

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 10, 1981

The twenty-fourth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 216:

DELETING THE SUPREME & DISTRICT COURT  
90-DAY RULE REGARDING PAYMENT OF JUDGES.

Senator S. Brown introduced the bill and said that it came out of a legislative audit. He placed into evidence a letter from Judge Coate (marked Exhibit A and attached to these minutes).

District Judge Leonard Langen stated that judges should not be singled out for a pay penalty when their work is not current, since other state employees are not subject to this type of penalty.

District Judge Gulbrandsen, Glendive, said that his case load has tripled over the last seven to eight years, and he explained the problems in trying to handle such a load and keep it current. He also questioned the quality of justice that would have to be rendered in a hurry to beat the ninety-day deadline.

District Judge Sorte, of Wolf Point, representing the Montana Judges Association, said that the nature of the work and the variety of the cases have increased enormously, and that this should be taken into account.

J. C. Weingartner stated that the State Bar supports the bill.

Mike Meloy, representing the Trial Lawyers Association, voiced concern about the time involved getting cases decided, said that he supported the bill, and suggested that it be amended so as to allow the Supreme Court to adopt rules relative to handling of case loads.

Tom Harrison, representing the Montana Judges Association, spoke in support of the bill, and said that he feels the current situation discourages the judges from agreeing to help each other in different districts because doing so

might make them fall behind in their schedule.

Senator Olson asked whether there could be some more lenient time limit placed on completion of a case. Senator Brown explained the enormous burden that a particularly involved case can place on a judge, and said that limits simply could not apply to such cases.

Judge Langen suggested that the Supreme Court be put in charge of overseeing that work gets out in a reasonable time.

Judge Gulbrandsen said that judges' case loads are on a computer now, giving great supervisory ability over the status of cases, so that it can be adequately handled by the Judicial Standards Commission.

#### CONSIDERATION OF HOUSE BILL 10:

##### TO GENERALLY REVISE SENTENCING LAWS.

Representative Keedy, District 18, Kalispell, introduced the bill, referring to it as the "mandatory sentencing bill". He said that he had sponsored the bill because he feels most people are puzzled and unhappy over excessive leniency in sentencing and the disparity in different sentences for the same crime. He said that he hoped this bill would comprehensively address these problems, and called it an attempt to provide for equal justice under the law.

Representative Gould, District 98, Missoula, traced the history of this bill, which was first begun during the 1975 legislative term. He called this version the best of all the bills regarding mandatory sentencing that have been put forward.

Ron Kunik, from Kalispell, testified in accordance with attached Exhibits B, C, and D, in opposition to the bill.

Judge Sorte, speaking on behalf of the Montana Judges Association, opposed passage of HB 10. He said that in addition to the points made by Mr. Kunik, enactment of the bill would lead to many more trials with an accompanying increase in costs. He asked the committee to defer their decision until they have seen the fiscal notes on all the sentencing bills.

Judge Langen, also speaking for the Montana Judges Association, said that he does not feel that harsher sentences deter crime so much as do certainty of apprehension and confinement.

Additional opponents registered their disapproval of the bill as can be seen on the attached testimony sheets and guest list. Beverly Gibson, of the Association of Counties, stressed

the expense which would be incurred at the local level, as well as overcrowding of the prison, even though she said that she would not object to the intent of the law.

Dan Russell, Administrator of the Department of Corrections, stated that there are 662 prisoners in the prison now, and that there is a 670-person limit. He then pointed to the wide discrepancy between the mandatory sentences described in the bill and the sentences currently being handed down. He said that the mandatory one-year sentence would increase the prison population by twenty-five percent.

Speaking for the Montana Trial Lawyers Association, Mike Meloy opposed the bill because it serves to shift the discretion from the district judge to the prosecutors, and because it will lead to an increase in criminal trials.

Mike McGrath, representing the Attorney General's office, joined Judge Gulbrandsen in saying that the problems leading to the formation of this bill are addressed more effectively in Senate Bill 219.

Tom Harrison stated that the differing facts in each case sometimes demand a disparate sentence.

Judge Sorte quoted from "ABA Standards for Criminal Justice" and "Corrections" the fact that mandatory sentencing is counterproductive.

Senator Halligan passed around a revised fiscal note on this bill (marked Exhibit G and attached to these minutes), and said that forty million dollars would be spent on this measure and it still would not reduce crime.

Senator Tveit established through questioning that the judges present were not present at the House hearing because they had not been notified of the hearing.

Senator Keedy challenged the figures in the revised fiscal note, so Chairman Anderson requested that he research it and bring his findings to a future meeting of the committee.

Senator Mazurek asked if the intent of lines 18 and 19 on page 6 of the bill was to allow district judges to have access to confidential juvenile files. Rep. Keedy's reply was affirmative, that his intent had been to open up these files.

Senator Anderson questioned the need for this bill, and asked if the crime rate had increased so drastically that this measure was indicated. Rep. Keedy replied that the bill was not particularly offered as a solution to a soaring crime rate. Senator Anderson then asked how we rank in Montana,

compared with the national average, in terms of return rate of people coming out of our prison. Jack Lynch replied that Montana has one of the best records in the country with only twenty-four percent return rate, most of which is due to violations of the terms of parole.

CONSIDERATION OF SENATE BILL 342:

DELETING CITIZENSHIP REQUIREMENT FOR  
MEMBERSHIP ON A BANK BOARD OR  
LICENSURE FOR CERTAIN PROFESSIONS.

Senator S. Brown introduced this as an audit committee bill, and handed out copies of the attached Exhibit H.

CONSIDERATION OF SENATE BILL 219:

AMENDING 46-18-201 TO GENERALLY REVISE  
SENTENCING LAWS.

Senator Towe introduced the bill and said that it addresses the questions discussed in House Bill 10; but that with the allowance for consideration of mitigating circumstances it is more realistic in dealing with the human experience. He felt that by requiring the judges to start from a specific point in the sentencing, and then having them explain in writing if they deviate either way from that starting point, more uniformity in sentencing would result.

Rising to support the bill were Mike McGrath, Karen Mikota, and Judge Langen.

Senator Mazurek asked whether the legislature has the authority to ask the Supreme Court to review sentences handed down by district judges. Senator Towe said that this was the case, and pointed out that existing laws are still the maximum sentence allowable.

Senator Mazurek asked Senator Towe's opinion of an amendment which would allow an appeal by either party challenging the sentence, and Senator Towe said that he would have no objection to this.



Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/10/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.



NAME: M JAMES SORTÉ DATE: 2-10-81

ADDRESS: P.O. Box 978 Wolf Point MT,

PHONE: 653-2613

REPRESENTING WHOM? MONTANA JUDGES ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB <sup>10</sup> ~~2~~ AND SB 216

DO YOU: SUPPORT? <sup>SB</sup> 216 AMEND? \_\_\_\_\_ OPPOSE? HB 10

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

94

NAME: C. J. McDonald DATE: 2/16/81

DATE: 2/16/81

ADDRESS: 1500

PHONE: \_\_\_\_\_

REPRESENTING WHOM? 544 / Mar -

APPEARING ON WHICH PROPOSAL: 2010 216

DO YOU: SUPPORT? ✓ AMEND?        OPPOSE? ✗

AMEND? \_\_\_\_\_ OPPOSE? 4

OPPOSE? ☒

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

24



NAME :

ADDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT? 5B 216

AMEND?

OPPOSE?

COMMENTS:

NAME: Karen Trukata DATE: Feb 10, 1981

ADDRESS: 406 N. Gwing Helena, Montana

PHONE: 443-6287

REPRESENTING WHOM? LWR of Montana

APPEARING ON WHICH PROPOSAL: HB 10 SB 219

DO YOU: SUPPORT? SB 219 AMEND?        OPPOSE? HB 10

COMMENTS:

- oppose  
HB 10:
- ① Research shows that the longer the sentence the less likely the rehabilitation - <sup>HB</sup>10 provides very lengthy sentences.
  - ② look at entire criminal justice system - effect on present programs
  - ③ sentences are random / value judgments / cause as much injustice as disparity now seen
  - ④ Needed emphasis on alternatives to incarceration

- support  
SB 219
- ① provides <sup>uniformity</sup> information to judges across the state
  - ② provides for more uniformity
  - ③ <sup>frequent</sup> sentence review beneficial
  - ④ requires ~~the~~ inclusion of specific circumstances of factors that constitute reasons for variation in the sentencing process.
  - ⑤ provides for consideration of wider range of circumstances

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Jan Brown DATE: 2/10/81

ADDRESS: 906 Madison, Helena

PHONE: 443-3824

REPRESENTING WHOM? Mt Assn of Churches

APPEARING ON WHICH PROPOSAL: HB 10

DO YOU: SUPPORT?                      AMEND?                      OPPOSE? ✓

COMMENTS: The Mt Assn of Churches position  
paper on Corrections, Unanimously  
adopted at its Annual Assembly  
in October, 1980, states support for  
a sentencing system which  
permits judges and others within the  
justice system latitude and discretion  
in dealing with individual offenders.

DATE: 2/10/51

ADDRESS: ATTN GENL'S OFFICE

PHONE: 2026

REPRESENTING WHOM? ATTY GEN

APPEARING ON WHICH PROPOSAL: 5219 — 4B1D

DO YOU: SUPPORT? 5219 AMEND? OPPOSE? HB 10

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

*Exhibit A*

**ALFRED B. COATE**

DISTRICT JUDGE  
FORSYTH, MONTANA 59327

February 4, 1981

Hon. Steve Brown  
State Senator  
Capitol Station  
Helena, Montana 59620

Re: Senate Bill No. 216

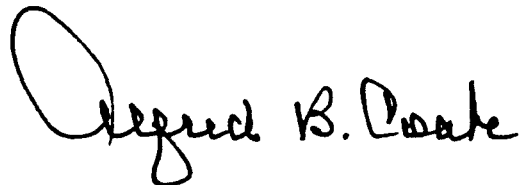
Dear Senator:

Enclosed is a copy of a letter and memo which I sent to Senator Crippen in support of Senate Bill 216.

I only wrote to Bruce as he is the only other Senator on the Committee I know personally.

My views do not represent the Montana Judges Association or anyone else. You have my permission to make whatever use of them you desire.

With best wishes,



Alfred B. Coate  
District Judge

ABC:lc

Enclosure

ALFRED B. COATE

DISTRICT JUDGE  
FORSYTH, MONTANA 59327

February 4, 1981

Hon. Bruce Crippen  
State Senator  
Capitol Station  
Helena, Montana 59620

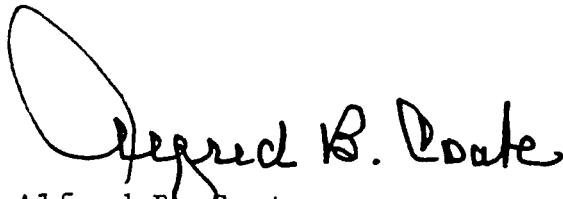
Re: Senate Bill No. 216

Dear Senator:

When Senate Bill No. 216 comes up for your consideration,  
I urge you to support it.

Enclosed are my reasons why this Section 3-5-212, MCA  
1979, should be repealed.

With best wishes,



Alfred B. Coate  
District Judge

ABC:lc

Enclosure

cc: Senator Steve Brown

M E M O

Background:

Section 3-5-212 MCA 1979 was enacted as section 1, Chapter 85, Laws of 1917. At that time the Supreme Court of Montana consisted of three members and was unable to keep up with its work load. In 1919 that Court was increased to five members, section 1, Chapter 31, Ex. Laws 1919. In 1921 the Legislature enacted Chapter 210, Laws 1921, to provide for three Court Commissioners for the Court, thereby making a Court of eight members. The title to Chapter 219, provides:

An Act authorizing the designation and appointment of district judges throughout the State of Montana to act in the capacity of commissioners of the Supreme Court in order to relieve the Court from the overburdened condition of its calendar; to provide required additional clerical assistance; prescribing certain duties of district judges; and declaring the same an emergency.

Thus it is apparent that the Supreme Court was unable to handle its work load in 1919 and in 1921. It is safe to assume, I believe, that this condition existed prior to 1919 and the purpose of Chapter 85, Laws of 1917, was to clear the Court's docket by withholding the Justices' pay until the docket was current.

The statute in question, it should be noted, was a Senate Bill introduced by Senator Gallwey of Silver Bow County; therefore, it may have had some intent to affect some change in in the operation of the district court in the Second Judicial District, as the "War of the Copper Kings" had only recently been concluded.

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128

The theory behind the legislation was not original with Montana, as the California Constitution contained such a provision. 48 C.J.S., Judges, sec. 37(c), p. 1002, citing Meyers v. Kenfield, 62 Cal. 512.

It should be noted that at that time a justice or judge could only be removed from office by impeachment or loss of an election. Impeachment was a totally ineffective means to discipline a judge who refused to perform his work. The 1972 Constitution of Montana has provided an adequate remedy for this problem.

#### Constitutionality:

Although section 3-5-212 MCA 1979 has never been judicially tested, it is submitted that the statute is unconstitutional for at least two reasons:

1. The Legislature was without power to amend the 1889 Constitution in this manner; and
2. The separation of powers doctrine does not permit the Legislative department to interfere with the Judicial department in this manner.

1. The general rule of law is that an elected official is entitled to compensation for the office he holds without regard to the performance of the duties of that office. Miami County Commissioners v. Collins, 47 Kan. 417, 28 Pac. 175; 15 Official Opinions of Attorney General, #398, 22 Official Opinions of Attorney General #104, 29 Official Opinions of Attorney General #13.

The Constitution of 1889 appropriated the funds for the payment of judges' compensation, so the failure of the Legislature to appropriate sufficient monies for that purpose did not deprive the judiciary of its compensation. 22 Official Opinions of Attorney General #40.



2. The second constitutional attack on the statute would be based upon the rationale that as the Judicial department could not deprive the Legislative department of its compensation for its failure to consider, or enact, proposed legislation, then the Legislative department cannot restrict the Judicial department for the failure to render a decision within a given time frame.

Purpose;

We may assume that the underlying purpose of the statute was to keep judicial dockets current. That is, of course, a commendable objective, which no one disagrees with. There is disagreement with the proposition that speed equates to justice. There are very few cases, if any, in Montana that would take three months to decide. The problem is the number of cases that must be considered within that time frame.

The real problem is that the population of this state has increased by approximately fifty percent since 1930. The number of practicing attorneys has, during the same time, increased from 750 to 1920. The size of the judiciary has not been increased proportionately to handle the increased business. The enactment of this statute in 1917 did not correct the problem in the Supreme Court at that time. It will not correct the problem in the District Courts at this time.

Conclusion:

The statute should be repealed. It does not accomplish what it was intended to do. Presently there are adequate provisions in the law to compel justices or judges to perform their duties,

Judicial Standards Commission, sections 3-1-1101, et. seq. MCA 1979.

The statute is an antiquated law which only brings discredit to the judiciary and should be repealed.

*Exhibit 13*

When I first heard of H B 10, the Mandatory Sentencing Bill, I was incensed. Because of a personal experience, involving my son, I knew what mandatory sentencing could do to a person.

After I went to the House Judiciary Committee hearing on this bill and listened to Mr. Keedy's opinion, that this would be a deterrent to crime, I decided to try to take an objective view and find out the facts, as best I could.

I have not only addressed mandatory sentencing, but determinant sentencing. Both types are meant to be a deterrent to crime. From the broad scope of bills on crime before the legislature and not knowing which of these might be incorporated into this bill, I thought I should report my findings on both.

I have talked to officials in So. Carolina, Indiana, Illinois, California and Montana. I would like to convey this information to you.

A couple of our House Legislators have said, that Calif. adopted mandatory sentencing laws with no significant changes in the prison status. I called the Calif. Dept. of Corrections in Sacramento, and spoke to Mr. Jim Park. He told me, Calif. did not have mandatory sentencing laws. They had had a couple of mandatory laws, but have since changed them. They have what is called Determinant Sentencing ( Flat time). The judge gives a flat sentence to be served with no parole. The judge has a degree of discretion as to the length of time to be served.

Mr. Park said, you must remember one thing, Determinant or Mandatory Sentencing works like compound interest as far as prison population is concerned. As far as a deterrent to crime, it doesn't appear to be working.

He also said, under Calif. law, no new law can be enacted or changed without a complete cost analysis done, to determine the economic impact it would have on the state.

*(2)*

According to an article by the U.S. Dept. of Justice on Impact of Determinant Sentencing, Calif. has a 25% increase in prison population. Let me read you a quote by Corrections Secretary, Howard Way of Calif. "The states over crowded prisons are failure factories. I am going to push very hard for alternatives to incarceration."

In the 1980 June edition of 'The Keepers Voice', American Association of Correctional Officers Newsletter, an article by Bob Barrington on the crisis situation developing in the Indiana prisons. Mr. John Larson, chairman of the state senate corrections committee, says, The last months siege at the over crowded Indiana State prison at Michigan City was a warning, perhaps the last warning the state will get before a major crisis develops. The article also states, 'Senator Larson finds fault with the legislature for inaction, but he might well consider that Indiana brought trouble, when it took hasty action to become the second state to return to the 'Justice Model' of Flat Time sentencing that had proved to be unsatisfactory in the last century. Without hope of parole, what incentive now remains to motivate that increasing number of inmates, who are under Indiana's new code. Maine was the first state to go back to Flat Time, Justice Model system, they too, are now suffering from severe overcrowding.'

Another article, by Mr. Barrington, states, 'It is not unusual for the interest of correctional officers to be ignored in the great debates raging over criminal justice policy. In the dangerous move to determinate sentencing, as an example, no one seemed to consider the well being of those, that must now control a growing army of long term inmates with vested good time, no hope of parole and little to lose from insubordination, manipulation, and testing of limits, that can lead to grave problems and some times to disturbances, which take lives.'

I talked to Dr. Norman Hunt of the Dept. of Corrections of Indiana, and found, the following.

Determinate Sentencing went into effect Nov. 1978. The preceeding years of 1976, 1977, 1978, the new prisoners were about 22 to 23 hundred per year. In 1979, the first year of the new code, there were 2758 new prisoners, in 1980 there were 3168. The population in 1977 was about 4600, in 1980 it rose to 6400, approximately 40% increase. Their projection for 1990 is a population of 11,000. At the present rate, that could be low. Their repeat offender crime rate is running about 25%.

Dr. Hunt feels, it has had no apparant effect, as to the deterrent of crime.

We discussed H.E. 10, and he felt the cost factor would be enormous, even more costly than their new code, as sentences would be longer, the local court cost would be extremely high, as very few would plead guilty under this type of law.

Illinois has incorporated a form of Determinte sentencing. Since doing so, prison population has sky rocked to 12,000 and are about 1,000 over capacity. Repeat offender crimes are now at about 70%. They too, cannot see, where this has acted as a deterrent to crime.

They have, however, come up with one very interesting statistic. State officials have found, that with the deeping recession, that for every percentage point rise in the states unemployment figure, about 1300 inmates end up in prison within a year. Also, a large decrease in prison population during war time.

South Carolina is the only state, that I could find, that actually has Mandatory sentencing. It was put into effect in 1975. Prison population, at that time was 5500. The 1980 population was approximately 9000, with no slow down in sight. Repeat offender crimes are about 70%. Crime overall is up 25% over 1979. Again, they can not see where it has acted as a deterrent to crime.

The Supt. of the Dept. of Corrections, of So. Carolina, said the one thing it is doing is making hard core criminals out of those, who might have been rehabilitated. The guards only keep

the prisoners inside the walls, the prisoners run the prison.

With mandatory sentencing, it is rare for someone to plead guilty, the cost to the counties is extremely high.

My son was convicted and sentenced in So. Carolina. I spoke with the County Attorney after. He told me he really thought my son would be found not guilty. I then asked him, why he did not reduce the charges to accessory after the fact and he said, that Steve was charged with armed robbery by the police and he prosecuted on those charges. He, also, said in his opinion, Steve should never have had to go to jail, but as the law was written, he so followed. I asked him, where was the justice in that? His answer was, I didn't say anything about justice, I only said what was law. If you can, go to the legislature and get the law changed. I agree, that the mandatory sentencing laws are not what they should be.

When I talked to corrections officials from these different states, they all had the same comment in regards to Montana's crime rate. 'We don't know what you are doing right, but it must be working, as you are among the lowest in the nation.

Now we come to Montana's criminal justice system. In Montana, we have Indeterminate Sentencing. Our judges retain the power to use their discretion to sentencing, after hearing all the facts and after a pre-sentencing report has been made.

Our prison population now is 684. We have 453 people on parole. About 26% will be returned to prison for parole violation, but only 4% of these will be for repeating another crime.

The case load of people on probation is 1839. We had 792 put on probation in 1979 and 575 in 1980. Of these only 6.5% ended back up before a judge in 1980. I do not know how many were crime related. I do not have the rate of crime increase or decrease for 1980 for the state, as it will not be available until some time in March. Montana's 1979 crime rate was up 13.4 % over 1978. The overall crime rate in the Flathead County for 1980 is down 17.2 % from 1979.

One of the biggest misconceptions about those being put on probation is that they are not being punished. When on probation, a great many of one's freedoms we all take for granted are taken away. There is always the constant fear of being sent to prison, if you step out of line. In many cases, restitution is one of the conditions of probation. With mandatory sentencing, the money lost in restitution to victims would be severely felt. In one department alone, Dept. 2 of the Eleventh Judicial District, the amount of restitution to victims was over 33,000.

I have heard a lot of talk about our judges being too lenient.. We must remember, that they hear the whole story on each and every case, they have a complete pre-sentencing report and base their decision on all the facts presented. If you look at our statistics as to repeat offenders etc. versus those of other states, then you must agree, our system must be working.

In all my conversations with people in all the many departments, who deal with the problems of crime, on a day to day basis, I did not find one person in favor of this bill. They all felt, mandatory sentencing was not the answer.

If this bill is passed, it would in dollars and cents be extremely costly. I doubt, that we could afford it, especially since it has not worked in states that have similar laws. You must remember, that very few would plead guilty, when faced with mandatory sentencing. Therefore, our court cost, as well as public defender cost etc. will sky rocket. Also, it could possibly make hard core criminals out of those, who might have been rehabilitated.

Every case and every individual are different. They must be judged and sentenced as to their own circumstances. If we remove the discretionary powers of the judges to do this, then we remove justice from the law. This, I believe, is a price we can never afford to pay.

Every country in the world has law, but not all have justice. Websters definition of justice ( the quality of being just, the principal or pratice of dealing justly with others, fairness. )

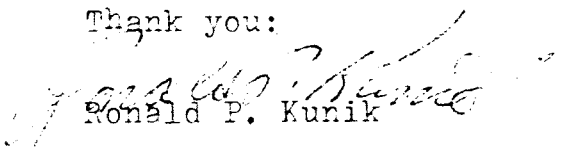
We must have law tempered by justice. When we start removing parts of the system that make this country great, then we start to destroy that system.

I heard this quote, I don't know who said it, but it is one, I believe to be true. "Small men serve the letter of the law, Great men serve justice."

We have had law since the beginning of time. The Lord gave us His Law, The Ten Commandments. He knew, that man through his weakness, could not at all times, obey the Law, so he gives us justice and forgiveness and salvation, through His Son, our Savior Jesus Christ. How, can any, who believe in the Lord and His mercy, not show any compassion for his fellow man?

To pass this law, I feel, would be an erosion upon our justice system and an even greater erosion upon our spiritual being.

Thank you:

  
Ronald P. Kunik

2505 Hwy. 2 East

Kalispell, Montana 59901

Phone 257-5069



WE THE UNDERSIGNED ARE AGAINST HOUSE BILL 10, THE MANDATORY  
SENTENCING LAW, AND WANT A NO VOTE BY OUR LEGISLATORS:

Name

Address

Marsha J. Devitt	743 Dwyer St. W.N. Box 870 Col. Falls.
Frank P. Martin	125 Dogwood Dr. Evergreen MT
George C. Russell	1320 1st Avenue West Kalispell, Mt.
Wanda L. Hill	110-14 E Evergreen; Kalispell.
Jane Pasquini	249 Rosewood Kalispell
Laura M. Brown	900 W Reserve Dr. Kalispell
Pauline Kilderslee	361 Hwy Dr. Kalispell
Sue Simmons	Box 354 Lakeside, Mt.
Tom Connelly	Box 1835 Kal. Mt.
Anna Kilderslee	147 College Dr. Kalispell
Ann Acres	103 Bruce St. Kalispell
Hona Quinell	510 Wilson Heights
Steve Dougherty	333 College Ave. #31
Hella Tausen	319 E Evergreen
Paul Tausen	2402 Hwy 2 W #4
Gayle Ann Jones	Box 133 - Kalispell, Mt.
Kelly Jay Kilderslee	1493 South Kalispell, MT
Linda Russell	Box 1647 Col. Falls, MT
Margaret L. Benning	Box #470 Kalispell Mt. 59922
Art Jones	Box 72 Lakeside, Mt.

WE THE UNDERSIGNED ARE AGAINST HOUSE BILL 10, THE MANDATORY  
SENTENCING LAW, AND WANT A NO VOTE BY OUR LEGISLATORS:

Name

Address

Evelyn J. Brown  
Xana Gabriel  
Alta Jensen  
Lee Bronson  
Lenny Lanks  
- 171 DRY  
Gm. Oeding  
Vicki Wolfe  
Diane R. Kardin  
Linda Clark  
Vicky Pennington  
Lois Moser  
Sue Coeno  
Bob Will

131 Cedar Lane

1985 Hwy 2 E. #4

429 Mtn. View Drive

185 Primavera RD. Hal.

775 North Main St

74 WINCHESTER, KAL.

425 S. Main KAL

469 1st Ave. W.D. Kal.

545 Cherry Lynn Road Kal.

308 1/2 E. Ferguson Dr. Kal.

1801 Shaw W.D. & Cal.

132 Poplar Dr. Kal.

44 N. Main Dr. Kal.

WE THE UNDERSIGNED ARE AGAINST HOUSE BILL 10, THE MANDATORY SENTENCING LAW AND WANT A NO VOTE BY OUR LEGISLATORS:

Name

~~H.D.~~

5. 3.

C: ty

- Pyler Myers
- Emma Rittler
- Betsy Barnhart
- J. H. Alenroper
- J. H. Armstrong
- Tina Goodsell
- Rose Goodsell
- Earnest C. Goodsell
- Betsy Goodsell
- Jane Goodsell
- Jack Myers
- Mary Starnes
- Ann Starnes
- Jane Goodsell
- Art Klein
- Rich Klein

[illegible]

WE THE UNDERSIGNED ARE AGAINST HOUSE BILL 10, THE MANDATORY  
SENTENCING LAW AND WANT A NO VOTE BY OUR LEGISLATORS:

Name	E.D.	S.D.	City
Luetta Klein			Polson, Montana
Raymond Klein			Polson mt
Luetta Klein			Col Falls mt
W. J. Klein			" " " "
Donald Johnson			Col Falls, mt
Wendy Basso			Columbia Falls mt.
Beverly Kunitz			Kalispell mt.
W. J. Kunitz			Kalispell mt
Arthur Candill			Kalispell, mt
James Candell			Kalispell, mt.
Donald Kunitz			Kalispell mt

*Exhibit D*

# Office of the County Attorney

## Flathead County

Kalispell, Montana 59901

February 4, 1981

P. O. Box 1516  
Courthouse West Annex  
(406) 755-5300 - Ext. 241

TED O. LYMPUS, County Attorney  
DENNIS J. HESTER, Deputy  
JONATHAN B. SMITH, Deputy  
RANDY K. SCHWICKERT, Deputy  
MICHEAL C. PREZEAU, Deputy

Mr. Ron Kunik  
2505 Highway 2 East  
Kalispell, MT 59901

Dear Ron:

In response to your inquiry of last week, I can now provide the following information. The numbers with respect to the criminal cases handled in 1980 are from Department 2 (Judge Sykes) only as he had previously calculated these figures and Judge Salansky has been trying a case in Missoula and therefore unavailable. Judge Sykes and I felt, however, that a doubling would safely represent a total case load for both Departments of the Eleventh Judicial District Court.

In 1980, Department 2 received 58 guilty pleas and 8 pleas of not guilty. Upon trial of the 8 not guilty pleas, 7 verdicts of guilty were returned and 1 verdict of not guilty was returned. For your further clarification, I am enclosing herewith a copy of a report prepared by Judge Sykes.

As to your inquiry regarding approximate cost of average jury trials, the average length of trial in 1980 (including the 3 week Forsyth murder trial) was 4.5 days. The approximate cost per day is \$350.00 and this approximation includes both civil and criminal trials, some of the civil trials consisting of 6 person juries. Also, this cost includes just court costs and does not include costs incurred by the prosecutor's office or expenditures on behalf of the public defenders.

The budget for the current fiscal year with respect to the public defenders (excluding costs of appeal and transcripts on appeal) is \$51,800. In addition, public defenders are by contract paid \$500 per appeal taken plus \$150 for travel and per diem plus \$200 per brief prepared. Additionally, the average cost of a transcript is \$1,300. On the average, each public defender appeal costs approximately \$2,000.

(24)

Mr. Ron Kunik  
Page Two  
February 4, 1981

Costs for psychiatric examinations and special investigations on behalf of the public defenders are additional to those above provided.

I trust the foregoing information will be of some assistance to you in your efforts with the legislature. If I can be of any further help or information, please feel free to call upon me.

With kindest regards,

Yours sincerely,

OFFICE OF THE COUNTY ATTORNEY  
Flathead County, Montana

By

  
Ted O. Lympus

**DISTRICT COURT**  
**BOX 839**  
**KALISPELL, MONTANA 59901**

**M E M O**

January 26, 1981

In 1980 Dept. No. 2 of the Eleventh Judicial District rendered sixty-six sentences on various criminal cases. Seven were found guilty by jury, and the other fifty-nine pled guilty. Of these fourteen were misdemeanors with fines levied in the amount of \$5600.00. In addition, more than \$700.00 was ordered in restitution to victims, and \$450.00 as payment to the Flathead County drug team. Fourteen deferred sentences were issued. These were based upon the recommendations in the pre-sentence report of the District Pardon and Parole Office, mitigating factors at the time of the sentence hearing, including in some cases, negotiated plea recommendations by the Flathead County Attorney's Office. Of these deferred sentences, six required more than \$1000.00 restitution to victims, and \$1600.00 of payment to the Flathead County drug team. Thirty-eight sentences to the state prison included one for three years, up to one sentence for seventy years. Fifteen sentences of prison were suspended, or a portion thereof. Of these, eight involved making restitution to victims in the amount of \$33,600.00.

## DEPARTMENT OF CORRECTIONS

SACRAMENTO



February 3, 1981

Mr. Ron Kunik  
2505 Highway 2 East  
Calspell, Montana 59901

Dear Mr. Kunik:

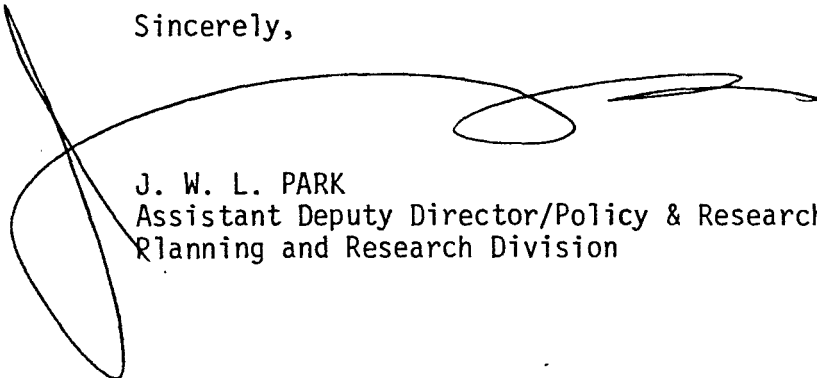
I have one citation for you that demonstrates the point for one offense. Our statisticians, in preparing the population projections for the California Department of Corrections, dated October 9, 1980, stated in Assumption No. 5 as follows:

5. Residential Burglary Legislation

The effects of SB 1236 requiring mandatory prison sentences for certain types of residential burglaries will begin to be felt in 1981-82 and are a major contributing factor to the rate of increase in male felons thereafter. Male felon admission rates for 1981-82 and thereafter are based on an annual intake of 400 per year, resulting in an ongoing population of 600 per year beginning in 1982-83.

In years past there have been similar analyses on other mandatory offenses as well as on raising terms by even one year.

Sincerely,



J. W. L. PARK  
Assistant Deputy Director/Policy & Research  
Planning and Research Division



GIBBS, GAILLARD, ROWELL & TANENBAUM

ATTORNEYS AT LAW

FOURTH FLOOR, KING & QUEEN BUILDING

SUITE 409, 145 KING STREET

CHARLESTON, SOUTH CAROLINA 29402

COMING B. GIBBS, JR.  
W. FOSTER GAILLARD  
A. HOYT ROWELL, III  
MARK C. TANENBAUM

TELEPHONE (803) 723-2756  
POST OFFICE BOX 659

November 24, 1980

TO WHOM IT MAY CONCERN:

I have been requested by Mr. Ronald Kunik of Kalispell, Montana to write a letter concerning what I view to have been the experience in South Carolina with the mandatory sentencing under the Armed Robbery Statute.

The maximum punishment in South Carolina for armed robbery is imprisonment not to exceed twenty five years. The minimum sentence that may be imposed is ten years, and under no circumstances is a person sentenced for armed robbery eligible for parole in less than seven years.

The Parole Statutes currently make all persons ineligible for parole until they have served at least one third of their sentence, or ten years, whichever is less. (In murder cases, twenty years must be served before parole eligibility.)

Accordingly, we have a statutory scheme whereby all persons convicted of armed robbery must serve a minimum of seven years imprisonment. The South Carolina Youthful Offenders Act, which allows indeterminate sentencing of youthful persons, cannot apply to armed robbery convictions.

In my personal view, and in that of the Bar at large, this has had certain undesirable results.

The first is that it precludes the Judge, in a case which a Judge might find appropriate, from dealing leniently with a first offender who has the misfortune of being convicted of armed robbery. It has the obvious affect of making the minimum sentence for armed robbery seven years, and the maximum sentence one third of twenty five years, to wit, 8.33 years. The spread between the minimum and the maximum obviously gives a Judge very little discretion.

A second result has been to cause the trial of a great many armed robbery cases that ordinarily would have been disposed of by guilty plea. When a trial only subjects a person to a maximum of one year and four months greater penalty than the least sentence under a guilty plea, there is little incentive for a person to plead guilty.

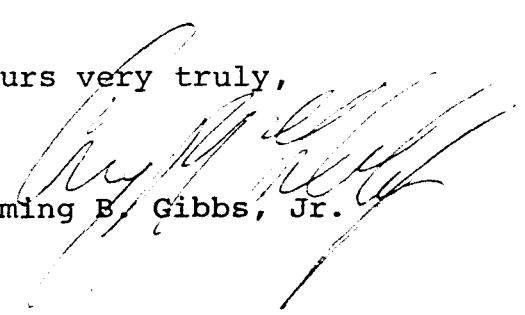
As a practical matter, prior to the enactment of the mandatory ten years, seven years before eligibility for parole sentence, Judges ordinarily were delivering quite serious sentences in armed robbery cases, generally in the range of fifteen to twenty years. Very occasionally, in the most unusual case, a more moderate sentence would be imposed, and in those cases, there was a general concensus that such a sentence was appropriate. There was no general outcry, editorials in newspapers, etc., that sentences in armed robbery cases were too lenient prior to the enactment of the minimum sentence provisions.

Armed robbery was and continues to be a quite serious problem in this state, and apparently the owners of merchantile establishments either prevailed upon the legislature, or the legislature seeking to carry favor with that group, enacted the Statutes.

As a lawyer who defends persons charged with crimes, I am aware that the disparate sentences sometimes imposed creates problems. I personally would favor granting to both the state and the defendant the right to appeal sentences, so that some uniformity, taking into consideration the personal history of the defendant, the seriousness of the crime, and other relevant matters, could be obtained.

Trusting that this will be of some help in considering these matters, I am with best wishes and kindest personal regards,

Yours very truly,

  
Coming B. Gibbs, Jr.

CBG/db

Exhibit #

A REPORT  
ON SENTENCING  
IN THE STATE OF MONTANA

The following report is based on statistical information provided by the Department of Institutions, Information and Systems Bureau.

The graphs show actual numbers of persons sentenced under several major felonies in the State of Montana from July 1, 1978, to December 12, 1979. Not all crimes are included in this report. The shaded bars on the graphs indicate sentences other than actual prison time. The black bars indicate actual prison sentences. In effect, this means that if a sentence includes a suspended portion, only the time an individual is actually sentenced to serve in prison is shown in black, and the suspended portion is indicated under "Part Suspended", with a shaded bar.

These figures reflect sentences by District Judges, and do not include changes made by the Sentence Review Division. If an individual is given a deferred or suspended sentence which is later revoked, both sentences are shown. As a result, the graphs may reflect more sentences than there were actual convictions. If one individual is sentenced separately for more than one crime stemming from one incident, each sentence is shown.

It should be noted that there are mitigating and aggravating circumstances which are considered by judges when imposing sentences. Some of these are prior felony convictions, use of weapons or violence in commission of the offense, and the age of the offender. While it would be helpful if such information were included, obtaining and presenting it goes far beyond the scope of this report.

It should also be noted that a prison sentence as indicated here does not accurately portray "time served". An individual is eligible for consideration for parole when one-fourth of his sentence has been served, or when one-half is served if he is designated by the Court to be a "dangerous offender". By law, a person with a very lengthy sentence cannot be incarcerated more than 17.5 years on one sentence without being considered for parole, and a person serving a life sentence must be considered for parole after 30 years less good time. A judge can, however, declare an offender ineligible for parole.

Good time consists of days taken off an individual's sentence as incentive to appropriate behavior in prison. He may earn ten (10) days a month for being available to work, plus added days of good time for participating in various self-help groups. At the present time, an individual can earn a maximum of 25 days good time per month.

Prepared by:

Lois A. Broyles, Secretary  
Sentence Review Division

STATE OF MONTANA

REQUEST NO. 26-81 Rev

revised FISCAL NOTE

Form BD-15

In compliance with a written request received February 6, 19 81, there is hereby submitted a Fiscal Note for House Bill 10 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

A proposal to implement mandatory sentences for persons convicted of a certain crime.

Assumptions

1. The population of Montana State Prison will increase 25%\*each year of the 1982-83 biennium from a current population of 643.
2. After the currently available 53 beds are filled, additional inmates will be contracted to other states or community programs.
3. A new 500 bed prison will be constructed with construction being completed by July 1, 1984.
4. Reduced plea bargaining will increase the number of cases that go to a jury trial.

Fiscal Impact

1. Construction cost of a new prison will be \$26,705,000
2. The costs of caring for additional inmates will be as follows:

	<u>FY 1982</u>	<u>FY 1983</u>
General Fund	\$1,213,710	\$4,755,575

3. In calendar year 1980, of 2,633 criminal filings in Montana, only 13% went to jury trial with a cost of \$2,000-\$10,000 per trial; the proposed legislation would cause more cases to go to trial, however, the number cannot be estimated.
4. The increased number of trials would also increase local costs for prosecution and public defender services.

\*U.S. Department of Justice, Handbook for Decision Makers, July, 1980

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-81

March 1980

OFFICE OF THE LEGISLATIVE AUDITOR  
SUNSET POSITION PAPER #3

## RE: CITIZENSHIP REQUIREMENTS FOR LICENSURE

Some of Montana's licensing laws require that applicants for licensure must be citizens of the United States. (See Appendix A.) The validity of such a requirement has been called into question a number of times and court decisions indicate that citizenship requirements are generally unconstitutional. In the case of In Re Griffiths, 413 US 717 (1973), the U.S. Supreme Court considered a Connecticut rule for admission to the practice of the law which required that all applicants be citizens. In considering the constitutionality of a prohibition against aliens being admitted to the bar, the court stated at page 721:

"In order to justify the use of the suspect classification, a state must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose for the safeguarding of its interest."

The court went on to conclude that the state had not carried its burden of proof in showing that the prohibition against aliens practicing as attorneys was necessary or accomplished any public purpose. In another U.S. Supreme Court case, Examining Board vs. Flores De Otero, 426 US 572 (1976), the court considered a prohibition in Puerto Rican law against aliens being licensed as civil engineers. At page 599 the court stated the question:

"Does Puerto Rico's prohibition against an alien engaging in the practice of engineering deprive the appellee aliens of 'any rights, privileges, or immunities secured by the constitution and laws,' . . ."

At page 601 the court answered this question as follows:

". . . the statutory restriction on the ability of aliens to engage in the otherwise lawful practice of civil engineering is plainly unconstitutional."

The court quoted extensively from its prior holding in the case of In Re Griffiths in reaching the conclusion that a prohibition against aliens practicing did not serve any public purpose. A final recent case was decided in U.S. District Court in the state of New York, Kulkarni vs. Nyquist, 446 F. Supp. 1269 (1977). The court considered a prohibition in New York's education laws concerning citizenship requirements. The court summarized the state of the law as follows:

"With respect to the first question, the law has been settled for quite a long time that a state may not restrict an alien lawfully residing in the United States, from pursuing a livelihood because he is not a citizen or does not intend to become one."

Clearly, these cases indicate that the state has a strong burden to show necessity and a public interest in precluding aliens from being licensed under state law. With the relevant boards in Montana, it does not appear that burden has been met and, therefore, such requirements for citizenship are probably invalid.

ISSUE:

Should citizenship requirements be removed from Montana's licensing laws?

## APPENDIX A

	Requirement for U.S. Citizenship		<u>Board</u>
	<u>No</u>	<u>Yes</u>	
<u>1st Sunset Cycle</u>			
	X	X	Accountants
			Architects
		X*	Banking
	X		Counting Printing
	X		Electricians
	X		Engineers and Land Surveyors
	X		Insurance Commissioner
	X		Investment Commissioner
	X		Landscape Architects
	X		Physical Therapists
	X		Plumbers
		X	Realty Regulation
<u>2nd Sunset Cycle</u>			
	X		Athletics
	X		Barbers
	X		Chiropractors
	X		Cosmetologists
	X		Dentistry
	X		Hearing Aid Dispensers
	X		Human Rights Commission
	X		Massage Therapists
	X		Medical Examiners
	X		Morticians
	X		Nursing
	X		Nursing Home Administrators
		X	Optometrists
	X		Osteopathic Physicians
		X	Pharmacists
		X	Podiatry Examiners
	X		Psychologists
	X		Radiologic Technologists
	X		Sanitarians
	X		Speech Pathologists and Audiologists
	X		Veterinarians
	X		Veterans Affairs
<u>3rd Sunset Cycle</u>			
	X		Aeronautics
	X		Hail Insurance
	X		Horse Racing
	X		Livestock
	X		Milk Control
	X		Oil and Gas Conservation
		X	Outfitters Council
	X		Public Service Commission
	X		Water and Waste Water Operators
	X		Water Well Contractors

\*Bank directors must be U.S. citizens.



## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Leigh Kirkpatrick	aide for Sen. Tom Lowe	SB219	✓	
Mike Ables	Supreme Court			
John Davis	Intern for Rep. Dave Brown	HB 10		✓
Ada DiShaftensaid	<del>Rep. Brown</del> <del>Chang</del> mt.			
Budd Gould	Dist. 98	HB 10	✓	
Karen Sedlak	Sup Court	HB 10		
Marie Anderson	Sup Court	HB 10		
KAREN Mikota	#WV of Montana	HB 10		✓
		SB 219	✓	
SEN Japhar	Democratic St. Hdqrs	HB 10		
Tom Hony	County Attorney	HB 10		
Beverly Gibson	mt. Ann. A Co's	HB 10 SB 219		
Mark C Murphy	\$ F			
Robert McQuinn	Intervenor			
Ron Kunitz	Kalespet	HB 10		✓
Jan Brown	Mt Ann Churches	HB 10		✓
"	"	SB 219	✓	
MIKE Meloy	MTLA	HB 10 SB 219	✓	✓
Dan Russell	Dept. of Inst	HB 10		✓
John Smith	Board of Pardoners	HB 10		✓
Frank H. Valkenburg	Senate Dist. 50	HB 10		✓