

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman at 8:10 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Regan who was excused until 9:30 a.m. this date.

The first order of business was the voting on bills in Executive Session.

EXECUTIVE SESSION

The following Senate bills were acted on as follows:

413 - Senator Towe moved each of the attached amendments, all of which carried unanimously. (See attachment #1). Senator Towe then moved that S.B. 413 as amended DO PASS. The motion carried unanimously.

419 - Senator Towe moved that S.B. 419 DO PASS. The motion carried unanimously.

417 - Senator Towe moved that S.B. 419 DO NOT PASS. The motion carried unanimously.

There being no further time for executive action, the committee met at this time, 9:30 a.m., to hear the bills scheduled for this date. At this time, Senator Regan joined the committee.

CONSIDERATION OF SENATE BILL 405:

Senator "Sandy" Mehrens of District 45, Anaconda, explained the object of this bill and said that he had introduced it at the request of the Fire Marshall.

DISPOSITION OF SENATE BILL 405:

Senator Warden moved that S.B. 405 DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 406:

Senator Jergenson, District 3, Chinook, sponsor of this bill, was present and explained the bill to the committee. He said that he had introduced it at the request of the Public Service Commission. He then called upon former senator, Gordon Bollinger, Chairman of the Public Service Commission, who in turn called upon the Commission's attorney, Ron Smith, to explain the bill in detail. He told the

committee that quite often the commissioners act as hearings officers and that they do not have the necessary experience for this. He further said that this bill is important because the agency should have the power to follow its own discretion because of the decisions the Public Service Commission must make.

Opponents of the bill were then allowed to testify. The first opponent was Lester Loble, who represented the Montana-Dakota Utilities. He said that they oppose this bill as this is a clear problem for administrative agencies. At this time he passed around an excerpt from a decision which is commonly called the 1975 rate case and which was drafted by a former attorney of the Public Service Commission, saying that it did not apply. (See Exhibit 1)

The next opponent to testify was Jim Hughes, representing Mountain Bell, who said they oppose the bill because it is vague. He read the attached statement. (See Exhibit 2)

Gene Phillips, a Kalispell attorney representing Pacific Power & Light, said that they oppose S.B. 406.

Former senator, Gordon McGowan, introduced Ron Waterman, a Helena attorney representing the Railroad Assn., who said that they join the other opponents in opposing S.B. 406, and said that he felt this bill would prolong the now existent lag in decision making.

Bob Gannon of the Montana Power agreed with the previous opponents of S.B. 406.

At this time, Les Loble, an opponent who had previously testified, said that the Public Service Commission hearings would be reduced to a free-for-all and the administrative lag problem would be accentuated.

Geoff Brazier, the Consumer Counsel, testified as a private citizen, saying that he did not feel comfortable agreeing with the utilities, but that he would have to on this bill.

Chairman Turnage then allowed the committee members to question the witnesses. After the questioning, he said that the committee would take S.B. 406 under consideration.

CONSIDERATION OF SENATE BILL 12:

Senator Towe requested that the privacy bill, S.B. 12, be considered at this time. He said that this is an omnibus bill as is the law enforcement bill and that he hoped that this does not have any controversial provisions in it. He then explained the bill, saying that it concerns the privacy of marriage and the family. He gave the committee 2 sheets of proposed amendments. (See Exhibit 1)

The first proponent of S.B. 12 was Senator Blaylock who said he had served on the committee on human rights during the Constitutional Convention in 1972, and that he felt the right of privacy

was very vital to all people. He said that he has always been impressed with the outrage of private citizens when they find their privacy is being invaded. He then told the committee that he felt that S.B. 12 is a way to implement the intent of the Constitutional Convention.

The next proponent to testify was Wade Dahood, an Anaconda attorney and former Constitutional Convention delegate who chaired the Committee on Human Rights. Mr. Dahood told the committee he had appeared in the House on this type of legislation and that he had very serious doubts about coming here because he finds that the government is taking away these rights. He said that he is displeased that the press is against these rights because they should be most concerned to see that these rights are upheld. He further said that the Constitutional Convention delegates felt that the problem was framed in clear terms so that the servants of the people in this state would know what they can do to protect these rights. He then told the committee that he did not think there would be any problem of having the mandate of the Constitutional Convention implemented when he was a delegate as the delegates were a cross-section of the people in this state from all jobs and all types of people. He said that they expected when they were done and when the Constitution was accepted by vote that it would become the supreme law of Montana, and that now they expect their representatives to implement the mandates, one of which is the right to privacy.

Dorothy Eck, a former Constitutional Convention delegate who is now on Governor Judge's staff, said she had worked on this bill with Senator Towe and that she believes the right-to-know legislation balances this legislation.

Other proponents were Mike Voeller and Sam Gilluly of the Montana Press Association.

The last proponent to testify was Gerald Neils of the Montana Logging Assn. who said that he and his family had personally had their privacy invaded many times during the past years.

There were no opponents present to testify.

CONSIDERATION OF SENATE BILL 255:

Senator Roberts, sponsor of this bill, told the committee that he has served as a deputy county attorney and prosecuted drug offenses. He said drugs are a sensitive problem and that 60 grams or less of marihuana is considered a misdemeanor offense, but the present law requires that it be heard in district court rather than in justice court where all other misdemeanors are heard.

The first proponent to testify was "Dusty" Deschamps, Missoula County Attorney, who said that the county attorneys are in favor of S.B. 255. He presented a chart showing the drug cases in Montana and in Missoula County. (See Exhibit 1) He then said that, from a

prosecution standpoint, the county attorneys felt that these cases should be taken out of the district courts and put in justice courts where misdemeanors are handled.

Doug Anderson, a former probation officer and presently a student in psychology at the University of Montana, said that drugs make up 16% of the case load of probation officers.

Mike McGrath of the Attorney General's staff said that they support S.B. 255 and that they feel the punishment should fit the crime. That, therefore, they feel, since this is the only misdemeanor offense treated in district court, that it should be treated in justice court and that sentencing should be treated the same throughout the state.

The next proponent was Dave Hill, a student at the University of Montana and student body president, who said that 85% of the students were in support of S.B. 255. He told the committee that many students have their lives and careers affected by this offense and that the sentence should fit the crime.

Tom Honzel, deputy county attorney for Lewis & Clark County, representing the County Attorneys Assn., said that they support S.B. 255, that it does not decriminalize possession of marihuana, and that the small counties have a problem because their district courts do not meet every day, and that these offenses could be taken care of swiftly in the justice courts. He further said that certain and swift handling is the answer to problems and that this bill does provide a graduated system for offenses and penalties, something like a DWI offense. The third offense has a much stiffer sentence. He said that this is a realistic approach.

Since there were no opponents present, the Chairman allowed questioning by committee members.

DISPOSITION OF SENATE JOINT RESOLUTION 30:

Senator Murray moved that SJR 30 DO NOT PASS. The motion carried unanimously.

DISPOSITION OF SENATE JOINT RESOLUTION 19:

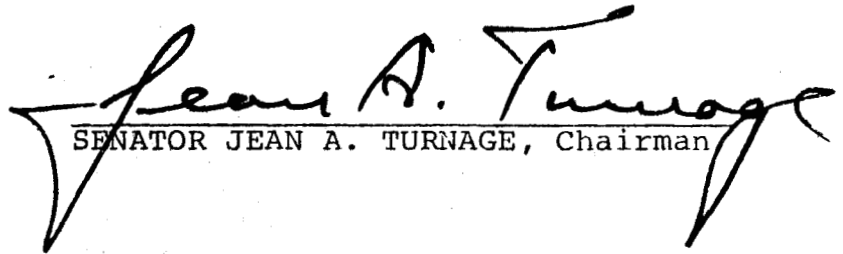
Senator Regan moved to amend page 2, lines 5 through 7, by striking them in their entirety; and in line 4, following "legislation" to strike "; and"; to further amend page 2, lines 13 through 16, following "crime" by striking them in their entirety and inserting a period; also to amend the title, following "CRIME" on lines 8 through 10 and 11, by striking through the words "INDIAN RESERVATIONS," The motion carried unanimously.

Senator Olson moved that SJR 19 as amended DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 406:

Senator Olson moved that S.B. 406 DO NOT PASS. The motion carried with a 5 - 3 vote, Senators Warden, Regan and Roberts voting "No".

There being no further business, the committee adjourned at 11:05 a.m..


SENATOR JEAN A. TURNAGE, Chairman

(Attach #1)

Respectfully report as follows: That.....SENATE..... Bill No 413,

the introduced bill, be amended as follows:

1. Amend title, line 8.

Following: "1947"

Insert: "; REPEALING SECTION 80-1908, R.C.M. 1947"

2. Amend page 2, section 2, subsection (6), line 25.

Following: "private hospital"

Insert: "which is equipped and staffed to provide treatment for persons with mental disorders"

3. Amend page 4, section 2, subsection (14), line 20.

Following: "facility"

Strike: "nor"

Insert: "or"

4. Amend page 11, section 4, subsection (5), line 4.

Following: "."

Insert: "No person may be detained in any hospital or other medical
~~XXXXXX~~ facility which is not a mental health facility unless such hospital
or facility has agreed in writing to admit the person."

5. Amend page 14, section 5, subsection (3)(c), line 22.

Following: "counsel"

XXXXXXXXXXXX
Helena, Mont.

XXXXXXXXXXXX

Strike: "1"
Insert: "and"
Following: "person"
Strike: ", "

6. Amend page 16, section 5, subsection (4), line 6.
Following: "the"
Strike: ~~XXX~~ "court"
Insert: "county attorney"

7. Amend page 16, section 5, subsection (4), line 15.
Following: "1"
Insert: "If the professional person finds that commitment proceedings should continue, the court may order further evaluation prior to the hearing but the respondent may not be detained except as provided in this section."

8. Amend page 17, section 5, subsection (5), line 14.
Following: "can,"
Insert: "upon request of the county attorney and"

9. Amend page 17, section 5, subsection (5), line 21.
Following: "others"
Insert: "as provided in 38-1304(5)"

10. Amend page 20, section 5, subsection (7), line 18.
Following: "matters"
Strike: ~~XXX~~ ". Mental disorder"
Insert: ~~XXXXXXX~~ ", except that mental disorders"

11. Amend page 25, section 6, subsection (2), line 17.
Following: "court"
Insert: "and the county attorney at least"
Strike: "within"
Following: "days"
Strike: "of"
Insert: "prior to"

12. Amend page 25, section 6, subsection (3), line 21.
Following: "patient"
Insert: "at the place of detention"

13. Amend page 28, section 7, subsection (2), line 17.
Following: "detained"
Insert: "and treated"

14. Amend page 33, section 8, subsection (5), line 3.
Following: "treatment"
Insert: "and the county attorney who initiated the action"

15. Amend page 38, section 11, subsection (5), lines 4 through 8.
Following: "unless"
Strike: lines 4 through 8 in their entirety
Insert: "it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case"

and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.'" "

16. Amend page 39, section 13, subsection (1), line 11.

Following: "facility"

Strike: "for a period of more than 72 hours"

17. Amend page 44, section 16, subsection (1), line 23.

Following: "consumers,"

Strike: "the medical sciences"

Insert: "doctors of medicine"

18. Amend page 45, section 16, subsection (1), line 3.

Following: "is"

~~XXXXXX~~ Strike: "an"

Insert: "a full-time"

Following: "employee of"

Strike: "the"

Insert: "any"

19. Amend page 45, section 16, subsection (1), line 4.

Following: "department"

Strike: "of institutions"

Insert: "or agency of the state"

20. Amend page 47, section 16, subsection (7), lines 10 through 13.

Following: "capability."

Strike: lines 10 through 13 in their entirety

~~XX~~ 21. Amend page 47, section 16, subsection ~~XX~~ (8), line 17.

Following: "to"

Insert: "the professional person in charge of the facility and, if appropriate after waiting a reasonable time for a response from such professional person, the board may notify"

22. Amend page 47, section 16, subsection (8), lines 19 and 20.

Following: "involved,"

Strike: "the professional person in charge of the facility,"

23. Amend page 48, section 17, line 21.

Following: line 21

Insert: "Section 18. Repealer. Section 80-1908, R.C.M. 1947, is repealed."

MSL.

Table

16. This will be a full scale rate hearing encompassing all aspects of rate determination, including, but not limited to, rate of return to the utility and distribution of rate charges among all classes of customers and users of all volumes of energy. (E 1)

*MOY
Doc. No
6277
1975
Rate case*

17. The Montana Administrative Procedure Act specifies that in conducting contested case hearings, "agencies shall be bound by common law and statutory rules of evidence." Section 82-4210, R.C.M. 1947. We interpret this to mean that to the extent federal and administrative law evidentiary rules do not fall under statute they are common law. In view of this statutory mandate and the recency of the adoption by the U.S. Supreme Court and Congress of the new Federal Rules of Evidence (See Feb. 1, 1975, advance sheet of Supreme Court Reporter) and the trend in the direction of accepting these as a generally recognized source of law, the Commission will attempt to look to the Federal Rules of Evidence, as well as, those rules of the State of Montana. This means that evidentiary matters will be decided on the basis of the new Rules of Evidence for United States Courts; Montana Revised Codes, Section 93-301-1 et seq., Title 70-101 et seq., and other relevant state statutes, as well as, on the basis of the common administrative law.

In resolving any difference in the various rules of evidence the Commission, as an administrative law adjudicatory body and like a common law court, retains the discretion to apply such rules to obtain substantial justice, especially where that application will aid in reaching the substantive goals contemplated by our statute, Section 70-101, R.C.M. 1947, et seq.

18. The satellite hearings will be conducted in each district by the Commissioner of the district. The satellite hearings will begin with a brief summary by each party (who wishes to do so) of his position in the case (10-15 minute summary for each party) and then any comments from citizens will be received.

19. Libraries in Billings, Glendive, Miles City, Plentywood, Sidney and Wolf Point have agreed to make their facilities available to display for their communities use the pleadings, testimony and exhibits of all parties in this proceeding. The utility applicant, Consumer Counsel and Montana Public Service Commission will send copies of their material to the places (see attached address of libraries) and to certify such service by affidavit to the Commission. If they so desire, other parties in the proceedings may place their pleadings and testimony in these libraries for ease of public access. Send your material directly to the library and not to the Commission.

Montana S. B. 406
(Introduced Bill)

Rules of Evidence
Before Public
Service Commission

SYNOPSIS: Provides that in contested case hearings the Public Service Commission is not bound by common law or statutory rules of evidence, and that the Commission may admit evidence which possesses probative value "commonly accepted by reasonably prudent men in the conduct of their own affairs."

POSITION: Oppose.

COMMENT: At present hearings before the Public Service Commission are governed by the Administrative Procedure Act, which requires that administrative agencies observe the common law and statutory rules of evidence. There is a good reason for this: the rules of evidence insure that that which is presented for consideration by the Commission is basically trustworthy in nature. This bill would allow the Commission to admit evidence "which possesses probative value commonly accepted by reasonably prudent men in the conduct of their own affairs." This standard is so broad and vague that in my opinion it is entirely unworkable.

Subsections 2-4 of the bill provide that the Commission may exclude irrelevant, immaterial and unduly repetitious evidence; that the Commission shall give effect to testimonial privileges, such as the attorney-client privilege; and that if the interests of the parties will not be prejudiced evidence may be received in written form. These provisions are unnecessary, since under present law they are part of the common law and statutory rules of evidence.

Finally, Subsection 5 provides that the Commission is bound by provisions of the Montana Administrative Procedure Act relating to documentary evidence, cross examination and administrative notice in contested cases. Again, there is no need for these provisions, since the Montana APA already applies to Commission proceedings.

MOUNTAIN BELL

NAME JAMES HUGGINS Bill No. SB 406

ADDRESS 560 N PARK AVE Date 2-16-77

WHOM DO YOU REPRESENT? MOUNTAIN BELL

SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

(Sen. Towle)
E-1
SB.12

Proposed amendments to SB 12

Page 3, line 2, strike the word "adult".

Page 4, after line 12, add (i):

- (i) any bonafide newsmen in the immediate accompaniment of law enforcement officers obtaining entry under a valid or apparently valid search warrant or in the immediate accompaniment of law enforcement officers lawfully gaining entrance when there is evidence that a crime has been committed.

Page 5, line 7, after the word "communication" insert:

"while such communication is being conducted or before it reaches the intended receiver or receivers"

Page 22, line 17, after the word "both" insert:

"provided, however, that no such act or omission shall be punishable unless it is first established that the accused person knew such act or omission was unlawful. Proof of such knowledge must be established as an independent fact and cannot be inferred or presumed."

Page 22, line 20, after the word "both" insert:

"provided, however, that no such act or omission shall be punishable unless it is first established that the accused person knew such act or omission was unlawful. Proof of such knowledge must be established as an independent fact and cannot be inferred or presumed."

Page 23, line 24, after the word "apply" insert:

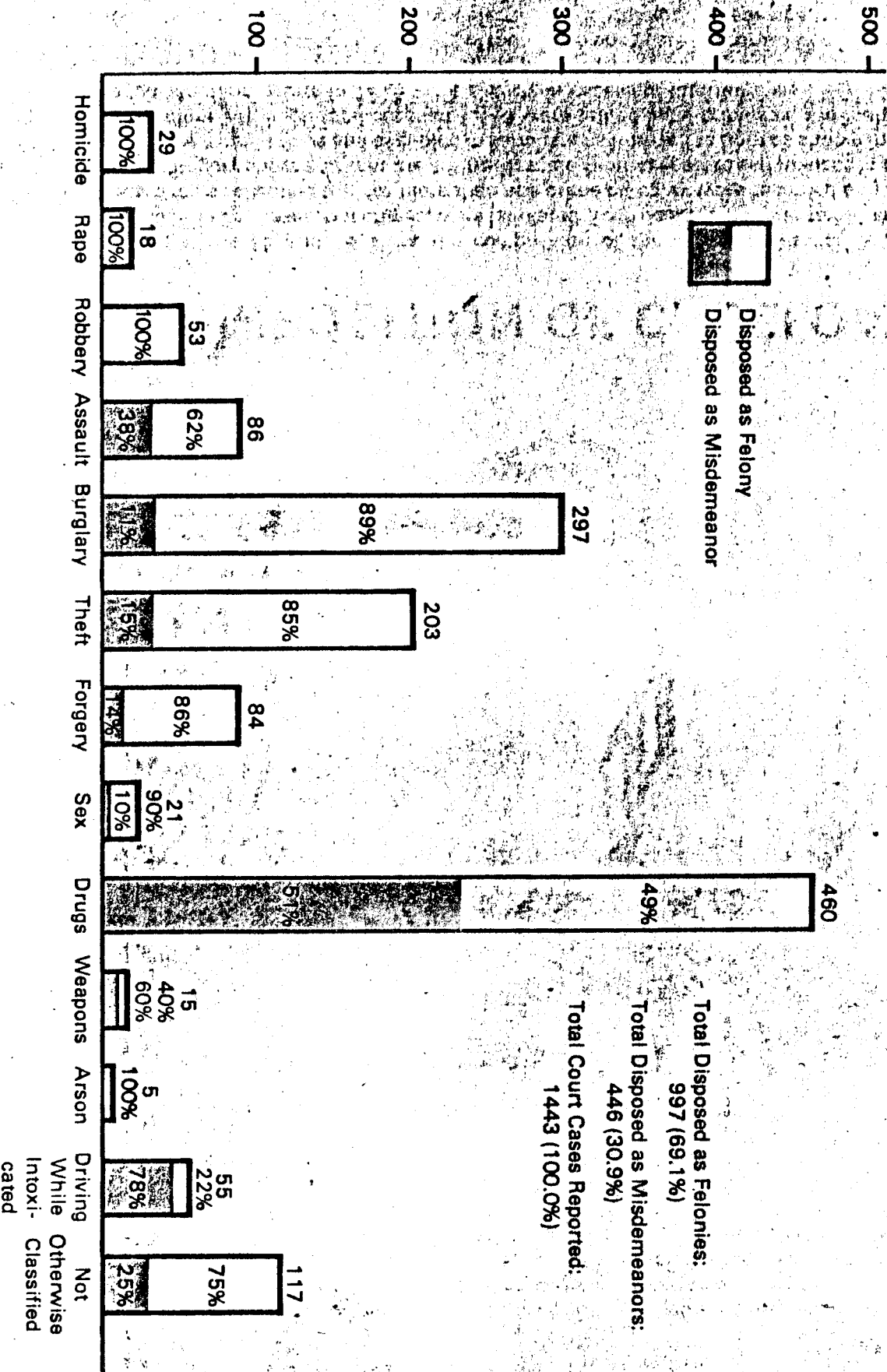
This provision shall not apply to any act or omission which would not be unlawful if consent were given by a proper person provided the accused person acts under a reasonably formed, although mistaken, impression that such consent was given. This exception shall not apply to an agent or employee of a governmental unit acting in the course of his employment."

Proposed amendment to SB 12

Page 12, line 18, after the word "above" add:

"Provided however, that any person may waive any right of privacy through the voluntary providing of information or facts to any representative of the news media. Any such waiver, ~~once given~~, may not be revoked."

Illustration 15
MONTANA DISTRICT COURT CASES
REPORTED TO MONTANA BOARD OF CRIME CONTROL
1975

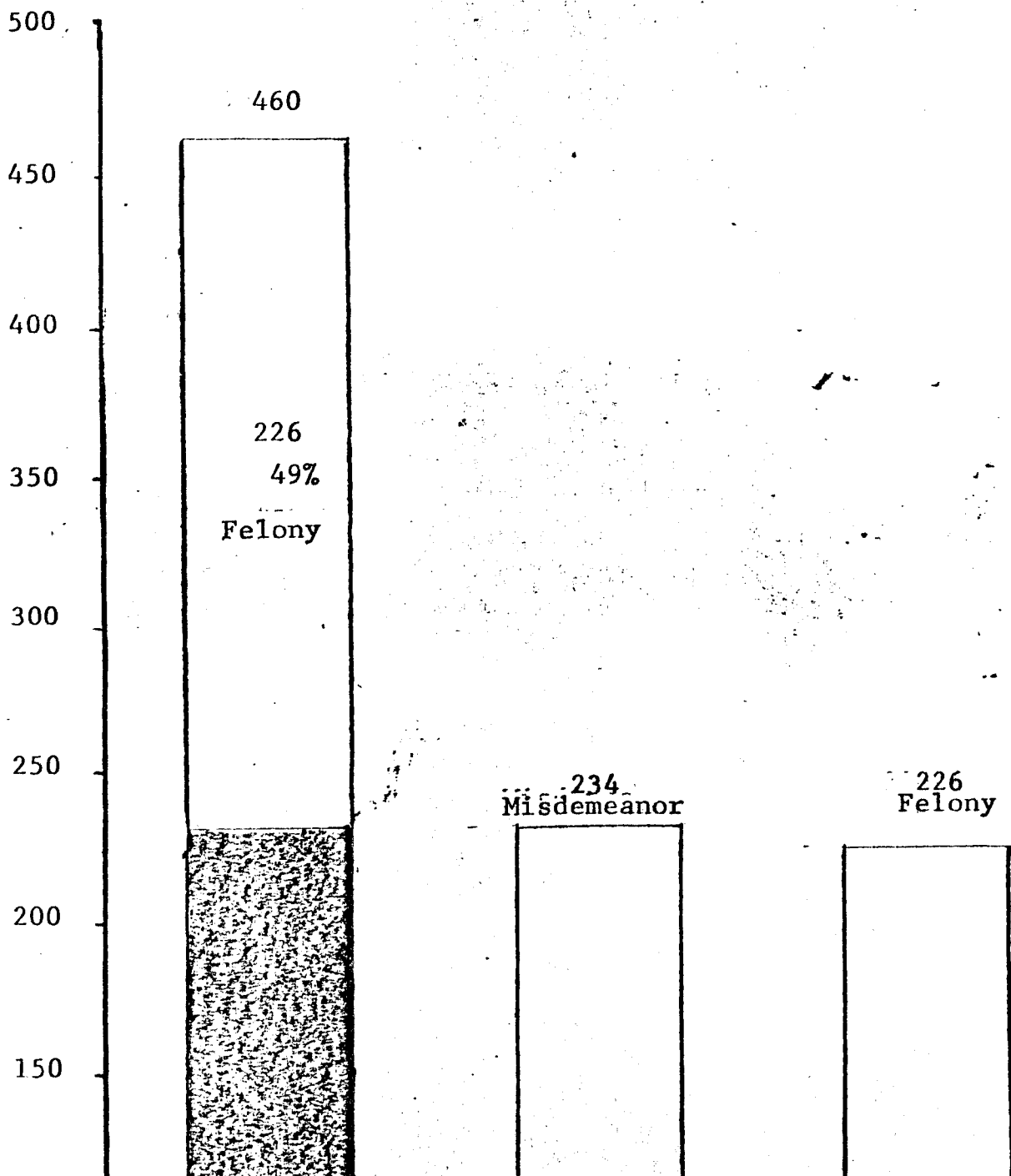


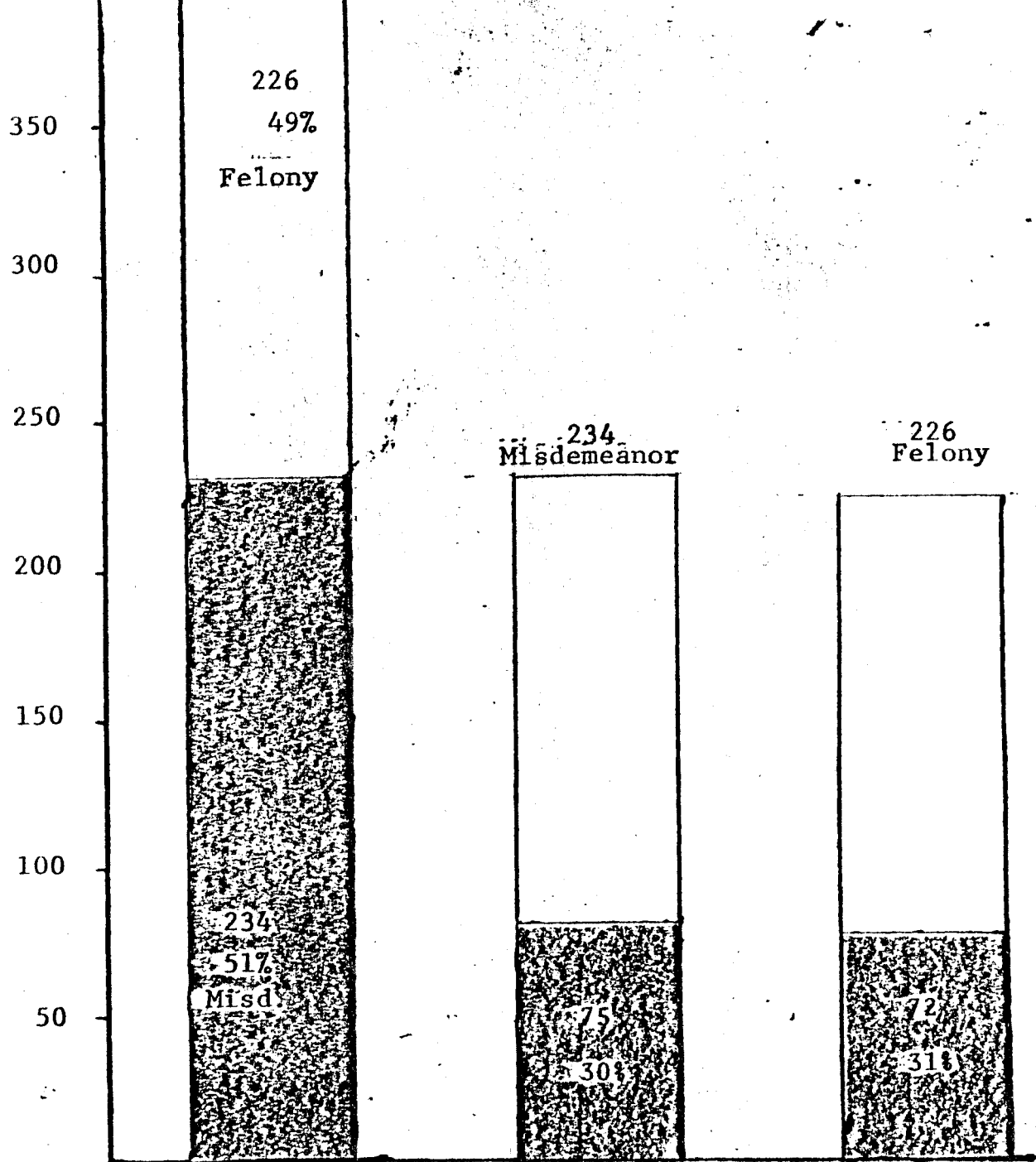
(Handwritten signatures and initials)

1975 MONTANA AND MISSOULA COUNTY
DRUG CASES BY NUMBER AND TYPE

STATE
TOTAL

MISSOULA CO. % OF
STATE TOTAL





MISSOURI COUNTY DRUG CASES SINCE 1969

| YEAR | POSSESSION | SALE | FRAUD. | OBT. | DRUGS |
|------|------------|-----------|--------|------|-------|
| 1969 | 41 | 8 | | 0 | |
| 1970 | 13 | 5 | | 1 | |
| 1971 | 50 | 18 | | 4 | |
| 1972 | 47 | 33 | | 1 | |
| 1973 | 54 | 25 | | 1 | |
| 1974 | 36 | 51 | | 1 | |
| 1975 | 186 | F=87 M=99 | 31 | 1 | |
| 1976 | 127 | F=61 M=66 | 15 | 3 | |

DISPOSITION OF POSSESSION CASES

| YEAR | TOTAL DISPOSITIONS | PRISON | COUNTY JAIL | SUSPENDED | DEFERRED | FINED | DIS |
|------|--------------------|--------|-------------|-----------|----------|-------|-----|
| 1975 | 156 | 3 | 2 | 15 | 58 | 42 | 2 |
| 1976 | 170 | 2 | 1 | 9 | 66 | 22 | 5 |

Backlog from 1975=62 cases

Backlog from 1976

MISSOURI COUNTY DRUG CASES SINCE 1969

| POSSESSION | SALE | FRAUD. | OBT. DRUGS | TOTAL |
|------------|--------------|--------|------------|-------|
| 41 | 8 | 0 | 49 | |
| 13 | 5 | 1 | 19 | |
| 50 | 18 | 4 | 72 | |
| 47 | 33 | 1 | 90 | |
| 54 | 25 | 1 | 80 | |
| 36 | 51 | 1 | 88 | |
| 186 | F=87 M=99 31 | 1 | 218 | |
| 127 | F=61 M=66 15 | 3 | 145 | |

DISPOSITION OF POSSESSION CASES

| PRISON | COUNTY JAIL | SUSPENDED | DEFERRED | FINED | DISMISS | ACQUITTAL | DEFERRED PROSECUTION |
|--------|-------------|-----------|----------|-------|---------|-----------|----------------------|
| 3 | 2 | 15 | 58 | 42 | 29 | 0 | 7 |
| 2 | 1 | 9 | 66 | 22 | 55 | 0 | 15 |

og from 1975=62 cases

Backlog from 1975-76=37

VISITOR'S REGISTER

| NAME | REPRESENTING | Check One | |
|-------------------------|-----------------------------|-----------|---------|
| | | Support | Oppose |
| Bob Gannon | Mont Power SB406 | | X |
| Robert L. Deschamps III | Co. Atty. Gen. SB 255 | X | |
| Les Loble | Mont-Dakota Atty SB406 | | X |
| Tom Havel | County Attorneys SB255 | X | |
| Russ Genger | me | 255 12 | |
| Dave Hill | U of Montana Students SB255 | X | |
| Jim Rogers | Capitol High School SB255 | X | |
| Wade Schood | Self SB12 | X | |
| Geralt Neils | Mont Logging Assoc SB12 | X | |
| Mike McGrath | ATTY GENL SB255 | X | |
| Mike Haeller | Montana Press Assoc | | |
| Sam Billy | " " " | | Audited |
| James H. Jones | MOUNTAIN BELL SB406 | | X |

(Please leave prepared statement with Secretary)