

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on March 8, 1993, at 10:10 a.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

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

##### **Committee Business Summary:**

Hearing:	HB 502
	HB 409
	HB 555
Executive Action:	HB 502
	HB 134
	HB 255
	HB 429
	HB 582

#### **HEARING ON HB 409**

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

Representative Pavlovich, District 70, told the Committee HB 409 was requested by the Clerks of Court. HB 121 is an act requiring

that a poor person provide a financial statement and that a court order of approval be issued before filing fees are waived. Rep. Pavlovich said under current law, when person files an affidavit stating that they have a cause of action and is unable to pay the cost, it is then the duty of the officer of the court to file action without demanding or receiving their fee in advance. The Montana Association of Clerks of the District court are asking the legislature amend that section by adding that a poor person must submit the affidavit and have a financial statement and an order from a court approving their request.

**Proponents' Testimony:**

Cort Harrington, Montana Association of Clerks of District Court, told the Committee they would like this requirement imposed in HB 121. Mr. Harrington said the requirement would give the clerk a basis to make a decision on whether to waive a fee. Mr. Harrington said a similar action is required when a defendant is appointed a court ordered attorney and that requirement has not been a problem.

Lori Maloney, Clerk of District Court for Butte-Silverbow County, supports HB 409. HB 409 would give the clerks of court some leeway in deciding who could have their fees waived. Ms. Maloney believes judges should have supervision over the decision.

Clara Gilreath, Clerk of District Court in Lewis and Clark County, supports HB 409.

**Opponents' Testimony:**

Susan Gobbes, attorney with Montana Legal Services Association (MLSA), opposes HB 409. MLSA is the largest provider of civil legal services to indigent people in the State of Montana. MLSA had two objections to HB 409. Ms. Gobbes said the financial guidelines for persons receiving MLSA services is 125% of the federal poverty level, which is the gross income level, not the net income level. MLSA screens individuals prior to providing such services. HB 409 would require MLSA to generate another piece of paper to ascertain what they already know about the client, which is whether they are poor and cannot afford legal services. Ms. Gobbes said HB 409 would place an onerous burden on their overworked and underfunded office. Ms. Gobbes said in addition, rural counties may only see a judge one working day a month and HB 409 has no provision for lodging a complaint, petition, or otherwise identifying when it was filed with the clerk of courts office. Someone could potentially be served with a petition or dissolution and their 20 days under the law could run before a judge ever appeared in their jurisdiction. Ms. Gobbes told the Committee that lodging is a procedure which is allowed in the federal court system. Lodging allows documents to be date stamped the day they are received and then when the ability to file them is ascertained it relates back to the date

on which they were received by the clerk of courts office.

**Questions From Committee Members and Responses:**

Senator Doherty asked Ms. Gobbes about amendments to make HB 409 acceptable. Ms. Gobbes told the Committee that two amendments would make HB 409 acceptable. One amendment would be to exempt clients represented by the MLS. The second amendment would be a lodging amendment which would state that if in fact it was appropriate to issue an order before a pleading it would be accepted and to have the ability to lodge the document and relate it back to the date it was received by the clerk of courts office.

Senator Doherty asked Mr. Harrington if those amendments would be acceptable. Mr. Harrington said yes.

Senator Doherty asked Mr. Harrington about a person's financial statement. Mr. Harrington said the person would fill out a document upon which a judge could determine if the person is indigent.

Senator Towe asked Mr. Harrington if HB 409 would impair an indigent's access into court. Mr. Harrington said the problem is to determine who is indigent and who is not indigent. A person would fill out a document for the court files that would determine whether a person could pay by the amount of income or assets of that person. Mr. Harrington feels that the judges in Montana are reasonable enough that a person would not be denied access because of those factors.

Senator Towe asked Mr. Harrington why the court order was needed. Mr. Harrington said the clerks are interested in getting the financial affidavit so they can help in the determination of whether the person is indigent.

Senator Towe asked Mr. Harrington about not requiring a court order. Mr. Harrington said the clerks did want the information as to what went into the financial affidavit spelled out in the statute.

**Closing by Sponsor:**

Rep. Pavlovich closed.

**HEARING ON HB 555**

**Opening Statement by Sponsor:**

Representative Pavlovich, District 70, said HB 555 was requested by the clerks of District Court. HB 555 is an act revising fees charged by the clerk of the District Court. HB 555 increases the fees for filing a petition for judicial determination of birth date and the entry of the judgment.

**Proponents' Testimony:**

Cort Harrington, Montana Association of Clerks of District Court, submitted an amendment. (Exhibit #1) Mr. Harrington told the Committee that when HB 555 was heard in the House the fiscal note had not been prepared. The Department of Family Services (DFS) testified against HB 555 in the House assuming the Committee had the fiscal note which indicated that HB 555 would cost DFS \$170,000. Mr. Harrington said he was not prepared to address the fiscal note at that time, but has since looked at the fiscal note and prepared an amendment to address the note. The amendment would propose to reinsert language stricken in the House Judiciary Committee concerning the requirement that governmental entities pay for certified copies. Mr. Harrington said since the hearing in the House Judiciary Committee, DFS discovered the fiscal note may be a potential \$5,000 impact. Mr. Harrington said the clerks would like the language reinserted. Mr. Harrington did not feel there would be a fiscal impact on DFS if HB 555 passed because the county attorneys are the people who typically obtain certified copies and they are not charged. Mr. Harrington urged the Committee to reinsert the language. Page 6, section 2, concerns the judicial determination of birth dates. The clerks would like the language inserted at the cost of having a judicial determination of birth be for the same fee as provided in 25-1-201. Therefore, anytime a fee is changed by the legislature the fee concerning judicial determination would change automatically. The amendments to section 1 help clarify HB 555.

Lori Maloney, Clerk of District Court for Butte-Silver Bow County, supports HB 555.

Clara Gilreath, Clerk of District Court for Lewis and Clark County, supports HB 555.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

Senator Towe asked Ms. Gilreath about the filing fee. Ms. Gilreath said the current fee is \$2.00 to file a complaint and \$1.00 for certification at the final order.

Senator Towe asked Ms. Gilreath how much it costs to file a lawsuit. Ms. Gilreath answered that it would cost \$90 to file a lawsuit and \$45 for the final order if HB 555 passes.

Senator Towe asked Ms. Gilreath about the determination of birth dates. Ms. Gilreath said the judge would make a judicial determination of birth date if there was no official record of the birth date.

Senator Towe asked Mr. Harrington about an amendment to exclude

DFS and allow the fees for everyone else. Mr. Harrington told the Committee the clerks would not have a problem exempting DFS.

**Closing by Sponsor:**

Representative Pavlovich closed.

**HEARING ON HB 502**

**Opening Statement by Sponsor:**

Representative Barnett, District 76, said HB 502 was introduced by request of the bondspeople in Montana. HB 502 brings about change in the bond fee structure as to when the bond should be released. Rep. Barnett said the new section is on page 1, lines 14 through 16, in which the bond must be released and returned to the surety within 30 days after the conviction. What has happened in the past, is if a defendant appealed his conviction, the bond was held through the entire appeal process. That tied up the money as long as two years on part of the bonds person. The bond that originally was issued had served its purpose of bringing the person to court, so the bond should be returned. If a new bond is required then they would have to get a new bond. On page 2, line 6 through 8, it states that the court would have to inform the surety within 10 working days that the defendant failed to make their court appearance. If the court failed to inform the surety within 10 days, the bond would become void and would have to be returned to the surety within 5 working days. Page 2, line 13 through 16, would give bonds people additional time to apprehend the person who jumped bail from 30 days to 90 days.

**Proponents' Testimony:**

Jack Young, Valley Bail Bonds, read from prepared testimony.  
(Exhibit #2)

Scott Resvedt, Valley Bonding in Bozeman, supports HB 502.

Earl Rowe, Bail Bondsman in Missoula, supports HB 502.

Gene Senne, Anderson Bond in Missoula support HB 502.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

Senator Blaylock asked Mr. Young the cost of a bond. Mr. Young said the cost of a bond is set by the state. In the state they can charge up to 25%, but the standard is 10%.

Closing by Sponsor:

Rep. Barnett submitted a letter. (Exhibit #3)

EXECUTIVE ACTION ON HB 502

Motion/Vote:

Senator Towe moved HB 502 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 255

Discussion:

Valencia Lane explained the amendments. (Exhibit #4)

Motion:

Senator Towe moved amendment 1 and amendment 13.

Discussion:

Senator Franklin asked Ms. Lane about the burden of proof.

Vote:

The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved amendments 8 through 10 and amendments 23 and 24. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved amendments 2 through 7, amendment 11, amendments 14 through 22, and amendments 25 through 27. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved HB 255 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 429

Discussion:

Valencia Lane told the Committee that Senator Doherty asked for a one word amendment. Page 2, line 24, following "weight of the" insert "dry".

**Motion/Vote:**

Senator Towe moved to amend HB 429. The motion CARRIED UNANIMOUSLY.

**Discussion:**

Senator Grosfield asked the Committee to hold the bill for further executive action based upon a letter from Robert H. Scott. (Exhibit #5)

Senator Doherty agreed with Senator Grosfield.

Chair Yellowtail also agreed.

Senator Blaylock told the Committee that Appropriations should hear HB 429 because passage of the bill would raise the population in Montana State Prison, therefore increase the money needed for the prison.

Chair Yellowtail said after the bill was amended, HB 429 might be referred to Appropriations.

Senator Grosfield told the Committee that he did not think HB 429 could be referred to a House Committee. Chair Yellowtail said he would check to see if HB 429 could be referred to the Senate Finance and Claims Committee.

**EXECUTIVE ACTION ON HB 582**

**Discussion:**

Valencia Lane explained the amendments. (Exhibit #6)

**Motion:**

Senator Doherty moved to amend HB 582.

**Discussion:**

Senator Bartlett asked Bill Fleiner, Montana Sheriffs and Peace Officers Association, about amendment 2. Mr. Fleiner agreed with the striking of subsection 5.

Senator Bartlett asked Mr. Fleiner if subsection 5 should remain in HB 582. Mr. Fleiner said no.

Senator Crippen asked Mr. Fleiner if a District Judge would issue a permit. Mr. Fleiner said yes.

Senator Crippen asked Mr. Fleiner why a person would have to go through a firearms safety course. Mr. Fleiner asked why would anyone want to carry a firearm for protection if they did not know how to use the firearm. Mr. Fleiner said a hunter safety

course would not be enough to teach a person how to use a gun properly for protection.

Senator Crippen asked Mr. Fleiner why a person would need to know how to use a gun if kept in their home. Mr. Fleiner said if the gun was in a person home, they would not need a permit. That is the right to bear arms, which law enforcement supports. Mr. Fleiner said he hopes that people who keep weapons in their homes or offices would take the time to learn what they need to know about the weapon to use it proficiently.

**Vote:**

The motion to amend HB 582 CARRIED. Senators Brown and Crippen voting NO.

**Motion:**

Senator Towe moved HB 582 BE CONCURRED IN AS AMENDED.

**Discussion:**

Senator Franklin asked Tom Harrison, Sheriff and Peace Officers Association, about page 3, subsection 2. Mr. Harrison said if a permit was not issued, a reason would have to be given to that person who was turned down. Mr. Harrison said that was a concern of law enforcement because a person may be involved in a criminal investigation and they would not want the person to know about the investigation.

Senator Blaylock said Montana has one of the most liberal gun laws in the United States. A person can pack a gun anywhere except in public places as long as it is in the open. Senator Blaylock said two years ago the power of issuing a permit was taken away from judges and given to the sheriffs because the people pushing the bill thought the judges were being too strict. Now those people want a reason if they get turned down. Senator Blaylock said there is no need for very many people to carry concealed weapons in Montana. If someone wants to carry a gun, they can pack it, but they should not be able to conceal a weapon if the public does not know that the person is carrying a gun.

**Motion:**

Senator Blaylock made a substitute motion that HB 582 be TABLED.

**Discussion:**

Senator Towe asked Mr. Harrison about refusing to state a reason for refusal of a permit. Mr. Harrison said he agreed with the implication of the statement and agrees with the conclusion that when you put any power in 56 different people, it is subject to abuse. The alternative, if you want everyone to have guns in this fashion, is to have state standards which no one seems to



want.

Senator Towe said two years ago an amendment was prepared that gave the sheriff discretion in determining who should be able to carry a concealed weapon. A person would be denied a permit if they were mentally ill, disabled, or a threat to the community. If an applicant has been denied a permit, the applicant should have the right to challenge the legal system, which HB 582 provides for.

Chair Yellowtail told the Committee that there is due process in the present law. The unsuccessful applicant has the prerogative to appeal the sheriff's decision to the District Court under present law.

Vote:

The motion to table HB 582 CARRIED by Roll Call Vote.

EXECUTIVE ACTION ON HB 134

Discussion:

Senator Halligan explained the amendments. (Exhibit #7)

Motion/Vote:

Senator Halligan moved to amend HB 134. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

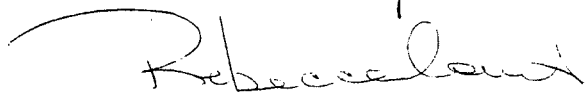
Senator Halligan moved HB 134 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:45 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-8-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 134 (first reading copy -- blue), respectfully report that House Bill No. 134 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 9.

Following: line 8

Insert: "REVISING THE DEFINITION OF PEACE OFFICER;"

2. Page 2, line 10.

Following: "by"

Insert: "a term of imprisonment not to exceed 6 months in the county jail or by"

3. Page 2, line 11.

Strike: "of not less than \$25"

Insert: "not to exceed \$500, or both"

4. Page 2, line 23.

Following: "officer,"

Insert: "motor carrier services division officer appointed pursuant to 61-12-201,"

5. Page 4, line 15.

Following: "(b)"

Insert: ","

Strike: "and"

6. Page 4, line 16.

Following: "(c)"

Insert: ", or (5)(d)"

7. Page 6, line 1.

Following: page 5, line 25

Insert: "(d) A peace officer appointed pursuant to 61-12-201 shall within 1 year of initial appointment attend and successfully complete an appropriate motor carrier services division officer basic course certified by the board of crime control."

8. Page 7, line 1.

Following: "by"

Insert: "a term of imprisonment not to exceed 6 months in the  
county jail or by"

Following: "fine"

Strike: "of not less than \$25"

Insert: "not to exceed \$500, or both"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
March 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 255 (first reading copy -- blue), respectfully report that House Bill No. 255 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 5, lines 3 and 4.

Following: "~~defendant~~" on line 3

Strike: remainder of line 3 through "services" on line 4

Insert: "state"

2. Page 5, line 8.

Following: "risk of"

Insert: ":"

(a)"

3. Page 5, line 9.

Strike: ", of"

Insert: ";"

(b)"

4. Page 5, line 10.

Following: "others"

Strike: ","

Insert: ";

5. Page 5, line 11.

Strike: "of"

Insert: "(c)"

6. Page 6, line 12.

Following: ","

Insert: "a substantial risk"

7. Page 6, line 13.

Following: "or"

Insert: "a substantial risk"

8. Page 6, line 17.

Following: "~~committed~~"

Insert: "by which the person was committed unless that court transfers jurisdiction to the court"

Amd. Coord.  
Sec. of Senate

San Toule  
Senator Carrying Bill

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9. Page 6, lines 20 and 21.  
Following: "committed" on line 20  
Strike: remainder of line 20 through "person" on line 21
10. Page 6, line 22 through page 7, line 5.  
Strike: subsection (2) in its entirety  
Renumber: subsequent subsections
11. Page 8, line 19.  
Following: ","  
Insert: "a substantial risk"
12. Page 8, line 20.  
Following: "or"  
Insert: "a substantial risk"
13. Page 8, lines 22 and 23.  
Following: "discharge" on line 22  
Strike: remainder of line 22 through "necessary" on line 23
14. Page 8, line 24.  
Following: "(7)"  
Insert: "(a)"
15. Page 9, line 3.  
Following: "risk of"  
Insert: ":"  
(i)"
16. Page 9, line 4.  
Following: "others"  
Strike: ", of"  
Insert: ";"  
(ii)"
17. Page 9, line 5.  
Following: "others"  
Strike: ","  
Insert: ";"  
Following: "or"  
Strike: "of"  
Insert: "(iii)"
18. Page 9, line 6.  
Following: "."  
Insert: "(b)"
19. Page 9, line 12.

Following: "risk of"  
Insert: ":"  
(i)"

20. Page 9, line 13.  
Following: "others"  
Strike: ", of"  
Insert: ";"  
(ii)"

21. Page 9, line 14.  
Following: "others"  
Strike: ","  
Insert: ";"  
Following: "or"  
Strike: "of"  
Insert: "(iii)"

22. Page 9, line 15.  
Following: "."  
Insert: "(c)"

23. Page 10, line 1.  
Following: "to"  
Strike: "in"  
Insert: "to"

24. Page 10, line 2.  
Following: "~~committed,~~"  
Insert: "by which the person was committed unless that court  
transfers jurisdiction to the court"

25. Page 11, line 5.  
Following: "risk of"  
Insert: ":"  
(a)"

26. Page 11, line 6.  
Following: "others"  
Strike: ", of"  
Insert: ";"  
(b)"

27. Page 11, line 7.  
Following: "others"  
Strike: ","  
Insert: ";"  
Following: "or"

Page 4 of 4  
March 8, 1993

Strike: "of"  
Insert: "(c)"

-END-



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 502 (first reading copy -- blue), respectfully report that House Bill No. 502 be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

Adm  
IS Amd. Coord.  
Sec. of Senate

Sen. Jaine  
Senator Carrying Bill

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## ROLL CALL VOTE

SENATE COMMITTEE                      Judiciary

## Judiciary

BILL NO. HB582

DATE 3-8-93

TIME 11:30 A.M. P.M.

A.M.

P.M.

NAME

YES

NO

[illegible]

Rebecca Court  
SECRETARY

SECRETARY

Bill (Yellowtail)  
CHAIR

CHAIR

MOTION: to table HB582 Carried.

**PROPOSED AMENDMENTS TO**  
**HB 555**  
Montana Association of Clerks of District Court  
March 8, 1993

1. Page 1 Line 8  
Following : ~~CERTIFICATION;~~  
Reinsert: " REQUIRING GOVERNMENTAL ENTITIES TO PAY FOR  
CERTIFICATION;"
2. Page 5 Line 23 through Page 6 Line 9  
Reinsert stricken material
3. Renumber subsequent sections

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 3-8-93  
BILL NO. HB555

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-8-93

BILL NO. HB502

TESTIMONY

HB 502 Bail Bond Amendments  
Introduced by Rep Joe Barnett  
Hearing March 8, 1993

SPEAKER: Jack Young  
Representing Valley Bail Bonds, Belgrade  
and other Montana Bail Bond persons

WE SUPPORT HB 502 BAIL BOND AMENDMENTS FOR THE FOLLOWING REASONS:

- (1) PROPOSE: THE BOND BE EXONERATED AT TIME OF CONVICTION. By this time a Bond has been in force six months to a year. Once the defendant has made all appearances until conviction or plea of guilt, the Bond has performed its function and should be exonerated. If the defendant appeals, a new Bond may be written for the appeal process as it is a whole new undertaking. Under the present statutes, Judges may hold bonds through appeal, pre-sentence investigation which can take two years or more creating a great financial burden for the person holding the Bond.
- (2) PROPOSE: A CHANGE FROM 30 DAYS TO 90 DAYS FOR RECOVERY OF DEFENDANT: This would give the bond agent additional time to recover the defendant. Many defendants under Bond move around frequently. The more time the bond agent has to recover the defendant, the better the chances of returning defendant to custody; thus, justice is better served. Failure to return the defendant within specified time costs the Bond agent. The State of Idaho recently extended recovery time to ninety days.
- (3) PROPOSE: TEN WORKING DAY NOTIFICATION OF FORFEITURE OF BOND: This prompts courts to notify bonding agent immediately when a defendant fails to make a court appearance. Courts in the past have waited two months to send notice of non-appearance. This gives a "bail jumper" a costly head start on the bonding agent's attempt to apprehend.

BOND AGENTS ARE AN ESSENTIAL SPOKE IN THE WHEEL OF JUSTICE. THEY KEEP JAIL POPULATIONS DOWN TO A MANAGABLE LEVEL. THEY SAVE MONTANA TAXPAYERS CONSIDERABLE SUMS OF MONEY BY RETURNING DEFENDANTS TO THEIR FAMILIES AND JOBS RATHER THAN THE COST OF INCARCERATION AND MANY TIMES RESULTING MEDICAL COSTS TO BE BORNE BY THE TAXPAYERS. BOND AGENTS ALSO SAVE THE STATE TIME AND MONEY, LAW ENFORCEMENT INVESTIGATION TIME AND EXTRADITION COSTS BECAUSE OF THEIR PROVEN ABILITY TO LOCATE AND APPREHEND "BAIL JUMPERS".

TO: LEGISLATIVE COMMITTEE  
FROM: BRADLEY B. AIPPERSPACH  
DATE: February 10, 1993  
RE: HOUSE BILL # 502

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 3-8-93  
BILL NO. HB502

LEGISLATIVE COMMITTEE  
RE: HOUSE BILL # 502

#### INTERDICTION

I Bradley B. Aipperspach have been a Bail bondsman for 3 years in the Missoula and Lake County areas. From 1987 through 1989, and I am currently returning to the bonding business.

#### ISSUE I. BOND TERMINATION AT TIME OF CONVICTION.

In Missoula about four or five years ago, William J. Henderson was charged with three felonies. Incest, accountability to incest, and felony bad checks. He was released on bail for all three charges. While waiting for the felony bad check case to come to court, he was tried and convicted of the INCEST, and ACCOUNTABILITY TO INCEST. The judge allowed him to remain free until the time of sentencing. Needless to say he never showed for the sentencing.

He was found and returned to Missoula the first of this year. He now faces two more felony charges in Missoula, he committed these felonies while free awaiting sentencing.

**This is a prime reason why bail should be terminated at the time of conviction.**

The bond in this matter was posted, when the person by law was to be presumed innocent. At the time of conviction the presumption of innocents no longer exists. **The assumption of risk, and desire to jump bail becomes much greater. Bonds should be terminated at the time of conviction.** If the courts need to release people before sentencing, a new bond should be posted, for the assumption of risk is much greater at this time.

#### ISSUE II. TIME OF FORFEITURE

Currently in Montana their is a 30 day time period to return people to the courts. Some people take more than 30 days to locate. Most people that bail out in Montana will return to the state, or have relatives that they will come to see.

Many states have a 6 month time period to return people to the courts. The change to **90 days** will greatly help in our search for people who have jumped bail.

The Common law has always been, when a bondsman return a person to the courts, **bond was exonerated.** The bondsman will spend time, money, effort, and risk of injury or life, to return these people to the courts.

Some where along the line Judges or J.P.s wanted the person to have a reason for missing court. I can see the reason for asking this, for normally the person is returned to jail. If they had medical reasons or Acts Of God, which kept them from court, the bond would be continued. Now it is the practice in many courts, that you must excuse the person from missing court or the bond is forfeited. The judges have gotten away from releasing the bond when you return a person to the court, they forfeit the bond.

I have meet a J.P. who does not care if you bring the person back to the court. He is going to forfeit the bond no matter what. If you spend time, money, effort and risk your life to return these people, **you should get the bond exonerated.**

The only people that are more powerful than a Judge or J.P. is the legislators when they make the laws that the Judges or J.P.s must follow.

"BAIL SHALL BE EXONERATION WHEN A PERSON IS RETURNED TO COURT WITH IN 90 DAYS OF NOTICE OF FORFEITURE"

I strongly feel that this should be part on Montana's statutes on bail.

Thank you for taking the time to read and consider this letter. May God guide you in your long year of law making.

Sincerely



Bradley B. Aipperspach

Amendments to House Bill No. 255  
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane  
March 5, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 3-8-93

BILL NO. HB 255

1. Page 5, lines 3 and 4.  
Following: "~~defendant~~" on line 3  
Strike: remainder of line 3 through "services" on line 4  
Insert: "state"
2. Page 5, line 8.  
Following: "risk of"  
Insert: ":"  
(a) "
3. Page 5, line 9.  
Strike: "of"  
Insert: ";"  
(b) "
4. Page 5, line 10.  
Following: "others"  
Strike: "1"  
Insert: " ";"
5. Page 5, line 11.  
Strike: "of"  
Insert: "(c) "
6. Page 6, line 12.  
Following: "1"  
Insert: "a substantial risk"
7. Page 6, line 13.  
Following: "or"  
Insert: "a substantial risk"
8. Page 6, line 17.  
Following: "~~committed~~"  
Insert: "by which the person was committed unless that court  
transfers jurisdiction to the court"
9. Page 6, lines 20 and 21.  
Following: "committed" on line 20  
Strike: remainder of line 20 through "person" on line 21
10. Page 6, line 22 through page 7, line 5.  
Strike: subsection (2) in its entirety  
Re-number: subsequent subsections
11. Page 8, line 19.

Following: "1"  
Insert: "a substantial risk"

12. Page 8, line 20.  
Following: "or"  
Insert: "a substantial risk"

13. Page 8, lines 22 and 23.  
Following: "discharge" on line 22  
Strike: remainder of line 22 through "necessary" on line 23

14. Page 8, line 24.  
Following: "(7)"  
Insert: "(a)"

15. Page 9, line 3.  
Following: "risk of"  
Insert: ":  
          (i)"

16. Page 9, line 4.  
Following: "others"  
Strike: "of"  
Insert: ";  
          (ii)"

17. Page 9, line 5.  
Following: "others"  
Strike: "1"  
Insert: ";;"  
Following: "or"  
Strike: "of"  
Insert: "(iii)"

18. Page 9, line 6.  
Following: "."  
Insert: "(b)"

19. Page 9, line 12.  
Following: "risk of"  
Insert: ":  
          (i)"

20. Page 9, line 13.  
Following: "others"  
Strike: "of"  
Insert: ";  
          (ii)"

21. Page 9, line 14.  
Following: "others"  
Strike: "1"  
Insert: ";;"  
Following: "or"  
Strike: "of"



Insert: "(iii)"

22. Page 9, line 15.

Following: "."

Insert: "(c)"

23. Page 10, line 1.

Following: "to"

Strike: "in"

Insert: "to"

24. Page 10, line 2.

Following: "~~committed,~~"

Insert: "by which the person was committed unless that court  
transfers jurisdiction to the court"

25. Page 11, line 5.

Following: "risk of"

Insert: ":"  
(a) "

26. Page 11, line 6.

Following: "others"

Strike: ", of"

Insert: " ;"  
(b) "

27. Page 11, line 7.

Following: "others"

Strike: " 1 "

Insert: " ; "

Following: "or"

Strike: "of"

Insert: "(c) "

EXHIBIT 4  
DATE 3-8-93  
HB 255

## ROBERT H. SCOTT

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March 5, 1993

Senate Judiciary Committee  
Senator Yellowtail, Chmn.  
c/o Rebecca Court  
Room 319, Capitol Building  
Helena, Montana 59620SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 5  
DATE 3-8-93  
BILL NO. HB 429

Re: House Bill 429 - Production of dangerous drugs

Dear Senator Yellowtail:

I apologize for being unable to speak to the committee in person. However, I ask that you please consider this letter in lieu of my testimony.

HB 429 is poorly drafted and skewed in its sentencing provisions. It does not prescribe any sentence for first-offense manufacturers of Schedule I and Schedule II drugs. Yet, it prescribes a sentence of two years to life for growing even small amounts of marijuana.

The sentencing provisions of HB 429 are as follows.

Section 1, subsection 2: Provides sentence for manufacture of narcotics and opiates. It does not provide for a higher penalty where there have been prior convictions.

Section 1, subsection 3: Provides sentences for manufacture of Schedule I or Schedule II drugs, but only where there have been prior convictions.

Section 1, subsection 4: Provides for a 0-10 year sentence for manufacture of marijuana, THC, or a dangerous drug not referred to in subsections 2 and 3.

There are no other sentencing provisions. Thus, there is no provision for sentencing of first-offense manufacturers of Schedule I and Schedule II drugs. It is doubtless the drafters' intent to punish first-time manufacturers of Schedule I and Schedule II drugs; however, the bill simply does not provide for it.

On the other hand, the drafters have provided for an enhanced sentence of two years to life for first-time marijuana growers "if the total weight is more than a pound or number of plants is more than 30". (See page 2, lines 20-22.) Although it would appear that 31 plants are required to trigger the enhanced penalty, the weight provision negates this requirement.

Because the bill does not specify whether the plants are to be weighed when dry or when still fresh and heavy with water, and because this weight includes such non-drug material as the stem structure (page 2, line 25), the actual number of fully-grown plants that could trigger the enhanced sentence may be as low as one or two. (As an attorney, I have seen marijuana plants preserved for evidence. They look like small trees, with a lot of stem and branch material. Before it is dried, one plant could easily weigh more than a pound.) Thus,

for all practical purposes, the bill provides for punishment of two years to life for almost any first-time conviction of growing marijuana.

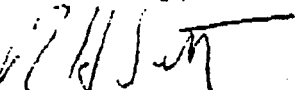
Even if the bill were worded so as to include sentencing of first-time Schedule I and Schedule II drug manufacturers under the general provision in Section 1, subsection 4, there would still be no sentence enhancement for manufacturing large amounts of these hard drugs. Thus, the first-time manufacturer of any amount of methedrine, LSD, cocaine, or crack, no matter how large, would only be subject to 0-10 years. On the other hand, as explained above, the first time marijuana grower, even of just a few plants for personal use, would receive a mandatory minimum of two years and a maximum of life.

This punishment scheme is backwards. Historically, the legislature has recognized that marijuana is not a hard drug like methedrine (speed) or crack. This is reflected in the fact that possession of small amounts of marijuana is a misdemeanor, while possession of any amount of hard drugs is a felony. Accordingly, it makes no sense to punish the small first-time grower of marijuana for personal use more harshly than the big-time speed or crack manufacturer.

The current possession statutes already provide stiff punishment for drug manufacturers when warranted. They also allow the judge to decide the appropriate sentence, taking into account the purpose for which the drug was manufactured (sale or personal use), the amounts produced, type of drug, and other factors. Mandatory minimum sentences take away the judge's discretion in favor of inflexible rules which inevitably result in miscarriages of justice. Regardless, if a mandatory minimum is ever warranted, should it not be for hard drugs like crack, rather than marijuana?

It is doubtful there is any need to change the current laws. However, if change is necessary, HB 429 is not the proper vehicle. Unless it can be amended to correct the above-mentioned problems, the bill should tabled.

Sincerely,



Robert H. Scott

cc: FAX 444-4105

20 444.5238  
attest

Amendments to House Bill No. 582  
Third Reading Copy

Requested by Senator Doherty  
For the Committee on Judiciary

Prepared by Valencia Lane  
March 8, 1993

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 3-8-93  
BILL NO. HB582

1. Title, lines 7 through 10.  
Following: "PERMIT;" on line 7  
Strike: remainder of line 7 through "FIREARMS;" on line 10
2. Page 4, line 25 through page 5, line 5.  
Strike: subsection (5) in its entirety

Amendments to House Bill No. 134  
Third Reading Copy

Requested by Senator Halligan  
For the Committee on Judiciary

Prepared by Greg Petesch  
March 8, 1993

SENATE JUDICIARY  
EXHIBIT NO. 7  
DATE 3-8-93  
BILL NO. HB134

1. Title, line 9.

Following: line 8

Insert: "REVISING THE DEFINITION OF PEACE OFFICER;"

2. Page 2, line 10.

Following: "by"

Insert: "a term of imprisonment not to exceed 6 months in the  
county jail or by"

3. Page 2, line 11.

Strike: "of not less than \$25"

Insert: "not to exceed \$500, or both"

4. Page 2, line 23.

Following: "officer,"

Insert: "motor carrier services division officer appointed  
pursuant to 61-12-201,"

5. Page 4, line 15.

Following: "(b)"

Insert: ", "

Strike: "and"

6. Page 4, line 16.

Following: "(c)"

Insert: ", or (5) (d)"

7. Page 6, line 1.

Following: page 5, line 25

Insert: "(d) A peace officer appointed pursuant to 61-12-201  
shall within 1 year of initial appointment attend and  
successfully complete an appropriate motor carrier services  
division officer basic course certified by the board of  
crime control."

8. Page 7, line 1.

Following: "by"

Insert: "a term of imprisonment not to exceed 6 months in the  
county jail or by"

Following: "fine"

Strike: "of not less than \$25"

Insert: "not to exceed \$500, or both"

DATE 5-8-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 409 H.B. 555 - Paulovic  
H.B. 502 - Barnett

Name	Representing	Bill No.	Check One	
			Support	Oppose
Clara Melnick	Clerk of District Court	#HB 409 #HB 555	✓	
Lori Maloney	Clerk of Dist. Court	#HB 409 #HB 555	✓	
Susan Gable		#HB 409		✓
Scott Restivo	Valley Bonding Business	#HB 502	✓	
Gene D. Senn	Anderson Bonding Inc.	#HB 502	✓	
Earl Rowe	THE BONDSMAN, P.I. INC.	HB 502	✓	
Jack Young	VALLEY BOND BROS.	HB 502	✓	

# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY