MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 22, 1995, at 7:00 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. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. Liz Smith

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 292 BE CONCURRED IN
	SB 174 BE CONCURRED IN
	SB 61 RECONSIDER ACTION
	SB 61 TABLE
	SB 90 BE CONCURRED IN AS AMENDED
	SB 143 BE CONCURRED IN AS AMENDED
	SB 333 BE CONCURRED IN AS AMENDED
	SB 316 BE CONCURRED IN AS AMENDED

Executive Action: SB 13 BE CONCURRED IN AS AMENDED
SB 237 TO TABLE, FAILED TIE VOTE

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 292

Motion: REP. DANIEL MC GEE MOVED SB 292 BE CONCURRED IN.

Motion: REP. DIANA WYATT MOVED TO AMEND SB 292. EXHIBIT 1

Discussion: REP. WYATT said that her objection to the bill was that it singled out one sex or one group of people and made the assumption that that group could not make a rational decision about their own health without 24 hour notice. The intent of the amendment was to change everything from woman's right to know to persons requirement to know. She did it because there are many medical procedures which all people need to understand in order to make a knowledgeable decision. She said her amendment would only change the abortion concept to all surgeries, women to all persons and right to know to a requirement that physicians ensure understanding of consequences of invasive medical procedures.

REP. MC GEE asked the committee to resist the amendment because no other surgical procedure (besides abortion) has been elevated to a constitutional right by the U. S. Supreme Court. He said the language in SB 292 is exactly the language put forth by the majority opinion in the Casey case, with one exception, to the Pennsylvania statute that was found to be in the interest of both the state and the woman. It is a contentious subject because it deals with women and is sui generis. It involves women and the potential for life as stated in Roe v. Wade and that it was determined that the state does have interest at some point (the state might have interest in trimesters subsequent to the first). In the 1992 Casey decision, the term, "trimester," was not the basis for determining viability. Secondly it was determined in the Casey decision that a woman's right to abortion was not fundamental. In the Casey decision, they upheld the entire statute that had the 24-hour waiting period, parental consent and record keeping and reporting requirements.

REP. DEB KOTTEL said she did not read that they elevated abortion to a constitutional right in the cases he cited. She read that they elevated the right to privacy under which abortion fits. She said that there is no other surgery that a state had ever passed a law to deny the right to receive. She believed that she could take the arguments in Roe v. Wade to the supreme court and they would say that the penumbra surrounding the first ten amendments would say that the right to privacy and the physician relationship far outweighed the government police actions to forbid that surgery. It was true that the only procedure to come up was the abortion decision because it was the only procedure which any state had attempted to stop.

CHAIRMAN BOB CLARK commented that they were not dealing with outlawing abortion or causing people to not have abortions. He said they were dealing only with disseminating information to women who have chosen to have an abortion. All the bill would require is that the information be made available.

REP. LOREN SOFT reiterated that the committee was getting off the subject of the bill and he urged the committee to resist the amendment.

REP. LINDA MC CULLOCH disagreed with the chairman and the previous statements because she did think the act would limit access to abortion.

REP. CHRIS AHNER said she didn't understand what was so fearful about giving information and waiting 24 hours. She believed that all other surgeries were preceded by full information and there was a waiting period.

REP. WYATT rebutted by saying that she felt that the opponents to her amendment made her point that if they were philosophically saying that it was good for one segment of the population, it should be good for all segments of the population. She said it was not a pro- or anti-abortion amendment, but it was an information amendment. She said she did not have an objection to 24-hour notice, but that if it was good for one medical procedure, it was good for all medical procedures.

REP. CLIFF TREXLER supported the amendment and felt all surgeries should be covered with full information and choices.

REP. MC GEE read excerpts from Casey, "A woman's interest in having an abortion is a form of liberty protected by the due process clause but states may regulate abortion procedures rationally limited to a legitimate state interest." In other forms of surgery, he said that he did not think the state had an interest. The reason the state has an interest here according to Roe is the potential for life. Further excerpts from Casey were, "Those requirements are rationally related to the state's legitimate interest in assuring that a woman's consent to an abortion be fully informed. The requirement that a physician _____ (inaudible) certain information about abortion procedures and its risks and alternatives is not a large burden and is clearly related to maternal health and the state's interest in informed consent. In addition the state may rationally decide that physicians are better qualified than counselors to impart this information and answer questions about abortion's alternative medical aspects. The requirement that information be provided about the availability of maternal child support, state funded alternatives, is also related to the state's informed consent interest and furthers the state's interest in preserving unborn life. That such information might create some uncertainty and persuade some women to forego abortion only demonstrates that it might make a difference and is

therefore relevant to a woman's informed choice. For the same reason, this court's prevailing holding in validating a state's 24-hour mandatory waiting period should not be allowed. The waiting period helps ensure that a woman's decision to abort is a well-considered one and rationally furthers the state's legitimate interest in maternal health and unborn life. It may delay, but it does not prohibit abortions and both it and the informed consent provisions do not apply in medical emergencies."

He said that he realized the intent of the amendment, however, he said they were dealing with one procedure which involves women and the potential for life. He stated that there is nothing else restricted by law or that had gone to the supreme court five or six times and that there is no other procedure that is so divisive in society.

REP. DUANE GRIMES said that one of the physicians who testified had come to support the bill with regard to women having abortions because he saw the tragedies which occur because of the ongoing trauma as well as the physical ongoing complications. He believed the physicians who testified had a perspective that the committee members did not and he felt the amendment was just an attempt to kill the bill.

REP. JOAN HURDLE recalled that they had heard testimony from a physician who stated that it was not right for the state to put words in a doctor's mouth. She said she felt this was an issue of discrimination and that everyone ought to be treated fairly instead of singling out one segment of the population to be required to read government produced information before electing surgery. She supported the amendments and did not think they were designed to kill the bill.

REP. AUBYN CURTISS wanted to mention the children who are involved. She wanted to make the point that the people supporting the amendment strongly opposed parental notification and she felt that there were many children not mature enough to make the decision without the assistance of someone.

Vote: The motion failed 7 - 11 by roll call vote. (REP. MOLNAR was absent at the time of the vote, REP. SMITH voted by proxy.)

Discussion: REP. SHIELL ANDERSON said he had no problem with women being fully informed before they have an abortion and he had no problem with giving guidance to minors in these issues. But he felt that when adults were given the same kind of guidance, the government became paternalistic. He thought the bill had some problems which needed to be cleaned up and had holes which needed to be addressed. He was concerned about independent causes of action by grandparents and parents and about the slant in the legislative purpose in findings as well as about the lack of specific guidelines in developing the material for psychological consequences. He said they didn't know if the young women who had testified would have had the abortions even

if they had had the information. He felt the bill was well-intentioned, but poorly executed. He felt that the physicians were not adequately covered in the reporting requirements. He felt it was paternalistic and antagonistic.

Motion/Vote: REP. ANDERSON MOVED TO TABLE SB 292. The motion failed 8 - 10 by roll call vote. (REP. MOLNAR was absent for the vote.)

Motion: REP. KOTTEL MOVED TO AMEND SB 292. EXHIBIT 2

Discussion: REP. KOTTEL explained that her amendments were designed to clean up some of the legal language of the bill. She recommended segregating the amendments for the purposes of discussion. Amendments 15 and 16 were aimed at providing for the filing of an amicus brief; amendments 11 through 15 were aimed at providing that parents or grandparents can sue for the woman if she is a minor or incapacitated; the balance of the amendments were aimed at a third purpose.

Motion: REP. KOTTEL MOVED AMENDMENTS 15 AND 16.

Discussion: REP. KOTTEL stated that this was in response to **Mr. Whalen's** request that the bill provide that they could file an amicus curiae brief. Under the current law an amicus brief can only be filed with the agreement of all parties or if the judge allows the discretion to file one. The bill as written provided for the right of intervention which is a right to be a party. This amendment would change that to the right to only file the amicus brief.

REP. GRIMES spoke to the amendments by stating that the bill originated from taking language from Americans United for Life (AUL) as well as Right to Life and he said he did not believe that the amendments would dissuade people from the original bill. He recommended voting the bill up or down since he was not sure any of the amendments would satisfy any of the opponents to the legislation. He asked for direction from the opponents of the bill as to whether any of the amendments would change their vote.

REP. ANDERSON thought there were ways to make the bill more palatable and elaborated on his opinion.

REP. GRIMES asked if this bill had a close vote in the Senate.

REP. MC GEE said that it had good bipartisan support in the Senate.

REP. TREXLER asked why this amendment would provide for just a legislator filing the brief.

REP. ANDERSON replied that it was limited to legislators because they were the ones passing the bill. If there is a question of

the court as to intent, they would be best situated to lend the court guidance as to that support.

REP. MC GEE said the reason they need right of intervention versus amicus curiae was that the court does not have to allow amicus curiae.

REP. KOTTEL said that this amendment would force the court to allow the brief.

REP. MC GEE replied that if it went to the supreme court, it would not be held by any statute included in the bill.

REP. KOTTEL said that it was current law under 24(a), Rules of Appellate Procedure. She was not saying that the court does not have judicial review and might find what they pass to be unconstitutional, but they might find the right of intervention to be _____ (inaudible).

REP. MC GEE urged the committee to resist the amendment.

Vote: The motion failed 2 - 16. REPS. KOTTEL and TREXLER voted aye.

Motion: REP. KOTTEL MOVED AMENDMENTS 11 - 14.

Discussion: REP. KOTTEL explained the reasons for the amendments being that the proponents had stated they wanted to be sure that a woman could be represented if she were a minor or otherwise incapacitated but that they did not want to give a grandparent an independent cause of action outside of the woman's cause of action. She said the wording of the provision in the bill clearly gave the grandparents an independent cause of action. She believed the amendments would clear up the intent testified to but not drafted.

REP. DEBBIE SHEA questioned whether the grandparents would have a right to an independent cause of action over the wishes of a spouse in a case where a woman was a minor or incompetent.

CHAIRMAN CLARK did not see that the amendments did not deal grandparents out of the right to an action.

REP. KOTTEL responded that grandparents still would have a right to bring an action if a person was a minor or incompetent, but it did deal grandparents out of the right to bring an action for a fully competent adult woman.

REP. SHEA asked if the grandparents' decision would supersede the spouse's.

The response to the question is inaudible.

REP. MC GEE asked the sponsor of the amendments if the intent was to qualify when a father or a grandparent [could bring a cause of action] and if she was saying that if the woman was under 18 years of age or physically or mentally incapacitated for purposes of deciding whether to pursue an action, then on a woman's behalf, they may.

REP. KOTTEL said that basically they were saying, as is not in the law, any party coming in as a guardian on behalf of the estate of the woman could act on her behalf. She said that was what was testified to, but as written it would provide them an independent cause of action for their own remedies and rights even for a competent adult female.

REP. SHEA said it was not clear to her.

REP. KOTTEL said her understanding was that there were three levels of tests which vary from state to state. One has to do with the relationship to the party. If the person was unconscious, the first person in line to make decisions regarding medical care would be the partner. If that partner was divorcing the person or hadn't lived with the person, another relative could come in and say they were not suitable to make the decision and substitute their decision. If that didn't take place, there are three other tests that courts use for making a decision for someone who is incompetent or unconscious.

REP. MC GEE read the definition of medical emergency as outlined in the bill on page 2 and said it came right out of the Casey decision.

REP. SHEA expressed her concern because of a case which had involved an unconscious woman whose spouse was prevented from making the decision to abort to save her life.

REP. KOTTEL pointed out that they were not dealing in the amendment with the medical emergency section of the bill but rather with who can sue the physician if they knowingly or recklessly violated this act in a non-emergency situation.

{Tape: 1; Side: B}

REP. ANDERSON commented that the amendment would not hurt the bill but would clarify what **Mr. Whalen** had testified was the intent during the hearing.

REP. BRAD MOLNAR asked what the current status was for the husband or father in a situation in which a wife or child had been somehow injured during surgery but did not want to sue. He wanted to know if he could not sue.

REP. KOTTEL said her understanding was that under current law he would not have a cause of action. She said with her amendments he would be able to intervene on behalf of the child, but not on

behalf of his adult competent wife. Neither would an adult parent be able to bring a cause of action on behalf of an adult competent daughter.

REP. ANDERSON said that even the bill as originally written would not provide for a cause of action as a parent because it did not address medical malpractice because the bill only addressed informed consent.

REP. MOLNAR presented the scenario where a daughter would have surgery without his consent and asked if he could not sue under current law.

REP. KOTTEL said she guessed he could sue and there would be tortious actions, but was not sure what his damages would be.

REP. MOLNAR asked if the father would have a cause of action for a surgery performed on a minor daughter without his express consent in a case, for instance, where surgery was against his religion.

REP. KOTTEL said she guessed he would and her amendment would allow that as well.

REP. SHEA said the word, "incompetent," disturbed her because she believed the authors of the bill thought all women are incompetent.

REP. KOTTEL replied that "incompetent" is a legal term of art which takes a civil procedure to determine.

REP. TREXLER asked if any of the parties could call their legislator to intervene.

REP. KOTTEL said she did not believe so. She said the intervenor action applied only when constitutional issues are raised. Section 7 applied to tort actions.

REP. WILLIAM BOHARSKI opposed the amendment. He felt that even though the person did not meet the criteria of being a minor or incompetent, but did not want to bring an action, there are situations where the parent or husband or father should be allowed to bring the action.

REP. ANDERSON said that by leaving the language as it was they would be granting standing to somebody who might not have any damage themselves, but who assume that someone else has been damaged and that went too far.

REP. BOHARSKI did not believe a judge would allow someone to bring an action when the person who had the procedure did not claim to be damaged.

Vote: The motion failed 7 - 12. REPS. ANDERSON, CAREY, MC CULLOCH, SHEA, KOTTEL, HURDLE and TREXLER voted aye.

{Tape: 1; Side: B; Approx. Counter: 12.0; Comments: The tape indicates the above vote to be 6 - 13, however, REP. WYATT changed her vote and REP. MC CULLOCH voted by proxy.}

Motion: REP. KOTTEL MOVED AMENDMENTS 1 - 10 AND 17 - 24.

Discussion: **REP. KOTTEL** asked for an opinion from **John MacMaster** about the effect for the state of Montana becoming the publisher of the materials and being subject to a lawsuit for failure to fully inform the woman. She disagreed with **Mr. Whalen** who said it would be covered by judicial immunity because she did not think it had anything to do with judicial immunity since it was produced by mandate of the legislature and produced out of the executive branch. She wanted to know if judicial immunity would cloak the state in producing this informed consent manual.

John MacMaster said that in his opinion it would not.

REP. KOTTEL said her amendment was offered in the spirit of the bill in that women must be given information, but that information should not be dictated by the bureaucracy which cannot change fast enough in publishing the material, but should be dictated by the physicians who read the medical journals on a daily basis and who could tailor the information for the situation. She said the bill as currently written grants the right to sue the physician for failure to give fully informed consent, so there is a civil remedy against a physician who does not give informed consent. That liability on the part of the physician should be sufficient for the physician to be giving women up-to-date information. She said that to hold a physician to be liable for giving the woman only government-approved information when he might want to give more information or to hold the bureaucracy liable when they cannot move fast enough was a bad situation.

REP. MC GEE laid the groundwork to speak against the amendment by reading from the Casey decision, "The United States Supreme Court will hold that a states' statute provision concerning a pregnant woman's informed consent to an abortion which provision requires that except in a medical emergency: (1) at least 24 hours before performing an abortion a physician must inform the woman of the nature of the abortion procedure, the health risks of the abortion and of childbirth and the probable gestational age of the unborn child; (2) the physician and or qualified non-physician must inform the woman of the availability of printed materials published by the state describing the fetus and describing information about medical assistance for childbirth, information about child support from the father, and a list of agencies which provide adoption and other services as alternatives to abortion; and (3) the woman must certify in writing that she has been informed of the availability of these

materials (it doesn't say that she has to read them) and that if she has chosen to view the materials she has been provided with does not violate the due process clause of the federal Constitution's 14th Amendment....."

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON.**

REP. MC GEE said the proposed amendment flew in the face of Casey as that decision stated that doctors will inform that there are materials and it specifically stated that the state would produce the publications. In his opinion the adoption of the amendments would fly in the face of a supreme court decision.

REP. KOTTEL replied, "All that Casey says is that to do this is constitutional. The Supreme Court does not say that any state has to do it." To mandate state materials is constitutional, but certainly the amendment did not fly in the face of Casey. She said that Casey did not consider the tort liability of a state who mandates materials. She believed it would be an issue in terms of state liability. Because there is a constitutional right to do something, it does not mean that there will not be a tortious liability.

REP. MC GEE said he believed the bill already addressed the fact that the physician is not liable if the state doesn't provide the information and the Casey decision of 1992 has been adopted in seven other states and not tested in court yet. He asked why they thought it would be tested in Montana.

REP. KOTTEL said he could not tell her that there had been no tort actions filed because of this action. She said that in Illinois the time between filing and going to court on a tort action is eight years. She was concerned that the information produced by the state would not be current or complete and the state could therefore be held liable.

REP. BOHARSKI stated that the legislature directs departments to do things all the time and there are many things which could be held as violations of code any given day. It bothered him to think of each individual physician providing the information because of the variance in their beliefs about the issue. Because the issue of abortion is different from any other, he did not mind putting the state in the middle of it and erring on the side of bureaucracy. Theoretically the state is neutral but has some direction in statute to do what they are directed.

REP. KOTTEL said there had always been two issues in the ability of the state to regulate the abortion process. One is protection of the health of the mother and the other is the protection of fetal life. This statute has to do, not with the issue of protecting fetal life, but with protecting the health of the mother--one of the two police powers of the state as recognized in Roe v. Wade, she asserted. She asked if all they were talking about was protecting the health of the mother, not attempting to

save fetal life, why this would be the only government sanctioned side effect to protect the health of the mother. She said they trust physicians to give informed consent in everything and they should trust physicians within the guidelines of this to give informed consent for this invasive medical procedure. If the physician failed to give good informed consent for the procedure, this statue would give a cause of action against the physician who would pay the price and that should be the role of government in protecting the health of the mother.

She felt the amendment did everything that had been stated they wanted to do without invasive government intrusion between the patient-physician relationship. "Which by the way, in the Webster case the supreme court upheld when the state.....said that a physician had to do certain types of testing in order to detect fetal development and, if you remember, the supreme court says you can't demand that the physician must test at a certain time, but what they said is what tests the physician must give in order to determine the gestation period of the fetus.....what they said is that if a fetus is over a certain age, you have to do certain things before you abort the fetus, but you cannot interfere with the physician patient relationship or tell the physician as part of his medical practice what tests to give," she said. She felt this came dangerously close to a line between Casey and Webster. She said they should have informed consent, protect the health of the mother, but not have government-determined side effects.

REP. BOHARSKI asked if she had said that Casey did say there was a compelling interest in both the health of the mother and the life of the unborn child.

REP. KOTTEL said she had not used the word, "compelling," and that he had added that. She said that Roe, Casey and all of them had also said that there is an interest...in Roe it just says an interest in protecting fetal life is outweighed by the woman's constitutional right of privacy in the first trimester. She said that Webster also said that a state had a police interest in protecting fetal life, whether or not that interest is strong enough to overcome what the court deemed as the constitutional right of privacy of a woman is at issue. To her knowledge he had never said, particularly at certain periods of the gestation period, that there is a compelling interest on behalf of the state to protect fetal life.

REP. BOHARSKI asked her to tie it back to her amendment.

REP. KOTTEL stated that her amendment and her understanding was that they were passing the bill not in an attempt to protect fetal life, unless they wanted to say that by giving informed consent more women will not have abortions, because she heard in testimony that they were protecting women from the physical and medical ramifications of making the decision to have the abortion. If the intent was to protect the health of the mother,

then she felt her amendment would do it in a way that was not governmentally intrusive and would not subject the government to possible civil tort liability and to give the woman the most up-to-date information from physicians.

REP. BOHARSKI asked if she was suggesting that they could not constitutionally make some effort to protect the life of the unborn child so long as they didn't create an undue burden on the mother.

REP. KOTTEL answered that she thought they could constitutionally take efforts to protect the life of the fetus as long as it was not an undue burden on the mother's constitutional right to privacy.

REP. BOHARSKI asked if she was saying that the bill, the way it was written, went beyond that and that it did create an undue burden. He said the language as he read it, on page 3, lines 17 through 20 exactly said that. He supposed that it was so that the mother didn't make the decision on a child which could have lived or to potentially protect the life of the unborn child. He did not, therefore, see a problem with the language other than her concern that the state would be somehow negligent in its actions and liable for a tort action.

{Tape: 1; Side: B; Approx. Counter: 32.6}

REP. KOTTEL responded, "Just so I understand what you said on record is that one of the two reasons for this bill is to protect fetal life -- to give a woman information so that perhaps she would not make a decision to have an abortion, is that what I heard you say?"

REP. BOHARSKI said, "No, my understanding is that the reason--that's why I'm looking at the language on lines 17 through 20--for informing that woman about the gestational age and viability of the child is so that she doesn't make a decision thinking that 'well, this thing can't live anyway" -- so we are giving the gestational development information so she's not to make a decision to go back.....'I never thought that thing was even a child.....' or as one proponent said, 'blob of tissue' or whatever the phrasing was, but that she will know, 'hey, this is something more'...that's my understanding of why we are supplying that gestational information."

CHAIRMAN CLARK resumed the chair.

REP. MC GEE responded to the questions previously asked by **REP. KOTTEL** by quoting from Roe v. Wade, "The court's decision recognizing a right of privacy also acknowledges that some state regulation in areas protected by that right is appropriate." He said that **REP. KOTTEL** had said there were two main points in Roe and that actually there were three. "As noted above, a state may properly assert important interests in safe-guarding health, in

maintaining medical standards and in protecting potential life." He added that maintaining medical standards was the reason for all the reporting information seen in the bill and is discussed more in Casey. "The privacy right involved, therefore, cannot be absolute. We therefore conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests and regulation."

He then quoted from Casey, "That some information might create some uncertainty and persuade some women to forego abortions only demonstrates that it might make a difference and is therefore relevant to a woman's informed choice. Abortion is a unique act, it is an act brought with consequences for others, for the woman who must live with the implications of her decision, for the persons who perform and assist in the procedure, for the spouse, family and society which must confront the knowledge that these procedures exist--procedures some deem nothing short of an act of violence against innocent human life and depending on one's belief, for the life or potential of life that is aborted. Though a woman has the right to choose to terminate or continue her pregnancy before viability it does not at all follow that the state is prohibited from taking steps to ensure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy the state may enact rules and regulations designed to encourage her to know that there are philosophical and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of the unwanted child as well as certain degrees of state assistance if the mother chooses to raise the child herself. It follows that states are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning. This too we find consistent with Roe's essential premises and indeed the inevitable consequence of our holding that the state has an interest in protecting the life of the unborn."

REP. GRIMES said it had not been raised as an issue heretofore that governments or state health departments were in any way jeopardized or liable in other states which had this statute on the books. He felt that if they removed all the language, which he believed needed to be included, they could inadvertently be put in the position of being more liable to circumstances because they would not be defining what should be provided and that would have to be litigated. He felt the language in the bill was standard information and needed to remain in the bill.

REP. SHEA asked what the ultimate goal of Right to Life was.

REP. MC GEE asked her if she meant what their agenda might be and said he could not speak to that and that he had no agenda.

REP. BOHARSKI said he was not a member of Right to Life but his ultimate goal with all three of the bills before this committee was to make sure to the extent that they were permitted by the courts that with what people were going through with the procedure of abortion they were provided with as much information and knowledge as possible.

REP. SHEA felt that their intelligence was being insulted and thought they were being led through a charade and that it was a first step in their full agenda and asked them to be up front about it.

REP. MC GEE said that even in the Casey decision there was division in the society over whether abortion should or should not be legal. The way he read it, they said they were going to hold to Roe and then proceeded to cut the bottom out from under Roe. He stated he was pro-life, meaning that he would rather see babies born than babies killed, as his personal philosophy, but he did not see an agenda but rather a very potential onerous thing that flew in the face of basic philosophical values on the part of some which needed to have some degree of control or regulation. He said he was not trying to say to women that they are incompetent but in his view the bill simply provided to women material so that they could have an informed decision about a matter of life and death, either to the woman or to the unborn child.

REP. SHEA said she felt the bill was an entire affront to women and she considered herself to be pro-family, pro-life and pro-choice.

Vote: The motion failed 5 - 14 by voice vote. REPS. CAREY, MC CULLOCH, KOTTEL, HURDLE and ANDERSON voted aye.

Motion: REP. ANDERSON MOVED TO AMEND SB 292 ON PAGE 6, LINE 7 TO STRIKE "A GROUP OF TEN OR MORE CITIZENS MAY SEEK AN INJUNCTION" AND INSERT "ANY CITIZEN MAY SEEK A WRIT OF MANDAMUS."

Discussion: REP. BOHARSKI said the testimony which was given in response to the question was that they didn't want hundreds of people across the state filing actions against the department and that they should at least get 10 people together before they went through it. He said he wanted to leave it at 10 though he understood the thinking of the sponsor of the amendment.

REP. ANDERSON said it would only take one person to get it done within the required time. For him the question wasn't whether they would have many suits, but that when they had the one suit, it would get the department to act.

Vote: The motion failed by voice vote 4 - 15, REPS. CAREY, KOTTEL, ANDERSON and GRIMES voting aye.

Motion: REP. ANDERSON MOVED TO AMEND PAGE 2 TO STRIKE LINES 4 THROUGH 7.

Discussion: REP. BOHARSKI said that was the heart of the testimony by the proponents who said they had not been provided the information by the clinics where they had had abortions. He said he thought that this was included to make it clear to the court why they were stepping into this area.

REP. ANDERSON said that if the bill passed, they would be providing all the information that all the others provide as required by law and it would become moot language anyway and would not change the outcome of it.

REP. BOHARSKI said it probably would not affect private causes of action down the road, but that it might affect the constitutional challenge to the bill and that was his understanding for these types of clauses.

REP. ANDERSON withdrew the motion to amend.

Motion: REP. ANDERSON MOVED TO AMEND PAGE 3, LINE 23 TO STRIKE "THE POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ABORTION" AND INSERT AT THE END OF THE SENTENCE "THERE MAY BE PSYCHOLOGICAL SIDE EFFECTS."

Discussion: REP. ANDERSON said the purpose of this amendment was to leave it to science and medicine with the doctor to explain and to define the psychological side effects rather than to leave it to psychology and interpretation by the department.

REP. MC GEE asked the committee to resist the amendment because this would not give enough information. He quoted from Casey, ".....with devastating psychological consequences that her decision was not fully informed." He said that he thought that one of the potentially critical aspects of abortion were psychological aspects--not necessarily tangible--but grave.

REP. ANDERSON asked where the department would get the information as to what those psychological side effects are.

REP. SOFT said he believed they would gather the information from the CDC and all other agencies to get the generic materials called for in the bill some of which would contain information on the possible psychological side effects. He did not believe that a group at the department would develop the material, but that it would be gathered.

REP. ANDERSON asked if it would comes from all sources and they would be given the discretion to select it. And he asked if there should be a public information hearing on how to develop the information.

REP. SOFT did not think that was necessary but up to their discretion.

REP. ELLEN BERGMAN said the information would come from the doctors who have had experience with it.

REP. ANDERSON said his point was that there is no guidance as to where the information should come from.

REP. HURDLE asked **REP. BERGMAN** why she wanted the doctors to package up the information, send it to the state so they could put it in a package and send it back to the doctor to give to the person.

REP. KOTTEL said she thought they had confused anecdotal information with (sic) enumerative information. She reiterated information from journals which indicated that the psychological side effects do not exist. She said the over 20 journals represented used scientific information that said that the psychological issues do not exist to any great degree, but they say that women who are psychologically disturbed before an abortion are psychologically disturbed after the abortion. The reverse was also stated in the journals as being true.

REP. MC GEE asked **REP. KOTTEL** if it was possible to have a detrimental psychological effect from an abortion.

REP. KOTTEL asked if he meant psychosis, neurosis, or just temporary sadness.

REP. MC GEE answered, "All of the above."

{Tape: 2; Side: A.}

REP. KOTTEL said it was possible.

REP. MC GEE asked her to assume that there were no documented psychological disorders and then the way it is currently written would mean that the clause would be limited in whatever publication they made. He said that it does not say that there are psychological side effects but that there are possible ones.

Vote: **The motion failed by voice vote 7 - 12, REPS. WYATT, ANDERSON, HURDLE, MC CULLOCH, CAREY, SHEA and KOTTEL voted aye.**

Motion: **REP. MC CULLOCH MOVED TO AMEND SB 292 ON PAGE 3, LINE 23 BY INSERTING "THE POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ADOPTION."**

Discussion: **REP. MC CULLOCH** cited the reason for her amendment was that information needed to be given in a non-biased and informative manner and that the sponsor had agreed that in order to make it fair, adoption would be one of the other aspects to be covered.

REP. BERGMAN asked if adoption was mentioned in the counseling [section] or in other sections of the bill.

REP. MC CULLOCH stated that it was included at the top of page 3. She said that during testimony that the 24-hour telephone service would also include descriptions of adoption agencies.

REP. BERGMAN said that it mentioned adoption agencies and did not think that was the same as adoption itself. She would agree that it was a good amendment if adoption were mentioned in the bill, but it was not.

REP. MC CULLOCH stated that if they are listed as well as a description of the services they offer, they were discussing adoption. Where the amendment would be added, the material to be provided would include information on abortion and childbirth and she felt that since adoption was mentioned above it fit in with the same scenario.

Vote: The motion failed by roll call vote, 6 - 13.

Discussion: REP. BOHARSKI said that after thorough examination of the bill he was inclined to think it was in as good a shape as it could be and that unless there was an amendment offered that would absolutely improve it, he was inclined to vote against any amendments to it and that anything technical would be cleaned up in the Governor's review and then come back for a vote.

REP. MC CULLOCH said that she would not offer her other amendments.

REP. ANDERSON questioned the previous discussion about the abortion pill, RU486, and whether this bill addressed that pill.

REP. KOTTEL understood that there were two different types of contraceptive devices -- one which stopped the process of ovulation altogether and this bill would not address that. She said that another type of device allowed the egg to fertilize, but stopped the egg from implanting into the uterine wall. Her understanding was that the bill would not stop that. The third type allowed the egg to implant but still caused through hormone levels to slough off and it was that type of contraception device, such as IUDs, which would now perhaps be banned under use of the word, drug or medicine. She said she had concerns about that.

REP. KOTTEL asked what understanding the committee had for the word, "coerce," on page 3, line 11. She said she believed it was unlawful to force, under duress, a woman to have an abortion just as she thought the opposite was true. She said if the bill was meant to be unbiased, it should include that it was unlawful for any individual to coerce a woman not to undergo an abortion. She said that if coerce meant to influence, then that definition should be on the record.

REP. MOLNAR said he believed everyone knew what coerce meant and proceeded to give an example. He said he believed it was not proper to threaten someone with a secondary cause of action if they did not do what the other person wanted them to do.

{Tape: 2; Side: A; Approx. Counter: 16.2.}

REP. BOHARSKI said the definition of coercion was in HB 482 where it meant, "restricting or dominating the choice of a minor female by force, threat of force or deprivation of food or shelter."

REP. KOTTEL said, "Then on the record you believe that this definition only applies to a minor child in HB 292."

REP. BOHARSKI said it had nothing to do with his opinion, but that he was just reading the definition.

REP. KOTTEL said it was a problem because there was no definition in this bill and asked if this was intended to apply only to minor children or to all individuals. She said that under **REP. MOLNAR'S** example it would be as much coercion to demonstrate in front of an abortion clinic to help influence a woman not to have an abortion. To her mind, that was free speech and people have a right to protest. She felt it was free speech to try to talk someone into or out of something. She heard in **REP. MOLNAR'S** example that when anyone gave a strong opinion to a person, it involved coercion.

REP. AHNER read the definition of coercion from *New College Edition of the American Heritage Dictionary of the English Language*, "to coerce, to force to act to think in a given manner to compel by pressure or threat, to dominate, restrain or forcibly control....."

REP. KOTTEL accepted that the definition of coerce could be as low as to compel by pressure. She asserted that for it to be an unbiased statement that it was just as unlawful for any individual to coerce a woman not to undergo an abortion as it was illegal to coerce a woman to undergo an abortion.

Motion: **REP. KOTTEL MOVED TO AMEND PAGE 3, LINE 11 INSERT "THE MATERIAL MUST STATE IT IS UNLAWFUL FOR ANY INDIVIDUAL TO COERCE A WOMAN IN HER DECISION TO UNDERGO OR NOT TO UNDERGO AN ABORTION."**

Discussion: **REP. GRIMES** commented that the purpose of that in the bill would be the same as in the other bill he was carrying in that there might be people with a vested interest in having someone undergo an abortion, particularly some man who would prefer not to have the ongoing expenses of child support. This was an attempt to deal with that sort of situation but he did not believe that the opposite was a problem where there is a problem with women being coerced to undergo abortions for selfish reasons.

REP. AHNER asked **REP. SHEA** if she, as a pro-choice person had, a personal agenda.

REP. SHEA said she did.

REP. AHNER asked if it was a personal agenda or a pro-choice group agenda.

REP. SHEA said her intent was to keep women safe and to honor their choice and intelligence to make good decisions.

REP. AHNER said she agreed with that agenda. She thought that given the full scope of all information that they could receive, they have the intelligence to still make their own personal choice. She could not see what fear would play in hindering fully informing someone and that that insults their intelligence. She continued to make comments from a point of personal privilege.

{Tape: 2; Side: A; Approx. Counter: 25.6}

REP. MC CULLOCH asked **REP. AHNER** if she had contacted any of the clinics around the state which provide abortions to discover what they do in providing information.

REP. AHNER said she had spoken with doctors and had gone to clinics and said that had she been given the information she probably would have another child. But she was not given the information which then resulted in abortion and that was why she felt so strongly.

REP. MC CULLOCH said she had not intended to solicit personal information but was wanting to know what sorts of information was given and available around the state and had personally checked and found abortion clinics provided very comprehensive information about abortions and some had pamphlets they distribute. She said that the national organizations required that their member providers go through all the information.

She said, in response to the question about the objection to the bill, that the objection was that the information in the bill is not non-biased but directed to limit access to abortion in that it is directed to make sure that someone comes to another conclusion--glossy pictures of fetus's are made to do that, she asserted, and they do not include glossy picture of abortions to pregnant women who want to continue that way. She felt it was biased information being requested in the bill and that portions of the bill were based on opinion rather than fact. On page 7 the discussion of the possible effects of breast cancer associated with abortion was an example as there were just as many studies to refute that there was a connection. The bill does not show all those different sides, she claimed.

She said they were skirting the issues and that one was the safety issue in that clinics do not perform abortions every day and that in requiring the 24-hour waiting period, could force a woman to wait one or two weeks which would increase risks. She felt that the bill served to limit freedoms for pregnant women. She said that another safety issue was in forcing women to come to the clinic more than once when people use that as opportunity to harass the women. She also objected to the idea that she was responsible enough to come as an elected official of the state, but not responsible enough to make a decision about her health without the intervention of the state.

REP. AHNER responded by asking if **REP. MC CULLOCH** thought the clinic would only give out the information that is biased to pro-life. Concerning freedom of speech, she asked if they should not give out both sides of the story and she said that was the essence of the bill. She said that they needed the freedom to put the information out on both sides and trust the intelligence of young women. In reference to the materials, she said it would depend on which clinic as to what information they had throughout the state and she was sure that the two of them had not gone to the same clinics and doctors.

REP. KOTTEL directed the committee back to the amendment. She said that in light of **REP. AHNER'S** point the committee should accept her amendment because it was unlawful for anyone to coerce someone to either have or not have an abortion. She cited the shooting of persons at abortion clinics.

REP. SOFT said that the debate comes down to when life begins and that they would not convince each other on these issues and stated his own struggle with the issues. However, he stated he wanted to go with the language contained in the bill and resist the amendment.

Vote: The motion failed 6 - 13 by roll call vote.

Discussion: REP. ANDERSON explained why he would vote against the bill. He said that he thought it had problems in that it allowed third party independent action by grandparents. He did not believe the department of health had enough guidance in coming up with the publication and that they were setting doctors up with reporting requirements with penalties to be assessed against them. He said that they already require doctors to advise the person seeking an abortion of the psychological, physical detrimental effects that may be involved in that abortion and that they are already required to present alternatives to having an abortion as well as the medical risks involved in having an abortion. He said that the information which is now coming from more personal sources was being put into a bland and impersonal publication to be distributed by the department of health.

REP. KOTTEL stated for the record the elements of the U. S. Constitution and the Bill of Rights which established the right to privacy and also the process for this bill to become law. She said the Montana Constitution uniquely states in article 2, section 10, "the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Unlike the U. S. Constitution, cases following Roe, etc., where the courts allowed an important governmental interest to override the right to privacy, the Montana Constitution specifically uses the word, "compelling," which has been defined by the U. S. Supreme Court as having strict scrutiny demanding an essentially tight nexus for it to be upheld. She did not believe this statute or the testimony of this committee showed the nexus of that compelling state interest and she thought that it would be found to be unconstitutional under Montana's Constitution.

She cited a 1992 case which said that the right of privacy and dignity is a fundamental right of every Montanan. She quoted, "Montana adheres to one of the most stringent protections of its citizens rights to privacy in this country. Montana's treatment of privacy rights is more strict than that offered by the federal Constitution." In State v. Burns, she said the court said that Montana has the strongest privacy laws of all the states. She felt that the statute would be found to be unconstitutional because of those strong privacy laws and the specific language of compelling state interest which requires a tight nexus.

{Tape: 2; Side: A; Approx. Counter: 44.5}

REP. BILL CAREY stated his opposition to the bill. He did not believe the proponents made a convincing case for the compelling need for the bill. He thought that three young women who had had bad experiences in the clinics was not enough evidence. He said they need to take a look at what clinics do throughout the state. Though some facilities don't provide enough information, he did not think they needed a law to address that. The discussion for him involving quotes from judges decisions reminded him of decisions by learned judges who once wrote reasons why women should not vote or why slavery was justified. He hoped that they would move away from the position of state intervention in these matters and that they could be worked out on a private basis.

REP. WYATT felt they were all pro-life, pro-family and pro-personal choice but from the viewpoint of a realist, she was concerned that it applied to women only and that if it was good medical practice in one instance it should be good medical practice in another. Another main objection was the independent course of action and said they will have divided families and provided for secrecy. She said she would look at it from the standpoint that if her privacy was going to be invaded by the state of Montana, then she would not tell her family or friends about her decision. She cited the situation in China in her objection to the use of coercion and said this would provide it

from the other end of the spectrum. She said it was an independent, private family decision and Montana as a state did not belong in it.

REP. MC GEE said it was a divisive topic and dealt with what members of the committee believed about themselves, life and about women and motherhood. He said that in 1972 in Roe v. Wade it was established that a woman had a right to an abortion. Casey, 20 years later, established that the state had certain interests (he did not know if they were legally "compelling" or not). The point was that they upheld a state's abortion control act which is also in place in other states. He said that Montana would be setting policy that it believes that it has an interest and perhaps a compelling interest in the protection of the woman, the protection of medical procedures and protection of prenatal life which is consistent with Roe and with Casey.

REP. BOHARSKI said it appeared in the original Roe case that the decision on why abortion was legal was that to prevent it was a violation of the penumbra of the right to privacy. The Casey case appears to show that the court has shifted and that is no longer the reason and he would argue that they have a good case in Montana that the privacy laws are probably irrelevant in the bill because abortion is not _____ (inaudible) liberty interest rather than a privacy interest. So the fact that the Montana Constitution is stronger on privacy possibly doesn't make any difference. He also pointed out that he had never seen any more compelling testimony in his years in the legislature than **Ms. Keller's** to demonstrate a compelling state interest. He did not see anything in it be an affront to women's intelligence.

REP. HURDLE said she was shocked by the whole process in the committee's resistance to the amendments which were offered in the sense of fairness and unbiased. She said she saw a hidden agenda of zealotry.

REP. BERGMAN responded to **REP. CAREY** and **REP. ANDERSON**. Her viewpoint was that information is not being given in all situations and that was the reason for the bill.

REP. AHNER asked **REP. HURDLE** if they had passed any of the amendments, would she have voted for the bill.

REP. HURDLE said that she did not know and restated her concern that none of them were seriously considered in her opinion.

Vote: The motion that SB 292 BE CONCURRED IN carried 12 - 7 by roll call vote.

EXECUTIVE ACTION ON SB 174

CHAIRMAN CLARK said that the bill had already been moved and that action was postponed because there were amendments.

{Tape: 2; Side: B}

Discussion: **REP. BOHARSKI** said most of the bill changed youth court to district court and changed _____ (inaudible) to supreme court and was relatively technical. He was concerned about the immunity language on page 6 and was not convinced it should be in there.

Motion/Vote: **REP. BOHARSKI MOVED TO AMEND SB 174 BY STRIKING THE IMMUNITY LANGUAGE ON PAGE 6, AND TO CHANGE THE NUMBER OF DAYS ON PAGE 7 FROM SEVENTEEN TO SEVEN.**

Discussion: **REP. KOTTEL** felt the amendments on page 6 would kill citizen review boards. She said she felt immunity from liability was necessary.

REP. BILL TASH asked if the other boards offered sovereign immunity.

REP. KOTTEL said that the boards she sits on are non-governmental functioning boards, 501(c)3, and that the citizen review board is authorized by statute to make a recommendation to a judge to perform a quasi governmental function in deciding where the government would place the children. That was different, she said, from sitting on an independent board of directors.

REP. TASH said he also sat on boards and said they had insurance to protect and provide immunization from liability.

REP. MOLNAR pointed out that if those who sit on the citizen juvenile review board breach confidentiality, they pay a $1,000 fine and are not held harmless for breaching their confidentiality. This board only makes recommendations, but do not do anything except request information and advise DFS. DFS makes all the decisions. He could only see that they could be sued for breach of confidentiality. He said the immunity provision had to come out of the bill since with it, the person could only be removed from the board but not fined no matter what harm they caused by such a breach of confidentiality. With the removal of the immunity clause, they would have no reason not to breach it.

REP. KOTTEL believed that not to be true and asked **Mr. MacMaster** for clarification.

Mr. MacMaster said he thought they were still bound the confidentiality laws and that the amendment said by that they had immunity from suit as provided in 2-9-112, MCA, which was the grant of immunity for judicial acts of omission. The immunity that people have as individuals of the judiciaries in subsection 2 is: "a member, officer or agent of the judiciary is immune from suit from damages arising from his lawful discharge of an official duty associated with judicial actions of the court." If a review board member is bound by law and _____(inaudible)

things confidential, that is not part of the lawful duty and he did not think they were talking about confidentiality.

REP. MOLNAR agreed that it was not talking about confidentiality, but that it is the only thing they could be sued for according to the wording at the top of the page.

REP. BOHARSKI said the immunity language was new and asked why it should be given to them.

Vote: **The motion failed 2 - 17 by roll call vote.**

REP. AHNER said she did not think it would solve any problems, that is was a "feel-good" program and was costly. She said the Court Appointed Special Advocate program (CASA) was a volunteer program which accomplished the same thing.

Motion/Vote: **REP. AHNER MOVED TO TABLE SB 174. The motion carried 11 - 8, REPS. WYATT, SHEA, CAREY, HURDLE, MC CULLOCH, KOTTEL, CURTISS, AND BOHARSKI voted no.**

Discussion: **REP. BOHARSKI** said that killing the bill did not kill the program. He said it was up to appropriations whether or not to do the program and that this committee was to decide whether or not to move the issues from the district court to the supreme court and from youth court to district court.

Motion/Vote: **REP. ANDERSON MOVED TO RECONSIDER THE TABLE ACTION ON SB 174. The motion carried by voice vote.**

Motion: **REP. ANDERSON MOVED SB 174 BE CONCURRED IN.**

Discussion: **REP. CURTISS** said that she did not think the board had had an opportunity to prove whether or not it was being efficacious. She wanted to support the bill and give them an opportunity to see what they could do. She felt there was a turf battle involved.

Vote: **The motion carried 17 - 2 by roll call vote.**

EXECUTIVE ACTION ON SB 61

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

Discussion: **REP. TASH** explained that SB 61 had been removed from the table because of some amendments which were offered from the Sheriff's and Peace Officer's Association.

Motion: **REP. TASH MOVED THE AMENDMENTS. EXHIBIT 3**

Discussion: **REP. TASH** explained the amendments.

REP. MOLNAR addressed amendment 7 and said that it was current practice and to include it simply repeated current practice and asked what then was the point of the bill.

REP. TASH said the intention was to reaffirm or keep the control in the district courts and the sentencing judge to guarantee that they were the ones to make the release of retention determination rather than the administrator having the sole authority to do so.

REP. MOLNAR said that the administrator currently has to ask the judge to let somebody go and they had testified that they brought the bill to avoid having to ask judges at inconvenient times to release. He did not see where the bill would change current practice.

REP. TASH suggested that it did and that to cover themselves, they would be advised to touch base with the judge.

REP. MOLNAR said his point was that they do and they must.

REP. MC GEE said his number one concern with the bill was the fact that the administrator could make those kinds of determinations without notifying the court under the bill. He said that he heard that this amendment would assure that the court would still be involved with the decision. He did not read it that way and that on subsection 2 on page 2 the detention center administrator can make the determination and they had only struck the fact that the person was convicted rather than charged. He thought that being charged was often as valid as convicted and he was further concerned that the detention administrator may request a committing or sentencing judge to release somebody and he also may not. He wanted the bill to reflect that the administrator was required to notify the judge of his action. He felt current law was the way it needed to be handled.

REP. TASH asked if the purpose of the amendments satisfied the intent to better coordinate and communicate between the detention center administrator and the judges as well as to better define the detention center administrator's duties to refuse custody or to prioritize incarceration of people charged with more serious offenses and allow them the opportunity to release misdemeanants in order to accept those charged with a more serious offense.

Brenda Nordlund, Department of Justice, without objection from the committee responded to the question. She said it would appear that this did coordinate between the administrator or the facility and the judge by giving the sentencing judge the necessary information about the jail capacity that would allow what facility the judge _____ (inaudible).

REP. TASH asked if the authority was still there or if, in fact, there currently was authority with the detention center administrators to prioritize incarcerations.

Ms. Nordlund said she could not answer that. It was not within her area, but would try to find someone from the department who could answer the question.

REP. MC CULLOCH said she had researched the amendments and found that they leave the judicial discretion exactly as it is now in section 2 and section 3 was added. She said she was told that magistrates were in agreement with the amendments as they were written. She read new section 3.

CHAIRMAN CLARK pointed out that the amendments under consideration did not set up section 3 to the bill but added to section 2 and changed some of the title.

REP. MC CULLOCH said she had meant to say subsection 3.

REP. MC GEE said he understood after consultation with **Mr. MacMaster** that if they adopted amendments 1 through 6 they were saying that if a person had not been convicted, then he had not been before the judge and therefore, it would not be the responsibility of the administrator to call a judge because a judge hadn't adjudicated the case. Under subsection 3 the administrator could request a committing or sentencing judge to release the person charged or convicted with a misdemeanor. He offered a friendly amendment to make it "shall" because if a person had been charged and then convicted by a judge, he thought the judge needed to make that decision because of the information he had in bringing the conviction where the administrator only knew he had an overcrowded jail. He asked the sponsor of the amendments if that would still accomplish his end.

REP. TASH said he would consider that a friendly amendment. The purpose of it was to better coordinate the incarceration procedures and do it in such a way to take some of the centers out of the liability arena.

REP. KOTTEL said that there was a problem with the friendly amendment. She said that if amendment 7 were changed to use the word, "shall," it would be the opposite of what had been done in the first part of the bill.

REP. MC GEE asked if they should then strike "charged with" to conform.

REP. KOTTEL said she did not think they needed the friendly amendment because under present law they could not release someone convicted and so they had to ask the judge. The statute now allows the release of someone charged but not convicted. She thought the amendments (unchanged) accomplished the goal which she stated as allowing an administrator to release someone charged without judicial permission though they may request permission from the judge.

REP. MC GEE withdrew the friendly amendment.

REP. ANDERSON felt the amendments took almost everything out the bill and he could see no substitute for the communications which should already be taking place between the judge and the administrator.

Motion/Vote: REP. ANDERSON MOVED TO TABLE SB 61. The motion carried 13 - 5, REPS. KOTTEL, TASH, MC CULLOCH, CAREY and CURTISS voted no.

Motion: REP. MC GEE MOVED TO RECESS UNTIL 7 PM.

{Tape: 3; Side: A}

When the committee resumed at 7 PM, **REP. LINDA MC CULLOCH and REP. DEBBIE SHEA** were absent and **REP. MC CULLOCH** registered proxy votes.

EXECUTIVE ACTION ON SB 13

Motion: REP. HURDLE MOVED SB 13 BE CONCURRED IN.

Discussion: REP. HURDLE said this bill dealt with the problem of 2,500 outstanding warrants and it was testified that 80% of them would end in conviction if they could be served.

REP. GRIMES said currently the only way to suspend a drivers license was to have a person appear. The bill would provide for two warnings if they failed to pay the fine.

REP. BOHARSKI understood the testimony to be that under this bill they were allowed to use the information on insurance and he wondered if the amendments included striking that language.

Motion: REP. ANDERSON MOVED TO AMEND SB 13. EXHIBIT 4

Discussion: REP. ANDERSON explained that the purpose of the amendments was to deal with persons who were not paying their fines and their licenses were suspended because of it. These amendments would provide that those persons be considered by the insurance companies in terms of the risk to be reflected in their premiums.

REP. SOFT asked what the bill would accomplish with all of that language removed.

REP. ANDERSON believed the bill still had some use as reflected in subsection 3 in that it would allow the department to bring them in on summons or complaint and they would still be subject to license suspension if they failed to pay their fines. It only allowed the insurance companies to assess the people in a higher risk factor for failure to pay.

REP. CAREY asked if the sponsor of the bill had been contacted about the amendments and he was told that the sponsor was not contacted.

REP. MC GEE asked **Ms. Nordlund** to respond to the amendments on behalf of the sponsor.

Without objection from the committee, **Ms. Nordlund** said that the amendments were done as an accommodation for another senator during second reading for debate, but these amendments were not of grave concern to the sponsor. The amendments were put on after the hearing without notice to the insurance industry and had not had the benefit of a hearing until they reached this committee.

Vote: The motion carried unanimously, 17 - 0, by voice vote.

Motion/Vote: REP. GRIMES MOVED SB 13 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 237

Motion: REP. CAREY MOVED SB 237 BE CONCURRED IN.

Discussion: CHAIRMAN CLARK expressed his views on the bill and reminded the committee that many cities and towns had ordinances to cover this problem. He favored convictions of DUI offenses rather than open container offenses.

REP. ANDERSON said he believed the bill had a few problems one of which was that constituents were not in favor of it. He said another problem provided that it was unlawful to drink an alcoholic beverage in a motor vehicle. He understood that motor vehicle included golf carts at golf courses outside the limits of an incorporated city or town. There was objection from a constituent that it would cause uncontrolled littering at more taxpayer cost. His main concern was that it was legal to go to a bar and then drive, legal to drink alcohol in the home and then drive, but this made it illegal to drink in a responsible fashion while driving yet it was legal to eat while driving in such a way as to hinder the ability to drive responsibly. The bill also prohibited the person who was driving and drinking in an unimpaired fashion from doing so because it banned open containers. It left questions about what an open container included as well as other problems.

He said that there were strict laws dealing with people driving while impaired and he thought those were the ones who needed the focus, not the responsible drinker.

Motion/Vote: REP. ANDERSON MOVED TO TABLE SB 237. The motion failed by tie vote, 9 - 9, on roll call vote.

Discussion: **REP. MC GEE** said he felt that alcohol affected a person's ability to function and it was a greater contributor to accidents in the state than speeding. He spoke for the bill.

REP. ANDERSON said that the state was the people whom they represented and he had not heard one constituent say it was a good idea. He asked the department to define motor vehicle.

Without objection from the committee, **Ms. Nordlund** responded that the definition of motor vehicle was found in title 61-1-102, MCA. She read that section.

REP. ANDERSON thought under that definition a golf cart would not be included but a motor home was included.

REP. BOHARSKI interrupted with clarification which was inaudible to the secretary and this changed **REP. ANDERSON'S** comment.

REP. ANDERSON said that the laws to get the other DUI bills passed and he was in favor of laws to put teeth into driving while impaired and felt that was important and asked why they should penalize the person who may be having one beer while driving. The driver may be impaired from the use of prescription drugs but there was no law against that. He said there was no penalty for the person who could drive unimpaired after consuming alcohol at an establishment or home, but did not have a container with him while driving. He added that there were laws for the person who was drinking too much and this bill went too far.

REP. KOTTEL said it might be an issue of the districts they represent. She said she had not received any indication of opposition from her constituents, but only from those who support it. She said the difference for her was that a person drinking in a stationary place could ask for someone to take them home while a person in a car while drinking who decided they had had too much had few options and probably would decide to continue to drive.

REP. MOLNAR said they were addressing a behavioral problem. He said he did not want to kill the bill but to table it temporarily while working with the sponsor to address the issues. He explained that there were circumstances where people could be charged that would be unwarranted.

REP. KOTTEL suggested that there were solutions to partially consumed containers being stored in places unoccupied by passengers.

REP. MOLNAR said in real-life situations, this would not always be possible. Therefore, he wanted to table it to work those issues out with the sponsor.

Motion: REP. MOLNAR MOVED TO TABLE THE BILL.

CHAIRMAN CLARK advised the committee that there would be no other scheduled meetings for executive action and they would be on an as-needed basis. He said that if the bill were tabled and **REP. MOLNAR** could accomplish his aim, they could have another executive meeting to handle that.

REP. BOHARSKI did not think they should table the bill but suggested that they postpone action by leaving the bill without final action until amendments could be worked out.

REP. KOTTEL asked the committee to pass the bill and work on the amendments before it was debated on the floor of the House.

REP. MOLNAR suggested that it might be appropriate to have executive action off to the side. He said that if it were to be amended, it would go back to the Senate and explained the ensuing process.

REP. BOHARSKI was concerned about fighting it on the floor. He felt it was possible to make a workable bill out of it and try to work with it out to the side. He suggested holding off on action.

CHAIRMAN CLARK asked **REP. MOLNAR** to withdraw his table motion if they would instead postpone action. **REP. MOLNAR** agreed.

REP. TASH asked how much coordination needed to be done on the three bills related to this subject.

CHAIRMAN CLARK said there was none needed on this bill that this bill did not fit in with the other DUI bills at all. He said the committee would postpone further action on the bill and that **REP. MOLNAR** would get with **SEN. BISHOP** to work out a compromise the committee could deal with. The committee's preference was to limit it to the driver, he believed. After hearing from **REP. MOLNAR** the committee would do a short executive action as had been suggested.

REP. HURDLE asked for an informal poll from the committee to see how many liked the bill as it was written. The **CHAIRMAN** agreed and there were seven who responded by a show of hands.

EXECUTIVE ACTION ON SB 316

Motion: **REP. SOFT MOVED SB 316 BE CONCURRED IN.**

Discussion: **REP. MC GEE** said there was to have been a committee made up of three Senators and three Representatives to address this bill and that did not occur. But they had met with **Brenda Nordlund, Joe Roberts** and others informally to combine the DUI bills. He said SB 316 dealt with the penalties for DUI and made the fourth DUI a felony. He said that SB 333 dealt with treatment for DUI. It had been decided to let the House DUI

bills run their course in the Senate and the Senate bills run their course in the House rather than try to merge House and Senate bills. He said a coordination clause had been attached to 256 in the Senate so that if 316 passed, the fourth DUI felony would be dropped and they would adopt the third DUI felony provision of 256. The base bill would be 256 and anything kept in 316 would be merged into the new law, he explained.

REP. BOHARSKI suggested a different way to work with it by eliminating this bill and working with HB 256.

REP. MC GEE said that SB 316 did more than HB 256. He explained the differences.

Mr. MacMaster said the bills were being coordinated in the Senate with **REP. MC GEE** and others but that the Senate had taken the lead in exactly how it would be done after the decisions were made. The technical work would be done between a Senate staffer and **Ms. Nordlund**. How it would be done was already established by them.

There was continued discussion about how to handle it and what the end result would be.

Motion/Vote: REP. ANDERSON MOVED TO AMEND SB 316 ON PAGE 4, LINES 24 - 26 TO STRIKE "AND FORFEITURE OF VEHICLE."

{Tape: 3; Side: A; Approx. Counter: 51.6}

Discussion: REP. ANDERSON explained the amendment to deal with the fact that there were forfeiture statutes in place. He said there are cases where people will pass the field sobriety test, but they wouldn't blow on the breathalizer and therefore their license would be suspended for six months. The bill said that if the person was caught twice for driving while suspended (perhaps to and from work without a permit to do so) the vehicle would be subject to forfeiture as a result of having refused the breathalizer test. In fact, the person might not be legally drunk. If they (sic) revoke a person's automobile for driving while suspended, people would not like it.

REP. TREXLER supported the amendment if for nothing more than the sake of consistency.

CHAIRMAN CLARK said that if a person is asked to give a test, it is up to the officer as to which test to give and it is more than breath, the officer can ask for a blood or urine test instead.

Vote: The motion carried 13 - 4, REPS. BOHARSKI, HURDLE, GRIMES and CLARK voted no.

Motion: REP. ANDERSON MOVED TO AMEND PAGE 2, SUBSECTION 7 ON LINES 13 - 16.

Discussion: **REP. ANDERSON** explained the amendments would deal with the objections of those who felt it was invasive to require subjection to the breathalizer tests. The subsection as written would provide for two violations and on page 5, line 27, the penalty was raised to six months for the first refusal and the second refusal would be another six months within the five-year period. He said this would provide for a one-year suspension for refusal of the test. His amendment would limit it to one test. He said there were people who were not impaired, but simply refused the test and this would be more fair.

CHAIRMAN CLARK said he did not believe that officers in Montana were currently equipped with the portable breathalizers. The section was looking toward the future when this would happen. The other tests apparently did not enter into this section of the bill.

REP. SOFT opposed the amendment. He felt the officer would not be stopping the motorist for no reason, but because there was evidence that the person had been drinking.

REP. HURDLE concurred with **REP. SOFT** and reminded the committee that one-half of the accidents involved drinking.

REP. ANDERSON said it was right that one-half of the accidents do involve drinking, but as far as the suspicion that an officer had to pull a person over, they have station checks after big events and they would not always just see a person driving erratically and in an impaired fashion.

{Tape: 3; Side: B}

He said he read the bill to provide for double jeopardy in that if a preliminary [field] alcohol screening test was refused, there would be a six month suspension and then if the breathalizer test were refused at the police station, they would be suspended an additional six months.

REP. BOHARSKI asked if his amendment would provide for only one suspension. **REP. ANDERSON** affirmed that interpretation of the amendment.

REP. SOFT felt that if the person knew about the law and still refused twice, there was something wrong.

REP. BOHARSKI did not think it was the intent of the bill to "hit" them twice for the same offense.

CHAIRMAN CLARK said it was the intent of the bill. He referred to line 14 on page 2 to spell it out.

REP. GRIMES asked **Ms. Nordlund** to address the section.

Ms. Nordlund, without objection from the committee, said that if she heard correctly that the amendment was designed to merely strike subsection 7--the second sentence, she was not sure that amendment would go so far as the sponsor of the amendment would like to go. The answer to **REP. GRIMES'S** question was, "Yes, the department's intent was that each testing refusal be considered a separate testing refusal, they are separate acts." However, she said to be fair with the committee and **REP. ANDERSON** and if that was what he wanted the committee to vote on, he also needed to examine the second sentence in subsection 5, which she quoted. She said that was the language which created the suspension or revocation that paralleled the implied consent testing refusal in 402. If they merely deleted subsection 7 or the second sentence of 7 and the bureau chief was to come to her with subsection 5 intact, she would tell him that they are each testing refusals and both may result in suspension or revocation.

REP. ANDERSON asked if they should then remove the second sentence of both subsections.

Ms. Nordlund answered that there would never be a penalty for refusal of a portable breathalizer test if those sections were struck.
REP. ANDERSON said his intent was that they could get a suspension for failure to take the field test with the hand-held device, but they could also get a suspension for failure to take the blood alcohol content (BAC). If they took the hand-held test and refused the BAC, that would still be one suspension and that was his intent.

Ms. Nordlund replied that to accomplish this on line 15 following the words, "shall," insert "not."

REP. ANDERSON said many people thought the breathalizer tests were inaccurate.

REP. KOTTEL claimed that defense lawyers advise their clients to not take the test if they are drunk or think they are drunk because it is harder to convict [without the test]. She did not think they refused to take the breathalizer test for moral issues or any other issue, but refused to take it for the reason that they think they are going to fail it. She felt that since they had increased the penalty so drastically for conviction for DUI, they had increased a person's effort not to be convicted. Part of that was to refuse the test. Because she felt they needed both penalties she asked the committee to oppose the amendments.

REP. ANDERSON said the amendment was as proposed by **Ms. Nordlund.**

Vote: The motion failed 6 - 11, REPS. TREXLER, BOHARSKI, ANDERSON, WYATT, MC GEE, and BERGMAN voted aye.

Motion: REP. ANDERSON MOVED TO AMEND LINE 5, PAGE 27 TO CHANGE SIX MONTHS TO 120 DAYS.

Discussion: **REP. ANDERSON** said that in the effort to "hang everybody high" they were going to upset a lot of people since many are convicted of DUI who are not all that impaired. He said if they were going to give them a double "whammy" on the refusal to take the breathalizer test, they shouldn't suspend them for a full year for one offense.

REP. MC GEE asked why he wanted to go to four months.

REP. ANDERSON explained that he thought it was a good compromise.

REP. BOHARSKI remembered testimony about changing it to 90 days but the **CHAIRMAN** did not remember that there was discussion on it.

REP. MC GEE said that subsection 5(a) was referring to the time factor penalty for a refusal to take a test and not a conviction of DUI and he could not remember why it was changed from 90 days to six months.

REP. HURDLE said it was changed because they were increasing the penalties for DUI.

REP. MC GEE said it was not for a DUI but for refusal to take a test.

REP. ANDERSON believed it was increased because they had a task force to address the problem of drunk driving and if it didn't come back with more stiff penalties, they wouldn't have done their job.

REP. HURDLE said she was trying to point out that they were trying to stiffen all the penalties because drinking and driving was too socially acceptable.

REP. GRIMES suggested that for future sessions the committee be given a list of all penalties so that they could see how the adjustment of one would affect and rank with the others. He said he would trust the task force recommendation and vote for the bill as written.

Vote: **The motion failed 5 - 12, REPS. ANDERSON, WYATT, TREXLER, BERGMAN and MC GEE voted aye.**

Discussion: **REP. BOHARSKI** cited a situation where the person tried to do the responsible thing by stopping the vehicle and perhaps going to sleep and yet was charged with a DUI though the vehicle was not in motion. He said he thought that was a problem which needed to be considered.

REP. HURDLE said it sounded as if he was saying that the first decision which was made [to get in the vehicle after drinking and to drive for any distance before stopping] did not count. She

said that when the person got in the car while [or after] drinking, the mistake was still made.

REP. BOHARSKI rebutted that argument.

CHAIRMAN CLARK responded that the first decision was wrong and that this was nothing new. [The criteria of] being in actual physical control of a motor vehicle had been in effect for a long time and some of the people because of their lack of good judgment, do not get clear off the road and some stop right in the middle of the traffic lane and others have been found to be facing the wrong way in the opposite lane and those were not seen driving. The purpose of the statute was that they would still be intoxicated and still in control of the motor vehicle for all legal purposes and he did not believe that they should weaken that. He said that was the reason they had juries and if the person was clear off the road on an approach and charged with a DUI, then it should be taken to a jury.

REP. ANDERSON said that a compelling criteria was that even in the driveway, if the key is in the ignition, the driver is still in control of the vehicle.

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

Discussion: REP. MC GEE asked if a coordinating instruction was needed on this bill.

Ms. Nordlund explained the conflict between section 8 of the bill which amended 61-8-714, MCA, and the same section in HB 256. She said there was coordination language if HB 256 passed with an amendment to 61-8-712, MCA, and the amendment contained a third-offense felony provision, that amendment would supersede the language in SB 316.

EXECUTIVE ACTION ON SB 333

Motion: REP. WYATT MOVED SB 333 BE CONCURRED IN.

Motion: REP. MC GEE MOVED TO AMEND SB 333. EXHIBIT 5

Discussion: REP. MC GEE explained the reasons behind the amendments being that he did not think a 30-day treatment was inadequate. The language of the amendment granted a provision for one year of follow-up. It also would provide that the treatment program required would not necessarily be an AA program. He said that amendment 5 took the penalty standards for the per se statute to correspond with what had already been done with the DUI penalty standards.

Ms. Nordlund, without objection from the committee, said she wanted to be very clear that this set of amendments made sure that the treatment provisions contained in the bill applied to

both the DUI offender and the BAC offender. The coordinating language in HB 256 was language which would make more parallel the penalties for DUI and BAC. In the actions in taking it to a third offense felony in HB 256, the BAC was not dealt with. She explained it further and said this only dealt with treatment.

REP. ANDERSON asked if the sponsor of the amendment would consider it a friendly amendment to amendment 4 to change "shall" to "may" so that the counselor would have the ability to keep the person for the year if needed, but would allow discretion to release them prior to that if they were found to not be chemically dependent.

REP. HURDLE was concerned about amendment 4 providing that a court couldn't assign people to AA because of the cost of other types of treatment. She felt that there would be cases where the best option was assignment to AA and did not want to see it prohibited.

REP. MC GEE preferred that everyone who had to go to treatment would follow-up with AA. But he was suggesting that people were getting sentenced to AA who did not want to go there and then were disruptive and broke anonymity of the group. A basic tenant of AA is that they wanted to be there. He did not believe it was within the purview of the state's authority to sentence them to a private "thing."

REP. SOFT asked where in the bill the court was ordering people to AA.

REP. HURDLE said she would eliminate the last sentence of amendment 4.

REP. MC GEE argued that it would not have to be AA and cited other organizations which offered aftercare treatment. He imagined that a treatment facility would institute aftercare treatment programs to comply with the statute. He did want to limit where the court could send people because his concern was with the people who were in AA.

REP. ANDERSON asked if it was his intention that a first-time offender have an automatic one-year counseling period or if it applied to those persons found to be chemically dependent. He said that if the intention was to eliminate AA from the judges' options, he would speak against the amendments.

{Tape: 3; Side: B; Approx. Counter: 49}

REP. BOHARSKI asked how effective the sponsor felt the one-year follow-up was. He did not see how in the original language, the judges couldn't require a one-year follow-up as a part of the sentence.

REP. MC GEE said he was relating to cases he was aware of in his area. He said he knew that people were being sentenced to AA without any consideration to the people who were going to AA because they wanted to be there. He said that he knew that AA groups had broken up or closed their doors because of this. He said that a number of people then had to yield because of one person who might not think he was an alcoholic and didn't want anything to do with AA. The original intent of the amendments was to lengthen the time frame of aftercare and to not use AA as a mandatory element for recovery though it may be utilized.

REP. BOHARSKI said that he thought it was a local problem and did not know of other parts of the state where it was a problem. He felt the aftercare of one year could be ordered as part of the original sentence for treatment and he was not sure this would solve the local problem.

REP. SOFT re-read the bill on page 4, lines 6 - 14. He thought that section covered amendment 4 and recommended that they delete amendment 4.

REP. GRIMES supported the concept behind the amendments but felt there was a technical problem with amendment 4 though conceptually it might be right. He asked for someone from the department to address that.

Mike Rupert, Boyd Andrew, without objection from the committee, said the amendment was his idea and the intent was for multiple offenders and not first offenders. He did not know how they arrived at the final language.

REP. GRIMES said he understood that it was in line with what they did on the other bill and he explained that further.

Mr. Rupert said the intent was to answer how they could make it more likely for the multiple offenders to get sober.

REP. GRIMES asked for a suggestion to adapt it so that it would apply to multiple offenders.

Ms. Nordlund, without objection from the committee, said they would insert "second and subsequent offenders," before "The treatment program shall include....."

REP. HURDLE continued to object to the second sentence of the amendment. She felt it was a local problem and did not belong in the amendment.

REP. KOTTEL supported the amendment and thought AA needed to be voluntary and should not be considered a treatment program. She felt it was a support program.

Mr. MacMaster said that every session deeply considered DUI bills and in every one of the sessions the department of corrections

personnel, whether right or not, had expressed a real concern about judges sending people to treatment programs which the department had not taken a look at and approved.

REP. MC GEE asked if the language was sufficient to give the approved program in the called for qualifier.

REP. ANDERSON had some reservations about telling people how to handle it in their different communities, but he would vote for the amendment if the word, "shall," were changed to "may."

REP. MOLNAR asked how effective treatment would be to sentence an offender to it rather than leaving it as a voluntary decision.

REP. MC GEE said it could work because treatment is intense. The point was to stretch out the treatment to extend the time for the person to reach the point where they accepted the treatment and received a good result.

REP. WYATT supported the amendment. In her community, AA also complained about those who were sentenced to AA meetings.

REP. GRIMES called for the question on the amendment including the language which was recommended by **Ms. Nordlund.**

REP. MC GEE considered that to be a friendly amendment and a substitute amendment was not necessary.

Vote: **The motion carried 16 - 1, REP. HURDLE voted no.**

{Tape: 4; Side: A}

Motion/Vote: **REP. MC GEE MOVED SB 333 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON SB 143

Motion: **REP. BOHARSKI MOVED SB 143 BE CONCURRED IN AS AMENDED.**

Discussion: **CHAIRMAN CLARK** reminded the committee that SB 143 had previously failed because of a tie vote.

REP. BOHARSKI discussed the amendments which removed all the Senate amendments with the exception of number 3 on page 2 and reinserted all of the original language in the bill which took it back to an optional provision.

REP. CURTISS supported the motion and felt it was important to get the bill out of the committee which would go along with several other mandate efforts supported by the Governor's office.

REP. BOHARSKI said he knew that **SEN. BAER** had met with the Governor and they agreed on the language on lines 10 through 16.

Vote: **The motion carried 12 - 6, REPS. CAREY, WYATT, HURDLE, TREXLER, KOTTEL and MC CULLOCH voted no.**

EXECUTIVE ACTION ON SB 90

Motion: **REP. KOTTEL MOVED THAT SB 90 BE REMOVED FROM THE TABLE AND BE RECONSIDERED.**

Discussion: **REP. MC GEE** asked if amendments were going to be offered.

REP. KOTTEL said amendments were included prior to the table action. She felt the bill was in good shape and she reiterated the amendments which referred to a national organization training in the lawful use of guns. The intent was to prevent the training for the use of a gun in an unlawful manner.

REP. MC GEE asked if a national organization could be something other than the National Rifle Association.

CHAIRMAN CLARK said it could and that there were a number of national firearms organizations which qualify firearms instructors.

REP. BOHARSKI asked if the amendment included the wording, "lawful use."

CHAIRMAN CLARK reminded the committee that they were just considering the motion to reconsider.

Vote: **The motion carried 14 - 4, REPS. WYATT, CAREY, HURDLE and MC CULLOCH voted no.**

Motion/Vote: **REP. MC GEE MOVED TO AMEND SB 90 TO INCORPORATE "TRAINING PEOPLE IN THE LAWFUL USE OF FIREARMS" IN THE BILL.**

Discussion: Various members of the committee worked with the language of the amendment.

{Tape: 4; Side: A; Approx. Counter: 14}

Vote: **The motion carried 17 - 1, REP. CAREY voted no.**

Motion/Vote: **REP. ANDERSON MOVED SB 90 BE CONCURRED IN AS AMENDED. The motion carried 17 - 1, REP. CAREY voted no.**

Discussion: **CHAIRMAN CLARK** reminded the committee that SB 192 and SB 237 were the only two bills left in committee. SB 237 was put on hold until **REP. MOLNAR** could meet with **SEN BISHOP.** SB 192 was the pay bill for the county coordinator and the language of

that bill was in HB 17 and if that passed, they would not need to act on SB 192.

REP. GRIMES said that he wanted the committee to formally request a list of the penalties in some organized fashion from the department of justice for the committee's information for a future session. The committee agreed to request that from the department in the form of a wall flow chart.

Mr. MacMaster said there were about 120 to 150 title 45 crimes which could be included. He said it could be done.

Motion/Vote: **REP. GRIMES MOVED THAT SUCH A CHART BE REQUESTED FROM THE DEPARTMENT OF JUSTICE TO BE SUPPLIED IN TWO-YEAR'S TIME. The motion carried unanimously.**

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

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

ADJOURNMENT

Adjournment: The meeting was adjourned at 9:30 PM.

BOB CLARK, Chairman

JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/22/95

7 AM

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	✓ 7:55		~~✓~~
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 8:00	~~✓~~	
Rep. Debbie Shea	✓		
Rep. Liz Smith			✓
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/22/95 7 PM

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	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 292** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. McGee

Committee Vote:
Yes 12, No 7.

661224SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 174** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Cobb

Committee Vote:
Yes 17, No 2.

661227SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 13** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Anderson

And, that such amendments read:

1. Title, lines 10 and 11.
Strike: "PROHIBITING" on line 10 through "PAY;" ON LINE 11

2. Title, line 12.
Strike: "SECTIONS 33-16-201 AND"
Insert: "SECTION"

3. Page 2, lines 5 through 8.
Strike: "A" on line 5 through end of line 8

4. Page 2, line 17 through line 23 of page 3.
Strike: section 2 in its entirety

-END-

Committee Vote:
Yes 17, No 0.

671124SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 316** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. McGee

And, that such amendments read:

1. Title, line 10.
Following: "SEIZE"
Strike: ","
Insert: "OR"

2. Title, line 11.
Strike: ", OR FORFEIT"

3. Page 4, line 5.
Following: "seizure"
Strike: ","
Insert: "of vehicle or"
Following: "rendering"
Insert: "vehicle"
Following: "inoperable"
Strike: ","

4. Page 4, line 6.
Strike: "and forfeiture of vehicle"

5. Page 4, lines 24 through 26.
Strike: subsection (6) in its entirety
Renumber: subsequent subsection

-END-

Committee Vote:
Yes 18, No 0.

671127SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 333** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Hurdle

And, that such amendments read:

1. Title, lines 7 and 9.
Following: "INFLUENCE"
Insert: "OR WITH EXCESSIVE ALCOHOL CONCENTRATION"

2. Title, line 11.
Following: "SERVICES;"
Insert: "REQUIRING AT LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION;"

3. Title, line 12
Strike: "SECTION"
Insert: "SECTIONS"
Following: "~~61-11-101~~"
Insert: "AND 61-8-722"

4. Page 4, line 10.
Following: "counselors."
Insert: "On a second or subsequent conviction, the treatment program must include followup procedures determined necessary by the counselor for a period of at least 1 year from the date of admission to the program. A court may not order a defendant to attend or participate in a self-help program not specifically recommended by the approved program providing services to the defendant under this subsection."

Committee Vote:
Yes 18, No 0.

671129SC.Hbk

5. Page 6, line 4.
Insert: "**Section 2.** Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, ~~he~~ a person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, ~~he~~ a person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, ~~if considered necessary by the counselor conducting the program~~ in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of

the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.""

-END-

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 143** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Keenan

And, that such amendments read:

1. Title, lines 12 and 13.
Strike: "ALLOW REJECTION OF"
Insert: "ASSERT MONTANA'S RIGHT TO REJECT"

2. Page 2, lines 16 through 22.
Strike: "IT IS" on line 16 through "AFFECTED." on line 22
Insert: "The state of Montana has the right to reject any attempt by the federal government to usurp the state's power by forced federal mandates, orders, directions, or commands derived from powers not enumerated in or otherwise granted by the United States constitution, especially when individual freedoms are affected or other constitutional protections are compromised."

3. Page 2, lines 24 and 25.
Strike: subsection (3) in its entirety

4. Page 2, line 30.
Page 3, line 2.
Strike: "allowing rejection of"
Insert: "asserting Montana's right to reject"

5. Page 3, lines 1 and 3.
Strike: "enumerated in or otherwise"

-END-

Committee Vote:
Yes 12, No 6.

671132SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 90** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Curtiss

And, that such amendments read:

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, who trains people in the lawful use of firearms, and"

-END-

Committee Vote:
Yes 17, No 1.

671130SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/22/95 BILL NO SB 292 NUMBER _____

MOTION: Wyatt Amendments

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 3/22/95 BILL NO SB292 NUMBER _____

MOTION: To 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 3/22/95 BILL NO SB 292 NUMBER _____

MOTION: McCulloch Amendments

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 3/22/95 BILL NO. SB 292 NUMBER _____

MOTION: Kottel Amendment to add "not to undergo"
Page 3, Line 11

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 3/22/95 BILL NO. SB292 NUMBER _____

MOTION: Be Concurred In

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 3/22/95 BILL NO SB 174 NUMBER _____

MOTION: Boharski Amendment

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 3/22/95 BILL NO. SB174 NUMBER _____

MOTION: Be Concurred In

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 3/22/95 BILL NO SB237 NUMBER _____

MOTION: To 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
COMMITTEE PROXY

DATE 3/22

I request to be excused from the House Judiciary 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.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*

SENATE BILL/AMENDMENT	*AYE*	*NO*
SB 292	✓	
NO AMEND.		
NO ON TABLE MOTIONS		

Rep. Wm E Bobarski
(Signature)

HR:1993
WP/PROXY

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*
HB 292		X
Amends	X	
HB ____		

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Ann Kelley
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/22/95

I request to be excused from the Jud. Cmt

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
SB292 1 & 2	✓	
Kottel #2 amend	✓	
TABLE 174		✓
RECONSIDER 174	✓	
DO CONCUR	✓	

PASSED

SENATE BILL/AMENDMENT	AYE	NO

And all amendments

Rep. Robert McCulloch
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/22/95

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

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
With ~~Soft~~ Shiell		

SENATE BILL/AMENDMENT	AYE	NO
with ~~Soft~~ Shiell		
174		
Bottarelli Amd.		X
Aymer Table motion	X	
Reconsider	X	
DO CONCUR	X	
SB 61 + Amds TABLE	X	

Rep. _____
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE March 22

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

SENATE BILL/AMENDMENT	AYE	NO
SB 292	✓	
Vote me on any amendments		X

Rep. Paulynn Curtis
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3/22/95

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*

SENATE BILL/AMENDMENT	*AYE*	*NO*
SB 292 Amend(s)		✓
SB 292 W/O Amend.	✓	

Rep. Tash
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-22-95

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

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*
292	X	
Amds → McCullough 1		X
Kottel		X

Rep. Cliff Trudell
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-22

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

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*
Kottel #3	X	
Bill		X
174	X on Bill	
amend-		X

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Joan Hurder
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-22-95

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

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*
amend 292		X
SB 292	X	
174		X
61		
13		
237		
316		

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Chris Ahner
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE March 22/95

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

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 13	y	
SB 77 Tabled - no way		
SB 133	y	
143	y	no
192	y	
201 1237	y	
4th DWI 316	y	
Medicaid 333	y	no amend. with insurance company

SENATE BILL/AMENDMENT	AYE	NO

Reconsider Tabled yes! Wy Wills -

Rep. Dana Wright
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE MARCH 22, 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 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
429		
SB 237 TABLE?		✓
Postponed action		
SB316 Anderson Amend #1	✓	(4)
" " " #2	(5?)	✓
#3	(5)	✓
SB 316	✓	(unanimous)
SB333 McGee Amend	✓	
" Concur AM	✓	
SB 143 (BAER)		(6)
SB 90 Reconsider?		✓(5)

SENATE BILL/AMENDMENT	AYE	NO
SB 90	✓	✓

Amd Adl Amendments

Rep. Linda H. McCulloch
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE Mar 22

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

Vote me C the Chairman

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*

Rep. Rep. Liz Smith
(Signature)

HR:1993
WP/PROXY

EXHIBIT 1
DATE 3/22/95
SB 292

Amendments to House Bill No. 292
Third Reading Copy

Requested by Representative Wyatt
For the House Judiciary Committee

Prepared by Eddye McClure
March 20, 1995

1. Title, line 10.
Strike: "WOMAN'S RIGHT-TO-KNOW"
Insert: "PERSON'S REQUIREMENT-TO-KNOW"

2. Title, line 11.
Strike: "ABORTION"
Insert: "SURGERY"

3. Title, line 13.
Strike: "AMENDING" through "MCA;"

4. Page 1, lines 18 and 19.
Strike: "Woman's Right-to-Know"
Insert: "Person's Requirement-to-Know"

5. Page 1, lines 22, 23, 25, and 27.
Page 2, lines 9, 10, and 13.
Strike: "woman"
Insert: "person"

6. Page 1, lines 22 and 23, 24, and 27.
Page 2, lines 2, 9, 10, 12, and 13.
Strike: "an abortion"
Insert: "surgery"

7. Page 1, line 24.
Strike: "woman's"
Insert: "person's"

8. Page 1, line 26.
Strike: "giving" through "abortion"
Insert: "having surgery and not having surgery

9. Page 1, line 28.
Page 2, line 4, 6, 7, and 11.
Strike: "abortion"
Insert: "surgical"

10. Page 1, line 30.
Strike: "abort"
Insert: "have surgery"

11. Page 2, line 12.
Following: "protect"
Strike: "unborn children from a woman's"

Insert: "a person from the person's"

12. Page 2, line 19.
Strike: "pregnant woman"
Insert: "person"

13. Page 2, line 20.
Strike: "abortion" through "pregnancy"
Insert: "performance of surgery"
Following: "avert the"
Strike: "woman's"
Insert: "person's"

14. Page 2, lines 23 through 25.
Strike: subsections (3) and (4) in their entirety

15. Page 2, lines 29 and 30.
Strike: "women"
Insert: "persons"
Following: "assist a"
Strike: remainder of line 29 through "dependent" on line 30
Insert: "person through surgery"
Following: "must"
Strike: ":"

16. Page 3, lines 1 and 2.
Strike: "(a)" on line 1 through "(b)" on line 2

17. Page 3, lines 3 through 5.
Following: "agencies" on line 3
Strike: remainder of line 3 through "child" on line 5

18. Page 3, line 11, 12, 13, and 30.
Strike: "woman"
Insert: "person"

19. Page 3, line 11, 12, and 30.
Strike: "an abortion"
Insert: "surgery"

20. Page 3, line 12.
Strike: "woman's"
Insert: "person's"

21. Page 3, lines 13 and 14.
Strike: "; and" on line 13 through "neonatal care" on line 14

22. Page 3, line 15.
Following: first "the"
Strike: "pregnant woman"
Insert: "person"

23. Page 3, line 16.
Strike: "characteristics of the unborn child at 2-week gestational increments from fertilization to full term"

Insert: "changes caused by the surgery"

24. Page 3, line 17.
Following: "the"
Strike: remainder of line 17 through "increments"
Insert: "organs, muscle, or tissue involved"

25. Page 3, line 18.
Strike: "contain" through "must"

26. Page 3, lines 19 and 20.
Following: "of" on line 19
Strike: "the unborn child's"
Following: "survival"
Strike: remainder of line 19 through "depicted" on line 20

27. Page 3, line 21.
Following: "about the"
Strike: "unborn child at the various gestational ages"
Insert: "surgery"

28. Page 3, line 22.
Strike: "methods of abortion"
Insert: "surgical"

29. Page 3, line 23.
Following: "effects of"
Strike: "abortion"
Insert: "the surgery"

30. Page 3, line 24.
Following: "with"
Strike: "carrying a child to term"
Insert: "the surgery"

31. Page 3, line 30.
Strike: "abortion"
Insert: "surgery"

32. Page 4, line 1
Strike: "an abortion"
Insert: "surgery"
Strike: "woman's"
Insert: "person's"

33. Page 4, line 6.
Strike: "this chapter"
Insert: "[sections 1 through 8]"

34. Page 4, lines 8, 10, 12, 15, 17, 19, 22, and 24.
Strike: "women"
Insert: "persons"

35. Page 4, lines 8 and 9.
Strike: "described" on line 8 through "50-20-104(5)(a)" on line 9

36. Page 4, line 16.
Strike: "described" through "50-20-104(5)(b)"

37. Page 4, line 14, 21, and 29.
Strike: "abortion"
Insert: "surgery"

38. Page 4, line 27.
Strike: "obtained an abortion"
Insert: "underwent surgery"

39. Page 4, line 28.
Strike: "abortions"
Insert: "surgeries"

40. Page 4, line 30.
Strike: "an"
Strike: "abortion"
Insert: "surgery"
Strike: "woman's"
Insert: "person's"

41. Page 5, line 10.
Following: "more"
Strike: "women in accordance with 50-20-106"
Insert: "persons"

42. Page 5, lines 21 and 22.
Following: "information" on line 21
Strike: remainder of line 21 through "50-20-106" on line 22

43. Page 5, line 29.
Following: "performs"
Strike: "an abortion"
Insert: "surgery"

44. Page 5, line 30.
Strike: "this chapter"
Insert: "[sections 1 through 8]"
Strike: ":"

45. Page 6, lines 1 through 3.
Strike: "(a)"
Strike: ";" on line 1 through "abortion" on line 3

46. Page 6, lines 1, 5, 17, 18, 23, and 25.
Strike: "woman"
Insert: "person"

47. Page 6, line 1, 4, 5, 18, and 25.
Strike: "an abortion"
Insert: "surgery"

48. Page 6, line 4.
Strike: "this chapter"

Insert: "[sections 1 though 8]"

49. Page 6, line 13.
Strike: "An abortion"
Insert: "Surgery"
Strike: "abortion"
Insert: "surgery"

50. Page 6, lines 19, 22, 24.
Strike: "woman's"
Insert: "person's"

51. Page 6, line 28 through page 9, line 30.
Strike: sections 9 through 13 in their entirety
Renumber: subsequent sections

52. Page 10, lines 6 through 8.
Strike: section 15 in its entirety
Renumber: subsequent section

EXHIBIT 2
DATE 3/22/95
SB 292

Amendments to Senate Bill No. 292
Third Reading Copy

Requested by Rep. Kottel
For the Committee on the Judiciary

Prepared by John MacMaster
March 20, 1995

1. Title, line 11.
Strike: "PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF"
Insert: "REQUIRING A PHYSICIAN TO GIVE A WOMAN"

2. Page 2, line 27.
Strike: "**Publication of materials**"
Insert: "**Provision of information by physician**"
Strike: "The department"
Insert: "A physician from whom a woman seeks an abortion or with whom a woman discusses an abortion"

3. Page 2, lines 27 and 28.
Strike: "publish" on line 27 through "indexed and" on line 28
Insert: "give the woman information"

4. Page 2, line 29.
Strike: "women"
Insert: "the woman"

5. Page 2, line 30.
Strike: "materials"
Insert: "information"

6. Page 3, line 6.
Strike: "department"
Insert: "physician"
Strike: "materials described in this section are"
Insert: "information given is"

7. Page 3, line 7.
Strike: "do"
Insert: "does"

8. Page 3, lines 7 through 27.
Strike: "The" on line 7 through "hospital." on line 27

9. Page 4, lines 24 and 25.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

10. Page 4, line 26.
Strike: "through (1)(c)"
Insert: "and (1)(b)"

11. Page 5, line 30.

Strike: ":"

12. Page 6, line 1.
Strike: "(a)"
Following: "performed"
Strike: ";"
Insert: "or, if the woman is under 18 years of age or is physically or mentally incapacitated for purposes of being able to decide whether to bring and pursue an action, then, on the woman's behalf, by either:"

13. Page 6, line 2.
Strike: "(b)"
Insert: "(a)"

14. Page 6, line 3.
Strike: "(c)"
Insert: "(b)"

15. Page 6, lines 28 and 29.
Strike: "**of intervention**" on line 28 through "Procedure, a" on line 29
Insert: "**to file friend of the court brief.** A"

16. Page 6, line 29.
Strike: "intervene"
Insert: "file a friend of the court brief in the lower court and on any appeal"

17. Page 7, line 28.
Following: "care;"
Insert: "and"

18. Page 7, line 30 through line 4 of page 8.
Strike: "; and" on line 30 of page 7 through "abortion" on line 4 of page 8

19. Page 8, line 19.
Strike: "If" through "the materials"
Insert: "The information described in [section 4]"

20. Page 8, line 20.
Strike: "her"
Insert: "the woman"

21. Page 9, lines 1 through 3.
Strike: subsection (5) in its entirety
Renumber: subsequent subsections

22. Page 9, line 10.
Strike: "(7)"
Insert: "(6)"

23. Page 9, line 20.
Strike: "(a)"

24. Page 9, lines 22 through 26.
Strike: subsection (b) in its entirety

EXHIBIT 3
DATE 3/22/95
SB 61

Amendments to Senate Bill No. 61
Third Reading Copy

Requested by Rep. Tash
For the Committee on the Judiciary

Prepared by John MacMaster
March 17, 1995

1. Title, line 5.
Strike: "OR CONVICTED OF"

2. Title, line 6.
Following: "VIOLATIONS,"
Insert: "OR A PERSON CONFINED UNDER A COURT ORDER"

3. Page 2, line 12.
Strike: "OR TO CONTINUE TO CONFINE"

4. Page 2, line 13.
Strike: "or convicted of"

5. Page 2, line 14.
Strike: "OR CONVICTED OF"

6. Page 2, line 15.
Following: "61-8-406"
Insert: "or confined under a court order"

7. Page 2, line 16.
Insert: "(3) A detention center administrator may request a committing or sentencing judge to release a person charged with or convicted of a misdemeanor."

EXHIBIT 4
DATE 3/22/95
SB 13

SB 13 AMENDMENTS

PREPARED BY JACQUELINE LENMARK
FOR THE AMERICAN INSURANCE ASSOCIATION

Amend SB 13, third reading, second printing as follows:

1. Page 1, lines 10 and 11.
   Following: "VIOLATION;"
   Strike: "PROHIBITING" on line 10 through "PAY" on line 11.

2. Page 1, line 12.
   Following: "~~SECTION~~"
   Strike: "SECTIONS 33-16-201 AND"
   Insert: "SECTION"

3. Page 2, line 5 through line 8
   Following: "restitution." on line 5
   Strike: remainder of line 5 through line 8 in their entirety.

4. Page 2, line 17 through page 3, line 23
   Strike: section 2 in its entirety.

EXHIBIT 5
DATE 3/22/95
SB 333

Amendments to Senate Bill No. 333
Third Reading Copy

Requested by Representative McGee
For the House Judiciary Committee

Prepared by Brenda Nordlund, Department of Justice
March 22, 1995

1. Title, lines 7 and 9
Following: "INFLUENCE"
Insert: "OR EXCESSIVE ALCOHOL CONCENTRATION"

2. Title, line 8
Following: "TREATMENT;"
Insert: "REQUIRING ONE YEAR OF TREATMENT FOLLOWUP FOR A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL CONCENTRATION;"

3. Title, line 12
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "61-8-714"
Insert: "and 61-8-722"

4. Page 4, line 10.
Following: "counsellors."
Insert: "The treatment program shall include followup procedures determined necessary by the counsellor for a period of at least one year from the date of admission to the program. A court may not order a defendant to attend or participate in any self-help program except for one specifically recommended by the approved program providing services to the defendant under this subsection."

5. Page 5, line 8.
Insert: "NEW SECTION. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both~~, if considered necessary by the counselor conducting the program~~, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility.

The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."