in lawful possession and control of the land or facilities upon which the participant sustained injuries caused by a dangerous latent condition that was known or should have been known to the equine activity sponsor or the equine professional and for which warning signs had not been conspicuously posted;~~

~~(iv) committed an act or omission that constituted willful or wanton disregard for the safety of the participant and the act or omission caused the injury; or~~

~~(v) intentionally injured the participant; or~~

~~(b) in a products liability action.~~

(2) If an equine activities sponsor or equine professional gives a participant an informative, effective, warning of the

2x 8  
2-18-91  
HB 364

due to reasonable

following that a reasonable person would fully understand, the participant assumes the risk of the following:

(a) the fact that an equine, irrespective of its training and usual past behavior and characteristics, may act or react unpredictably at times to such things as sounds, sudden movement, and unfamiliar objects, persons, and animals;

(b) weather conditions, variations in or hazards related to terrain and steepness of terrain, snow and ice, forest growth, stumps, rocks, and man made structures; and

(c) the possibility and risk of collisions with other participants or equines or other persons, objects, or animals.

(3) If a participant fails to adequately advise an equine activities sponsor or equine professional of the participant's skill and abilities with respect to equine activities or fails to engage in an equine activity within his level of skill and abilities, an equine activities sponsor or equine professional whose negligent acts or omissions are a proximate cause of injury to or death of a participant toward whom the equine activities sponsor or professional has a duty to exercise due and reasonable care is liable only in the percent that his negligence caused the injury or death.

NEW SECTION. Section 3. Repealer. Section 27-1-733, MCA, is repealed.

NEW SECTION. Section 4. Applicability. [Sections 1 and 2] apply to injuries and deaths that occur on or after October 1, 1991.

-End-

Amendment to House Bill 631:

Page 1, line 9.  
Following: "45-5-502"  
Strike: "AND"  
Insert: ", "  
Following : "46-18-201,"  
Insert: "AND 46-18-222,"

Page 5,  
Following: line 14  
Strike: "END"  
Insert: "Section 3. Section 46-18-222, MCA, is amended  
to read:

\* \* \*

(6) If the offense was one committed under title 45, chapter 5, part 5, and the court determines that treatment of the offender on the local level affords a better opportunity for rehabilitation of the defendant and the ultimate protection of society. In such case, the court shall include in the judgment a statement of the reasons for its conclusion."

EXHIBIT 10  
 DATE 2-18-91  
 HB 284

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18-91 BILL NO. 284 NUMBER \_\_\_\_\_

MOTION: Rep. Rice: Reconsider

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	/
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
<b>TOTAL</b>	<b>15</b>	<b>3</b>

EXHIBIT 11  
DATE 2-18-91  
HB 284

Amendments to House Bill No. 284  
First Reading Copy

Requested by Reps. Rice and Toole  
For the Committee on the Judiciary

Prepared by John MacMaster  
February 13, 1991

1. Title, line 6.

Following: "LATER"

Insert: ", BUT IN ANY EVENT WHEN THE CHILD REACHES THE AGE OF 19"

2. Page 1, line 9.

Insert:

"Statement of Intent

A statement of intent is not required for this bill, because it does not grant rulemaking authority. However, a committee may by a two-thirds vote agree to attach a statement of intent to a bill not requiring one. The legislature finds that it would be unconscionable to have child support terminate prior to the graduation of a child from high school if the child is still living at home with the other parent and is still in need of support and there has been no change in living circumstances prior to high school graduation."

3. Page 3, line 1.

Following: "later,"

Insert: ", but in any event provisions for support may not continue past the age of 19"

EXHIBIT \_\_\_\_\_  
 DATE 2-18-91  
 HB 284

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18 BILL NO. HB 284 NUMBER \_\_\_\_\_

MOTION: 2nd amend. (Rep. Rice)

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	—	—
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER		/
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	—	—
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	14	4

EXHIBIT 13  
 DATE 2-18-91  
 HB 412

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18 BILL NO. 412 NUMBER \_\_\_\_\_

MOTION: Reconsider by Rep Rice

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	<del>///</del>
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	/	
<b>TOTAL</b>	11	7

EXHIBIT 14  
 DATE 2-18-91  
 HB 412

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-18 BILL NO. AB 412 NUMBER \_\_\_\_\_

MOTION: Rep. Brown table

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	12	7

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#691

DATE 2-18-91

SPONSOR(S) Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CARL N. Hatch	Jim & Kathy Sanders	✓	
Jo Ann Hancock	self	✓	
STEVE CROSS	SELF	✓	
Vicki Lawrence	Banisher	✓	
M. W. Lammie	"	✓	
Ted J. Dorey	Mountain Water Co.	✓	
Jim Jensen	MEIC	✓	
Ole Hennrich	MT Solid Waste MSEWC Contractors	✓	
Michael Sheewood	MTLA	✓	
Joanne P. Chance, PE	MT Toole Council	✓ with amendment only	

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







