

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on January 13, 1995,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing: SB 64, SB 66
Executive Action: SB 36, SB 69, SB 59

HEARING ON SB 64

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, Senate District 43, Cut Bank, presented SB 64, which is here at the request of the Board of Crime Control. This bill deals with six sections of the Code.

Proponents' Testimony:

Gene Kiser, Director of the Board of Crime Control, stated that in 1993 the Board of Crime Control appointed a task force to

assess the effectiveness of Minor in Possession (MIP) enforcement and make recommendations for change. The recommendations of the task force were approved by the Board and are contained in SB 64. **Mr. Kiser** presented written testimony **EXHIBIT 1**.

Candy Kendall, Board of Crime Control, presented her written testimony, **EXHIBIT 2**. A representative from Highway Traffic Safety and **Ms. Kendall** presented this information to the Girls State meeting last spring. They talked to approximately 350 girls and the majority responded that increased fines may or may not have a deterrent effect depending on whether the child or the parent paid the fines. However, driving privileges had the most potent impact on all of them. **Ms. Kendall** provided the committee with a letter in support of SB 64 from Chief Michael F. Shortell, member of the Montana Board of Crime Control and Chairman of the Minors in Possession Task Force, **EXHIBIT 3**.

James Kember, representing the city of Billings, announced their support of SB 64.

Beth Baker, Department of Justice, testified that the Department worked with the MIP task force in putting together this legislation and supports their recommendations. They believe they have worked out a good method of dealing with driving convictions through the driving records, which is an important aspect of the bill. We need to get to the youths before they become problem drinkers. In the handout that **Ms. Kendall** provided, 22% of the students surveyed reported they had an excess of four drinks and drove in the month preceding the survey. We feel they are on their way to becoming problem drinkers and that is why the court should find out how many offenses they have committed. The bill does allow a provisional license to be issued if the judge allows that.

Mary Ellerd, Executive Secretary of the Montana Juvenile Probation Officers Association, stated they generally support the bill, however, they do have some concerns.

Joe Connell, Chief Probation Officer of the Fifth Judicial District, a member of the task force, expressed his concern specifically with regards to the effort to move more toward the penalty of driving privilege. In some instances, this proposal tends to be much more severe with the young adults who are 18, 19, and 20 particularly with respect to incarceration for a six month period for failure to comply with the treatment program when, in comparison, the penalty for adults who may be contributing is a total of 10 days in jail. His concern is that this bill is moving more towards serious penalty instead of rehabilitation of the youth.

James Oberhofer, Member of the Legislative Committee for the Chiefs of Police Association for Montana, stated they stand in favor of this bill. During his 21 years in law enforcement, many juveniles slipped through cracks and ended up with serious

alcohol problems. They believe that the driver's license suspension will get the attention of many of the young people. He attended a meeting of the Sheriffs and Peace Officers Association and is also speaking for them in support of the bill.

Jerry Williams, Montana Police Protective Association, announced their support of SB 64.

Robert Runkel, Director of Special Education of OPI, commented that OPI participated in the task force which develop this legislation and supports SB 64.

Ken Taylor, Department of Corrections, Alcohol and Drug Abuse Division, was involved in this legislation, they support the bill. He submitted written testimony, **EXHIBIT 4**.

Rick Chambers, Chairman of the DUI Task Force in Jefferson County, stated that they stand in support of SB 64. They would like special attention paid to rehabilitation.

Steve Yeakel, Montana Council for Maternal and Child Health, spoke in support of this bill and stated that through their forums around the state they have heard from more than 500 Montanans about their views in respect to children and families.

Bob Gilbert, Montana Magistrates Association, announced they support the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR LORENTS GROSFIELD expressed concern regarding actions insurance companies would take for a first time offense. **Daryl Beckstrom, Chief of Records and Driver Control**, explained they currently record the first offense. In the language in the bill, if a person's record did reflect an increase in rate because of the first offense, the person could point this out to the insurance company and have their rate adjusted. **SENATOR GROSFIELD** further asked who would be receiving reports of these offenses. **Brenda Nordlund, Department of Justice, Records and Driver Control**, explained that the Motor Vehicle Division has comprehensive lifetime driving records for individuals. What they report to insurance companies and what they term the "motor vehicle record" includes only three years worth of history and it would not include this offense if it is a first time offense. The only time it would show is if someone asked for an individual certified driving record, which is a lifetime record. The insurance companies are just looking at the MVR.

SENATOR SUE BARTLETT asked if this bill only covered alcoholic beverages and not drugs. **Ms. Kendall** replied it covered all

intoxicating substances which would include substances beyond alcohol. **SENATOR BARTLETT** asked if the designated driver, who had not taken any intoxicating substances and was driving the vehicle when it was stopped, would be subject to the same penalties as the other people who had. **Ms. Kendall** answered that the task force had many hours of discussion on this issue and decided the designated driver would be subject to the same penalties. Their concern is the double message being presented to the youth. We have a law on the books which says it is illegal, under any circumstance, to possess or be in a situation where you can immediately possess alcohol. **Ms. Baker** stated this has been an issue for prosecutors and law enforcement officers for many years. Regarding possession, everyone at the kegger cannot be charged unless there is some evidence that they actually consumed or were in possession, either actual or constructive possession. Mere presence at the scene does not give rise to a charge under the statute, however, if there is some evidence that the person had dominion and control over the alcohol they could be charged. **SENATOR BARTLETT** asked for clarification of lines 21 and 22, page 4, of the bill which states that the person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection. **Ms. Baker** stated that sentence was added to the statute in 1989 to address the situation where the child drops the cup as soon as the cops show up and it is intended to allow the charge to be brought if there is some evidence that the child was drinking or in possession of alcohol. **SENATOR BARTLETT** stated that when an adult is picked up for a DUI there are provisions for them to get a temporary license for work. Are there any provisions for either the minors under 18 or the young adults between 18 and 21 to have temporary licenses for work. **Ms. Baker** responded this is provided in Section 6, page 7, line 5, which adds 45-5-624. Subsection 9 states that the department may issue a restricted probationary license to any person who falls under this section. Unless the sentencing court says there is to be no probationary license, the court would be allowed to issue a probationary license. **SENATOR BARTLETT**, referring to page 6, line 14, questioned whether this bill deals with 18, 19, and 20 year olds as being treated as alleged youths in need of supervision. **Ms. Baker** answered that that subsection only deals with the defendant who was under the age of 18 when the offense was committed and is under the age of 21 when that person fails to comply with the sentence.

SENATOR LINDA NELSON questioned the minimum amount of drivers license suspension instead of leaving the length of suspension to the court's discretion. **Ms. Kendall** replied that it was put in so the judge could have a range to apply to certain circumstances. **SENATOR NELSON** questioned whether this would apply to the 18 to 20 year olds as well. **Ms. Kendall** replied that the judge does have the option of confiscating their license on the first offense. The judge has the option of issuing a probationary license for work or school.

SENATOR BRUCE CRIPPEN questioned whether the designated driver does not have control of the six pack found in a car. **Ms. Baker** stated that determination needs to be made in a case by case basis but it is certainly possible that the driver could be charged. She understands there will be a proposal introduced for a statewide open container law which would prohibit open containers in the car. **SENATOR CRIPPEN** questioned when the six month period of incarceration would be used. **Ms. Baker** remarked the six month jail sentence would only be allowed for a third or subsequent offense when the person is over 18. In researching this bill, she found instances of 23rd and 24th offenses for possession. The six month period was provided so the judge would have some discretion where the youth is old enough to be sentenced to jail. Often these are the youth who are providing alcohol to the younger kids.

Closing by Sponsor:

SENATOR GAGE stated we owe our youth the effort to try to shape them and keep them out of as much trouble as we can. Hopefully, this bill will help them as well as the law enforcement people in the state.

Additional exhibits handed out for SB 64, **EXHIBIT 5, 6, 7, & 8.**

{Tape: 1; Side: A; Approx. Counter: 43.7}

HEARING ON SB 66

Opening Statement by Sponsor:

SENATOR J. D. LYNCH, Senate District 19, presented SB 66. He stated that he had visited with many people in his town who couldn't understand for one minute why people should get three opportunities to commit some of the most dastardly deeds. In the state of Georgia, by public initiative and by a vote of 82 to 18 percent, over one million people decided that those of us in elective offices had not done enough when it comes to the "meanest of the mean". He believes the vote would be similar if we did the same thing in Montana. SB 66 is completely based after the Georgia initiative and lists the crimes covered by this bill. After being convicted a second time by a jury of their peers, they should not be able to be in society again. He feels the people of this state are saying enough is enough. This measure might involve up to eight individuals per year who will be sentenced to our prisons for life. This is a bill which is late in coming but its time has come. There will be more people in prison as a result of this bill, but they ought to be there.

{Tape: 1; Side: B; Approx. Counter: 8.5}

Proponents' Testimony:

Jerry Williams, Montana Police Protection Association, announced that they stand in support of SB 66.

Tom Winsor, Montana Shooting Sports Association, announced that they support SB 66 and that the Western Montana Fish & Game Assoc., the Gun Owners of America and Assistance Committee for the Right to Keep and Bear Arms also join in this testimony. In Montana in 1992, a murder was committed every 15 days and 5 hours. A woman was raped every one day and 17 hours. Robbery was committed every one day and 15 hours. Statistics show that 5% of those on probation for murder are arrested for another murder within three years. Twenty percent are rearrested for some other violent crime within three years. The average career criminal commits 187 to 287 crimes per year. This average crime cost per year is \$2300. The average per year cost of career criminals is as much as \$430,000. The national average to keep that person in prison is \$25,000 per year. The organizations he is here representing today represent approximately 30,000 Montanans. He presented written testimony, **EXHIBIT 9.**

John Huth, Department of Corrections and Human Services, stated he was here neither as a proponent or opponent of SB 66 but simply to provide information. **EXHIBIT 10**

A. M. Budwell, Montana Weapons Collectors Society, stated they support SB 66. They are opposing a bill which would put in a three strikes and you are out provision. They like SB 66 much better.

Kathy McGowan, Montana Sheriffs and Peace Officers Association, expressed their support of SB 66.

Informational Testimony:

Ted Clark, Research Manager for the Department of Corrections and Human Services, provided written testimony **EXHIBIT 11.**

Opponents' Testimony:

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, opposes SB 66. Mr. Crichton presented his written testimony **EXHIBIT 12.**

Russell Hill, Executive Director of the Montana Trial Lawyers Association, announced that MTLA opposes SB 66. The issue is how we deal with crime. The bill goes beyond violent crimes. MTLA feels this bill, under sexual intercourse without consent, would include statutory rape. It would also include sexual relationships where there was a misunderstanding about consent. Under arson, the bill includes anyone who knowingly starts a fire that eventually endangers human lives, including firefighters. Kidnapping, under the law, is restraining somebody with unlawful

authority to do so. Merchants who suspect shoplifters and wish to restrain a shoplifter are constantly afraid of this law. Under robbery, most robberies are theft plus a violent component of theft. The statute does not define robbery as including a violent component. Robbery could be in the course of theft. This bill reduces dramatically the discretion of the courts. Law enforcement personnel are given some discretion in terms of prosecuting crimes. Juries will understand that if they convict on a second defense it will require a lifetime sentence and they will not convict.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN, questioned the procedure for medical care in referring to page 1, line 28(c), "may not for any reason be transferred for any length of time to another type of institution, facility, or program." **SENATOR LYNCH** answered that medical care is provided at the facility, however, prisoners are not precluded from going to a hospital temporarily as long as they are still under the direction of the prison. **SENATOR HOLDEN** asked about need for more prisons. **SENATOR LYNCH** stated that down the road prisons would be needed.

SENATOR STEVE DOHERTY questioned, in the review of sentences from 1990 to 1994, how many were persistent felony offenders. **Mr. Clark** stated he did not look at persistent felony offenders specifically. **SENATOR DOHERTY** questioned if any costs were taken into account for geriatric care. Is there a difference in housing a 25 year old at \$40 a day who is healthy compared to someone who is much older and unhealthy. **Mr. Clark** stated they have one year of data from Blue Cross and in that data inmates who were older than 50 had slightly more than twice as many medical encounters as those under 50 and that the costs of those encounters was about half again as much as for those under 50. **SENATOR DOHERTY** further questioned whether these projections were taken into account in the projections given earlier. **Mr. Huth** stated they did include medical costs in their projection. In the fiscal note asked for they did provide a brief area to explain that there would be considerable medical costs. **SENATOR DOHERTY**, in referring to the robbery statute, questioned whether two strikes would apply when in the process of stealing cattle a fire was started and that person was convicted of felony theft for both robbery and arson. **SENATOR LYNCH** said he is relying on the jury and prosecutors not to count that as two strikes. However, if the wording needs to be cleared up, he defers to the committee to do so.

SENATOR SHARON ESTRADA asked **Mr. Crichton** if his concerns were the costs and humanitarian reasons. **Mr. Crichton** answered that when three strikes and you are out was being discussed he talked to Rick Day from the Department and was told that they already have the capacity to see that the second serious offender will spend a very, very long time in jail through the habitual offender, sentence enhancement and minimum mandatory rules that

are already in place. The ACLU is concerned about the conditions of people in confinement. The state has a responsibility when people are in its charge that at least minimum constitutional standards are upheld.

SENATOR MIKE HALLIGAN stated that the geriatric considerations are very real. He questioned whether there could be some modifications to Section 1, line 28, wherein it states that the prisoner may not be transferred. **SENATOR LYNCH** stated that he had no problems with modifications if that could make it a better bill. He does not want the serious offenders sent to a half way house in his hometown.

SENATOR BARTLETT, in referring to the need to build an additional high security unit which would house 80 inmates, asked what number the current high security unit of the prison houses. **Mr. Huth** said he did not have that information, however, the current high security unit is almost at maximum. **SENATOR BARTLETT** asked **SENATOR LYNCH** if he looked at the list of crimes which is to be included and if he agreed that each should be listed and included. **SENATOR LYNCH** stated the only one he took a second look at was robbery. He was thinking of robbery and burglary as the same thing, however, they are not. **SENATOR BARTLETT** asked if he looked at felonies that are listed in our Codes that are not included in this bill and if there are any that he would add. **SENATOR LYNCH** replied that he would not add any additional felonies to the bill. **SENATOR BARTLETT** asked whether a fiscal note had been requested on this bill. **SENATOR LYNCH** said it had. **SENATOR BARTLETT** remarked that during executive session on this bill they need to turn their attention to item (c) on line 28 which talks about not transferring for any length of time.

CHAIRMAN CRIPPEN asked for a definition of the state prison. **Mr. Clark** stated that the state prison is the Montana State Prison. For purposes of figuring institutional population counts they include prerelease centers and the intensive supervision programs around the state. The prison remains the prison. Prerelease centers house people who are considered prison inmates for statistical purposes, but they do not consider themselves part of that institution. **SENATOR CRIPPEN** remarked that the regional correction facilities, such as jails, would not then be considered the prison. **Mr. Clark** stated that he is not entirely certain how regional correction facilities would fit into this. **SENATOR CRIPPEN** stated that of the 38 inmates referred to earlier, 28 of them are in the Montana State Prison and the rest are somewhere else. Were those costs included in the report? **Mr. Clark** stated that the costs given were for all 38 inmates being incarcerated at the Montana State Prison. **SENATOR CRIPPEN** questioned how many prisoners at the Montana State Prison are serving under a third offense. **Mr. Clark** stated that a year ago he looked at the current prison population looking for people who had been convicted of three consecutive separate violent crimes. In the January 1994 population of 1500, there were three or four inmates who were convicted of three separate independent violent

crimes. If you looked at people convicted twice separately of any violent crime, not limited to the offenses in SB 66, there were 20 or 30.

{Tape: 2; Side: A}

Closing by Sponsor:

The person SB 66 addresses has to be convicted by a jury of their peers a second time. This bill wants to protect our children and our grandchildren. Law enforcement endorses the bill.

EXECUTIVE ACTION ON SB 36

Discussion: SENATOR GROSFIELD referenced the handout from SRS listing that four presumptions that are in the law. EXHIBIT 13 Number 4 would become the first priority. The other presumptions are (3) the child's mother and father have acknowledged the father's paternity, (2) the man holds himself out to be the child's natural father and (1) is marriage. The question before the committee is whether they are satisfied with having blood testing showing a 95% or higher statistical probability being the first priority and letting the judge decide amongst the other three or does the committee want to set priorities for the other three. SENATOR BISHOP stated that blood testing is the surest way to determine paternity.

Motion: SENATOR BARTLETT moved to strike the language that starts on page 1, line 29, through line 2, on page 2, all of (5). That would strike the provision that would give a presumption to a blood test. Also on page 8, strike line 22 through 25.
EXHIBIT 14

Discussion: SENATOR HOLDEN felt that the committee would be "gutting" the bill. SENATOR BARTLETT felt that the real part of this bill is in other changes to the existing statutes. SENATOR BISHOP asked Mary Ann Wellbank if the amended bill would put them in compliance with the federal act. Ms. Wellbank said they would still be in compliance. This language does say that blood test presumption has the higher rank of all of the presumptions. To delete that would not harm them in any way. SENATOR BARTLETT stated that in reading the information from the Child Support Enforcement Division and the variety of scenarios that could occur it is much more important to let the triers determine on the facts of the case and what they consider most compelling in each individual case.

Vote: The motion to amend SB 36 CARRIED on oral vote with SENATORS GROSFIELD, HALLIGAN, HOLDEN and NELSON voting "NO".

Motion/Vote: SENATOR BISHOP moved SB 36 DO PASS AS AMENDED. The motion passed unanimously on oral vote.

EXECUTIVE ACTION ON SB 69

Discussion: Valencia Lane explained amendment 1 was to include (1) in the effective date of this act. The remainder of the amendments were requested by the sponsor. EXHIBIT 15

Motion/Vote: SENATOR HOLDEN MOVED TO AMEND SB 69. The motion passed unanimously on oral vote.

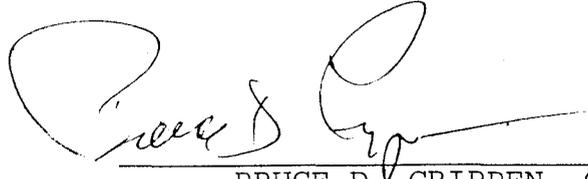
Motion/Vote: SENATOR HOLDEN moved that SB 69 DO PASS AS AMENDED. The motion PASSED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON SB 59

Motion/Vote: Motion: SENATOR HALLIGAN moved that SB 59 DO PASS. The motion passed unanimously on oral vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.



BRUCE D. CRIPPEN, Chairman



JUDY J. KEINTZ, Secretary

BC/jjk

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB36 (first reading copy -- white), respectfully report that SB36 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, line 13.

Strike: "presumption --"

4. Page 1, line 29 through page 2, line 2.

Strike: subsection (5) in its entirety

Renumber: subsequent subsections

5. Page 7, line 22.

Following: "he"

Strike: "the person has acknowledged"

Insert: "the child's mother and the child's alleged father have
acknowledged the alleged father's"

6. Page 8, line 3.

Following: "he"

Strike: "the person acknowledges"

Insert: "the child's mother and the child's alleged father
acknowledge the alleged father's"

7. Page 8, lines 22 through 25.

Following: "evidence." on line 22

Strike: remainder of lines 22 through line 25

8. Page 11, line 1.

Strike: "parentage"

Insert: "paternity"

9. Page 11, line 3.

Strike: "parentage"

Insert: "paternity"

 Amd. Coord.
SA Sec. of Senate

111436SC.SRF

10. Page 11, line 12.

Insert: "NEW SECTION. Section 12. Effective date. [This act] is
effective July 1, 1995."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB69 (first reading copy -- white), respectfully report that SB69 be amended as follows and as so amended do pass.

Signed: _____


Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 17.

Following: "~~shall~~,"

Insert: "as in effect on [the effective date of this act],"

2. Page 1, line 30 through page 2, line 1.

Following: "(1)" on line 30

Strike: remainder of line 1 through "court-martial" on page 2,
line 1

Insert: "When a court-martial is convened, the senior judge
advocate of that element"

3. Page 2, line 10.

Following: line 9

Strike: "state judge advocate"

Insert: "adjutant general"

Following: "by the"

Strike: "judge advocate"

Insert: "adjutant general"

Following: ". The"

Strike: "state"

4. Page 2, line 11.

Following: line 10

Strike: "judge advocate"

Insert: "adjutant general"

5. Page 2, line 15

Strike: "soldiers"

Insert: "members"

-END-

 Amd. Coord.

SA Sec. of Senate

111312SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB59 (first reading copy -- white), respectfully report that SB59 do pass.

Signed: 
Senator Bruce Crippen, Chair

 Amd. Coord.
SA Sec. of Senate

111323SC.SRF

MONTANA SENATE
 1995 LEGISLATURE
 JUDICIARY COMMITTEE
 ROLL CALL VOTE

DATE 1/13/95 BILL NO. 36 NUMBER _____

MOTION: Senator Bartlett moved to
amend SB36.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
LORENTS GROSFIELD		✓
MIKE HALLIGAN		✓
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON		✓

STATE OF MONTANA
DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL
303 North Roberts - PO Box 201408 - Helena, MT 59620-1408

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1/13/95
BILL NO. SB 64

Joseph P. Mazurek
Attorney General



Phone (406) 444-3604
FAX (406) 444-4722

SB 64 : MINOR IN POSSESSION

SPONSOR: SENATOR DEL GAGE

Testimony: Gene Kiser
Montana Board of Crime Control
444-3604

In 1993 the Board of Crime Control appointed a task force to assess the effectiveness of Minor in Possession enforcement and make recommendations for change. Upon the completion of the task force's work a recommendations was made to and approved by the Board the language contained in SB 64.

Mr. Chairman, if I may, I would like to introduce Cathy Kendall, who was the staff person for the Task Force regarding it's work and recommendations.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL

303 North Roberts - PO Box 201408 - Helena, MT 59620-1408

VERSION NO. 2
DATE 1/13/95
BILL NO. 64

Joseph P. Mazurek
Attorney General



Phone (406) 444-3604
FAX (406) 444-4722

SB 64 : Minor In Possession

Sponsor: Senator Del Gage

Testimony: Cathy Kendall
Montana Board of Crime Control
444-2947

Based on statements of concern from justice system professionals throughout the state, the Board of Crime Control appointed a task force in 1993. Its charge was to assess the effectiveness of Minor in Possession (MIP) enforcement and make recommendations for changes, if any deficiencies were found. The task force, chaired by Havre Police Chief Mike Shortell, was made up of representatives from law enforcement, the judiciary, juvenile probation, and treatment professionals. Staff from Crime Control, Highway Traffic Safety, and the Alcohol and Drug Abuse Division of Corrections & Human Services provided support for the task force.

SB 64 reflects the work of the MIP Task Force - a combination of reviewing statutes, data regarding arrests and dispositions, a survey of justice professionals, and the wealth of experience represented by task force members.

A survey was conducted in the summer of 1993 of Sheriffs & Police Chiefs (116), Chief Juvenile Probation Officers (20), Courts of Limited Jurisdiction (126) and treatment professions (37). Response rates varied from 76 - 95%; the high return lends validity to the results.

- ▶ A majority (70-95%) indicated that current MIP statutes are inadequate.
- ▶ 69% of law enforcement and 78% of treatment professionals felt that dispositions were too lenient.

DATA:

- **5,160** minors were arrested in 1993 for possession, an increase of 3,700 over the 1,485 arrested in 1983. Of those, about 1/5th (900), were referred to Youth Court.
- The gender split has consistently been about **70/30 for males and females**.
- 90% are arrests of white youth; 8% arrests of native americans.

The major intents of this legislation are to: establish consistency, provide effective deterrents, and provide a method of tracking.

1. Problem: no method of tracking repeat offenders.

proposal: require that all convictions be reported to Records & Drivers Control. 1st offense cannot be used for insurance purposes.

2. Problem: lack of consistent treatment because jurisdiction is shared between Youth Court and Courts of Limited Jurisdiction.

proposal: require same penalties irrespective of jurisdiction.

3. Problem: Current statutes have limited impact and questionable deterrent effect.

proposal: establish increased penalties for 2nd and 3rd offenses. Increase the fines for possession and attempt to purchase, use suspension or revocation of driving privileges, require community service and substance abuse education - if available.

Substantial consideration was given to the question of using driving privilege penalties for non-driving offenses. The majority of Task Force members, although not all, felt that fines alone were not effective. It was their judgment that the potential loss of driving privileges would have the most profound effect.

Concern for "multiple offenders" was raised repeatedly. Over the life of the task force, members frequently brought newsclippings showing citations for 5 and 6 Mip offenses. As there is no data system currently collecting the information, we have no way of judging how many of the 5,000+ kids cited during 1993 had more than one arrest. Until the court automation projects are implemented, using Records and Drivers Control Division is the most efficient, immediately available option. The Division has indicated that they can accommodate service.

Copies detailing the full deliberation of the Task Force as well as the complete response for the survey are available from the Board.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3DATE 1/13/95BILL NO. 864

City of Havre, Montana 59501

POLICE DEPARTMENT

Michael F. Shortell, Chief of Police

406/265-4362

January 12, 1995

The Honorable Mr. Del Gage, Senator
Montana State Capital Building
Helena, MT 59620

Dear Senator Gage,

As a member of the Montana Board of Crime Control and Chairman of the Minors in Possession Task Force, I support fully Senate Bill 64 as written. I believe that Senate Bill 64 reflects the recommendations of the entire Minor in Possession Task Force.

As such, the Task Force and I thank you for all of your support and efforts pertaining to this legislation.

Respectfully,

Michael F. Shortell
CHIEF OF POLICE

Testimony Senate Bill No 64

My name is Ken Taylor, I work for the Department of Corrections and Human Services, Alcohol and Drug Abuse Division in the area of Prevention Programs. I have been with the division for almost five years.

From the beginning of the process which led to the development of this legislation, there has been involvement by the Alcohol and Drug Abuse Division. The Division oversees the state approved treatment programs which play an important role in the current system as providers of the educational course required of all minors found in possession of alcohol. We have been concerned, as have others, that current law does not provide adequate sanction for young people with multiple MIPs. A recurrent comment which I have heard from counselors throughout the state is, " what do you do with the kid who's been through the program so often they can give the lecture?" There are three aspects to this legislation:

- consistent sanctions
- escalating sanctions
- tracking offenders

These are the issues identified by the MIP task force and these are the issues currently being mention by the thirty state approved treatment programs which serve each of Montana's fifty six counties.

The Alcohol and Drug Abuse Division is currently preparing its four year plan. As part of the planning process each county is asked to identify their top alcohol and other drug treatment and prevention issues. In this process counties are asked to include county commissioners, local law enforcement, education, social service and youth serving agencies. This local planning process is used to identify strategies and policies which then become part of the Division's plan for supporting local AOD services. The current planning documents were submitted by counties on or before December 31, 1994.

Problems in providing an adequate response to MIP's was consistently mentioned in these plans. Further, one or more of the specific strategies contained in this legislation was mentioned as a desirable response to the problem of multiple MIPs. Unfortunately under current law there is only a limited response available to communities.

As a policy response to the problem of underage drinking, this legislation fits within the overall approaches to prevention identified by the Center for Substance Abuse Prevention, the lead Federal alcohol and other drug prevention agency.

The committee might be interested to learn that Virginia enacted a law in 1989, commonly called "you use, you loose." Under Virginia's legislation possession of alcohol, whether in a motor vehicle or not, is cause for loss of a drivers license, as is unlawful possession of a firearm. If the offense involves purchase or possession, public intoxication or drinking on school property, the sanction for a first offense is loss of license for up to a year or until age 17, which ever is longer. The second offense results in loss of license for another year or until age 18, again which ever is longer.

There are 21 states which either currently have a "you use, you loose," legislation or are considering this legislation. These states include:

Alaska	New Hampshire
Arizona	Nevada
Arkansas	Oklahoma
California	Oregon
Florida	Rhode Island
Georgia	Tennessee
Illinois	South Dakota
Indiana	Utah
Missouri	Virginia
Montana	Washington
	Wyoming

This legislation offers to address a long term problem with our current approach to the problem of adolescent substance abuse. For that reason, the Department of Corrections and Human Services Alcohol and Drug Abuse Division supports it as part of a broad based approach to the problem of substance abuse by adolescents

MINORS IN POSSESSION:

A PROBLEM FOR MONTANA



MONTANA BOARD OF CRIME CONTROL

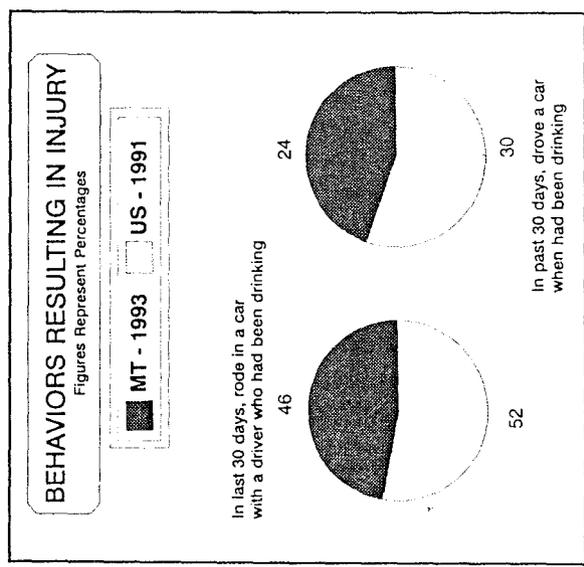
In response to this information, the Montana Board of Crime Control is supporting amendments to MCA 45-5-624 to provide a more effective means of deterring youth alcohol use. The objectives are to enhance penalties for 1st, 2nd, and subsequent MIP offenses and to provide a means to track multiple offenders.

- * Increase fines proportionately for each subsequent offense
- * Require community service if available
- * Mandatory suspension of driver's license for 2nd and subsequent offenses
- * All arrests are to be reported to Driver Record and Control Division of the Department of Justice

These recommendations are presented through deliberation of the Minor in Possession Task Force, an ad hoc committee of the Board of Crime Control. Careful consideration of data and survey results formed the basis for their recommendation: 1993 Montana Youth Risk Behavior Survey, 1993 Montana Criminal Justice Professionals Minors in Possession Survey, Highway Traffic Safety data and 1993 Crime in Montana Report.

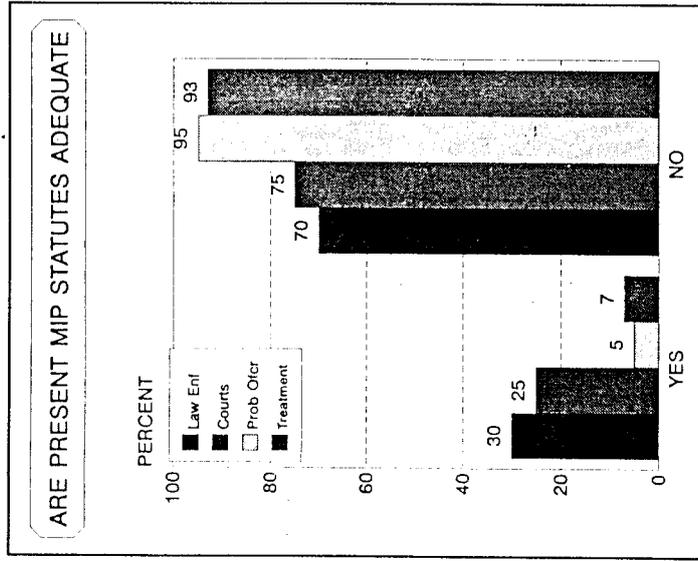
Your support of these amendments would enhance the ability of the Justice System in Montana to respond to growing concern about the level of alcohol misuse by Montana youth and its often tragic outcomes.

The 1993 Montana Youth Risk Behavior survey reported that 46% of responding students rode in a car driven by someone who had been drinking. In the same survey it was noted that 24% drove a car after consuming alcohol.

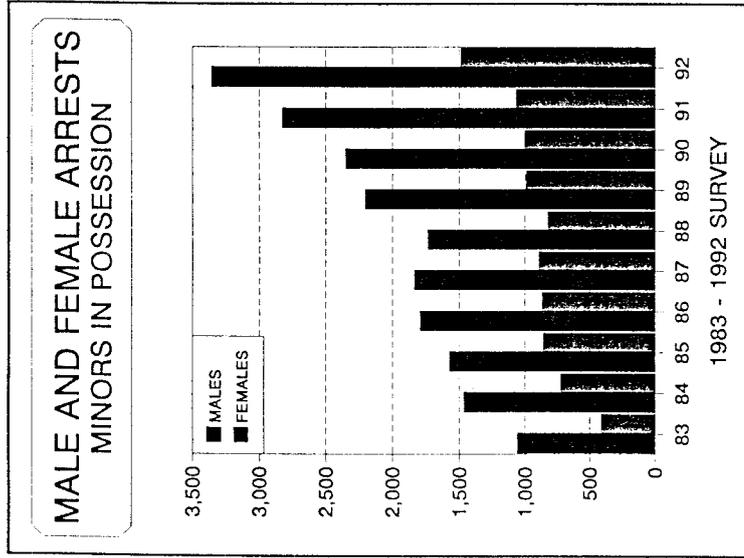


We have a reason to be concerned about the use of alcohol by Montana youth!

A 1993 Montana Justice System survey shows that current Minor in Possession statutes are insufficient to meet the demand placed on law enforcement and the courts.



There is a general sense shared by justice system professionals that the number of youths committing multiple alcohol related offenses is increasing, however, there is no reliable method of tracking that information. In addition, existing statutes appear to have little deterrent effect on repeat offenders.



WHAT DO WE KNOW?

The 1993 Montana Youth Risk Behavior Survey revealed that 22% of the students reported that they had in excess of 4 drinks in a row on 3 or more days during the month preceding the survey.

56% of Montana youth report having at least one drink of alcohol during the 30 days prior to the survey.

During the last 10 years, over 10,000 Montana youth have been injured in alcohol-related crashes.

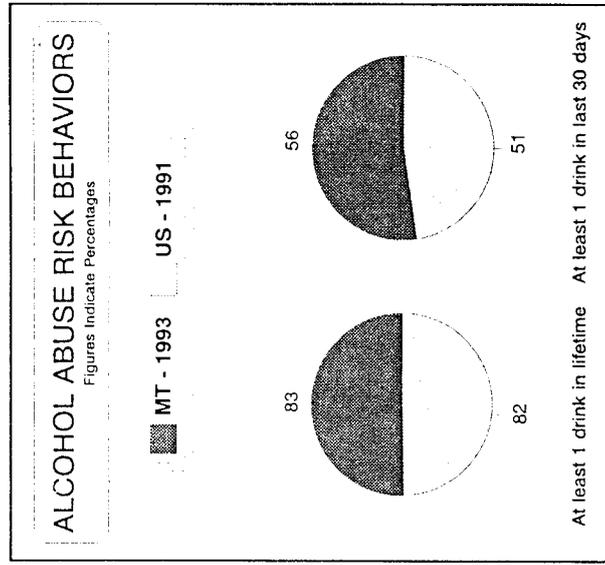


EXHIBIT NO. 42 SB 64
DATE 1/13/95
CALL NO. SB 64

January 12, 1995

H. E. L. P.

(Havre Encourages Long-Range Prevention)

306 3rd Avenue, Ste 205

Post Office Box 68

Havre, MT 59501

(406) 265-6206

(Phone & FAX)

Senator Del Gage #10
State Capitol Building
FAX: 1-900-225-1600

Dear Senator Gage:

As the Executive Director for H.E.L.P. (Havre Encourages Long-Range Prevention), it is my pleasure to extend support for Senate Bill 64, on H.E.L.P.'s behalf.

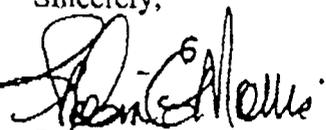
H.E.L.P. is a 15-year old community-based prevention organization that services a five-county region, which includes the Rocky Boy's and Ft. Belknap Indian Reservations. Many of our programs target high-risk youth and their parents. Specifically, the mission and scope of the H.E.L.P. Committee is the prevention of Alcohol, Tobacco, and Other Drug Abuse (ATOD).

Our organization has compiled and up-dated yearly a five-county ATOD Needs Assessment document. This document supports the need for stiffer penalties and fines for Minors in Possession. The current approach is simply not working. If it were, minimally, we would not be experiencing such a high number of repeat offenders.

However, we have not been standing still. We are in the process of implementing a Youth Diversion program to handle many of these cases and look forward to having more to work with in convincing the youth that a minor in possession charge is nothing to make light of.

In closing, I would like to express my deep appreciation and support of those that took the time to research and write SB 64 -- the present handling of MIP's is inconsistent from one county to another, and ineffective. Please communicate our strong, wholehearted support of SB 64. I am pleased to provide additional information if needed at (406) 265-6206.

Sincerely,



Robin E. Morris
Executive Director

SENATE JUDICIAL DISTRICT
EXHIBIT NO. 1
DATE 1/13/95
BILL NO. SB 64

PROBATION OFFICE
TWELFTH JUDICIAL DISTRICT

HILL COUNTY COURTHOUSE
HAVRE, MONTANA 59501

ROBERT J. PEAKE
CHIEF PROBATION OFFICER
(406) 265-5481 EXT 43

JOHN WARNER
JUDGE

January 12, 1995

Senator Del Gage
State Capitol Building
FAX: 1-406-444-4722

Dear Senator Gage:

As the Chief Juvenile Probation Officer of the Twelfth Judicial District it is my pleasure to support Senate Bill 64.

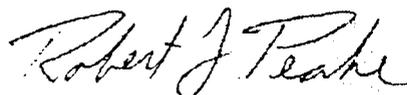
It has been a concern of mine since I accepted the position of Chief that MIP's have long been improperly handled. The MIP's in our county have been shuffled between City Court, Justice Court, and also through my office when neither of the aforementioned could get an appearance from the youth, nor payment of any fine ordered.

It is indeed the right time to address this problem. I sincerely believe that the community has changed its ideas of tolerating and belittling the crimes that today's youth are committing. It is time that the courts, juvenile probation and the community hold these youths accountable for their actions. Stronger penalties and the ability to enforce them will reduce the care-less attitude among these youth; therefore, lowering the recidivism rate among this population.

I applaud your effort towards Senate Bill 64, and am behind this bill all the way.

If you need more information, please contact me at (406) 265-5481, #43. Thank you for your time and attention.

Sincerely,



Robert J. Peake, Chief
Juvenile Probation

RP/tl

EXHIBIT NO. 2
DATE 1/13/95
FILE NO. SB64

MINORS IN POSSESSION

TASK FORCE REPORT

Presented to:



MONTANA BOARD OF CRIME CONTROL

1993

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(bound report)

Department of Corrections and Human Services
Alcohol and Drug Abuse Division

Department of Justice
Highway Traffic Safety Division

CRIMESTRIKE

A Division of the National Rifle Association

NRA Institute for Legislative Action
11250 Waples Mill Road
Fairfax, VA 22030
(703) 267-1160
(703) 267-3992 FAX

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 1/13/95

BILL NO. SB 66

MEMORANDUM IN SUPPORT

TO: The Honorable Bruce Crippen, Chair, Senate Judiciary Committee
The Honorable Members of the Senate Judiciary Committee

DATE: January 13, 1995

SUBJECT: Senate Bill 66, A Bill for an act entitled :
"An Act Providing That A Person Convicted Of Two Major
Violent Offenses Must Be Sentenced To Life In A State Prison
Unless the Death Penalty Is Applicable And Imposed..."

Violent criminals who willfully violate the law and prey on the public must be punished. And those who continue to commit violent crimes, even after a felony conviction, should not be given the opportunity to harm innocent citizens again.

It is with great hopes for its success in Montana that NRA CrimeStrike and the NRA members announce our support for Senate Bill 66, a bill commonly referred to as "Two Strikes, You're Out." We applaud the sponsors for addressing the serious issue of crime and punishment, and urge the Judiciary Committee to favorably report this bill.

The issue of crime has captured the national attention, and rightly so. Every 22 minutes a murder is committed; a rape every five minutes, and a robbery every 47 seconds.

Even Montana is not immune. A violent crime is committed in Montana every 6 hours- and a woman is raped every day and a half. Passage of "Two Strikes, You're Out" will help to alleviate the effects of crime on the citizens of Montana by locking up incorrigible criminals for life.

Repeat offenders are a serious threat to public safety. According to the National Center for Policy Analysis, the average criminal commits 187-287 crimes a year. With the passage of SB 66, the threat to the public is substantially reduced by taking these repeat offenders off the street.

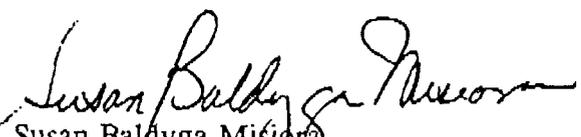
Memorandum in Support
SB 66
Page Two

Though a fiscal commitment must be made to put a criminal in prison for life, in the long run, it will save society money. The National Center For Policy Analysis study reports that it costs taxpayers about \$25,000 a year to keep someone in prison. If that criminal is out on the street, committing the 187-287 crimes referenced above, the cost to society is approximately \$2,300 per crime. Added together, one career criminal could cost Montana \$430,000 annually.

Another compelling reason for the passage of SB 66 is that increased incarceration for violent crime works. As the attached chart demonstrates, as Montana has jailed more criminals, the crime rate has decreased. With "Two Strikes" assuring that repeat offenders remain behind bars, the crime rate will continue to decrease.

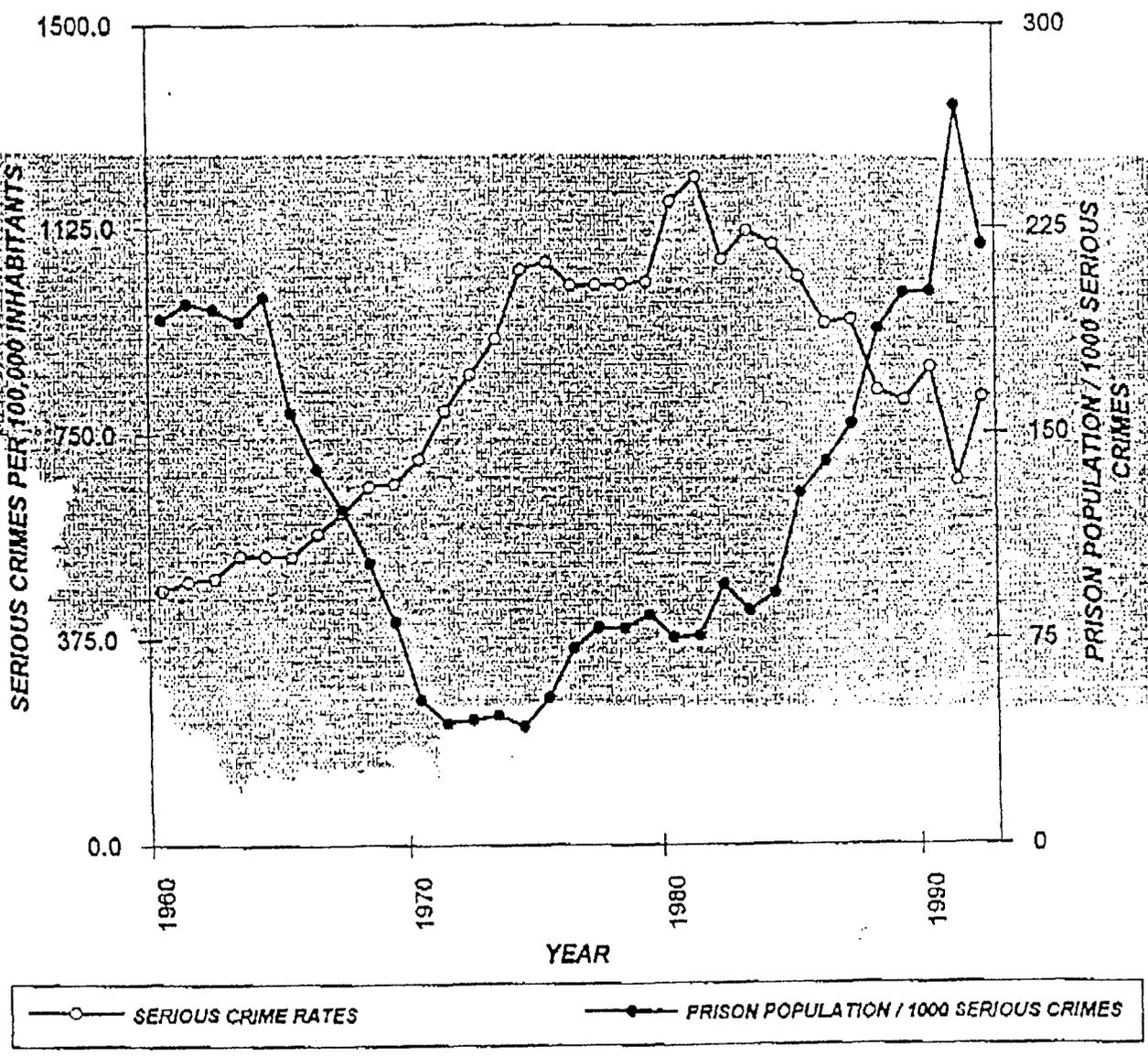
Contrary to popular opinion, making the decision to put repeat violent offenders in jail for life is not an easy decision. It requires the political will to stand up against the nay-sayers who preach, despite the overwhelming evidence to the contrary, that increased jail time is not the answer. The introduction, and subsequent passage, of SB 66 proves that Montana has that will. Again, we respectfully urge a favorable report.

Respectfully submitted,


Susan Baldyga Misiora
Manager, CrimeStrike State Legislative Affairs


Amy Elliott
Montana State Liaison

SERIOUS CRIME RATES VS. PRISON POPULATION PER 1000 SERIOUS CRIMES (1960 - 1992): MONTANA



Serious Crimes include murder, rape, robbery, assault, and burglary.

Compiled from Department of Justice Data by CrimeStrike.

1992 Crime Clock: Montana

Crime	Crimes	Days	Hours	Minutes	Seconds
Crime Index	37,872	0	0	13	53
Violent Crime	1,400	0	6	15	26
Property Crime	36,472	0	0	14	25
Murder	24	15	5	0	0
Rape	210	1	17	42	51
Robbery	222	1	15	27	34
Aggravated Assault	944	0	9	16	47
Burglary	5,306	0	1	39	3
Larceny-Theft	29,243	0	0	17	58
Motor Vehicle Theft	1,923	0	4	33	19

SERIAL JUDICIAL CODE 100
EXHIBIT NO. 10
DATE 1/13/95
FILE NO. SB66

**SB0066 TESTIMONY
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
13 JANUARY 1995**

The Department of Corrections and Human Services has looked at data that identifies Prison admissions who would have received life in prison without parole under the provisions of SB66 for the years FY90-FY94. There is an annual average of eight admissions to MSP for offenders with two separate convictions for crimes defined in SB66.

SB66 would have no fiscal impact in the 1996-97 biennium to DCHS. The people convicted of second offenses would be incarcerated regardless of SB66. The fiscal impact of this bill is in the long-term. The increase in population of 8 inmates per year would require an additional high security housing unit every 10-15 years at an estimated cost of \$4-\$5 million based on FY94 dollars. To staff a close custody unit of this nature would require an additional 26.0 FTE and cost \$1,184,936 to operate based on FY94 dollars. (80 X \$40.58 X 365 days)*

* 80 inmates
\$40.58 FY94 General Fund cost per ADP per day

DATA CONCERNING FY1990 - FY1994 PRISON ADMISSIONS WHO WOULD HAVE RECEIVED LIFE SENTENCES WITHOUT PAROLE UNDER SB66.

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
13 JANUARY 1995

1. An unduplicated total of 38 inmates was admitted to prison for second conviction of crimes addressed by SB66 in Fiscal Years 1990 through 1994.
2. Today, those admissions are in the following status:
 - a) MSP - 28, 13 in high custody and 15 in medium-minimum custody;
 - b) Pre-release - 1;
 - c) SRCTC - 1;
 - d) Montana state Hospital - 1;
 - e) Interstate Compact - 1;
 - f) Parole - 1;
 - g) Probation - 1; and,
 - h) Release from supervision - 4 (2 from parole, 2 from discharge balance suspended).
3. Sentences received by these admissions had the following characteristics:
 - a) Maximum - 100 years;
 - b) Minimum - 5 years;
 - c) Average of all sentences - 30.0 years; and,
 - d) Average sentence with maximum and minimum deleted each year - 26.1 years.
4. Two of the 38 are ineligible for parole.
5. Crimes committed by these admissions and identified in SB66 were:
 - a) Robbery - robbery. 13 admissions, 34.2% of total;
 - b) Rape - rape. 11 admissions, 28.9% of total;
 - c) Robbery - arson. 4 admissions, 10.5% of total;
 - d) Robbery - rape. 3 admissions, 7.9% of total;
 - e) Kidnapping - rape. 2 admissions, 5.3% of total;
 - f) Homicide - homicide. 1 admission, 2.6% of total;
 - g) Kidnapping - kidnapping. 1 admission, 2.6% of total;
 - h) Arson - arson. 1 admission, 2.6% of total;
 - i) Homicide - rape. 1 admission, 2.6% of total; and,
 - j) Robbery - kidnapping. 1 admission, 2.6% of total.
6. Those admissions with the shortest sentences were sentenced in accordance with plea bargains in all but one instance. Parole ineligibility was assigned for reasons of lengthy and violent criminal history. The admission who received a 100 year sentence had twice committed a homicide.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

DATE 1/13/95
FILE NO. SB 66

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763
SB 66 January 13, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of and lobbyist for the American Civil Liberties Union of Montana. I am here today to express opposition to SB 66.

I know the temptation here today is to think that you are doing something bold and new to combat crime. However, I think if you take a closer look at the reality of the situation, you already effectively have two strikes with enhanced penalties for habitual offender and recidivist provisions which are in place in Montana. In addition, over recent years, more and more provisions have been made for mandatory sentencing requirements.

When Governor Racicot spoke to us about the "State of the State", he included a reference to the prison system and the people we incarcerate. He said, "We are confining prisoners at a record pace in Montana. We now have close to 1,300 prisoners in a prison built for 850. Montana's aggressive criminal justice system and law enforcement community have produced one of the lowest crime rates in the nation." The Governor reminded us that spending for prisoners was not discretionary, that a key proposal will be a Truth-in-Sentencing bill, and that he's proposing a Sentencing Commission allowing for public participation in designing voluntary sentencing guidelines for judges to use."

I think we need to take a long hard look at the practical effect of passing this "two strikes and you're out" legislation, and what additional pressures and costs will be placed on our already bulging prison population. Before you rush headlong into passing this bill, I ask you to consider the effects of "aging out" and, at the very least, the costs associated with establishing a geriatric ward at Montana State Prison.

According to FBI data, violent crime arrests rise rapidly in the teens, peak at 18 and taper off through the 20's. By age 35 most adults "mature out" of crime and actually commit crimes at a rate lower than 13 year olds. To continue with the sports metaphor the sponsor has chosen, this makes violent crime very much a "young mans game".

But this is no game, no sporting event. By adopting mandatory life without parole statutes as proposed here, you will be creating a real legacy for future generations. The effects may not be felt significantly this biennium, or the next, or even over the next decade. But gradually and then dramatically, the costs for making such a decision today will be the burden of your children, and of your children's children for all of their tomorrows.

Any of you who have watched a parent or grandparent decline with age, should be able to grasp that the "average cost" of incarcerating an inmate will substantially rise as the inmate ages. In time, our state prison will need to have its own geriatric ward. The associated medical expenses of aging convicts who can never be released will be substantially more burdensome than it was when they were young. For like it or not, the state is responsible for medical costs. I think you need to scrutinize any fiscal note, recognizing the department projections vary from session to session.

The state acknowledged as much when it entered into an agreement with the ACLU that was finalized last November, promising in federal court to among other things 1) increase physician and nursing coverage to meet the prison population needs; 2) employ a medical director to develop a comprehensive medical care system; 3) conduct tuberculosis screening and follow up, following the Center for Disease Control's guidelines; 4) eliminate the dental list backlog within one year; 5) retain a part time psychiatrist to develop a comprehensive mental health services plan.

Adding insult to injury, no sooner did the Department and ACLU attorneys have their settlement approved by the court, than the United States Department of Justice filed suit saying this agreement did not go far enough to protect the rights of these inmates.

I want you to consider this. Experts tell us that age is the most powerful crime reducer. To life sentence people who will almost certainly "age out" of their criminality makes no sense.

Jerry Johnson, the president of the American Correctional Association says, "The idea of sentencing every three-time offender in their mid-twenties to life without parole is ludicrous. The last 40 years of the sentence buy almost nothing for public safety, but have an incredible cost to the taxpayer."

The only real beneficiary of this proposal will be the prison construction industry, which is already a growth industry thanks to mandatory minimum sentences already in effect. California, for an example, which recently passed a three strikes proposal, and which currently has more people in prison than we have in our largest city, Billings, will add an estimated 58,518 inmates to the projected base of 165,000 by the year 1998- more than a 50% increase. By the year 2028, it will add 275,000 more at a cost of \$5.7 billion. (Those figures according to the California Department of Corrections.)

I know Montanans don't want to be like Californians. But if we enact into law proposals like that which we are discussing, we will follow in their foot steps. The total dollars we be smaller numbers no doubt, but with similar percentages of limited tax dollars going towards unnecessary costs committed to by this legislature.

Beyond aging out" and the costs associated with that concept, there are two other notions worthy of some consideration- the issues of "non-deterrence" and "increased violence".

Most violent crimes are not pre-meditated. They are committed in anger, in the heat of passion or under the influence of alcohol. This bill is not going to stop those who are acting impulsively, without the fore thought of the likely consequences of their action. In addition, repeat offenders do not consider the penalties they face before acting because they don't anticipate being caught.

Some law enforcement professionals oppose legislation like this out of fear such laws would spur a dramatic increase in violence against police, corrections officers and the public. A criminal facing the prospect of a mandatory life sentence will be far more likely to resist arrest, to kill witnesses or attempt a prison escape. Dave Paul, a corrections officer from Milwaukee, Oregon, wrote in a newspaper article: "Imagine a law enforcement officer trying to arrest a twice-convicted felon who has nothing to lose by using any means necessary to escape. Expect assaults on police and corrections officers to rise precipitously." (Portland, Oregon, 3/94). Ironically, such laws may cause more, not less, loss of life.

To close, crime is too complex an issue to try to resolve by offering simplistic solutions. In the short term, anyone who says "lets get tough on crime" may find it easier to get re-elected. However, I direct you to the provisions of MCA 46-18-101, which requires, in addition to punishment, that rehabilitation be addressed. The statute provides in part:

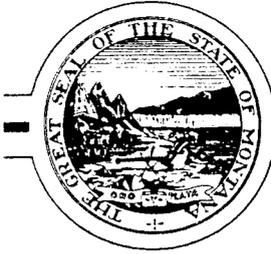
(2) the correctional policy of the State of Montana is protect society by preventing crime through punishment and rehabilitation of the convicted... To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs and potentialities.

Tyhe tough job is to do real problem solving. The problem of crime can only be addressed through long-term initiatives which require considerations of many factors-- individuals, family and community. The current narrow and highly politicized debate only intensifies the public's fears and leads to disappointment.

In my opinion, lawmakers would make better use of taxpayers' money today, and of taxpayers for generations to come, by emphasising front-end, crime prevention approaches rather than back-end reactive tactics like you are considering today.

I urge you to vote no on SB 66.

DEPARTMENT OF
 SOCIAL AND REHABILITATION SERVICES 11/13/95
 CHILD SUPPORT ENFORCEMENT DIVISION SB 36



MARCRACICOT
 GOVERNOR

PETER S. BLOUKE, PhD
 DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
 (406) 444-4614

3075 N MONTANA, SUITE 112
 PO BOX 202943
 HELENA, MONTANA 59620-2943

January 12, 1995

TO: Senator Bruce Crippen, Chairman
 Senate Judiciary Committee

FROM: Mary Ann Wellbank, Administrator
 Child Support Enforcement Division
 Department of Social and Rehabilitation Services

RE: SB 36

Thank you for the excellent hearing of SB 36 on January 11.

Senator Grosfield asked the Committee to defer executive action on the bill until such time as the division provides clarification of the new language in Section 40-5-232(5), MCA, which provides in pertinent part,

"If there are conflicting presumptions not based on paternity blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls."

Summary of Issues

Some members of the committee questioned the intent of the language, specifically with regard to the meaning of "weightier considerations of policy and logic controls." The members expressed concern that the language is unusual, and really gives no guidance to the courts or administrative agency as to the state policy. Members felt that perhaps the Legislature should establish state policy in statute, rather than leaving any discretion to the adjudicating tribunal.

The division responded that the language was adopted from the original recommended language of the Uniform Parentage Act, although the language had not been previously incorporated into Montana's version of the Uniform Parentage Act. The division explained that current statute gives no guidance as to how to resolve conflicts among two equally valid presumptions of paternity. Under present law, it is left to the adjudicating tribunal to make the decision as to which presumption is appropriate given the specific facts of the situation.

The division agreed to provide options as to how the Legislature might set state policy in statute by prioritizing presumptions of paternity (See discussion attached.) After researching the issue, the division concludes that prioritization of presumptions would not be appropriate without comprehensive evaluation as the ramifications are significant and the facts of each case vary widely. The division therefore recommends deletion of the above language to facilitate consensus on the bill.

Thank you for the opportunity to provide additional information. Please let me know if you would like the division to present additional testimony on this issue.

c: SRS Director Peter S. Blouke, PhD.
 Senator Al Bishop, Sponsor
 Senator Lorents Grosfield

DISCUSSION OF CONFLICTING PRESUMPTIONS OF PATERNITY

SB 36

Summary of Presumptions of Paternity

Presumptions currently existing in Montana law (40-6-105, MCA with the addition of the blood test presumption added by SB 36):

A man is presumed to be the natural father of the child under any of the following primary circumstances:

- 1) the man and the natural mother are or have been married (or have attempted to marry) and the child is born or conceived during the marriage (or attempted marriage), even if the marriage (or attempted marriage) has terminated through divorce, death, annulment, declaration of invalidity, etc.
- 2) the man holds himself out to be the child's natural father through his actions and admissions
- 3) the child's mother and alleged father have acknowledged the father's paternity in writing and filed the acknowledgement with the Dept. of Health or appropriate legal forum
- 4) blood testing shows a 95% or higher statistical probability of the man being the father of the child

DISCUSSION:

SB 36 amends 40-6-105(3) to provide "when two or more conflicting presumptions arise, a presumption based upon a blood test is sufficient to overcome the other presumptions." In other words, by amending SB 36 to add this sentence to 40-6-105(3), the Legislature is saying that the presumption of paternity from blood testing is always given priority over other existing presumptions. This will be a statutory policy determination that would apply in all cases between a presumption based on a paternity blood test and any of the other presumptions of paternity. Of course, all presumptions are still rebuttable in an appropriate action filed in district court.

The last sentence added to 40-6-105(3) by SB 36 provides "If there are conflicting presumptions not based on blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls." This is the section that the Committee was primarily concerned with.

This sentence is part of §4(b) of the Uniform Parentage Act of 1973. In the UPA the "conflicting provisions" language was part of a paragraph that included what is existing 40-6-105(2). The entire provision in the UPA reads,

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

In 1975 Montana adopted only the first sentence of §4, and changed the standard of proof from "clear and convincing" to a "preponderance." At least 15 other states adopted the UPA from the mid-70's to the mid-80's and adopted some form of §4(b). These states include Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Nevada, New Jersey, North Dakota, Ohio, Rhode Island, Washington and Wyoming. Other states including Arizona and Colorado have adopted similar "conflicting presumption" language.

Alabama words the sentence at issue as follows: "In the event two or more conflicting presumptions arise, that which is founded upon the weightier considerations of public policy and logic, as evidenced by the facts, shall control."

Arizona, California, Colorado, Delaware and Hawaii, Kansas, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Washington and Wyoming's language is exactly as expressed in the UPA.

Ohio's code provides: "If two or more conflicting presumptions arise under this section, the court shall determine, based upon logic and policy considerations, which presumption controls."

Searching the annotations to these state codes, the CSED could find no cases discussing the phrase "weightier considerations of policy and logic". Cases concerning conflicting presumptions, most notably cases concerning a presumption based on marriage versus one based on another man holding the child out as his own, or one based on marriage versus a presumption based on a positive blood test of another man, have been determined on the individual facts of each case.

It is hard to draw out any consensus from the decisions of the states that would assist in ranking the conflicting presumptions in all cases. For example, in a case of a marriage presumption versus another man presumed to be the father based on a blood test presumption, when the child at issue had reached the age of 10, always believing the mother's husband to be her father and having a positive father-child relationship with this man, public policy might favor the presumption based on marriage. If the facts were changed, and the husband, although presumed to be father, had never had a relationship with the child, while the other man had, public policy might favor the presumption based on the blood test.

One of the most basic decisions to be made when trying to rank the

conflicting presumptions, (were you not going to leave it up to trier of fact), would be to decide whether fundamentally, public policy favors a biological tie. That is, whether the paternity determination should ultimately be made based on the answer to this most basic question - Who is the biological father? If public policy is to favor a biological tie, then the blood test presumption might rank first, and the CSED has proposed this when the two conflicting presumptions are one based on a blood test and one based on another presumption. If the Committee is not convinced that this is or should be the public policy of the state, then perhaps the second sentence of new subsection (3) of Section 7 of SB 36, amending 40-6-105, should be deleted.

Beyond this, when there are two conflicting presumptions, neither based on a paternity blood test, one might next think about the presumption based on marriage as higher ranking. But again, what if the parties were separated at the time of conception of the child, have never reconciled, the child has never known the mother's husband, but has a sporadic relationship with the man who has in the past claimed paternity and lived with the mother and child a number of years ago?

The facts of each case vary. If the Committee is not comfortable that the proposed language regarding conflicting presumptions of paternity adds anything of value to a court, then rather than trying to cover every possible fact situation in a statute in ranking the presumptions, the CSED would propose to delete this sentence also.

ADDENDUM:

SB 36

Section 40-6-105, MCA, as proposed in SB 36 and with amendments to SB 36 adopted by the Senate Judiciary Committee 1/11/95. (Note: Amendments to bill passed by Senate Judiciary Committee on 1/12/95 are CAPITALIZED to facilitate reference)

"40-6-105. **Presumption of paternity.** (1) A man person is presumed to be the natural father of a child if any of the following occur:

(a) he the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER HAVE ACKNOWLEDGED THE ALLEGED FATHER'S THE PERSON HAS ACKNOWLEDGED HIS PATERNITY of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of health and environmental sciences or with the district court for the county where he the person resides or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office; or

(ii) with his the person's consent, he the person is named as the child's father on the child's birth certificate; or

(iii) he the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he the person receives the child into his the person's home and openly ~~holds out~~ represents the child to be as his the person's natural child; or

(e) he THE PERSON ACKNOWLEDGES THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER ACKNOWLEDGE THE ALLEGED FATHER'S HIS paternity of the child in a writing paternity acknowledgment form that is provided by the department of social and rehabilitation services and filed with the department of health and environmental sciences or with the district court of the county where he the person resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment

within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office. The department of health and environmental sciences or the district court shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of social and rehabilitation services shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity. If another ~~man~~ person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(2)(3) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence. When two or more conflicting presumptions arise, a presumption based upon a blood test is sufficient to overcome other presumptions. If there are conflicting presumptions not based on blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls.

(4) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

Amendments to Senate Bill No. 36
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 13, 1995

1. Title, line 6.
Strike: "AND"

2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, line 13.
Strike: "presumption --"

4. Page 1, line 29 through page 2, line 2.
Strike: subsection (5) in its entirety
Re-number: subsequent subsections

5. Page 7, line 22.
Following: "he"
Strike: "the person has acknowledged"
Insert: "the child's mother and the child's alleged father have
acknowledged the alleged father's"

6. Page 8, line 3.
Following: "he"
Strike: "the person acknowledges"
Insert: "the child's mother and the child's alleged father
acknowledge the alleged father's"

7. Page 8, lines 22 through 25.
Following: "evidence." on line 22
Strike: remainder of lines 22 through line 25

8. Page 11, line 1.
Strike: "parentage"
Insert: "paternity"

9. Page 11, line 3.
Strike: "parentage"
Insert: "paternity"

10. Page 11, line 12.
Insert: "NEW SECTION. **Section 12. Effective date.** [This act] is
effective July 1, 1995."

SENATE JUDICIARY
EXHIBIT NO. 15
DATE 1/13/95
BILL NO. SB 69

Amendments to Senate Bill No. 69
First Reading Copy (white)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
January 11, 1995

1. Page 1, line 17.
Following: "~~shall~~,"
Insert: "as in effect on [the effective date of this act],"
2. Page 1, line 30 through page 2, line 1.
Following: "(1)" on line 30
Strike: remainder of line 1 through "court-martial" on page 2,
line 1
Insert: "When a court-martial is convened, the senior judge
advocate of that element"
3. Page 2, line 10.
Following: line 9
Strike: "state judge advocate"
Insert: "adjutant general"
Following: "by the"
Strike: "judge advocate"
Insert: "adjutant general"
Following: ". The"
Strike: "state"
4. Page 2, line 11.
Following: line 10
Strike: "judge advocate"
Insert: "adjutant general"
5. Page 2, line 15
Strike: "soldiers"
Insert: "members"

DATE 1-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 604
SB 66

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Cathy Kendall	Crim Central	64	✓	
Ted Clack	DCHS	66		
John Ruth	DCHS	66		
W. James Kumbel	City of Billings	64	✓	
MARY ELLERD	MUPOA	64		
Bob Gilbert	MT. MAGISTRATES ASSOC.	64	✓	
Beth Baker	Dept of Justice	SB64	✓	
Thomas Sp Wanson	Mont. Shooting Sports et al.	SB 66		
Len Taylor	ADAID - DC HS	SB64	✓	
Jim OBERHOFFEN	MCOP	64	✓	
Kathy McGowan	MSPOA	64, 66	✓	
Robert Runkel	OPI	64	✓	
A. M. (Bud) Elwell	NWAC / WCRM	^{SB} 66	✓	
Russell B Hill	MTZA	66		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 64
SB 66

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jerry Williams	Montana Police Protective Assn	64	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jerry Williams	" " " "	66	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GENE KISER	MBCC	64	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STEVE YEAKEL	MT COUNCIL FOR MATERNAL & CHILD HEALTH	64	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY