MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 26, 1981

The meeting of the Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 479 SENATOR CRIPPEN, sponsor, stated this bill is to validate certain conveyances of real property containing technical defects.

WILLIAM ROMINE, representing the Montana Land Title Association, supported the bill. EXHIBIT 1.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. KEEDY asked about the omission, defects or informalities in the execution of the instrument. SENATOR CRIPPEN stated this would be only talking about the notary's execution and not the substance of the document. ROMINE suggested the '83 legislature should introduce legislation that is self-perpetuating so every two years this will not have to be passed. ROMINE did not know why this procedure is being used instead of something that is automatic already.

REP. KEEDY asked about subsection 2 concerning copies of records. ROMINE stated the instrument is copied into the record. Some old records are not microfilmed as newer records are. The old copies are the only evidence available for certain transactions.

SENATE JOINT RESOLUTION 20 SENATOR CRIPPEN, sponsor, stated this would request the Montana Supreme Court to prepare proposed legislation for the 48th legislature to reconcile conflicts between the Montana Rules of Evidence and statutes on evidence contained in the Montana Code Annotated. The primary objection of the Senate Committee concerned Senate Bill 33, as there was a conflict between MCA and Supreme Court rules of evidence. That part of the code should be deleted and request the supreme court to study the rules of evidence. Rather than have the legislature resolve the conflict this would have the Supreme Court and the Montana Bar Association do it.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. YARDLEY asked if the sponsor of the bill intended to delete most of the chapters. REP. HANNAH asked how this would change the rules of evidence. SENATOR CRIPPEN replied this would not need a 2/3 vote. This requests the Supreme Court to study the effects. They will have the final say on the conflicts. They will study it and make suggestions.

REP. HANNAH felt it would be a constitutional change. The supreme court has the power to change their rules any time they wish, the Senator stated. The legislature has only two sessions to disapprove such changes. All this is asking for is an interim study.

SENATE BILL 419 SENATOR BLAYLOCK, sponsor, stated this bill would provide for the appointment by the Supreme Court of a chief judge in each multijudge district. Some of the work in multijudge districts is not allotted properly. Decisions are not being rendered. Two years ago the judicial salary was raised to $40,000. The Senator felt it is right that the judge should be well paid. As citizens, however, it should not be too much to expect a judge to put in an eight hour day. The workload is not done fairly. Some of the attorneys in the Senate were upset about the bill. Chief Justice Haswell appeared before the legislature at the beginning of the session. If something is wrong we can go to the Supreme Court and say things are not right.

SENATOR BLAYLOCK suggested the following amendment to strike language on page 2, lines 16 and 17 and to insert "if the chief judge becomes arbitrary and totally unjustifiable the other judges can have him removed".

MARGARET DAVIS, League of Women Voters, supported the bill. It is a good step to have an administrator handle distribution of the judges' workload. A system of budgeting work that is compatible will solve the problem in multijudge districts.

There were no further proponents.

JIM WHEELIS, District Court Judge, was neither a proponent nor opponent. Schedules of judges are full and workloads are heavy. WHEELIS agreed with the proposed amendment. This would be limited to districts over two judges. This makes it easy to negotiate. In Montana the judges have an advantage over judges back east. In the east the judge goes to the courthouse and sees what cases he is scheduled for and goes to the appropriate courtroom.

TOM HARRISON, Montana Judges Association, was against the bill. HARRISON agreed with the proposed amendments. HARRISON disagreed with subsection (d) in that staff and secretarial personnel would be assigned where appropriate. It is important for a judge and the secretary or clerk to have a good working relationship. Personality plays a major role. One judge should not be able to assign these people for the use of other people. The judge should have the decision of who his employees are.

MIKE MELOY, Montana Trial Lawyers Association, stated this district does not have a problem because it is a multijudge district. If the added amendments as proposed were adopted there would be a problem in the districts with only two judges. Why change the system, MELOY asked. The present system authorizes the judges in the district to get together and work out for themselves everything that is on page 3 of the bill. Those judges negotiate as to what kinds of things go on. They make decisions as to who should be the administrative chief judge. This bill would make the Supreme Court decide.

J. C. WEINGARTNER, State Bar Association, opposed the bill as he felt there was no real problem.

There were no further opponents.

In closing, the Senator stated the problems are that some judges head to the golf course and leave their work behind. The work is not done and the decisions are not made. It is up to the legislature to say we will give the Supreme Court the authority to appoint a chief judge.

REP. HANNAH asked if seniority would be a problem. SENATOR BLAYLOCK replied just because a certain judge is in the district longest does not mean the Supreme Court will pick him to do the job. We must have some confidence in the Chief Justice. He knows the judges and he would confer with the other judges and pick people right for the job.

REP. TEAGUE asked about the two-judge districts. The Senator stated the amendment would not address the two-judge districts. This would involve three districts that have over two judges.

REP. EUDAILY asked if there are chief judges in districts presently. BLAYLOCK stated yes, they have elected it upon themselves, however, this will enable the Supreme Court to do it.

REP. EUDAILY questioned subsection 4 in which it states a judge shall be in Lake County. WHEELIS replied we do not have someone at Lake County every day. There is not enough work to do. We expanded the time and restructured the time schedule. He

did not feel the legislature meant last session that a judge would be permanently based in Lake County. A judge is in Lake County a few times a week.

REP. ANDERSON asked if the main problem is some judges are goofing off, why not take it to the commission? BLAYLOCK replied who will do it? How does the layman know how to go about doing it. Legal friends say that certain judges have delayed opinions but if an attorney reports him he will be angry and possibly decide unfavorably in their pending cases.

SENATE BILL 381 SENATOR STEPHENS, sponsor, stated this bill would provide for disclosure of youth arrest records and youth court proceedings and files in certain cases. This is the result of a direct appeal by the public. The public feels this should be considered. This was started by a project in the Independent Record, the Helena newspaper, asking the public what issues they felt were important that the legislature should address. This topic was one of the strongest issues addressed.

SENATOR TURNAGE stated there have been two bills of similar material. The first section explains adjudicatory hearings. Subsection 2 explains a petition concerning publicity. After a petition is made publicity may be given concerning a youth formally charged with or proceeded against or found to be a delinquent youth, or if the youth is charged with a crime which would be a felony if he were an adult. If there is a formal proceeding publicity may be given. Section 4 of the bill was taken out. Page 7 entails the disposition of records. After the youth reaches 18 years old the records are sealed except traffic records.

MIKE VOELLER, Independent Record, supported the bill. This will protect the innocent by publishing the wrongdoer's name. The papers are allowed to publish names of 15-year-olds when they are found drunk driving but if someone commits a felony or crime of any kind the papers are not allowed to print the name. The paper receives flack from many people concerning this but because of state law, nothing can be done.

DAWN CREEK, Helena High School, stated all the students felt strongly about Senate Bill 381. The students are in favor of this as shown by a survey done at the school. If names are published CREEK believed this would be an embarrassment to the individual as well as to his family.

JEROME JOHNSON, Montana Probation Association, supports the bill in its present form.

KEVIN GILES, Independent Record, stated we should join the human race. GILES stated he was the victim of a juvenile. The juvenile drove into his house. The boy is a ward of the state and is under custody at state prison facilities.

GLADYS INMAN was in support of the bill. She read "This I Know". EXHIBIT 2. The youths that are causing the problems should have to pay for it. She stated she was one of the people interviewed in the paper concerning this subject. The night the article appeared she received an obscene phone call from a youth. INMAN stated she was proud of the students that came to the committee who expressed their concern.

ROSEMARY ROGERS favors the bill. It is unfair for the juveniles to be dealt with dishonestly. They have all kinds of rights; then we hold up disclosure of crimes they commit. Along with the rights come some responsibilities. She strongly urged support of the bill.

There were no further proponents.

There were no opponents.

In closing, SENATOR STEPHENS stated the students who appeared at the committee did not come to the Senate hearing. He appreciated their presence. This bill is not trying to convict the kid who steals a package of gum from the store. If a youth vandalizes anothers' property his name should be publicized. This will reduce the amount of crimes.

REP. CONN asked how this would be treated in the papers. She felt it would be possible to blow certain stories out of proportion. VOELLER replied it would depend on the offense. If it was $25,000 damage to broken windows it would probably be on page 1 of the paper. It would be possible in most cases that the offense would be listed on the city record page.

REP. KEEDY stated existing statutes provide the general publication unless it is in the individual's best interest. This bill would make it mandatory to publicize names. SENATOR TURNAGE felt it would be that way.

It was stated by REP. KEEDY that one of the objections to the other bills on this subject was that it would encourage the youth to commit crimes to see his name in the paper. JOHNSON stated he had mixed reactions to the bill. He is concerned about the impacts it will have. His concern is to try to get the bill at a format to apply it fairly. This bill is not as wide open as REP. PISTORIA's bill. SENATOR STEPHENS stated we are proud of young people today. There are always individuals who thrive on publicity, young and old. Those who thrive on publicity by doing offensive things are in the rarety. Most students would rather

see their name in the paper for athletics or honor roll, etc.

REP. MATSKO felt much of this dealt with the coverage the press gives the youth. JOHNSON replied it is hard to say. Probation officers have dealt with it from both sides. REP. MATSKO thought the press could have an impact on the manner of youths if they publicized something as the "crime of the century".

REP. CONN asked how many students took part in the high school survey. ELLEN TIDDY, Helena High School, replied everyone in school during the first period class. The whole student body is 1200. From that 2% did not want their names in the paper.

REP. CONN asked if the students who prefer to have their name in the paper usually are the type who like school and are in honor society, athletics, etc. The high school student agreed.

REP. TEAGUE asked if school files would be open. SENATOR TURNAGE replied it would be justice files only.

REP. TEAGUE asked if pictures in the paper have a physological effect, and would the press be able to photograph the youth. VOELLER replied cameras in court are not allowed without the permission of the judge. REP. TEAGUE asked if there would always be a followup article. What if the youth were innocent, would there be a followup? VOELLER replied if he is found innocent the paper would try to give equal treatment and not be biased. If a person is not charged his name would not be printed. REP. TEAGUE further asked if five youths were charged and two of the five were let off, would those two be assured of good press? Yes was the reply.

REP. DAILY asked how many youths were charged and then found innocent. JOHNSON replied usually the youth has been appearing before a probation officer. If a petition is filed against the youth the probation officer would contact the county attorney. Ninety-eight percent are actually adjudicated and found guilty. It is very rare to have him not be guilty.

EXECUTIVE SESSION

SENATE BILL 33 REP. SHELDEN moved do pass.

REP. DAILY moved the amendments do be adopted as in EXHIBIT 3.

JIM LEAR explained the first amendment to strike section 3 in its entirety is because the Department of Administration feels this language is obsolete and is in conflict with the pay plan

structure. This would just strike it from the bill and not repeal it from the law.

The motion carried.

JIM LEAR explained the next three amendments (2-4) are necessary because of subsection 1 being stricken. REP. HANNAH moved amendments 2, 3, and 4 be adopted. The motion carried.

JIM LEAR stated amendment 5 "is" is being inserted to give it sense. The amendment carried after REP. SEIFERT moved its adoption.

REP. BROWN moved the amendments as in EXHIBIT 4. The motion carried with REP. HANNAH opposing.

REP. BROWN moved do pass as amended. The motion carried with HANNAH, CURTISS, and MCLANE voting no.

REP. SEIFERT was assigned to carry the bill on the House Floor.

SENATE BILL 219 REP. HUENNEKENS moved do pass.

REP. KEEDY moved the amendments as in EXHIBIT 5 be adopted.

Subsection 2 on page 1 will be stricken. All of page 2 will come out. The court shall impose the presumptive sentence for such offense as provided in section 2 or in accordance with section 6 or section 5. The amendments restore the list of circumstances and takes out the catch all phrase.

JIM LEAR stated this bill leaves it open to the judge. Page 3, section 2 deals with presumptive sentence bill as amended would be as set forth in section 7. (Amendment 4). The laundry list of offenses are included in the original House Bill 10. This would give the court a range in which to decide. More restrictive guidelines are set up.

REP. KEEDY stated the rest of the bill's amendments are easily understood by looking them over. Some of the new language was taken out of the bill. In this bill there is nothing that provides a procedure of how the court will proceed on hearings. It is too openended. The defendant's interest should be protected.

REP. CONN stated she felt the extensive amending of the bill was to pick up where House Bill 10 left off. REP. KEEDY stated House Bill 10 was still alive in the Senate. He felt it was proper to make the amendments since it was in the scope of the title and the author's basic intent.

REP. TEAGUE asked if subsection (2)'s purpose is to intensify the sentence. KEEDY replied yes.

REP. HUENNEKENS stated this would be infringing on the right when you go into detail telling courts how they will function. KEEDY stated it is not telling them to do any less. It is telling them to add years to certain procedures. REP. HUENNEKENS asked if the new section 7 is essentially the list from House Bill 10. REP. KEEDY said no, he tried to split it down the middle. For example, in House Bill 10, 30 years was the time for mitigated deliberate homicide. In this bill a spread of five years is given on each side.

REP. BROWN stated the bill is not a clone of House Bill 10. He disagrees with some of the sentences but supports the amendments as a whole.

REP. EUDAILY asked if the amendments were shown to the sponsor of the bill. No was the reply. REP. BROWN felt the Senate as a whole should deal with it. A conference committee between the two houses will probably result. REP. HUENNEKENS felt the Senate as a whole would not accept the amendments and the conference committee would result.

REP. HANNAH agreed with the concept of the amendments and felt this was a good way to approach the subject.

REP. TEAGUE felt subsections 2 and 3 under section 5 were changing the intent of the author.

REP. BENNETT asked if the legislature would have an opportunity to do something if all the authority was given to the Supreme Court. REP. KEEDY stated the legislature would have every opportunity to change the law. REP. BENNETT asked if the judge would still have the ability to suspend or defer sentences. Yes was the answer. REP. BENNETT felt the original bill would be weak without the amendments.

REP. TEAGUE suggested to hold action on the bill. REP. KEYSER stated the deadline to get amended bills back to the Senate was approaching and he could not see holding the bill.

The amendments carried with TEAGUE, SHELDEN, EUDAILY, and HUENNEKENS voting no.

REP. HANNAH moved do pass as amended. The motion carried with EUDAILY, SHELDEN, HUENNEKENS, and TEAGUE voting no. (REP. YARDLEY and REP. IVERSON were absent during the voting of the bill and the amendments).

SENATE BILL 222 REP. CURTISS moved the committee reconsider action on the bill for purpose of amendments. EXHIBIT 6. The motion resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and ANDERSON. Those voting no were: BENNETT, CONN, EUDAILY, DAILY, HUENNEKENS, SHELDEN, KEEDY, TEAGUE and BROWN. The motion failed 9 to 8.

SENATE BILL 246 REP. BROWN moved do pass.

REP. BROWN stated he would prefer to take chances that estimates from an insurance company would be better than the bluebook.

REP. HANNAH spoke against the motion. This will effect the cost of insurance. The establishing of value of a wrecked car will be a source of argument.

REP. MATSKO stated his car was worth $300-$500 dollars book value. With 4-wheel drive equipment, however it could be sold for $800-$1,000. Yet the insurance company would settle for $300-$500 dollars.

REP. TEAGUE asked who determines the value of the car. It was answered the insurance company of the owner. There are no real guidelines. REP. CONN stated many people who drive older cars believe the car is worth more than book value. It is valuable to them and an investment.

REP. HANNAH stated no matter how much money is placed into the car the value will not go up. The insurance company should not have to pay you that. REP. DAILY stated they would pay the replacement value of the motor vehicle.

The motion of do pass carried with HANNAH, TEAGUE, and SHELDEN voting no. REP. BROWN was assigned to carry the bill.

SENATE BILL 288 REP. KEEDY moved do pass. REP. KEEDY moved the amendments be adopted as in EXHIBIT 7. REP. KEEDY stated the bill is intended to open up proceedings of judicial standards to public scrutiny yet it really does not. With the proposed amendments it will allow public access for each charge with probable cause. This will broaden the bill. This will open up to the public hearings before the supreme court to make a recommendation. REP. DAILY questioned if there would be less hearings because of it. REP. KEEDY did not think it was possible.

It will help move it in a positive direction.

REP. EUDAILY asked how many laypeople are on the commission. It was replied two laypeople, one lawyer and two judges.

The amendments carried unanimously.

REP. HANNAH moved do pass as amended. The motion carried. REP. TEAGUE was assigned to carry the bill.

The meeting adjourned at 11:00 a.m.

KERRY KEYSER, CHAIRMAN

mr

NAME William L. Romine BILL No. S.B. 479

ADDRESS Helena DATE 3-26-81

WHOM DO YOU REPRESENT Mont. Land Title Assn.

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This is merely a housekeeping bill. It clears up small minor problems with notary acknowledgments, such as transposing the expiration date, or the failure to put down the residence. This bill use to be introduced every session by the old Mont. Bar Assn. For some reason it has not been introduced since the creation of the new State Bar of Mont.

FORM CS-34
1-81

Exhibit 2

This I Know

1. The twin enemies of crime are fear of punishment and fear of publicity.

2. Discipline begins in the high chair not the electric chair.

3. 97% of the youngsters today are as good as those of any generation, the 3% hoodlums are worse.

4. Secrecy in the juvenile courts indicts the class and does not pinpoint the individual.

5. Open public hearings with the parents present and full newspaper coverage gets results. Our law authorizes this in juvenile felony cases.

6. If a youth is old enough and tough enough to topple a tombstone, wreck a church or a school house, hold up a service station, snatch a woman's purse or beat up an old man, he is old enough and tough enough to have a public trial with his parents in the front row and full newspaper coverage.

7. It is outrageous, as in so many places, to find the law suddenly cringing before its hoodlum youngsters and going to absurd lengths to stay on the right side of them.

8. My experience shows the quickest way to break up a gang is a public hearing, naming names and the blame placed where it belongs, on the hoodlum and his parents.

9. I have in my District a 49% decrease in juvenile felony cases. The law has been in effect three years. There is a continuing decrease in juvenile felony cases.

10. The woodshed is coming back, indifferent parents are diminishing; they don't want the publicity or the heat.

11. It is a myth that publicity glamorizes the juvenile and makes him worse. Any juvenile, or adult, who likes to see his name in the paper as a criminal is in a class with those who threaten witnesses, and is dangerous and should be so dealt with.

12. There is no such word as juvenile any more. It is juvenile delinquent. This is not fair to the good kids about whom we don't say enough.

13. Open courts establish public confidence. The public is entitled to know what happens to the juvenile hoodlum.

14. **The so-called progressive thinkers, mollycoddlers and dreamers got us into this and they can't get us out.**

15. **Preventive and rehabilitation programs are not enough.**

16. **The juvenile problem can be solved.**

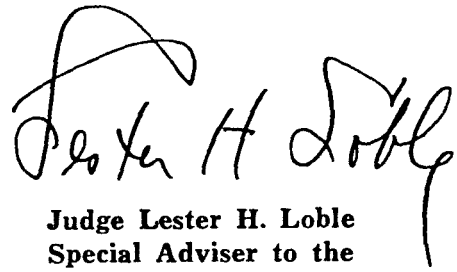
17. **Some think if you don't look it will go away. It won't!**

Articles written about my Court can be found in:

Reader's Digest, April, 1964

American Legion Magazine, December, 1963

Catholic Digest, March, 1963



Judge Lester H. Loble
Special Adviser to the President's Committee on Juvenile Delinquency and Youth Crime

THE LOBLE LAW

Montana Law on Pubilicity of Juvenile Trials

Section 10-611.

. . . provided, however, that whenever the hearing in the juvenile court is had on a **written petition charging the commission of any felony,** persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. . . .

Section 10-633.

. . . No publicity shall be given to the identity of an **arrested juvenile** or to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children, **except** where a hearing or proceeding is had in the juvenile court on a **written petition charging the commission of any felony.**

★

MONTANA HAS THE BEST JUVENILE LAWS IN THE NATION

The rights of the juvenile are fully protected.

1. He can demand and receive a jury trial.
2. He may be represented by Counsel.
3. He has the right of appeal to the Supreme Court of Montana.
4. He can disqualify me by the simple statement that he doesn't think he can have a fair trial before me. I have never been disqualified by a juvenile or his parents.

Amendments to SB 33

1. Page 4, line 13 through line 4, page 5.
Strike: section 3 in its entirety
Renumber: subsequent sections

2. Page 8, line 4.
Following: "through"
Strike: "9"
Insert: "8"

3. Page 79, line 24.
Following: "section"
Strike: "85"
Insert: "80"

4. Page 80, line 1.
Following: "section"
Strike: "85"
Insert: "80"

5. Page 119, line 21.
Following: "complaint"
Insert: "is"

PROPOSED AMENDMENTS - SB 33

Department of Revenue

1. Page 62, line 7
   Following: "for"
   Insert: "barrows and gilts,"

2. Page 62, line 8
   Following: "3"
   Insert: ","
   Following: "at"
   Strike: "200"
   Insert: "230"

3. Page 62, line 9
   Following: "sows"
   Insert: ",grades 1 to 2,"

4. Page 62, line 10
   Following: line 9
   Strike: "270 to 330"
   Insert: "300 to 350"

AMENDMENTS TO SENATE BILL NO. 219

1. Page 1, line 10.
Following: "."
Strike: "(1)"
Following: "in"
Strike: "subsection (2)"
Insert: "46-18-201"

2. Page 1, line 13.
Following: "[section 2]"
Insert: "unless the court finds in accordance with [section 5] that aggravating circumstances are present or in accordance with [section 6] that mitigating circumstances are present"

3. Page 1, line 14 through line 2, page 3.
Strike: subsections (2) through (5) in their entirety

4. Page 3, line 6.
Following: "in"
Strike: "Title 45"
Insert: "[section 7] within the ranges contained therein and for all other felony offenses set forth in the MCA within the sentencing range, if any, designated for each such offense"

5. Page 3, line 10.
Following: "necessary"
Insert: "consistent with the ranges set forth in [section 7]"

6. Page 5, line 8 through line 4, page 7.
Strike: sections 4 and 5 in their entirety
Insert: "NEW SECTION. Section 4. Hearing to determine exceptions to presumptive sentences. (1) Upon request of either the defendant or the prosecution, the court shall grant a hearing prior to the imposition of sentence to determine the existence of circumstances enumerated in [section 5 or 6].

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to the assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the evidence submitted during the trial and during the sentencing hearing that none of the circumstances enumerated in [section 5 or 6] existed, the court shall impose the applicable mandatory sentence. If it appears by a preponderance of the evidence that one or more of the circumstances enumerated in [section 5 or 6] existed, the court shall impose the applicable sentence as provided in [section 5 or 6].

(4) The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

NEW SECTION. Section 5. Aggravating circumstances for felonies -- increased penalties. (1) The court shall add to the mandatory sentence for a felony offense 25% of the mandatory sentence for each of the following aggravating circumstances found by the court to have existed at the time the offense was committed, known by the defendant to exist, and considered by the defendant in the commission of the offense:

(a) the victim was mentally defective or incapacitated;

(b) the victim was physically helpless;

(c) The victim was less than 16 years old or 65 years of age or older;

(d) there were multiple victims;

(e) the defendant threatened to inflict bodily injury upon any person or knowingly put any person in fear of immediate bodily injury;

(f) the defendant took advantage of his fiduciary relationship with the victim to commit the offense;

(g) the defendant used or involved minors in the commission of the crime; or

(h) the defendant, prior to age 18, had committed an act that would have been a felony if committed by an adult.

(2) The court shall add to the mandatory sentence for a felony offense 50% of the mandatory sentence for each of the following aggravating circumstances found by the court to have existed at the time the offense was committed:

(a) the defendant inflicted bodily injury upon another;

(b) the defendant received compensation for committing the offense;

(c) the defendant, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device as defined in 45-8-332(1), or other dangerous weapon;

(d) the defendant had previously been convicted of a felony.

(3) The court shall add to the mandatory sentence for a felony offense 100% of the mandatory sentence for each of the following aggravating circumstances found by the court to have existed at the time the offense was committed:

(a) the defendant is a person who had previously been convicted of an offense committed under 18 U.S.C. 924(c), as amended, on a different occasion than the present offense or who had previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device as defined in 45-8-332(1), or other dangerous weapon.

(b) the defendant is a person who had previously been convicted of a second felony offense and who is presently being sentenced for a third or subsequent felony committed on a different occasion than any of his prior felonies.

(4) For the purpose of this section, an offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

(5) A circumstance that constitutes a lesser included offense of the present offense or a circumstance that constitutes a necessary element of the present offense may not be found to be an aggravating circumstance for purposes of this section.

NEW SECTION. Section 6. Mitigating circumstances for felonies -- reduced penalties. If appropriate for the offense, the court shall reduce the sentence for a felony offense by 10% for each of the following mitigating circumstances found to be present:

(1) The defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress. The duress need not be such that it would constitute a defense to the prosecution.

(2) The defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor.

(3) No serious bodily injury was inflicted on the victim nor was a weapon used in the commission of the offense.

(4) The defendant has fully compensated or can reasonably be expected to fully compensate the victim of his criminal conduct.

(5) The defendant assisted law enforcement authorities in the performance of their duties.

NEW SECTION. Section 7. Presumptive sentencing ranges for specified felonies. Pursuant to [section 2] the Montana supreme court shall establish a presumptive sentence for each of the following felony offenses within the designated range:

(1) 55 - 75 years for deliberate homicide;
(2) 25 - 35 years for mitigated deliberate homicide;
(3) 5 - 10 years for aiding or soliciting suicide;
(4) 2 - 5 years for assault under 45-5-201(3);
(5) 10 - 20 years for aggravated assault;
(6) 1 - 5 years for intimidation;
(7) 1 - 5 years for mistreating prisoners;
(8) 5 - 10 years for kidnapping;
(9) 40 - 50 years for aggravated kidnapping without voluntary release of victim;
(10) 5 - 10 years for aggravated kidnapping with voluntary release of victim;
(11) 3 - 7 years for custodial interference;
(12) 15 - 25 years for robbery;
(13) 5 - 15 years for sexual assault under 45-5-502(3);
(14) 15 - 20 years for sexual intercourse without consent under 45-5-503(2);
(15) 25 - 35 years for sexual intercourse without consent under 45-5-503(3);
(16) 1 - 5 years for deviate sexual conduct under 45-5-505(2);
(17) 5 - 15 years for deviate sexual conduct under 45-5-505(3);
(18) 5 - 15 years for aggravated promotion of prostitution;
(19) 1 - 5 years for incest;
(20) 1 - 5 years for nonsupport;
(21) 10 - 20 years for sexual abuse of children;
(22) 5 - 10 years for negligent arson;
(23) 10 - 20 years for arson;
(24) 5 - 10 years for burglary;
(25) 15 - 25 years for aggravated burglary;
(26) 5 - 15 years for crimnal sale of dangerous drugs under 45-9-101(2);
(27) 15 - 25 years for criminal sale of dangerous drugs under 45-9-101(3) with a prior conviction;
(28) 35 - 45 years for criminal sale of dangerous drugs under 45-9-101(3) upon a third or subsequent conviction;
(29) 5 - 10 years for criminal possession of dangerous drugs with intent to sell.

Renumber: subsequent section.

7. Page 7, line 19.
Following: "(h)"
Strike: "application of or deviation from"
Insert: "misapplication of"

8. Page 7. line 20.
Following: "[section 1]"
Insert: "or the exceptions enumerated in [sections 5 or 6]"

Exhibit 6

MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730 • HELENA, MONTANA 59624 • PHONE 442-2405

Amendments to SB 222
House Judiciary Committee

I. Line 7, P. 1

amend "costs" to "costs and attorney fees"

II. Line 9, P. 1

amend to include stricken ~~NOT~~

III. Lines 19 and 20, P. 1; lines 20 and 21, P. 1

amend "state, a political subdivision or an agency of the state or political subdivision" to read "state, city,or county or an agency of the state, city, or county"

Line 25, P. 1, and line 1, P. 2

amend "state, political subdivision, or agency." to read, "state, city, or county or agency thereof."

Line 7, P. 2; lines 10 and 11, P. 2; line 13, P.2

amend "state, a political subdivision, or an agency of either" to "state, city or county or an agency thereof"

IV. Line 15, P. 2

amend "costs" to read "costs and attorney's fees"

Reasoning: Amendments I, II and IV are housekeeping amendments, offered to correct errors made in amending SB 222 in the Senate.

Amendment III is offered with the intent of eliminating school boards from the political subdivisions covered by SB 222. To eliminate all but state government would weaken the bill considerably, which striking "political subdivision" would do. Leaving in city and county governments should alleviate this problem.

#

Exhibit 7

AMENDMENTS TO SENATE BILL NO. 288

1. Title, line 10.
Following: line 9
Strike: "SECTION"
Insert: "SECTIONS"
Following: "3-1-1105"
Insert: "AND 3-1-1107"

2. Page 1, line 25.
Following: "disclosure"
Strike: "of record"

3. Page 2, lines 1 through 3.
Following: "commission" on line 1
Strike: remainder of line 1 through "3-1-1106(3)" on line 3
Insert: "finds probable cause for charging a judge with judicial misconduct"

4. Page 2, line 8.
Following: ";"
Strike: "and"
Insert: "(2) the proceedings in which the commission or masters hear the charges of misconduct; and"
Renumber: subsequent subsection

5. Page 2, line 11.
Following: "in"
Strike: "subsection"
Insert: "subsections"
Following: "(1)"
Insert: "and (2)"

6. Page 2.
Following: line 11
Insert: "Section 3. Section 3-1-1107, MCA, is amended to read:
"3-1-1107. Action by supreme court. (1) the supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:
~~(1)~~ (a) order censure, suspension, removal, or retirement of a judicial officer; or
~~(2)~~ (b) wholly reject the recommendation.
(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public." "
Renumber: subsequent sections

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 381 Date 3/26/81

SPONSOR Stephens

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Jeremiah F. Johnson	Rm. 309 MSLA. Co. Courthouse	Mont. Probation Assoc.	✓	
Kevin Gilos	1622 Kelly Road	Independent Record	✓	
Mike Keller	1410 S. Belmus	" "	✓	
[illegible]	[illegible]	Helena High School	✓	
Ellen Teddy	2230 Rodeo	" " "	✓	
Gladys Simpson	1001 Knight	Citizens of Helena	✓	
Tom Poore	1519 Normal	Concerned Citizens	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 419 Date 3/26/81

SPONSOR Blaylock

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Jim Wheelis	Missoula	SELF (I AM A DISTRICT JUDGE)		X
[illegible]	Helena	[illegible]	X	
[illegible]	~~[illegible]~~ Helena	State Bar		V
[illegible]	Mont. Judges Assoc.	Helena		X
[illegible]	~~[illegible]~~ Helena	[illegible]	X	

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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 479 Date 3/26/81

SPONSOR Crippen

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
William L. Romine	Helena	Land Title Assn	X	

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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL SJR20 Date 3/26/81

SPONSOR Crippen

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE

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