

MONTANA LEGISLATIVE HISTORY

Chapter 513 19 73

Bill H _____ S 109 Original bill & history C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 19 C

Hearing Date(s) Jan 24 C

Mar 06

Feb 26 C

Mar 07

Mar 01 C

Mar 08

Mar 05 C

Mar 09

Date Out Mar 10 C

Jan 24 C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Joint Conference Committee

Mar 19

SENATE JUDICIARY COMMITTEE---January 24, 1973

The committee was called to order by Chairman, Luke McKeon. All members were present. The only bill discussed was SB 109. Proponents who spoke were:

- (1) Prof. Larry Elison, UM Law School
- (2) Judge Castles
- (3) Prof. Crowley, UM Law School
- (4) John Frankino, Catholic Conference--Mr. Frankino also suggested some minor amendments which are attached to the record.
- (5) Conrad B. Fredericks, Attorney, Big Timber
- (6) Larry Stimatz, Attorney, Butte
- (7) Jack Lynch, Montana Catholic Conference, Great Falls
- (8) Roderick Gudgel, Mont. Pharmaceutical Assoc.

The above men spoke with reference to and explained the Revised Proposed Montana Criminal Code of 1973.

Senator Gilfeather moved that SB 109 do pass; Senator Hall Seconded; and the committee unanimously voted that SB 109 DO PASS.

The Chairman read two letters into the minutes: Robert J. Brooks and Chester L. Jones--both are attached to the minutes.

Attachments


Senator Luke McKeon, Chairman

Robert J. Brooks

Attorney At Law

COUNTY ATTORNEY
Powder River County
Telephone 436-2365

January 22, 1973

Box 345
BROADUS, MONTANA
59317

Senator Luke McKeon
Chairman
State Judiciary Committee
Capitol
Helena, Montana 59601

Dear Senator McKeon,

Thank you for inviting me to the hearing on Senate Bill # 109. I appreciate the courtesy, and only wish my schedule allowed attendance.

There are a few weaknesses in the bill as written, although on a whole the criminal code is an improvement over our present code.

The bad check law (94-6-309) has some serious problems, for example, what if (as is often the case) the offender refuses to take written notice of a bad check from the mail? There should be included a presumption that refusal to accept the five day notice is the same as acceptance.

The negligent homicide Section (94-5-104) does not adequately solve the problem of motor vehicle homicide. What kind of negligent act in driving a car would be homicide? The commissioners comment seems to try to solve this problem, but not satisfactorily. I would suggest a separate, clear statute dealing with motor vehicle homicide such as California has. This would take a great burden off the County Attorney.

Very truly yours,

Robert J. Brooks
Robert J. Brooks

RJB:ek

CHESTER L. JONES
COUNTY ATTORNEY

OFFICE OF THE
COUNTY ATTORNEY
MADISON COUNTY
VIRGINIA CITY, MONTANA 59755

TELEPHONE
843-5413
AREA CODE 406

January 22, 1973

Honorable Luke McKeon
Montana State Senate
Helena, Montana

File: State Legislation '73

Dear Senator McKeon:

I want to take this opportunity to commend the presentation under Senate Bill No. 109 of the new Montana Criminal Code.

I have read the document in some detail with particular attention to those offenses most frequent in my jurisdiction.

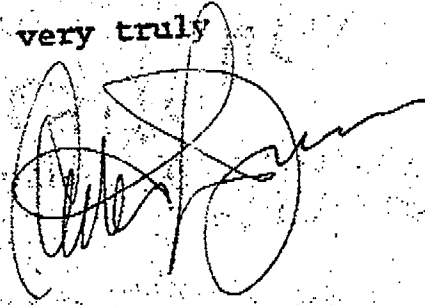
I feel that the code as a whole represents a solid advance in the criminal law process and will assist efficient administration of law enforcement throughout the state.

As with all codifications, any one individual may find certain weaknesses in the terminology or concepts but these are so far outweighed by the benefits in this bill that I believe the criminal code should be adopted by our Legislature.

Yours very truly

CLJ:ee

cc: Senator Frank Hazelbaker



1973 BY THE MONTANA CATHOLIC CONFERENCE

* * *

After a special subcommittee of the Montana Catholic Conference undertook a thorough study of the Revised Proposed Montana Criminal Code of 1973 and made its findings known to the Board of Directors of Montana Catholic Conference, the Montana Catholic Conference submits the following criticisms and recommendations with respect to the Proposed Code:

I.

Pages 10-11, lines 25 and 26 (General Definitions) reads:

"(22) 'Human Being' means a person who has been born and is alive."

CRITICISM: Nowhere else in statutory law is the term "human being" defined. This particular definition is outdated and unnecessary.

a) It is exactly the same definition which is found in ancient Roman law: "persona est natus et vivus" - which was based on biology which has long since been superseded. In the last 15 to 20 years, courts have broadened their understanding of "human being" before the law, basing their conclusions upon developments in genetics and modern biology.

b) Should the criminal law contain this definition of "human being" there is reason to believe that our courts would use this definition as a precedent in other areas of the law, and it must be conceded that this dated definition being used in other contexts would be undesirable.

RECOMMENDATION: Delete the definition of "human being" pages 10-11, lines 25 and 26. In order to avoid any possible ambiguity in the criminal homicide section on page 40, substitute in lieu of the words "human being" at line 7, the following language:

". . . person who has been born and is alive . . . "

III.

Pages 7 through 20, Section 94-2-101, (General Definitions) (Entire Section)

CRITICISM: As the definition section now stands, it is nearly impossible to find where the words or phrases defined therein are used in the substantive part of the Code.

RECOMMENDATION: Add a comment to the section stating where each of the particular definitions are used, and cross-reference each offense to section 94-2-101.

IV.

Page 46, line 24 to Page 47, line 3 (Indecent Exposure) reads:

"(1) A person, who for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure."

CRITICISM: R.C.M. 1947 Sec. 94-3603(1) provides as follows:

"Every person who wilfully and lewdly either:
1. Exposes his person, or the private parts thereof, in any public place or in any place where there are other persons present to be offended or annoyed thereby;
... is guilty of a misdemeanor."

The proposed section changes the present law by adding the following specific intent:

"For the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse."

It is believed that it would be more desirable to retain the traditional language and intent so that the offense is based more on its effect on the public than upon the subjective intent of the actor. In addition, the proposed section is limited to only exposure of the genitals.

RECOMMENDATIONS: In lieu of the language contained in paragraph (1) of the section, the following language should be substituted:

"A person who exposes his sexual or other intimate parts under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure."

V.

Page 57, lines 17 to 20 (Negligent Arson) reads:

"If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the State prison for any term not to exceed 10 years."

CRITICISM: Since the mental state required is negligence, a felony penalty should not be attached.

RECOMMENDATION: Delete the last sentence of the section beginning on line 17, page 57.

VI.

Page 93, Sec. 94-7-502, Desecration of Flag (Penalty).

CRITICISM: The penalty (lines 16 through 18, page 94) is one of not to exceed 10 years in the State Prison. This penalty is too inflated for the type of social conduct involved.

RECOMMENDATION: Reduce the penalty to the original Proposal of "fined not to exceed \$100.00 or be imprisoned in the County Jail for a term not to exceed 10 days, or both."

Page 113, Section 95-719. Stop and Frisk. (Entire Section).

CRITICISM: Aside from the fact that this kind of a police procedure is not needed in Montana, there is a possibility that it will give the authorities license to harrass minorities and unpopular groups. In addition, there is some question as to its constitutional validity.

RECOMMENDATION: Delete this section.

IX.

Page 116, lines 17 through 13 (Sentence of Imprisonment for Persistent Felony Offender) reads:

"(2) A persistent felony offender shall be imprisoned in the State prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this State or any other jurisdiction for which a sentence of a term of imprisonment in excess of one year could have been imposed;"

CRITICISM: This is inconsistent with the proposed Section 94-1-105 wherein it is stated in the comment that "this section makes it clear that the actual sentence imposed upon conviction determines the classification of the offense." Thus, a person who has been previously given a one-day sentence on a potential felony, commits another felony on a different occasion, is subject to a sentence of not less than five (5) nor more than one hundred (100) years in the State prison.

In addition, the mandatory minimum removes the discretion which a sentencing Judge otherwise has on all the offenses contained in the Criminal Code.

RECOMMENDATION: Paragraph (2) on page 116 be amended as follows:

"(2) a persistent felony offender shall be imprisoned in the State prison for a term not to exceed one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this State or any other jurisdiction for

J U D I C I A R Y

Senate Committee

Date 1/24 5 BILL No. 109

Time 4:30

	Y	N
Mckeon	✓	
Gilfeather	✓	
Boylan	✓	
Hall	✓	
Zody	✓	
Drake	✓	
Harrison	✓	
Moore	✓	
Turnage	✓	

M. D. Rice
Mary Lane Rice, Secretary

Senator Mckeon, Chairman

Motion: Do Pass

February 19, 1973

JUDICIARY COMMITTEE

The thirty fifth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, February 19, 1973 at 7:30 p.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Marbut, absent, excused.

SENATE BILL 109 Chairman Hall opened the meeting stating the committee has as bill for consideration Senate Bill 109 and that notice was also given on House Bill 38 which will be deferred until discussion on Senate Bill 109. HB 38 is Representative Brand's proposal on habitual offender code and action previously deferred on this because thought would incorporate HB 38 into Senate Bill 109.

Senator Jean A. Turnage, District #17, chief sponsor, summarized this bill stating it is the product of ten years of study of the Criminal Law Commission which was created by legislature in 1963. Had hoped it would not be necessary to amend bill but feels there is one amendment which will be necessary in relation to abortion section. Had prepared statement of amendments which was given to each committee member.

Proponent Judge Wesley W. Castles stated commission members were appointed in 1963 following creation of commission. Commission consisted of one supreme court judge, three district judges and seven lawyers. Judge Castles explained the procedure followed by the commission in writing the criminal codes which by 1967 had drafted a criminal procedure act which with two or three minor amendments in 1969 has served well. Commission then turned to substantive part. This proposed in 1970 and green book printed and circulated to judges and lawyers throughout Montana. In December, 1970, decided not to submit to 1971 legislative session and to wait until this session. Senator Turnage had some strong criticism and offered changes to the commission which he feels have not been worked out. Went through green book and explained it and stated few corrections and changes in Senate Bill 109 from the green book. Assume legislature will pass this and the governor will sign it. Assume effective date of January 1, 1974 following which the Supreme Court intends to carry on seminars with the bench, bar and judges as the commission would then be dead.

Proponent Professor Larry Ellison, University of Montana Law School, explained the structure of the criminal code and stated the commission has attempted to make it workable and useful in structured way.

Page 2 (2/19/73 P.M. meeting)

Proponent Professor Crowley of University of Montana Law School stated the commission tossed out old language which is well over one hundred years old and have attempted to make broad general definitions of conduct rather than nit picking. Codes of a number of states have been drawn from, particularly state of Illinois codes.

Proponent Judge Wesley Castles stated that Senate Bill 109 is split into thirty three sections and proceeded to explain each section. He then introduced Mr. Terry Cosgrove, a law clerk, who has worked for criminal law commission and is thoroughly familiar with the bill and suggested Mr. Cosgrove be asked to help in writing amendatory language to be sure it is the same as the term definition.

Fred A. Johnston, Great Falls attorney, proposed some amendments and stated he does not oppose legislation. Feels members of commission have done a tremendous job and wants only to change a very small area of law dealing with trespassing. Stated proposed code assumes consent and puts burden to stay off to owner to post notice and patrol land. Prefers law be that whoever wishes to use land of another solicit consent. Discussed effect of "things" upon land of another. Suggested on page 58, line 23 amend after the word "who" by inserting the new material "on foot".

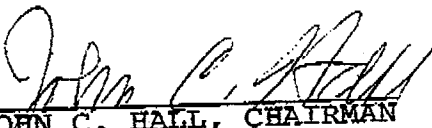
Chairman Hall then stated that questions committee might ask tonight might well be answered by reading the bill but will not rule out any questions. Chairman Hall stated the committee would again take up the bill for discussion among committee members to include questions to proponents of bill on Monday evening, February 26, 1973.

Representative Towe had several questions regarding how the commission arrived at statute for desecration of flags, section relating to sale of contraceptives and the obscenity section in which he feels there are substantial problems. Representative Hall questioned whether we have made it impossible to have criminal provisions with the new constitution.

Prepared statement was presented by Mr. Terry Cosgrove.

All business being concluded, the meeting adjourned at 8:50 p.m.

JCH:pb


JOHN C. HALL, CHAIRMAN



MONTANA CRIMINAL LAW COMMISSION

M.S.U. LAW SCHOOL MISSOULA, MONTANA

January 12, 1973

CHAIRMAN

HON. WESLEY CASTLES
ASSOCIATE JUSTICE, SUPREME COURT
HELENA, MONTANA

SECRETARY

LOUIS FORSELL, ESQ.
ASSISTANT ATTORNEY GENERAL
HELENA, MONTANA

MEMBERS

HON. ROBERT J. NELSON
DISTRICT JUDGE
GREAT FALLS, MONTANA

HON. W. W. LESSLEY
DISTRICT JUDGE
BOZEMAN, MONTANA

HON. E. GARDNER BROWNLEE
DISTRICT JUDGE
HAMILTON, MONTANA

RUSSELL K. FILLNER, ESQ.
COUNTY ATTORNEY
FORSYTH, MONTANA

WILLIAM F. CROWLEY, ESQ.
DEPUTY COUNTY ATTORNEY
HELENA, MONTANA

M. DEAN JELLISON, ESQ.
ATTORNEY AT LAW
KALISPELL, MONTANA

CHARLES F. MOSES, ESQ.
ATTORNEY AT LAW
BILLINGS, MONTANA

JOHN M. MCCARVEL, ESQ.
ATTORNEY AT LAW
GREAT FALLS, MONTANA

PROF. LARRY M. ELISON
SCHOOL OF LAW, M.S.U.
MISSOULA, MONTANA

PROF. EDWIN W. BRIGGS
SCHOOL OF LAW, M.S.U.
MISSOULA, MONTANA

Hon. Jean A. Turnage
Hon. Luke McKeon
Senators:
43rd Legislative Assembly
Helena, Montana

Dear Senators:

This letter accompanies a copy of the Revised Proposed Montana Criminal Code of 1973, with some additional information which might be helpful to you. The bill copy of the proposed code has some additional changes in it, which were not made at the time the proposed code was printed last spring. I have listed for you the additional changes that have been made.

1. Section 94-1-109 - Compelling Testimony: Immunity from Prosecution. This proposal has been placed in the criminal procedure proposal, and has been removed from Title 94, its new number is 95-1807.
2. There have been some changes made in section 94-2-101, the general definitions section:
 - a. subsection (1) Acts, has a somewhat different definition than in the bound green volume;
 - b. subsection (28) Knowingly, had a typo and line 116 on page 12 should be omitted;
 - c. subsection (62) Tamper, has an addition to it, at the end of the sentence a clause was inserted which reads: "or deposit refuse upon it".

3. Two new sections have been added which are not in the proposed code, they are 94-2-110, Substitutes for Negligence and Knowledge, and 94-2-111, Consent as a Defense. The present sections number 94-2-110 and 94-2-111 are kept but they have been renumbered 94-2-112 and 94-2-113, respectively.

4. Section 94-5-101 - Criminal Homicide has been changed to read as follows:

"(1) A person commits the offense of criminal homicide if he purposely, knowingly or negligently causes the death of another human being.

"(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide."

Page 2

Joint Conference Committee Report to Senate Bill No. 109 (cont'd)

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the fifth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the sixth full paragraph,

And that as so amended Senate Bill No. 109 be concurred in.

NAME David A. Johnston BILL No. 109
 ADDRESS Box 13028 DATE 2/19/1973
Great Falls, MT. 59403
 WHOM DO YOU REPRESENT? Self

SUPPORT? _____ OPPOSE? _____ AMEND? X

Sec. 94-6-201

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

*add on line 23, page 58, after
 "a person who" the words "and fact"*

February 26, 1973

JUDICIARY COMMITTEE

The forty first meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday evening, February 26, 1973 at 7:40 p.m. Representative Dan V. Yardley, vice-chairman, presided. All members were present except Representatives Hall, Greely and Warfield, absent, excused.


Acting Chairman Yardley opened the meeting stating that Representative Hall had set tonight as the second meeting on Senate Bill 109. This meeting was set primarily as opportunity for committee members to ask questions of witnesses who testified at previous hearing on Senate Bill 109 on Monday evening, February 19, 1973.

Robert J. Campbell, attorney in Missoula, and currently a public official for Constitutional Convention, testified in support of Senate Bill 109 and proposed several amendatory changes to the criminal codes (see attached exhibit of prepared statement). Following testimony of Mr. Campbell the meeting was opened to questions from the committee. Many questions were asked by committee members including questions regarding 94-5-503, section 3 on statutory rape; section on treason; death penalty, desecration of the flag; obscenity, 94-8-110; stop and frisk; vagrancy statute; prostitution; problem of extradition. It was pointed out that now, under new criminal codes, have sentence review board of three other judges in case judge got out of bed on wrong side and overshot his "maximum sentence" power.

Those present at meeting as witnesses and to answer questions included Judge Wesley W. Castles, County Attorney Thomas L. Dowling, Judge Meloy, Professor Larry Elison and Mr. Terry Cosgrove of the Criminal Code Commission, and William F. Crowley from the University of Montana, also a member of Criminal Law Commission.

All business being concluded the meeting adjourned at 8:50 p.m.

DVY:pb


DAN V. YARDLEY, VICE-CHAIRMAN

TESTIMONY ON REVISED PROPOSED MONTANA CRIMINAL CODE OF 1973SENATE BILL 109, BEFORE HOUSE JUDICIARY COMMITTEEJOHN C. HALL, CHAIRMANFebruary 26, 1973Helena, Montana 59601

My name is Robert J. Campbell, Attorney at Law, Missoula, Montana, a public official currently serving as an elected Constitutional Convention delegate assigned to the Bill of Rights Committee where 7 of my proposals were adopted in the new Constitution and will be effective July 1, 1973. I would like to discuss the impact of two of these sections of the new Bill of Rights Article II and these are Section 7 Freedom of Expression, and Section 10 the Right of Privacy.

I must first state that the Montana Criminal Law Commission should be congratulated for the thousands of ~~hours~~^{hours} expended to improve our criminal laws, they did propose a criminal code which does eliminate many of the unnecessary and objectionable statutes found under the present code adopted in 1895. It would indeed be a tragedy if the new criminal code is not adopted but I do have some suggestions as to how it can be improved in such a manner as to avoid future problems with the few remaining sections which, unless removed, will unnecessarily burden our courts that are already over crowded and congested with more important matters.

The Montana Criminal Law Commission did not have the benefit of writing its proposed code in view of the new Bill of Rights which becomes effective at the same date as this suggested criminal code and as a result there are several sections which are either unnecessary because of the current Federal law and United States Supreme Court Decisions or are unconstitutional under Sections 7 and 10 of Article II in the new Constitution.

The Senate was correct in passing the entire code as is to allow your committee to hold public hearings and make the necessary amendments for referral back to the Senate committee for final confirmation. It is altogether fitting and proper that they should do this since they have more than their share of difficult questions attempting to solve the problem of women. No male legislature in the past, present or future will ever solve that particular problem and I certainly appreciate the difficulty of their dilemma.

Montana by being part of the United States subjects our citizens to the federal criminal law imposed on all American citizens as a means of controlling antisocial behavior. Because of the adequate federal laws now in effect it is both unnecessary and unwise to include in the new Montana criminal law proposed sections, 94-7-502 and 94-7-501.

The first section 94-7-502 is patterned after the current federal law enacted only recently on July 5, 1968 for the proposed of controlling the dissenter who would publicly defile the United States Flag during the most destructive National Nominating conventions our nation has ever known. It may or may not have served its original purpose by imposing a one year prison sentence or a thousand dollar fine, but it still covers such acts of any person within ^{our} state, ^{the} criminal statute with the proposed ten year sentence would be unwise because of its exceptionally broad language making it selectively enforceable at the worst. If enforced to the letter of this law thousands of our otherwise abiding Montana citizens would be criminals for proudly displaying the Stars and Stripes on an unbelievable number of commercial items now not available. Nothing promotes disrespect for the law more than your passing criminal laws which are unnecessarily broad for selective enforcement against a few while many others are burdened with the knowledge that their actions are ~~considered~~ criminals.

A good Federal or State government doesn't need a criminal law to command respect for the flag and a bad government could not

and should not be supported. This was pointed out in a recent editorial in The Missoulian attached as exhibit "A" which also contains the statement of Missoula County Sheriff John Moe, former FBI agent, that he sees little need for the statute in the new proposed code since it is already covered by Federal law. Also a Montana Remain editorial pointing out some of the practical problems of such a statute if enforced literally.

The same is true of proposed section 94-7-501 concerning the crime of treason. It has been said by James Wilson who was a delegate to the Constitutional Convention in Philadelphia in 1787 that:

It is an old trick of tyrants wilfully to extend the definition of treason thereby gaining power over the people. The statutes of Edward the Third were at a point where the highest treason was to imagine the death of the king. What is loyalty on Monday might well be treason on Tuesday.

The Federal provisions in 18 USCA 2381 are more than adequate to cover the crime of which has the same definition with the penalty being not more than death nor less than 5 years in prison or a \$10,000.00 fine. Its provision of giving aid and comfort to the enemy in times of war is more than sufficient to apply to our Montana citizens and as a state we are not likely to declare war on any neighboring state or province. Short of a declaration of war by the state of North Dakota for our shameless perversion of Polack jokes, the state may rest secure. The proposed provision is unnecessary and the fact that the proposal contains the longest possible prison term of 100 years makes it even more objectionable.

Concerning statutes of doubtful constitutionality under the United States and the new Montana Constitution we have four that you should remove from the proposed code. No one has appeared to argue that prostitution is a major problem in Montana in spite of the fact there is presently no state statute making a prostitute a criminal. The only criminal statutes we have under the present code

make houses of "ill-fame" a crime and as we all know that such houses of "ill-fame" are now so famous that they are owned by some of the most respected people in the community. The proposed Section 94-5-602 by making the prostitute a criminal for the first time in Montana history is unwise, unnecessary and unconstitutional. The Right of Privacy in Section 10 requires the State to carry the burden of proving to a unanimous jury that there is a compelling state interest in invading the individual privacy to make a person a criminal. In light of the recent United States Supreme Court decision placing abortion within the right of privacy, what possible compelling state interest can you allege to be present in making criminal the private act of two consenting adults? The criminal law should stop where the bedroom begins and the inclusion of a new victimless crime in the state of Montana is the last thing we need.

Likewise this applies to proposed Sections 94-5-603 and 94-5-505.

Proposed Section 94-8-110 entitled "Obscenity" must be viewed in the light of the new Constitution's Section 7 "No law shall be passed impairing the freedom of speech or expression" and Section 10 the Right of Privacy, which places the burden upon the State to show a compelling state interest before invading individual privacy. The 1970 proposal was much preferable to the present 1973 proposal in that Section 1(a), (b), (c), (d) and (e) all include the words "anyone under the age of eighteen (18)" and if there is any argument as to why a statute like this should exist it is the argument that such material should be kept out of the hands of those less than the age of majority. The proposed 1973 code does not say why it omitted the original intent of protecting the youth and states an unconstitutional prohibition against any such material in the hands of any citizen.

On April 7, 1969, the United States Supreme Court in the case of Stanley vs. Georgia, 394 US 557, 89 S. Ct. 1243 (Exhibit B) held that the first Amendment to the United States Constitution, as made applicable to the States by the Fourteen Amendment, prohibits a State from making

mere possession of obscene material a crime. Again, our Section 10 Right of Privacy restates that and expressly protects free expression and the statute as proposed is clearly unconstitutional both under the United States Supreme Court interpretation of the First Amendment and under the new Montana Constitution Article II Section 7. To avoid the later Court challenges which undoubtedly will follow if this provision is adopted you should amend this Section to include "anyone under the age of eighteen (18)" as originally proposed by the Commission or face an inevitable Court suit which will invalidate the entire Section and present no protection for those under the age of 18 at all. The Section as proposed is unrealistic and as men and women who are sworn to uphold the Constitution of the United States as interpreted by the United States Supreme Court it is your duty to follow the law of the land. You must not pick and choose which laws You wish to follow any more than you tolerate others choosing which laws they should follow whether it be in opposition to a past war or disagreeing on an abortion decision.

I would like to comment on two of the proposed amendments to the Code of Criminal Procedure enacted in 1967. First the proposed Section 95-719 entitled "Stop and Frisk" is an unwise codification of the authority of the officer which already exists by case law. The great danger in cementing the present procedures into a statute is that it prohibits development of reasonable procedures which are unforeseen at this time. The placing of any time limit on an officer in stopping an individual under this Section presents more problems than it solves. You are raising the additional technical problems that the defense attorney will raise concerning the question of whether or not the arrest was made 31 minutes after the original stop or 29. What about the situation in which there are multiple people stopped at close intervals of time? Does the first time period begin with the first stop or does each additional defendant give the officer an additional 30 minutes in which to make a decision whether or not to arrest? Would you require an officer to carry a stop watch to insure that he

comes within your statute? I have yet to see a widespread need for such a provision and being unnecessary should not be adopted since it could be too easily abused if not confined within the narrow limits for which it is intended.

The final provision I would like to comment on is the proposed Section 95-206.1, the Death Penalty, which was inadvertently left out of the 1967 Code of Criminal Procedure and which in effect meant that Montana has not had the death penalty for the last 6 years.

The death penalty side issue in the election of June 6, 1972 was a question of whether or not to abolish the death penalty in the new Constitution or not to mention it at all. Since that vote not to abolish it in the new Constitution, the United States Supreme Court has abolished the death penalty as being cruel and unusual punishment. There is no doubt in my mind that this proposed section as written will never be enforced in this state and the present state of the law as it now stands with no death penalty should be continued.

SUMMARY

The entire Code is an improvement over the present Code and the Commission worked hard to suggest a significant improvement over the present archaic statutes which no longer apply to modern life.

Our past criminal law experience in this state and nation has proven to be a failure in those areas in which it has tried to control moral behavior by trying to force people to fit the laws. It is your duty as elected representatives to make the difficult decisions opposed by the vocal minority and to, for the first time in our state enact the criminal laws to fit the people.

You must not be intimidated by the minority who did not elect you and may express their opinions only on isolate issues which evoke an emotional response. The majority of Montana citizens want a progressive realistic criminal code which they can respect and which respects them.

You must enact laws which will be applied equally to all the people of our state and nothing promotes more disrespect for the law than your passage of criminal laws to be selectively enforced against

those who may not be in favor with those in power. Do not enact
a law that you do not want to apply to everyone^{and} using this guide
you will achieve the final goal set forth in the introduction of
this proposed Code and that is "to formulate a code of criminal
law that would be an effective instrument of social control."

Thank you, Mr. Chairman,

Bob Campbell

5. Section 94-5-611 - Intimidation, has been moved from the chapter on Offense Against the Family, and has been placed in the Assault section and numbered 94-5-203, there has been no change in any of the language of the section.

6. On page 63, in the section - Criminal Trespass to Vehicles, that section is numbered 94-6-202, not 94-6-602, as it is in the green volume.

7. Section 94-8-110--Obscenity, in subsection (2) line 4, the word "community" and the phrase "with respect to minors" are omitted. In subsection (3)(a) line 29, the words "of minors" should be changed to read "of recipients". Subsection (3)(c) line 32, the words "in the state", should be omitted.

8. On page 121 of the green volume, the section ---The Burden In a Homicide Trial, is numbered 95-3004, rather than the 94-7221 which it was numbered in the book.

Respectfully,

Terry Cosgrove

TC:jw

AMENDMENTS TO THE PROPOSED CRIMINAL CODE

Senate Bill 109

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

94-2-109 RESPONSIBILITY.

This is in section 1 of the bill on page 27, the section will be amended on line 6, by substituting the word "eighteenth" for the word "sixteenth". The section would then read:

"No person is capable of committing any offense unless he had attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in Title 10, Chapter 6, R.C.M. 1947."

(The underlined material is the proposed change).

In section 29 of the bill, page 148, the renumbering section, that section will be amended by deleting all of line 16 and line 17 through the number 94-5-612.

Section 32 of the bill will be amended by adding to the bill on line 5 page 159, after the number 94-306, the following: 94-401 through 94-402.

This will take the present abortion section and repeal it.

* *****

In section 31, 95-2206.4, When No Felony Penalty Is Specified, on page 158, an amendment will be added to that section on page 159, line 1: the number five (5) which appears after the word exceed, will be changed to ten (10).

STANLEY v. GEORGIA.

557

Syllabus.

STANLEY v. GEORGIA.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 293. Argued January 14-15, 1969.—Decided April 7, 1969.

Under authority of a warrant to search appellant's home for evidence of his alleged bookmaking activities, officers found some films in his bedroom. The films were projected and deemed to be obscene. Appellant was arrested for their possession. He was thereafter indicted, tried, and convicted for "knowingly hav[ing] possession of . . . obscene matter" in violation of a Georgia law. The Georgia Supreme Court affirmed, holding it "not essential to an indictment charging one with possession of obscene matter that it be alleged that such possession was 'with intent to sell, expose or circulate the same.'" Appellant contends that the Georgia obscenity statute is unconstitutional insofar as it punishes mere private possession of obscene matter. Georgia, relying on *Roth v. United States*, 354 U. S. 476, argues the statute's validity on the ground that "obscenity is not within the area of constitutionally protected speech or press." *Id.*, at 485. *Held*: The First Amendment as made applicable to the States by the Fourteenth prohibits making mere private possession of obscene material a crime. Pp. 560-568.

(a) Neither *Roth*, *supra*, nor subsequent decisions of the Court were made in the context of a statute punishing mere private possession of obscene material, but involved governmental power to prohibit or regulate certain public actions respecting obscene matter. Pp. 560-564.

(b) The Constitution protects the right to receive information and ideas, regardless of their social worth, and to be generally free from governmental intrusions into one's privacy and control of one's thoughts. Pp. 564-566.

(c) The State may not prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct, *Roth*, *supra*, distinguished, or proscribe such possession on the ground that it is a necessary incident to a statutory scheme prohibiting distribution, see *Smith v. California*, 361 U. S. 147. Pp. 566-568.

224 Ga. 259, 161 S. E. 2d 309, reversed and remanded.

EXHIBIT "B"

4—The Missoulian, Wednesday, January 10, 1973

EXHIBIT "A"

EDITORIAL PAGE — Editorials, Letters, Opinion

Commanded by a Prison Term?

When a person is held in respect by others, the respect has to have been earned.

When a nation holds the respect of its citizens, that too has to have been earned. Certainly most Americans hold their nation in warm regard. Part of their love and respect for it stem from the freedoms the United States allows, including the freedom to point out faults on the nation's beloved visage.

If a man told his fellows, "You must respect me or I'll have you jailed," respect would die instantly. Respect and love cannot be fostered or enforced by threats and punishments.

Occasionally some twerp desecrates the nation's flag. Most citizens, who love and respect the flag as the symbol of the country they love and respect, are disgusted by a desecration.

The instinct to rush to protect the flag and inflict punishment upon the desecrator is natural. So Congress in 1968 enacted a law against "... publicly mutilating, defacing, defiling, burning, or trampling" the American flag. A desecrator would be fined up to \$1,000, imprisoned for up to a year, or both.

And in Montana the proposed new criminal code would have flag desecrators imprisoned for up to 10 years.

The federal law defines the flag as pictures or representations which "... the average person ... may believe to represent the flag. . . ." The proposed Montana law includes the state flag as well as the national, and bans placing or attaching "to the flag any word, mark, design, or advertisement not properly a part of such flag or (exposing) to

A federal court has held it wasn't a violation to wear a shirt which came within the statutory definition of a flag, nor was it a violation to wear flag buttons saying "Wallace for President, Stand Up for America," and "Vote Pig Yipple in Sixty-Eight."

The proposed Montana law clearly is aimed at persons who put peace or other symbols on the flag. Presumably the law would not be used to imprison persons who wore a button with a picture of Nixon, Wallace, Agnew, McGovern or other leading political superimposed on an American flag, though that too would seem to be in violation of the proposed law.

This proposed law, if it is enforced at all, will be enforced selectively against the minority which the majority regards as freaks and outcasts.

The 1968 federal law requires public act of mutilating, defacing, defiling, burning, or trampling. The proposed Montana law could nab culprits who in private did something to the flag. And "flag" under the Montana law would include, in addition to the national and state flags, the U.S. shield, the U.S. coat of arms, "or a copy, picture, or representation of any of them."

Such a Draconian state law is neither necessary nor wise. At a time when many courts are overburdened, it seems odd to make a law which would burden them further, with appeals to federal courts certain to follow. It seems un-American to aim a law at a specific element of society, as this proposed law does. It seems strange to enact a law which will create



"It was designed as a flag, buddy — not as a blindfold."

now exists. And it seems unwise to protect the Stars and Stripes from the antics of an occasional hothead. Respect for the flag is not created by or dependent upon punishments meted out by any government. Respect of country and its symbols is cheapened by threats, by the notion that true respect can be commanded by a prison term.

The Missoulian, Saturday, January 27, 1973-3

Sheriff Sees Little Need For State Flag Statute

Missoula County Sheriff John Aho has said Montana probably doesn't need the stiff flag desecration statute proposed in the 1973 Montana Criminal Code being the state legislature because of federal law. Federal law should adequately cover the crime, Aho said at a discussion at the University of Montana Thursday evening.

The proposed state code sets maximum penalty of 10 years for flag desecration. Existing state law sets a penalty for this crime at one year in the county jail or 90 days in the state prison.

Aho was asked if he saw object to the flag desecration provision being dropped from the proposed code.

"I think probably there's sufficient coverage under federal law," Aho replied. Aho was one of four panelists discussing the proposed code.

The panel discussion was held at the University of Montana on Jan. 24.

Montana Kaimin

The Code also demands due respect for the flag, which brings us to the related problem of flag decals on automobiles. What should be done when the President orders flags to be lowered, taking the window with an attached flag decal down would be one solution, but many decals are not attached to movable windows. In these cases, it might be best to let half of the air out of the vehicle's tires.

LAW OFFICES OF
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AREA CODE 406

February 24, 1973

Judiciary Committee,
House of Representatives
Attention Hon. John C. Hall, Chairman
Helena, Montana 59601

Gentlemen:

At the committee hearing on January 29, I suggested that Section 94-6-201 of the proposed Montana Criminal Code (at page 58 of SB 109) be amended to make a distinction between a person who enters upon land of another by walking and one who enters in a vehicle. Perhaps it can be assumed that landowners are willing to permit persons upon the land if they walk, but, as I indicated at the hearing, I do not believe that it can be assumed that landowners wish persons to enter in snowmobiles, trailcycles, 4-wheel drive vehicles or ATV's. I also believe that the section should be amended to make it clear that a peace officer has authority to request a person to leave land.

The section, with the suggested amendments, would read as follows:

94-6-201. Definitions.

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who on foot enters or remains upon land does so with privilege unless notice to leave or to keep out is personally communicated to him by an a peace officer or other authorized person, or unless such notice is given by posting in a conspicuous manner.

At the hearing Senator Turnage suggested an amendment to Section 94-6-201, a copy of which is attached. I do not believe that these provisions are necessary for the following

reasons:

(a) If a person hunts on the land of another, he violates Section 26-303.3 of the Fish and Game laws.

(b) If he injures, damages, or destroys property, he will violate Section 94-6-102 (dealing with criminal mischief) of the proposed code.

Sections 26-110.1 and 26-110.2 refer to Sections 94-3308 and 94-3309, which will be repealed by Senate Bill 109 and replaced by Sections 94-6-102 and 94-6-203. Accordingly, I recommend that the following Sections be added to SB 109:

Sec. _____. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

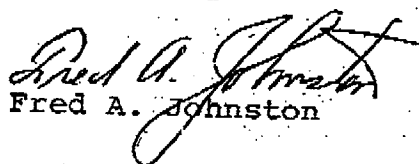
"26-110.1. Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Sec. _____. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947."

If the members of the committee would like any additional information, I would be glad to provide them with it.

Yours very truly,


Fred A. Johnston

AMENDMENTS TO THE PROPOSED CRIMINAL CODE

Senate Bill 109

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

March 1, 1973

JUDICIARY COMMITTEE

The forty fourth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Thursday, March 1, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Marbut, absent, excused and Representative McKittrick, absent, excused.

SENATE BILL 28 Amendments to bill as voted in by committee in executive session on Wednesday, February 28, 1973 were prepared in the form of a substitute bill and a copy provided to each committee member. Representative Lucas moved BE CONCURRED IN AS AMENDED. Representative Roberts seconded. Representative Lucas stated he felt the amendments were well prepared and was very satisfied with the substitute bill. The motion BE CONCURRED IN AS AMENDED carried with Representative Towe voting no.

SENATE BILL 109 Hearings were conducted on this new criminal code proposal on Monday, February 19, 1973 and again on Monday, February 26, 1973 with questions from the committee to proponents during the latter hearing. Chairman Hall inquired as to how the committee wished to proceed with this bill and stated his own feeling is that the bill should be acted on during this session. Chairman Hall stated he felt the criminal code commission had rather thoroughly worked on this bill and also that there will be areas in bill that need amending but that many won't be discovered until we live with this bill. Representative Lucas concurred with Representative Hall's opinion as did Representatives Towe and Bell also. Representative Greely stated he concurred with Representative Hall's opinion but will propose some amendments. Chairman Hall stated the committee will meet to act on this bill with due caution, circumspection and speed.

SENATE BILLS 80, 81 and 331 Chairman Hall inquired as to the pleasure of the committee regarding these no-fault insurance bills. Chairman Hall stated that Senator Luke McKeon, chairman, senate judiciary committee, expressed the opinion that it was the feeling of his committee that they wanted to defer action on these bills and the feeling was that they should take all the no-fault insurance bills and jointly work on them. Senate bills came over without any amendments. Representative Lucas moved that any senate bills on no-fault under consideration be postponed until 1974 session with work done jointly during the interim. Representative Yardley seconded. Discussion followed which pertained primarily to whether there were any understandings with the senate judiciary committee and whether to have joint judiciary committee meetings now on the no-fault bills. Representative Towe made a substitute motion to get together with the Senate Judiciary before passing the no-fault bills out of committee. Representative Brown seconded. Representative Yardley pointed out that the committee should attempt to follow the legislative time schedule and action on the no-fault bills now would make it almost impossible to follow the time schedule. Representative Towe's motion to have joint committee

Page 2 (minutes 3/1/73)

meetings now failed. Committee reverted to Representative Lucas' motion that bill BE HELD OVER. Motion carried with Representative Roberts voting no.

SENATE BILL 109 Committee reverted back to this bill. Discussion followed regarding proposed amendments by proponents of bill which testified at hearings. Chairman Hall pointed out that there was a renumbering error on page 150, line 7 following the numbers "23-4759" and should be amended by deleting the incorrect numbers "94-1460" and inserting in lieu thereof the numbers "23-4760".

Representative Greely proposed that bestiality and homosexuality as crime be eliminated. Representative Greely stated the criminal code commission was very much in favor of eliminating bestiality and homosexuality as crimes for various reasons but, in order to eliminate much dissension, and since the vote was close, put it in. Discussion followed among committee members regarding the death penalty, desecration of flag, homosexuality and bestiality. Representative Hall stated he felt the sense of proportion bothered him and that there were more important issues to be considered in this bill. Representative Towe disagreed. Motion to amend bill to eliminate bestiality and homosexuality failed with Representatives Baucus, Greely, Roberts, Towe and Warfield voting yes.

Representative Roberts then came back to meeting with Mr. Terry Cosgrove and explained the authority and ability to help write amendments of Mr. Cosgrove.

Representative Greely moved to amend by making assault of law enforcement officers as was in the old code which has been resolved from the new code. Stated this has in past proved an effective control. Representative Lucas seconded motion. Following discussion vote was taken and the motion carried with Representatives Roberts, Baucus, Towe and Yardley voting no.

Chairman Hall stated that without objection he would ask Mr. Cosgrove to prepare the amendatory language.

Chairman Hall then stated that of real concern to him is the definition of homicide as the new code has done away with second degree homicide. Discussion followed. Time wise the committee was then done for the day, though nothing actually resolved by action on this issue.

Meeting adjourned at 10:35 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

March 5, 1973

JUDICIARY COMMITTEE

The forty fifth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, March 5, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representatives Baucus and Lucas, absent, excused.

SENATE BILL 109 Mr. Terry Cosgrove was present at the request of the committee and provided prepared form for amendments acted upon in meeting of Thursday, March 1, 1973. Chairman Hall stated that before getting to details he feels the committee should figure out how it is going to proceed on this bill, whether crime by crime or section by section. Discussion ensued and the general feeling was that the committee would proceed section by section. Chairman Hall stated that the committee would take sections one at a time with no more than ten minutes per section except where have major section and he would then allow thirty minutes per section. If there is a serious problem with a section he will change this time allowance.

Representative Towe moved to adopt an amendment changing the age from sixteen to eighteen on page 27, line 4 as requested by Senator Gene Turnage. Representative Marbut seconded. Motion carried unanimously.

Representative Greely moved to amend on page 10, lines 3 and 4, page 12, lines 22 and 23 and on page 14, lines 6 and 7 by deleting section 94-2-101, subsection (15), (31) and (37) in their entirety and to renumber subsections accordingly and also change sequential sections on page 22, lines 15 through 17. Motion carried with Representatives Greely, Bell, McKittrick, Roberts and Hall voting yes. Representatives Marbut, Baeth and Brown voted no. Representatives Yardley, Towe and Warfield abstained.

Representative Hall moved to amend without objection on page 22, line 17 by deleting "942-2-101" and inserting in lieu thereof the material "94-2-101".

Chairman Hall also moved to amend without objection on page 22, line 19 after the words "if the" by deleting the word "statue" and inserting in lieu thereof the word "statute".

Time ran out for the committee and the meeting left off on discussion concerning the defendent still having the burden of proof and Chairman Hall asked the committee to think about it for now.

The meeting adjourned at 10:32 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

Proposed amendment to Senate Bill 109, The Proposed Criminal Code.

In section 1 of the bill on page 40 in the Aggravated Assault section, 94-5-202, that section will be amended by changing the period on line 22 after the word "weapon" to a semicolon and adding the word "or" and then adding a new subsection which will be number subsection (d) which would read as follows:

(d) Inflict bodily injury to a peace officer.

The entire section would then read as follows:

94-5-202. Aggravated Assault.

(1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

- (a) serious bodily injury to another; or
- (b) bodily injury to another with a weapon; or
- (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) inflict bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

The underline portion is the proposed change.

March 6, 1973

JUDICIARY COMMITTEE

The forty sixth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, March 5, 1973 at 9:00 a.m. Representative Dan V. Yardley, Vice-Chairman, presided. All members were present except Representatives Hall, Lucas, McKittrick and Warfield, absent excused and Representative Brown, absent. Mr. Terry Cosgrove and Mr. Larry Ellison were also present.

SENATE BILL 109 Mr. Terry Cosgrove pointed out there was still one other amendment to be made in definitional section which was proposed by the commission on page 18, section 2, line 15 after the words "by another person" by inserting the new material "for purpose of arousing or gratifying the sexual desire of either party". Representative Greely seconded. Motion carried to adopt amendment.

Chairman Yardley, without objection, moved to amend on page 18, line 11 after the word "vulva" by inserting the punctuation mark "," to correct clerical error. No objection. Motion carried.

Representative Greely moved to adopt the two pages of amendments as written and provided by Mr. Terry Cosgrove which were proposed and carried by committee in meeting of March 5, 1973. (see exhibit attached). Representative Marbut made a substitute motion to adopt all amendments except the one on page 2 concerning "intoxicating substances". Representative Marbut's motion carried unanimously.

Representative Marbut moved to amend by deleting references to the death penalty. Representative Towe seconded. Much discussion ensued. Representative Greely stated he opposed this amendment. Representative Yardley stated he voted against the death penalty and is opposed to it but will not vote for the amendment. Roll call vote was taken and the motion to delete the death penalty failed with Representatives Baucus, Marbut and Towe voting yes and Representatives Hall, Brown, Lucas, McKittrick and Warfield absent.

Representative Roberts moved to amend on page 39, line 4, subsection (1) (e) by deleting it in its entirety. Motion carried unanimously.

Representative Roberts moved to amend on page 39, subsection (2) (a) (b) and (c), lines 6 through 13 in their entirety. Motion failed with Representatives Bell and Roberts voting yes.

Representative Greely moved to amend on page 38, subsection (c), line 25 and carried over to page 39, line 1, by deleting this subsection in its entirety. Representative Towe seconded. Motion carried with Representatives Bell and Baeth voting no.

Page 2

(3/6/73 minutes)

Representative Greely moved to amend on page 38, line 19 (amendment proposed by Judge Castles in his letter, see exhibit) after the word "court" by deleting the word "may" and inserting in lieu thereof the word "shall". Discussion followed. Motion carried with Representatives Towe, Baucus, Hall and Marbut voting no.

Chairman Yardley moved without objection to amend on page 39, line 3 after the word and punctuation "duty;" by deleting the word "or". No objection. Motion carried.

Representative Towe moved to amend on page 39, subsection (d), lines 2 and 3 by deleting subsection (d) in its entirety. Motion failed with Representatives Towe, Bell and Marbut voting yes.

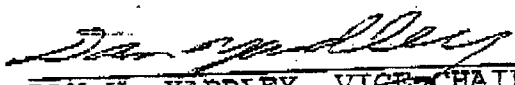
Representative Bell proposed that the whole committee consider the question of the death penalty as so many members are absent today. Stated the death penalty also involved on page 158.

Representative Bell moved to amend on page 43, subsection (1), line 20 after the word "court" by deleting the word "may" and inserting in lieu thereof the word "shall". Discussion followed. No action taken on proposed amendment.

Representative Hall questioned why change the death penalty to make it mandatory and then change it to be unmandatory. Proposed an amendment and requested Mr. Cosgrove and Mr. Ellison to draft two alternative proposals to Chairman Hall's proposed amendment.

Time ran out and the meeting adjourned at 10:35 a.m.

DVY:pb


DAN V. YARDLEY, VICE-CHAIRMAN

WESLEY CASTLES
ASSOCIATE JUSTICE

State of Montana
Supreme Court

HELENA
March 1, 1973

Hon. John Hall
Chairman House Judiciary Committee
43rd Legislative Assembly
Capitol Bldg.
Helena, Montana

Dear Representative Hall:

This letter is intended to inform you and your committee of the amendments proposed by the Criminal Law Commission to the Proposed Criminal Code, Senate Bill 109. The Commission has proposed these amendments in a somewhat piecemeal fashion, and some of the proposed amendments have been withdrawn. To clarify any confusion this might have caused, the Commission now proposes the following amendments:

1. Abortion: "In section 29 of the bill, page 148 the renumbering section, that section will be amended by deleting all of line 16 and line 17 through the number 94-5-612."

"Section 32 of the bill will be amended by adding to the bill on line 5 page 159 after the number 94-306, the following: 94-401 through 94-402."

Note: This proposed change will take the present abortion statute, 94-401, 94-402, from the transfer section and place that statute in the repealing section.

2. Responsibility. 94-2-109: This is in section 1 of the bill on page 27, the section will be amended on line 6, by substituting the word "eighteenth" for the word "sixteenth". The section would then read:

"No person is capable of committing any offense unless he had attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in Title 10, Chapter 6, R.C.M. 1947."

Note: This amendment would change the age in the Responsibility section from 16 years old to 18 years old.

3. Sexual Intercourse. 94-2-101(56): In Section 1 of the bill, page 18, line 15 after the word "person" insert the following language:

"for the purpose of arousing or gratifying the sexual desire of either party."

The final sentence of the bill will read as written

in the bill.

Note: This amendment will be added to the definition of sexual intercourse.

4. In section 1 of the bill, on page 38, the section 94-5-105, Sentence of Death for Deliberate Homicide, on line 19 after the word "court", change the present word "may" to "shall". Line 19 would then read as follows:

"deliberate homicide, the court shall impose the sentence of".

In section 1 of the bill, on page 43, section 94-5-304, Sentence of Death For Aggravated Kidnapping, on line 20 after the word "court", change the present word "may" to "shall", line 20 would then read:

"A Court shall impose the sentence of death".

In section 30 of the bill on page 158, the section 95-2206.1, Sentence to Death, on line 2 after the word "court", change the present word "may" to "shall". Line 2 would then read:

"death or imprisonment, the court shall sentence the offender".

Note:

These 3 amendments change the capital punishment sections of the proposed code, by substituting the word "shall" for the word "may" which is presently used.

5. *worked out* In section 31, 95-2206.4, When no Felony Penalty is Specified, on page 158, an amendment will be added to that section on page 159, line 1: the number five (5) which appears after the word exceed, will be changed to ten (10).

Note: This amendment is intended to keep the sentencing scheme in order by changing the five year sentence in this section to ten years.

These then are the only amendments proposed by the Criminal Law Commission to the Proposed Criminal Code. If you would have any questions of these amendments or want any further clarification, I would be happy to answer them.

Sincerely,

Wesley Castles
Wesley Castles

WC:fw

cc: Senators Turnage
and McKeon

AMENDMENTS TO SENATE BILL 109 PROPOSED ORIGINAL CODE

In section 1 of the bill, 94-2-101 (15) Felony, on page 10 of the bill, will be changed to read as follows:

Worked out

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one year.

Worked out

In section 1 of the bill, 94-2-101 (37) Offense, on page 14, will be changed to read as follows:

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

Worked out

In section 1 of the bill, 94-2-101 (31) "Misdemeanor", on page 12 of the bill, will be amended to read as follows:

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

Worked out

In section 1 of the bill 94-1-105 Classification Of Offenses, on page 4 of the bill, that section will be amended by deleting sections (1), (2) and (3) from the bill and changing sections (4) and (5) to sections (1) and (2) respectively.

In section 1 of the bill, 94-2-101 (25) Intoxicating Substance, on page 11 of the bill will be amended to read as follows:

Worked out

(25) "Intoxicating substance" means any substance having an hallucinagenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum of alcohol by volume.

(The underlined portion is the proposed change)

Worked out

In section 1 of the bill, 94-2-101 (47), Possession, on page 16 of the bill, that section will be amended as follows:

"(47) Possession is the knowing control of any thing for a sufficient time to be able to terminate control.

March 7, 1973

JUDICIARY COMMITTEE

The forty seventh meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Wednesday, March 7, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative McKittrick, absent, excused, for the first fifteen minutes of meeting.

Chairman Hall opened the meeting stating that hearing on House Bill 495 would be held on Thursday, March 8th and hearing on Senate Bill 376 was scheduled for Friday March 9th. The committee has the criminal code before them on this day and left off yesterday considering the death penalty provision. As the Chair understands, the committee had amended section to make the death penalty mandatory, had moved to amend a couple subsections and then committee felt motion should have been reconsidered when more committee members could be present. Representative Marbut, having made the motion yesterday, moved to reconsider to delete all references to the death penalty. Chairman Hall stated this motion open up all action taken yesterday. Representatives Yardley and Towe seconded. Motion carried with Representative Lucas voting no. Representative Lucas withdrew his no.

Chairman Hall stated that Senate Bill 109 with regard to the death penalty was not in same state as when came in from the senate. Professor Elison provided committee members with three alternatives for amendatory language regarding the death penalty provision as committee moved to amend in previous meeting. Representative Marbut requested that committee in considering alternatives look into "mental condition" provision and stated that if we can provide for mental condition why can't we refer to physical condition. Concept of diminished responsibility mentally as well as total irresponsibility. Much discussion among committee members regarding imposing the death penalty. Representatives Brown and Towe discussed the death penalty for prisoners only. Representative Roberts stated he supports Representative Marbut's opinion to delete the death penalty but politicals enter in and if send bill to floor without the death penalty they will surely put it in on the floor.

Representative Marbut moved that Senate Bill 109 be amended by deleting all reference to the death penalty. Motion failed with Representatives Baucus, Greely, Marbut and Towe voting yes.

Representative Towe moved to accept alternative #I with the deleting of subsection (b) and (c). He stated this leaves the death penalty that Representative Brown referred to. The Chair stated that it would divide the question. Motion to delete subsection (b) from alternative #I failed with Representatives Baucus, Brown, Greely, Marbut and Towe voting yes. Motion to delete subsection (c) in alternative #I failed with Representatives Yardley, Baucus, Brown, Greely, Marbut and Towe voting yes.

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(3/7/73 minutes)

Professor Elison explained that alternatives #I and III are identical in substance, the language is the only difference. Alternative II is the broadest kind of discretion in trying a case, broadest scope for not invoking death penalty.

Representative Baucus moved committee adopt alternative II. Representative Greely seconded. Representative Lucas questioned whether alternative could be redrafted to put mitigating circumstances in separately. Motion to accept alternative #II carried with Representatives Baeth, Bell, Brown, Greely, Lucas and Warfield voting no.

Representative Lucas moved to place back into death penalty code the proposed provision of code, subsection (e). Representative Bell seconded. Motion failed with Representatives Yardley, Bell, Lucas, McKittrick and Warfield voting yes.

Chairman Hall stated he felt the committee would want to adopt alternative II in section 94-5-304 pertaining to the death penalty in kidnapping since committee adopted alternative II in section 94-5-105. Representative Greely made substitute motion to delete the death penalty in aggravated kidnapping section. Motion failed with Representatives Baucus, Greely, Marbut, Roberts and Towe voting aye. With no objection alternative II for kidnapping will be treated the same as alternative II for the death penalty. No objection.

Chairman Hall thanked the committee for delaying action on the definition and amendatory language on "intoxicating substances" until he could be present. Committee will take this up now. Representative Greely moved to accept amendment on intoxicating substances under 94-2-100(25) as proposed and requested by Judge Castles in letter dated March 1, 1973. Motion to accept amendment carried unanimously.

Representative Greely moved to adopt amendment #5 proposed by Judge Castles in his letter of March 1, 1973 on felony penalty. Motion carried unanimously.

Chairman Hall stated he was opposed to placing upon the defendant the burden of proof, it is unfair and makes instructing the jury wild and almost impossible. All of the affirmative defense has the burden of proof. This is on page 23, subsection (6) of SB 109. Representative Towe moved that every place it requires "affirmative defense" including page 23, lines 23 to 25 the term "preponderance of evidence from defense" be deleted and suitable language be used. Representative Brown seconded. Representative Greely made a substitute motion to give the problem to Mr. Cosgrove and Professor Elison to work out on use of "preponderance of evidence, to draft amendatory language. Representative Lucas seconded. Motion to amend preponderance of evidence carried with Representatives Bell, Greely, Lucas, Marbut,

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(3/7/73 minutes)

Roberts and Warfield voting no. Professor Elison will prepare amendments. Representative Greely withdrew his substitute motion.

Time ran out and the committee adjourned at 10:35 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

Amendments to Senate Bill 109

worked out

1. In section 1 of the bill, 94-2-103, on page 23 of the bill, amend the section by deleting all of words after the word "defense" on line 24 and all of words on line 25. The subsection would then read:

"(6) Any defense based upon this section is an affirmative defense."

.....

worked out

2. In section 1 of the bill, 94-2-112, on page ²⁹~~28~~ of the bill, subsection (2) will be amended by deleting the following language, found on line 5 "by a preponderance of the evidence," from the section.

.....

worked out

3. In section 1 of the bill, 94-5-506, on page 47, subsection (1) will be amended by deleting the following from line 22 "by a preponderance of the evidence," from the bill.

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(3/8/73 minutes)

SENATE BILL 109 Chairman Hall opened discussion of this bill by listing requests of committee members on sections they wished to work on. The list was as follows:

- Representative Marbut - death penalty for premeditated murder.
- Representative Baucus - treason issue
- Representative Greely - eliminate "or suffers from serious bodily harm" from alternative II to amend section 94-5-304 on page 43.
- Representative Towe - 94-8-110, obscenity, page 105 in green book.
- Representative Roberts - death penalty to do with life imprisonment instead and to specify "life imprisonment".
- Representative Greely - Mr. Johnston's amendment on trespassing.
- Representative Baucus - acts between consenting adults.
- Representative Hall - habitual offenders.
 - Judge Castles' proposed amendment on abortion.

Chairman Hall then stated the committee had left off with amendment dealing with "preponderance of evidence" in previous meeting and Mr. Cosgrove presented a copy of his proposed amendatory language. Representative Greely moved to accept amendments as proposed on "preponderance of evidence". Representative Bell stated he was reluctant to take this rule out and what kind of rule will we have then. This, he feels, is step to make it more difficult to prove a case and who is guilty. The Chair ruled that this issue had been passed on already. The motion to accept proposed amendatory language on "preponderance of evidence" carried with Representatives Baeth, Bell and Roberts voting no, Representatives Lucas and McKittrick excused, and the remainder voting aye.

Representative Bell moved to amend on page 39, section 94-5-101 by adding subsection (d) the deliberate homicide was committed by ambush or after lying in wait. Representative Roberts opposed. The motion failed with Representatives Bell and Hall voting yes.

Representative Roberts moved to limit imposition of death penalty for deliberate murder for prisoner killing while in prison and already on life sentence. Representative Greely seconded. Following discussions during which it was stated this was covered on page 37, lines 21 through 24 on term sentencing Representative Roberts withdrew his motion.

Chairman Hall stated the next matter to consider was the section on treason, 94-7-501 on page 93. Representative Marbut moved to delete the entire section on treason and upon asking, found the commission included section on treason because of outside pressure. Representative Baucus seconded. Representative Bell stated this section doesn't do anything and for that reason doesn't hurt anything. Motion carried with Representative Bell voting no.

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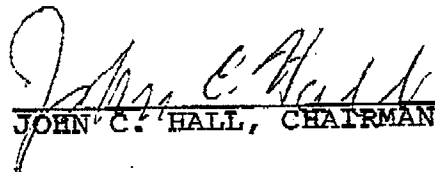
Representative Greely moved to amend the proposed alternative II for amendatory language on section 94-5-304, page 43, section I which was voted for acceptance in meeting of March 7, 1973 after the words "is dead" by deleting the material "or suffers from serious bodily harm". Representative Towe seconded. Motion carried with Representatives Baeth and Hall voting no.

Chairman Hall stated that obscenity, section 94-8-110 on page 104 in the bill would be considered next. Representative Towe moved to substitute the language of the first commission report in the yellow book. Representative Greely seconded. Motion carried with Representative Bell voting no and Representative Hall abstaining.

Representative Marbut moved that the question of final deposition of bill be postponed until Friday, March 9, 1973. Representative Greely moved substitute motion that those who can meet and work on amendments and try to dispose of matters on adjournment of the House today and then final vote on bill on Friday. Chairman Hall stated he would call a meeting this evening upon adjournment of the House for all who can come it if isn't too late when house adjourns, will act upon these separate sections and also called meeting for 8:00 a.m. on March 9, 1973.

All business being concluded, the meeting adjourned at 10:30 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

March 9, 1973

JUDICIARY COMMITTEE

The forty ninth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Friday, March 9, 1973 at 8:10 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Lucas, absent, excused.

SENATE BILL 109 Chairman Hall stated the committee would work again on this bill until 9:00 a.m. at which time hearing would be conducted on Senate Bill 376 scheduled for this morning.

Representative Towe moved to delete the section concerning desecration of the flag, 94-7-502 on pages 93 and 94. Representative Baucus seconded. Discussion followed with Representative Towe stating he did much research into cases involving desecration of the flag. Motion to amend carried with Representatives Yardley, Hall and Bell voting no. Chairman Hall stated he wished to go on record that he had never seen so much fussing about nothing.

Chairman Hall stated the committee would then take for consideration Mr. Johnson's amendment as proposed during testimony from witnesses regarding "Enter or Remain Unlawfully" under definitions; also two new sections he proposed (see exhibit). Chairman Hall feels after checking the title of this bill there would not be any problem inserting two new sections and ruled that unless there was objection from the body will include two new sections saying section 26-110.0 is amended to read as follows and section 26-110.2 is amended to read as follows. Also key numbers would have to be amended in line 4 by inserting after "25-229" the new figures "26-110.1 and 26-110.2". There were no objections from committee so two new sections, sections 35 and 36, will be added. Representative Greely moved the adoption of amendment on "Enter or Remain Unlawfully". Representative McKittrick seconded. Much discussion ensued regarding just what this bill applied to and how it affects existing codes. Substitute motion made to pass this section at this time on "Enter or Remain Unlawfully" carried with Mr. Cosgrove and Professor Elison to prepare language in conformity with Representative Hall's suggestion. Motion carried.

Representative Towe moved to amend on page 10, section 94-2-101, line 2 after the word "sex" by deleting the material "or any form of sexual intercourse with an animal" and inserting in lieu thereof the material "without consent".

Representative Greely brought up the question of consenting adults. Chairman Hall ruled that since last vote was a negative vote do not need a motion to reconsider. Representative Greely moved to delete homosexuality between two consenting adults and bestiality between man and sheep. With twelve committee members present the motion tied and the Chair ruled it was therefore defeated.

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February 24, 1973

Judiciary Committee,
House of Representatives
Attention Hon. John C. Hall, Chairman
Helena, Montana 59601

Gentlemen:

At the committee hearing on January 29, I suggested that Section 94-6-201 of the proposed Montana Criminal Code (at page 58 of SB 109) be amended to make a distinction between a person who enters upon land of another by walking and one who enters in a vehicle. Perhaps it can be assumed that landowners are willing to permit persons upon the land if they walk, but, as I indicated at the hearing, I do not believe that it can be assumed that landowners wish persons to enter in snowmobiles, trailcycles, 4-wheel drive vehicles or ATV's. I also believe that the section should be amended to make it clear that a peace officer has authority to request a person to leave land.

The section, with the suggested amendments, would read as follows:

94-6-201. Definitions.

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who on foot enters or remains upon land does so with privilege unless notice to leave or to keep out is personally communicated to him by an a peace officer or other authorized person, or unless such notice is given by posting in a conspicuous manner.

At the hearing Senator Turnage suggested an amendment to Section 94-6-201, a copy of which is attached. I do not believe that these provisions are necessary for the following

reasons:

(a) If a person hunts on the land of another, he violates Section 26-303.3 of the Fish and Game laws.

(b) If he injures, damages, or destroys property, he will violate Section 94-6-102 (dealing with criminal mischief) of the proposed code.

Sections 26-110.1 and 26-110.2 refer to Sections 94-3308 and 94-3309, which will be repealed by Senate Bill 109 and replaced by Sections 94-6-102 and 94-6-203. Accordingly, I recommend that the following Sections be added to SB 109:

Sec. 35. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

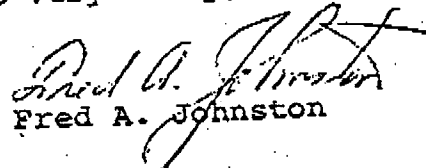
"26-110.1. Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections ~~94-3308~~ 94-6-102, ~~94-3309~~ 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Sec. 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections ~~94-3308~~ 94-6-102, ~~94-3309~~ 94-6-203 and 32-4410, R.C.M. 1947."

If the members of the committee would like any additional information, I would be glad to provide them with it.

Yours very truly,


Fred A. Johnston

AMENDMENTS TO THE PROPOSED CRIMINAL CODE

Senate Bill 109

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

March 10, 1973

JUDICIARY COMMITTEE

The fiftieth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Saturday, March 10, 1973 at 8:30 a.m. Representative John C. Hall, Chairman, presided. All members were present.

SENATE BILL 109 Chairman Hall stated the committee had three matters left on the criminal codes. Representative Greely moved the adoption of amendment on abortion as presented by Judge Castles in his letter of March 1, 1973 which amends on page 148, section 29, by deleting all of line 16 and line 17 through the number 94-5-612 and amend section 32 on page 159, line 5 after the number 94-306 by adding the following: "94-401 through 94-402". Representative Towe seconded. Motion carried unanimously.

Chairman Hall suggested committee take up habitual offenders section in code which is 95-1507 and he would like to take up in this connection House Bill 38 by Representative Brand without objection. Representative Greely moved to keep sections of code in because there is some flexibility as written now. Urged committee to pass code as it is. Representative Warfield seconded. Discussion followed including comment by Representative Towe that pardon is rarely used and would be a special case when person files for appeal on grounds of new evidence. He also questioned what if decision reversed as government does have the right of appeal under Habeas Corpus. Chairman Hall stated that without objection he would treat as a clerical addition on page 117, line 1 after the words "post conviction hearing" by adding the new material "and has not been reversed on appeal". Hearing no objection the new material will be inserted. Motion to amend carried with Representatives Towe and McKittrick voting no.

HOUSE BILL 38 This bill was then taken for consideration in conjunction with the criminal codes in section on habitual offenders. Comparison was made by committee. Representative Greely moved House Bill 38 DO NOT PASS. Representative Bell seconded. Motion carried unanimously.

SENATE BILL 109 Representative Towe moved to delete on page 116, lines 8 and 9 the words "less than five (5) years nor". Representative McKittrick seconded. Motion failed with Representatives Marbut, McKittrick, Roberts, Baucus, Brown and Towe voting yes.

Professor Elison then provided committee with proposed alternatives for language regarding "Entering and Remaining Unlawfully", (see exhibit), an amendment moved and carried in meeting of March 9, 1973. Professor Elison explained his three proposed alternatives. Representative Marbut moved the adoption of

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alternative #1 which is pro rancher or land owner, relates only to pedestrian and reads as follows: "Enter or Remain Unlawfully. A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Representative Towe made a substitute motion to adopt alternative #3 stating that with alternative #1 could have problems with people who might be up in the air over this. Considerable discussion followed. Motion failed with Representative Towe voting aye. Committee reverted to original motion to adopt alternative #1 on page 58, 94-6-201, as replacement for present section 94-6-201. Motion carried with Representatives McKittrick, Roberts and Towe voting no.

Representative Marbut raised question of looking on page 113, subsection (d), lines 11, 12 and 13 and moved to amend by deleting the words "or from a relative". Representative Towe seconded. Discussion followed and Representative Marbut revised his motion to amend on page 113, subsection (d), line 11 by deleting the word "relative". Motion carried unanimously.

Committee reverted to habitual offenders section. Representative Roberts moved to amend on page 116, section 2, subsection (a) dealing with classification of offenses in code on felony and stated he feels it is inconsistent with 94-1-105. Representative Baucus seconded. Representative Hall stated he was a little disturbed by Representative Roberts' proposal and pointed out that with a kid under sixteen the judge is lenient on the kid the first offense and then he goes back at it again and just is limited in sentencing him. Motion failed with Representatives Baucus, Towe, Marbut, McKittrick and Roberts voting yes.

Representative Greely moved to amend on page 116, line 14 by changing five (5) years to ten (10) and stated he feels five years is too short a time. Motion failed with Representatives Lucas, Bell, Warfield and Greely voting yes.

Chairman Hall then announced that Senate Bill 109 was before the committee as a whole. Representative Warfield requested a rundown of all the amendments and they were read by Chairman Hall. Representative Marbut moved for committee to reconsider action on homosexuality and bestiality stating the minutes are a matter of public record and may later be used politically. Motion made to reconsider. Representative Greely moved that section on homosexuality and bestiality be eliminated from the codes. Representative Greely requested the roll call vote be taken.

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(3/10/73 minutes)

With all members present, Representatives Greely, Roberts and Towe voted yes, the remaining committee members voted no. Motion failed.


Representative Greely moved Senate Bill 109 BE CONCURRED IN AS AMENDED. Representative Roberts seconded. Motion carried unanimously.

HOUSE BILL 594 Representative Roberts, chief sponsor, stated he wished to postpone consideration on this bill which was heard in committee several days prior. He stated he wanted to make amendments. Representative Roberts moved consideration be deferred until next regular session. Representative Baeth seconded. Motion carried.

Chairman Hall stated the Chair will entertain a motion to thank Mr. Terry Cosgrove and Professor Larry Elison for their help during the past week. Motion seconded by many and carried unanimously. Representative Greely moved the committee send a letter of commendation to Judge Wesley W. Castles of the Criminal Code Commission with a copy to Professor Elison and Mr. Cosgrove. Motion carried unanimously.

SENATE BILL 376 Chairman Hall stated that without objection he would take this bill sponsored by Senator P. J. Gilfeather up in two sections and treat amendment dealing with WICHE program and the two amendments dealing with scholastic aspects. No objection. Representative Warfield moved to amend on page 2, lines 1, 2 and 3 in the Senate Third Reading Bill after the word "year" by deleting the inserted underlined material "only when such waiver does not result in the exclusion of a resident student in favor of a nonresident;", and also amend on page 2, line 7 after the word "sponsored" by deleting the material "eight (8)". Motion carried unanimously to amend. The Chair then ruled that on page 2, subsection (2), lines 11 and 12 are deleted as they are in the Senate Third Reading Bill. Chairman Hall stated the committee then had before it subsection (C). Representative Greely moved to bring out Senate Bill 376 without subsection (C), and if committee agrees will consider as committee bill a bill dealing with substance of Senate Bill 346 to be brought out on second reading and Senate Bill 376 with title be amended by deleting its underlined portions as in the Third Reading Senate Bill. Motion carried unanimously.

JCH:pb


JOHN C. HALL, CHAIRMAN

ALTERNATE NO. I

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

ALTERNATE NO. II

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon land is privileged to do so unless he is hunting upon inclosed premises or is injuring, damaging or destroying property.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

ALTERNATE NO. III

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person on foot who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

HOUSE OF REPRESENTATIVES

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109.

be amended on page 1, key line 4 of the Senate Third Reading bill after the figures "25-229," by inserting the new material "26-110.1, 26-110.2,", and

be further amended on page 4, section 1, 94-1-104, subsection (1), (2) and (3), lines 11 through 24 of the Senate Third Reading Bill by deleting lines 11 through 24 in their entirety and renumbering the subsequent subsections, and

be further amended on page 10, section 1, 94-2-101, subsection (15), lines 3 and 4 of the Senate Third Reading Bill after the word "Felony" by deleting the material "has-the-meaning-specified-in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.", and

Be further amended on page 11, section 1, 94-2-101, subsection (25), lines 9 through 16 of the Senate Third Reading Bill after the punctuation and figures "(25)" by deleting all of the material in lines 9 through 16 and inserting in lieu thereof the new material: "Intoxicating substance means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume.", and

be further amended on page 12, section 1, 94-2-101, subsection (31), lines 22 and 23 of the Senate Third Reading Bill after the word "Misdemeanor" by deleting the material "has-the-meaning-as-specified-in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less", and

be further amended on page 14, section 1, 94-2-101, subsection (37), lines 6 and 7 of the Senate Third Reading Bill after the word "Offense" by deleting the material "has the meaning specified in section 94-1-105" and inserting in lieu thereof the new material "means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors", and

HOUSE OF REPRESENTATIVES

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material ~~"is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his control"~~ and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark ",", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material ~~"which the defendant must prove by a preponderance of evidence"~~, and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material ~~"7-by-a-preponderance-of the-evidence"~~, and

HOUSE OF REPRESENTATIVES

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on pages 38 and 39, section 1, 94-5-105, subsections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material: "(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "," and inserting in lieu thereof the new material "; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

be further amended on page 47, section 1, 94-5-506, subsection (1), line 22 in the Senate Third Reading Bill after the word "prove" by deleting the material "by a preponderance of the evidence", and

be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

HOUSE OF REPRESENTATIVES

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.", and

be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

HOUSE OF REPRESENTATIVES

-2-

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material ~~"is-a-voluntary-act-if-the-offender-knowingly-secured-or-received-the-thing-possessed, or-was-aware-of-his-control-thereof-for-a-sufficient-time-to-have-been-able-to-terminate-his-control"~~ and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark ",", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material ~~"which-the-defendant-must-prove-by-a-preponderance-of-evidence"~~, and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material ~~"7-by-a-preponderance-of-the-evidence"~~, and

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on pages 38 and 39, section 1, 94-5-105, subsections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material: "(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "-" and inserting in lieu thereof the new material "; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

be further amended on page 47, section 1, 94-5-506, subsection (1), line 22 in the Senate Third Reading Bill after the word "prove" by deleting the material "by a preponderance of the evidence", and

be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.", and

be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

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(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "relative", and

be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "94-401-is renumbered-94-5-611,-94-402-is-renumbered-94-5-612", and

be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "five-(5)" and inserting in lieu thereof the new material "ten (10)", and

be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures "94-306," by adding the new material "94-401 through 94-402,", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 36 to read as follows: "Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35. Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309-94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

BE CONCURRED IN AS AMENDED

HOUSE OF REPRESENTATIVES

-5-

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "~~relative,~~", and

be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "~~94-401-is renumbered-94-5-611, 94-402-is-renumbered-94-5-612~~", and

be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "~~five-(5)~~" and inserting in lieu thereof the new material "ten (10)", and

be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures "94-306," by adding the new material "94-401 through 94-402,", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 36 to read as follows: "Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35. Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309-94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

BE CONCURRED IN AS AMENDED

HOUSE OF REPRESENTATIVES

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109.

Senate agrees
 be amended on page 1, key line 4 of the Senate Third Reading bill after the figures "25-229," by inserting the new material "26-110.1, 26-110.2,"; and

Senate agrees
 be further amended on page 4, section 1, 94-1-105, subsection (1), (2) and (3), lines 11 through 24 of the Senate Third Reading Bill by deleting lines 11 through 24 in their entirety and renumbering the subsequent subsections, and

Senate agrees
 be further amended on page 10, section 1, 94-2-101, subsection (15), lines 3 and 4 of the Senate Third Reading Bill after the word "Felony" by deleting the material "has the meaning specified in section 94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year."; and

Senate agrees
 Be further amended on page 11, section 1, 94-2-101, subsection (25), lines 9 through 16 of the Senate Third Reading Bill after the punctuation and figures "(25)" by deleting all of the material in lines 9 through 16 and inserting in lieu thereof the new material: "Intoxicating substance means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume."; and

note agrees
 be further amended on page 12, section 1, 94-2-101, subsection (31), lines 22 and 23 of the Senate Third Reading Bill after the word "Misdemeanor" by deleting the material "has the meaning as specified in section 94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less"; and

Senate agrees
 be further amended on page 14, section 1, 94-2-101, subsection (37), lines 6 and 7 of the Senate Third Reading Bill after the word "Offense" by deleting the material "has the meaning specified in section 94-1-105" and inserting in lieu thereof the new material "means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors"; and

HOUSE OF REPRESENTATIVES

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material ~~"is-a-voluntary-act-if-the-offender-knowingly-procured-or-received-the-thing-possessed-or-was-aware-of-his-control-thereof-for-a-sufficient-time-to-have-been-able-to-terminate-his-control"~~ and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

Senate accedes

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark "", and

Senate accedes

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

Senate accedes to protect doctor done by Cosgrove

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

Senate accedes

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material ~~"which-the-defendant-must-prove-by-a-preponderance-of-evidence"~~, and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

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be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material ~~"-by-a-preponderance-of-the-evidence"~~, and

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HOUSE OF REPRESENTATIVES

-3-

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

amend by add sub (d)(f) before language in sub a

be further amended on pages 38 and 39, section 1, 94-5-105, sub-sections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material:

"(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "-" and inserting in lieu thereof the new material "; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

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be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

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*Senate
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articles 3*

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articles 4*

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articles 5*

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March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

Senate accedes

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action," and

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be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

House accedes

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

Senate accedes

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

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(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

HOUSE OF REPRESENTATIVES

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "relative", and

*Senate
amends
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House
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be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "94-401-is renumbered-94-5-611, 94-402-is renumbered-94-5-612", and

be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "five-(5)" and inserting in lieu thereof the new material "ten (10)", and

*Senate
amends
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House
amends
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be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures 94-306," by adding the new material "94-401 through 94-402," and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 36 to read as follows: "Section 36.

Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

*Senate
amends
5*

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35.

Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

*Senate
amends
6*

(f) The deliberate homicide was committed
as a part of a scheme or operation which,
if completed, would result in the death
of more than one person

HOUSE OF REPRESENTATIVES

THIRD READING AMENDMENT TO SENATE BILL 109

March 13, 1973

Amend House Committee on Judiciary Amendments to Senate Bill 109, dated March 10, by deleting from page 2 of said amendments the following:

"be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and further amend such Judiciary Committee Amendments in line 2, second paragraph from bottom of page 2, by changing "line 16" to "line 6".

*Senate
accide*

*Senate
accide*

March 19, 1973

JUDICIARY JOINT CONFERENCE COMMITTEE

SENATE BILL NO. 109

Committee members appointed and present were Senators McKeon, Turnage and Zody and Representatives Hall, Lucas and Baucus. The meeting was called to order in Room 436 of the Capitol Building at 10:40 a.m. on Monday, March 19, 1973. Also present was Mr. Terry Cosgrove from the Criminal Code Commission.

See attached exhibit for amendments which the Senate acceded to and the House receded to. In regard to the amendment on the death penalty there was much discussion among committee members. Representative Lucas moved to delete the portion of amendment on death penalty as pertained to gain and reinsert that portion as pertained to heinous or atrocious crime. The motion failed with Senators McKeon and Zody and Representative Lucas voting aye. Representatives Baucus and Hall voted no and Senator Turnage was absent during this vote.



Representative Lucas moved to add deliberate homicide by ambush or lying in wait or death by torture to the death penalty. Senator McKeon seconded. The motion carried with all members voting aye, Senator Turnage absent.

Considerable discussion ensued regarding the amendment deleting the section on treason. Senator McKeon moved to put treason back into the Criminal Codes. Senator Turnage seconded. On a roll call vote the motion failed with Senators McKeon, Zody and Turnage voting aye, Representatives Baucus and Hall voting no, Representative Lucas absent for this vote.

Mr. Terry Cosgrove was directed to write the amendatory language for the additional amendments on the death penalty.

All business being concluded the meeting adjourned at 12:10 p.m.

LMcK:JCH:pb


LUKE MCKEON, CHAIRMAN
SENATE JUDICIARY
JOHN C. HALL, CHAIRMAN
HOUSE JUDICIARY

March 19, 1973

JOINT CONFERENCE COMMITTEE REPORT TO HOUSE JUDICIARY COMMITTEE
AMENDMENTS DATED MARCH 10, 1973 AND HOUSE THIRD READING AMENDMENTS
DATED MARCH 13, 1973 TO SENATE BILL NO. 109.

That the Senate accede to the two house Third Reading Amendments,

And further that the Senate accede to the House Committee on
Judiciary amendments on pages one and two,

And further that the Senate accede to the House Committee on
Judiciary amendments on page three of the amendments, first amend-
ment, and by inserting the following new material at the end of that
amendment;

"(d) the deliberate homicide was committed by means of
torture; or

(e) the deliberate homicide was committed by a person lying
in wait or ambush; or

(f) the deliberate homicide was committed as a part of a
scheme or operation which, if completed, would result in the death
of more than one person."

And further that the Senate accede to the House Committee on
Judiciary amendments on page three, paragraphs two, three and four,

And further that the House recede to the House Committee on
Judiciary amendments on page three, paragraph five,

And further that the Senate accede to the House Committee
on Judiciary amendments on page 4, paragraph one, an amendment
pertaining to trespassing, section 94-6-201,

And further that the Senate accede to the House Committee
on Judiciary amendments on page four, paragraph two,

And further that the House recede to the House Committee on
Judiciary amendments on page four, paragraph three,

And further that the Senate accede to the House Committee on
Judiciary amendments on page four, paragraph four pertaining to
obscenity which continues over to page five,

And further that the Senate accede to the House Committee on
Judiciary amendments on page five, the first full paragraph,

And further that the House recede to the House Committee on
Judiciary amendments on page five, the second full paragraph,

And further that the Senate accede to the House Committee on
Judiciary amendments on page five, the third full paragraph,

And further that the House recede to the House Committee on
Judiciary amendments on page five, the fourth full paragraph,

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And further that the Senate accede to the House Committee on Judiciary amendments on page five, the first full paragraph,

And further that the House recede to the House Committee on Judiciary amendments on page five, the second full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the third full paragraph,

And further that the House recede to the House Committee on Judiciary amendments on page five, the fourth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the fifth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the sixth full paragraph,

And that as so amended Senate Bill No. 109 be concurred in.

FOR THE SENATE:

MCKEON

TURNAGE

BODY

FOR THE HOUSE:

FADE

LUCAS

BAUCUS