MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 1, 1995, at 7:00 AM.

ROLL CALL

Members Present:

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

Members Excused: NONE

Members Absent: Vice Chair Diana Wyatt

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

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

Committee Business Summary:

Hearing:	SB 59, SB 61, HJR 14, HB 290
Executive Action:	HB 55 POSTPONE ACTION
	HB 179 DO PASS AS AMENDED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 55

Motion: REP. WILLIAM BOHARSKI MOVED HB 55 DO PASS.

Motion: REP. SHIELL ANDERSON MOVED A CONCEPTUAL AMENDMENT TO SECTION 3, PAGE 2, LINES 12 AND 13 TO STRIKE THE LANGUAGE WHICH REFERS TO AN OBLIGOR WHO FAILS TO PAY AND TO INSERT A CIVIL PENALTY PROVISION OF NO MORE THAN $500 NOR LESS THAN $100.

Discussion: REP. DUANE GRIMES asked if he had the department's comments on this and/or if this affects any federal mandate.

REP. ANDERSON did not have the department's comments on the amendment and asked if someone from the department could respond to the question concerning the federal mandate.

REP. AUBYN CURTISS said her notes indicated this bill provides that state law coincide with and comply with federal regulations.

REP. DANIEL MC GEE opposed the amendment. He said the issue was not child support, an obligor or obligee, but the issue is the civil liability of an employer. He could see no reason to encumber an employer because an employee is not fulfilling his/her obligation.

REP. ANDERSON said **REP. MC GEE** was correct and that he had used obligor in the wrong context, it is an employer. But he felt that **REP. MC GEE** should find the amendment favorable to his point of view since it made the employer liable for a civil penalty, rather than the total amount he should have withheld on behalf of the obligor which could be a significant amount.

REP. MC GEE said the point was well taken but he believed that the bill makes the employer a criminal and any amendment still does not address the criminality of the employer.

REP. JOAN HURDLE was against the amendment and also opposed **REP. MC GEE'S** position. She thought there could be a case where the employer and the employee who owed the child support were friends and felt they could agree to avoid paying the child support.

REP. BRAD MOLNAR opposed the amendment. He spoke from his experience as an employer and also about his disagreement with creating a bill to comply with a federal mandate.

REP. DEB KOTTEL was against the amendment. The reason to pass the bill was that it provides equity. She cited other causes for writs of garnishment and felt children deserved the same rights as business creditors.

REP. LOREN SOFT spoke in opposition to the amendment. As an employer he understood the responsibility to withhold for child support. He did not think it should be put in statute that if an employer does not comply, they would come under threat of action against them. He felt it takes more of the responsibility factor away from the parent who owes the child support.

Motion: REP. SOFT MOVED TO STRIKE SECTION 3 IN ITS ENTIRETY AS A SUBSTITUTE AMENDMENT.

Discussion: REP. GRIMES said they needed to realize that there is a great deal of money tied to this in federal funds. He said they also need to keep in mind that this is current practice and the bill clarifies some things. He objects to federal mandates as well, but these are the facts.

REP. ANDERSON clarified his reason for bringing this amendment.

REP. GRIMES felt there were ways to deal with the problems politically on a federal level. He felt this committee needed to avoid getting wrapped up on this issue and deal with the issue of federal mandates in another way.

REP. HURDLE said that 90% of the irresponsible parents are men and 90% deadbeat dads and the women are doing the best they can in most cases with the children and they deserve the support of the employers and spoke against amending the bill in any way.

REP. ANDERSON spoke in favor of the substitute amendment. He wanted to know if striking section 3 was in violation of federal law.

REP. MOLNAR asked if striking any section would put Montana out of compliance. He said that Montana has been out of compliance for a time, and the federal funds have not been removed. He suggested putting the "feds" to the test if this bill is not passed to see if they will take Montana's money. The purpose would be to protect the sovereignty as a state.

CHAIRMAN BOB CLARK, without objection from the committee, asked **Ms. Wellbank** to respond to the question at hand.

REP. MC GEE objected.

REP. LIZ SMITH asked if there are other statutes which fine an employer or a banker who does not comply with a garnishment order.

REP. KOTTEL said they become civilly liable for the amount they should have deducted.

REP. SMITH referred to the title of the bill and asked for an explanation.

REP. KOTTEL read and explained 42 U.S.C. 666(A)(8)(B).

REP. ELLEN BERGMAN asked how what section 3 says is different from current law.

REP. SOFT said it already does say it in current law.

REP. BERGMAN asked if there is really any choice when they are dealing with federal mandates.

REP. LINDA MC CULLOCH spoke against the amendment. This bill is about seeing that children get food, clothes and housing and if it takes this section to be sure they receive those things, she said, "So be it."

REP. BOHARSKI asked what difference it makes to have district courts impose child support orders or execution orders on wages. If this section is removed, it doesn't make any sense that a court would tell them to do it. He wanted clarification about what would happen if the determination has to be that the employer has no chance to talk to the judge. He imagines there is some sort of notification by the judge.

REP. ANDERSON said there is probably a statute which addresses this elsewhere, but without this section when a court order is issued to withhold for child support and he doesn't do it, he would be held in contempt of court.

REP. BOHARSKI said the language is "any amount up to" so the judge does not have to fine him the total accumulated amount. He said there should be something in here to say the court could go back for enforcement.

REP. MC GEE made three points:

1. The bill never asks if the obligor has the money, but just addresses the employer's liability,

2. The bill is not about deadbeat dads, this is about employers, and

3. Those who have never been an employer simply do not know what is involved. The bill has the effect of making employers criminals for things they did not do. It also sets an employer up for criminal action for not hiring someone who is an obligor when the employer does not want to deal with the withholding.

REP. KOTTEL said that they should have an amendment which clarifies that it is not a fine but a penalty which would remove the criminal edge. The change in the law which took place January 1, 1994, made Montana out of compliance but because the legislature meets only once every two years, the federal government granted a waiver and withheld sanctions pending the

actions in HB 55. The penalty or sanctions they could levy would be 66% of the current child support budget of $7 million. Failure to comply would eliminate the Child Support Enforcement Division unless the state funded it. At that point Montana would be out of compliance with AFDC and they could withdraw 100% of AFDC funding plus they could issue daily fines for the time they are out of compliance. It seemed to her that they should not draw the line with the federal government over children, but take another issue for that sort of action.

REP. GRIMES understood the frustrations with federal programs. He quoted a phrase that says, "In some cases you just have to hold your nose and vote." He did oppose the amendment and felt another battleground could be chosen.

REP. SOFT withdrew his motion to amend HB 55 under protest.

REP. ANDERSON called for the question on his amendment.

Vote: The motion failed by voice vote.

Discussion: REP. MOLNAR pointed out that a few years ago Montana was number 50 out of 50 states for collecting or attempting to collect child support. Currently Montana is in the top 10 in almost all of those areas. If this bill had never been written or passed, Montana would still be a shining example of child support enforcement collections.

REP. BILL TASH said he understood that several things relating to this bill are in a state of flux in federal and state welfare acts. He preferred to wait to see how they will turn out and then vote.

Motion/Vote: REP. TASH MOVED TO TABLE HB 55. The motion carried on a roll call vote, 11 - 7.

EXECUTIVE ACTION ON HB 179

Motion: REP. ANDERSON MOVED HB 179 DO PASS.

Discussion: REP. BOHARSKI asked if other counties would have a mechanism for reimbursement by the state as they currently do in Powell County.

REP. SMITH said there was no opposition to this from her limited research on it.

REP. BOHARSKI asked if there is a section in statute to direct the department to reimburse.

John MacMaster said the Powell County attorney testified that his office is reimbursed by the department through a simple process. He was not aware of the statute which grants that authority.

REP. SMITH recalled that the committee was to receive that information and it had not yet been received.

REP. BOHARSKI referred to the fiscal note as the basis for his question.

CHAIRMAN CLARK said it was going to save the Department of Corrections and Human Services (DCHS) money but it would not save local governments money so he assumed there would not be reimbursement.

REP. SMITH said this was the direction for the past few years. This bill would only provide compliance with current practice.

REP. MC GEE noted that testimony indicated that the 1989 legislature had deleted this proposed provision and wanted to discuss that. He also asked about line 16 where it seemed to indicate that a person charged was to be asked in which county he wanted to be charged.

Mr. MacMaster said under the state Constitution there is an amendment which says a person charged with a criminal offense must be charged in the county in which the offense occurred. Therefore, he has the right to be charged in the county where the escape occurred. He can waive that right and that accounts for the language of the bill.

Motion: REP. BOHARSKI MOVED TO AMEND BY INSERTING AT LINE 16, "MAY AT THE DISCRETION OF THE COUNTY ATTORNEY FOR THE COUNTY IN WHICH THE PERSON WAS ARRESTED AND."

Discussion: REP. MC GEE asked for clarification of this amendment.

Mr. MacMaster asked for clarification concerning the identity of the prosecutor.

REP. SMITH said the intent was that it be the place of apprehension.

CHAIRMAN CLARK further clarified the amendment.

Vote: The motion carried unanimously, 18 - 0.

Motion/Vote: REP. BOHARSKI MOVED HB 179 DO PASS AS AMENDED. The motion carried unanimously, 18 - 0.

HEARING ON SB 59

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, introduced SB 59 on behalf of the Montana Sheriff's and Peace Officer's Association (MSPOA). This bill proposes that a subpoena remain in effect until the final determination is made in a case.

Proponents' Testimony:

Kathy McGowan, MSPOA, expressed strong support for SB 59. **EXHIBIT 1**

Sheriff Chuck O'Reilly, Lewis and Clark County, gave statistics which support the need for this bill regarding costs for multiple servings of subpoenas.

{Tape: 1; Side: B}

John Connor, Montana County Attorney's Association, Department of Justice and Attorney General's Office, spoke in favor of SB 59.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC GEE asked how the new system works in keeping people informed about changes in times, etc.

Mr. Connor said the form would be changed to state that it is valid for the duration of the action and it would be incumbent upon the party subpoenaing the witness to keep them informed as to when and where subsequent hearings would be held. The same sanctions would be available as are currently if there are violations.

REP. MC GEE asked if he was comfortable with this proposed process.

Mr. Connor said he was and described how he personally would use the proposed system.

REP. MC GEE asked him to speak to how this system would relate to civil matters.

Mr. Connor did not see many differences.

REP. BOHARSKI asked if subpoenas currently state the time and place of the court appearance.

Mr. Connor said they do.

REP. BOHARSKI asked how they could expire.

Mr. Connor said the subpoena should reference that it remains in effect until judgment, dismissal or final determination of the action. If for some reason the action is continued, the subpoena will remain in effect until the future date for that action.

REP. BOHARSKI asked about the court modifying the subpoena. He wanted to know how the person is notified of the change.

Mr. Connor clarified.

REP. BOHARSKI restated his question and asked for further clarification.

Mr. Connor said the subpoena requires that the witness appear at a given date and time. If the witness appears at that time and place and there is some judicial action to continue the matter or that witness's testimony is not needed until some future date during the trial, the witness needs to be apprised of the change and it is incumbent upon the party subpoenaing the witness to tell him/her when it is necessary to appear.

REP. BOHARSKI asked how that works from a practical standpoint.

Mr. Connor said under current law a new subpoena is issued.

REP. BOHARSKI asked how the court notifies the person that they must appear at a later time.

Mr. Connor said the subpoena form needs to be modified to indicate that if the person is not required to testify on the date and time specified in the subpoena, the subpoena remains in effect as contemplated in this bill. It is incumbent upon the attorney of the party subpoenaing the witness to notify the witness by letter, by subsequent subpoena or some other way to inform the witness. There is no fault on the part of the witness if he/she is not so informed.

REP. BOHARSKI wanted to be sure the person would know of the change, but he would take his word for it that the witness would not have any difficulties with the court if he/she had not been properly informed of a change.

Mr. Connor discussed the option of mailing the notice with a possible follow-up phone call. He quoted, "Once mailed, it is presumed to be received."

REP. KOTTEL asked for a summary of the current practice when a witness fails to appear on subpoena.

Mr. Connor believed that the court would be shown that the witness had been subpoenaed who failed to appear and asked that the witness be held in contempt of court.

REP. KOTTEL asked if at the show cause hearing, the witness would have the opportunity to give reason for not appearing and the judge would not hold the witness in contempt if he/she had a reason such as not having been notified.

Mr. Connor agreed.

REP. KOTTEL asked if it becomes one person's word against another. She wondered if they could amend the bill to address this possibility.

Mr. Connor said his understanding of her proposed amendment would remove any sanction for the witness failing to appear. He said they are not interested in holding witnesses in contempt or punishing witnesses. He had never experienced a reason for holding a witness in contempt but did not feel it would be appropriate to remove all sanctions in the event they did not show.

REP. KOTTEL feared that some attorneys would not notify and this system could place witnesses in an indefensible position. Witnesses should be held liable for failure to show, but if the attorney did not send written notice, then the witness should not be held liable in a rule to show cause and the bill should include wording to hold the attorney accountable to notify.

Mr. Connor saw her point and agreed. The bill is trying to remove the responsibility from the sheriff's office to re-serve subpoenas.

Closing by Sponsor:

SEN. CRIPPEN closed and summarized the intent of the bill.

{Tape: 1; Side: B; Approx. Counter: 20.9}

HEARING ON SB 61

Opening Statement by Sponsor:

SEN. CRIPPEN, SD 10, brought SB 61 at the request of MSPOA. This bill deals with detention centers and the orderly administration of them. He explained the sections of the bill. He said the change is located on the second page which allows for an exception when the detention center is at full capacity and a detention center administrator can refuse to confine or continue to confine a person charged with a misdemeanor. He expanded on the need for this change.

Proponents' Testimony:

Kathy McGowan, MSPOA, stood in support of SB 61. **EXHIBIT 2**

Barry Michelotti, MSPOA, Cascade County Sheriff, listed the competent authorities who are able to bring people charged with crimes to jail while it is the sheriffs' responsibility to keep charge of the detention centers and those incarcerated in them. In the overcrowded conditions which exist, it becomes a difficult responsibility and the bill will allow for cooperative efforts to explore alternatives to solve the overflow problems.

Lt. Jim Cashell, MSPOA, Gallatin County Jail Administrator, explained and demonstrated how the system works.

John Connor, Montana County Attorneys' Association, voiced support for SB 61 and echoed previous testimony.

Troy McGee, Montana Police Protective Association (MPPA), supported the bill from the standpoint of the liability issue. If they make an arrest and then are unable to incarcerate them because of overcrowding of the facilities, this bill would provide protection for the police officers in those cases.

Chief Bill Ware, Montana Chiefs of Police, supported the bill for the same reasons as previously stated.

{Tape: 1; Side: B; Approx. Counter: 55.8}

Opponents' Testimony:

Gregory Mohr, Montana Magistrates Association, Richland County Justice of the Peace, Sidney City Judge, spoke in opposition to the bill because he and the organization he represents believes this is a local problem rather than a statewide problem.

Informational Testimony:

A letter from Scott Wyckman, Justice of the Peace, Gallatin County, was entered in the record in opposition. **EXHIBIT 3**

Questions From Committee Members and Responses:

REP. KOTTEL discussed standards which were referred to in testimony and wanted to know if they arise from constitutional issues or from federal guidelines.

Mr. Michelotti said to his knowledge there was nothing constitutional which provides for jail space. However, the federal court rulings as well as Montana courts prescribe certain criteria for jail as well as voluntary standards from MSPOA and American Corrections Standards.

REP. KOTTEL referred back to federal court decisions.

Mr. Michelotti said most of those decisions promulgate the standards throughout the United States.

REP. KOTTEL said she was confused about the liability issue police officers might have when they either release people or decide not to arrest. She wondered if she understood that there are two issues in using their own discretion in these two situations.

Mr. Michelotti said a law enforcement officer can either affect an arrest or write a notice to appear. Once the officer makes an arrest under the current statute, the only way he can unarrest is to find there is insufficient evidence to incarcerate. He cannot unarrest just because there is no room in the jail. Currently, the only one who can release a suspect from jail is the judge. The amendment gives the law enforcement officer the ability to release the individual without liability.

REP. KOTTEL asked if the police officers know when the jail is filled. She further asked if it is more likely that a police officer would simply not arrest or write a notice to appear which would put the public at risk. Additionally, she wanted to know if that should not be the decision of the officer in the field, but rather the administrator of the detention center.

{Tape: 2; Side: A}

Mr. Michelotti answered that the administrator of the facility (generally the sheriff) should have some authority because he is the one who is liable. It is he who gets sued rather than the prosecutor, judge or commissioners.

REP. KOTTEL wanted to know current practice when a suspect is brought in and the jail is completely full.

Mr. Michelotti said they have called a magistrate and at times they cannot reach a judge during the late night, early morning hours.

REP. MC GEE asked for an elaboration on the statement that this is not a statewide problem.

Judge Mohr said this problem seems to be localized in major metropolitan areas. When he has had a problem with overcrowding, he has met with the sheriff to work the problem out on their own.

REP. MC GEE asked if he agreed that there may be problems in other places.

Judge Mohr said he definitely did and anticipated more.

REP. MC GEE asked how he would address the concerns.

Judge Mohr said he would meet with the local judges and work it out by forming a local commission to plan for contingencies and he felt that it was part of his job to be called at anytime to do his part.

REP. SMITH asked how many liability charges had been brought because of this problem.

Mr. McGee said there had not been any lawsuits to his knowledge.

REP. SMITH asked him to explain, in light of that, what his concern was as stated in testimony.

Mr. McGee stated that in his county if a police officer picks up a person, the officer will call the jail through dispatch to determine if it is full. If they are full and won't take the suspect, the officer writes a notice to appear and releases him at the scene. If it is a felon, they would take them to the jail where the decision would be made to call the judge to get a release. The liability concern for misdemeanor cases lies in the possibility that the person would return to the scene and create more problems. They are concerned about these types of people who are released at the scene.

REP. SMITH asked if he was feeling pressure from the citizens of his community.

Mr. McGee said that when they release people who should be going to jail, they have had citizens complain.

REP. SMITH asked when the federal cap on the numbers of inmates came and what that entails.

Lt. Cashell deferred that question to **Mr. Michelotti** since his jail is the only one he knew of under a federal cap. (**Mr. Michelotti** was not called to answer the question.)

REP. SMITH asked his opinion on electronic monitoring.

Lt. Cashell felt electronic monitors are a viable alternative for both pre-sentenced and sentenced inmates.

REP. BILL CAREY asked if this bill became law, how **Judge Mohr** would "do business in Sidney."

Judge Mohr said if the bill became law, he would have to accept it, but would anticipate constitutional challenges because of separation of powers. This law would mean a person from a different branch of government could overrule his decision. Because his area does not have a problem, the bill would make no real difference in his county.

REP. HURDLE requested the categories of non-violent felons.

Lt. Cashell said that of the inmates in their facility, a large number of them are violent felons. Non-violent felonies could include theft, some non-aggravated burglaries, or forgeries.

REP. HURDLE asked what percentage of non-violent felons are incarcerated as compared with violent felons.

Lt. Cashell said most violent felons are incarcerated. Usually the bond is low enough for non-violent felons to post bail but those who are incarcerated are usually repeat offenders. Most of the felons in his facility are non-violent, but 35% are violent felons.

REP. HURDLE presumed that DUIs take up a lot of space in the jail and those are misdemeanor offenses.

Lt. Cashell agreed.

REP. HURDLE asked if the DUIs have intervention or treatment programs offered to them.

Lt. Cashell said that of the 78 people they have on the waiting list, 53% are DUIs, of those, seven are repeat offenders. All but seven of those 78 are eligible by statute to participate in a county work program to discharge their jail time. The alternatives for intervention or treatment programs are required for first offenders as part of their sentence at their own expense.

REP. HURDLE asked about anger management programs being available for other types of offenders at the facility.

Lt. Cashell said they have AA programs, Prison Fellowship, Montana State University graduate program for counseling, alcohol services and legal counseling.

REP. HURDLE asked how he would recommend getting more of a grip on the DUI problem.

Lt. Cashell believed that increased enforcement of DUI laws has contributed to the decline in the number of DUI arrests. He believed the county work program was more effective than 24-hour incarceration.

REP. HURDLE asked if that treats the alcohol problem.

Lt. Cashell said the repeat offenders are usually referred from the Alcohol Counseling and Training Program to other types of programs. In addition, if they are serving more than 24-hours, they are referred to AA programs.

REP. HURDLE asked what county he represents and if they do as the "man from Sidney" has advocated.

Lt. Cashell repeated that he was from Gallatin County. He reviewed how his county handles the situation.

REP. MC GEE proposed amending the bill which would allow the local magistrate to allow the detention center to use discretion to confine or continue to confine.

Judge Mohr said it would need a lot of language dealing with the criminal history of the person they are considering to release. He would have a hard time with such an amendment.

REP. SOFT asked if he heard correctly that nearly 40% of those on the waiting list are DUIs.

Lt. Cashell said that was correct.

REP. SOFT asked what alternatives they offer for DUI offenders.

Lt. Cashell said a first offense DUI has an automatic license suspension for six months. Subsequent offenses go through a one-year suspension and then revocation of the driver's license. On the third DUI there is a revocation for three years. He was not sure about other sanctions.

REP. SOFT asked about the alternatives for those incarcerated for forgeries.

Lt. Cashell said that Yellowstone County has a program called Alternatives, Inc. which puts DUI offenders on a work release program, teaches forgers basic records keeping skills, sees that people attend counseling and pay their fines while they are housed in a hotel-style environment.

REP. SOFT asked if he saw SB 61 as pushing for some creative alternatives to jail time.

Lt. Cashell definitely agreed.

REP. MOLNAR asked why the discretion should be taken away from a judge and given to a non-elected jailer to determine who stays in jail.

Mr. Michelotti answered that instead of the jailer, it is actually the sheriff or jail administrator who would decide. In nearly every county, the sheriff is ultimately responsible for the jail. In his county the judge feels that certain people should go to jail; but with the jail completely full, it presents financial problems which the county cannot solve.

REP. MOLNAR wondered if it would be best to "kill" SB 61 to force those making the decisions to negotiate alternatives.

Mr. Michelotti said to "kill" this bill would be detrimental to sheriffs and for communities. He gave examples of non-cooperation between responsible parties to support his opinion.

REP. MOLNAR wanted to know how this would help bring cooperation.

Mr. Michelotti said they were building a new jail in their county but this would not solve the problem because it will be seen as a solution and soon it too would be overcrowded. So alternatives must be explored. This bill would help by limiting their liabilities and judges could still do their job, but it would force the dialog to solve the problems.

REP. MOLNAR asked the sponsor if he was aware that the bill does not include youth detention centers.

SEN. CRIPPEN said that if it does not, there is a reason for it.

REP. MOLNAR asked if there was a problem in spelling out that it does not include youth detention centers by amendment.

SEN. CRIPPEN said that would be fine if it is the will of the committee.

REP. MOLNAR discussed the philosophy of deterrents from crime and how it applies to releasing misdemeanants.

SEN. CRIPPEN replied that this is a problem this society has with a lack of jail space.

REP. MOLNAR asked if there isn't a stronger impetus to work this out if this bill is not passed out of committee.

SEN. CRIPPEN said that there is no authority under the law to delegate the responsibility to a detention center administrator.

REP. MOLNAR stated, "Right now, if the judges are forced to look at alternatives and give those alternatives, then this bill becomes moot. If indeed we pass this bill and there is no impetus because the overcrowding is handled by the administrator, the judges then do not have to sit down and cut a deal or to work toward alternative sentences." He asked again why that is false.

SEN. CRIPPEN could not say that it was false, but there would still be the responsibility of the judge to work out a system with the detention center administrator. Right now, they don't have that authority and the liability is still there. It would not change if the bill doesn't pass. This bill deals with liability and gives the administrator the authority.

REP. TASH asked if the sponsor would be amenable to including DUI first offenders in the work release programs in the bill.

SEN. CRIPPEN said a first offense of DUI demands 24-hour incarceration and he felt there was a good reason for that.

{Tape: 2; Side: A; Approx. Counter: 42.5}

CHAIRMAN CLARK asked the sponsor to clarify that officers would not be turning people loose unless it is as the direction of the jail administrator.

Mr. Michelotti said it is actually the sheriff who would allow the jail administrator to refuse certain misdemeanants when the jail has reached capacity.

CHAIRMAN CLARK wanted clarification that the officer on the street is not addressed in the bill with the authority to turn someone loose unless the jail administrator tells him to.

Mr. Michelotti affirmed that.

CHAIRMAN CLARK wanted to know if **Chief Ware** or his officers have a problem with officers being able to handle situations with people who would say, "You can't lock me up anyway."

Chief Ware said that he would hope this would not interfere with the officers' duty to arrest and take to the jail. What this bill addresses is that once they get to the jail, the administrator will assess that particular arrest with one already incarcerated and make a decision about who can be let out.

CHAIRMAN CLARK wanted to be sure it would not put an undue burden on the officers on the street.

Chief Ware hoped that it would not.

Closing by Sponsor:

SEN. CRIPPEN believed this bill would be an added incentive for magistrates to work together with the jail administrators to solve the issues with overcrowding. He felt this would also deal with liability issues for law enforcement officers.

HEARING ON HJR 14

Opening Statement by Sponsor:

REP. DICK GREEN, HD 61, introduced HJR 14 requested by the county attorney of his county. There is a program whereby law students participate in bringing lawsuits on behalf of prisoners or ex-prisoners. This resolution petitions the Supreme Court to stop the practice which is funded by the taxpayers of the state. It becomes an unfunded mandate and a burden on the county attorney and his budget to defend against lawsuits brought against the state. Most of the cases, which are without merit and frivolous, would not be considered if the prisoners had to pay for them. He said that meritorious cases will never lack advocates and will not be ignored.

Proponents' Testimony:

George Corn, Ravalli County Attorney, said the resolution highlights the problem of the law school, acting through one of its projects, causing counties significant expense in money and resources. He described the project and that the lawsuits are brought against local and state government agencies. He said Department of Corrections and Human Services (DCHS) pays the law school $78,960 a year for the defender's project to represent state prisoners and to train the prisoners to represent themselves and one another. The difficulty comes in how it is put into practice bringing unfunded expense to the counties while perhaps saving money for the state. He said is it wrong for DCHS to pay the law school to represent prisoners in suits against the counties unless the state also provides the counties with the funds or the resources to fight the suits.

Allen Horsfall, Ravalli County Commissioner, described what they experience at the county level with this situation and what is entailed in the expense to the county.

{Tape: 2; Side: B}

He expressed that no taxpayer expects their tax dollars to aid and abet the legally convicted felons at taxpayers' expense to sue under civil law. He gave examples to support his statement.

Opponents' Testimony:

Margaret Tonon, Clinical Director, University of Montana Law School, said she was Ravalli County prosecutor for 16 years and so has been on both sides of the fence. She distributed a packet of information to support her opposition to HJR 14. **EXHIBIT 4** The sense she got from this resolution was that by taking law students and the defender project out of the system that the suits would stop and she said that is not true. She said some suits are filed by the defender project but most are filed by the inmates. She defended the project as creating a savings. Their files show no suit has been filed on behalf of a prisoner against the county by a law student in the law school clinics.

{Tape: 2; Side: B; Approx. Counter: 20.9}

Questions From Committee Members and Responses:

REP. MC GEE asked **Ms. Tonon** to refer to lines 26 and 27 of the bill. He read it as saying that the Supreme Court is being urged to modify its students' practice rule to prohibit law students from participating in filing law suits on behalf of current or former prisoners against county, state and public agencies. He asked her if she had a problem with limiting the defenders' project from filing suits against the state that has funded their training.

Ms. Tonon said she did because the assumption is erroneous in that the law school is a state-assisted law school and the bulk of the fees do not come from tuition, they pay for most of it themselves. The defender project is paid totally by the state. There is a federal mandate to provide counsel for inmates. If it is not paid by the defender project, it would be paid by taxpayer dollars elsewhere.

REP. CLIFF TREXLER referred to **EXHIBIT 4** where it says that only one student in five years has filed a law suit.

Ms. Tonon corrected that it says, "participated in a law suit."

REP. TREXLER asked if he was correct in assuming that this affects very few people.

Ms. Tonon said the resolution was drawn up too narrowly and that she believed the intent was to prevent law students from even participating in law suits which have already been filed. If it is limited to filing law suits, it wouldn't affect them that much but she still had a problem with it because under the federal mandate there would be times in which they would want to file.

REP. TREXLER asked if there was an problem in the process which would prevent them from assigning a student to defend the county as well as to provide a student to bring suit.

Ms. Tonon said there was nothing in statute to prevent that. It is limited by the numbers of students, faculty and funds available.

REP. TREXLER asked if she would agree that the education would be equally as valuable to defend as to file.

Ms. Tonon agreed but re-expressed her concerns about the availability of resources.

REP. ANDERSON asked if the law students file law suits only when it is brought to their attention by a prisoner.

Ms. Tonon explained how the defender project works.

REP. ANDERSON asked if she would object to the student only suggesting to the prisoner whether or not the case has merit rather than the student continuing on with the case.

Ms. Tonon answered that there is still the federal mandate to represent inmates who have meritorious claims. If they only advise, it is still incumbent on the inmate to decide whether to proceed and ask an attorney be appointed.

REP. ANDERSON asked what percentage of those cases filed against counties are handled by a court-appointed attorney as opposed to a law student in civil rights cases.

Ms. Tonon said court appointed counsel generally don't follow up in a criminal case, but they will follow up with an appeal. They are not often involved in a civil rights violation though they could be.

REP. ANDERSON asked if the law students generally are handling the civil rights case.

Ms. Tonon said they come to their attention. She directed the committee's attention to the last page of **EXHIBIT 4** to demonstrate the types of cases they are handling currently.

REP. TASH asked how the filing of these cases in Powell County affects **REP. SMITH'S** district.

REP. SMITH said she did not have data related to that, but the appeals process appears to be ongoing and they seems to be predominantly inmates' hearings.

REP. BERGMAN asked the sponsor if the bill intends to eliminate the defender project altogether.

REP. GREEN said they were trying to eliminate those cases where they are making the counties defend themselves. He did want to include cases involving any political subdivision in the state.

REP. BERGMAN concluded that the Supreme Court has allowed any political subdivision to be sued through this program and "we are paying to get sued."

REP. GREEN answered that was the point.

{Tape: 2; Side: B; Approx. Counter: 37.0}

REP. KOTTEL asked **Mr. Corn** a series of questions leading to the conclusion that Chief Justice Turnage commended the defender project in that they had a role to play and encouraged the legislature to ensure that it continued.

Mr. Corn said there was nothing in his remarks that said the defender project should be stricken. It has a role, but his point was that it should not hurt the counties inordinantly. It should also provide the counties with the same resources that the prisoners are provided with. Taken in context, he agreed with the Chief Justice's statement.

REP. KOTTEL asked how he would suggest that the legislature meet the requirements of Bounds v Smith to provide meaningful legal representation, information and assistance to prisoners in a more economical way than is done through the project.

Mr. Corn suggested providing a law library at the prison and he referred to the wording of the case she cited where it does not

say they must be represented by a lawyer, but that they may be trained in the law to represent themselves.

REP. KOTTEL asked if a private defender would have a right to request attorney's fees which would be paid for out of state-supported tax dollars.

Mr. Corn said **REP. KOTTEL** would be assuming that the attorney prevailed in the suit. As far as recovering those fees, he believed it would come from the county not necessarily the state.

REP. KOTTEL asked if he knew what average attorney's fees are in civil rights cases.

Mr. Corn said he did not.

REP. KOTTEL asked if he was philosophically opposed to the state paying for public defenders.

Mr. Corn said he was not and he had acted as a public defender in some very difficult cases. His opposition was to the present system which makes no sense.

REP. KOTTEL asked **Mr. Corn** to explain what she felt was a conflict between his support of one constitutional principle while opposing another.

Mr. Corn felt her summary was a distortion of what he had said. He summarized his previous statement by saying, "The defenders project may be appropriate but it is equally as appropriate, or while the defenders project is appropriate, my solution was to have another project to serve as a counter balance, counter weight to that. So I see no contradiction between the two at all."

REP. KOTTEL asked if he saw any issue having to do with academic freedom and why there was no positive solution offered.

Mr. Corn felt the question should be directed to the sponsor and he found it difficult to deal with the word, "positive," as being too vague and subjective.

REP. KOTTEL asked if the point was that students are not participating on both defense and prosecution. She also wanted to know if that was the point, would it have been better to request additional money for law students to assist counties and state government in defense of these types of law suits.

REP. GREEN replied that it was not his intent to do away with the advocacy program. His intent was to stop the practice of suing groups within a political subdivision which causes additional expense to the counties. His intent was in equity. In response to requesting funding for a counterpoint to the advocacy program, he said he wouldn't be interested in that at all.

REP. KOTTEL asked how to maintain an advocacy program without assisting prisoners in filing their litigations to bring the issues to a just resolution.

REP. GREEN deferred the question to **Mr. Corn.**

Mr. Corn said one way to do it would be to switch the advocacy program from prisoners, let the private market handle that, and use the program to support counties and the state when they are sued.

REP. SMITH asked for clarification about the funding of the program itself as well as the details of the makeup of student involvement in the program.

Ms. Tonon explained according to **EXHIBIT 4.**

REP. SMITH related the information to 98% of the cases in the Supreme Court being stimulated from the inmate population. She knew they have a law library and updated code books. She said 50% of the appeals are coming from the prison and asked if that was correct.

Ms. Tonon did not know.

REP. SMITH asked if it is possible to break the Montana Defender Project down keeping a maximum of ten students at the prison and putting ten students into county or state government.

Ms. Tonon said the American Bar Association has guidelines for how to supervise students. The resources are not available.

REP. SMITH asked further questions about shifting students and about the ratio of appeals.

Ms. Tonon again said she did not have information about the nature of the appeals. The contract with DCHS dictates the numbers of students being used in the program.

{Tape: 3; Side: A}

REP. BOHARSKI said the resolution seemed to be aimed at law suits against counties. He asked if the court said they have to provide that type of legal representation for prisoners or for someone regarding their constitutional rights.

Ms. Tonon said the Bounds decision requires providing legal assistance whether it is in the form of a law library, law training of individuals, etc. The state has determined that it must provide access for inmates and so there is a mandate.

REP. BOHARSKI asked how much DCHS is paying the University of Montana for the program.

Ms. Tonon said it is between $78,000 and $82,000 per year and she listed what is included in that budget figure.

REP. BOHARSKI asked if it includes the cost to state taxpayers in the amount of money to subsidize the law school.

Ms. Tonon did not have that information.

REP. BOHARSKI asked how often the student assisted cases prevail.

Ms. Tonon did not have those figures. Generally speaking the students prevail in one of two ways; either by convincing the inmate that they shouldn't file the law suit or they prevail by reaching accommodation either with the county or the state. The vast majority of civil rights cases are settled through an attempt to avoid the suit.

REP. BOHARSKI asked **Mr. Corn** to give his impression of the quality of the cases in question.

Mr. Corn said his experience is that the cases have been trivial and not particularly good. He presented **EXHIBIT 5** as an example of the amount of work involved as a demonstration of the quality of some cases. He went into detail about the variety of cases and the amounts of time they may take to defend against.

REP. BOHARSKI said it sounded like the program, rather than providing a legal resource, is making the students advocates.

Mr. Corn said that had been his feeling.

REP. CURTISS asked if the forms used in the program are a form of solicitation.

Ms. Tonon said the form was prepared many years ago and she described its content. It is provided upon an inmate's request and is used to determine whether there is any merit in the case.

REP. CURTISS wanted to establish that the inmate has to request the form before they are made available to them.

Ms. Tonon said her understanding was that that was true.

REP. SOFT asked for clarification on the ruling requiring either adequate law libraries or counsel.

Ms. Tonon said it is worded either/or.

REP. SOFT asked if the mandate would be met if the law library were fully updated and complete.

Ms. Tonon answered, "Again, I would give you that yes and no answer."

REP. SOFT asked if the state mandate is different from this.

Ms. Tonon said it derives from the Bounds case and from a federal case out of Billings.

REP. SOFT asked how many cases the students in the defender project have been involved in over the years have been cases to right the wrongs of prisoners.

Ms. Tonon couldn't give him that answer and gave reasons why she could not.

REP. SOFT asked the rhetorical question, whether Montana attorneys would contribute to the law library to meet the mandate. **Ms. Tonon's** opinion was no.

REP. KOTTEL asked if the library alone would stop frivolous lawsuits from being filed, decrease the county workload or stop the increased need for private attorneys.

Ms. Tonon said her original point was that this resolution would not change the fact that lawsuits would continue to be filed and in a less efficient manner.

REP. KOTTEL concluded from this line of questioning that the present system decreases the number of frivolous lawsuits filed, decreases the workload and decreases the need for private attorneys at increased cost.

Ms. Tonon agreed.

{Tape: 3; Side: A; Approx. Counter: 23.5}

CHAIRMAN CLARK confirmed with **Ms. Tonon** the amount paid by the state and then asked if the city of Missoula or Missoula County pay for the assistance received from the students.

Ms. Tonon said they do not pay the clinical students who cannot receive pay while also receiving credit for the work.

CHAIRMAN CLARK asked why, if the state pays while benefitting from the program, the city and county do not pay for the program--not the students.

Ms. Tonon said they are receiving a cost savings.

CHAIRMAN CLARK questioned the state paying for the program, Missoula County benefitting from that while the state also pays half of the Missoula County attorney's costs and wanted to know if that didn't seem unfair to other counties.

Ms. Tonon said that has to do with proximity. The mandate requires that they provide the supervision. She provided other arguments for their not paying for the clinical students.

CHAIRMAN CLARK asked if there were attorneys in those offices in the county who could qualify as supervisors.

Ms. Tonon said they qualify but are not faculty and they have their own caseloads. The University provides a nexus for the program which cannot be provided by the other attorneys.

Closing by Sponsor:

REP. GREEN made his closing remarks summarizing the benefit in reduction in costs and workloads to the county and slowing the growth in government.

{Tape: 3; Side: A; Approx. Counter: 30.0}

HEARING ON HB 290

Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, HD 89, said HB 290 provides a method for gaining access to isolated lands. He gave the history for the current law and practice. The bill provides that county commissioners are a go-between in settling access grants though it would not require a cost to the county.

Proponents' Testimony:

Stephen Craig gave personal testimony which sparked the need for this bill. Their position in settling their longstanding dispute is that a lawsuit is the last resort. This legislation would provide a way for settlement. He provided maps as background information for his testimony. **EXHIBITS 6 and 7**

Kathy Craig read a letter from her sister in support of HB 290. **EXHIBIT 8**

Opponents' Testimony:

William Spilker, Licensed Real Estate Broker, appeared on his own behalf to oppose HB 290. He viewed the legislation as a serious threat to private real property rights without adequate protection to other landowners. He said it is to be codified under title 70, chapter 30, which is the imminent domain statute. He said HB 290 defies and is a major departure from that statute by granting the power of imminent domain to the county commission to take private property rights for private purposes. The action would be concluded after a mere public hearing and the appeal process in the statute seems to only relate to the amount of compensation to be awarded to the property owner to whom the easement should pass and doesn't relate to the county commission decision whether to grant the right of way or the easement. He gave further detailed argument in opposition to HB 290.

Allen Horsfall, Ravalli County Commissioner, Montana Associations of Counties (MACO), rose in opposition to HB 290 on behalf of MACO. He said the passage of this bill would cause difficulties to the county governments and he detailed those. It would put them in the middle of litigation that would not result otherwise. He said the landlocked landowner has the right to bring suit on their own behalf and have the judicial body settle the dispute in a better fashion than a board of county commissioners. He cited a current case in Ravalli County to substantiate his opposition.

{Tape: 3; Side: A; Approx. Counter: 52.9}

John Bloomquist, Montana Stockgrowers, sympathized with the proponents but stated his concerns that the results would be public access and saw a problem through definitions of a "person." He felt there are other remedies.

Questions From Committee Members and Responses:

REP. ANDERSON suggested that **Mr. Craig** had options other than a court proceeding. He asked him to comment on his success with such remedies as a prescriptive easement.

Mr. Craig said they had not taken that route and told why they had not.

REP. ANDERSON asked the sponsor to respond to a concern relating to isolated parcels being sold to people who may never see them and how this bill would affect that.

REP. DEBRUYCKER said he did not know how to get around the problems which exist, but that he was an advocate of private landowner rights. The bill is taken out of Nebraska law and the main reason for bringing it forward was that there are people who do not have the finances to go into court for action. This would provide a way for them to find a solution.

{Tape: 3; Side: B}

REP. GRIMES asked for a copy of the Nebraska statute.

REP. DEBRUYCKER provided it. **EXHIBIT 9**

REP. TREXLER referred to line 26 on page 2 and line 2 on page 3 and line 18 on page 2 in asking if it was true that the only choice for the county commissioners is to produce a public access and they are not empowered to provide an easement.

REP. DEBRUYCKER said that was how he understood the bill and that this would provide leverage.

REP. TREXLER referred to page 3 which says that the county is not responsible for future maintenance unless a public road is established yet a public road is their only choice.

REP. DEBRUYCKER answered with a differentiation between situations were the county would provide maintenance and where they would not.

REP. TREXLER looked ahead to other situations were state lands are being sold and the only way to gain access is to condemn private land to get to it. Lines 22 and 23, on page 3 provide an appeal process and he asked for clarification of the award from the appraiser in an appeal when there was no appraiser.

REP. DEBRUYCKER said he would have to get a complete understanding from the drafter of the bill. He explained it as he understood it.

REP. TREXLER asked who pays for it.

REP. DEBRUYCKER said it would be paid by the person requesting access.

REP. CURTISS asked if the bill was addressing property where there were no roads previously.

CHAIRMAN CLARK believed that there was previous access.

Mr. Craig said 60 years ago there was a logging road but no record at the courthouse and that it had been about 50 years since the public had used it.

REP. CURTISS questioned the provision for ten petitioners for opening the road. She wanted to know if they had to be adjacent landowners.

CHAIRMAN CLARK said they just had to be freeholders.

Mr. Horsfall responded to the question that any citizen could petition the county government to open, close or alter a roadway and it does not say an existing road had to be there. It has to be in the public interest and only ten freeholders anywhere in the county can sign the petition. Adjacent landowners must receive written notice that the hearing is being held.

REP. CURTISS wondered if on testimony alone of one who knew of the existing road could avoid these procedures.

Mr. Horsfall explained the difference in the processes in opening roadways which previously existed.

{Tape: 3; Side: B; Approx. Counter: 11.5}

REP. KOTTEL read the statute and asked for clarification.

REP. DEBRUYCKER affirmed her understanding.

Closing by Sponsor:

REP. DEBRUYCKER said this bill is an extension of present laws. He said the county commissioners are protected since whoever is petitioning has to put up a bond. He said he was open to amendments which would address some of the concerns voiced during the hearing.

Motion: **REP. MC GEE MOVED TO ADJOURN.**

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

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:20 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/1/95

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

HOUSE STANDING COMMITTEE REPORT

February 1, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 179** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 6.
Strike: "WITHOUT OBJECTION FROM THE CHARGED PERSON"
Insert: "UNDER CERTAIN CIRCUMSTANCES"

2. Page 1, line 16.
Following: "may,"
Insert: "at the discretion of the county attorney for the county in which the person was arrested and"

-END-

2\2
95
Committee Vote:
Yes 18, No 0.

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/1/95 BILL NO. HB 55 NUMBER _____

MOTION: Table

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

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Feb. 1, aye

Date ~~Jan. 19~~, 1995

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 55 *

Representative Bill Lacy voting aye
(aye or no)

* and all amendments pertaining to this bill aye.

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-1-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 179 *

Representative Bill Carey voting Yes
(aye or no)

* and all amendments pertaining to the bill.
WJC.

EXHIBIT 1
DATE 2/1/95
SB 59

February 1, 1995

Testimony Supporting Senate Bill 59
Provided by the Sheriff's and Peace Officer's Association

Mr. Chairman and members of the House Judiciary Committee, my name is Kathy McGowan. I am appearing before you today on behalf of the Montana Sheriff's and Peace Officer's Association (MSPOA). We would like to express our strong support for Senate Bill 59, and urge you to give this bill your favorable consideration.

Essentially, this is bill represents cost savings to local county law enforcement departments that have the responsibility for serving Subpoenas. The serving of Subpoenas takes time, and as you know, time is money. This money comes from local taxpayers, and MSPOA is interested in making the most efficient use possible of taxpayer dollars.

When Chuck O'Reilly, Sheriff for Lewis and Clark County, presents his testimony, he will provide you with statistical information from Lewis and Clark County that illustrates exactly how costly the subpoena process can become.

Senate Bill 59 stipulates that the original subpoena, once served, remains in effect until the final determination in the case is made by the court of jurisdiction. This should not pose a problem for the courts or for the citizens involved in a proceeding. If a proceeding must be continued, the attorneys involved have the obligation to inform their clients and any witnesses they are calling. The responsibility to inform rests with the attorneys involved in the case.

This legislation will save local law enforcement time and money. It's efficiency legislation at its best, and the kind of cleanup bill this section of the law has needed for quite some time.

Thanks for the opportunity to testify in support of Senate Bill 59. There are other proponents here today, and any of us will be pleased to respond to any questions you may have.

EXHIBIT 2
DATE 2/1/95
SB 61

February 1, 1995

Testimony Supporting Senate Bill 61
Provided by the Sheriff's and Peace Officer's Association

Mr. Chairman and members of the House Judiciary Committee, my name is Kathy McGowan. I appear before you today on behalf of the Sheriff's and Peace Officer's Association (MSPOA). We are here to express our strong support for Senate Bill 61, and urge you to give this bill your favorable consideration.

When we presented House Bill 250 to you on Monday, we told you that it was one of three bills designed to alleviate overcrowding problems in many of our county jails. Senate Bill 61 is the second such bill you will consider. It reflects one more effort by county sheriffs and their jail administrators to perform a very delicate balancing act. That balancing act is one of public safety on the one hand and managing their jails in the most cost efficient manner on the other. Still another major factor are constitutional challenges when overcrowding exists.

As you know, there are two basic types of offenses: misdemeanors and felonies. The former are minor offenses: traffic violations, jaywalking, littering, and trespassing, as examples. The latter are more serious offenses such as armed robbery, assault, rape, burglary, homicide, and arson). Senate Bill 61 proposes to allow jail administrators to refuse custody of persons charged with or convicted of misdemeanors when the detention center is at full capacity.

Our county jails and detention centers operate under the scrutiny of state and federal authorities; and that of private watchdog organizations like the American Civil Liberties Union. Jails can be filled; but not overfilled. If they are overfilled, there is a tremendous amount of liability exposure for the county generally, and the Sheriff's department in particular. If jails are over capacity, deputies are hard pressed to check the prisoners frequently enough to guarantee safety. The very real risks of assaults or suicides in the jail is being run when its resident population exceeds capacity. In addition, when a jail is overfilled, the overcrowding itself increases the risk of an incident that may well result in loss of life or in harm being done to an inmate.

Yesterday I had a call from Michael O'Hara, Jail Administrator from Missoula County, and he very much wanted to be here today to testify. He was unable to make it because today he is transporting eleven prisoners to Montana State Prison. He expressed his frustration to me during our conversation. He said they actually have a waiting list for the jail in his county. I was flabbergasted. I am very familiar with waiting lists for public mental health services and group home services for abused and neglected children, but I did not know that there waiting lists for jails. In addition, Lieutenant O'Hara also told me that Missoula County just yesterday was

served with another lawsuit due to overcrowding in their jail. Like other counties, Missoula County has agreements with contiguous counties. For instance, if they have federal prisoners in their jail and they are at capacity, they regularly transport the federal prisoners to Ravalli County in order to make room for others. This hurts in more ways than one, since the federal government reimburses at a higher rate for those prisoners. Lieutenant O'Hara said Senate Bill 61 was important to him because it would allow him to make better use of his management skills and give him the flexibility he needs to manage the Missoula County facility in such a way as to ensure public safety and at the same time make the best possible use of monetary resources.

The MSPOA believes that sheriffs have a moral obligation to protect the inmates of their jails. Dereliction of that duty places counties and cities at tremendous legal and financial risk. When no clear cut statutory language clarifies their authority to release misdemeanants due to the jail being full, additional liability is placed upon city and county officers. This bill is protection for cities that utilize county facilities as well as for the counties themselves.

In many of our larger communities, the local jail or detention center is full much, if not most, of the time. Currently, if someone being held for a felony is being incarcerated, and a misdemeanant must be discharged in order not to exceed the facility's capacity, the local Sheriff must seek and get an order from a judge. As you know, crime is not an 8 a.m. to 5 p. m. activity, so sheriff's offices quite often find themselves calling a judge in the middle of the night and requesting an order to discharge a traffic violator in order to hold a rapist, for example. Understandably, the judges resent this kind of intrusion.

Senate Bill 61 will alleviate the problem by giving the county sheriffs the discretion they need in order to manage and administer their facilities in such a way as to protect the prisoners in their care and at the same time limiting the liability for local government and local law enforcement and maintaining public safety. Senate Bill 61 will not allow the release of those individuals who have committed crimes such as DUI, domestic abuse, or stalking.

Thanks for the opportunity to testify in support of Senate Bill 61. There are other proponents here today, and any of us will be pleased to respond to any questions you may have.

EXHIBIT 3
DATE 2/1/95
SB 61

GALLATIN COUNTY JUSTICE COURT

SCOTT WYCKMAN, JUSTICE OF THE PEACE
DEPARTMENT #1

GORDON L. SMITH, JUSTICE OF THE PEACE
DEPARTMENT #2

LAW AND JUSTICE CENTER, 615 South 16th Avenue, Room 168
Bozeman, MT 59715 • (406) 582-2191 • FAX (406) 582-2176

January 31, 1995

Honorable Greg Mohr,

You have advised me of the content of Senator Crippens bill regarding the incarceration of persons convicted of misdemeanor criminal offenses.

From our conversation it appears that a great deal of discretion will be extended to jail administrators as to whether or not a misdemeanant can be incarcerated. To allow the Sheriff and his jail staff to dictate to the Courts of limited Jurisdiction who may or may not be jailed seems to raise constitutional issues on the separation of powers, the executive from the judicial. Equally important is taking away discretion the Judges now have in determining whether or not an individual should be jailed.

I am opposed to this bill because it will allow the following:

- The jail staff can realign its priority in the direction of financial considerations rather than local jail service to the courts by allowing federal prisoners to fill limited space because of reimbursement opportunities.
- The court will have difficulty in enforcing its orders (time payments, conditions of bail etc.) because the final decision with regard to incarceration will rest with the jail administration.
- It appears that this bill is one which deals with local problems at a state level.
- When more people are refused at the jail because of this bill there will be a public and law enforcement perspective of failure by the courts to appropriately deal with persons convicted of a crime.

Feel free to distribute this letter to the House members concerned with the outcome of SB61. I wish I could appear tomorrow to voice my opposition to this bill, but my calendar is full. I support your position in this matter and trust you will express my feeling to the House and its committee(s).

Sincerely,

Judge Scott Wyckman

Judge Scott Wyckman

EXHIBIT 4
DATE 2/1/95
HB HJR 14

The University of
Montana

School of Law
The University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

Missoula, Montana
January 31, 1995

Rep. Bob Clark
Chairman, House Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Joint Resolution 14

Dear Chairman Clark:

I am writing to provide the Committee with some facts about the Law Student practice rule in the State of Montana. As you know, Representative Dick Green (R-Ravalli County) has introduced HJ 14, which urges the Supreme Court to prohibit students in state-supported programs from filing law suits on behalf of current or former prisoners against state and local entities.

First, I should point out that Rep. Green's initiative arises from an article published in the Ravalli Republic on December 17, 1994. That article reported that UM law students had filed "two more" law suits against Ravalli County on behalf of prisoners in the county jail. The article went on to claim that a half dozen such suits had been filed, and that "instead of working on appeals, they [the law students] file complaints against the counties that incarcerated them." I can understand Rep. Green's reaction. The only problem is, the article is absolutely false.

The inmates apparently filed the cases on their own. The Law School knew nothing about them until someone provided us a copy of the Ravalli Republic article. Even now, we know only what was reported in the article. Democratic County Attorney George Corn's claim that law students file complaints against counties is also false. In recent memory, no student in the Law School's clinics has filed suit on behalf of a prisoner against a county. In the last five years, one student in the Montana Defender Project, about whom Attorney Corn was complimentary, participated in one case against a county, out of perhaps a thousand others.

Last year, at the personal request of a local federal judge, the Montana Defender Project, a clinical program at the Law School, agreed to represent a Montana State Prison inmate in his pending litigation over inhumane conditions in the old Ravalli County jail. It was our view that assisting in that meritorious case would save the County money in the long run. When inmates file law suits, one of two things happens. They obtain counsel or they represent themselves. When they represent themselves, they generate huge amounts of paper and huge amounts of unnecessary work for the attorneys who represent the government defendant. This translates into increased costs to the government for their defense. In the case we took, our students were able to focus on the important issues in the case and exclude the frivolous issues, saving the government substantial defense costs. Additionally, when our students represent an inmate, we can tell the inmate what his or her case is really worth rather than what he or she thinks it is worth. This usually means that we can settle the case, and the County avoids the major expense of a trial.

When an inmate has private counsel, the government defendant incurs even greater costs. Under the Civil Rights Attorney's Fees Act and similar statutes, a plaintiff who prevails against someone who has violated their civil rights is entitled to have their attorney's fees paid by the defendant. That means that counties end up paying tens and hundreds of thousands of dollars to the plaintiff's lawyers. A few examples come to mind. In 1993, Silverbow County paid over $40,000 in attorney's fees to the lawyers who represented a man who had been beaten by another inmate in the Silverbow County jail. In 1986, Big Horn County and the local school district paid over $250,000 in fees and costs to the plaintiffs' attorneys in a case brought against it.

As a rule, when the Montana Defender Project brings a civil rights case, it does not seek attorney's fees. All in all, it is less expensive for a county to have the Montana Defender Project in such a case than it is to have them out. The Montana Defender Project does bring civil rights cases on behalf of prison inmates. As I said, this almost **never** involves a local government.

The Montana Defender Project has been in existence since 1966. After it was founded, a federal court required the State of Montana to provide legal representation to inmates incarcerated in the prison system. This order follows the United States Supreme Court holding in *Bounds v. Smith*, 430 U.S. 817 (1977).

In *Bounds*, the Supreme Court said, "We hold, therefore, that the fundamental right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Later Supreme Court holdings have emphasized that inmates should receive assistance from lawyers in most meritorious cases.

The State was faced with several options: hiring private counsel on a case-by-case

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basis, setting up a law office, or working with the Montana Defender Project. The Project was, and remains, the most cost-effective means of complying with federal law. Currently the Project provides legal representation in post-conviction criminal proceedings, in review of sentences, and in civil rights cases. As a result, the State gets twice the benefit from its investment -- we provide both legal services and clinical education.

Many people view law suits by inmates as unnecessary and frivolous. We don't bring cases over chunky peanut butter, and we successfully discourage inmates from bringing such claims. However, when we do represent inmates in meritorious cases, the public benefits.

It is also important for the Committee to understand that State and local governments benefit directly from the training that our students receive in our clinical programs. All of our law students, because they more often than not go to smaller towns and work in smaller firms where they cannot receive the necessary mentoring and supervision, must complete four credits of clinical training. Just as a doctor does not enter medical practice without a period of internship, our students do not enter legal practice without a period of internship. That internship is spent in our clinical program.

We presently have ten clinical programs, at the Missoula County Attorney's office, where students do criminal prosecutions, at the Missoula City Attorney's Office, where students do civil and criminal prosecutions, at the U.S. Department of Agriculture, at an environmental law clinic, Montana Legal Services, at a University legal services program paid for by students, at a disability law clinic, in the Montana Defender Project and an Indian Law Clinic and at University Legal Counsel.

We don't teach our students to be exclusively criminal defense lawyers or to bring civil rights law suits. We teach them about the law and how to practice it. Many, if not most, of our students go to work for government or in law firms that defend governments. Among students from the Montana Defender Project, in the last five years, eight graduates began work as prosecutors (straight out of law school), twenty went to work for judges, and others went to work at law firms that defend law suits against local and state governments. Three went to work exclusively as criminal defense attorneys. These students bring to bear the skills and knowledge that they learned in our clinics and they do it on behalf of taxpayers.

I have enclosed, for your perusal, copies of the original Ravalli Republic article, my response, two letters from a Ravalli County resident and my response to him, and a brief description of our Law School clinics. I hope that this assists the Committee in considering the merit, or lack of merit, of the proposed Resolution. I hope that you agree that the

Legislature should not act on the erroneous information spread by the Ravalli Republic article.

Sincerely,

Margaret A. Tonon

Margaret A. Tonon
Acting Clinical Director

c: Committee Members
President George Dennison
Dean Rodney K. Smith

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CLINIC DESCRIPTIONS

The Montana Defender Project, Prof. Jeffrey Renz (Maximum of 20 students)

The Montana Defender Project is located in Room 192 of the Law School at the University of Montana. The Montana Defender Project provides representation in post-conviction, habeas corpus, and civil rights cases, and in parole and sentence review matters, to inmates at the Montana State Prison, the Swan River Boot Camp, and the Women's Correctional Center. Students perform such tasks as interviewing and counseling, investigation, marshalling of evidence, collection and study of court documents, preparation of pleadings, motions, and discovery, and trial work in Federal Court. With the exception of appellate representation before the Sentence Review Division of the Montana Supreme Court, students will appear primarily in federal court. In several instances, substantial law reform has taken place as a result of cases developed, filed and argued by the law students. Law student participation is expected to reduce the load which pro se inmate cases place on the Helena and Missoula Divisions of the United States District Court.

*** Montana Legal Services Association, Klaus Sitte (Maximum of 6 students)**

The Montana Legal Services office is located at 304 N. Higgins Avenue. The Montana Legal Services Association provides civil legal assistance to low income individuals at no cost to the client. The general areas of practice include administrative law, housing law, public benefits, consumer law, family law and many others. Clients are accepted on a priority schedule and on income guideline eligibility. Students do interviewing, counseling, letter writing, drafting of pleadings, discovery, motion practice, trial work, as well as many other areas, under the direction of a supervising attorney.

*** ASUM Legal Services, Bruce Barrett & Annie Hamilton (Maximum of 12 students)**

This office is located on campus in the UC, and provides legal services to students at the University. The cases encountered are 90% civil, and 10% minor criminal. The civil cases are of a broad variety, including dissolutions (divorces), negligence, consumer, landlord/tenant, simple wills, domestic cases (adoption, name-change, etc.), and a variety of others. The minor criminal matters are generally limited to traffic citations, shoplifting, and disturbance charges. Each intern will work one three-hour shift per week, and see three clients during that shift. Usually, only one of the three clients involves more than a one-time, advice-only session. Some work outside of the appointed shift is to be expected. Interns can expect to perform the full range of attorney activities, from negotiating, drafting, and plea-bargaining, to full jury and non-jury trials.

*** Natural Resource Clinic, Tom France (Maximum of 8 students)**

The Natural Resource Clinic office is located at 240 North Higgins. The clinical program in natural resource law is sponsored by the National Wildlife Federation, and is similar to other NWF programs at the University of Colorado and the University of Michigan. Students work under the supervision of NWF attorney Thomas France on a variety of issues ranging from forest planning and coal leasing to the permitting process of the proposed Kootenai Falls Dam. Work assignments include brief writing, administrative appeals, and legal and factual research. The program is open to both second- and third-year students. Students usually receive two credits a semester, and are encouraged to enroll in the program for at least one year.

Indian Law Clinic, Profs. Brenda Desmond/Raymond Cross (Maximum of 8 students)

The Indian Law Clinic is located in the Law School at the University of Montana. The justice system of Montana's seven tribal governments is the focus of the work of the Indian Law Clinic. The Clinic's activities include responding to requests from tribal governments for assistance with tribal code development, and to requests from Tribal Courts for training programs for Court personnel and assistance in improving procedural rules and processes. The Indian Law Clinic responds to requests for legal research from Tribal Court judges and attorneys working in the field of Indian law. It also works cooperatively with the Montana Defender Project in responding to requests for information on Indian law issues from inmates at the Montana State Prison. The primary object of the Indian Law Clinic is to provide a means for students to gain practical experience within the tribal justice system and to work directly with both substantive and jurisdictional aspects of Indian law.

***U of M Legal Counsel's Office, UM Legal Counsel (Maximum of 2 students)**

The U of M Legal Counsel is located in Main Hall at the University of Montana. Students assigned to the University Legal Counsel's Office will be given a variety of legal matters to handle--ranging from general advice to representation of the University in state administrative and judicial proceedings. This office functions as an in-house legal counsel's office and handles all legal matters involving the University. These matters range from general advice to administrators on student-related questions, personnel matters including affirmative action, contracts, state procurement, interpretation of state and federal regulations, and representation in administrative proceedings. Since the University also has several collective bargaining agreements with various segments of the University community, opportunities for students to become involved in contract interpretation and grievance resolution may also be available.

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***Missoula County Attorney, Betty Wing, Karen Townsend (Maximum of 8 students)**

The Missoula County Attorney's office is located at the Courthouse. Clinical students assigned to the Missoula County Attorney's Office deal with a variety of civil and criminal matters. The students prosecute traffic cases incorporating the lawyering skills of interviewing, preparation of witnesses and negotiating and the litigation skills involved in trial work. The County Attorney's Office also offers assistance to the public in the areas of landlord-tenant and consumer relations. These areas are handled primarily by the clinical students. Students may also have an opportunity to work under the supervision of several different attorneys in the office in the areas of public health, mental commitments and other district court matters.

Office of General Counsel, U. S. Dept. of Agriculture, Mark Lodine (Maximum of 2 students)

The Office of General Counsel is located in the Federal Building, 340 North Pattee. Clinical students assigned to the U.S.D.A. perform in a variety of civil and in a limited number of criminal matters. The Office of General Counsel represents Region 1 of the U. S. Forest Service encompassing Northern Idaho, Montana, North Dakota and parts of South Dakota, with responsibilities encompassing federal contract appeals, forest planning, mining claim review and contests, claims and objections under Montana and Idaho water law, Federal tort claim land acquisition and special uses, and law enforcement. This office also represents the Montana Offices of Farmers' Home Administration, Agricultural Stabilization and Conservation Service, Commodity Credit Corp., Soil Conservation Service, Agricultural Research Service, Food & Nutrition Service (Food Stamps), and other U.S.D.A. agencies with responsibilities including loan servicing, foreclosure actions, bankruptcy proceedings, tort claims, water right claims and objections, criminal prosecutions of food stamp violations, and general advisory opinions.

Disability Law Clinic - Montana Advocacy Program, Mary Gallagher (Maximum of 2 students)

The Disability Law Clinic provides representation to clients of the Montana Advocacy Program, a statewide advocacy organization responsible for providing protection and advocacy services to individuals with disabilities in Montana. Cases may come from MAP attorneys in the regional offices in Helena, Billings, Warm Springs or Missoula and are under the direction of the supervising attorney. The general areas of practice include administrative law, Americans With Disabilities Act enforcement, Assistive Technology access through various state agencies, mental health law, housing discrimination issues, Civil Rights Act issues, commitment and guardianship issues, special education as it relates to children in institutions, constitutional issues based on the Rights of Institutionalized Persons Act and institutional conditions issues, health care and hospital regulation laws, Montana Human Rights Act

violations, juvenile justice and juvenile mental health issues, some interface with the criminal justice system and more.

Students perform discovery, motion practice, litigation assistance, brief writing, administrative appeals, legal research, client interviews, counseling, letter writing, drafting pleadings, negotiations as well as legal educational projects.

Missoula City Attorney's Office, Jim Nugent (Maximum of 2 students)

The Missoula City Attorney's office is located on the second floor of Missoula City Hall, 435 Ryman. The general areas of legal assistance that will be available to a law school clinical student would be legal research of a civil, administrative or criminal matters; counselling citizens regarding municipal government operations, interviewing complainants and witnesses in misdemeanor criminal cases, preparation and prosecution of misdemeanor cases in Missoula Municipal court.

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* Margaret A. Tonon and Gail Hammer are currently assigned to work with these clinics.

nall business survey

See page 2

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See page 6 for details

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Ravalli Repu

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Taxpayer: sue thyself

UM law students file two more cases against county

By RUTH THORNING

Two more prisoners in the Ravalli County Jail have filed lawsuits against Ravalli County and county attorney George Corn is disgusted with the entire process.

"Intolerable, ludicrous, expensive, unnecessary—take your pick. All those adjectives fit," Corn said. "And the worst part of it is, we taxpayers pay the University of Montana law school to help these prisoners sue the counties and waste more tax dollars."

Corn said he has seen more than half a dozen such suits this year, all brought by present, or former, jail prisoners. Each accepted lawsuit costs the county a deductible amount on the county's insurance policy. Four recent cases totaled $3,227 in deductible costs.

In addition, some suits are not covered by the insurance policy. For example, prisoners who complain about the length of their sentences are not covered by the insurance. Corn estimated about 20 percent of his purchased services budget this year has been spent on those cases.

There are other costs as well. Corn and his staff, who are working with an ever-increasing caseload of civil county business, as well as felony and misdemeanor crimes, must answer the

See Lawsuits, page 5

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Lawsuits

continued from page 1

charges. It often takes days of an attorney's time to prepare responses to the charges—and that cuts into time Corn believes is needed for more important work.

The last two lawsuits, which are almost identical, were filed by Joseph Saalfrank and Leo Taylor. They are against the Ravalli County Commissioners, Sheriff Jay Printz, his undersheriff and lieutenant and several jailers.

Saalfrank was last in the local jail after being picked up on a warrant. He was convicted of felony witness tampering in 1992. He disappeared before sentencing, and was arrested in another state in 1994. He was sent to the Montana State Prison to serve a five-year sentence.

Taylor was charged with felony burglary of the U.S. Bureau of Reclamation property at Lake Como and those charges were transferred to a federal court in Missoula. He now is in the Missoula County Jail.

The lawsuits, which were filed in U.S. District Court in Missoula, allege violations of civil rights. Specifically, that the Ravalli County Jail does not have medical staff or medical screening, that no tuberculosis tests, HIV screening or blood screening tests are done before prisoners are placed in jail, that no delousing procedures are done, and that medication is given out by jailers rather than trained medical personnel.

The suits state jail conditions are inadequate because no fresh air, no sunlight, and no recreation opportunities are provided. Jail deficiencies include placing misdemeanor and first-time offenders in with more serious felons and, if jail staff is not available, prisoners are not able to visit at will with their attorneys.

Saalfrank also claims he was not given a special diet he needed during part of his time in jail.

The lawsuits ask the Ravalli County Jail be closed until all state and federal standards are met. Saalfrank is asking for $332 per day for each day he was incarcerated in the jail and Taylor is seeking $150 per day.

"The law school receives a generous allowance from the state to allow third-year law students to act as public defenders and help prisoners at Montana State Prison," Corn said. "Often, instead of working on appeals, they file complaints against the counties that incarcerated them."

Corn said he has asked the law school for third-year students to work in his office. He says they would gain experience and help relieve some of the workload. But he has always been told it is not possible, because there is nobody available at the law school to supervise students who might work in Ravalli County. At this time, a number of law students work for the Missoula County Attorney's office and a professor at the law school is paid to oversee the prison defender project.

"We end up spending local money to prosecute these people and then to defend ourselves against them, generally after they have been sent to prison," Corn said. "It costs and costs and costs. The law school ought to at least set up a counterweight to that system."

Lottery

Sundays winning numbers

Montana Cash
14 19 25 27 36
Tri-West
9 12 17 23 24 30
Powerball
3 14 22 30 38 (40)

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DATE 2-1-95
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December 19, 1994

940 Nature Way
Stevensville, MT 59870

Dean Rodney K. Smith
University Law School
University of Montana
Missoula, Montana 59812

Dear Dean Smith:

Ravalli County Attorney George Corn has been faced with law suitts which were promoted by University of Montana law students presumably as part of their law school training. Their actions have put an intolerable burden of time and expense on the County Attorney's office and a financial burden on the county's taxpayers.

As a graduate of the University of Montana and a taxpaying resident of Ravalli County, I am highly interested and disappointed by the above activities of the Law School. Since Ravalli County does not benefit financially from the presence of the University as does Missoula County, the Law School should use Missoula County's jail exclusively as their training ground.

If the Ravalli County Jail is the only satisfactory training arena available, the Law School should send not only a team to initiate the suits, but also a team to defend the County's interests.

We ask you to take action to correct the situation brought about by the Law School's activities in Ravalli County.

Sincerely,

Kenneth L. Kershner

Kenneth L. Kershner

cc: President George Dennison, University of Montana
George Corn, County Attorney, Ravalli County, Montana

December 27, 1994

Mr. Kenneth L. Kershner
940 Nature Way
Stevensville, MT 59870

Dear Mr. Kershner,

Law School Dean Rodney Smith recently forwarded to me your letter of December 19, 1994. I am eager to respond to your concerns in my capacity as Acting Director of the law school's Clinical Program. When I first received your letter I was admittedly puzzled. Although I live in Hamilton, I do not receive the Ravalli Republic and was unaware of the article on December 12, 1994 which may have prompted your letter. I have now read the article and would like to respond to both it and your concerns.

The article, unfortunately, contained several inaccuracies and misstatements which may have raised issues for you which do not exist. The sub-heading, "UM law students file two more cases against county" is both misleading and incorrect. I personally checked on the two cases mentioned in the article and neither involves law students nor The Montana Defender Project. The article also mistakenly implied that law students had filed "more than half a dozen such suits this year." I spoke with the Director of the Project and he stated that there are no cases currently being handled by The Defender Project which involve Ravalli County former inmates and the issue of jail conditions.

I should mention that last year, at the personal request of the local federal judge, the Montana Defender Project, a clinical program at the Law School, did agree to represent a former jail inmate in his pending litigation over inhumane conditions in the old Ravalli County Jail. It was our view that assisting in a meritorious case would save the County money in the long run. When inmates file law suits without the assistance of counsel, they generate a huge amount of unnecessary paper and unnecessary work for the County's attorneys. Our students were able to focus on the important issues in the case and keep the frivolous issues to a minimum.

Additionally, Mr. Corn is wrong when he says in the article, "Often, instead of working on appeals, they [law students] file complaints against the counties that incarcerated them." In the last five years our Defender Project students have participated in one civil rights case involving a county, out of perhaps a thousand potential cases.

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The Montana Defender Project is one of ten clinical opportunities afforded third year law students. It has been in existence since 1966. Not long after it was founded, the United States District Court ordered the State to provide legal representation to inmates in the prison system. The State was faced with several options: hiring private counsel on a case-by-case basis, setting up a law office, or working with the Defender Project. The Project was, and remains, the most cost-effective means of complying with federal law. Currently the Project provides legal representation in post-conviction criminal proceedings, in review of sentences, and in civil rights cases.

In your letter you refer to the possibility of the Law School providing student interns for Ravalli County. As I have repeatedly explained to Mr. Corn and the County Commissioners, we do not have the resources to provide one or more additional faculty clinical supervisors required to oversee such out-of-town placements. Our three and one half clinical faculty now provide faculty supervision to over 60 students. The American Bar Association standards by which we are governed simply do not allow us to stretch our limited resources any thinner. We have offered to assist Mr. Corn in hiring students on the Work-Study Program, which would save the County 70% of the students salary. Mr. Corn has not responded to that offer.

I am very proud of the clinical program at the University of Montana School of Law. We are one of only four law schools in the nation which requires clinical training of all its students. We offer students a wide range of opportunities at the City Attorney's office, where they do criminal prosecutions, in the Missoula County Attorney's office, where they do civil and criminal prosecutions, at Montana Legal Services, at a disability law clinic, at a University legal services program paid for by the students, at the University's General Counsel's office, at the U.S. Department of Agriculture, at the National Wildlife Federation, and in the Law School's Indian Law and Montana Defender Project Clinics. Our goal, first and foremost, is the quality education of our students. Second, we aspire to and do provide a valuable service to our community and state.

I hope that I have addressed your concerns and would welcome any further questions that you may have.

Sincerely,

Margaret A. (Peggy) Tonon
Acting Clinical Director

cc: President George Dennison
Dean Rodney K. Smith
George Corn, Ravalli County Attorney

940 Nature Way
Stevensville, MT 59870
January 4, 1995

Margaret A. (Peggy) Toioni
School of Law
University of Montana 59812-1071

Dear Ms. Toioni:

Thank you for your very prompt and courteous letter of December 27, 1994, which responded quite adequately to my letter of December 19th.

As you suggested, my letter was prompted by the Ronald Reagan article about the filing of cases at UM and I am pleased because of your response I am now much better informed about the activities of these law students.

Your letter includes information about the training of law students that is indeed encouraging.

Again, thank you for your response.

Sincerely,

Kenneth L. (Ken) Nordtvedt

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DATE 2-1-95
HJR 14

Ravalli Republic
OPINION
Page 2 - Tuesday, January 10, 1995

Second class postage paid at Hamilton, MT under publication #148080. Published by Ravalli Republic at 232 Main Street Hamilton, every morning except Saturdays & Sundays and on national holidays. Postmaster, please send change of address to Ravalli Republic, 232 W. Main, Hamilton, MT 59840-2562.

Reader's comment

Professor defends defender project

Recently, in my capacity as Acting Clinical Director at the University of Montana School of Law, I was forwarded a letter received from a concerned citizen of Ravalli County. He was very upset about county lawsuits promoted by University of Montana law students. I had no idea what the citizen was talking about until I received a copy of an article which appeared in the Ravalli Republic on Dec. 12 entitled, "Taxpayers: Sue Thyself." The sub-headline reads, "UM law students file two more complaints against county."

The article, unfortunately, contains several inaccuracies and misstatements which raised issues for the citizen which do not exist. The sub-heading is both misleading and incorrect. I personally checked on the two cases mentioned in the article and neither involves law students nor The Montana Defender Project. The article also mistakenly implies that law students have filed "more than half a dozen such suits this year." I spoke with the director of the project and he stated that there are no cases currently being handled by the defender project which involve Ravalli County former' inmates and the issue of jail conditions.

I should mention that last year, at the personal request of the local federal judge, the Montana Defender Project, a clinical program at the law school, did agree to represent a former jail inmate in a suit he filed over inhumane conditions in the old Ravalli County Jail. When inmates file lawsuits without the assistance of counsel, they generate a huge amount of unnecessary paper and unnecessary cost for the county's attorneys. By assisting the inmate, our students were able to focus on the important issues in the case and keep the frivolous issues to a minimum.

Additionally, the article is wrong when it says, "Often, instead of working on appeals, they (law students) file complaints against the counties that incarcerated them." In the last five years, our defender project students have participated in one civil rights case involving a county, out of perhaps a thousand potential cases.

The Montana Defender Project is one of 10 clinical opportunities afforded third-year law students. It has been in existence since 1966. Not long after it was founded, the United States District Court ordered the state to provide legal representation to inmates in the prison system. The state was faced with several options: hiring private counsel on a case-by-case basis, setting up a law office, or working with the defender project. The project was, and remains, the most cost-effective means of complying with federal law. Currently, the project provides legal representation in post-conviction criminal proceedings, in review of sentences, and in civil rights cases.

However, this means that the project represents prison inmates in lawsuits that can include lawsuits against local governments. There are benefits in having law-trained representatives in these cases rather than having inmates represent themselves. We can reduce the enormous amount of paperwork that the inmates generate. Second, we can tell an inmate what his, or her, case is worth (typically not the millions that they claim). This usually means that we can settle the case without the cost of a trial.

Finally, because we take only cases with merit, those inmates would likely have been entitled to have an attorney represent them. Counties then, under federal law, would face the additional liability of the inmate's attorney's fees, payable at a commercial rate. Based upon our experience in civil rights and attorneys' fee litigation, those costs typically run in the tens of thousands of dollars. Since the defender project does not seek attorneys' fees as a rule, it would probably be less expensive for Ravalli County to have the defender project in these cases than it would be to have them out.

Cases against jails are rare, but often necessary. As a former Deputy County Attorney for Ravalli County for 16 years, I was acutely aware that our old jail was a lawsuit waiting to happen. Currently, the prisons and jails in the United States are in the midst of a tuberculosis epidemic. When jails, such as Ravalli County's old jail, are ill conceived and underfunded, TB can run rampant. Not only are prisoners at risk, but the officers who watch over them are at risk as well. Since most prisoners in jails are eventually released and are our neighbors and relatives, all citizens have a stake in a clean, well-run jail. Complaints that prisoners are whining and that their claims are frivolous should be tempered with the reality that there are serious public health problems in many of our nation's jails.

The article also refers to the issue of the law school not providing student interns for Ravalli County. As I have repeatedly explained to George Corn, Ravalli County Attorney, and the county commissioners, we do not have the resources to provide one or more additional faculty clinical supervisors required to oversee such out-of-town placements. Our three and one half clinical faculty now provide faculty supervision to over 60 students. The American Bar Association standards by which we are governed simply do not allow us to stretch our limited resources any thinner. We have offered to assist Mr. Corn in hiring students on the Work-Study Program, which would save the county 70 percent of the students' salary.

I am very proud of the clinical program at the University of Montana School of Law. We are one of only four law schools in the nation that requires all of our third-year students to complete an internship under the supervision of experienced attorneys. This training takes place in actual office settings. We offer students a wide range of opportunities at the Missoula City Attorney's office, where they do criminal prosecutions; in the Missoula County Attorney's office, where they do civil and criminal prosecutions; at Montana Legal Services; at a disability law clinic; at a university legal services program paid for by the students, at the university's general counsel's office; at the U.S. Department of Agriculture; at the National Wildlife Federation; and in the law school's Indian Law and Montana Defender Project clinics. Our goal, first and foremost, is the quality education of our students. Second, we aspire to, and do provide a valuable service to our community and state.

"Taxpayers: Sue Thyself" was an unfortunate misnomer of a process that protects the public in the long run. By assisting those most in need—whatever the root cause—makes all of us the better for it.

Margaret Tonon
University of Montana

MONTANA DEFENDER PROJECT
CURRENT CASE LOAD

Active Cases

9 Sentence Review Cases.

3 Appeals from Convictions (Montana Supreme Court.)

12 Post-conviction Relief Cases.

6 Federal Habeas Corpus Cases.

12 Civil Rights Cases (including 7 taken at the request of the Federal Court.)

9 Others (including parole, adoption, child custody and visitation, among others.)

Cases Under Investigation

1 Appeal from conviction (to determine if appeal should be dismissed.)

12 Post-conviction Relief Cases.

5 Federal Habeas Corpus Cases.

13 Civil Rights Cases.

3 Others.

Civil Rights Cases Discouraged or Closed Without Litigation

During 1993-1995, we investigated and closed 11 potential civil rights cases without further action by us or the inmate. Four cases were settled without litigation being filed. The state paid a total of $160 dollars in settlement. In only one case did an inmate disregard our recommendation and file a pro se lawsuit. We saw similar results with respect to post-conviction and habeas cases.

EXHIBIT 5
DATE 2/1/95 Commissioners
HJR 14

Jeffrey T. Renz
Shane N. Reely, Legal Intern
Montana Defender Project
School of Law
University of Montana
Missoula, Montana 59812
(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA MONTANA

JIM E. THOMPSON, Plaintiff, v. RAVALLI COUNTY BOARD OF COMMISSIONERS, RAVALLI COUNTY SHERIFF'S OFFICE, JAY PRINTZ, and ALL JAIL EMPLOYEES, individually and officially Defendants.	Cause No. CV 93-113-CCL RULE 200-5 DISCLOSURE

FACTUAL BASIS FOR CLAIMS

The factual basis for Plaintiff's pain and suffering and punitive damage claims are as follows: There was mildew on the roof of his cell block. The shower floor was very slippery, causing him to fall. Water dripped on his bunkbed as a result of condensation. The outside walls were cracked, permitting seepage into the cell block.

The cell block was overcrowded. Plaintiff was not allowed to exercise while he was incarcerated. There were no recreational facilities available to Plaintiff. There were no ventilation vents, there were two fans in the cell block, but both were plugged. The cell block consequently always smelled like defecation. The temperature was unusually cold and the cell was very humid. There were no windows in the cell block. There

443-7250

were no fire sprinklers or fire extinguishers in the cell, nor were there any visible smoke alarms. The jail has insects. Overcrowding resulted in inadequate access to the toilet and commode. Plaintiff contracted athlete's foot and a cold while incarcerated. Plaintiff was exposed to at least one cancerous person with open sores.

The clothing and bedding had not been washed prior to Plaintiff's incarceration. Electric outlet on walls occasionally saturated with condensation. Plaintiff was denied access to the telephone and television, and had to make collect calls for local calls. Plaintiff was not provided with adequate cleaning supplies to clean the toilet and commode. Plaintiff was not provided with a special liquid diet, and officials knew that his most of his face had recently been stitched shut and could not eat solid foods.

Plaintiff's factual basis for his denial of visitation claim is as follows: The Jail's policy was to permit visitors twice per week for 2 1/2 hours. Each visit lasted thirty minutes. The visits were on a first-come-first-serve-basis. Plaintiff was denied visitation three times when his wife came to see him. Finally, there was no grievance procedure.

LEGAL THEORIES

Plaintiff relies upon the following constitutional claims to support his claims: Fourteenth Amendment for denial of due process, discrimination, and Equal Protection; Eighth Amendment for cruel and unusual punishment; First Amendment for redress of government.

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PERSONS KNOWN TO OR BELIEVED TO HAVE INFORMATION ABOUT THE CLAIMS IN THE COMPLAINT.

1. Plaintiff

2. Defendants

3. Plaintiff's wife
Address unknown at present
Knows about visitation policy

4. Wallace Arney
Address unknown at present
Inmate at Ravalli County Jail with cancerous sores

5. Deleena Stewart
Address unknown at present
Incarcerated while Plaintiff incarcerated, had all bodily hair shaved off as a result of vermin in Jail subsequent to Plaintiff's transfer to Montana State Prison.

6. All inmates incarcerated during Plaintiff's incarceration.
Addresses unknown

DOCUMENTS

1. Legal papers and correspondence.

COMPUTATION OF DAMAGES AND OTHER RELIEF

1. Actual damages for pain and suffering in an amount stated in Plaintiff's Complaint.
2. Punitive damages in an amount stated in Plaintiff's Complaint.
3. Damages for denial of visitation in an amount stated in Plaintiff's Complaint.

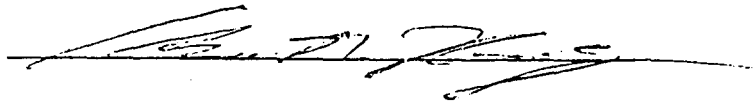
DATED THIS 7th of November, 1993

JEFFREY T. RENZ
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I certify that on this _____ day of November, 1993, a true and correct copy of the foregoing was deposited in the U.S. Mail, postage prepaid thereon, addressed to the Defendants as follows:

Dee Ann G. Cooney
Utick & Grosfield
Attorneys at Law
P.O. Box 512
Helena, MT 59624-0512



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Jeffrey T. Renz
Shane N. Reely, Legal Intern
Montana Defender Project
University of Montana School of Law
Missoula, Montana 59812
(406) 243-2222
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * * * * * *

JIM E. THOMPSON, Plaintiffs v. RAVALLI COUNTY BOARD OF COMMISSIONERS, RAVALLI COUNTY SHERIFF'S OFFICE, JAY PRINTZ, and ALL JAIL EMPLOYEES, individually and officially Defendants.	Cause No. CV 93-113-CCL PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND PRODUCTION TO DEFENDANTS

* * * * * * *

TO: Defendants Ravalli County Board of Commissioners, Ravalli County Sheriff's Office, Jay Printz, and all Jail employees, individually and officially:

COMES NOW the Plaintiff, by and through his counsel, and pursuant to Rules 33 and 36, Fed.R.Civ.P., offers the following Interrogatories and Requests for Admissions to the Defendants:

INTERROGATORY NO. 1: Please state the names of all Jail employees who were employed at the Ravalli County Jail between December 22, 1992, and January 1, 1993.

ANSWER:

INTERROGATORY NO. 2: Please state the names of all persons who actually worked at the Jail, in any capacity, between December 22, 1992, and January 1, 1993.

ANSWER:

INTERROGATORY NO. 3: Please state whether the Ravalli County Jail has been inspected by any State or Local Agencies in the past three years.

ANSWER:

INTERROGATORY NO. 4: If the answer to Interrogatory No. 3 is "yes", please state the names of the agencies and inspection officials or personnel who performed such inspections, and the exact dates, beginning with the most recent date.

ANSWER:

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REQUEST FOR PRODUCTION NO. 1: If the answer to Interrogatory No. 3 is "yes", please produce all copies of any documents, papers, findings, conclusions, reports, letters, evaluations, and suggestions which were prepared by such agencies.

INTERROGATORY NO. 5: If any state or local agencies referred to in your answer to Interrogatory No. 3 have made any recommendations or imposed any restrictions upon the Ravalli County Jail, please describe in detail the steps taken by the Jail to address the recommendations or restrictions. Also, if any such agencies have made any recommendations or have imposed restrictions upon the Ravalli County Jail, please describe in detail the steps taken by the Jail to address the recommendations or restrictions.

ANSWER:

INTERROGATORY NO. 6: Please describe in detail the ventilation system inside the cell block in which Plaintiff was incarcerated at the Ravalli County Jail.

ANSWER:

REQUEST FOR ADMISSION NO. 1: Please admit that there were no windows in Plaintiff's cell block between December 22, 1992, and January 1, 1993.

RESPONSE:

INTERROGATORY NO. 7: If you denied Request for Admission No. 1, please describe in detail the location of any such windows which were inside Plaintiff's cell block between December 22, 1992, and January 1, 1993.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: Admit that there were no fire sprinklers or smoke alarms in Plaintiff's cell block between December 22, 1991, and January 1, 1993.

RESPONSE:

INTERROGATORY NO. 8: If you denied Request for Admission No. 2, please state in detail the number and locations of such fire sprinklers or smoke alarms.

ANSWER:

INTERROGATORY NO. 9: Please state the daily population at the Ravalli County Jail, the design capacity, and the number of permanent bunkbeds inside Plaintiff's cell

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block.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce a copy of the Ravalli County Jail's evacuation plan.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of the floor plan of the Ravalli County Jail.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of the Ravalli County Jail policy manual.

REQUEST FOR PRODUCTION NO. 5: Please produce a copy of every Ravalli County Jail inmate handbook and/or manual.

REQUEST FOR ADMISSION NO. 3: Admit that the cell block in the Ravalli County Jail had insects between December 22, 1992, and January 1, 1993.

RESPONSE:

REQUEST FOR ADMISSION NO. 4: Admit that between December 22, 1992, and January 1, 1993, the Jail employees engaged in the practice of cutting off all of the inmates' access to the telephone and television when one inmate within Plaintiff's cell block committed an infraction or violated a

Jail rule, policy, or restriction.

RESPONSE:

INTERROGATORY NO. 10: If you denied Request for Admission No. 4, please describe with particularity how Jail employees disciplined inmates for violating Ravalli County Jail rules or regulations.

ANSWER:

INTERROGATORY NO. 11: Please describe in detail the Ravalli County Jail's policy or procedure regarding inmates' use of the telephone inside the cell block.

ANSWER:

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of such policy or procedure described in Interrogatory No. 11.

INTERROGATORY NO. 12: Please describe in detail the Ravalli County Jail's policy or procedure regarding feeding or otherwise caring for inmates who are unable to eat solid foods, and who, as a result of a physical condition, must consume liquids.

ANSWER:

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INTERROGATORY NO. 13: Please state what cleaning materials or supplies were provided to prisoners in Plaintiff's cell block between December 22, 1992, and January 1, 1993.

ANSWER:

INTERROGATORY NO. 14: Please state whether any other lawsuits relating to conditions at the Ravalli County Jail have been filed in the past five years.

ANSWER:

INTERROGATORY NO. 15: If the answer to Interrogatory No. 21 is "yes", please identify by parties and docket number and the describe the disposition of each lawsuit.

ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please produce a copy of the Ravalli County Jail's inmate exercise policy which was in effect between December 22, 1992, and January 1, 1993.

REQUEST FOR ADMISSION NO. 5: Admit that between December 22, 1992, and January 1, 1993, the Ravalli County Jail officials did not allow inmates to physically exercise unless an inmate

had been incarcerated for thirty (30) days.

RESPONSE:

INTERROGATORY NO. 16: If you denied Request for Admission No. 5, please describe in detail the exercise policy or practices of the Ravalli County Jail between December 22, 1992, and January 1, 1993.

ANSWER:

REQUEST FOR ADMISSION NO. 6: Admit that during Plaintiff's incarceration in the Ravalli County Jail, the only exercise inmates were allowed was to walk around the block adjacent to the Jail, under the direction of Jail officials.

RESPONSE:

REQUEST FOR ADMISSION NO. 7: Admit that there were no recreational facilities available to inmates inside the Ravalli County Jail between December 22, 1992, and January 1, 1993.

RESPONSE:

INTERROGATORY NO. 17: If you denied Request for Admission No. 7, please describe any such recreational facilities available to inmates inside the Ravalli County Jail between December 22, 1992, and January 1, 1993.

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ANSWER:

INTERROGATORY NO. 18: Please state whether the Ravalli County Jail conducts due process hearings prior to imposing discipline upon inmates.

ANSWER:

INTERROGATORY NO. 19: If the answer to Interrogatory No. 25 is "yes", please describe in detail the hearings process.

ANSWER:

REQUEST FOR PRODUCTION NO. 8: If the answer to Interrogatory No. 24 is "yes", please produce a copy of any such procedures.

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of any inmate grievance procedures which were in effect between December 22, 1992, and January 1, 1993.

INTERROGATORY NO. 20: Please describe in detail the visitation policy or procedure of the Ravalli County Jail.

ANSWER:

REQUEST FOR PRODUCTION NO. 10: Please produce a copy of the Ravalli County Jail's visitation policy or procedure.

INTERROGATORY NO. 21: Please state the names of the inmates who were incarcerated in Plaintiff's cell block between December 22, 1992, and January 1, 1993.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: Please permit the inspection of the Ravalli County Jail by Plaintiff's counsel and experts (if any.)

DATED this 22nd of November, 1993.

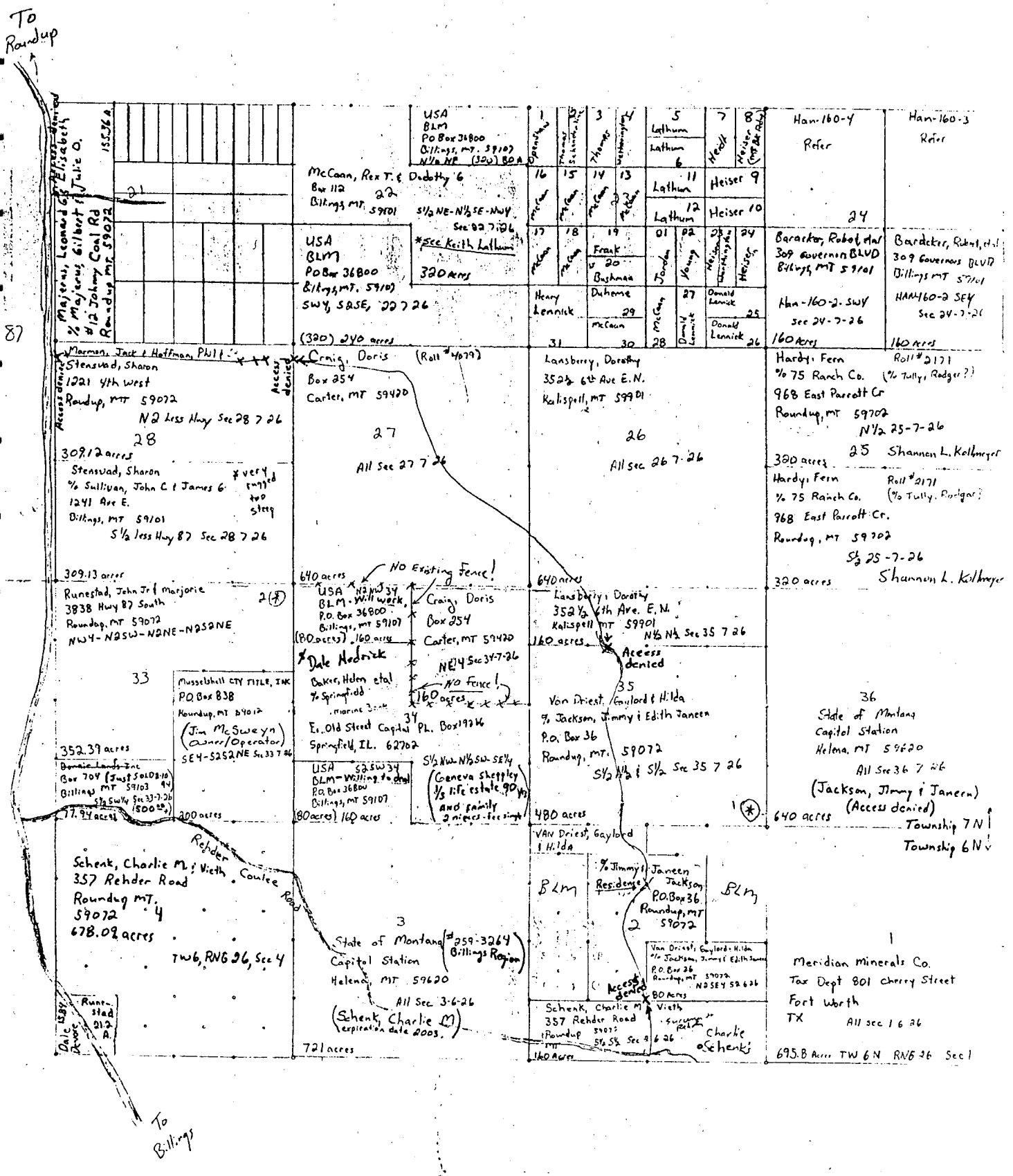
JEFFREY T. RENZ
Attorney for Plaintiff

CERTIFICATE OF MAILING

I certify that on this 22nd day of November, 1993, a true and correct copy of the foregoing was deposited in the U.S. Mail, postage prepaid, addressed to the Defendants as follows:

Dee Ann. G. Cooney
Utick & Grosfield
Attorneys at Law
P.O. Box 512
Helena, Montana 59624-0512

EXHIBIT 6
DATE 2/1/95
HB 290



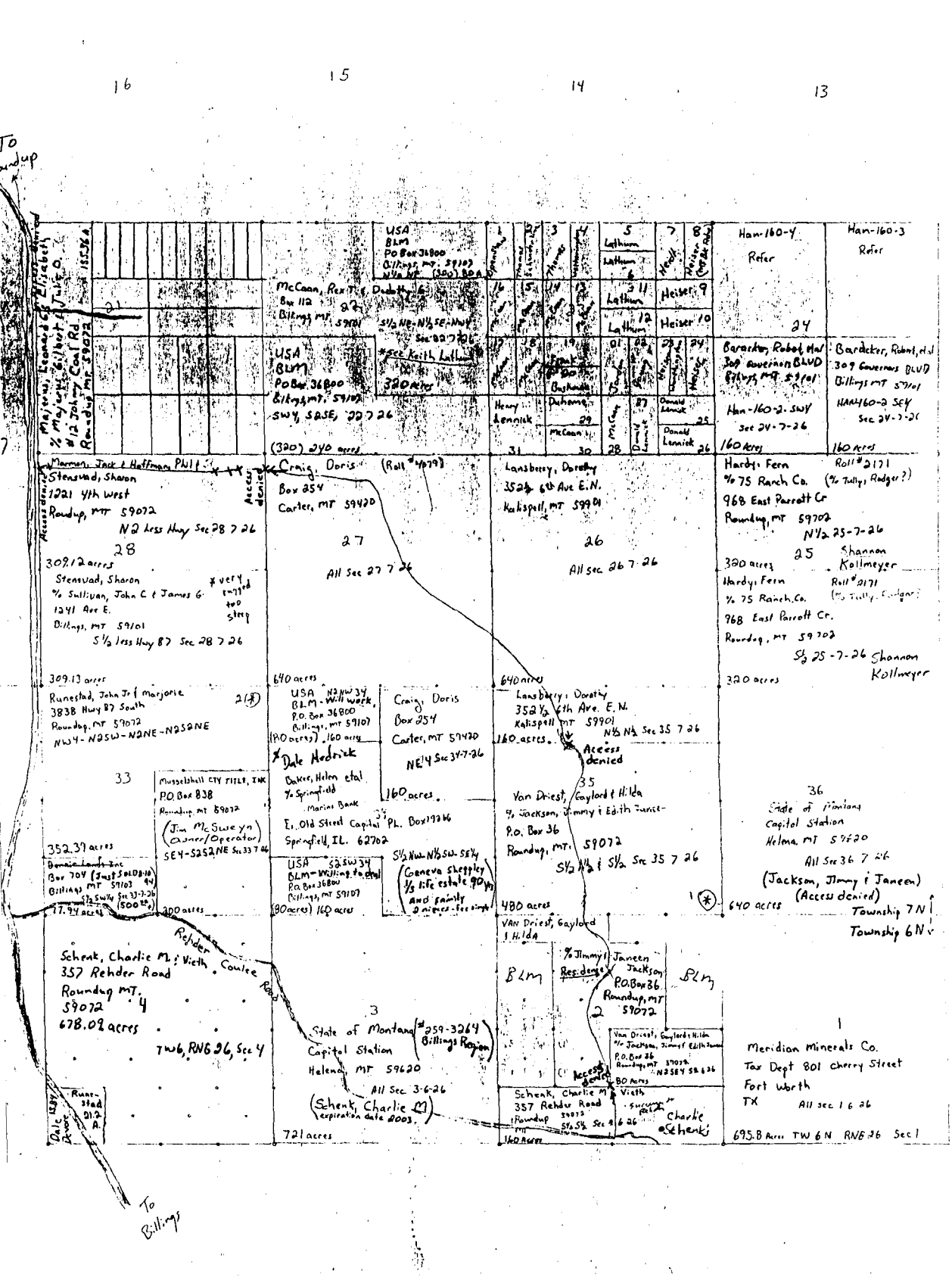


EXHIBIT 7
DATE 2/11/91
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EXHIBIT 8
DATE 2/1/95
HB 290

Gloria Dibbern
11024 W. Abbott Rd.
Cairo, NE 68824

Re: HB 290

To the Honorable Legislators:

There is a great need for the state of Montana to have a law that prevents a landowner from being shut off from his property. HB 290 is being submitted for just that purpose. It is the same law that is used successfully in the state of Nebraska.

My mother and my aunt, along with their brother, inherited property from their mother. The brother inherited the property that controlled access to the sisters property. Several years passed, then the brother sold his land without including an easement for his sisters. The land was sold again, to a third party. When my mother and aunt sought to log their property they were denied access to their land. When they consulted their lawyer about this, they learned that their only recourse was to sue.

It is not good for a government to encourage, either actively or by default, its citizens to sue one another. The laws of the State should encourage citizens to work out their differences and to compromise. The laws of the State should also make it difficult for the dishonest and greedy to take advantage of others. In my mother's and aunt's case, surrounding landowners were offering to buy their property for a fraction of its true worth. At the time the trees were worth close to $500.00/acre and the surrounding landowners were offering $100.00/acre or less. When their offers were refused, they made it quite clear that they controlled access and that my mother and aunt would be kept off of their own property.

If HB290 were to pass, landowners, like those in my mother's and aunt's case, would be encouraged to work out access with their neighbor. If access cannot be obtained through negotiation, then the county commissioners would solve the matter by declaring a public road into the property. Note: The plaintiff must show that he tried to obtain an easement from surrounding landowners and was unsuccessful. This law does not apply to those who buy land without access.

In my family's efforts to obtain access to my mother's property we have learned of many more people who have lost access to their property. Loss of access to one's property is not an isolated occurrence in Montana. It should be unheard of, just as it is in Nebraska. Now is the time to make it just that!

Sincerely,

Gloria Dibbern

39-1710. New or altered roads; plats; records; duties of county board. After a new road has been established or an existing road altered, the county board shall cause the plat of such road to be recorded and platted in the road plat record of the county with a proper reference to the files in the office of the county clerk where the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 10, p. 544.

39-1711. Road plat record; contents; entries, when made; duties of county board. The county board shall cause a road plat record to be kept in which every road that is legally laid out must be platted. Each township shall be platted separately, on a scale of not less than four inches to the mile. All changes in or additions to the roads shall be immediately recorded and entered on the proper page of the road plat record with appropriate reference to the files in the office of the county clerk in which the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 11, p. 544.

39-1712. Resurvey; when ordered. When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any road since the original survey that its location cannot be accurately defined by the papers on file in the proper office, the county board may, if it deems it necessary, cause such road to be resurveyed, platted and recorded as provided in sections 39-1705 to 39-1707.

Source: Laws 1957, c. 155, art. IV, § 12, p. 544.

39-1713. Isolated land; access; affidavit; petition; hearing before county board; time. When any person shall present to the county board an affidavit satisfying it (1) that he or she is the owner of the real estate described therein located within the county, (2) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (3) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (4) asking that a public access be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for such access may be included in a separate petition instead of in such affidavit.

Source: Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1.

A road established hereunder is a public road and this section is constitutional. Moritz v. Buglewicz, 187 Neb. 819, 194 N.W.2d 215.

39-1714. Isolated land; access by private road only; affidavit; petition; hearing before county board. Whenever all the other conditions prescribed by section 39-1713 are present and, instead of being entirely shut off from all public roads, the only access by any owner of real estate to any public road is by an established private road less than two rods in width, the county board shall, upon the filing of an affidavit or affidavit and petition, substantially in the manner set forth in section 39-1713, setting forth such facts, appoint a time and place and hold a hearing thereon in the manner set forth in section 39-1713.

Source: Laws 1957, c. 155, art. IV, § 14, p. 545.

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. Burton v. Annett, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-1715. Isolated land; access; hearing; notice; service; posting. When a hearing is to be held as provided in sections 39-1713 and 39-1714 the county board shall cause notice of the time and place of the hearing to be given by posting notices thereof in three public places in the county at least ten days before the time fixed therefor. At least fifteen days' written notice of the time and place of the hearing shall be given to all of the owners and occupants of the lands through which such access may pass. The notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant of such lands and, whenever possible, by either registered or certified mail to the owners of such land.

Source: Laws 1957, c. 155, art. IV, § 15, p. 545; Laws 1982, LB 239, § 2.

39-1716. Isolated land; access road; width; damages; powers of county board; costs; maintenance. The county board shall, if it finds (1) that the conditions set forth in section 39-1713 or 39-1714 exist, (2) that the isolated land was not isolated at the time it was purchased by the owner, (3) that the isolation of the land was not caused by the owner or by any other person with the knowledge and consent of the owner, and (4) that access is necessary for existing utilization of the isolated land, proceed to provide public access and, if it finds that the amount of use and the number of persons served warrants such action, may lay out a public road of not more than four nor less than two rods in width, to such real estate. The county board shall appraise the damages to be suffered by the owner or owners of the real estate over or through which the access shall be provided. Such damages shall be paid by the person petitioning that such access be provided. For any real estate purchased or otherwise acquired after January 1, 1982, for which public access is granted pursuant to sec-

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tions 39-1713 to 39-1719, the person petitioning for such access shall also reimburse the county for all engineering and construction costs incurred in providing such access. In those cases in which public access is granted pursuant to sections 39-1713 to 39-1719, the county shall not be responsible for future maintenance unless a public road was laid out.

Source: Laws 1957, c. 155, art. IV, § 16, p. 545; Laws 1982, LB 239, § 3.

The duty of the board of county commissioners under this section, to lay out a public road upon a showing that the statutory conditions of section 39-1713, R.R.S.1943, exist, is ministerial. Singleton v. Kimball County Board of Commissioners, 203 Neb. 429, 279 N.W.2d 112.

A road established as provided herein is a public road. Moritz v. Buglewicz, 187 Neb. 819, 194 N.W.2d 215.

39-1717. Isolated land; location of access road. Whenever possible, access provided pursuant to sections 39-1713 to 39-1719 shall be along section lines. When the most practicable route for the public access as provided in section 39-1716 shall be adjacent to a watercourse, the land to be taken for such access shall be measured from the edge of the watercourse.

Source: Laws 1957, c. 155, art. IV, § 17, p. 546; Laws 1982, LB 239, § 4.

39-1718. Isolated land; access road; order of county board; award of damages; payment; filing of order. Upon the providing of public access as provided for by section 39-1716, the county board shall make and sign an order describing the same and file it with the county clerk, together with its award of damages which order shall be recorded by the clerk; *Provided*, the amount assessed as damages to the owner or owners of said real estate shall be paid to the county treasurer before the order providing such access shall be filed.

Source: Laws 1957, c. 155, art. IV, § 18, p. 546; Laws 1982, LB 239, § 5.

39-1718.01. Isolated land; changes in law; applicability. Sections 39-1713 and 39-1715 to 39-1718 shall not apply if public access has been granted prior to July 17, 1982.

Source: Laws 1982, LB 239, § 6.

39-1719. Isolated land; access road; award; appeal; procedure. Any party to an award as provided by section 39-1718 may, within sixty days after the filing thereof, appeal therefrom to the district court of the county where the lands lie. The appeal shall be taken by serving upon the adverse party a notice of such appeal and filing such notice and proof of service thereof with the clerk of the court within said sixty days. Thereupon the appeal shall be set down for hearing at the next term of the

court. It shall be heard and determined in like manner as appeals from awards in condemnations as provided in sections 76-704 to 76-724. Such appeal shall not affect the right or authority of the petitioner to the use of the roadway under the award of the appraisers; *Provided*, the applicant shall in case of appeal file such additional security as may be required by the county board for such costs and damages as may accrue against him by reason of such appeal; *and provided further*, if on appeal, the appellant shall not obtain a more favorable judgment and award than was given by the appraisers, then such appellant shall pay all the costs of such appeal. Either party to such suit may appeal from the decision of the district court to the Supreme Court, and the sum deposited as hereinbefore provided shall remain in the hands of the county treasurer until a final decision is had.

Source: Laws 1957, c. 155, art. IV, § 19, p. 546; Laws 1961, c. 189, § 8, p. 583.

39-1720. **Roads to bridge on county line; opening; maintenance; closing or vacating.** Where there is, or may be hereafter constructed, a public bridge across a stream dividing two counties, it shall be the duty of the county boards of such counties to open and keep open within their respective counties a public road leading from such bridge to the most convenient public road. Each county shall bear the expense necessary to open and maintain such roads in good condition for travel. Such roads shall not be closed or vacated except by concurrent action of the county boards of both counties.

Source: Laws 1957, c. 155, art. IV, § 20, p. 547.

39-1721. **County and township roads, portions within cities or villages; subject to municipal regulations.** Such portions of all public roads of the counties and townships as lie within the limits of any incorporated city or village shall conform to the direction and grade and be subject to all the regulations of other streets in such city or village.

Source: Laws 1957, c. 155, art. IV, § 21, p. 547.

(c) VACATION AND ABANDONMENT

39-1722. **Road vacation or abandonment; resolution of county board directing study; report to board; permanent record.** The county board of any county may by resolution, when it deems the public interest may require vacation or abandonment of a public road of the county, direct the county highway superintendent or in counties having no highway superintendent then such person as the board may direct to study the use being made of such public road and to submit in writing to the county board within thirty days, a report upon the study made and his or her

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-1-95

BILL NO. SB 59 SPONSOR(S) Rep. Cripper

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Kathy McGowan - Helena	MSPOA	✓	
Barry Michelotti Cascade County	MSPOA	✓	
Charles R. Brooks	Yellowstone County	✓	
John Connor	Atty. General's Office MT County Attys Assn	✓	

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

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-1-95

BILL NO. SB 61 SPONSOR(S) Rep. Crippen

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Kathy McGowan	MSPOA	✓	
LT. JAMES CASHELL	MSPOA	✓	
Barry MICHELOTTI	MSPOA	✓	
Troy McGee	MT. Police Protective Assoc	✓	
BILL WARE	Mt. Asso. of Chiefs' Police	✓	
Gregory Pinher	Montana Magistrates Assoc		✓
J.P. GOAN	MT. SUPREME COURT		✓
Charles R. Brooks	Yellowstone County	✓	
John Connor	MT County Attorneys Association		

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

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-1-95

BILL NO. HJR 14 SPONSOR(S) Rep. Green

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Margaret A. (Peggy) Tonon	UM School of Law		✓
George Corn	Powell County Attorney	✓	
Allen Horsfall	Powell County Commissioner	✓	

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

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-1-95

BILL NO. HB 290 SPONSOR(S) Rep. De Bruycker

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Stephen F Craig Box 305 Carter, MT. 59420	myself	X	
Paul R. Craig Box 254 Carter MT. 59420	Myself	X	
W.R. Korizek 2520 S. Ridge Dr. Helena	Self		
Bill Spilker 801 Harrison Helena			X
Allen C. Horsfall Jr	Commissioner (MACO)		+
Kathy Craig Carter, MT	self	X	
John Blamont	Mt. Stockgrowers		X

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

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