

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BOB CLARK**, on March 15, 1995, at 8:15 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. Bill Carey (D)  
Rep. Aubyn A. Curtiss (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 Soft (R)  
Rep. Bill Tash (R)  
Rep. Cliff Trexler (R)

**Members Excused:** Rep. William Boharski  
Rep. Duane Grimes

**Members Absent:** NONE

**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: NONE  
Executive Action: SB 61 TO RECONSIDER ACTION  
SB 64 BE CONCURRED IN AS AMENDED  
SB 66 BE CONCURRED IN AS AMENDED  
SB 77 TABLE  
SB 90 TO RECONSIDER ACTION  
SB 113 BE CONCURRED IN AS AMENDED  
SB 174 POSTPONE ACTION  
SB 218 BE CONCURRED IN

Executive Action: SB 272 BE CONCURRED IN  
SB 297 BE CONCURRED IN  
SB 353 BE CONCURRED IN  
SB 372 BE CONCURRED IN AS AMENDED  
HB 517 DO PASS AS AMENDED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 61

Motion: REP. BILL TASH MOVED TO RECONSIDER SB 61.

Discussion: REP. TASH reviewed the bill saying it allowed jail administrators to refuse custody of persons charged with or convicted of misdemeanors except for domestic abuse, stalking and DUI violations. This was intended to alleviate problems when detention centers are at full capacity. He believed it was tabled previously because of the concern for juvenile offenders having to be transported between counties when the local detention center was full. He said this bill would still allow counties which have places of incarceration to detain them whenever necessary. With the shortage of money to build more detention centers, there was a necessity to determine priorities for those needing to be incarcerated versus those who could be dealt with differently.

REP. AUBYN CURTISS supported the motion to reconsider and suggested that electronic monitoring was a viable alternative to some incarcerations.

REP. DIANA WYATT agreed that there is a problem, but said this bill was a major shift in policy which the legislature would authorize by its passage. She believed that judges should make the determination that a person not be incarcerated but put under electronic surveillance or community service. She did not want to give the administrators in the detention facilities the opportunity to make that determination.

REP. TASH responded that the bill still would allow the judge to determine, not necessarily incarceration, but the level of sentencing and then the administrator and the judge could make the decision based on what the sentence was for.

REP. DANIEL MC GEE discussed an amendment which would affect line 12 on page 2 which related to the discussion above about who ultimately is responsible for the decision. If the language of the amendment would positively affect the bill, he also would urge reconsideration of it.

REP. BRAD MOLNAR said he preferred to leave the bill tabled because he felt the judge and the local authorities needed to work out a plan to solve the problem.

REP. DEB KOTTEL supported the motion to remove the bill from the table because she thought they were confusing what happens when judges over sentence and what happens in an emergency situation in the middle of the night. She felt they needed to allow for this type of flexibility and hoped that it would not be misused to avoid dealing with the problem.

REP. CHRIS AHNER supported the motion to remove it from the table but asked that they postpone action until they had a chance to re-review the bill.

Vote: The motion carried 10 - 5, REPS. WYATT, SHEA, MOLNAR, TREXLER and HURDLE voted no.

#### EXECUTIVE ACTION ON SB 64

Motion: REP. AHNER MOVED SB 64 BE CONCURRED IN.

Discussion: REP. ELLEN BERGMAN asked for a review of the intent of the bill.

REP. HURDLE said it was to clear up the distinction between penalties for persons in possession of alcohol at ages 18 and 21. She said the Senate amended it so that they would treat adult juveniles differently than they would juveniles.

Motion: REP. SHIELL ANDERSON MOVED TO AMEND SB 64. EXHIBIT 1

Discussion: John MacMaster explained the need for the coordinating amendments for this bill with HB 429 and HB 551.

Vote: The motion carried unanimously.

Motion/Vote: REP. MOLNAR MOVED SB 64 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

#### EXECUTIVE ACTION ON SB 113

Motion: REP. AHNER MOVED SB 113 BE CONCURRED IN.

Motion: REP. WYATT MOVED TO AMEND SB 113 TO INCREASE THE FINE FOR THE FIRST OFFENSE ON LINE 16 TO NO LESS THAN \$250 OR MORE THAN \$500 AND LINE 18 CHANGE \$350 TO \$750 AND ON LINE 19 AND TO DOUBLE THE FINE TO \$1,000.

Discussion: REP. WYATT stated that the purpose of the amendment was to equalize the amount of punishment with the cost for the insurance.

REP. DEBBIE SHEA asked if they couldn't afford the insurance, how they would afford the fine.

REP. LIZ SMITH said she did not like the bill and thought there was a significant amount of people who are neglectful of buying insurance and there are many who feel they cannot afford it. She felt there was a way to be creative in helping people have access to insurance coverage for their cars without more regulations and damages. She felt this was oppressive and had the effect of discouraging obtaining insurance.

CHAIRMAN CLARK asked her to elaborate on her solution to the problem.

REP. SMITH said they could be given a tax credit or some incentive to buy insurance rather than addition of fines.

REP. DEB KOTTEL opposed the amendment because it would negatively affect people who simply could not afford insurance and explained the experience she had had with people in that category.

REP. WYATT felt the issues were being confused. She pointed out that the court may suspend a required fine upon determination that the offender was unable to pay the fine. She felt that making the fine equal to the rational conscious choice they were making by not having insurance would act as a deterrent. She contended that if they didn't have the money for the insurance, why would they have the money for the car and the gas.

REP. SHEA said she had a problem with it in that they did not consider the reality of those who are in need and that she would oppose the amendment.

Vote: The motion carried 12 - 7 by roll call vote.

Motion/Vote: REP. WYATT MOVED SB 113 BE CONCURRED IN AS AMENDED. The motion carried 18 - 1, REP. SMITH voted no.

#### EXECUTIVE ACTION ON SB 297

Motion: REP. BILL CAREY MOVED SB 297 BE CONCURRED IN.

Discussion: CHAIRMAN CLARK reminded the committee that this bill provided for five points on a driving record for failure to carry or display the insurance card.

REP. HURDLE spoke in favor of the bill because it addressed the irresponsibility of people who failed to carry automobile insurance.

REP. KOTTEL said she understood that the points would not go on the driving record if the person could show the court proof of insurance.

REP. MC GEE felt the point was to make the responsible party responsible. He thought it was important to remember that it is a privilege and not a right to use the highways.

REP. KOTTEL said she had a problem with the issue of parity in that physicians and lawyers are not required to carry insurance, but that they were legislating the requirement for automobile insurance. She said that there are many other tortious actions in society where people are not being forced to carry insurance.

REP. MC GEE replied that no one has to go to a doctor or lawyer and he did not have to share those choices with other people, but he did have to share the highways with those who would choose not to be insured.

REP. HURDLE asked if it was possible to post a bond rather than purchasing car insurance.

REP. KOTTEL said self-insurance was allowed in Montana.

REP. CLIFF TREXLER discussed parity from the standpoint of the numbers of points allocated for serious and reckless driving habits as compared with the number of points for failure to carry insurance.

Motion: REP. TREXLER MOVED TO AMEND SB 297 BY REDUCING THE POINTS FROM FIVE TO THREE.

Discussion: CHAIRMAN CLARK explained what occurs, from a law enforcement perspective, with people not carrying insurance.

REP. SHEA and REP. LINDA MC CULLOCH clarified the issuance of citations and dismissal of charges in various scenarios. Line 22 on page 2 addressed and clarified the issues.

REP. MC GEE opposed the amendment because the issue behind the high point value was the effect of the lack of insurance on other persons and their property.

REP. TREXLER said his motion to reduce the amount of points did not relate to the responsibility of the driver, but to make it fit into the other areas of offense in reckless driving and other endangerment of life issues.

Vote: The motion failed on voice vote.

Vote: The motion to concur carried 17 - 2, REPS. SMITH and TREXLER voted no.

#### EXECUTIVE ACTION ON SB 218

Motion: REP. HURDLE MOVED SB 218 BE CONCURRED IN.

Discussion: REP. KOTTEL supported the bill.

REP. MC GEE questioned proposed amendments and REP. KOTTEL clarified the proposed amendments as not being needed.

Vote: The motion carried 17 - 2, REPS. CLARK and BOHARSKI voted no.

*{Tape: 1; Side: B}*

EXECUTIVE ACTION ON HB 517

[NOTE: HB 517 was heard on 3/6/95, passed as amended on 3/9/95, reconsidered on 3/13/95 and passed as amended on 3/15/95.]

Motion: REP. KOTTEL MOVED HB 517 DO PASS AS AMENDED.

Discussion: REP. KOTTEL objected to the reconsideration of this bill and explained why.

REP. ANDERSON responded to her objections and stated his reasons for his objections to the bill and his desire for the committee's reconsideration of the bill.

There was continuing debate over the original vote count and over the process of reconsideration of the bill as well as the philosophy behind carrying bills and promoting their passage or defeat.

*{Tape: 1; Side: B; Approx. Counter: 8.1.}*

REP. KOTTEL spoke to the substance of the bill and the intent behind it to find ways to add revenue to the general fund. She reiterated that it would not raise rates, that it would induce parties to settle, unclog the courts and generate money for the state.

REP. ANDERSON rebutted the arguments for the bill. He said in his mind it could not be reconciled with another bill which would cap noncompensatory damages to curb the costs of health care, it would allow courts to self fund and would allow judges to delay action if they want to accrue more interest on the noncompensatory damages and it would further clog the courts. He said it would only affect the defendant which might or might not be an insurance company. He did not believe it would encourage settlement and described why. He felt that the court might give overly broad instructions to the jury and would result in self-serving and self-feeding legislation.

Vote: The motion carried 12 - 7 on roll call vote.

**EXECUTIVE ACTION ON SB 372**

**Discussion:** REP. SHEA reminded the committee that there had been a motion to concur at a prior executive action and that the committee had agreed to postpone action to consider proposed amendments. REP. HURDLE reviewed the amendments which were made.

**Motion/Vote:** REP. SHEA MOVED SB 372 BE CONCURRED IN AS AMENDED.

**Discussion:** REP. WYATT said she would be voting against the bill because she thought it was an anti-business, anti-general public bill. She felt that every time a government employee was called to give testimony in a case, the general public would pay their hourly wage plus expenses. She felt the purpose of their job is to serve the community.

REP. CURTISS saw no compelling reason for the bill though the students who had brought the bill to the committee were to be commended for their work.

REP. ANDERSON thought it was a good bill and an example he felt justified it involved a policeman being called away from his regular duties in a case for determining fault in an automobile accident for instance. In other cases where a government employee who was called as an expert witness and thus away from their regular duties when the agency they work for is not a party to the lawsuit, he felt it was unfair for the taxpayers to pay their wage when it was for the benefit of one party in the action.

CHAIRMAN CLARK mentioned that the Department of Justice and one other agency already employ this provision. A bill passed in 1989 requires highway patrol officers or anyone else who investigates an accident or a similar action to furnish all of that information to the defense in its lawsuit. That is all done at state cost as well as similar costs for agencies other than the Department of Justice and one other agency which uses this provision.

REP. HURDLE did not see why taxpayers should have to pay for the costs of others and supported the bill.

REP. MC GEE asked if the state would also have to pay for overtime if it was required.

CHAIRMAN CLARK said as far as Department of Justice employees that was not the case.

REP. BERGMAN was asked if this was awarded after the judgment had been given or if it was paid up front.

REP. KOTTEL said that was the law now in civil law. Whoever subpoenas the expert witness must pay the costs. She said it seemed like a case of parity in that the party calling the

witness should pay the costs of state employees just as they would for private individuals.

REP. AHNER supported the bill and felt it would prevent some frivolous lawsuits.

REP. SMITH asked if the bill was initially enacted for the private sector and they had excluded state employees.

CHAIRMAN CLARK said that up until a few years ago when it became effective for Department of Justice employees and one other state agency, it was not in effect for any state employees. This bill would include all state employees unless the state is a party to the action.

REP. SMITH asked if in comparison to the private sector whether a storekeeper, bartender, rancher, etc., they could be paid if called as a witness.

REP. KOTTEL answered that there were two levels of witnesses. One is called a current witness who is eligible for some costs; the other is the expert witness who is eligible for payment of a fee or their actual time. There is also a distinction between civil and criminal cases in determining compensation.

REP. WYATT suggested that there could be the argument that a state employee was being paid twice since part of their job might involve giving testimony.

CHAIRMAN CLARK said the difference to be considered rested in whether or not the state was a party in the case.

REP. WYATT and CHAIRMAN CLARK continued to clarify how it is determined that the state is a party to a case and the payment for subpoenas of witnesses.

REP. MC GEE further clarified the provisions in the bill.

REP. SMITH asked if the employee is a witness in a case where the state is a party to the suit if the employee would be paid double. The answer was no and then she said she could see where the provision could prolong the longevity of the case.

CHAIRMAN CLARK said it would only go into effect for the duration of the subpoena therefore, there would be no benefit in delay nor would it cost any more. He reiterated that it provided that state pays only when the state is involved in the suit.

REP. CURTISS and CHAIRMAN CLARK re-discussed and clarified the issue of double payment.

Vote: The motion carried 17 - 1, REP. WYATT voted no. \*\*(See note at end of next executive action.)



EXECUTIVE ACTION ON SB 272

Motion: REP. ANDERSON MOVED SB 272 BE CONCURRED IN.

Discussion: REP. ANDERSON said this bill was intended to streamline the handling of paperwork and urged the committee to vote favorably for it.

Vote: The motion carried unanimously.

\*\*Without objection from the committee REP. SMITH changed her vote on SB 372 from a yes to a no, making the final count 17 - 2.

EXECUTIVE ACTION ON SB 174

Motion: REP. SHEA MOVED SB 174 BE CONCURRED IN.

Discussion: REP. KOTTEL reported that she had discovered that the citizen review board had only met four times in Missoula. She said there was a lack of coordination regarding the social worker standards and citizen standards. Because of that it appeared that children were not going back to homes more quickly but instead going back much slower. She said the department believed the reason was that the citizen review boards were made up of people who held values and standards which they were attempting to impose on all the people involved resulting in the children being left in foster care longer even though the threat to the child was removed.

REP. CURTISS wondered if the program had had an opportunity to work and perhaps if the committee failed to pass the bill they would be cutting off the opportunity.

REP. LOREN SOFT was concerned about the fact that both the foster care review committee and the citizen review board were operating instead of one replacing the other.

CHAIRMAN CLARK announced that REP. BOHARSKI had a proposed amendment but he was absent from the meeting and so he recommended that the action be postponed.

EXECUTIVE ACTION ON SB 66

Motion: REP. MC GEE MOVED SB 66 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON MOVED TO AMEND BY ADDING A COORDINATING INSTRUCTION TO REMOVING THE CRIME OF ARSON IF HB 64 PASSED. The motion carried unanimously.

Motion: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED.

**Discussion:** REP. SHEA remembered that there was testimony requesting that child molestation be included in the list of crimes on this bill.

REP. KOTTEL was concerned about equity in the bill in protecting crimes against adults at a higher level than crimes against children. Her second question about the bill had to do with the broad definition of sexual assault.

REP. CURTISS asked if it was true that before anyone is ever convicted of a felony, they have been charged with innumerable previous felonies.

CHAIRMAN CLARK said many felons are convicted on the first offense. The percentage of repeaters is quite high for some felonies.

REP. SMITH clarified the provision in regard to date rape being a felony. She said, "So, if they date rape the first time, this wouldn't be affected, if there is a second date rape, it would be affected. And I know that interdepartmentally that they have classification levels of sex offenders." She said that if someone is incarcerated on a date rape felony, they would be allowed to be placed elsewhere outside the state prison. If he was convicted a second time of the same offense, he would have to have a life sentence under this statute and asked if that was correct.

CHAIRMAN CLARK said that was his understanding.

REP. SMITH said the interdepartmental classification of that made no difference. She supported the bill.

*{Tape: 2; Side: A}*

REP. ANDERSON felt they should not include sexual assault on a minor because there were cases the Department of Family Services (DFS) had gone after where the alleged abuses had not occurred. He said, "It is far too broad, it is any sexual contact, is what sexual assault and the minor part has to do with the child being under sixteen and three years younger than the perpetrator, so I think it is too broad a net."

REP. HURDLE said she liked the bill because she liked this idea of locking up predatory people but spoke against the bill because it was going to mean that every ten years they will have to build a new prison. It would mean 25 - 30 new FTE's and \$2 million per year just to house the offenders. She felt it was irresponsible to pass the bill without looking how they were going to do it financially. She was concerned about gutting other social programs and education or about seeing if the people wanted to pay increased taxes for it.

REP. CURTISS mentioned that this would be a strong deterrent. She thought that criminals would cease and desist or move to another state.

**Motion:** REP. KOTTEL MOVED TO AMEND SB 66 TO INCLUDE SECTIONS 45-5-625, MCA, AND 45-5-627, MCA.

**Discussion:** REP. KOTTEL said that this bill only addressed criminal convictions while the cases involving DFS which were alluded to are civil actions. She read the criminal statutes dealing with the sexual abuse of children and ritual abuse of children.

REP. HURDLE said that studies in other states have shown that this legislation does not deter crime or change the level of criminality in the culture but that it creates more of the same thing in a never ending "black pit."

REP. ANDERSON said REP. KOTTEL was right and said he was addressing a different statute which was brought up as one to be included. He used DFS as an example because it was discussed. He suggested segregating the two codes in the amendment and they continued to discuss the philosophical ramifications of the proposed amendments.

**Motion:** REP. KOTTEL MOVED THE SEGREGATION OF THE AMENDMENTS.

CHAIRMAN CLARK said that by agreement with REP. KOTTEL the amendments were segregated and asked the committee to focus on 45-6-625, MCA, in the amendment.

CHAIRMAN CLARK asked if it would be a two-strike offense or a three-strike offense.

REP. KOTTEL believed it should be a two-strike offense.

REP. HURDLE said they should consider what it would cost and figure that one of the biggest social costs is statutory rape, unwanted teen pregnancies and should be included.

CHAIRMAN CLARK said it would be included in the second amendment under consideration.

REP. MC GEE said they were paying for it now and elaborated on his response to REP. HURDLE.

REP. HURDLE wanted to consider how to prevent the crimes so that they would not have to be locked up. She wanted to figure out how to stop creating criminals through the lack of social programs. Her contention was that the money needed to be put at the front end through prevention programs.

CHAIRMAN CLARK responded by saying that this would stop it at the front end when those already engaged in these crimes are no

longer there and the others are going to see that if they do it, they would be gone and that to him was evidence of a deterrent.

**REP. HURDLE** asked to be shown one study or statistic which proved that this kind of a measure would lower crime and said that in states where it was tried it had not changed the crime rate.

**CHAIRMAN CLARK** said that it was too new to have statistics and that three strikes had only been around a short time in California and Georgia.

**REP. HURDLE** retorted that there are many studies in both states which refuted what he was saying.

**REP. AHNER** thought harsher penalties would be the deterrent and they would not have to build new prisons. She cited the deterrent for crimes in countries with harsh sentences and lower crime rates.

**REP. SOFT** believed they were going to have to build more prisons whether or not this bill was passed because of the rising crime rate in the country. The general public is saying that something is going to have to be done and knows there will be increased costs, he contended.

**REP. SMITH** said they could pay for it by taxing the pornographic activity that is going on. She believed there were ways to fund it. She said this amendment would cover this area and strongly supported the amendment.

**Vote:** The motion (on Kottel amendment 1) carried unanimously by voice vote.

**Motion:** **REP. KOTTEL** MOVED HER SECOND AMENDMENT TO INCLUDE 45-5-627, MCA, MINUS ALL SECTION EXCEPT SUBSECTION (B) UNDER RITUAL ABUSE OF MINORS.

**Discussion:** **REP. KOTTEL** elaborated on the provision she was asking to be included in the bill.

**REP. MOLNAR** asked if it was worthy of one of the cells under the two-strikes bill and expressed his reasons for the question.

**REP. ANDERSON** spoke against the amendment agreeing that there could be several other crimes which could be added and felt they should try it out for a while before adding this and similar crimes to those included under the two-strikes provision. He felt that there was sufficient provision for punishment of this particular crime in statute.

**REP. KOTTEL** said that if they were going to vote for this bill, she could not see how they could exclude the two most serious crimes against children while including basically all other crimes against adults. She agreed that if the judges were

enforcing the felony rules properly, they probably didn't need the bill. But if they were going to vote for it, it should include [the prosecution of] crimes that protect the children.

Vote: The motion carried 18 - 1, REP. ANDERSON voted no.

Motion: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED.

Motion: REP. SOFT MOVED SB 66 BE AMENDED TO INSERT AFTER "ENROLL IN" "AND COMPLETE THE EDUCATIONAL PHASE OF THE SEXUAL OFFENDER PROGRAM" ON LINE 17, PAGE 9.

Discussion: CHAIRMAN CLARK explained that this dealt with first-time offenders in an attempt to prevent a repeat of the crimes.

Vote: The motion carried unanimously by voice vote.

Motion/Vote: REP. ANDERSON MOVED SB 66 BE CONCURRED IN AS AMENDED. The motion carried 16 - 3, REPS. WYATT, CAREY and HURDLE voted no.

#### EXECUTIVE ACTION ON SB 77

Discussion: REP. ANDERSON stated that there were no proponents for the bill and told how many votes it would take for it to pass both houses to be put on the ballot. He felt the bill was superfluous and that the sponsor had failed to cite any places where the current system needed to be corrected.

Motion/Vote: REP. ANDERSON MOVED TO TABLE SB 77. The motion carried 16 - 3, REPS. CLARK, SOFT and MC GEE voted no.

#### EXECUTIVE ACTION ON SB 353

Motion: REP. KOTTEL MOVED SB 353 BE CONCURRED IN.

Discussion: REP. KOTTEL discussed how this provision would parallel the federal system and how it would add to court efficiency and improve court administration. She felt it would also provide for a guardian ad litem for children.

REP. ANDERSON discussed his minor concern about the possibility of the provision for the exercise of favoritism through the bill. He said he would vote for it with reservations.

Vote: The motion carried unanimously by voice vote.

#### EXECUTIVE ACTION ON SB 90

Motion: REP. KOTTEL MOVED TO RECONSIDER SB 90.

**Discussion:** REP. ANDERSON asked for the reasons behind the motion to reconsider.

REP. KOTTEL felt there had been some confusion on the bill when it was originally considered. She said that they ask people to engage in firearm safety classes and yet there is a belief that those who do engage in firearm safety classes might be held vicariously liable for the actions of people who have taken the classes. She remembered adding two amendment on the bill to clarify who the people were in terms of national accreditation and training in the legal use of firearms. She said the bill only exempted vicarious liability. She did not believe that that liability currently existed in the state, but if the perception is there that they could be sued for it, this bill by statute would provide for the dismissal of such a case.

REP. ANDERSON asked for one example where there is a problem in getting a firearm safety instructor and said he did not believe it would do what she thought it would. He said that in those cases where vicarious liability might be present, it would raise the standard to gross negligence. He felt the bill was ahead of its time because there is no current problem it would address.

REP. HURDLE said, "If I understand REP. KOTTEL'S logic there is no vicarious liability but people think there is so they had better make a bill to reassure them that there isn't a liability that there already isn't."

REP. KOTTEL said she was right because tort liability is common law, judge-made law, so the judge at any time could find that to exist. And that is the fear and this would stop the judge from doing that.

REP. HURDLE said she could not support it.

REP. BILL CAREY asked if this was the bill REP. MC GEE had initially supported and then voted against.

CHAIRMAN CLARK said that he believed REP. MC GEE had changed his mind on it. He made the following points:

1. There is a shortage of firearm instructors in the state.
2. When they are talking about dealing with those 12 years old, the fish and game hunter safety instructors are not included in the bill who are teaching those kids. This bill did not deal with what happens with that firearm instructor while he is teaching the class, but what could happen a few years down the road. The child or person who committed an act of unsafe firearm use would not have any assets, but the instructor would have a business and other assets. The bill would prevent anyone from suing him because of the act of the person who was instructed by that instructor.

**REP. MOLNAR** could not think of a reason for a firearm instructor to be sued.

**REP. ANDERSON** said that they would not see one case where a person who was some years out of a firearms training course being brought to trial because there is no way to prove the firearms safety instructor caused whatever accident or problem they might have that far beyond the training course. He did not think that was what the bill addressed, but that it addressed problems which occurred during the course of training. He said he did not have evidence that there was a shortage of instructors.

**CHAIRMAN CLARK** said there is no shortage as far as hunter safety instructors because they are already immune under current law but there is a shortage of instructors beyond that.

**REP. AHNER** said they could bet that "some nut" down the road would claim to not have learned something during class and would go back to the instructor to determine if they covered the item in question.

**Vote:** The motion to reconsider SB 90 failed by tie vote on a roll call vote.

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

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

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 11:00 AM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg



# HOUSE OF REPRESENTATIVES

## Judiciary

ROLL CALL

DATE 3/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, 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	✓ 8:30	✓	
Rep. Loren Soft	✓ *		✓ *
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

\* returned  
late in  
meeting



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 64 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Soft

And, that such amendments read:

1. Page 4, line 15.

Following: "~~shall~~"

Strike: "referred to in subsection (1) must"

Insert: "shall"

2. Page 4, line 18.

Following: "of the"

Insert: "sealed"

Following: "~~so~~"

Strike: "that have been sealed"

-END-

Committee Vote:  
Yes 19, No 0.

601517SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 113 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Carey

And, that such amendments read:

1. Title, line 6.

Following: "INSURANCE;"

Insert: "INCREASING FINES;"

2. Page 1, lines 16 and 17.

Strike: "not" on line 16 through "\$250 or more than" on line 17

3. Page 1, line 18.

Strike: "\$350"

Insert: "\$750"

4. Page 1, line 19.

Strike: "\$500"

Insert: "\$1,000"

-END-

Committee Vote:

Yes 18, No 1.

601520SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 297 (third reading copy -- blue) be concurred in.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Ryan

Committee Vote:  
Yes 17, No 2

601235SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 218** (third reading copy -- blue) be concurred in.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Wiseman

Committee Vote:  
Yes 17, No 2.

601236SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 517 (first reading copy -- white) do pass as amended.

Signed: Bob Clark  
Bob Clark, Chair

And, that such amendments read:

1. Title, line 6.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 30.

Strike: "awarded by a verdict"

Insert: "received by a claimant"

3. Page 2, line 8.

Insert: "NEW SECTION. Section 2. Applicability. [This act]  
applies to proceedings filed after July 1, 1995."

Renumber: subsequent section

-END-

Committee Vote:

Yes 12, No 7.

601524SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 372 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Ahner

And, that such amendments read:

1. Page 1, line 13.

Strike: "IN A CIVIL ACTION"

Following: "duties"

Insert: "in a civil action in which the state or one of its agencies is not a party"

-END-

Committee Vote:

Yes 17, No 2.

601521SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 272 (third reading copy -- blue) be concurred in.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Anderson

Committee Vote:  
Yes 19, No 0.

601236SC.Hbk





## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 66 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Menahan

And, that such amendments read:

1. Title, line 12.

Following: "45-5-503,"

Insert: "45-5-625, 45-5-627,"

2. Page 1, line 25.

Strike: "OR"

3. Page 1, line 27.

Following: "~~7-OR~~"

Insert: ";

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor"

4. Page 6, line 15.

Insert: "Section 9. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to

Committee Vote:

Yes 16, No 3.

601523SC.Hbk

engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses material referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in [section 1] and subsections (2)(b) and (2)(c) of this section, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) ~~If~~ Except as provided in [section 1], if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A Except as provided in [section 1], a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

**Section 10.** Section 45-5-627, MCA, is amended to read:

**"45-5-627. Ritual abuse of minor -- exceptions -- penalty.**

(1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the

presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A Except as provided in [section 1], a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Renumber: subsequent sections

5. Page 9, line 17.

Following: "enroll in"

Insert: "and complete"

6. Page 13, line 11.

Insert: "NEW SECTION. Section 20. Coordination instruction. If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act]."

-END-



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 353** (third reading copy -- blue) **be concurred in.**

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Grimes

Committee Vote:  
Yes 19, No 0.

601237SC.Hbk

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3/15/95

I request to be excused from the JANUARY

Committee meeting this date because of other commitments. I desire

to leave my proxy vote with CHAIRMAN CLARK.

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.

5B

HOUSE BILL/AMENDMENT	AYE	NO
55 R 10	✓	
5 B 353	✓	
AMD. BY BILLS		
W/ CH. CLARK		

SENATE BILL/AMENDMENT	AYE	NO
64	✓	
113		✓
218		✓
517		✓
61	✓	
372	✓	
297	✓	
272	✓	
174 AMD.		
64	✓	
77		✓

Rep.

Wm E Boharski

(Signature)

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3/15

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

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
<del>HB 517</del>	<del>AYE</del>	

SENATE BILL/AMENDMENT	AYE	NO
SB 372	✓	<del>NO</del>
SB 272	✓	
SB 174		✓
SB 77		✓
SB 10	✓	
SB 353	✓	
SB 66	✓	
Others		
with Anderson		

Rep.

(Signature)

HR:1993  
WP/PROXY



# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3/15/95

I request to be excused from the

Judiciary

Committee meeting this date because of other commitments. I desire to leave my proxy vote with \_\_\_\_\_.

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.

*With Shick on all the following incl. amendments*

HOUSE BILL/AMENDMENT	AYE	NO
<u>HB 517</u>		<u>X</u>

SENATE BILL/AMENDMENT	AYE	NO
<u>SB 13</u>		
<u>64</u>	<u>X</u>	
<u>113</u>		
<u>218</u>	<u>X</u>	
<del>317</del>		
<u>372</u>	<u>X</u>	
<u>297</u>	<u>X</u>	
<u>272</u>	<u>X</u>	
<u>174</u>		
<u>77</u>		<u>X</u>
<u>166</u>		

Rep.

(Signature)

*[Handwritten Signature]*

SJR 10

SB 353

SB 61

*With Bill Tash incl. amend.*

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3-15-95

I request to be excused from the

*jud.*

Committee meeting this date because of other commitments. I desire

to leave my proxy vote with

*Bill Carey*

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
SB 372	✓	

SENATE BILL/AMENDMENT	AYE	NO

*and all amends.*

Rep.

(Signature)

*[Signature]*



# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE \_\_\_\_\_

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

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
SB 66	✓	
Kottel #1	✓	
Kottel #2	✓	
SB 71		✓
(yes to table)		

SENATE BILL/AMENDMENT	AYE	NO

*And all amendments*

Rep. \_\_\_\_\_

(Signature)

*John J. Shear*

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE March 15, 1995

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

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
229	X	
63 (venue)	X	
109	X	
340	X	
64	X	
113		X
297	/	X
278	X	
HB-517		X
SB-372	X	X
SB 272		

SENATE BILL/AMENDMENT	AYE	NO
SB-174		X
SB-66	X	
SB-77	X	

tabled

Rep. Lo Smith  
(Signature)

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-15-95

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

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
<u>W/Clark + Amds</u>		

Rep. Shiell W. Anderson  
(Signature)

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 3/15/95 BILL NO. SB113 NUMBER \_\_\_\_\_

MOTION: Wyatt Amendment to increase fines

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 3/15/95 BILL NO. HB517 NUMBER \_\_\_\_\_

MOTION: Do Pass

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 3/15/95 BILL NO. SB 90 NUMBER \_\_\_\_\_

MOTION: To Reconsider

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	✓	

Amendments to Senate Bill No. 64  
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane  
March 13, 1995

1. Page 4, line 15.

Following: "~~shall~~"

Strike: "referred to in subsection (1) must"

Insert: "shall"

2. Page 4, line 18.

Following: "of the"

Insert: "sealed"

Following: "~~se~~"

Strike: "that have been sealed"