

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN RUSSELL FAGG**, on February 2, 1993, at 8:00 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. Tim Whalen (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** None.

**Members Absent:** None.

**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 323, HB 340  
Executive Action: HB 215, HB 81, HB 255, HB 253, HB 257

**HEARING ON HB 323**

**Opening Statement by Sponsor:**

REP. BEA MCCARTHY, House District 66, Anaconda, said this bill allows the court, after a second conviction of cruelty to animals, to limit the defendant's custody of animals. She said that she and her constituents have been trying to collect information for the last two and one-half years on what is

believed to be extreme animal cruelty occurring in Deer Lodge County. **EXHIBIT 1**

**Proponents' Testimony:**

**Mr. Beaudett, County Attorney, Deer Lodge County,** stated that Deer Lodge County is interested in this bill because of the magnitude of a current case. They are particularly concerned about the abuse to a large number of horses and dogs being maintained by this person.

**REP. MCCARTHY** said the present statute is inadequate because it does not address the issue of removing the animals from the situation after the penalty provisions have gone into effect. The amendment specifically seeks specific time tables for removing the animals from the custody after the second and third convictions of cruelty. He said that 31 other states have enacted statutes that deal specifically with provisions of removal of animals.

**Dave Guhlke, Veterinarian, Anaconda,** supported this bill and the ability to remove animals from an abusive situation.

**John Siders, Animal Warden, Anaconda/Deer Lodge Counties,** supported the bill.

**Dave Pauli, Regional Director, Humane Society of the United States, Billings,** stated that during 1992, in Montana alone, his office investigated over 30 cases of abuse. Animal cases are very difficult to investigate and prosecute; live animals are difficult to house and expensive to maintain. Non-profit organizations such as the humane society assist local prosecutors, but existing Montana statute does not provide the authority to compose long-term remedies to these problems. This bill adequately addresses the problem; it does not impose restrictions on legitimate business enterprises; and it gives the courts the discretionary power to guide the cases of an owner who cannot or will not solve the problem.

**Michael Grayson, previous Deputy County Attorney, Anaconda,** stated his belief that it is necessary to give courts more power in certain cases, and in extreme cases, to do more than fine a person and put him/her in jail. The courts should have the power to prevent future problems.

**John Bloomquist, Attorney, Special Systems, Montana Stock Growers Association (MSGA),** stated the MSGA solicits support for this bill.

**Dr. Don Marksburg, Veterinarian,** stated that the courts should be able to prevent people who cannot care for animals from having them.

REP. LIZ SMITH, House District 48, Deer Lodge, said the county is strongly affected by this case. She is concerned with disease control.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. VIVIAN BROOKE asked Mr. Beaudett how this problem should be enforced. Mr. Beaudett said it should be handled like a criminal matter.

REP. BOB CLARK asked Mr. Beaudett if taking the animals away from the owner would alleviate the problem. Mr. Beaudett emphasized that the point of the bill is to keep animals from harm and injury by taking them away from the owner.

Closing by Sponsor:

REP. MCCARTHY withdrew the amendments and asked that the bill, if passed, be effective upon passage and approval.

HEARING ON HB 340

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, stated that the purpose of this bill is to remove the responsibility from the bartender or the person selling alcohol to a minor and to put it on the minor purchasing the alcohol. REP. BROWN asked the committee to ignore the changes on the first two pages because they are all Legislative Council gender-related amendments. Page 3, lines 12-16, establishes a new offense of "attempt to purchase" for which there is a \$50 fine. This will have a substantial impact on those youths still living at home and is an attempt to start out in this area to see how effective this penalty would be. The new section on page 4, line 9, essentially gives the tavern owner some protection from youngsters that try to buy alcoholic beverages with fake IDs who look like they're 25 when, in fact, they're only 20. This is a bill that attempts to balance both those sides.

Proponents' Testimony:

Mark Staples, Montana Tavern Association, stated that trying to buy beer has become a sport for minors, and there's basically no disincentive to the effort. It is a crime to use a fake ID, but this is a separate charge. The fine for serving under-age

drinkers could be \$1,500. If a store owner or bartender is caught serving under-age drinkers three times, he/she will lose the liquor license. However, there is no fine for the under-age drinker; and if she/he is caught buying liquor, the person serving the alcoholic beverages is fined. Mr. Staples mentioned that there is a bill coming that will introduce a new state ID. The \$50 fine is a start and should prove to have some impact on the under-age drinker. EXHIBIT 2

SEN. ED KENNEDY, Senate District 3, Kalispell, said he supports this bill because it will discourage minors from drinking alcohol. He will also introduce a bill this session that mentions a completed study concerning the effect of alcohol on our youth from advertising. His main emphasis is to stress to minors that drinking alcoholic beverages is not the social thing to do, it's not good for them, and this bill is definitely a step in the right direction.

Bill Stevens, Montana Food Distributors Association, presented written testimony. EXHIBIT 3

REP. RANDY VOGEL, House District 86, Billings, congratulated REP. BROWN for an excellent piece of legislation. He said it should have been done a long time ago. It assists law enforcement and is also a great assistance to small business owners. He suggested that second and subsequent offenses should be raised to a \$250 fine which is pretty much in line with some misdemeanors. REP. VOGEL thinks the \$50 could be used as a warning and a deterrent. If minors continue going back for alcohol, it should be dealt with a little differently.

Bill Fleiner, Montana Sheriffs and Police Officers Association, stated the MSPOA supports this piece of legislation with one exception. In Section 2, line 16-18, it is the community's responsibility to address under-age drinking, and that means all components of the law enforcement.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BERGMAN asked REP. BROWN how this bill would be enforced and whether the bartender would call the police if minors try to buy liquor. REP. BROWN said it is assumed that, in most cases, if a bartender is working the bar, there should be witnesses that will vouch that the person ordering liquor is under-age. The bartender or a witness can then call the police.

REP. RICE said that the defensive driving statute includes "misrepresenting qualifications of purchase" in Title 16. A violation of that particular section ties into the statutory penalties under 45-5-624, which outlines options the court has in

sentencing the offender, including increased penalties for a second or subsequent offense. REP. RICE said that this bill's offense - attempt to purchase an intoxicating substance - is similar to misleading qualifications of purchase. REP. RICE asked why the bill should include two offenses that are so similar and wondered why REP. BROWN'S offense was not tied in with the structured penalty system already in statute. REP. BROWN said that when the bill first came back from drafting, "attempted purchase" or "possession" was already written in the statute. He reworded it because the word "purchase" means the same as "possession." REP. BROWN said he is trying to sensitize the under-age drinking population and does not want this bill tied into lengthy and strict penalties for possession. A \$50 fine is a hefty punishment for this age youth.

REP. RICE said whether kids trying to buy alcohol the second or third time could be charged under Title 16 which is possession. REP. BROWN concurred, saying that would be the prosecutor's decision.

REP. RICE said that, in his opinion, subsection 1 in the new section is too broad, and he asked Mr. Fleiner what changes he would recommend. Mr. Fleiner said it appears to be a "catch-all," and he believes there's a reasonable argument in sections 2 and 3, "appearance" of the purchaser, covers the "very mature" looking minor.

REP. VOGEL was concerned with subsection (2), Section 2. He asked Mr. Fleiner if the MSPOA supports that just the "appearance" of the purchaser is acceptable. Mr. Fleiner said that "appearance" is defensible as it stands. REP. VOGEL is concerned with the line "where an appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age." REP. VOGEL said there are many 20-year-olds who look 25, and no one bothers to check their ID. REP. VOGEL asked Mr. Fleiner if he is ready to support that on the basis of appearance. Mr. Fleiner said that the request should be made to check the ID, no matter what.

CHAIRMAN FAGG asked Mr. Staples and the tavern owners if they would support this bill if section 2 was stricken from the bill. Mr. Staples will check with the Board of Directors of the Montana Tavern Association, but he thinks the idea was to create a balance. He said this bill adopts another state's idea but not some of the protection that came with it. CHAIRMAN FAGG said he doesn't see the balance as Mr. Staples sees it. CHAIRMAN FAGG said he probably would not have signed the bill knowing Section 2 was in the bill.

REP. RUSSELL asked Mr. Staples whether current law prosecutes people who make false IDs. Mr. Staples replied he is not aware of a state initiative but is aware of a national initiative. The Tavern Association was asked and pressured to do this. REP. RUSSELL asked if passage of the North Dakota law has been

effective. Mr. Staples said it has shown a significant difference in teenage drinking. The North Dakota law refers to purchasing and drinking in a tavern.

Closing by Sponsor:

REP. BROWN said that he recommended this bill to the Tavern Association. They wanted a more stringent solution to this

situation. The North Dakota statute was the best of all those he has seen.

EXECUTIVE ACTION ON HB 215

Motion: REP. WYATT MOVED HB 215 BE TABLED.

Discussion:

REP. RICE asked if it is necessary to officially reconsider their action on this bill. REP. BROWN replied that, if the motion is amended to say "by unanimous consent," he will offer a substitute motion to table the bill.

REP. BROOKE said if the bill is voted "do not pass," it will come to the floor of the House as an adverse committee report, to be voted on by all 100 representatives. Her intent was to preclude that situation, and she hoped the committee would table the bill.

REP. SAYLES said this issue will come up every session until the wrong is corrected. While Americans are aware of the need for equal rights for women and Native Americans, they need to be aware of all groups, and that includes homosexuals.

Vote: HB 215 BE TABLED. Motion carried unanimously (18-0).

EXECUTIVE ACTION ON HB 81

CHAIRMAN FAGG noted that REP. BACHINI has asked the committee to move either a table or do pass motion on HB 81. The bill is in limbo after the do pass motion which failed 9-9. This means that REP. BACHINI did not have a chance to take it out of committee. CHAIRMAN FAGG asked that the committee take up HB 81 to see if it can get another vote on this bill.

Motion: REP. BROWN MOVED HB 81 BE TABLED.

Discussion:

REP. BROWN said this is vindictive legislation. It takes away the discretion of the court, and his biggest objection is the impact on the court system. If the committee is concerned about

the prison population discussed, then this bill will guarantee that it stays where it is.

REP. VOGEL said that all sentencing is vindictive; it's punishment for doing something wrong. What this bill tries to do is to see that the punishment is absolutely carried out.

REP. RICE said this bill ties everyone's hands. It ties the judge's hands and eliminates the possibility of rehabilitation of anyone coming out of prison.

REP. BROOKE echoed REP. RICE's remarks. She believes the system should retain the flexibility.

REP. GRIMES reminded the committee to think of the families and the victims of the crime. He also asked CHAIRMAN FAGG to clarify what a table motion would do. CHAIRMAN FAGG responded that, if a table motion passes, REP. BACHINI could make a motion on the floor to take the bill off the table; this takes a three/fifths vote to do that. If the table motion fails, the committee can reverse that vote to a do pass vote, and it would go to the floor for a normal debate on second reading.

Vote: HB 81 BE TABLED. Motion carried 14-3. Those voting to table HB 81 were CHAIRMAN FAGG, REPS. BROWN, BIRD, BERGMAN, BROOKE, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE, WHALEN, and WYATT. Those voting not to table the bill were REPS. CLARK, WINSLOW and VOGEL.

#### EXECUTIVE ACTION ON HB 255

Motion: REP. BROWN MOVED HB 255 DO PASS.

#### Discussion:

REP. TOOLE said the language on page 3, line 15 doesn't give the court the opportunity to make the finding that will get a person committed after being found not guilty due to mental disease or defect. It is a chance for the court to make the finding that the person should be committed because of the inability to defend him/herself. That's what the Supreme Court decision is trying to implement. It says, "The court shall evaluate the nature of the offense with which the defendant was charged." The court should have the discretion to say that, considering what the person did, the court finds he/she has a mental disease or defect. REP. TOOLE said he believes that, if it is necessary to implement this decision, then the committee should pass this bill with that approach.

REP. RICE proposed an amendment. He said that at this type of hearing, a court trial has taken place wherein the defendant rose to the defense and said, "I'm not guilty of this murder because I have a mental disease or defect," and he presents substantial

evidence which was agreed to by the jury. When the defendant is declared not guilty, it goes to another hearing. Putting the court through another hearing to establish mental disease or defect at this point, when there's already been a jury trial, can become a very difficult process.

REP. TOOLE closed on his amendment. Mr. MacMaster read REP. TOOLE'S amendment to the committee. On page 3, line 19, after the word damage, insert: "and if there's substantial evidence to show that at the time of evaluation, the existence of a mental disease or defect."

REP. BIRD referred to page 11, lines 6 and 7 which says "the court may retain jurisdiction to revoke a conditional release for no longer than 5 years." Section 5 discusses Revocation of Conditional Release. She asked Mr. MacMaster to explain sentence 6 and 7. Mr. MacMaster said he was not sure what that sentence means other than the fact that five years was the preferred amount of time among the courts to revoke release.

Motion: REP. BIRD moved to strike lines 6 and 7, page 11, from the bill.

Discussion:

REP. BROOKE asked REP. BIRD why she feels it is important to strike that section from the bill. REP. BIRD replied she is not sure a five-year period is sufficient in these circumstances. A person could revert to the same behavior within five years. REP. BROOKE said, in other words, that person would not be released; that this would eliminate revocation. REP. BROOKE said she believes that five years is sufficient time to rehabilitate. CHAIRMAN FAGG, speaking neither as a proponent or an opponent to the amendment, clarified the amendment. He believes that what this section currently does is allow the courts to retain jurisdiction over a person when that person has been conditionally released. What this section currently says is the court retains jurisdiction for five years, i.e., they can say a person is conditionally released, and that condition remains for five years. After five years, a person is no longer conditionally released; they're just released. REP. BIRD'S amendment would say the court can retain jurisdiction for an indefinite amount of time on a conditional release.

REP. WINSLOW believes there is no choice in this matter; that, with all the backup testimony that courts provide, five years is a given time. CHAIRMAN FAGG said that on the bill as a whole, he believes that is correct. REP. WINSLOW said REP. BIRD'S amendment would change the intent of the bill to the point that the legislature would be in compliance with what the court wishes the committee to do. CHAIRMAN FAGG said he did not know the answer to that, although he thought not.

Vote: The question was called on REP. BIRD'S motion to strike



lines 6 and 7 on page 11 from the bill. REP. BIRD requested that action be deferred for 24 hours or until she checks with the Department of Corrections and Human Services for more accurate information concerning her amendment.

#### EXECUTIVE ACTION ON HB 253

CHAIRMAN FAGG introduced a proposal from REP. BROWN to the committee which was not included in the scheduled hearings.

REP. BROWN said HB 253 was not meant to be introduced; however, he did feel it was important to discuss the contents of the bill. HB 253 lowers the DUI drivers license reinstatement fee for DUIs from \$100 down to \$50. He put it in as a pressure point in his discussions with the Attorney General Mazurek and the DUI Task Forces so that they could work out various funding matters between the DUI Task Force and the alcohol and drug abuse activities in the local communities, buying new sheriff's equipment, etc. A hearing was not scheduled.

Motion/Vote: REP. BROWN MOVED TO TABLE HB 253. Motion carried 17-1 with REP. VOGEL voting no.

#### EXECUTIVE ACTION ON HB 257

Motion: REP. TOOLE MOVED HB 257 DO PASS. EXHIBIT 4

#### Discussion:

REP. TOOLE discussed an emergency response agreement. He said a number of Montana communities have reached an agreement, but they do not effectively provide for the quickest emergency response. Instead they establish protocol for going to the scene, and in some circumstances they depend on one another for assistance.

Motion: REP. TOOLE moved the amendment of an effective date two years from passage and approval, assuming passage and approval would occur during this legislative session. Approval date would be the date the Governor signs the bill.

REP. BROWN said he believed the bill should be tabled.

REP. VOGEL stated he was absent during this hearing; however, while perusing the testimony, he developed a lot of scenarios where this bill could be very detrimental to local governments. He echoed REP. BROWN'S motion to table the bill.

REP. SAYLES said the only reason proponents had signed onto an automatic aid agreement with the Missoula Fire District was because REP. TOOLE'S proposed bill was a threat. This state deserves to have quick medical response whether a person lives in Billings, Missoula, or Helena. He believes if emergency response

agencies do not get their act together to address the public's needs and concerns, it is the legislature's job to do so.

REP. TOOLE said this is not "just another Missoula bill." Legitimate problems exist in five of the state's largest cities, and he believes this bill would address them. He said he believes the amendment to make the bill effective two years from passage, rather than hindering agencies and cities' ability in lawsuits, should make them stronger and more resistant to lawsuits because they have made an attempt to do this.

REP. TOOLE closed on his amendment. This bill is an effort to make a reasonable and good faith effort to enter into these negotiations, and it's only for rough equivalent service.

Vote: REP. TOOLE'S amendment that the effective date is two years from passage and approval. Motion carried 16-2 with REP. RICE and REP. VOGEL voting no.

Motion: REP. BROWN MOVED TO TABLE HB 257.

Discussion:

REP. BROWN said he understands REP. SAYLES' and REP. TOOLE'S comments, but he doesn't think the state should legislate these kinds of issues.

Vote: HB 257 BE TABLED. Motion carried 15-3 with REPS. SAYLES, TOOLE and SMITH voting no.

ADJOURNMENT

Adjournment: 11:00 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-2-93

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	✓		

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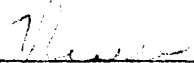
CS-09

HOUSE STANDING COMMITTEE REPORT

February 5, 1993

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Mr. Speaker: We, the committee on Judiciary report that House Bill 255 (first reading copy -- white) do pass as amended .

Signed:   
Russ Fagg, Chair

And, that such amendments read:

1. Page 4, line 21.

Following: "~~judicial~~"

Insert: "court that ordered the commitment unless that court  
transfers jurisdiction to the"

-END-

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 2-2-93 BILL NO. HB 215 NUMBER 18

MOTION: Motion to table HB215 carried 18-0

NAME	AYE	NO
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 Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 2-2-93 BILL NO. HB 257 NUMBER 18

MOTION: Motion to table carried 15-3

NAME	AYE	NO
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 Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 2-2-93 BILL NO. HB 81 NUMBER 18

MOTION: Motion to table HB 81 Carried 15-3

NAME	AYE	NO
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 Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	15	3

EXHIBIT 1

DATE 2-2-93

SB HB 323

## Animal cruelty charges filed

Attorney W.G. Gilbert III of Dillon, representing a Ga-

len-area woman, appeared in Anaconda-Deer Lodge County Justice Court Thursday where his client was charged with animal cruelty.

Mary Kellogg, 1180 Yellowstone Trail, is charged with cruelty to animals, not having rabies vaccinations for her dogs and not having a kennel license.

Kellogg is scheduled to appear before Justice of the Peace Lorraine Biggs Oct. 17 to answer the charges, which originated with the recent discovery that hundreds of horses may be starving to death.

The allegations were made by investigating law enforcement officers after neighbors complained that there was not enough forage or other feed available for her animals. According to court documents, nearly 370 horses are on the property.

The rabies and kennel license charges were brought because there are at least 40 dogs on her property and they are allegedly not properly vaccinated.

Meanwhile, the county switchboard has been swamped with calls from citizens offering help and emergency food supplies, according to operator Bobbie Austin.



## Anaconda / Area

# Horse owner charged with cruelty

Mary Kellogg to plead Oct. 17, authorities negotiate to feed animals

**By Duncan Adams**  
Standard Staff Writer

A Galen-area woman sent her attorney Thursday to Anaconda-Deer Lodge County Justice Court on her behalf to hear a charge of cruelty to animals stemming from concern about hundreds of horses on her ranch.

Attorney W.G. Gilbert of Dillon appeared before Justice Lorraine Biggs on behalf of Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail. Kellogg was charged with cruelty to animals, a misdemeanor, and with failing to have rabies vaccines and a kennel license for 44 dogs on her property.

She was scheduled to enter a plea

to the charges Oct. 17.

According to County Attorney Sherry Petrovich-Staedler, in addition to having more than 300 horses, Kellogg owns approximately 77 dogs.

"That's her count," said Petrovich-Staedler.

The criminal complaint accompanying the cruelty to animals charges alleges that Kellogg "without justification, knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter ..."

Petrovich-Staedler would not release the report of veterinarian Mark Ransford, who visited the ranch Wednesday with police.

But her description of Ransford's

**She does have some horses that are in very good condition .... But she's got a big group of them that don't look so good**

write-up of that visit indicated conditions at the ranch might not be as bad as first believed.

"She does have some horses that are in very good condition. But she's got a big group of them that don't look so good," said Petrovich-Staedler.

She added that authorities who served a search warrant on Kellogg Wednesday believe they may have missed some of the animals in the roughest shape. A videotape in police possession shows horses that police did not see Wednesday, she said.

"The vet's report is based on horses they saw yesterday. The does say that those horses are living in feed, but they're not to point of starvation," said Petrovich-Staedler.

Meanwhile, authorities are negotiating with Kellogg and her attorney to allow the city-county to begin feeding the horses. And Kellogg reportedly has been forbidden to sell any of the animals until questions and charges are resolved.

According to a police report, Kellogg has received at least one harassing telephone call since the investigation regarding her horses came public. That report, made by Kellogg, described a phone call from an unidentified female who said, "You're disgusting. I'll kill you."

# Court orders Galen rancher to obtain mental evaluation

Evaluation might look at 'animal addiction'

By Duncan Adams  
Standard Staff Writer

They say a dog is man's best friend. Perhaps Roland said it more succinctly: "The more I see of men, the better I like dogs."

Truth is, both everyday experience and scientific research suggest that animals do soothe a human's everyday cares.

Many researchers also claim that a small and daily glass of wine can offer a fine if fleeting solace.

But just like there are those whose quest for relaxation takes them past a glass of wine to a bottle or two, there are those whose affinity for animals occasionally gets out of control.

To date, no one has officially argued that rancher Mary Kellogg of Galen, convicted of cruelty to animals and recently sentenced to serve four days in jail, suffers from what some researchers call "animal addiction."

But prosecutors in Anaconda-Deer Lodge County, and Justice of the Peace Lorraine Biggs, have recommended that Kellogg seek an evaluation of her mental health.

A range analysis expert has concluded that Kellogg's ranch provides pasture enough to support only 44 mature horses year-round without supplemental feeding. Yet, according to court records, Kellogg has had more than 270 horses on her ranch in recent months.



A horse found last fall on Mary Kellogg's ranch

At one point, records show, she also had dozens of dogs.

During a court hearing Thursday, Justice Biggs ordered Kellogg to reduce her herd of horses to 100 head by July 7.

Dr. Karen Kemper, a veterinarian for the city of Houston's Animal Control Bureau, has made a study of the phenomenon of "animal addiction."

According to a July 1991 article by Evan Moore in the "Houston Chronicle," Kemper believes behaviors associated with animal addictions share characteristics with traits identified in connection with substance abuse.

According to Moore's article, those "10 parallels of behavior" are:

- A preoccupation with the addiction.
- Repetition or cycling of the addictive behavior.
- Alibis for behavior.
- Neglect of personal, physical and environmental conditions.

- Claims of persecution.
- Presence of enablers, people who help continue the addiction.
- Denial that the addiction exists.
- Isolation from the rest of society except those who also deal in the addiction, such as enablers.
- Abuse of animals through neglect.
- Have been committed at least once and found sane.

Kellogg was charged in October with cruelty to animals for her alleged neglect of scores of horses on her ranch. In December, she received a deferred sentence, with conditions for that charge.

Recently, however, Kellogg, 44, and her husband, William, 52, were in court on a new charge of cruelty to animals. Both entered an Alford plea of guilt to those charges Thursday, and sentencing was set for July 7.

Justice Biggs also revoked Mary Kellogg's earlier deferred sentence, citing failure to comply with court conditions defining recommendations for proper care of the animals on her ranch.

Biggs sentenced Kellogg to six months, with all but four days in jail suspended, and ordered her to reduce the size of her herd of horses.

And she reiterated the court's directive for Kellogg to participate in a mental health evaluation.

There was talk during Thursday's hearing of a "referral question" for a mental health professional to consider during his or her evaluation of Kellogg.

On Friday, Deputy County Attorney Michael Grayson was asked whether that referral question, from his perspective, might ask an evaluator to consider the possibility of animal addiction.

"I think that's what we have in mind as a referral question," Grayson replied. "That's certainly what I was looking at, and I think that's what the court was looking at, too."

Grayson says prison endangering w

# Horses get food, probe continues

**By Duncan Adams**  
Standard Staff Writer

The animal control warden for Anaconda-Deer Lodge County began feeding horses Friday at a ranch near Galen where authorities believe many of the horses have been starving.

"I went down and fed the horses, Friday and Saturday," said animal control warden John Siders on Monday.

Siders said the "horses almost tore my truck apart," trying to get at the hay he was delivering.

Around 4 p.m. Friday, Siders called in to report to police that he had found a horse dead on the ranch, owned by Mary Kellogg, at 1180 Yellowstone Trail.

On Monday, Siders said an autopsy is being performed on the horse, which may have died from causes unrelated to malnutrition.

The horse, said Siders, "appeared to have some meat on it," unlike many of Kellogg's 300-plus horses. Authorities have said they fear some of these animals do not have the necessary reserves to live through a Montana winter.

Kellogg was charged in Anaconda-Deer Lodge County Justice Court Thursday with cruelty to animals. Records show she is accused of "failing to provide (the horses) with proper food, drink and shelter."

She is scheduled to enter a  
Please see FOOD Page 8

## Food . . .

(Continued from Page 1)  
plea to that charge, a misdemeanor, on Oct. 17.

Police Chief Jim Connors said Monday that officials have not yet worked out the legal issues and logistics involved in the city-county's role in providing for the horse. For example, Connors said, the city-county has not identified an appropriate place for storing hay and other feed donated by area residents.

For that reason, Siders said, "I was told to hold off just a little bit longer" before actively soliciting additional donations of feed for the horses.



Oct 9- 1991

# Starving horses focus of inquiry

WED OCTOBER 9, 1991

By Duncan Adams  
Standard Staff Writer

What may be the largest cruelty to animals case currently under investigation in the United States is gradually coming to light in Anaconda-Deer Lodge County.

The city-county's animal control warden is desperately seeking feed and other assistance for more than 300 head of horses believed to be starving at a ranch in the Deer Lodge Valley.

Meanwhile, police chief Jim Connors says authorities are investigating the horses' dire circumstances. He said the ranch owner, Mary Kellogg of Yellowstone Lane, was charged Oct. 3 in justice court with cruelty to animals, a misdemeanor.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said.

During a interview Tuesday, animal control warden John Siders said charges of cruelty to animals can be difficult sometimes to prove in court. But for Siders, the evidence seems clear enough. He said he has knowledge of horses at the ranch eating their own dung for lack of other food.

Siders said he has solicited and received real or promised aid from several humane societies in other Montana cities and towns and from a national humane society. And, he said, a local man has agreed to donate a haystack. But, he said, additional feed will be required to keep the animals alive through the winter.

Connors reported that approximately 250 horses are being kept in Anaconda-Deer Lodge County, with an additional 67 head across the line in Powell County.

The chief said Siders has been tracking the case since he took the animal control job last May.

Connors said Kellogg has refused to part with the horses, even to prospective buyers, and, he said, "there's absolutely no pasture" at the Kellogg ranch.

"I don't know what's going to happen to them," he said.

"She swears she's feeding them. But you can't have to know much about horses to see that they're starving."

Oct 10- 1991

# Officer: Horses in poor shape

## Police veterinarian say animals lack hay for winter

By Duncan Adams  
Standard Staff Writer

Two police officers, an animal control warden, and a veterinarian served a search warrant Wednesday afternoon at a ranch near Calen where authorities fear hundreds of horses are starving.

Anaconda-Deer Lodge County Police Capt. Michael Softich, Lt. Jack Eklund, animal control warden John Siders and Philipsburg veterinarian Dr. Mark Ransford reportedly were met at the ranch by its owner, Mary Kellogg, and her attorney.

Siders said later at his tour of the ranch confirmed fears about the condition of many of the horses there.

"I feel they're in very poor shape," said Siders.

Siders and Police Chief Jim Connors seemed to speak more cautiously Wednesday about conditions at the ranch, noting the potential complexity of legal issues associated with charging Kellogg with cruelty to animals.

Connors clarified Wednesday that Kellogg had not yet appeared in justice court. He had said she'd made an initial appearance on Oct. 3. But he was scheduled to appear Thursday on a misdemeanor charge citing cruelty to animals, he said.

Siders was tight-lipped, too, when asked to describe the findings of Ransford.

"He's writing up his report," Siders said. "He said that the pas-

ture is overgrazed and that the horses have no reserves to go into the winter.

"She needs to get some hay out there," Siders added.

Kellogg would not talk to a reporter who stopped at her ranch-house on Yellowstone Trail Wednesday. A woman at the house said Kellogg was not feeling well.

But a member of a ranching family in the Deer Lodge Valley was willing to share her feelings about the Kellogg controversy on the condition she not be identified.

"I'm so glad something finally is being done," she said, adding that many area ranchers have been concerned about the horses at the Kellogg spread.

"I'm upset with these people because they keep breeding these horses year after year. I don't know why they don't sell a few so they can feed the ones they have," she said.

Gesturing toward some thin and apparently lethargic horses grazing in a parched field nearby, the woman pointed out one horse's protruding hip bones.

"These are yearlings from last year, and they're just starving to death," she said.

Siders said Wednesday that officials have estimated it will require approximately three tons of hay per day to keep all the horses, most of them Arabians, alive.

"That's bare minimum," Siders said. "My horse gets at least 30 pounds of hay per day, plus a quart

Please see HORSE Page 8

SEE NEXT  
PAGE

# Horse investigation . . .

(Continued from Page 1)

of oats."

Siders said officials do not yet have an accurate count of the total number of horses owned by Kellogg. However, he said authorities believe there are more than 300 horses at the ranch.

"It's not definitely clear how many there are. It would be almost impossible to get a completely accurate account," Siders said, adding that he walked more than five miles Wednesday searching pastures on the ranch and tallying horses.

He was asked to describe Kellogg's reaction to the appearance of police Wednesday afternoon.

"She was cooperative. Of course, when you have a search warrant served on you, most people are (cooperative)," he said.

Siders said he had received at least six calls Wednesday from peo-

ple offering some kind of assistance for the horses. But neither he nor Connors has an idea yet how the problems at the ranch will be resolved.

The National Humane Society is keeping tabs on the case, Siders said. And Powell County authorities are assisting the investigation, he said, since some of Kellogg's horses

are pastured in that county.

The woman, who said area ranchers have been watching the Kellogg spread said she had "been trying to keep track of all the horses" there.

"There was the prettiest little black colt I used to see. I haven't seen it recently. I hate to think what might have happened," she said.

## Subject of charges

OCT 11  
1991



Staff photo by Walter Hinick

THIS HORSE, intermingled with healthier looking companions, was photographed Thursday on Mary Kellogg's ranch on Yellowstone Trail near Galen. Kellogg was charged Thursday in Anaconda Justice Court with cruelty to animals. A story is on Page 5.

# New cruelty counts filed

## Prosecutor claims Galen couple let animals die

**By Duncan Adams**  
Standard Staff Writer

This time the charges do not specify the animals are starving. This time the charges say 10 of the horses, "mostly colts," two dogs, two calves, and a goat are dead.

A Galen-area rancher, Mary A. Kellogg, 44, Yellowstone Trail, pleaded innocent Friday afternoon in Anaconda-Deer Lodge County Justice Court to cruelty to animals, second offense.

Her husband, William Kellogg, 52, pleaded innocent to cruelty to animals, first offense.

Deputy County Attorney Michael Grayson would not comment specifically about the new charge filed against Mary Kellogg, who received a deferred sentence in December for a previous charge of cruelty to animals.

But a motion Grayson filed last week to revoke Mary Kellogg's deferred sentence offered specific allegations accompanying the latest

proved check of the defendant's property," Grayson's motion alleges.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion adds, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Justice of the Peace Lorraine Biggs that Kellogg had participated in an evaluation of her mental health.

- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John R. Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only

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DATE 2-2-93  
31 AB 323

## New animal cruelty charges . . .

(Continued from Page 1)  
for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charges, "Siders has documented that the defendant is only feeding about one-half ton of hay per day total."

A hearing to consider Grayson's motion has been scheduled tentatively for next Thursday in justice court.

The Kelloggs were represented during the court appearance Friday by attorney Kevin Vainio of Ute. After his clients' appearance, Vainio was asked by a reporter to respond to the charges filed against

**S**iders states that all of the animals are believed to have died since the court's judgment (in December)

the Kelloggs.

"Just that we deny the charges and the accusations," Vainio said.

He added that he believed earlier accounts last fall in *The Montana Standard* of the situation at the Kellogg ranch were unfair and not an accurate portrayal of conditions there.

Asked whether she had a statement about the latest charge filed

against her, Mary Kellogg replied, "Not at this time."

A police citation accompanying the cruelty to animals charges against the Kelloggs alleges that they "negligently starved 10 horses to mistreatment and neglect by failing to provide proper food, drink, shelter, and proper licensed (veterinary) care to seriously-ill animals."

## Anaconda / Area

# Trial set in horse neglect case

**By Duncan Adams**  
Standard Staff Writer

A Galen-area woman is scheduled to go to trial this month on charges she has neglected and mistreated scores of horses on her ranch.

Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail in the Deer Lodge Valley, is scheduled to appear Dec. 19 in Anaconda-Deer Lodge County Justice Court for a bench trial on a misdemeanor charge of cruelty to animals.

On Oct. 18 in Justice Court, Kel-

logg pleaded innocent to that charge and accompanying allegations she had failed to provide rabies vaccinations for 44 dogs and did not have a kennel license.

On Tuesday, Deputy County Attorney Michael Grayson acknowledged that the local animal control warden, John Siders, has been making regular visits to the Kellogg ranch. Kellogg's attorney reportedly agreed to those visits after charges were filed against her.

In early October, the county attorney's office charged that Kellogg allegedly, "without justification,

knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter..."

When the news first broke of the ongoing investigation of the condition of horses at the ranch, Police Chief Jim Connors said a number of the animals were in poor condition.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said at the time.

Subsequent visits to the ranch by

a veterinarian have determined that some of Kellogg's horses are in good condition, while others "don't look so good," according to County Attorney Sherry Petrovich-Staedler.

Since the charges were filed, Siders has provided supplemental feed to the horses on occasion. After one such visit in early October, Siders said horses on the ranch "almost tore my truck apart" trying to get at feed he was delivering.

Grayson would not comment Tuesday about details of the county's case against Kellogg. If he did say state law provides for a \$500

fine and/or six months in the county jail as a maximum penalty for first offense of cruelty to animals.

In addition, an animal owner convicted of cruelty to animals "may be required to forfeit to the county in which he is convicted any animals affected," Grayson said, reading from state statutes.

Under the law, any forfeiture of animals would be limited to those shown to have been mistreated, he said. Asked whether such a determination would be made by a veterinarian, Grayson replied, "That would be logical."

## Unjust treatment of animals

I was shocked and appalled to read in *The Montana Standard* of horses, goats, dogs being starved to death in Anaconda-Deer Lodge County once again.

Why weren't these animals taken away

from this party? Why didn't the animal warden check these animals out? Maybe these animals would still be around today.

There must be something done to stop this cruel and unjust treatment of these animals. How many more animals must suffer before something is done right?

I truly hope the Anaconda-Deer Lodge officials do something different and that justice is served.

I hope justice is served for the many animals who really suffered a needless, senseless death. — LEE ROY DeJOHN, 2823 George

EXHIBIT 1  
DATE 9-2-93  
HB 323

The Montana Standard, Butte, Friday, March 6, 1992

## Anaconda / Area

# Deferred sentence revoked

## Mary Kellogg must serve 4 days in jail for violating terms

By Duncan Adams  
Standard Staff Writer

An Anaconda justice of the peace decided Thursday to revoke a deferred sentence of a Galen-area woman for violations of court conditions accompanying a cruelty-to-animals conviction in December.

Justice Lorraine Biggs sentenced rancher Mary A. Kellogg, 44, of Yellowstone Trail to six months with all but four days in jail suspended for failure to comply with conditions of her deferred sentence.

Kellogg and her husband, William Kellogg, 52, also entered Alford pleas of guilty to more recent charges of cruelty to animals. Accepting a recommendation by Deputy County Attorney Michael Grayson, Biggs set sentencing for those charges for July 7, allowing the Kelloggs time to reduce their herd of 10 horses to 100 head.

failure to comply with the herd reduction or with other court conditions could have serious consequences.

She told the Kelloggs that if they did not become "caring and responsible ranchers," her "next action just might include an auction sale and (an order) forbidding you to have any animals."

Grayson recently filed a motion to revoke Mary Kellogg's deferred sentence, citing allegations that she and her husband have continued to neglect animals on their ranch.

"According to Animal Warden John Siders, bodies of 10 horses (mostly colts), two calves, two dogs, and a goat were found by him on Feb. 12, 1992, during a court-ordered check of the defendant's property," Grayson's motion alleged.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion added, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Biggs that Kellogg had participated in an evaluation of her mental health.
- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only 44 mature horses year-round without supplemental feeding. Records show veterinarian Phil Murphy counted approximately 275 horses during a recent visit to the Kellogg ranch.

Grayson alleges that calculations for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charged that Siders had "documented that the defendant is only feeding about one-half ton of hay per day total."

The Kelloggs were represented during their court appearance Thursday by attorney Kevin Vainio of Butte. Vainio argued that his clients attempted to comply with court conditions related to care of animals on their ranch.

"I would ask the court for leniency," Vainio said before sentencing. "They've tried to comply ... They've been working out there night and day trying to get these horses back into shape."

And Vainio argued that there are questions about why the horses on the ranch continue to be sick.

"We just don't have adequate proof about what the problems are out there with these animals," said, noting theories that the animals could be suffering because of worms or because of "environmental toxicity" tainting the pastures where they graze.

Grayson countered that other potential issues notwithstanding the Kelloggs still owned "a manageable large herd" for acreage available for grazing.

Biggs agreed. She set three lines for the Kelloggs to meet reduction of their herd. By April Biggs said, the herd must be to 200 head; by May 30, down to 200 head; and by July 7, down to 100 head.

And Biggs told the Kelloggs the problems on their ranch concern both to local people and residents statewide.

"Your neighbors around here are concerned about the well-being of these animals," she said.

ANACONDA



# **Justice Court**

## ***Couple sentenced for contempt***

Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail for criminal contempt for failure to abide by the conditions set by the court Thursday.

Mary Kellogg will serve her sentence five days at a time while William Kellogg will serve his sentence three days at a time. They will also be responsible for paying their own jail fees.

According to Judge Lorraine Biggs, the Kelloggs did not comply with the conditions of their sentence because they did not file the veterinary reports they were ordered to file. In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 90-98 head of horses on the property at the last count.

The Kelloggs last appeared in justice court with their attorney, Kevin Vainio, on Oct. 28 for a revocation hearing concerning a sentence given to the Kelloggs in December 1991 after the Kelloggs entered an Alford plea of guilty to charges of cruelty to animals.

At that time Biggs ordered a state financed veterinary inspection of the herd of horses under the Kelloggs' care before she made a ruling on the revocation.

During the October revocation hearing Deputy County Attorney Michael Grayson and Siders attempted to prove that the Kelloggs had not complied with the terms of their sentences by showing that as of 12:05 p.m. that day the Kelloggs still had over 100 head of horses on their property and they did not file the requested monthly written reports on the status of the animals' health.

Vainio and the Kelloggs stated that they have tried to comply with the order and by the end of Oct. 28 or at the latest, by the end of Oct. 29 the herd on their ranch would be down to 100 head. They had been moving horses when Siders was on their property counting horses at noon the day of the hearing.

The sentence originally given to the Kelloggs was a one year deferred imposition with conditions and fines of \$500 with a \$15 surcharge. The conditions of Kellogg's sentence were devised by Biggs and Grayson.

The conditions were as follows:

- Veterinarian Phil Murphy of Deer Lodge would conduct monthly inspections of the Kellogg ranch and the Kelloggs were to comply with any recommendations Murphy had for the feeding or care of the horses.

- In addition to the veterinary visits, range management specialists would also visit Kellogg's ranch to determine the appropriate number of horses the ranch can support.

- The 35 horses that appeared to be in bad shape must be brought into decent shape or sold by Kellogg.

- Kellogg will be required to seek and complete a mental

health evaluation within 60 days and a report must be filed with the court.

The veterinary visits to the ranch were to be paid for by Kellogg. Grayson explained that Dr. Murphy had discontinued services for the Kelloggs because they allegedly would not pay their veterinary expenses.

According to Grayson the herd was supposed to be reduced by July 1, 1992, but due to a series of troubles that befell the Kelloggs extensions were granted. Wednesday was the final extension date for the herd reduction.

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## **Forfeitures**

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DATE 2-2-93

HB-323

# Anaconda / Area

## Area ranchers get jail time

For contempt in not caring for animals as ordered by court

By Tina Vander Veer  
Standard Staff Writer

Two Galen ranchers who have been accused of cruelty to animals were given jail sentences Thursday or not complying with a court order to properly care for horses, dogs and rabbits on their property.

After a five-hour hearing, Anaconda-Deer Lodge Justice of the Peace Lorraine Biggs found Mary Kellogg, 44, and her husband William Kellogg, 52, both of 1180 Yellowstone Trail, guilty of criminal contempt of court, a charge that carries a maximum six-month jail sentence and \$500 fine.

### Monthly installments

Mary Kellogg was sentenced to 30 days in jail each month for the next six months, and William Kellogg was sentenced to three days in jail each month for the next six months.

They will have to pay the county in advance for each night they spend in jail.

In a scathing speech from the bench, Biggs told the couple that she was impatient with their refusal to comply with court orders, and called their behavior "an absolute violation of humane treatment of animals."

### 'Sick to death'

"I'm sick to death of having to have you come in here," Biggs said.

Biggs ordered the Kelloggs to manage their range in a more effective way, reduce the number of horses on their property, and provide the court with a list of all the horses and owners of horses that are or have been on their ranch.

Biggs also set up a committee of interested groups, such as the Humane Society, to help the Kelloggs obtain adequate care for their animals.

### Might lose rights

If the Kelloggs do not comply with the court's mandates, Biggs said she would consider stripping the couple of their right to own animals.

The Kelloggs and their lawyer, Kevin Vainio of Butte, argued that they have taken steps to decrease their herd size by taking about 30 head to Garrison and pasturing others in Gallatin County, leaving fewer than the mandated total of 100 horses on the Galen property.

But under cross-examination, Mary Kellogg said she did not know where in Gallatin County her horses are, nor how many horses were

moved there. She said she had no bills of sale for the animals, and that they weren't examined by the brand inspector before the move.

### 'Playing games'

Judge Biggs said that by taking horses out of the county rather than selling them as the court ordered, the Kelloggs were "playing games" with the court.

"You have deliberately misconstructed the court's order to release animals under your care by moving them to other counties," she said.

Biggs added that the apparent reduction in the horses' numbers did not free the Kelloggs from responsibility in the court's eyes.

"It's not just the numbers of these horses," she said. "I'm concerned about the care of these horses."

### Vet testifies

Biggs' decision came after testimony from the county animal warden, a Philipsburg veterinarian assigned by the court to inspect the animals on the ranch, Mary Kellogg herself, and a neighbor of the Kelloggs, Mark Jones.

The warden, John Siders, produced photos of a horse with a

large abscess running with pus, dogs in a muddy kennel, and dog food covered with mold, all taken at the ranch.

He testified that he counted as many as 177 horses on the ranch as late as Oct. 27, and said conditions hadn't improved on the ranch since the December court order.

### 'Fair shape at best'

The vet, Dr. Mark Ransford, said that most of the horses were in "fair shape at best" and that many of the younger or weaker horses were in worse condition than that.

"You could see ribs, you could see pinbones," he said. He added that the animals were lethargic and unalert.

"These horses weren't broken, but I could walk right through them," he said.

Some horses had skin growths, infections or swollen limbs and were in need of veterinary care, he said. Others showed signs of stunted growth or needed a farrier.

### Dogs have worms

An autopsy of one six-year-old horse showed that the animal probably died of malnutrition, he said.

When he inspected the ranch's 70-odd dogs in April, Dr. Ransford said he found them to be "thin to adequate," but infested with at least three kinds of worms.

The kennels were muddy, didn't provide shelter for the dogs and didn't provide adequate food and water for them, he said.

"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

### Barn called filthy

Dr. Ransford said the

collies had worms, claiming she wormed them once a month with Ivermectin.

But when the veterinarian pointed out that Ivermectin, a stock dewormer, is often fatal to collies, Kellogg said her dogs were a special strain of collies not susceptible to the effects of Ivermectin.

### Neighbor defends

The Kellogg's neighbor, A. Jones, testified that many of the rabbits at the ranch were his, that the Kelloggs adequately cared for their animals.

In closing arguments, DeKalb County Attorney Mike Gray noted that Mary Kellogg refused to accept the opinions of veterinarians and range experts as valid, substituting her own authority instead.

"She thinks everything is fine," he said. "Mrs. Kellogg won't acknowledge this, and doesn't even know there's any problem."

### Alford to cruelty

In December, Mary Kellogg entered an Alford plea to a charge of cruelty to animals. In an Alford plea, the plaintiff does not admit guilt, but concedes that there is enough evidence to convict him or her.

At that time, Biggs issued a court order, specifying that Mary Kellogg would have to feed and adequately care for all the animals on her property within six months.

Those conditions were bolstered after both Kelloggs entered Alford pleas to new charges of cruelty to animals in February.

They were ordered to meet their 260-head

## ANACONDA

### Calendar

- AA meets at 8 p.m. Friday in the basement of St. Peter's Church, Fourth and Alder streets.
- Well child clinics are held once a month at the Anaconda/Deer Lodge public health office. No charge for immunizations and anyone is eligible. Call 563-7863 or stop by 115 W. Commercial for an appointment.
- AA meets at 9 a.m. Saturday in the Rarus Railroad Building

to death or having to come in here," Biggs said. "I ordered the Kelloggs to their range in a more effective way to reduce the number of animals on their property, and I presented with a list of all the owners of horses that have been on their ranch. I also set up a committee of groups, such as the Humane Society, to help the Kelloggs provide adequate care for their animals."

### Animal rights

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"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

### Barn called filthy

Dr. Ransford said the animals that bothered him the most were the 80 rabbits housed in one of the ranch's barns.

The rabbits' hutches, stacked four deep, didn't have trays covering the bottoms of each cage, so that rabbits above could defecate on rabbits below, he said.

The barn itself also was filthy, he said. "When I walked into the room of the rabbits, I could hardly breathe, the smell of ammonia was so overpowering," he testified.

Mary Kellogg attempted to provide explanations for all the evidence presented against her.

### Mary Kellogg speaks

She said the hutches smelled because they recently had been cleaned of waste; that the horse's abscess had been treated by a veterinarian and by herself; that her farrier had been injured and hadn't been able to attend to the horses for a year; that the stunted horses are actually naturally-occurring pony-sized American Saddlebred horses; that the dogs' kennels were covered with gravel twice a year and that the animals had adequate shelter; and the whitish material on the dog food was not mold, but goat's milk.

At one point, she denied her

Ivermectin.

But when the veterinarian pointed out that Ivermectin, a livestock dewormer, is often fatal to collies, Kellogg said her dogs were a special strain of collies not susceptible to the effects of Ivermectin.

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### Alford to cruelty

In December, Mary Kellogg entered an Alford plea to a charge of cruelty to animals. In an Alford plea, the plaintiff does not admit guilt, but concedes that there is enough evidence to convict him of a crime.

At that time, Biggs issued a court order, specifying that Mary Kellogg would have to feed and adequately care for all the animals on her property within six months.

Those conditions were bolstered after both Kelloggs entered Alford pleas to new charges of cruelty to animals in February.

They were ordered to reduce their 260-head herd to 200 by April 30, 150 head by May 30, and 100 head by July 9.

Mary Kellogg was sentenced to four days in jail for the offense.

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Call your local representative if you are having newspaper delivery problems.

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ext. 556

**The Montana Standard**

**The Montana Standard**  
Anaconda office

## ANACONDA

### Calendar

A meets at 8 p.m. Friday in the basement of St. Peter's at Fourth and Alder streets.

Well child clinics are held once a month at the Anaconda/Deer public health office. No charge for immunizations and anyone is welcome. Call 563-7863 or stop by 115 W. Commercial for an appointment.

A meets at 9 a.m. Saturday in the Rarus Railroad Building

### Justice court

EXHIBIT 1

DATE 2-2-93

HB-323

Anaconda Leader, F

## JP, police chief named

# Couple's lawyer files writ of habeas corpus

By Frank Hamilton  
Leader Staff Writer

Attorney Kevin Vainik filed a writ of habeas corpus in the Anaconda-Deer Lodge County Clerk of the District Court's office this week on behalf of Mary and William Kellogg.

The writ names Chief of Law Enforcement Jim Connors and Justice of the Peace Lorraine Biggs as the respondents. According to the writ, the sentences imposed on the Kelloggs for contempt of court exceed the legal limit and thus the writ asks that the remaining time on the sentences be dismissed. Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail

for criminal contempt for failure to abide by the conditions set by the court in November 1992 in connection with animal cruelty charges. Mary Kellogg was sentenced to serve her sentence five days at a time while William Kellogg was to serve his sentence three days at a time.

Biggs had ruled the Kelloggs to be in contempt of court for non-compliance with the conditions of their sentence. According to the court, the

Kelloggs did not file the veterinary reports they were ordered to file.

In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 10-98 head of horses on the property at the last count.

The writ alleges that there was never any formal charge made against the petitioners

charging them in writing as required by the Montana Criminal Code(MCA).

The writ also states that the three day and five day sentences per month are in excess of those contained in the section 3-10-404 of the MCA which states, "A justice may punish for contempt by fine or imprisonment or both; such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The writ goes on to say that the petitioners have served more than one day in jail which is the maximum sentence allowable for contempt by the Justice of the Peace.

Because of these circumstances, the writ is asking that the remaining jail sentences be dismissed, the court award petitioner's costs and attorney

## Ranchers claim jail, fines assessed unconstitutional

Two Deer Lodge Valley ranchers sentenced to fines and jail time for contempt when they did not comply with a court order to properly care for their horses are claiming they were unconstitutionally imprisoned.

Mary Kellogg was sentenced to five days in jail every month for six months and \$600 in fines. Her husband, William, was sentenced to three days in jail every month for six months and fined \$360.

Justice of the Peace Lorraine Biggs sentenced them Nov. 12, when she found they had failed to follow a court order to decrease the herd or provide reports of monthly veterinarian reports on the animals' condition.

The case began more than a year ago, when the county animal control officer reported some of the horses on the Kellogg land were starving.

Kevin Vainio, attorney for the Kelloggs, filed a writ of habeas corpus in district court Thursday alleging they have been imprisoned illegally. The action names Biggs and Anaconda-Deer Lodge Chief of Law Enforcement Jim Connors.

The Kelloggs were scheduled to begin serving jail time in December, but that was delayed because of illness, Connors said Thursday.

Vainio's filing says his clients never received any formal charges in writing, and he quotes state statutes that limit contempt sentences from justice court: "Such fine not to exceed in any one case, \$100 and such imprisonment, 1 day."

The Kelloggs have requested a hearing before a district court judge, and asked that the judge relieve them of "the unconstitutional and unlawful restraint on their liberty," and nullify the sentence.

## Powell County court

The Office of the Sheriff  
Barry C. Michelotti, Sheriff



CASCADE COUNTY

325 Second Avenue North  
Great Falls, Montana 59401  
(406) 761-6842 FAX (406) 771-0070

EXHIBIT # 2

DATE 2-2-93

HB 340..

January 28, 1993

FAXED TO #1-444-4105

Sen. Eve Franklin  
Sen. Chris Christiaens  
Sen. William Wilson  
Sen. Steve Doherty  
Sen. Kenneth Mesaros  
Rep. Carley Tuss  
Rep. Shiela Rice  
Rep. Diana Wyatt  
Rep. William Ryan  
Rep. Dick Simpkins  
Rep. Pat Galvin  
Rep. William Strizich


RE: HOUSE BILL #340

We are writing you this letter in support of House Bill #340. If this bill passes, it would create a definite deterrent against young men and women who illegally purchase alcohol in our taverns, stores and alcohol outlets in Cascade County.

It would also allow law enforcement to work cooperatively with these establishments to prevent the serious problem of under age drinking. These young men and women should be held accountable for their actions, just as a tavern or other establishment is, if they knowingly sell to a person that is not old enough to possession or consume alcohol.

We would ask for your support on this bill and hope for its passage into law.

Sincerely,

  
BARRY C. MICHELOTTI, Sheriff

  
JOHN L. STRANDELL, Undersheriff

BCM:jbs

/cc: Montana Bar & Lounge  
Attention: Diane  
612 Central Avenue  
Great Falls, MT 59401



EXHIBIT # 3  
DATE 2-2-93  
HB 340

# MONTANA FOOD DISTRIBUTORS ASSOCIATION

2700 Airport Way • P.O. Box 5775 • Helena, Montana 59604 • (406) 449-6394 • 1-800-735-1082

## RESOLUTION

By the MONTANA FOOD DISTRIBUTORS ASSOCIATION

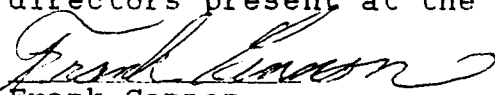
We, the undersigned, being members of the Board of Directors of the MONTANA FOOD DISTRIBUTORS ASSOCIATION (MFDA), do hereby consent to and adopt the following course of action for and on behalf of the MFDA as a result of a vote taken during the '93 MFDA Annual Meeting at the Copper King Inn in Butte on 9 January 1993:

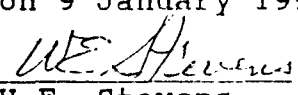
RESOLVED, that the members of the 53rd Legislative Assembly of the State of Montana pass the proposed legislation currently referred to as House Bill 340, which is sponsored by Representative Dave Brown, Democrat of Butte (District 72), and entitled as follows: "An Act Creating The Offense Of Attempt To Purchase An Intoxicating Substance; Providing A Penalty; And Amending Section 45-5-624, MCA."

RESOLVED, that the members of the 53rd Legislative Assembly of the of the State of Montana pass this legislation for the following reasons:

1. Current Montana law does not make it unlawful for a person under 21 years of age to attempt to purchase an intoxicating substance, but does make it unlawful for retailers to sell an intoxicating substance to a person under 21 years of age;
2. Under current Montana law, retailers face potential civil and criminal liability if they sell an intoxicating substance in good faith to a person under 21 years of age who provides false identification,
3. This places an unfair burden on the "good-faith" retailer, and that burden should be shared by a person under 21 years of age whose "bad-faith" attempt to purchase could result in that person's unlawful possession and consumption of an intoxicating substance.

This action is taken by unanimous consent of those members and directors present at the MFDA Annual Meeting on 9 January 1993.

  
Frank Cannon  
Chairman

  
W.E. Stevens  
President

*Not all of the  
information could be  
in writing*

NEAREST AVAILABLE STATION RESPONSE AGREEMENT  
FOR FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

EXHIBIT #4  
DATE 2-2-93  
SB HB 257

THIS COOPERATIVE AGREEMENT FOR FIRE PROTECTION AND EMERGENCY SERVICES by and between the Missoula Rural Fire District and the City of Missoula is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, for the purpose of providing nearest available station response fire protection and emergency services to designated areas as mutually agreed upon.

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD by the parties hereto as follows:

I. One fire engine from the closest available fire station will respond to emergency incidents regardless of jurisdiction within the following identified boundaries:

A. Missoula Rural Fire District Station 1 - all emergency incidents west of a border framed by the Clark Fork River on the North; Catlin Street on the East; South 3rd Street on the South; then West of a border framed by Johnson Street on the East including addresses directly adjacent to Johnson Street on the East; South 3rd Street on the North and South Avenue on the South; then a border framed by South Avenue on the North from Johnson to Garfield including only addresses directly adjacent to South Avenue on the North; and then West of a border framed by the Bitterroot Railroad Spur on the East, South Avenue on the North and the intersection of Brooks Street and Reserve Street on the South.

B. Missoula Fire Department Station 1 - all emergency incidents North of the Clark Fork River West to North Reserve Street; Northwest to Snowbowl Road and Grant Creek Road; Northeast to Rattlesnake Valley end (per Rattlesnake Agreement).

C. Missoula Fire Department Station 3 - all emergency incidents Southeast to the Missoula Rural Fire District's Eastern most district limits in Pattee Canyon.

II. The intent of the parties to this Agreement is to authorize the fire chiefs to manage this Agreement and to have as much flexibility as is necessary to administer the implementation and application of this cooperative agreement as is legally permitted pursuant to Montana law. The Fire Chief's authority will include the ability to mutually agree to administrative modification of the provisions as long as the authority, power, function, etc. exercised pursuant to this Agreement is legal and has been mutually agreed upon.

III. Emergency Response:

A. The fire protection services fire chiefs shall inform 9-1-1 with respect to any dispatch procedures. Specific dispatch procedures unless mutually revised as agreed to by the respective fire chiefs shall be simulcast or nearest station dispatched first.

B. Missoula City Fire Department would provide its normal response compliment to calls within the City boundaries of the above designated areas. Missoula City Fire Department would provide a single engine response to areas within Missoula Rural Fire District's boundaries except when additional assistance is needed and requested through mutual aid.

C. Missoula Rural Fire District would provide its normal response compliment to all calls within the Missoula Rural Fire District boundaries. Missoula Rural Fire District would provide a single engine response to areas within Missoula City boundaries in the above designated areas, except when additional assistance is needed and requested through mutual aid.



D. First arriving engine will communicate a size-up of the incident, take initial command of the incident and communicate any need for additional resources.

E. Apparatus responding within their jurisdiction may not be canceled by another jurisdiction. However, they may be requested to change code level response depending on the status of the emergency.

F. HazMat Responses - Missoula Rural Fire District HazMat assistance inside the city limits shall be implemented through existing city fire department procedures.

#### IV. Personnel Management

Should personnel problems or other questions arise during the course of this agreement, the Fire Chiefs or their designee shall meet within one working week to work towards solving those problems or questions.

Each agency will continue to strive towards meeting a three (3) professional firefighter initial and backup engine company response to emergencies in the urban area of the valley as applies to the nearest station response. These firefighters will meet the agencies minimum professional standards for firefighters.

Pending achievement of the above goal Missoula Rural Fire District will work with its volunteer firefighters to develop a fully staffed response team.

#### V. Joint Training Sessions

The fire chiefs shall be responsible for joint training sessions between the personnel of MRFD and MFD. Training sessions between City Fire and Missoula Rural firefighters shall be determined and established by agreement of the fire chiefs.

#### VI. Incident Command System

The National Fire Academy Model Incident Command System shall be used to manage all incidents. The jurisdiction within which the incident occurs shall assume command of any incident wherever both jurisdictions have responded pursuant to this system.

#### VII. CAD

The Fire Chiefs, as part of the implementation of the Computer Aided Dispatch (CAD) system, shall modify the specific dispatch procedures in Section III to meet the requirements of the CAD system.

#### VIII. Hold Harmless and Indemnification

Should either jurisdiction be forced to close a fire station either temporarily or permanently and not be able to dispatch apparatus from that station, it shall not be charged with breach of this agreement.

Should either jurisdictions nearest station not be available for immediate response due to an emergency commitment, apparatus breakdown, inspections and prevention activity or out of position for training, that jurisdiction shall not be responsible to respond and will notify 911 dispatch immediately.

It is understood and agreed that in the event of any claim, lawsuit or other action made by a person, firm, corporation or other entity not a party to this agreement against any party hereto, seeking damages arising solely out of an emergency incident responded to by any party hereto from outside the jurisdiction in which the incident occurred, each party

agrees to indemnify and hold harmless the other party hereto from any loss or damage except such loss or damage proximately caused, or contributed to, by the actor or omissions of the party seeking such indemnification.

PROVIDED, however, neither party shall be obligated hereunder to indemnify a party who responds to a request for aid against loss resulting from a claim that the responding party left its own jurisdictional area inadequately protected because of responding to such request for aid.

X. Modification to the Agreement

This agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this agreement or of any breach of this agreement shall not be deemed a waiver of any term or condition of this agreement or any part hereof or of any later breach of the agreement. Any waiver must be in writing. The parties may mutually agree to modifications, alterations or changes to this agreement.

XI. Length of Agreement

This agreement shall be effective from the date approved by the Missoula Rural Fire District Board of Trustees and the Missoula City Council and shall continue in effect subject to termination by either party pursuant to 90 days advance written notice.

XII. Entirety of Agreement

The parties hereby agree that this agreement is the entire Agreement. There are no other provisions that the parties are aware of that have been omitted from this Agreement and therefore the provisions of the Agreement shall be controlling.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

MISSOULA RURAL FIRE DISTRICT

CITY OF MISSOULA

\_\_\_\_\_  
Jim Lofftus, Chair

\_\_\_\_\_  
Daniel Kemmis  
Mayor

\_\_\_\_\_  
Paul Laisy  
Missoula Rural Fire Chief

\_\_\_\_\_  
Charles H. Gibson  
Missoula City Fire Chief

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Richard Gebhardt

\_\_\_\_\_  
Charles C. Stearns  
Finance Officer-City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jim Nugent, City Attorney

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

**COMMITTEE**

**BILL NO**

**DATE**

**SPONSOR (8)**

**PLEASE PRINT**

**PLEASE PRINT**

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[illegible]

**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.

HB 340

DATE Feb. 2, 1993

SPONSOR(S)

Brown

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill Stevens	MA Food Dist Assn	✓	
Senator Ed Kennedy		✓	

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