

## **MINUTES**

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

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN RUSSELL FAGG**, on March 3, 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. 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: SB 109, SB 125, SB 108  
Executive Action: SB 109, SB 140, SB 108, SB 78

#### **HEARING ON SB 109**

##### **Opening Statement by Sponsor:**

**SEN. STEVE DOHERTY**, Senate District 20, Great Falls, said this bill is an act expanding the definition of "serious bodily

injury" in criminal law to include bodily injury that creates a substantial risk of serious permanent disfigurement or of protracted loss or impairment of the function or process of any bodily member or organ.

**Proponents' Testimony:**

John Conner, Attorney General's Office and representing the Montana County Attorneys Association (MCAA), noted that the bill had been requested by the MCAA, and it was suggested by the University of Montana Law School to correct a problem in the law since this code was enacted in 1973. When the bill was considered in the Senate, the Senate added the third subsection to make the language clearer. This bill simply tries to bring the rest of that statute in line with the courts. It also expands the definition of serious bodily injury.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:** None

**Closing by Sponsor:** None

**HEARING ON SB 125**

**Opening Statement by Sponsor:**

SEN. FRED VAN VALKENBURG, Senate District 30, Missoula, explained that SB 125 is a clean up bill from the 1991 legislative session. It was patterned after a bill requested by the Montana Criminal Procedure Committee to update the state's criminal procedure code. That bill died in committee in 1989 but passed in 1991. This particular bill, which is about one-fourth the size of the 1989 bill, simply makes some changes to the difference between city courts and district courts. A number of references in the bill are now clearly defined.

SEN. VAN VALKENBURG addressed two significant new areas in the bill: clarification as to who is responsible for investigating crimes and suspension of a sentence in a misdemeanor.

**Proponents' Testimony:**

Robert L. Deschamps, County Attorney, Missoula County and Chairman, Montana Criminal Procedure Committee (MCPC), said that in the mid-1980s, the Montana Supreme Court and the Montana State Bar Association proposed changes for this bill. There are too many inconsistencies in the law.

John Conner, Attorney General's Office and representing Montana County Attorneys Association (MCAA), agreed with Mr. Deschamps that this bill addresses oversights in the 1991 legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BROOKE asked Mr. Deschamps why the word concealment on page 2, line 25 was stricken. Mr. Deschamps said there are two reasons: 1) Concealment is not a term that lends itself to definition as it was planned in the bill. The definition as seen in the bill has a very limited application; it has to do with wholesale or retail stores, and concealment has a broader meaning than that when referring to criminal law. 2) Concealment, defined by case law, is not appropriate under this definition.

REP. WHALEN referred to page 23, line 25 and page 24 lines 1-4, and asked SEN. VAN VALKENBURG if the Supreme Court has made a decision to provide that affidavits that provide information can be concealed under any circumstance. SEN. VAN VALKENBURG said the reason the section of the criminal code is being stricken is because the courts struck out that provision. REP. WHALEN asked if SEN. VAN VALKENBURG had any objection to an amendment leaving to the discretion of the court whether specific circumstances call for the concealment of that affidavit. SEN. VAN VALKENBURG requested that he review the decision of the court before he answered that question, and asked Mr. Conner to respond. Mr. Conner had found a way for the court to conceal that particular affidavit at least until such time as discovery requirements need to be in place.

Page 9, line 7 refers to the investigative costs, and REP. VOGEL noted his concern that large costs will be passed down to the city from what now is state obligation regarding investigative costs. Presently, the Billings Police Department does a tremendous amount of testing at the state lab, and the department doesn't pay for those costs; he wondered whether they would now have to pay for that service. SEN. VAN VALKENBURG said that he believes the exact opposite is true; he will propose an amendment to clarify that the state would continue to cover those costs presently provided.

REP. SAYLES asked SEN. VAN VALKENBURG if he would be willing to clean up the language on page 8 and 9, to the effect that the agency starting an investigation would be responsible for all costs. SEN. VAN VALKENBURG responded that he is agreeable to an amendment stating that current state costs will not be passed down to local governments, in particular, all of the functions of the state crime lab. On the other hand, he added, he feels fairly strongly that right now cities are trying to pass costs on to counties, which is inappropriate.

REP. VOGEL referred to page 33, line 13, "The court shall maintain a list of the names of the persons to whom subpoenas are issued" and asked SEN. VAN VALKENBURG, how long that list will have to be maintained. SEN. VAN VALKENBURG said he thinks it's important that agencies keep records with respect to a case. In order to serve a witness, a person must be able to display the original subpoena to the witness. Before that subpoena is filed with the court, the other partner in the case may have no idea who has been subpoenaed to testify in a case. It is part of the process of being fair to all the partners to know who has been subpoenaed. If the court keeps a list of witnesses, then the other partner will know who is subpoenaed to testify.

Closing by Sponsor:

SEN. VAN VALKENBURG said allocation of costs is an important issue because there is no source of funding for these kinds of costs in prosecutors' offices, and he doesn't know if the state has the ability to pick up these costs. It is his opinion that it is only fair that city government should only be responsible for that which they initiate.

HEARING ON SB 108

Opening Statement by Sponsor:

SEN. DELWYN GAGE, Senate District 5, Cut Bank, said that SB 108 revises the laws relating to criminal justice information and allows the Department of Justice (DOJ) to use juveniles' fingerprints and photographs for investigative purposes.

Proponents' Testimony:

Peter Funk, Attorney General's Office, Department of Justice (DOJ), said there are three diverse topics in this bill: 1) Section 1 deals with retention of juvenile fingerprints. DOJ would like to be able to retain juvenile fingerprints in a central depository in order to locate prints for juveniles more efficiently. While these would be distributed to law enforcement agencies, there would be no distribution of juvenile fingerprints to the general public.

2) The second section of the bill concerns the DOJ's responsibility to audit other state and local criminal history record systems. Under the proposed statute, DOJ would send the managers of the state's criminal history record information system to five county sheriffs' departments, state police departments, and any other state agencies which have operating systems, to determine whether they are in compliance with state law.

3) Section 3 of the bill simply involves how much DOJ's law enforcement services division can charge when people come in and ask for copies of criminal issues without authorization.

He introduced **Walter Joyce, Law Enforcement Services Division, DOJ**, who answered questions regarding **Mr. Funk's** testimony.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BIRD referred to Assumption 2 of the fiscal note and asked **Mr. Funk** what impact this will have on the DOJ. **Mr. Funk** said the only added charge will be fingerprints of juveniles, and that will not be a major impact on the department.

REP. RUSSELL asked if fingerprinting of juveniles is standard practice throughout the country. **Mr. Funk's** experience is relatively limited to Montana, but it is his understanding, given certain conditions, that fingerprinting of juveniles is generally allowed. The conditions are fairly restrictive, and they are reflected in the first few statutory provisions of the bill.

REP. RUSSELL asked **Mr. Joyce** whether, if a juvenile has committed a felony, has his fingerprints taken, and is found not guilty, those records are expunged. He said if a person is found not guilty after being charged with a felony, those fingerprints are expunged from the record.

Regarding section 2, REP. WINSLOW asked **Mr. Funk** why DOJ is currently not performing random audits. **Mr. Funk** said current law prohibits the only subagency capable of performing the audits from doing so. This is part of the law DOJ is proposing to amend.

REP. WINSLOW'S asked how much extra manpower this audit function would entail. **Mr. Funk** said the central services division staff, along with the law enforcement services division, felt that they could fit that function into their normal tasks without resulting in additional full-time employees. **Mr. Funk** could not give the number of audits that would be done; if DOJ is given this authority, the audits would start out slowly and with rural counties first.

Closing by Sponsor:

SEN. GAGE said SB 108 is a new program being implemented throughout the country. With regard to conducting audits, that whole system, in SEN. GAGE'S opinion, is a privacy matter, and it is important to protect the citizens of the state and to make sure that the information is being used properly.

EXECUTIVE ACTION ON SB 109

Motion/Vote: REP. WHALEN MOVED SB 109 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 140

Motion: REP. CLARK MOVED SB 140 BE CONCURRED IN.

Discussion:

Motion/Vote: REP. WHALEN moved an amendment which would require the posting of a warning sign that liability would be on horse riders and not the owners. Amendment failed 16-2 with REPS. RUSSELL and WHALEN voting yes.

Motion/Vote: REP. TOOLE moved an amendment that horse riders understand the risks involved with riding horses. Amendment failed 13-5 with REPS. BROWN, RUSSELL, TOOLE, WHALEN, and WYATT voting yes.

Vote: SB 140 BE CONCURRED IN. Motion carried 16-2 with REPS. TOOLE and WHALEN voting no.

EXECUTIVE ACTION ON SB 108

Motion: REP. WHALEN MOVED SB 108 BE CONCURRED IN.

Motion: REP. WINSLOW proposed an amendment on page 2, line 12, to say, "If a youth is not found in a youth court of criminal proceeding to have committed an act that would be a felony if committed by an adult, each law enforcement agency holding fingerprint and photographs or copies of them must destroy them."

Discussion:

REP. MCCULLOCH thought fingerprints were already on file, and he asked if REP. WINSLOW wanted those destroyed as well. It was not REP. WINSLOW'S intent; this would only apply to future action.

CHAIRMAN FAGG said he would vote against the amendment because Montana has a difficult time getting a handle on its increasing amount of crime. If the state wants to control this crime, then automatically making those fingerprints disappear would be a step backwards.

REP. VOGEL said that, when a juvenile enters the court system and is fingerprinted, he/she usually has an attorney on felony cases in youth court or before a youth court judge. He encouraged the committee to vote against the amendment and vote for the bill.

Vote: REP. WINSLOW'S amendment failed on a vote of 9-9.

Further discussion on the bill as amended.

Motion: REP. BIRD moved to amend page 4, line 8 by striking "associated with records" and after the word "costs" insert: "of supplying the costs."

Discussion:

REP. WHALEN supported the amendment, saying it prevents these agencies from passing on processing fees; if, in fact, there are fees involved.

Mr. MacMaster said this bill was written by DOJ; he thought the language addressing costs was vague and suggested adding the costs of supplying copies. DOJ wants to add "costs associated with records requested." The costs of buying photocopiers and storing records was also added. They will not charge per page or per copy. DOJ will get back whatever it costs to make the store records.

Vote: REP. BIRD'S amendment carried 17-1 with REP. BROWN voting no.

Motion/Vote: CHAIRMAN FAGG MOVED SB 108 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 78

Motion: REP. CLARK MOVED SB 78 BE CONCURRED IN.

Discussion:

Because it had been a long time since the committee discussed this bill, CHAIRMAN FAGG explained the bill to the committee.

REP. BROWN read the fiscal note which says that no cost will be incurred to the state, and all costs would shift to the local government.

REP. VOGEL asked MR. MACMASTER to clarify "may" in the bill. Mr. MacMaster said he believes there is a drafting problem on page 2, line 3. It says the county or city attorney "may" represent the state. This bill should be clarified as such: "and the county attorney shall represent the state, except that the city attorney shall represent the state if the file is charged in the city at municipal court, and the county declines to represents the state."

Motion: REP. BROWN MOVED A SUBSTITUTE MOTION TO TABLE SB 78.

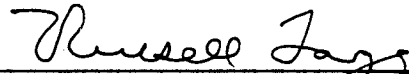
Discussion:

CHAIRMAN FAGG said he believes the bill would be acceptable if someone wants to make the changes along the line that if it is a city court charge, then the city has to represent the state; if it is a county charge, then the county has to represent the state. He believes "may" is acceptable because, in most cases, city attorney and county attorney offices work well together, and he doesn't think there's going to be any problem.

Vote: SB 78 BE TABLED. Motion carried 13-5. Those voting not to table the bill were CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK and GRIMES.

ADJOURNMENT

Adjournment: 11:00 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm



## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-3-93

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

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CS-09

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 108 (third reading copy -- blue) be concurred in as  
amended .

Signed: T. Russ Fagg  
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Bird

1. Page 4, lines 8 and 9.

Strike: "costs associated with records requests under this  
section"

Insert: "the cost of supplying the copies"

-END-

Committee Vote:

Yes   , No   X  .


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HOUSE STANDING COMMITTEE REPORT

March 3, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 140 (third reading copy -- blue) be concurred in.

Signed:   
Russ Fagg, Chair

Carried by: Rep. Tash

RICE

Committee Vote:  
Yes 16, No 2.

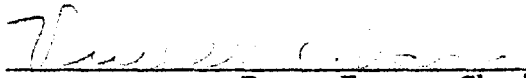
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HOUSE STANDING COMMITTEE REPORT

March 3, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 109 (third reading copy -- blue) be concurred in .

Signed:   
Russ Fagg, Chair

Carried by: Rep. Vogel

Committee Vote:  
Yes A, No D.

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## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 78 NUMBER 18MOTION: SB 78 Be Tabled 13-5

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	✓	
	13	5

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 108 NUMBER 18MOTION: Rep. Winslow's Amendment failed 9-9

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	✓	
	9	9

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 108 NUMBER 18

MOTION: SB 108 Be Concurred in 18-2

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	2

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 140 NUMBER 18MOTION: SB 140 Be Concurred 16-2

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	✓	
	16	2



## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 140 NUMBER 18MOTION: Rep. Toole's Amendment failed B-5

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		✓
	✓	
	5	13

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 3-3-93 BILL NO. SB 410 NUMBER 18MOTION: Rep. Whalen's amendment "Notice Provision"  
Failed 16-2

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		✓
	2	16

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

*Judiciary*  
DATE *March 3, 1993*

COMMITTEE

BILL NO.

*SB 108*

SPONSOR(S)

*D. Gage*

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Peter Funk</i>	<i>Dept. of Justice</i>	<i>X</i>	
<i>WALTER JOYCE</i>	<i>DEPT OF JUSTICE</i>	<i>X</i>	

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 125  
DATE march 3, 1993 SPONSOR(S) J. Van Valkenburg  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	MT County Attys Assn	X	
Robert L. Deschamps	MT. Criminal Procedure Comm.	X	
CRAIG L. HOPPE	MT MAGISTRATES ASSN	X	

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**HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER**

Judiciary  
DATE March 3, 1993 SP

**COMMITTEE**

**BILL NO.**

SB 109

DATE March 3, 1993 SPONSOR(S)

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