

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on January 20, 1993, at
9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: No members excused.

Members Absent: Rep. Tim Whalen (D)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: HB 127, HB 157
Executive Action: HB 142

HEARING ON HB 127

Opening Statement by Sponsor:

REP. RAY PECK, HD 15, Havre. A BILL FOR AN ACT ENTITLED: "AN
ACT ALLOWING THE USE OF HEARSAY EVIDENCE AT A TEMPORARY
INVESTIGATIVE HEARING IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY
PROCEEDING; AND AMENDING SECTION 41-3-403, MCA."

Proponents' Testimony:

John Conner, Asst. Attorney General speaking on behalf of the Montana County Attorney's Association, stated this bill was requested by the County Attorney's Association in response to a problem that evolved as a consequence of a supreme court case in April of 1992. If there are allegations of child abuse or neglect, and the situation is examined by the county attorney, he or she can take action by filing a petition alleging abuse or neglect and seek court control, which can range in specifics from leaving the children with parents to taking the children away from the parents and placing the children in custody of the Department of Family Services (DFS). This equates to an adjudicatory hearing, and this is not the process that this bill addresses. In order for children to be removed from the home on any kind of a long-term basis, there has to be an adjudicatory hearing conducted.

This bill addresses the situation where an emergency exists and the child is taken out of the home because of that emergency. The county attorney then files a Petition for Temporary Investigative Authority. This must be accompanied by an affidavit that sets forth the facts explaining the emergency situation and requesting relief. When this happens, it necessitates filing of that petition. The statute requires that a hearing must be held within 20 days after the filing of the petition. Some basic court control or authority over the child over a period averaging about nine days gives enough time for the temporary investigator to evaluate the situation. The petition also requests such things as psychological evaluations of children, physical evaluations of children, and counseling sessions for parents and the children. Mr. Conner said children will be placed in foster care until arrangements can be worked out differently. Sometimes these cases go into adjudicatory proceedings.

There has been some concern as to the potential abuse over this bill. Hearsay testimony is always subject to the discretion of the court simply because it is allowed, but it does not mean the court simply must allow any and all hearsay testimony as evidence. The court, in every case, has the ultimate discretion to control the proceedings, and if the proceedings do not appear to be appropriate under the circumstances, the court has the authority to limit or restrict.

It is not uncommon in criminal law to have hearsay situations. The rules governing criminal law allow the use of hearsay testimony in proceedings that are far more obtrusive.

This is a good bill because in its application, it will be used most often in situations where the child has been taken out of the home and is very emotionally traumatized and simply is not ready or prepared to present any kind of statements in court concerning the nature of problems that he or she is suffering from.

Randy Hood, Chief Public Defender, Lewis and Clark County, contended that until the child is removed from the home, the child is in a crisis situation and suffering from trauma. The child is also being evaluated by professionals. What the child has revealed can be used for court purposes, but many don't want to discuss their parents. They have an intense feeling of going home, and experience feelings of betrayal toward their family. It is very difficult for children to testify against parents. Even after evaluation statements are made by the child after the 20-day period, children are still not ready to testify.

Carolyn Clemens, Deputy County Attorney, Lewis and Clark County, has been handling cases for ten years on behalf of the Department of Family Services. Ms. Clemens believes it is important for the committee to know that the kind of proceedings discussed in this bill are often on an emergency basis. There is concern that children are being taken from their parent's homes in situations other than that. These cases often occur in situations where parents are taken to jail, and children are abandoned, and are placed outside the home. The kind of proceeding involved often is where children remain in the home, which is one of the problems in taking a county case to a hearing and requiring a child to come forth and testify. It is very difficult for a child to testify against their parents in a courtroom, even if the parents abused that child. It is very traumatizing for a child to be put through that process. For these reasons it would be helpful for a child's testimony could be presented to a court without the necessity of having the child present in the courtroom. These are limited proceedings and 20 days is not very much time to prepare and conduct investigations, however, in the interest of preserving family unity, the DFS does require that it be brought to court in a timely manner. Oftentimes, this is the initial proceeding, and what the court is determining is the authority to investigate further.

Ann Gilkey, Legal Counsel, Department of Family Services (DFS), explained the DFS brings cases such as child abuse or neglect to the attention of county attorneys. It is at the request of DFS that the county attorney files a petition for temporary investigative authority (TIA). TIA investigates alleged incidents of child abuse and neglect. HB 127 will help the agency ensure these orders for TIA will be granted and that the safety of the children that are at risk from abuse and neglect will be ensured.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, maintained section 41-3-402 already allows an affidavit and a petition for these emergency hearings. Section 41-3-404 also allows the court to consider matters it deems relevant. Hearsay rule is a legitimate rule. 41-3-409 makes an appeal to the Supreme court

possible. Relaxing the hearsay rule raises the possibility of more proceedings being challenged and appealed to the supreme court. The hearsay rule could possibly cut both ways.

Sen. Gary Aklestad, Senate District 6, Galata, is concerned that good parents are being unjustifiably put through this experience. Fifty percent of the children taken from their homes were removed in an unjustified manner. There is potential that this will increase the number of lawsuits. The primary concern is the children, however there is a priority to keep families together.

Mary McCue, Montana Clinical Mental Health Counselors (MCMHC), stated the MCMHC is concerned about parents who have been unjustly accused of child abuse, which is happening more and more. She requested the committee be mindful of this when voting on the bill.

Informational Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked **Ms. Clemens** what the county attorney's office did prior to the Montana Supreme Court decision in regards to hearsay evidence? **Mr. Clemens** said it is more effective to have the witness testify in a courtroom. Many witnesses are hesitant to testify in a courtroom, and children, especially, do not like to testify in a courtroom.

REP. HOWARD TOOLE said that testimony from the children is being delivered through hearsay from someone else. Is it the intent to have hearsay evidence from other sources be admissible, or is it just limited to testimony from the child? **Mr. Conner** said the bill was drafted to be broad enough to cover the situations other than children's testimony directly, although that's the instance in which we are most often concerned. Reports are to be confidential, and in an emergency situation, it's appropriate to maintain confidentiality after the initial stage.

REP. DIANA WYATT asked **Mr. Conner** why an affidavit is required under these circumstances? **Mr. Conner** said the statute requires that the county attorney file a petition that's accompanied by an affidavit. The affidavit is simply an instrument which gives the courts information by which the court can determine what the files will be. Under the law, an affidavit is not evidence, and when it's time for the hearing, a person still has to present evidence at the hearing.

REP. JIM RICE asked **Mr. Conner** if he could explain the supreme court decision and the basis of the decision. Did the statute not authorize hearsay evidence? **Mr. Conner** said the case basically covers testimony from the social workers. The County Attorneys' Association does not see this bill as providing opportunity to file more of these cases, it sees it as an opportunity to relieve the traumatic burdens that are placed on

the witnesses who have to testify in these emergency situations. REP. RICE commented that 20 days is a very long time to be without your children. Mr. Conner said children are not always removed from their homes. If children are removed from their homes because of an abusive situation, 20 days is not a long time. REP. RICE asked what evidence is being used now without this authority. Mr. Conner said that depending on the circumstances, it requires that direct evidence be presented in testimony, even if children testify. As the statute is currently written, hearsay is not admissible.

REP. TOOLE said there's no reference made to that kind of evidence. He asked if this is going to lead to a circumstance in which there will be a perception that the children's actual, live testimony is less important in these cases than they formerly were? REP. TOOLE is concerned about a blanket allowance of children's testimony to be filtered through social workers and professionals, and in the name of protection, taking them out of the judicial process altogether and increasing the risk that force will be used to remove children from families. What is the bill's intent? Mr. Conner said the statute REP. TOOLE is referring to is the adjudicatory statute 43-3-404, and he does not believe this bill affects that statute. The Montana County Attorneys' Association requested that this bill be drafted so that this section be placed only in subsection (b) of 41-3-403 which relates only to that hearing. REP. TOOLE said the adjudicatory hearing doesn't require testimony from children and probably wouldn't in many instances. The 20-day hearing is the only hearing that the parents are going to get, and it may eliminate any direct contact between children and parents. Mr. Conner said this is a full-blown hearing and parents are always involved.

REP. DUANE GRIMES asked Ms. Gilkey if the passing of this bill will mean more challenges of litigation and what recourse do parents have? Ms. Gilkey said parents would have the same voice that they presently have and that is if they disagree with the court's decision, they may take it to the supreme court.

REP. ANGELA RUSSELL asked Mr. Conner to explain hearsay evidence. For example, if REP. RUSSELL interviewed a child, as a professional social worker, and she concluded that the family is possibly putting this child at risk, than that is considered hearsay evidence. If the child doesn't actually tell the court this information, but the social worker tells the court, that is also hearsay evidence. If the social worker had videotaped and interviewed the child, is that admissible to the court and considered hearsay? Mr. Conner first explained that hearsay is basically a statement made out of court by someone other than the person who is presenting it in court. Yes, the child is giving hearsay information to the social worker. There isn't any provision in this law that allows the utilization of those kinds of tapes to be used as direct evidence although they are being used in criminal evidence.

REP. VIVIAN BROOKE asked Anne Gilkey if it is a requirement that the parent/guardian having legal custody of a child receive legal counseling services, and how often is that used in a temporary situation? Ms. Gilkey said depending on the situation, it's available if warranted. It is paid for by insurance and mental health centers. The DFS would not require counseling if a family could not pay for it.

Closing by Sponsor:

REP. PECK said this is a very small area being discussed, very limited in scope. It is a protection situation where a child is in an abusive situation needing a temporary investigative authority of courts. A judge makes a lot of determinations in a court setting, and when he hears hearsay testimony, he is going to make a judgement as to the value of that, depending on the character, the knowledge, and the immediate acquaintance of the person who is testifying.

HEARING ON HB 157

Opening Statement by Sponsor:

REP. RANDY VOGEL, HD 86, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR ALCOHOL OR DRUGS; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THEIR THIRD SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTION 61-8-714, MCA."

This may be a radical approach, but it has been proven effective. It's patterned after Arizona's and Oregon's DUI laws. The motor vehicle operated at the time of the offense may be forfeited. If a vehicle is seized, the law enforcement agency may remove the vehicle to a storage area for safe keeping, remove the vehicle to an area designated by the court or provide for another custodian or agent to take custody of the vehicle and move it to an appropriate location within the jurisdiction of the court. An estimated value is taken of the vehicle, and within 20 days of the seizure, the offender is given notice of the seizure as is any person or entity with vested security interests. After 20 days of seizure, a written request has to be sent to the county or city attorneys. They shall assume probable cause that the vehicle is actually subject to forfeiture, and at that point, they initiate proceedings. If the attorney decides that there isn't any probable cause, he shall notify the agency and immediately authorize the release of the vehicle. EXHIBIT 1.

Proponents' Testimony:

SEN. TOM TOWE, SENATE DISTRICT 46, Billings, said he generally does not support forfeiture of property in connection with criminal offenses because there can be horrendous results.

REP. VOGEL has pointed out law enforcement has tried and tried to

reduce DUI offenses, i.e. suspend the owner's drivers license, drivers education courses, fines, jail sentence, and cancelling offender's insurance. This bill is designed only to allow forfeiture of the car owned and operated by the defendant. There's an exception to that. If the car is not owned by the offender, and if the owner is aware of the violation, that car can be forfeited as well. REP. TOWE included amendments to make it clear that this is, in fact, what will happen. The intention is not to seize an innocent person's car, but to take the driving privileges away from a DUI offender. After that person has been convicted of the third DUI, law enforcement can obtain a search warrant and seize the vehicle. After the vehicle is seized, within 20 days, law enforcement will notify all registered owners, all the secured parties, and the county attorney of the forfeiture. The county attorney has 75 days in which to do something. If the county attorney decides he does not have a case to seize the vehicle, and doesn't do anything within 75 days, the vehicle is automatically released. If the county attorney files a petition within 75 days, then that starts a legal proceeding. Then a hearing will be held within 60 days. If, in fact, it is decided in the hearing that the vehicle should be forfeited, at that point, there's a sale, and after the sale, the proceeds are disbursed to a secured party, second to the entity who is responsible for seizing the vehicle. In other words, if the vehicle is seized within the county, it goes to that county. If it's seized within the city, it goes to that city.

Officer Mark Cady, Police Officer, City of Billings. Officer Cady works the night shift as a police officer for the city of Billings. On September 19, 1992, Officer Cady was dispatched on an armed robbery in progress. As he responded to that call, he was hit by a 22-year old male who ran a red light. He doesn't remember much after that. He spent 17 days in intensive care, 28 hours of surgery, broke almost every bone in his face, broke his jaw, broke most of his ribs, collapsed both his lungs, punctured his stomach and intestines, shredded his liver, broke his arms and legs and compacted a disk in his back. The person who hit Officer Cady was a multiple DUI offender who still had his car, and he had just been involved in another accident approximately five minutes before he hit Officer Cady. This person had not used any of his DUIs as a learning experience. In Officer Cady's experience as police officer, he has seen many DUI repeat offenders. In 1992, he had given a DUI offender his seventh DUI; he's still driving. It doesn't make any difference to take the driver's license away, DUI offenders will still drive without their licenses. Many DUI offenders don't have automobile insurance and they can no longer apply for it. The person that hit Officer Cady did not have insurance, but fortunately for Officer Cady, the State Worker's Compensation Fund is paying for doctor bills reaching \$500,000. DUI offenders make a joke out of their DUIs. Many return to drinking and driving immediately after their jail sentence or DUI courses. Officer Cady said DUI offenders never really think about what they're doing until they

hit someone like himself or kill someone. The second DUI offense in Idaho is a felony. Officer Cady believes this bill is a good start.

Mark Staples, Montana Tavern Association (MTA), said the MTA believes the firmest measures possible need to be used for DUIs. A DUI for the first time offender is sobering, humiliating, frightening, memorable, and a financial catastrophe, and it takes away a number of that person's rights. If an offender is on his third offense, there is no question, either by a common sense approach or a clinical definition, that this person is a problem drinker. The question is this: Does this bill take care of the problem drinker? If the vehicle is taken away from the problem drinker or DUI offender, he will find another car to use. Common carriers are exempted, and the banks are protected. Is the family protected from this? The family takes the abuse from this alcoholic person in the first place. Mr. Staples would entrust this bill to try to consider the potential damaging effects to innocent families.

Bill Fleiner, Montana Sheriffs and Peace Officers Association, (MSPOA) claimed the civil departments and sheriffs are a more appropriate avenue to handle DUI forfeiture offenses and are set up to handle this problem. The State Highway Patrol may have to create a position to handle various mechanical issues. Sheriff's fees and the civil process are already established, and the sale of the vehicle is given to the appropriate agency who's involved in the forfeiture.

REP. TIM SAYLES, EMT/Firefighter, stated he has 21 years of emergency technician and firefighter service. He described an accident where, a driver convicted of a DUI for the sixth time, traveling at 60 mph totaled a county sheriffs vehicle and killed two patrol officers. The officers were dispatched with a warning that a drunk driver was on the road. Unfortunately, the officers could not avoid the drunk driver and were killed.

Capt. George Olson, Helena Police Dept. (also speaking on behalf of Billings Chief of Police), reported there's an arrest in excess of 425 DUI drivers every year in Helena, . The city of Billings arrests in excess of 1,000 DUI drivers every year. In Helena, 50 percent of those are repeat offenders. In Billings, the statistics are 60 percent repeat offenders. Capt. Olson has seen over the years that alcohol treatment hasn't worked.

EXHIBIT 2

REP. BOB CLARK, HD 31, Ryegate, stated when he was a patrol officer in the early seventies, people started taking notice of the DUI problem. There were many suggestions in place, one of which was to take away the license plates, but they never considered forfeiting the vehicle. REP. CLARK said we're only talking about third offense DUIs and the ones that were caught and convicted. He is more concerned about finding a solid solution for people that are driving with multiple convictions

with DUIs. REP. CLARK supports the sheriff's civil process handling of forfeiture.

Peter Funk, Asst. Attorney General, Dept. of Justice, said drinking and driving statutes were passed in 1989, and the sanctions for penalty for DUI and Blood Alcohol Content (BAC) offenses were identical, because they are essentially the exact same offense. The prosecutor simply uses the BAC charge when a person has a blood alcohol concentration test, which gives them evidence that a person's blood alcohol is .10 or above. There's no difference between these offenses except that someone has taken a blood alcohol test. Currently, in Montana law, if a person is a multiple DUI offender, that person is mandated certain sentencing for treatment. If a person is a multiple BAC offender, there's no sentencing mandate. Some people think that if they take a breathalyzer test, they deserve a break. It is recommended to take the test because if the person chooses not to take the test, he will lose his driver's license. No matter what happens to this bill, from the prosecutor's standpoint, the further these two statutes grow apart, the less sense the statutory scheme makes.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. KARYL WINSLOW asked REP. VOGEL what the intent of the bill is, and as an officer, is a DUI offender required to go through drug/alcohol abuse training. REP. VOGEL said the true intent of the bill is to take away the tool of destruction from multiple offenders of DUI laws; and in serious cases to forfeit the vehicle. Police officers go through continuous training. REP. WINSLOW finds it interesting that no one from drug and alcohol dependency programs are testifying in favor of this bill, and she asked REP. VOGEL if he believed that by forfeiting somebody's vehicle, it will keep multiple DUI offenders off the roads? REP. WINSLOW commented that a person convicted of his third DUI offense is clearly having problems with drug and alcohol abuse. REP. VOGEL said that by taking away the vehicle, it will take away the weapon, but there's no way to control the alcoholic or drug abuser unless he chooses to be helped.

REP. JODY BIRD asked REP. VOGEL if caffeine and nicotine are considered addictive drugs. For example, cold tablets are known to cause drowsiness. REP. VOGEL said that caffeine, nicotine and over the counter drugs, such as cold tablets, are not included in this bill, unless there has been an overdose. These types of narcotics are included in the drug and alcohol statute.

REP. DAVE BROWN asked REP. VOGEL in his experience as a police officer in Billings if the penalty for negligent vehicular assault is a \$1,000 fine and a year in the county jail. There

are criminal endangerment statutes up to \$50,000 and up to ten years in prison, and negligent endangerment statutes with penalties of \$1,000 and a year in county jail. Regarding vehicular assault, which happened in the accident described by Officer Cady, what happened to the offenders? REP. VOGEL said the defendant spent one year for negligent assault for the first accident he was involved in, and he has yet to be adjudicated for the second accident. The person involved in Officer Cady's accident was charged with felony criminal endangerment. That doesn't address the second, third and fourth offense.

REP. BROWN asked Mr. Funk if he could, in the future, provide the number of DUI offenses over the last ten years in Montana for the committee. The description between the divergence between per se and driving under the influence interests REP. BROWN. In 1983, he met with Jean Turnage, Chairman of the Senate Judiciary Committee, and assisted in writing the statute at the request of prosecutors. This was intentional and has not been revised because the prosecutors said they needed a way to get a quick conviction on a per se and try to essentially bluff people out of taking the longer route to get a conviction due to the technicalities involved. REP. BROWN asked Mr. Funk, if it is not a good idea to have this information on the books? Mr. Funk said the sanctions were identical. REP. BROWN said that the statutes were significantly different and the only information added to both areas were increased penalties.

REP. BROWN asked if this bill stays the way it is now, is every bank that gives a loan on a car going to have to file a lien against the local sheriff and chief of police, as a matter of course, because nearly every person that drives a car who has a family member driving the car who has a drink can end up in this situation potentially. Banks are going to take a closer look at persons with at least one DUI offense to see whether or not they are protecting their interest. If they have filed that lien, their security interests are protected. The paperwork is going to increase substantially for the sheriff's and police departments. REP. BROWN believes bankers may oppose this bill because of the way it's written. REP. VOGEL does not know of a

bank that wouldn't have security interest in a vehicle registered. If the bank's name is on that title, they have a secured interest. REP. BROWN does not agree with REP. VOGEL.

REP. BOB CLARK inquired about the Montana Tavern Association's taxi service for people who have had too much to drink and asked Mr. Staples if the program is only in effect on holidays or 12 months a year. Mr. Staples said it is in effect 12 months a year with increased funding during the holiday season and extra offers such as towing the cars.

REP. WYATT asked REP. VOGEL if there is any opportunity for incarcerated people to be rehabilitated and enhance their driving abilities, and is there a grace period as to when the car will be returned? REP. VOGEL said no, there is no grace period, and a person can not only reapply for a driver's license after rehabilitation but also purchase another car.

REP. WYATT is concerned for the teenager of alcoholic parents. She asked what happens if the teenager owns his own car and the parents have access to that car, and how can this teenager keep his parents from taking his car without his permission. REP. VOGEL referred to page 13, Section 3, line 13 of the bill to answer REP. WYATT'S concerns: In making a disposition of a motor vehicle under (sections 2 through 9), the court may take any action to protect the rights of innocent persons.

Closing by Sponsor:

REP. VOGEL closed by emphasizing four main points of the bill: 1) D.A.R.E. has the best program to prevent alcohol abuse for teens; 2) To remove a tool/weapon from the streets for protection of the driver and innocent lives; 3) To add an escape clause for innocent persons and families; and 4) The safety of our citizens outweighs the inconvenience of a DUI.

CHAIRMAN FAGG announced to the committee that HB 157 has been assigned to a subcommittee. The subcommittee consists of:

REP. JIM RICE, CHAIRMAN

REP. SCOTT MCCULLOCH

REP. BILL TASH

REP. DIANA WYATT

EXECUTIVE ACTION ON HB 142

Motion: REP. WYATT MOVED HB 142 DO PASS.

Discussion:

Rep. Anderson met with the Attorney General's office to discuss the attached amendments. CHAIRMAN FAGG moved the amendments. EXHIBIT 3. The amendments increase the maximum fine available to a judge to \$1,000 for misdemeanors. This doesn't mean the judge

will fine \$1,000, only that he has the ability to fine up to \$1,000. Secondly, the amendments increase the maximum jail time the justice and city courts can impose to one year. This doesn't mean they have to, they have the ability to up to one year. The purpose of these amendments was because if the misdemeanor amount is going to increase to \$1,000, they are going to be fairly expensive misdemeanors. On the other hand, the judges should have more discretion if there is a \$950 theft. It's going to be a misdemeanor, but if the judge knows the background of this particular defendant, this may allow the judge to give the defendant more fine and more jail time.

The amendments have been moved, CHAIRMAN FAGG asked the committee if there is any further discussion on the amendments.

REP. VOGEL asked CHAIRMAN FAGG if we are asking for a \$1,000 fine on a \$1,200 theft? CHAIRMAN FAGG said that in order to be a misdemeanor, the courts cannot fine in excess of \$1,000. The judges also have the option of restitution of whatever the amount, plus the \$1,000 fine if justified, plus jail time if the judge believes it justified.

REP. BROWN is concerned the fine is too much, and inflation doesn't warrant the increase. Rather than \$1,000, he proposed \$500. He is also concerned that there are no lawyers or people with training in the law in justice court and city court. The one-year jail sentence is a major concern of REP. BROWN'S.

REP. VOGEL'S main concern is not raising the fine up to \$1,500, it's maintaining a level of fine higher than that of the crime, so that it doesn't pay to steal. If the level of misdemeanor drops back down to \$500, then drop it proportionally to \$650 or \$750. REP. VOGEL agrees with REP. BROWN and believes the sentencing shouldn't be any more than six months although it will be difficult to get a conviction on six months.

CHAIRMAN FAGG said, in reality, more penalties are imposed in city court and justice court than they are in district court. CHAIRMAN FAGG has prosecuted a number of thefts in the \$300 to \$1,000 range. Prosecuted as a felony, they plead guilty or are found guilty, and the judge gives the person a deferred sentence, which means it can be taken off his record if he's clean for two or three years, but a suspended sentence which means he is given two or three years, or it's all suspended. CHAIRMAN FAGG said a person may not spend a day in jail. The district courts rarely, if ever, fine anybody, and they only sometimes order restitution. On the other hand, in the city court and justice court, it's a misdemeanor, but typically, they're fined and ordered to pay restitution. On a first offense, they're typically given suspended sentences, on a second offense, typically given five to ten days, and on the third offense, typically given thirty days to sixty days. Typically, a person is going to get more of a penalty in justice and city court. This is why CHAIRMAN FAGG supports the bill. He supports the amendments because if the

threshold is going to be increased, than consequently, the fines that can be imposed should be increased or the jail time that could be imposed should be increased. REP. BROWN recommended the committee split the amendments and vote on the increase of the fine and the increase of jail time.

REP. BROWN said Amendment 1 can be changed to reflect the actions of the committee. REP. BROWN offered a substitute motion to Amendment 2, to strike \$1,000 and insert "\$600".

REP. CLARK asked what REP. BROWN'S intention was in dropping the \$1,000 down to \$600. REP. BROWN said he planned to drop both and is not sure how much. He agreed with the suggestion of \$600 or \$750.

REP. BROWN and CHAIRMAN FAGG withdrew their motions for the purposes of first determining what the threshold should be.

Motion: REP. BROWN moved an amendment to raise all threshold amounts to be at \$600 rather than \$1,000.

Discussion:

REP. VOGEL voiced his support of the amendment.

REP. BROOKE opposed the amendment and wants to keep the threshold at \$1,000.

CHAIRMAN FAGG said the question now is raising the threshold of misdemeanors from \$300 to \$600. The bill raises the threshold from \$300 to \$1,000.

Vote: The amendment passed 15-3. Those in favor of raising the threshold of misdemeanors to \$600 are REPS. VOGEL, BIRD, BERGMAN, BROWN, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE, WHALEN, and WYATT. Those opposed are REPS. BROOKE, FAGG AND WINSLOW.

Further discussion on the bill as amended:

Motion: REP. BROWN moved an amendment to raise the fine to \$750.

Discussion:

CHAIRMAN FAGG spoke in favor of REP. BROWN'S motion. He stated current law has a misdemeanor threshold of \$300, and the maximum fine is \$500. It's higher than the threshold. If the threshold is \$600, than the fine limit of \$750 is appropriate.

Motion/Vote: The question was called on the amendment to raise the fine from \$500 to \$750 as the maximum fine allowed.

Vote: The amendment carried 15-3. Those in favor of raising the fine from \$500 to \$750 were REPS. FAGG, VOGEL, BIRD, BERGMAN, BROOKE, BROWN, CLARK, GRIMES, MCCULLOCH, RICE, SAYLES, SMITH, TASH, WHALEN and WINSLOW. Those opposed were REPS. RUSSELL, WYATT and TOOLE.

Motion: REP. BROWN MOVED HB 142 DO PASS AS AMENDED.

Discussion: Mr. MacMaster said Amendment 4 is a clarification of a gender/neutralizing change from the bill.

Motion: REP. BROWN moved Amendment 4. This puts the text back into the section and still gender/neutralizes it. Question was called on Amendment 4.

Vote: Motion on Amendment 4 do pass carried unanimously.

Mr. MacMaster said page 21, line 4 discusses various steps of offenses that HB 142 covers. In all the offenses in the bill, a misdemeanor does not have separate penalties for first, second and third offense. On page 21, line 24, the offense is called theft. On page 22, lines 24 and 25, for first, second and third offenses, if the value of the property is under this dollar amount there are separate penalties. Right now it's up to \$500 and up to six months for first offense. For second offense, it's \$500; and for the third offense, it's \$1,000 and thirty days to six months. He asked the committee to decide what the penalties will be for a first, second and third offense.

REP. BROWN moved an amendment to strike \$500, and insert \$700 on page 22, line 1. On page 22, line 3, strike \$500 and insert \$850.

CHAIRMAN FAGG restated that first offense will be up to \$700, second offense \$850, and third and subsequent offenses will be \$1,000.

REP. RICE moved to change offenses to read: \$750 first offense, \$850 second offense, and \$1,000 for third offense.

Motion/Vote: The question was called for. Those in favor of the amendment to raise the fine to \$750 for first offense, \$850 for second offense, and \$1,000 for third or subsequent offense carried unanimously with REP. RUSSELL voting no.

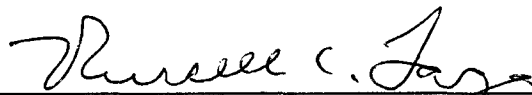
Discussion: REP. RUSSELL stated she represents an area where the income is limited. These high fines affect her constituency disproportionately because the income is so limited. REP. RUSSELL does not feel that the justice system fines people fairly and knows that many of her constituents are picked up. She said she cannot support this bill.

Motion/Vote: Question was called on the bill as amended.


VOTE: HB 142 DO PASS AS AMENDED. The motion failed on an 8-8 tie vote. CHAIRMAN FAGG, REPS. BERGMAN, CLARK, RICE, TASH, TOOLE, WINSLOW, and WYATT voted in favor of the bill as amended. Those opposed were REPS. VOGEL, BROWN, BIRD, BROOKE, GRIMES, MCCULLOCH, RUSSELL, and SMITH. REPS. WHALEN and SAYLES did not vote.

ADJOURNMENT

Adjournment: 12:00



RUSSELL FAGG, Chair



BETH MIKSCHÉ, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

1-20-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen		✓	
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man


CS-09

HOUSE STANDING COMMITTEE REPORT

January 22, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 142 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "\$1,000"

Insert: "\$500"

2. Page 17, lines 16 and 18.

Page 19, line 12.

Page 21, line 25.

Page 22, line 9.

Page 23, lines 15 and 19.

Page 24, lines 13 and 17.

Page 25, line 12.

Page 26, line 12.

Page 27, line 24.

Page 29, line 9.

Page 30, line 2.

Strike: "\$1,000"

Insert: "\$500"

3. Page 27, lines 2 and 3.

Strike: "that" on line 2 through "person's" on line 3

Insert: "the"

Following: "condition" on line 3

Insert: "of the person making or directing another to make the statement".

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

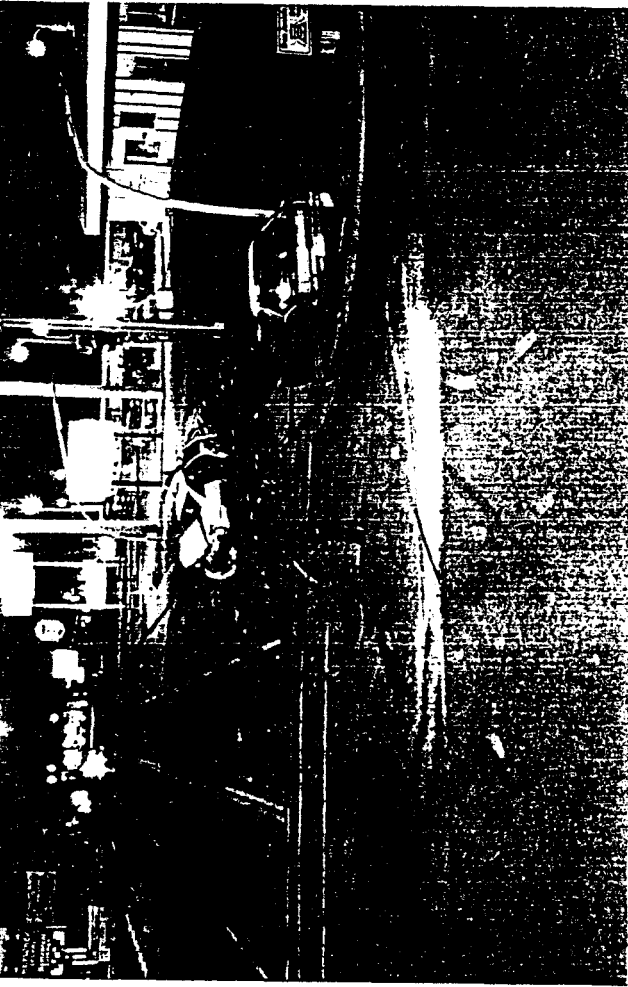
ROLL CALL VOTE

DATE 1-20-93 BILL NO. HB 142 NUMBER 16

MOTION: TO DO PASS TICS 8-8

(Bill is reconsidered 1-22; see 1-22 Minutes)

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	NO VOTE	
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	NO VOTE	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	8	8



These photos are stored at the Historical Society,
 225 North Roberts Street, Helena, MT 59620-1201.
 The phone number is 444-2694.

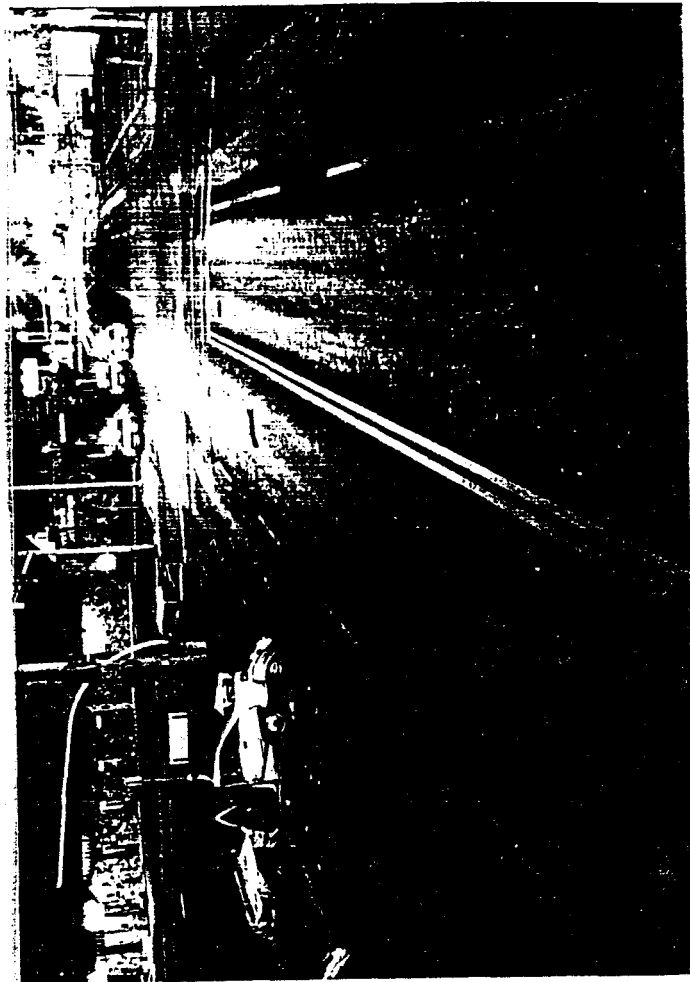


EXHIBIT 1
 DATE 1-20-93
 NO. 157



CITY OF BILLINGS
POLICE DEPARTMENT

EXHIBIT 2
DATE 1-20-93
SS 157
NB

P.2



WAYNE R. INMAN
CHIEF OF POLICE

P.O. BOX 1554
BILLINGS, MT 59103

January 19, 1993

Chief Bill Ware
Helena Police Department
Helena, Montana

Dear Chief Ware,

I understand that the Judiciary Committee is hearing an amendment to section 61.8.714 MCA, at 9 a.m. on January 20th. This bill deals with the penalty for driving under the influence of alcohol or drugs. Because of the late notification, neither I nor Assistant Chief Dave Ward will be able to attend in person. This bill is of great importance to the Billings Police Department and to the community we serve. Would you please share my letter with the Committee members, and if time permits, please highlight the important points to the Committee.

As you know, we almost lost a police officer to a DUI driver who had two convictions prior to the accident on September 19, 1992. I cannot express the frustration felt by this Police Department and the community of Billings that the law had failed to deal with this multiple offender. This Police Department received many phone calls and letters expressing outrage that our society had failed to keep this menace to the community off the streets.

Representative Randy Vogel's bill would take a giant step toward filling the vacuum that currently exists in addressing the repeat DUI offender. I'd like to emphasize that this bill is aimed toward the THIRD offender. One DUI is one too many; two is inexcusable; three demands that this state take some action to assure that a fourth doesn't occur.

The last legislature recognized the magnitude of drinking and driving and specified enhanced jail sentences. The time has come when the instrumentality of the offense, the driver's vehicle, be removed. If the drunk doesn't have a vehicle to drive, he/she won't be driving. Of course we can argue that the drunken driver will be able to find another vehicle. Perhaps they can, but at least some if not many of the drivers can't find the alternative vehicle and are not on the streets and highways

Billings Pride

of this state trying to kill themselves or worse yet, innocent members of our community. Representative Vogel's bill adequately addresses the issue of the common carrier, the vehicle used without the permission of the owner, and the security interest holder.

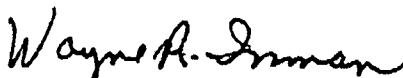
I will continue to support education and prevention as a long term solution, but we need to take some very effective preventative action now in conjunction with the education efforts which are long term in effect.

Let me leave you with some statistics from the enforcement efforts of the Billings Police Department:

During 1991, 1044 DUI's were arrested. During 1992, 1140 DUI's were arrested. That is an increase of 9.2%. Approximately 60% of the 1992 DUI arrests were repeat offenders. Of the five fatal accidents in the City of Billings during 1992, four involved alcohol.

Whatever education and punitive measures we have in place at the present time appear to be marginally effective at best. We owe the citizens of this state a strong stand on the issue of the DUI driver.

Sincerely,



Wayne R. Inman
Chief of Police

c: Mark Watson, City Administrator
Bruce McCandless, Assistant City Administrator

Amendments to House Bill No. 142
First Reading Copy

Requested by Rep. Fagg
For the Committee on the Judiciary

Prepared by John MacMaster
January 19, 1993

1. Title, line 6.

Following: "INCREASED;"

Insert: "INCREASING THE PENALTY UPON PERSONS WHO COMMIT THOSE
CRIMES FOR THE FIRST TIME;"

2. Page 19, line 9.

Page 23, line 16.

Page 24, line 14.

Page 25, line 8.

Page 26, line 7.

Page 27, line 20.

Page 29, lines 5 and 22.

Strike: "\$500"

Insert: "\$1,000"

3. Page 19, line 10.

Page 23, line 17.

Page 24, line 15.

Page 25, line 9

Page 26, line 8.

Page 27, line 21.

Page 29, lines 6 and 23.

Strike: "6 months"

Insert: "1 year"

3. Page 22, lines 1 through 7.

Strike: "\$500" on line 1

Insert: "\$1,000"

Strike: "6 months" on line 2

Insert: "1 year"

Strike: "A person" on line 2 through end of line 7

4. Page 27, lines 2 and 3.

Strike: "that" on line 2 through "person's" on line 3

Insert: "the"

Following: "condition" on line 3

Insert: "of the person making or directing another to make the
statement".

Testimony: Did not testify

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME

Roger Tippy

BILL NO.

HB157

ADDRESS

1215 11th Ave

DATE

12/1/93

WHOM DO YOU REPRESENT?

Montana Beer & Wine Wholesaler Assn.

SUPPORT

X

OPPOSE

AMEND

COMMENTS:

An ordinance of the city of Portland, Oregon contains
similar forfeiture provisions. It seems to be effective.
The beverage industry does not need or want
the business of persistent DUI offenders.
We recognize that amendments may be
suggested in several areas and believe this bill
can be made to work.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 127
DATE Jan. 20, 1993 SPONSOR(S) Peck
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
BANDI HOOD	SELF	✓	
CAROLYN CLEMENS	SELF	✓	
Ann Calkins	DFS	X	
Gregory Olson	MT. Assoc of Chiefs of Police	X	
Russell B Hill	MTLA		X
Mary McCue	MT. Clinical Mental Health Counselors		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

Judiciary COMMITTEE BILL NO. SB 157
DATE Jan. 20, 1993 SPONSOR(S) Vogel

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Roger Tippy	Mt Beer & Wine Wholesalers	X	
Bob Griffith	Mont Highway Patrol	X	
Jim Tillotson	City of Billings	X	
Theresa Sanders	Intern		
MARK CADDY	Self, BILLINGS Police	X	

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