MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 1, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: Rep. Brad Molnar
Rep. Liz Smith

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 13, SB 165, SB 109, SB 113	
Executive Action:	SB 59	BE CONCURRED IN AS AMENDED
	SB 61	TABLE
	SB 69	BE CONCURRED IN
	SB 90	TABLE
	SB 165	BE CONCURRED IN

{Tape: 1; Side: A}

HEARING ON SB 165

Opening Statement by Sponsor:

SEN. GARY AKLESTAD, SD 44, said SB 165 pertained to ending abuses in the appeals process.

Proponents' Testimony:

Beth Baker, Department of Justice, supported the bill as part of an overall effort to limit successive appeals in criminal cases both at the state and federal levels. She familiarized the committee with the state's post conviction remedies and how this bill would alter the current system. The bill would apply to all post-conviction petitions filed in criminal cases and would require that the petition be amended only once. She recalled the Dawson case which brought the need for this bill to the forefront.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. AKLESTAD closed with remarks that this legislation would cut down on the incentive of some of the attorneys who may abuse the process and it would streamline the process.

HEARING ON SB 109

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, said SB 109 was a proposed constitutional amendment to give the legislature the authority to change the legal age for gambling from 18 to 21. The only current exclusion in the Constitution for people under 18 years of age is the possession, consumption, or purchase of alcoholic beverages. He cited the problems this causes tavern owners with youths allowed to gamble in their establishments. He also said it was a problem because 70% - 80% of 18-year-old's are still in high school.

Proponents' Testimony:

Ellen Engstedt, Don't Gamble With the Future, submitted her testimony as a proponent of SB 109. **EXHIBIT 1**

David Hemion, Montana Association of Churches, said the association was historically opposed to the legalization of gambling and since that line has been crossed, they urge the strictest regulation of gambling. He said it was no accident that drinking and gambling are found in the same sections of Montana law because they both have the potential of being highly addictive and of exacting a high social cost from citizens.

Pat Melby, Rimrock Foundation, said one of the addictions they treat is gambling. They have noted a trend in an increase in the numbers of cases of gambling addiction since gambling had been legalized. He also cited the linkage between drinking and gambling.

Sharon Hoff, Montana Catholic Conference, urged passage of SB 109. In her discussions about the issue, she had discovered that gambling seemed to be the new rite of passage for children. She felt adults give kids the message that gambling is okay because it is legal.

Arlette Randash, Eagle Forum, spoke in support of SB 109 and voiced the strong grassroots support demonstrated in the Senate hearings on the bill. **EXHIBIT 2**

Laurie Koutnik, Executive Director, Christian Coalition of Montana, rose in support of this measure. **EXHIBIT 3**

{Tape: 1; Side: A; Approx. Counter: 30.0}

Opponents' Testimony:

Bob Campbell, Delegate, Montana Constitution Convention, submitted his opposition to SB 109. **EXHIBIT 4**

Diana Rodeghiero, Third Year Law Student, stated her opposition to SB 109. **EXHIBIT 5**

{Tape: 1; Side: a; Approx. Counter: 43.6}

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked the sponsor how gambling is defined.

SEN. GROSFIELD answered that gambling is defined in statutes which includes a variety of activities under 23-5-101 through 801, MCA.

REP. ANDERSON asked how many votes the bill received in the Senate.

SEN. GROSFIELD said the final vote in the Senate was 32 and 68 were needed for its passage.

REP. ANDERSON referred to testimony that 56% of the candidates elected in the last election said they would work to reverse moral decline and asked where that figure came from.

Mrs. Koutnik said that figure came from a Gallop Poll conducted on election day which indicated that those who were elected were elected because voters in a 56% margin wanted to see moral decline addressed. 39% wanted to see economic issues addressed.

REP. ANDERSON asked if that would not indicate that those who did not answer that survey or those who said they wanted to address fiscal issues didn't also want to see a reverse in moral decline.

Mrs. Koutnik said that it did say that the voters who voted supported candidates who were willing to address moral decline in this country. They may have wanted to also see economic issues addressed.

REP. ANDERSON asked if it was immoral to gamble.

Mrs. Koutnik answered that she did not say it was immoral to gamble, but believed that they were setting a bad precedent to allow children to be turned loose on a path which leads to severe destruction and financial consequences to society at large.

REP. ANDERSON asked if she was saying that for the purposes of gambling they are children until they reach age 21.

Mrs. Koutnik said that she believed that as long as they are financially dependent, residing still in the home with their families, attending high school and some even attending college, they are still living under the protection and decisions of the family. In her household, they would still abide by the rules of the home as long as they remained dependent financially.

REP. JOAN HURDLE asked **Ms. Rodeghiero** to address the differences between rights and privileges and choices and desires.

Ms. Rodeghiero said the reason she had classified gambling as a right was that under the Constitution in Montana a person reaching the age of 18 is considered an adult for all purposes. Gambling is still a choice for the individual. She felt that choice was protected under the Constitution and should continue to be protected.

REP. HURDLE asked her to distinguish between rights. She asked if it was something she wanted to do, was that a right of someone over 18.

Ms. Rodeghiero said, "No, but you have a right to make a choice to do what you'd like to do.....unless it's illegal. The right is the right to make a choice."

REP. HURDLE asked if the sponsor had considered addressing the problem that there are children in bars at all ages and if that was related.

SEN. GROSFIELD said it was not considered. In Montana it is a difficult issue because in many small towns, the only restaurant may be a bar as well.

REP. HURDLE said that in Montana it seemed to be assumed that bars can be a family atmosphere. She asked if they were circling that issue here.

SEN. GROSFIELD said that perhaps they were and compared the laws with those in other states.

Closing by Sponsor:

SEN. GROSFIELD addressed the following points in closing:

1. Gambling is recreation much as drinking is and could hardly be viewed as a right on the same par with voting,

2. Montana did succumb to federal extortion in raising the legal drinking age to 21 though the first time it was raised from 18 to 19 was prior to the federal intervention and it was done to get drinking out of high schools. When the age was raised by an act of Congress, they dealt with issues of maturity, etc.,

3. He said that the age could be set at some other age, but would expect that 21 would be the accepted age because it is the traditionally recognized age,

4. There were no representatives of the taverns or gambling industry or many teens opposing the bill,

5. He had to agree with one testimony during the Senate hearings that he was not particularly proud that the government has become partially reliant on Montana teenagers' losses to support it, and

6. Teenagers in high school who are gambling will not admit to having losses, but they would brag about their wins and encourage others to gamble.

{Tape: 1; Side: B}

HEARING ON SB 113

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, said SB 113 would increase the penalties for uninsured drivers on a third offense.

Proponents' Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, Department of Justice, rose as a proponent and gave some history behind the bill. He said the bill intended to make the third offense equal with other misdemeanors with a six-month jail sentence.

Colonel Craig Reap, Montana Highway Patrol (MHP), said they supported the bill for a number of reasons. He said that in 1989 MHP wrote 5,914 insurance violations. In 1994, they wrote 5,800. This demonstrated the numbers of people who were in violation of the law. Increasing the penalty would allow it to become consistent with other misdemeanors, but would also give the justices an opportunity to provide additional sentencing to those who have no intention of purchasing insurance.

Vicki Frazier, Deputy County Attorney, Lewis and Clark County, said they and the County Attorneys' Association supported the bill because it would send a message that they are serious about individuals carrying insurance. With medical costs, society could not afford to have individuals driving who are not insured. Secondly, it would provide options to offices to sentence individuals.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BILL CAREY asked about the deterrent effect of the six-month option.

Ms. Frazier said that it would have a deterrent effect in that in individual crimes, higher maximum penalties are a signal that it is being taken seriously. It would also provide a hold over the individual for six months. Sentencing to six months, with it partially suspended, would still allow the courts to hold the conditions over them to bring them into conformity. Currently there is only a 10-day hold over the individual to revoke them.

REP. CAREY asked what kinds of conditions the court generally imposes on people and how that would change things.

Ms. Frazier said she did not necessarily know that the conditions would change, but that they would have the longer hold. She believed that the threat of jail time is an effective deterrent.

Another condition is that they remain law abiding. If they break another law, it may lengthen the time they can hold them and would provide more sentencing options

REP. WILLIAM BOHARSKI said that under current law after the second conviction, they take the drivers license and registration in which case they could not operate the vehicle anyway.

Ms. Frazier said they take the registration. They are supposed to turn the plates in, but it doesn't keep them from driving other vehicles.

REP. BOHARSKI asked how that affects the fact that they may be covered under another party while driving a vehicle insured with another person. He pointed out that the bill says that the court shall order the surrender of their registration and license of the vehicle and it would seem that they are already under their jurisdiction.

Ms. Frazier said that was true, but they would only have them for 10 days. They cannot give them any longer jail terms than the 10 days and the intent of the bill is to extend that time for the deterrent effect. It doesn't matter how many times they are stopped, currently they only have 10 days to sentence them to jail.

REP. BOHARSKI said the fiscal note suggested that it would cost about $300,000 and asked how those bills are paid.

Col. Reap said the bills are paid out of budget line items. The cost is based on a contract with each county. If the increases were to occur, the money would have to come out of that same budget item.

REP. BOHARSKI asked if the funding would come from fines.

Col. Reap said that their funding comes from a state special gas tax.

REP. LOREN SOFT asked who the people are who make up those in violation of the insurance laws. He asked how many of the 5,800 were repeat offenders.

Col. Reap said most of the people, particularly the repeat offenders, are people with whom they have other problems such as lack of registrations or DUI convictions. The first-time offenders in many cases are regular citizens whose insurance may have lapsed. Some are well able to purchase insurance, but for one reason or another don't want the government to be telling them to have insurance.

REP. SOFT asked if the increased jail time would deter for repeat offenders and those who are offending in other areas.

Col. Reap said that the fact that the court would have control over them for the additional time would promote the buying of insurance.

REP. SOFT asked what the procedure is in detecting who is not carrying insurance.

Col. Reap described the procedures for writing citations and warnings. Each officer has discretion to determine the situation and to act with either a citation or a warning.

REP. SOFT ask why warnings would be written when the law demands a conviction on first offense.

Col. Reap repeated that officers are allowed discretion in all violations. The whole picture is taken into consideration especially when there may be other violations of a more serious nature. Most cases of warnings would involve those who simply don't have proof of insurance with them, but may be insured.

{Tape: 1; Side: B; Approx. Counter: 19,8}

REP. HURDLE cited her own experience of having been involved in an accident with someone for whom it was the seventh offense. She saw him driving around in the same car later and suggested that it was more an enforcement problem.

Col. Reap said he did not disagree at all and that license plate taking is not done all of the time. He said sometimes the offender puts different plates on the car from another vehicle and that it is a major problem for MHP.

REP. HURDLE asked what the point of this is if they can only cite when the violations occur.

Col. Reap said that the additional six months would give the court the ability to tell that individual that they are on a suspended sentence, but for the remainder of the sentence they would have to have insurance. It would exercise some control that does not now exist.

REP. HURDLE again said that it was not being enforced and that was the problem.

Col. Reap replied that the fact of their having written over 5,800 citations indicated that it is being enforced, but the lack of control for the courts beyond 10 days was the problem.

REP. HURDLE asked in how many cases people are required to show proof of insurance after having been arrested for having no insurance.

Col. Reap answered, "Quite often, in fact, we really can't do this legally, but after we cite someone we sometimes make the

person come in and show that they did get insurance." He said he knew courts do that too. They could buy the 30-day insurance and then let it expire and there is no one to check on them again to require that they do it unless they are stopped again.

REP. HURDLE asked if at any stage anyone would lose their drivers license.

Col. Reap said there is a measure in the legislative process where five points would be assessed on a person's driving record who fails to have insurance. He said that had been strengthened by requiring that all insurance violations have the five-point designation and eventually with enough points, they would lose their license. This would still not require them to get insurance where this bill would present that opportunity.

Closing by Sponsor:

SEN. BROOKE recommended that the committee seriously consider the bill.

HEARING ON SB 13

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, said the purpose of SB 13 was to eliminate the problem of having to use law enforcement personnel to chase down minor offenses by requiring the suspension of a drivers license for failure to appear in response to a traffic violation. The second page of the bill, lines 9 through 15 provided for the warning at the time that a citation is issued. An additional notice would be followed by a letter. After that warning, there would be an official notice of suspension. There is a provision where insurance companies could not use the information for to change rates.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, said they would not be adopting a new policy in using the drivers license as a tool to get an individual to comply with a citation to appear in court or to comply with a court order to pay a particular fine. That policy was adopted in 1987. The reason for this bill is that the policy which was put into law contains a mechanism that doesn't work well and this bill would fine tune it so that it will work. The current law has no provision for forcing compliance. This bill would provide that two warnings be given before the department would suspend a license because they failed to appear on a citation or because they failed to pay a fine after being convicted of an offense under title 61.

Colonel Craig Reap, Montana Highway Patrol, reported that they have 2,500 outstanding warrants at any given time. The majority

are for multiple offenders. One of the problems they encounter when they try to enforce the warrants are the full jails in many counties. They see this proposal as a valuable tool for enforcement and the methods proposed as effective for ensuring that offenders will appear to pay their fines.

{Tape: 1; Side: B; Approx. Counter: 45.5}

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association (AIA), made it clear that AIA supported the original intent of the bill but stood as an opponent because of the concerns brought about by the Senate amendments. The concerns dealt with amendments on page 2, lines 6 - 8 and section 2 which modified the insurance code. She informed the committee of the ground rules for insurance underwriting and concluded how the insurance company would take care of the person who was generally compliant with the law, but is negligent in responding to warrants to appear. She said that when a factor which an insurance uses in underwriting a risk is removed, availability of insurance is impacted and the other is affordability of the product. This was the reason that the suspension of a drivers license is an important factor for consideration by an insurance company. She asked that SB 13 be passed, but to amend it by deleting lines 6 - 8 on page 2 and to delete section 2.

Ron Ashabraner, State Farm Insurance Company, supported the bill, but opposed the amendments added by the Senate. He said that one of the deterrents, in DUI cases for instance, today is the responsibility when the insurance company rates the driver. He said that under this bill, the driver could not be rated because of the restriction to inform the insurance company that the driver failed to appear. He reiterated the request for amendments to delete the exclusion.

Roger McGlenn, Executive Director, Independent Insurance Agents' Association of Montana, said they "love the bill, hate the amendments." They requested the removal of the Senate amendments.

Questions From Committee Members and Responses:

REP. ANDERSON asked if they could leave in the language on lines 6 - 8, but refer to subsection (1)(c) which dealt with the suspension for mere failure to pay the fine or to appear so that the insurance company could still use convictions under title 61 as part of the calculations for risk.

Ms. Lenmark said that their response would still be the same because it is an indication that someone is not complying with rules and public policy. They are trying to encourage compliance

with the law. Their position was that they want public policy to require compliance.

REP. ANDERSON said the current law does not provide for the use of suspension in their calculations and he did not understand how failure to pay the fine or to appear on a summons would make a difference.

{Tape: 2; Side: A}

Ms. Lenmark said she read the bill to intend that the failure to pay the fine would trigger the suspension of the license.

REP. ANDERSON said that was correct, but under current law there is no suspension provision.

Ms. Lenmark recognized that it isn't something which happens under current law, but they are supporting the passage of this bill and if it were to become law, then it would be a factor they need to be able to consider in underwriting policies.

REP. ANDERSON said he still did not understand how it would translate into increased risk.

Ms. Lenmark replied that a person who was ordered by law enforcement or a court to pay a fine and disregarded that might just as easily disregard a traffic sign. The ability and willingness to disregard public policy or law that was at issue.

REP. ANDERSON asked the sponsor if he was supportive of the amendments.

SEN. HALLIGAN said he would not be bothered if the amendments were deleted from the bill.

REP. BOHARSKI asked why the bill contained extra written notice requirements.

SEN. HALLIGAN said they wanted to make sure that there were sufficient warnings and were directed at the teen driver whose parents or guardian needed to be informed.

REP. BOHARSKI asked if this didn't put an extra burden on the court.

SEN. HALLIGAN answered that the magistrates' association testified in favor of the bill and even if they have to send out a separate letter, the offsetting problem and costliness of the outstanding warrants was more than taken care of through the process.

REP. DANIEL MC GEE asked about the stricken language in the title.

SEN. HALLIGAN replied that it was the original title of the bill.

REP. MC GEE said he thought he would be in favor of the original language of the bill which indicated that the drivers license would be taken at the outset and asked why that was changed.

SEN. HALLIGAN responded with the history of the bill and the fiscal note which had created a problem in unfunded administrative costs at the local level. He had been informed that there was an existing law which, if amended, would handle the problem rather than to make a new law.

REP. MC GEE asked if the original language would address the outstanding warrants to a greater degree or more positively than what was being attempted with this bill.

SEN. HALLIGAN said, "Yes." He understood the department's desire to fix the existing law, but both needed to be dealt with.

REP. MC GEE said there would be some fiscal impact with the multiple mailings of notices. He also said that if the drivers license had to be recovered by a person appearing in court, there would be more incentive than receiving a ticket stamped with the warning that it may be suspended. He felt it would also eliminate the concern of the insurance companies about suspended licenses. He asked if that would not be a better approach.

SEN. HALLIGAN said the changes to the bill obviously created a tremendous problem for the insurance companies. He referred the question to **Ms. Nordlund.**

Ms. Nordlund said she could not address anything beyond this session's discussion. She advised the committee that as the bill was originally drafted and as they appeared for hearing, there were additional opponents (bondsmen) to the bill which they managed to avert by using this mechanism rather than the bail for bond. She discussed issuing a temporary permit and taking the license at the time of the arrest. She said that when that occurs, the department doesn't know anything about that action and would not find out about the citation until a conviction was actually recorded in the court and sent to them. The individual who would get the temporary driving permit from the officer could request a duplicate license. It would create at least as much administrative difficulty for the officer. The bill would limit the insurance companies' options to deal with the driver whose record would reflect a suspension related to a nonappearance or nonpayment. Under current law, when the insurance company orders a copy of motor vehicle reports on a person, it would show those who had not paid a fine and under a time-pay contract with a court-ordered suspension action.

REP. MC GEE said it looked like a logistical issue and he proposed a solution which would involve the officer who issued

the citation to notify the court upon taking the drivers license so that duplicate licenses could not be obtained by the driver.

Ms. Nordlund responded that this would place an additional responsibility on the court to notify the department.

REP. MC GEE countered with the argument that in the bill, an additional responsibility is created in the written notices which might not be received by the respondent because of address changes or error and said he could not determine what the bill would solve.

Ms. Nordlund said it would solve the problem in that the first warning would have been given at the time of the arrest. The second warning by first class mailing wouldn't make a difference whether received or not. Most would receive it because in most cases the address given to the officer will be accurate.

REP. MC GEE asked if they were addressing the problem or making a problem. He saw the real problem as finding a way to cut down on problem drivers rather than how to notify them. He felt that was addressed in the original bill before the amendments to strike the language in the first three lines.

Ms. Nordlund suggested giving this bill a try since it addressed the system as it currently exists and allow them to create a data base for the next legislature to determine its effectiveness. If an automated system is put in place then they may need to make changes. Their intent was to make the currently hollow statute substantive enough to work with the system that is in place.

REP. ANDERSON requested a list of the most often cited offenses under title 61.

Col. Reap said they included insurance [violations], night speeding with a fine of $50, seat belt offenses, reckless driving and careless driving.

REP. BOHARSKI asked if the judge has to ask the department to suspend a license.

SEN. HALLIGAN said that was correct that there has to be a certification from the court indicating that the notice has been given and the person failed to appear or post bond.

REP. BOHARSKI asked if it was a "may" on the part of the court.

SEN. HALLIGAN answered, "No."

CHAIRMAN CLARK asked how this would deal with an out-of-state driver.

SEN. HALLIGAN replied that he understood that if someone does not have the bond, under the new changes in the bill, there are electronic connections between states for driving privileges which are suspended and that there are reciprocal agreements. He did not know if they would apply.

Ms. Nordlund said that a nonresident violator who cannot post bond would be taken before the judge. Montana is not a member of the nonresident violator compact. She did not think that the discretion of the law enforcement officer on the street would change under this law. There are no separate consequences for nonresidents.

REP. CLIFF TREXLER asked if **Ms. Lenmark** was saying that when someone breaks one law, there is a chance that they will break others.

Ms. Lenmark answered, "Yes, I said that there is a greater likelihood if a person is willing to disregard one law that he will be willing to disregard a different law."

REP. TREXLER gave the example of breaking the speed limit law indicating that that person might not show up for the hearing.

Ms. Lenmark said she did not know if that would indicate that they might not show up for the hearing, but it might indicate that they might be willing to do a "Hollywood Stop" at a corner.

REP. TREXLER said he was concerned that the fact that they would have their insurance written up mainly because of nonappearance rather than being written up for breaking the law in the first place when the citation was issued.

Ms. Lenmark replied that the person would be cited for breaking the law and as a result of that citation or conviction a penalty would be imposed and then noticed that there would be a suspension if there is noncompliance. If the license were suspended, the insurance company would see that as two separate kinds of violations, one was a cited violation and the other is a noncompliance violation with the consequence of suspension.

REP. TREXLER asked if the insurance company would look at it as other suspensions or if there are different kinds of suspension classifications.

Ms. Lenmark answered that insurance companies, based on their own criteria and considerations, have different approaches to rating policies. She thought the suspension would be looked at in terms of the violation for which the license was suspended. A DUI would have a more serious impact on the policy than a "Hollywood Stop."

CHAIRMAN CLARK looked at it from the standpoint of helping insurance companies and asked if the license were suspended for a

no-show and they come in as a result of the suspension, wouldn't that expedite the process of getting that conviction on the person's driving record so that it could be used by the insurance companies. Without it, there are several outstanding warrants without a conviction.

Ms. Lenmark said that having the knowledge that it is suspended is an advantage.

CHAIRMAN CLARK restated the question, "What I am saying is, the fact that the person's driver's license is being suspended because they did not show up on a speeding ticket, for an example, you cannot take action against them as the insurer until they have a conviction. Correct."

Ms. Lenmark said they would not use the suspension as a criteria until the suspension had occurred and showed up on their driving record.

CHAIRMAN CLARK redirected the question to before the suspension had occurred. If the person broke the law, until that person was convicted, the insurance company could not do anything about it.

Ms. Lenmark said that was accurate.

CHAIRMAN CLARK pointed out that as long as the person avoids prosecution, the insurance company has no control; but with this law he asked if the threat alone of losing their drivers license could bring them in and get the conviction on their record and thereby give the insurance company the ability to take action.

Ms. Lenmark answered that she agreed and that they supported the intent of the bill, but did not support the prohibition for them to use that information as an underwriting criteria.

CHAIRMAN CLARK reiterated that he meant that even if they cannot use that prohibition against them it was still to their advantage to get them in and convicted. He said that because the suspension would likely be short term, it would be to the advantage of the insurance company to not worry about that because they will be able to take action based on the conviction of the traffic violation.

Ms. Lenmark said she understood that that is the way things are now and this bill would streamline and economize the way that a driver can be notified of the possibility of suspension. The insurance company can use that information now. But the amendments would take away one of the underwriting criteria which insurance companies presently have.

CHAIRMAN CLARK said they would speed the process up if they leave the suspension provision in the bill.

Ms. Lenmark agreed that it would speed up the process but was not willing to say that they don't need to have the additional criteria. It's not that the company would use it adversely in every instance. There is a presumption in the amendments that always the information is going to be used to the detriment of the driver and that it not necessarily true. She said that her position was that they need to have the freedom to use suspension information for underwriting criteria that are telling to them in any given situation.

CHAIRMAN CLARK thought he was hearing that the insurance companies, upon conviction, raise a person's rates in most cases.

Ms. Lenmark answered, "In some cases." The Chairman repeated, "In most cases."

CHAIRMAN CLARK said that now they would be given another opportunity without this amendment to not only raise the rates, but also to raise the rates because his drivers license was suspended.

Ms. Lenmark respectfully disagreed. She said they already have that ability and the amendments take away a factor they are presently, in some instances, using.

CHAIRMAN CLARK asked if they have the ability now, in what types of convictions do they have that ability now on a suspension.

Ms. Lenmark said the department already must suspend the license when a person is charged with a violation of some specific statutes. The bill would change that to conviction. Words are being added regarding the complaint and the court order. She pointed out further existing law regarding suspension. What would be new is in subsection (c) on page 1 which changes the way that the notice of those effects get to the driver. She said insurance companies already have the ability to use that information but the amendments would remove that ability.

CHAIRMAN CLARK said, "You do not now or the department now does not suspend a drivers license for someone who is caught speeding at night and they do not suspend a drivers license for someone who runs a stop sign. The only things that a drivers license is suspended for now are things like DUI and habitual offender and those types of violations, persons driving while revoked....." But under this it would happen for every moving violation, the way he understood it.

Ms. Lenmark said the present statute reads that the suspension must happen for some specific statutes in chapter 3 and other chapters in title 61. This bill would take out those specifically enumerated chapters. This is a substantive change in this bill and that was why she reiterated the department already has the authority and the insurance companies already have the ability to use the information. The amendments take

away their ability to use information that is important in identifying the cost of a risk.

REP. TREXLER was concerned about the 2,500 outstanding warrants and asked if they would all result in convictions.

Col. Reap said that when they are finally brought to the court, they all would end up in conviction. Some of the warrants relate to people who have already been to court and this bill wouldn't address those. He said that had it been in effect, they might not have gotten to this point with the people in their disrespect for the court. The people the bill would affect are about 80% which will end in conviction.

Closing by Sponsor:

REP. HALLIGAN closed with the agreement that he would work with whomever might want to make changes in the bill to address the concerns of proponents and opponents.

{Tape: 2; Side: A; Approx. Counter: 54}

EXECUTIVE ACTION ON SB 59

Motion: **REP. ANDERSON MOVED SB 59 BE CONCURRED IN.**

Motion: **REP. BOHARSKI MOVED TO AMEND SB 59 ON PAGE 1, LINE 21 FOLLOWING "SUBPOENA." INSERT "THE TIME AND PLACE MAY BE MODIFIED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES OR BY AN AMENDED SUBPOENA ISSUED BY THE CLERK OF THE COURT."**

Discussion: **REP. BOHARSKI** said he thought they needed the amendments to make the bill work. He asked how a person would receive the information about any changes to an existing subpoena.

CHAIRMAN CLARK said the person would be served with an amended version of the subpoena by the process server.

Vote: **The motion carried unanimously by voice vote.**

Motion/Vote: **REP. MC GEE MOVED SB 59 BE CONCURRED IN AS AMENDED. The motion carried unanimously by voice vote.**

EXECUTIVE ACTION ON SB 61

Motion: **REP. BOHARSKI MOVED SB 61 BE CONCURRED IN.**

Discussion: **REP. MC GEE** said that his notes indicated that there was testimony from a Justice of the Peace (JP) who did not like the sheriff overturning a JP decision and wanted the local government to deal with that.

REP. HURDLE asked if this essentially would make a sheriff into a judge.

CHAIRMAN CLARK said either the sheriff or the jail administrator (in most cases that is the sheriff) would decide who would be jailed or released.

{Tape: 2; Side: B}

Informational Testimony: **EXHIBIT 6** was submitted for information concurrent with executive action on SB 61.

REP. HURDLE asked if it gives them the authority to decide which prisoners need to be released to admit a new prisoner.

CHAIRMAN CLARK replied that that was how he understood the bill.

REP. ANDERSON spoke against the motion because he believed that they should not dictate to local people who should have communication between judges and jailers and the JP's and jailers that the jailer would have the final say on who comes and who goes in the jail. If the jail is at full capacity, he said the judge should be the one who would determine who should be there.

REP. BILL TASH also spoke against concurring in the bill for the same reasons. More and more of these types of mandates from the state places a burden on their ability to sentence in accordance with what the case justifies especially with juvenile detention.

REP. LINDA MC CULLOCH asked if a local government can currently give the right to do this to the jail administrator if they want to.

REP. TASH said that in Beaverhead County the common jail is cooperatively administered and when there is no more room, they send them elsewhere generally at high cost to the county.

CHAIRMAN CLARK said that he believed that jail administrators are currently refusing to take more prisoners even in DUI cases.

REP. MC CULLOCH asked if they were breaking the law in doing that or was it a local control issue by county.

CHAIRMAN CLARK said there is no law, but this bill would create one to allow them to do what they currently are doing.

REP. MC CULLOCH asked what this bill would accomplish.

CHAIRMAN CLARK said it would just put a decision in statute.

REP. DUANE GRIMES commented that in testimony Great Falls has currently an 80- to 100-person waiting list. The title of the bill revealed the intent and he explained that. He said it was intended to serve on a most-dangerous basis rather than a first-

come, first-served basis. He gave his further reasons for supporting the bill.

REP. ELLEN BERGMAN asked if this was for detention centers only.

CHAIRMAN CLARK said they were talking about adults, not juveniles.

REP. BOHARSKI said that they do not have the authority to do this according to 7-32-2205, MCA, lines 7 - 9 though they may be currently doing it. The reason for the bill was to address what happens if the jail is full and they can't get in touch with the judge or the judge does not respond. He asked who is liable. And it seemed that if they are currently deciding without the judge, then they were breaking the law.

REP. HURDLE responded to previous discussion by saying that she did not think it would increase communication between authorities. But she saw that the administrator has to cope with the problems of overcrowding and the judge arbitrarily send persons to jail. She said she was opposed to the bill.

REP. CAREY said that he was in favor of the bill because he felt a good argument had been made that they are doing it now and they are making the decisions on the street and they are liable so there should be legislation in effect to address it.

REP. HURDLE asked for a response to her concern about taking the judge out of the loop in sentencing people without any concern that there might not be room.

REP. ANDERSON said that it was a problem which would be developed with this bill in that the persons would be sent to the jail and the discretion would be left with the jailer to turn people out. He said the judge might not feel he needed to keep up correspondence with the jailer and if it is out of his hands, he might not take proper responsibility but hand it over to the jailer. He did not believe that they should not determine that they shouldn't have one extra person in jail because of a threat from ACLU or somebody. The decision should rest with the elected judges to decide who needs to be incarcerated even if it would result in overcrowding for short periods of time.

REP. BERGMAN asked what difference it makes who makes the decision. The jailer is the one who is there and the judge may not have current information.

CHAIRMAN CLARK said it is a liability problem no matter which way it is decided.

REP. MC GEE opposed the bill because he thought the decision should rest with the judge. He referred to **EXHIBIT 6** in his arguments against the bill. He did not believe it was ever the job of a jailer to overturn the decision of the judge. He did

not want to take away the judge's responsibility or to redefine the jailer's responsibility.

REP. HURDLE said that the energy and time should be spent figuring out how to prevent the rapidly increasing damaged and criminal adults.

REP. BOHARSKI withdrew his motion.

Motion/Vote: REP. BOHARSKI MOVED TO TABLE SB 61. The motion carried 9 - 8 by roll call vote.

EXECUTIVE ACTION ON SB 90

Motion: REP. AUBYN CURTISS MOVED SB 90 BE CONCURRED IN.

Motion: REP. MC GEE MOVED TO AMEND SB 90. EXHIBIT 7

Discussion: REP. BOHARSKI asked who was included in the definition of a national firearms association.

John MacMaster said it would be a national organization with membership spread throughout the nation. He said it was fairly wide-open, but the sponsor of the amendments was aware of it.

REP. BOHARSKI asked if it would include the Montana Shooting Sports Association.

CHAIRMAN CLARK said they were an affiliate of all of those organizations, but are not the state representative for the National Rifle Association (NRA) though they were also an affiliate of the Gun Owners of America as well as some others. He wondered about including "or state affiliate" in the amendment.

REP. BOHARSKI suggested the wording be "national or statewide firearms association."

Motion: REP. BOHARSKI MADE A SUBSTITUTION MOTION TO CHANGE THE WORDING TO "NATIONAL OR MONTANA FIREARMS ASSOCIATION."

Discussion: REP. MC GEE opposed the substitute amendment because someone might decide to form an association with the sole purpose of training people for some other kind of activity that was not intended by this legislation. By leaving it a national firearms association, it would be under the umbrella of the NRA which would be the proper type of affiliation. If they are affiliated, they could receive NRA endorsements.

Vote: The motion failed by voice vote.

Vote: The motion on the original amendment carried unanimously by voice vote.

Discussion: **REP. ANDERSON** said he was going to vote against the motion to concur because he was not convinced that there is a shortage of gun safety instructors and he did not see what the bill was intended to accomplish. He was unaware of any lawsuits which had been brought against gun instructors and there is no vicarious liability for gun instructors for the conduct of their students. This bill might set the instructors up for greater liability than they currently have. In the event that there is some liability held to that gun instructor, he wondered if the level should be raised to gross negligence because they were teaching 12-year-old's. He felt the bill was before its time.

CHAIRMAN CLARK said that 12-year-old's have been taught firearms safety for many years which he believed had prevented thousands of problems. He questioned waiting to provide the immunity until after a lawsuit occurs.

Motion: **REP. BOHARSKI MOVED HB 90 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. MC GEE** talked about why he had decided to oppose the bill. He said he thought the background for it was to be able to set up other kinds of firearms training, not necessarily safety instruction, whereby the people would act out illegally and the bill would set up a condition in which the instructors of the firearms handling would be immune from prosecution. He said he upholds the second amendment of the Constitution and wants proper and safe training.

REP. BOHARSKI said it seemed to him that the bill was attempting to provide protection for unwarranted lawsuits against instructors who may have trained someone to use a firearm and subsequently used it to defend themselves. He could not see any reason to withhold gross negligence protection from them.

REP. ANDERSON said he could not see how liability could be tied back to an instructor who was not even present at the time the person used the firearm to protect themselves. He read the bill to provide immunity to an instructor who was teaching 12-year-old's and because he was an inept teacher a student might be injured in the process of the course. He did not want to give him immunity until he reaches the gross negligence standard.

CHAIRMAN CLARK said this was about the conduct, acts, or omissions of the students and not for the instructor himself while he is instructing the course.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 90. The motion carried 11 - 6 by roll call vote.**

EXECUTIVE ACTION ON SB 69

Motion: **REP. SHEA MOVED SB 69 BE CONCURRED IN.**

Discussion: **REP. ANDERSON** restated the intent of the bill was to adopt by reference the latest military code.

Vote: **The motion carried 15 - 2, REPS. CURTISS and BOHARSKI voted no.**

EXECUTIVE ACTION ON SB 165

Motion: **REP. MC GEE MOVED SB 165 BE CONCURRED IN.**

Discussion: **REP. CAREY** asked if there were any constitutional issues with this bill.

Mr. MacMaster said he did not see any.

REP. MC GEE reported that a representative of the Department of Justice had said that this bill was as far as the state could go in clearing up the problems with the appeals system.

Vote: **The motion carried unanimously by voice vote.**

Motion: **REP. TREXLER MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:55 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/1/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓	3:05 ✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar		✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith		✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 59** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Kottel

And, that such amendments read:

1. Page 1, line 21.
Following: "subpoena."
Insert: "The time and place may be modified by mutual written agreement of the parties or by an amended subpoena issued by the clerk of the court."

-END-

3/1

Committee Vote:
Yes 16, No 0.

481349SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 69** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Ahner

3/1

Committee Vote:
Yes 15, No 2.

481351SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 165** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. McGee

Mw
3/1
Committee Vote:
Yes 17, No 0.

481352SC.Hbk

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/1/95

I request to be excused from the _____ Committee meeting this date because of other commitments. I desire to leave my proxy vote with Anderson.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*

SENATE BILL/AMENDMENT	*AYE*	*NO*
SB 90 / AMend		✓

Rep. Tash
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-1-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Dan McKee.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

~~HOUSE BILL~~ Senate Bills/AMENDMENT	AYE	NO
SB 64	X	
SB 77		
SB 69	X	
SB 132	X	
SB 59 Bond-Pass	X	
SB 61 Tabled-(Y)		
SB 90 Table-(Y)		
SB 143	X	
SB 13	X	
SB 113	X	
SB 109	X	

SENATE BILL/AMENDMENT	AYE	NO
SB 165	X	

Rep. [signature]
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/1/95 BILL NO. SB61 NUMBER _____

MOTION: Table

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle		✓
Rep. Deb Kottel	✓	
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar		
Rep. Debbie Shea	✓	
Rep. Liz Smith		
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/1/95 BILL NO. SB 90 NUMBER _____

MOTION: Table

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee	✓	
Rep. Brad Molnar		
Rep. Debbie Shea	✓	
Rep. Liz Smith		
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

EXHIBIT 1
DATE 3/1/95
SB 109

TESTIMONY - SB 109 - HOUSE JUDICIARY

Mr. Chairman and Members of the Committee:

For the record, my name is Ellen Engstedt and I represent Don't Gamble With The Future, a statewide organization opposed to the expansion of gambling in Montana and in favor of stronger regulation of the gambling currently legal in the state. Our membership is comprised mostly of small business folks and their families. *

We come before you today in strong support of SB 109.

This piece of legislation would allow a ballot to be placed before the Montana voters as has happened TWICE already with Article II, section 14 of the Montana Constitution, which when drafted, granted all adult rights to persons 18 years of age. The drafters of the Constitution had the right motives and theory. However, as most of us have found in our lives, sometimes in practical application, theory just does not work. Granting all adult rights to persons 18 years old has not worked with the consumption of alcohol and is not working with the activity of gambling.

The voters first changed the drinking age from the all-inclusive 18 years to 19 years in November 1978, just six years after the adoption of the Constitution. The arguments were powerful during the hearings conducted on the bill that provided that first Constitutional Amendment and are detailed in the minutes from the hearings held during the 1977 Legislature. Many educators and citizens testified of the intense problems caused

by 18-year-olds drinking in bars. The testimony included that over 70 percent of all 18-year-olds are still in high school. The bill passed and voters said yes to changing the drinking age from 18 to 19 years.

The second time the language changed in Article II, section 14 was in 1986 when any reference to age was deleted and the Legislature was allowed to set the drinking age, which it has, at age 21. SB 109 would ask the public if the Legislature could also be allowed to set the gambling age as it does the drinking age. The rationale for this request is simple.

Drinking and gambling are intertwined because of the system of permitting of gambling machines. When gambling was legalized in 1985 the system of permitting of gambling machines was tied to an all-beverage liquor license or an on-premise beer and wine license. The intent of the Legislature by tying drinking and gambling together was that the gambling machines would be located in bars and not in an atmosphere frequented by children. This is the connection that places the 18-year-old in a bar where she is legally allowed to gamble with a 21-year-old friend who can legally gamble and drink. With nationwide studies proving that teenagers are one of the fastest growing segments of the population addicted to gambling, the least Montana can do is consider moving the age upward and out of the teen years to coincide with drinking age.

EXHIBIT 1
DATE 3-1-95
SB 109

If the Constitutionalists had prevailed with arguments as powerful as those who asked for the age change for drinking, Don't Gamble With The Future would not be before you today. However, common sense prevailed during those legislative sessions with statistics proving under 21-year-olds in bars caused problems, both for themselves and for the bar owners. The same is true today. Many responsible individuals in the gambling industry want the age raised because of the enforcement and liability difficulties they have in maintaining the current differing laws.

For those folks who argue that when an individual reaches age 18, that person should be an adult for all purposes, it is TOO late to be SO PURE. Montana voters have twice rejected that theory in this section of the Constitution and I ask that you again allow those voters to decide whether the age for gambling, the recreational companion to drinking, should also be established by the Legislature. Drinking and gambling are companion activities conducted in the same location. They are not rights as voting is a right - they are recreational activities allowed by law.

Remember, please, the point of SB 109 is NOT to establish a gambling age in the State of Montana. The intent of SB 109 is to allow the Montana voters to decide if it is appropriate for the Legislature, or itself through the initiative process, to establish whatever age it deems fit.

Laws and constitutions are written by people and should be changed, when necessary, by people.

Thank you for your favorable consideration of SB 109.

EXHIBIT 2
DATE 3/1/95
SB 109

March 1, 1995

House Judiciary/SB 109
Arlette Randash / Eagle Forum

I rise in favor of SB 109 because the reasons for support are compelling. 70 to 80% of teenagers are still in high school at 18, teens are 2.5 times more likely to be pathological gamblers than adults, teenagers are permitted to gamble in casinos where drinking is permitted; however, they are not allowed to drink.....an enforcement nightmare for casino owners where drinking and gambling go hand in hand, all facts you've heard. In a February article by James Wallis in the Christian American on American gambling he pointed out that less than 20 years ago under 1% of Americans were considered pathological gamblers; however, today that figure may be as high as 7-9% with the percentage doubled for teenagers.

In the Senate Hearing on SB 109 is was pointed out that the compelling reason for permitting the constitutional age change for the drinking was the federal highways dollars directly linked to the its passage. Acknowledging that, Senator Grosfield pointed out in his closing remarks that Congress came to that decision after weighing the maturity level of 18 year olds. Economics is involved in this bill also. Wallis, in that same article, revealed the economic prudence of forestalling gambling for the young saying a study, interesting one not funded by gambling interests which normally leaves one believing there are no negatives to tax revenues raised by gambling, that gambling costs $3.50 for every dollar it raises. He cited John Kindt, legal professor for the University of Illinois saying "each newly created pathological gambler has been calculated to cost society between $13,200 and $52,000 per year. He said, "lost productivity alone has been calculated at $23,000 per year per pathological gambler."

Gambling is a regressive form of taxation, nowhere demonstrated more than when young people with little earning power and impressionable minds are involved. Not only may they be squandering their present, they may be selling out their future by becoming addictive gamblers, but even more is the loss in education and job training that normally needs to be undertaken at this time in their life to prepare for their future and the future of their families to be.

Postponing the entry of young people into the deceptive world of gambling is an economically prudent thing to do, it is the moral thing to do, it is the right thing to do. Please support SB 109.

EXHIBIT 3
DATE 3/1/95
SB 109

Mr. Chairman, members of the House Judiciary Committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and I rise in support of Senator Grossfield's proposed measure to put to the vote of the people raising the legal age of gambling.

Last fall, 56% of voters cast their ballots in support of candidates who said they would work to reverse the moral decline in this country. They recognized the importance of addressing social problems that have eroded our moral fabric. According to experts, an estimated five million to 10 million Americans are afflicted with serious gambling problems. Divorce, bankruptcy, theft, job loss, child abuse and neglect, attempted suicide, and other destructive behaviors run high on the list. These are the trade offs state government makes when we legalize gambling and become dependent upon it for revenue. But I ask you, are these destructive behaviors what we desire to impart to our children?

Most 18 year olds are still residing at home, and most are still in school With our current legal age of 18 years to gamble, we are encouraging high school kids to frequent bars and gamble to recreational purposes. These are the same kids we have educated from sixth grade, investing our tax dollars and academic time with alcohol and drug resistance programs in an effort to help them choose healthy lifestyles. Then we turn around and invest additional dollars to provide treatment and counseling for many of these same youths that become addicts. Let's stop this insane approach. Lets be consistent in prevention rather then needing to address treatment.
Assist parents and educators in sending a consistent message to young adults. Let's assist theproprietors of liquor establishments who must be mindful not to serve underage minors who are in their bars to gamble and recreate. Twenty-one years of age would make gambling age consistent with drinking. Now is the time to see the need to raise the legal age of gambling. Please give a "do pass" to SB 109. Thank you.

Respectfully submitted 2/29/95
Laurie Koutnik, Executive Director
Christian Coalition of Montana

EXHIBIT 4
DATE 3/1/95
SB 109

MONTANA CONSTITUTIONAL CONVENTION
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

HOUSE JUDICIARY COMMITTEE HEARING---SB 109
MARCH 1, 1995

TESTIMONY IN OPPOSITION TO SB 109

BOB CAMPBELL
DELEGATE, DISTRICT 18
MONTANA CONSTITUTIONAL CONVENTION
HELENA, MONTANA

AUTHOR OF ARTICLE II, SECTION 14, ADULT RIGHTS.

MEMBERS OF THE COMMITTEE:

On June 6, 1972 Montana voters enacted the constitutional right of adulthood at the age of 18, adopted by a 82-2 vote of the delegates. At the same election, Montana voters were asked if they would approve proposed Section 9 of Article III, which would ban all forms of gambling. By an overwhelming vote they rejected the gambling ban and instead allow the legislature or the people to determine what gambling should be authorized and the right to control or ban it completely.

Today we are faced with a conflict between the constitutional right of adulthood for all purposes, except the federally required exception for possessing alcohol, and the proposal from a group that would like to allow the legislature or the people to deny one aspect of adulthood, gambling, from any age group that they find a high risk at the moment.

I oppose SB 109 for the following reasons:

1. It does not request authority to reduce the rights of 18, 19, and 20 year olds, but <u>any</u> age group that they can petition future legislatures to restrict. Their own studies show middle age housewives equally at risk to the temptation of gambling and I suspect that they can show our senior citizens equally vulnerable. Would you require each legislature to debate the issue of which adults should be restricted each session?

2. Eighteen year olds are not "technically" adults, they are "actual" adults. Of the rights and responsibilities of adulthood, the right to gamble does not require the most responsibility. They have the right to vote, contract, marry, adopt children, serve on juries where they vote on life and death issues, they can hold city and county offices, serve as a police judge or a justice of the peace, be elected from your district to serve in

this Chamber or as a member of the Montana Senate. Does this sound like a description of individual presumed to be too immature to control an impulse to place a quarter in a Keno machine you authorized or buy a lotto ticket that is widely advertised by a state agency?

3. There is no compelling evidence that a need for this wide-ranging amendment is necessary or would even achieve the objective of its supporters. Separation of certain yet to be identified adults from gambling machines to protect them from themselves has little meaning when this legislature in SB 276 by a 42-7 vote killed a bill this group supported that would have separated minors from having access to gaming areas.

4. Be Consistent. Fracturing this constitutional right by adding the uncertainty as to which adults are restricted in each future session makes no sense at all.

If our current statutes on gambling are creating problems that are not being addressed, then this group or any group should ask you to review and improve our regulation efforts. If you are convinced that the adverse side effects of gambling are so serious that you should ban it entirely, the people have given you right and responsibility to do so.

For the above reasons I urge you to vote NAY on SB 109.

Bob Campbell

EXHIBIT 5
DATE 3/1/95
SB 109

Diana Rodeghiero

I am here not to make a statement for or against gambling, but for the rights guaranteed to each of us by the Constitution. Montana is uniquely committed to individuals' rights. It is these rights that I feel are at issue here today.

The previous speakers outlined some of the actions that 18, 19, and 20 year olds are capable of undertaking. Age 18 is the age at which individuals become adults - that has already been explicitly decided in our state Constitution. We know that there isn't any magic to the number, the number could have been 19 or 22, but 18 is the number chosen by the general consensus. 18 is the age of responsibility.

Of course there may be positive results brought about by raising that age of responsibility when it comes to gambling or other activities that we feel could be harmful to young adults. But, those projected results do not justify a restriction on the individual rights guaranteed by the Constitution. If that were the case, there would be innumerable areas we could restrict to protect young adults. For example, we could raise the drinking age to 25.

If we want tc change the age of responsibility and age at which one becomes an adult to 21 then we should do that. We shouldn't set the age at which one becomes an adult at 18 then continue to add exceptions.

Groups such as the one that is responsible for bringing this bill before you today desire to protect young adults, but we can't be parental forever - we have to draw the line somewhere, and that line has already been drawn at age 18. Passage of this bill would be taking a notable step toward the deterioration of the individual rights here in Montana.

We've heard testimony of how harmful gambling is to young adults, so today we set the stage to limit the right to gamble. Next year maybe we'll hear of how dangerous cigarettes are to young adults and how smoking seems to be tied with drinking. So, next year we'll raise the age for smoking. Then perhaps there will be a considerable number of hunting accidents with youngsters one year, so we'll raise the age for hunting. This bill would be just the beginning.

I don't mean to advocate for drugs, smoking, or gambling, but those are perhaps the rights most vulnerable to attack since it can be argued that they are immoral, unhealthy, or addictive. But, vunlerable or not, fundamental or not, these are adult rights.

It's true that the age for drinking was raised to 21, but we all know that it was done because Montana and other states were financially pressured through the federal highway program. That in itself is disturbing - that perhaps our rights are for sale if the price is right. But, we need to stop there.

We are not being financially blackmailed here today - we do have a choice. You have the opportunity to say that, even though it may be healthier or more morally sound to raise the age or even outlaw an activity whether that activity is gambling, drinking, smoking, or whatever, we are not going to limit the rights and choices of individuals at the expense of the Montana Constitution and at the expense of the people to whom those rights belong.

Everyone wants to protect young people and set them on the right path, but a Constitutional amendment further limiting rights is not the proper way to protect them. Raising the age is a bandaid solution to any problems caused by allowing 18-20 year olds to gamble. We cannot legislate morality.

It could be asked "What's going to be hurt by putting this before the people of Montana - if they don't like it, they'll vote against it and we won't have to worry?" But, we can't kid ourselves by saying that it will be the 18-20 year olds making this decision. Perhaps if the vote was only put to them it would be fairer. But, what's going to happen is that one group of people will be voting to take away the rights of another group.

Even the initial passage of this bill- even if this bill fails in the election in November - shows that these rights granted by the Constitution are not something upon which we can rely.

Take the opportunity to exemplify how strongly Montanans feel about our individual rights and the protection of those rights. We need to stand behind our Constitution and show that it is more than just an antiquated piece of paper. It is a meaningful, contemporary document that Montana should be proud of upholding. I urge you to vote against Senate Bill 109.

EXHIBIT 6
DATE 3/1/95
SB 61

TO; MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM; THE MONTANA MAGISTRATES ASSOCIATION
BOB GILBERT, LOBBYIST

REF; SENATE BILL # 61

Senate Bill # 61 has been introduced in an attempt to address to problem of overcrowded jails in Montana. It only addresses a symptom of the real problem, the refusal of our citizens to fund the building of adequate detention facilities in this state. It does take the threat of a law suit by the Federal Government or the ACLU off the shoulders of the detention center administrators.

This bill does create the potential for a more serious problem for the judges in our state. As amended, it allows exceptions in only three areas; domestic abuse, stalking, and DUI violations. There are other areas where is is necessary to incarcerate someone for their own good or for the safety of the community. Consider the following:

1. Probably the most effective tool any judge possesses is the power to take away freedom -- incarceration. Withdraw or limit that power, and to that degree, you limit the power of the court to effectively discharge its constitutional duty.

2. Judges must always be able to incarcerate when appropriate. One could make a convincing argument that when a person has been committed to jail by a judge, no one, other than the committing judge or higher court on appeal, should be able to "free" that person.

3. Judges should always be able to put someone in jail when the judge preceives either a danger to society or the circumstances of the crime or defendant make it necessary to incarcerate. Judges must always have the tools available -- jail -- to effectively deal with defendants that challenge the system or the court.

4. Judges should be sensitive to the realities of limited jail space. Judges should be encouraged to work and communicate with their local sheriff regarding arrangements for serving jail time when circumstances do not dictate immediate incarceration. You can relate that we will encourage judges in this regard during our training sessions.

It is our concern that the negative results of this legislation may outweigh the positive results. We would ask the Committee to either table this bill or make a do not pass recommendation on it. The answer to this part of the problem is having the law enforcement officials and the judges work together to make sure the jails do not become overcrowded and that arrangements can be made to delay the incarceration of some defendants until there is "room at the inn". Perhaps it is time for common sense to prevail. Our members are more than willing to sit down with the law enforcement community and work this out.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

EXHIBIT 7
DATE 3/1/95
SB 90

Amendments to Senate Bill No. 90
Third Reading Copy

Requested by Rep. Kottel
For the Committee on the Judiciary

Prepared by John MacMaster
February 27, 1995

1. Page 1, line 17.
Following: "A"
Insert: "person who is designated as a"

2. Page 1, line 18.
Following: "instructor"
Insert: "by the department of fish, wildlife, and parks under 87-2-105 or certified as an instructor by a national firearms association and"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/1/95

BILL NO. SB 165 SPONSOR(S) Sen. A Kolstad

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Beth Bakes	Dept of Justice	✓	

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

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JUDICIARY COMMITTEE DATE 3/1/95

BILL NO. SB 109 SPONSOR(S) Sen Crosfield

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Arlette Randash	Eagle Forum	✓	
David Hemion	MT Assoc. of Churches	✓	
Ellen Engstedt	Doig Gamble with the Future	✓	
Pat Melby	Rimrock Foundation	✓	
Sharon Hoff	MT Catholic Conf	✓	
Diana Rodeghiero			X
Laurie Kenrick	Christian Coalition of MT	✓	
Dallas Erickson	Self	✓	
Bob Campbell	Self		X

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JUDICIARY COMMITTEE DATE 3/1/95

BILL NO. SB 113 SPONSOR(S) Sen. Burke

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dean Roberts	Dept of Justice - MVD	✓	
Craig Reap	MHP	✓	

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JUDICIARY COMMITTEE DATE 3/1/95

BILL NO. SB 13 SPONSOR(S) Sen. Halligan

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Craig Reap	MHD	✓	
Brenda Nordlund	DOJ	✓	
Roger McGlenn	Independent Ins. Agents Assoc. of MT		✓ Amend
Jacqueline Denmark	Am. Ins. Assoc.		✓ amend
Ron Ahlbrand	State Farm Ins		✓ Amend

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