MINUTES OF THE JUDICIARY COMMITTEE
February 3, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown. All members were present. Brenda Desmond, Legislative Council, was also present.

HOUSE BILL 433

REPRESENTATIVE MUELLER stated this bill would provide that there would no longer be a challenge for cause on the basis of a debtor-creditor relationship when the relationship arises solely because a prospective juror is a depositor of funds in a bank or similar institution.

This legislation will save the counties money. The only change in the bill is on page 2, lines 4 through 6.

The reason the bill is proposed results from a recent situation in Libby. A Libby bank brought suit against a person. The case called for a jury trial. The judge was required to dismiss a large number of potential jurors because they had funds deposited in the bank in question. In order to have an impartial jury, it was felt that the jurors should not be depositors. This resulted in wasted taxpayers money. EXHIBIT A.

MARC RACICOT was in favor of the legislation. Although the problem does not happen frequently, it does happen often enough to waste taxpayers money. It cost the county $1,200 to process 100 potential jurors to find 12 that could serve that were not depositors of the bank. Each potential juror receives $12.00 a day.

REPRESENTATIVE KEYSER stated he was in favor of the bill.

There were no further proponents.

There were no opponents.

REPRESENTATIVE ADDY asked if the bank's attorney objected to jurors that had accounts with the bank. RACICOT replied both sides of the case dismissed potential jurors that had accounts.

The hearing on the bill closed.

HOUSE BILL 430

REPRESENTATIVE HANNAH. sponsor, stated the bill would increase the penalties for violation of laws relating to motor vehicle registration, operation and accident reports.

The penalty is being increased from $25.00 to $500 or imprisonment not exceeding six months in the county jail. This brings the law current with other misdemeanor offenses.

MARCELL TURCOTT, a spokesman for the Montana Magistrates, was in favor of the bill. The problem is not when the first offense is committed, but when it happens continually after that. Judges feel there must be something done to deter this repeated action.

LARRY MAJERUS, Department of Justice, supports the bill. MAJERUS noted that House Bill 560 also deals with provisions on page 3.

There were no further proponents.

There were no opponents.

The hearing on the bill closed.

HOUSE BILL 481

REPRESENTATIVE PHILLIPS, sponsor, stated this bill's purpose is to allow officers of the United States Customs Service or Immigration and Naturalization Service to make arrests. The border patrol check points are staffed with federal officers. Current statute does not state whether they can arrest a person for the state of Montana or for local governing bodies. The federal officers can only arrest people for federal violations. They do this by running a check on a suspected offender through a nationwide computer. The officer is allowed to apprehend the federal offender. If a person is wanted for a local or state crime, legally the federal officer cannot hold the person. His only recourse is to notify local officials of the person's whereabouts.

The bill was drafted by the Attorney General's office. It is modeled after Minnesota and North Dakota statutes.

D.W. MYHRA, representing U.S. Customs, was in favor of the bill. Federal officials have been detaining offenders at the border. An actual arrest is not made. Border officials can be sued for this.

MYHRA noted that when the officials feel someone is "wanted" the officials key the name and car description into the computer. Local law enforcement officials are notified while the person is going through customs.

JOHN SCULLY, Sheriffs & Police, was in favor of the bill. Assistance by the border patrol is needed.

BILL WARE, Montana Chiefs of Police Association, urged the committee to favorably consider the bill.

BOB ASH of Forsyth also showed support of the bill.

There were no further proponents.

There were no opponents.

REPRESENTATIVE VELEBER asked what would be "reasonable grounds" that the officer believes a person has committed an offense. MYHRA responded if the person is carrying weapons, if there is a warrant out for his arrest, if there is an APB out for the person, etc.

REPRESENTATIVE J. BROWN asked what is the difference between a warrant for the person's arrest and a felony warrant. SCULLY replied a warrant would be any warrant that is issued in this state. A felony warrant is one that has been issued from another state for a person charged with a felony. Under this bill, the federal officers are authorized to arrest on an out-of-state warrant only when it is for a felony.

REPRESENTATIVE ADDY asked if the border patrol would be able to search and arrest as a result of a warrant. SCULLY felt they could under federal law. In the event that an individual is picked up through usage of a warrant the official may have more authority than they would otherwise.

REPRESENTATIVE ADDY asked if a party was improperly searched could objects found be used in the trial. SCULLY replied it would depend on the exclusionary rule. If a warrant was issued for dangerous drugs only and that was found, the drugs could be used as evidence.

The hearing on the bill closed.

The committee then went into executive session.

EXECUTIVE SESSION

HOUSE BILL 481

REPRESENTATIVE SEIFERT moved DO PASS, seconded by REPRESENTATIVE IVERSON.

REPRESENTATIVE FARRIS asked why the state of Montana must give authority to federal officials. CHAIRMAN BROWN stated the federal officials as well as the local law enforcement officers would like the border patrol to have the power of arresting individuals that have committed state of local crimes. Currently they only have the power to arrest for federal crimes.

REPRESENTATIVE IVERSON added the border patrol officials are well trained. Several times they have been asked to help out local officials but have been unable to do so. They can only be responsible for people who have entered the country illegally. Many illegal aliens try to come into the country through the smaller border crossings.

REPRESENTATIVE SCHYE stated they have had problems with this in his area. He totally agrees with the bill.

All were in favor of the bill leaving the committee with a DO PASS recommendation.

HOUSE BILL 433

REPRESENTATIVE CURTISS moved DO PASS, seconded by REPRESENTATIVE EUDAILY.

The motion passed unanimously.

HOUSE BILL 430

REPRESENTATIVE HANNAH moved DO PASS. REPRESENTATIVE EUDAILY seconded the motion.

REPRESENTATIVE ADDY moved to strike "less than $10 or" on page 3, line 12 of the bill. REPRESENTATIVE JENSEN seconded the motion. All were in favor of the motion.

REPRESENTATIVE JENSEN moved DO PASS AS AMENDED, seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE BERGENE asked about Section 61-3-601. REPRESENTATIVE HANNAH replied that section deals with penalties for violations. Wherever current statute does not provide for a penalty this section defines what the penalty shall be.

It was asked if the proposed penalty is too steep. The sponsor replied he thought about that. However, he felt the fine is a good preventive measure.

REPRESENTATIVE KEYSER stated committee members who feel judges should not have descretion should vote for the bill. If we are consistent, this is a reasonable approach.

The motion of DO PASS AS AMENDED carried with REPRESENTATIVE IVERSON and CHAIRMAN BROWN voting against the motion.

HOUSE BILL 429

REPRESENTATIVE HANNAH moved DO PASS. He stated the same principle

applies to this bill as did the previous bill. Shooting firearms within city limits is dangerous in that is can harm innocent people as well as damage property.

REPRESENTATIVE SEIFERT stated that air rifles are often more powerful than small rifles. REPRESENTATIVE JENSEN felt that was a good point. Perhaps the definition of firearms should be redefined in this bill. CHAIRMAN BROWN stated there is a bill in Fish and Game and will change the firearms definition to include BB and pellet guns.

REPRESENTATIVE EUDAILY questioned if the bill would include peace officers firing weapons. BRENDA DESMOND stated that Section 45, Chapter 3, Part 1 identifies when force is justified.

The motion of DO PASS carried with CHAIRMAN BROWN voting against it.

HOUSE BILL 376

REPRESENTATIVE J. BROWN moved DO PASS, seconded by REPRESENTATIVE DARKO.

REPRESENTATIVE KEYSER moved to change subsection 5 to subsection 4 (1), as he felt the subsection pertains to the previous subsection. REPRESENTATIVE DAILY seconded the motion. All were in favor of the amendment.

REPRESENTATIVE ADDY moved the committee adopt REPRESENTATIVE McBRIDE's amendment (EXHIBIT B).

REPRESENTATIVE FARRIS stated she belongs to an adoptive parent group. There has been a trend in the last five years attempting to keep natural parents in touch with the child that is adopted to another family. It is very important for possible medical reasons, among others, that the lines of communication not be cut off completely. The bill eliminates section (3) of the present statute, yet the amendment puts that same language back into the bill. People involved with adoption feel there is a trend even though officials from SRS did not think so. REPRESENTATIVE FARRIS was against the amendment.

REPRESENTATIVE ADDY felt the question is whether the courts or the adoptive parents will be able to decide if visitation rights can be granted to a stepparent or a grandparent. He felt that if a family adopts a child it should be up to them whether or not the natural grandparent can have visitation rights. The amendment provides no visitation rights for grandparents if the child has been adopted other than by a grandparent or stepparent. In the situation where the unwed mother, who has no prospect of marriage, places the child up for adoption, it might be detrimental for the infant to know and be acquainted with his natural grandparents.

REPRESENTATIVE FARRIS stated there are some people who are adopted, especially infants, that never know they are adopted. They might require medical attention that links back to their ancestors. They have the right to know who their biological parents are.

REPRESENTATIVE HANNAH asked if these records are available to the court. REPRESENTATIVE FARRIS stated it was her understanding that when something is terminated, it is stopped. Some parents, however, do write letters to SRS for insertion into their file on the child's birthday explaining why the child was put up for adoption, and other facts the natural parent thinks the child might want to know.

REPRESENTATIVE HANNAH felt that when a child is adopted the adoption agency has a thorough record of the parents' medical information. This information would "follow" the child.

REPRESENTATIVE KEYSER stated under present law, a grandparent may petition the court for visitation rights. This amendment does not allow such a petition for a hearing.

REPRESENTATIVE BERGENE asked if there are times when the courts or adoption agencies know when a situation is destructive towards the child's well-being. REPRESENTATIVE FARRIS stated she could understand that custody of the child would not be awarded to people in certain circumstances. However, the bill indicates visitation rights may not exceed 48 hours a month, so it might be in a child's best interests for his grandparents to have visitation rights with him even though it wouldn't be in the child's best interest for the same grandparents to have custody of him.

REPRESENTATIVE ADDY stated if the law is changed, natural grandparents might start coming to the adoptive parents to demand visitation rights. The question is who makes the decision, the court or the adoptive parents. The amendment takes the decision out of the court and places it in the hands of the adoptive parents.

REPRESENTATIVE DAILY agreed with REPRESENTATIVE ADDY. There are different kinds of adoption. If the amendment is passed many grandparents might feel guilty for not visiting the child before. If the child is 5 or 6 years old, it could very well make a difference in the rest of his life. It should be up to the adoptive parents.

CHAIRMAN BROWN stated the court would probably listen to all sides of the matter before deciding the rights.

REPRESENTATIVE CURTISS felt is was presumptuous for the committee to decide this. Some people have a dependency on their roots.

REPRESENTATIVE ADDY stated that allowing grandparents to intrude would make it more difficult for those who adopt. REPRESENTATIVE FARRIS stated the laws should not be written by 10% of the people but by 51%.

The motion to adopt EXHIBIT B as an amendment resulted in a roll call vote. Those voting in favor of the amendment were: ADDY, DAILY, DARKO, IVERSON, SEIFERT, SPAETH and VELEBER. Those voting against the amendment were: D. BROWN, J. BROWN, CURTISS, EUDAILY, FARRIS, HANNAH, KENNERLY, KEYSER, and SCHYE. The amendment failed 10 to 7.

REPRESENTATIVE FARRIS stated the problem the bill tries to address became apparent when grandparents had differing religious or moral views than the parents of the child had.

BRENDA DESMOND stated the bill is a result of the fact that families are not as close as they once were. The close family unit is diminishing. Grandparents are not allowed access to the grandchildren as much as before. Many states do not grant the right for grandparents to petition the court to see the children.

REPRESENTATIVE JENSEN said that some grandparents are meddlers and are only interested in their own needs and not the child's. CHAIRMAN BROWN stated "that meddlers are meddlers to everyone who looks at them." The whole purpose of the bill is to allow the court to decide whether it is within the child's best interest to let the relationship between the child and the grandparent develop.

REPRESENTATIVE CURTISS stated that REPRESENTATIVE JENSEN's comments hold true with some parents also.

The motion of DO PASS AS AMENDED, made by REPRESENTATIVE J. BROWN, carried with REPRESENTATIVE JENSEN, REPRESENTATIVE ADDY and REPRESENTATIVE SPAETH voting no.

HOUSE BILL 184

REPRESENTATIVE DAILY moved DO PASS, seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE DAILY moved the committee adopt the amendments as in EXHIBIT C.

BRENDA DESMOND, Committee Staff Attorney, stated she drafted the exhibit as to the concerns committee members expressed to her. She briefly went through the exhibit explaining it to the committee members.

REPRESENTATIVE JENSEN stated the exhibit should be amended on page one, section (1) to "A district court judge shall within 45 days act upon receipt of a petition for a permit or renewal of a permit

to carry a concealed firearm for a term of one year if the petitioner complies with this section..." This could prevent a district judge from "sitting" on the application.

"Firearm" in the first sentence of the exhibit was changed to "weapon". The definition of "Concealed weapon", as in Section 45-8-315 was read to the committee: "Concealed weapon" shall mean any weapon mentioned in 45-8-316 through 45-8-319 which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon."

REPRESENTATIVE DAILY stated that Sheriff O'REILLY would like the application fee changed from $10.00 to $30.00 in the amendments. He was also concerned with applicants "judge shopping" to receive a permit. If the bill was amended to state the permit must be applied through the sheriff governing where the applicant resides, that would eliminate "judge shopping".

REPRESENTATIVE JENSEN stated that the proposed amendment he made should be deleted and inserted on the second page of the amendment under (4). It would read: "After a petition has been filed the judge shall withing 45 days act upon receipt of the application and order the sheriff to check the appropriate local, state and national law enforcement records for information relating to the applicant and to file the results of the investigation with the court." Page 1, of the exhibit, line 2 would be amended to read: (1) A district court judge shall, in his descretion,".

REPRESENTATIVE JENSEN withdrew his proposed amendments to the exhibit.

REPRESENTATIVE DAILY withdres his motion to amend the bill with the exhibit.

REPRESENTATIVE SEIFERT moved the committee recommend the bill DO NOT PASS, with REPRESENTATIVE HANNAH seconding the motion.

A roll call vote resulted. Those Representatives voting yes were: D. BROWN, ADDY, EUDAILY, FARRIS, HANNAH, IVERSON,(via proxy), JENSEN, RAMIREZ, SEIFERT, and VELEBER. Those voting no were: BERGENE, J. BROWN, CURTISS, DAILY, DARKO, KEYSER, SCHYE and SPAETH. The motion of DO NOT PASS carried by a vote of 10 to 8.

HOUSE BILL 355

REPRESENTATIVE CURTISS moved DO PASS. It was seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE CURTISS moved to amend the bill by adding on line 6, page 7, and line 9, page 10 "except in criminal cases." REPRESENTATIVE DAILY seconded the motion.

REPRESENTATIVE SPAETH stated the amendment concerns the person's fifth amendment rights. What about evidence presented by the prosecution when that evidence really does apply?

REPRESENTATIVE CURTISS withdrew her motions so the committee could hear House Bills 438, 439 and 440.

REGULAR HEARING

HOUSE BILL 438

REPRESENTATIVE HAND, sponsor, stated the bill would provide for the criminal offenses of negligent assault, negligent vehicular assault, and negligent endangerment. The bill deletes from the assault law a presumption as to the assailant's purpose as per reasonable apprehension.

MARC RACICOT, on behalf of the Prosecutors, was in favor of the proposed legislation. The striking of the material on page 1 is for two reasons: presumption is unconstitutional, in our view because of the Sandstrom Case. Secondly, it creates a presumption in every case that a weapon is used that it is a "simple assault." That is not always the case. There are a number of instances when a weapon is used to intimidate the victim.

The major part of the bill concerns negligent assault cases. This statute concerns when people negligently cause serious bodily injury to another, as in a hunting accident when serious bodily injury occurs but the injured does not die.

In the case of State v. Price, a drunk driver seriously injured others. He was charged with aggravated assault with a weapon. This was upheld on appeal. New Section (3) Negligent vehicular assault is designed to prevent those types of actions from occuring.

New Section 4 - Negligent endangerment was written as a result of the incident in which two men shot at an occupied tent recently, thinking it was a bear. The prosecution was able to prove both men fired but that only one person actually hit the woman in the tent. The man who did not hit the woman was charged with hunting beyond the daylight hours.

The proposed legislation would also cover a situation where the driver of a vehicle left a hitchhiker stranded in inclement weather that he could not survive on his own.

There were no further proponents.

There were no opponents.

The sponsor closed the bill.

REPRESENTATIVE KEYSER stated the new sections of law are quite broad; is there case law that back this up? RACICOT replied that the sections are broad but so is the whole criminal code. REPRESENTATIVE KEYSER further asked about negligent vehicular assault. RACICOT stated there is nothing in the statute presently that covers this.

REPRESENTATIVE ADDY asked if negligent assault would also apply to the Livingston bear case. RACICOT stated the person would have to actually cause the serious bodily injury. The prosecution could not prove that the one shot did not hit the woman.

REPRESENTATIVE ADDY asked how the stricken material is considered unconstitutional. RACICOT replied it is unconstitutional because it presumes that a defendant intended to cause reasonable apprehension of bodily injury in another whenever the defendant uses a weapon. So the burden of proof on one element of the offense is taken from the prosecutor in violation of the Fifth Amendment. RACICOT stated the bill is drafted after Colorado statute.

REPRESENTATIVE SPAETH further asked about section 3 of the bill. RACICOT replied the definition in the criminal code is "pretty broad". This bill was drafted to be consistent with that particular code.

The hearing on the bill closed.

HOUSE BILL 440

The sponsor of the bill, REPRESENTATIVE HAND, stated this bill provides for mutual and reciprocal discovery in criminal cases.

MARC RACICOT, representing the Prosecutors, stated the bill would require the defendant's counsel to provide the prosecutor with a number of items. A list of witnesses the defendant plans to call for testimony during the trial along with their addresses and any books or papers or other evidence that will be submitted would be required to be given to the prosecution prior to the trial.

In the interest of justice both sides should mandatorily submit this material. It would save both sides valuable time, therefore, resulting in a speedy trial.

RACICOT did not feel this proposed legislation would violate the constitutional protection against self-incrimination.

There were no further proponents.

Opponent, KARLA GRAY, representing the Montana Trial Lawyers, stated the state has the burden to prove, beyond a reasonable doubt, the defendant's guilt. A person is presumed innocent until he is proven guilty. The defendant does not have to testify if he does not want to. As a practical matter, the defense is largely a reaction to whatever happened in the state's case. The defense case is basically a rebuttal. The defendant should not have to provide materials prior to the trial because it is the state's burden to prove the guilt. Suggesting the defendant help the state to do this is against the Fifth Amendment right not to incriminate oneself.

American Civil Liberties Union of Montana spokesman, WES KRAWCZYK, was opposed to the adoption of the legislation. EXHIBIT E.

There were no further opponents.

REPRESENTATIVE KEYSER asked why the defendant would oppose submitting a list of names, doesn't the defendant's attorney already know who they might call to the stand on his behalf? GRAY stated she was not suggesting that the defendant's attorney does not know who potential witnesses would be. The state or the prosecution has the burden to prove the accused's guilt. Often the defendant's counsel responds to statements made during the trial. Those decisions are not made in advance of the fact.

REPRESENTATIVE SPAETH asked about subpoenaing witnesses. RACICOT replied that a statement given in trial often is not the same statement given before trial.

REPRESENTATIVE RAMIREZ asked why good cause was being eliminated by both the prosecution and the defendant. RACICOT replied our feeling is we don't want more of an advantage than anyone else. Both sides should be wide open so that the case can "get moving".

Most prosecutors have an "open book policy".

REPRESENTATIVE RAMIREZ noted the bill states a list of witnesses must be submitted ten days prior to entering the defendant's plea. Is that a bit restrictive? RACICOT stated the prosecution submits names at the time the information is filed. He did not feel that was a big problem. If the committee wanted to amend it to five days prior to the entering of the plea that would be satisfactory.

REPRESENTATIVE ADDY asked how the bill would alter the balance of functions between the individual and the government. RACICOT replied between the accused and his government he does not see any change. The bill is asking for the same procedure to be used in all criminal cases, that is already used in affirmative defense cases. We are talking about a search for truth. We should get

on with the trial and avoid delay. There is no threat to that relationship.

REPRESENTATIVE ADDY asked what the bill gives the government that the government could not get previously. RACICOT said it gives a list of witnesses.

The hearing on the bill closed.

HOUSE BILL 439

REPRESENTATIVE HAND, sponsor, stated this bill will abolish the Sentence Review Division of the Montana Supreme Court, repealing sections 46-18-901 through 46-18-905, MCA.

MARC RACICOT, Prosecutors, stated the Sentence Review Board was created in 1967. The Division has three judges appointed by the Chief Justice. RACICOT read the continuation of his testimony from EXHIBIT F.

There were no further proponents.

WES KREWCZYK, American Civil Liberties Union of Montana, was opposed to the bill. KRAWCZYK read testimony from EXHIBIT G.

JUDGE JOSEPH B. GARY was also opposed to the bill. JUDGE GARY submitted a letter to the committee stating his views. EXHIBIT H. JUDGE GARY noted he has received a letter from the Attorney General's office stating they do not take a stand on this bill. He felt the Sentence Review Board is good. It is an excellent advancement in the treatment of Montana inmates. Very few other states have this. No judge is perfect. The Supreme Court mandates that a judge state his reasons why a sentence was handed down. A person should know why he is being sentenced. Several sentences have been reduced because the judge has not stated a reason. JUDGE GARY was opposed to the bill because 95-97% of the time the defendents that appear before the board are indigent defendants. The public defender has represented them. When they appear before the Supreme Court the counties must pay for the cost of the transcripts, briefs, etc. This costs between $2,000 and 2,500. If the Sentence Review Board is eliminated the only recourse the defendant has is to appeal the case before the Supreme Court.

JUDGE GARY noted on occasion the Board has increased the sentence time.

JUDGE MARK SULLIVAN stated he serves on the Sentence Review Board. He was against repealing the Board. He agreed there is a great discrepancy in sentencing. The board tries to "level it up." The board saves the taxpayers expenses, and there is no great

expense to the state. JUDGE SULLIVAN did not know why various judges give various sentences. Perhaps it is the pressure of sitting on the bench or perhaps the media coverage in that area, or the lack of criminal experience.

There is a defenders program at the University of Montana Law School in which seniors take on petitions for hearings if the prisoners request this action. They have done a great job. We find out from them what the average sentence is throughout the state. The Board decreases sentences, but we also increase sentences.

JUDGE SULLIVAN did not object to the proposed legislation of allowing county attorneys to join with the defendants to sit before the board. He noted that he has never seen RACICOT nor other members from the Attorney General's office at hearings, even though statute provides for open meetings.

J.C. WEINGARTNER, State Bar of Montana, was opposed to the legislation and urged the committee to recommend do not pass.

REPRESENTATIVE TED SCHYE was also opposed to the bill. REPRESENTATIVE SCHYE read a letter from JUDGE LANGEN opposing the bill. EXHIBIT I. Personally, REPRESENTATIVE SCHYE opposed the bill because he felt the Sentence Review Board does a good job.

ROBERT W. MINTO, JR. stated he could not recall any instances from law school in which the Sentence Review Board gave a person a break that did not deserve one. He, therefore, was opposed to the bill. EXHIBIT J.

CURT CHISHOLM from the Department of Institutions, stated the Department was neither a proponent nor opponent of the bill. The present policy, however, does have an impact on the prison population. On the average 2.75 years are reduced on an inmates sentence. Every month 30 to 33 in-mates leave the prison; 3 to 5 of whose departures result from the board changing the inmate's sentence. Today there are 770 inmates.

MIKE ABLEY, Supreme Court, was opposed to the bill. The reason the board was established is still valid today. This is an economical wasy to handle the situation.

There were no further opponents.

In closing, the sponsor stated there is a discrepancy in sentences. We should look more closely at what the judges do.

REPRESENTATIVE JENSEN asked if there is a substantial amount of pressure from the public in some communities that forces

judges to sentence in a strict manner. JUDGE GARY responded that that statement is true in some communities in Montana. No one knows what it is like to sentence an individual until you look at him eye-to-eye and impose the sentence.

REPRESENTATIVE JENSEN asked what percent of appeals appear before the board annually. ABLEY did not know.

REPRESENTATIVE JENSEN asked JUDGE SULLIVAN his opinion on the legislative parameters of sentencing. The Judge replied the system is running fine today. Mandatory sentencing will take the pressure off the judges. Although there is too much disparity among judges, sentencing should not be mandatory.

REPRESENTATIVE KEYSER asked how many sentences have been increased. ABLEY stated the Supreme Court records indicate only one case in three years has been increased.

REPRESENTATIVE KEYSER asked if tax burdens were becoming a major factor in sentencing. JUDGE GARY stated he could not equate that.

REPRESENTATIVE IVERSON asked if an appeal could only come from the prisoner at the time of sentencing. It was replied yes. JUDGE SULLIVAN stated the only prisoners that request a hearing are the ones that feel their sentence is too strict, not the ones that feel their sentence was light.

REPRESENTATIVE SPAETH asked RACICOT if he had any further comments. RACICOT stated that he has appeared before the Board. He was not allowed to cross-examine the prisoner. The judges had no idea of the minor details that happened in the trial and during the case as there was no transcript. Although the defendants plead guilty, there was no record of this.

REPRESENTATIVE SPAETH asked if it would have been possible for someone to appear before the board and present information to them. RACICOT stated he appeared because he prosecuted the case. We are not complaining about the results of the Board. We feel, however, that the procedure is done backwards. The problem should be confronted by sentencing guidelines. It seems that something is wrong when 50% of the cases that appear before the Board are changed.

REPRESENTATIVE RAMIREZ asked if the bill is a severe remedy for the problem by abolishing the board entirely. RACICOT stated his personal opinion would be to call for a Joint Resolution calling for a promication of sentencing, but that is not the consensus of the County Attorneys.

Being no further questions, the hearing ended.

CHAIRMAN BROWN stated that Friday's meeting of the House Judiciary Committee will be at 7:00 a.m.

The meeting adjourned at 11:30 a.m.

Dave Brown
DAVE BROWN, Chairman

Maureen Richardson
Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 481

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFFICERS OF THE UNITED STATES CUSTOMS SERVICE OR IMMIGRATION AND NATURALIZATION SERVICE TO MAKE ARRESTS."

Respectfully report as follows: That HOUSE Bill No. 481

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 433

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CHALLENGE FOR CAUSE TO A JUROR MAY NOT BE TAKEN BECAUSE OF A DEBTOR-CREDITOR RELATIONSHIP WHEN THAT RELATIONSHIP ARISES SOLELY BECAUSE A PROSPECTIVE JUROR IS A DEPOSITOR OF FUNDS IN A BANK OR SIMILAR FINANCIAL INSTITUTION; AMENDING SECTION 25-7-223, MCA."

Respectfully report as follows: That HOUSE Bill No. 433

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 430

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE PENALTIES FOR VIOLATION OF LAWS RELATING TO MOTOR VEHICLE REGISTRATION, OPERATION, AND ACCIDENT REPORTS; AMENDING SECTIONS 61-3-601, 61-3-704, 61-6-304, and 61-7-111, MCA."

Respectfully report as follows: That HOUSE Bill No. 430

BE AMENDED AS FOLLOWS:

1. Page 3, line 12.
Following: "more"
Strike: "less than $10 or"

AND AS AMENDED

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 429

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE PENALTY FOR DISCHARGING FIREARMS WITHIN THE LIMITS OF A CITY OR TOWN; AMENDING SECTION 45-8-343, MCA."

Respectfully report as follows: That HOUSE Bill No. 429

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 376

First reading copy (White color)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION 40-9-102, MCA."

Respectfully report as follows: That HOUSE Bill No. 376

BE AMENDED AS FOLLOWS:

1. Page 2, following line 21.
Strike: subsection 5 in its entirety
Renumber subsequent subsections

AND AS AMENDED

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 3, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 184

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE REQUIREMENTS FOR OBTAINING A PERMIT TO CARRY A CONCEALED WEAPON; AMENDING SECTIONS 45-8-317 AND 45-8-319, MCA."

Respectfully report as follows: That HOUSE Bill No. 184

DO NOT PASS

~~DO PASS~~

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE ------ JUDICIARY COMMITTEE

	Date: 2/3 No: HB 376 Amendment	Date: 2/3 No: HB 184 Do Not Pass	Date: No:	Date: No:	Date No:	Date No:	Date: No:
BROWN, Dave	No	Yes					
ADDY, Kelly	Yes	Yes					
BERGENE, Toni	No	No					
BROWN, Jan	No	No					
CURTISS, Aubyn	No	No					
DAILY, Fritz	Yes	No					
DARKO, Paula	Yes	No					
EUDAILY, Ralph	No	Yes					
FARRIS, Carol	No	Yes					
HANNAH, Tom	No	Yes					
IVERSON, Dennis	Yes	Yes (Proxy)					
JENSEN, James	-	Yes					
KENNERLY, Roland	No	-					
KEYSER, Kerry	No	No					
RAMIREZ, Jack	-	Yes					
SCHYE, Ted	No	No					
SEIFERT, Carl	Yes	Yes					
SPAETH, Gary	Yes	No					
VELEBER, Dennis	Yes	Yes					
	7 - 10	10 - 8					

HB 433
Exhibit A
2/3/83

HOUSE BILL 433

THE PURPOSE OF THIS LEGISLATION IS TO SAVE THE COUNTY MONEY. CHALLENGE FOR CAUSE TO A JUROR WOULD NOT BE ALLOWED UNDER THIS LEGISLATION JUST BECAUSE OF A DEBTOR-CREDITOR RELATIONSHIP WHEN THAT RELATIONSHIP ARISES SOLELY BECAUSE A PROSPECTIVE JUROR IS A DEPOSITOR OF FUNDS IN A BANK OR SIMILAR FINANCIAL INSTITUTION.

LET ME GIVE YOU AN EXAMPLE:
ONE OF THE LOCAL BANKS BROUGHT AN ACTION AGAINST A MAN UPON A PROMISSORY NOTE, CLAIMING A FEW HUNDRED DOLLARS DUE UPON IT. THE MAN THEN COUNTER-CLAIMED AGAINST THE BANK, CLAIMING THAT THE BANK HAD WRONGFULLY DENIED HIM CREDIT AND ASKED FOR DAMAGES. AS I RECALL, THE DAMAGE CLAIMED WAS IN THE THREE TO FOUR THOUSAND DOLLAR RANGE. THE DEFENDANT DEMANDED A JURY TRIAL.

IN DUE COURSE, THE CASE WAS CALLED FOR A JURY TRIAL. THE DEFENDANT INSISTED UPON A FULL, TWELVE PERSON JURY. BECAUSE A BANK WAS INVOLVED, I CALLED APPROXIMATELY FORTY JURORS. WHEN EXAMINATION OF THE JURY WAS COMMENCED, THE DEFENDANT'S LAWYER PROCEEDED TO CHALLENGE FOR CAUSE ANY DEPOSITOR OF MONEY WITH THE BANK INVOLVED. HE CLAIMED, PROPERLY UNDER THE LAW, THAT A PERSON WHO HAD A DEPOSIT WITH A BANK WAS A CREDITOR OF THAT BANK AND AS SUCH, THE DEBTOR-CREDITOR RELATIONSHIP WOULD DISQUALIFY THAT PERSON FROM SERVING AS A JUROR. AS A RESULT OF THIS, NOT ENOUGH JURORS REMAINED OF THE FORTY TO PROCEED TO TRIAL. THE JUDGE THEN

DECLARED A MISTRIAL AND LEFT THE CASE FOR ANOTHER DAY. SO THE COUNTY WAS OUT SEVEN TO NINE HUNDRED DOLLARS TO CALL THE JURY IN AND THE CASE IS NOT CONCLUDED.

WHAT THE SUGGESTED AMENDMENT WOULD DO WOULD PLACE DEPOSITORS WITH A BANK IN THE SAME STATUS AS PERSONS WHO OWE BILLS TO UTILITIES. THE LAWYERS WOULD STILL BE ABLE TO QUESTION THE JURORS AND FIND OUT IF THERE WAS ANY SPECIAL RELATIONSHIP BECAUSE OF THEIR HAVING A DEPOSIT WITH THE BANK. IF THERE WAS, OBVIOUSLY THE PERSON COULD NOT SERVE. BUT CONVERSELY, HAVING A DEPOSIT WOULD NOT AUTOMATICALLY DISQUALIFY A JOROR AS IS NOW PRACTICED.

SOME OTHER JUDGES HAVE HAD SIMILAR PROBLEMS. THERE ARE EVIDENTLY NOT A GREAT NUMBER OF CASES LIKE THIS, BUT <u>EACH ONE</u> IS UNNECESSARILY EXPENSIVE TO THE TAXPAYERS.

THIS HOUSEKEEPING CHANGE WOULD ALLEVIATE THE PROBLEM OUTLINED REDUCING COSTS THAT SERVE NO USEFUL PURPOSE.

1/26/83
SE

HB376 Ex. B
Executive Session
2/3/83

AMEND HOUSE BILL 376

1. Page 3.
Following: line 6
Insert: "(6) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

Executive Session

HB 184
Exhibit C
2/3/83

45-8-319. Permits to carry concealed ~~firearm~~ weapon -- records -- revocation. (1) A district court judge ~~may, in his discretion,~~ shall within ~~30~~ 45 days act upon receipt of ~~grant~~ a petition for a permit or renewal of a permit to carry a concealed firearm for a term of 1 year if the petitioner complies with this section and is:

(a) a store owner or store employee, who may carry the weapon only during business hours;

(b) an employee of a financial institution, who may carry the weapon only during business hours;

(c) a private investigator or private patrol operator licensed under Title 37, chapter 60;

(d) a state or local law enforcement officer or correctional officer; or

(e) a person with a legitimate fear of injury to person or property justifying issuance of a permit.

(2) A permit or renewal of a permit is obtained by filing a petition with the clerk of the district court. No charge may be made for filing the petition. The petition must be accompanied by an application completed pursuant to subsection (3).

(3) The application must be on a form prescribed by the identification bureau, department of justice and must contain the following information:

(a) the applicant's name, age, occupation, height, weight, sex, race, and color of hair and eyes;

(b) the applicant's residential and occupational addresses;

(c) the applicant's fingerprints;

(d) a list of any prior arrests or convictions of the applicant;

(e) a list of any commitments pursuant to Title 53, chapter 24 for alcohol treatment or pursuant to Title 53, chapter 21 for treatment of mental illness; and

(f) a description of the firearm that will be carried.

(4) After a petition has been filed, the judge shall order the sheriff to check the appropriate local, state, and national law enforcement records for information relating to the applicant and to file the results of the investigation with the court.

(5) In making the determination of whether or not to grant a petition for a permit, the judge shall consider:

(a) whether the applicant has been convicted of an offense involving the threat or infliction of bodily injury or the use of alcohol or drugs;

(b) whether the applicant has ever been committed to the department of institutions for alcohol treatment pursuant to Title 53, chapter 24; and

(c) whether the applicant has ever been committed for the treatment of mental illness pursuant to Title 53, chapter 21.

(6) The judge may impose reasonable restrictions on the carrying of the firearm.

(7) If the petition for a permit or for renewal of a permit is granted, the applicant must pay a fee of $10. If the petition for a permit or renewal of a permit is denied, the judge must state the grounds for denial.

(8) If a petition for a permit is granted, the clerk of court must:

(a) issue a permit card; and

(b) establish a record of the permit that includes a copy of the application and a copy of the order granting the petition. A copy of the record must be mailed to and kept by the identification bureau, department of justice.

(9)(a) The form of the permit card must be prescribed by the identification bureau, department of justice.

(b) The permit card shall state the date of issuance, the person's name, age, address, height, weight, sex, race, and color of hair and eyes and must contain the description of the firearm set forth in the application and any restrictions imposed under subsection (6)

(c) A permitholder shall carry the permit card when carrying the firearm for which the permit is issued and shall exhibit the permit card upon the demand of any law enforcement officer.

(10) Upon good cause shown, any district court judge may, following notice and hearing, revoke a permit. The clerk of court shall notify the identification bureau, department of justice when a permit has been revoked.

Section 2. Existing permits. A permit issued prior to October 1, 1983, to carry a concealed weapon is valid until and expires on January 1, 1984. A person holding such a permit may not carry a concealed weapon on or after January 1, 1984, unless he has obtained a permit under this act.

-End-

HB 440
Exhibit 1D
2/3/83

HOUSE BILL 440

Presently in a criminal case the prosecution must provide to the defense the following:

1) A list of witnesses for the prosecution including names and addresses prior to trial;
2) Any books, statements, papers or other objects for inspection or copying prior to trial;
3) Any exculpatory materials;
4) Designated books, statements, papers, or objects obtained from the defendant;
5) Any admissions made by the defendant;
6) A list of witnesses to the admissions;
7) All documents, papers or things the prosecution intends to introduce into evidence;
8) Notice of an intention to introduce evidence of the defendant's other crimes;
9) A list of witnesses that would rebut the defenses of self-defense, entrapment, compulsion, alibi or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged (affirmative defenses).

The defendant in a criminal case must provide to the prosecution the following:

1) A statement of intention to rely upon an affirmative defense;
2) A list of witnesses in support of that defense;
3) All documents, papers, or things the defense intends to introduce into evidence.

House Bill 440 would compel the defense in a criminal case to produce, in addition to the foregoing, the following:

1) A list of witnesses, other than himself, that the defendant intends to call at trial;
2) Any designated books, statements, papers or objects obtained from any person other than the defendant that are material, relevant and necessary to the state's case.

Both of these things the defendant already receives from the prosecution in addition to much more.

It is in the interests of justice that the legislature mandate mutual, good-faith discovery on a reciprocal basis. By requiring that both sides have the maximum possible amount of information with which to prepare their cases, the legislature will reduce the possibility of "trial by surprise" and the resulting confusion and delay. Our criminal justice system has a dual aim: to protect the innocent and punish the guilty. To this end we have placed our confidence in the adversary system entrusting to it the primary responsibility for developing relevant facts on which a determination of guilt or innocence can be made. The adversary system contemplates that the parties will contest all issues before the court. The need to develop all relevant facts in the adversary system is fundamental. The ends of justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts. To ensure that justice is done compulsory process should be available for the production of evidence needed either by the prosecution or the defense.

Reciprocal discovery procedures do not violate the defendant's privilege against self-incrimination. They do not compel the defendant personally to reveal or produce anything, but merely regulate the procedure by which he presents his case. They simply require a defendant to disclose information that he would reveal shortly in any event. By requiring reciprocal discovery the defendant loses only the possible tactical advantage of taking the prosecution by surprise at trial, an advantage that is usually gone for naught given the probability that the trial court would grant a continuance for the prosecution to prepare a rebuttal.

HB 440
Exhibit E
2/3/83

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

The A.C.L.U. is opposed to HB 440. We believe that the 5th/6th amdts. of the U.S. Constitution are in question before this committee. The constitutional principle at stake is that of self-incrimination.

Two way streets are usually fair! But with this Bill - there could possibly be a violation of the 6th Amdt,i.e., "to have the compusary process for obtaining witnesses in his/her favor."

The first part of this bill (section 1) regarding notice is objectionable but not as much as section 2. Section 1 does not have that practical problem as section 2.

Certainly, the defendant can not take 3 policemen and go to the prosecution's witnesses door and question them! Witnesses for the defendent already have a reluctence to testify in the judicial process. Harrassment and intimidation of the the defendants witnesses by the prosecution is what this bill is all about.

Why do we need this? What exactly will this bill do that the prosecution can not do now? Is it the job of the prosecution to prove the guilt of the defendent?

This bill has nothing to do with the prosecution's job! The prosecution's job is to make a case to the jury. NOT to intimidate potential defense witnesses by policemen and county prosecuters.

The ACLU of Mont. is oppose HB 440 and we hope this committe will do the same.

HB 439
Exhibit F
2/3/83

HOUSE BILL 439

The Sentence Review Division of Supreme Court was created by the 1967 Legislature and became operational on January 1, 1968. The division consists of three district court judges appointed by the chief justice of the Montana Supreme Court and is empowered to adopt any rules and regulations which will expedite its review of sentences. The Sentence Review Division meets four times a year on the second Thursday of February, May, August and November at the prison in Deer Lodge and remains in session until all pending cases are heard. Rules governing the sentence review process have been promulgated by the Division.

All persons who have been sentenced to more than one year in Montana State Prison are eligible to apply for sentence review within 60 days of the date the sentence was imposed. If review is requested, the sentence imposed may be increased, decreased, affirmed or modified by the Sentence Review Division. The decision of the Sentence Review Division is final and a rehearing may be granted only to the defendant. The procedure is as follows:

1) A defendant sentenced to more than one year is served with forms prescribed by the Division (forms 1 and 2) and a copy of the trial court's sentence and judgment by the clerk of the district court.

2) The defendant files his Application for Sentence Review (form 2) with the clerk.

3) The clerk files the original application in the court file, completes a certificate and statement (form 3) and forwards that file to the Sentence Review Division in Helena within five days of receipt of the Application for Review of Sentence.

4) The clerk also forwards a copy of the Application for Review of Sentence to the sentencing judge and the county attorney within the five day period.

5) After the Application for Review along with the court file is received by the Sentence Review Division, the secretary of the Division reviews the court file and accepts for filing any statements, letters or other documents from interested parties including the sentencing judge and the county attorney. Copies of those statements, letters or other documents are furnished to the defendant's counsel, the sentencing judge and the county attorney.

6) Notice of the sentence review hearing is sent by the secretary at least 25 days prior to the hearing

to the sentencing judge, the county attorney, the defendant, his attorney and any other interested person.

7) The secretary to the Division then copies those portions of the court file deemed relevant and forwards those along with the Application for Review and the statements, letters or other documents of interest to the members of the Sentence Review Division for their reveiw prior to the hearing.

8) The hearing is held before the Division at the Montana State Prison at the time set. The defendant and his counsel have the right to appear as does the county attorney or the Attorney General. It is as informal as possible and is not adversarial in nature. There is no record of the testimony presented, the witnesses are not sworn and there is no right of cross-examination.

9) The Sentence Review Division renders a decision based upon the following factors:

A. Facts surrounding the commission of the offense:
   1) Was the crime of violence committed against any person?
   2) Was any person put in fear during the commission of the offense?
   3) During the commission of the offense was any person actually injured or was there a possibility that some person could have been injured?
   4) Was this act the result of pre-planned activity?
   5) What was the extent of the involvement of the defendant?

B) The background history of the defendant and his psychological profile for the purpose of determining whether:
   1) He will repeat or has repeated criminal behavior;
   2) He will be a danger or is danger to society.

C) Statistical information concerning the sentences imposed for the same or similar crimes committed by other persons in the State of Montana.

D) Rehabilitation of the offender.

E) Deterrence of other members of the community who might have tendencies toward criminal conduct similar to that of the offender.

F) Deterrence of the offender himself.

G) Possible need for isolation of the offender from society.

The Division does not consider any matters or developments subsequent to the imposition of sentence in the trial court such as:

A. Institutional adjustment;
B. New social information;
C. Institutional disciplianry actions pending or had against the defendant;
D. Work report; or
E. Inmate release plans.

In 1981 the Sentence Review Division reviewed and rendered a decision in 65 cases. The Division records indicate that 37 sentences remained the same, 27 sentences were reduced and 1 sentence was increased. In 1982 the Division rendered a decision in 93 cases and 43 sentences remained the same, 47 sentences were reduced and 3 sentences were increased. Over the last two years, of the 158 cases decided, 80 (50.6%) have remained the same, 74 (46.8%) have been decreased and 4 (2.5%) have been increased.

There is something seriously wrong someplace. The prosecutors believe that it is the Sentence Review Division that deserves examination. That is not to say that there is, or has been, something wrong with the individual or specific members of Division now or in the past. Our experience with this method of sentence equalization has revealed that the concept of a sentence review division is out of context. It presents numerous practical problems, creates another level of litigation, lacks integrity, not becasue of the people involved, but because of the procedure followed, and attempts to handle problems it was not designed to handle.

The sentencing judge presides over an adversarial proceeding of record. The witnesses that testify before the trial court are sworn, their testimony is recorded and the rules of evidence are followed. The trial judge presides over the case from the beginning to the end. He or she sees and hears all of the witnesses, is able to assess their appearance on the stand, their demeanor and candor, or lack of it. In short, the trial judge has all of the facts before him or her and presides over a proceeding that assures much more probity than that afforded by the informal sentence review process.

There are practical problems associated with the present sentence review process also. Assembling three judges, and defense counsel from different parts of the State in Deer Lodge aside, it is still difficult, if not impossible, for prosecutors to be able to attend the hearings because of other demands upon their time. The

present sentence review process simply does not make for the most efficient use of our criminal justice resources.

Sentence Review Division is really a misnomer. The statistics mentioned above reveal that the trial judge, in reality, only gives a preliminary or estimated sentence that isn't final until it is reviewed by the Sentence Review Division. As a result, what we really have in place is a Sentencing Division not a Sentence Review Division. That was not its intended design.

Equalization of sentences or assuring similar punishment for those who are similarly situated, is an important and vital objective of a healthy criminal justice system. At the present time however, we're trying to achieve that noble objective in a backwards fashion and producing disastrous results. We have confused "progress" with "regress." The sentence review experiment we have witnessed since 1967 reveals a perfect illustration of how any given solution in the area of sentencing has an annoying tendancy to reappear as a new problem elsewhere in the system. The "after the fact" approach to uniformity in sentencing should be abandoned. Instead, attempts at equalization should occur at the "front end" of the process through the promulgation of sentencing guidelines.

MONTANA SENTENCE REVIEW FORM NO. 1

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT
OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF .....

STATE OF MONTANA,

Plaintiff,

vs.

NOTICE OF RIGHT TO APPLY FOR SENTENCE REVIEW

....., Defendant

TO THE ABOVE NAMED DEFENDANT:

TAKE NOTICE

You are hereby notified that you may, within 60 days from this date, apply to the Sentence Review Division of the Supreme Court of Montana for a review of the sentence just imposed upon you in the above-entitled case.

You are advised that if you do apply for such review your sentence may be increased, decreased or affirmed without change.

You are herewith furnished three copies of Application for Review of Sentence, Montana Sentence Review Form No. 2. If you decide to file such Review Application, you will mail the original to the undersigned Clerk of Court and retain two copies for your use.

DATED this .....day of ....., 19.... .

.....
Clerk

.....
By Deputy

The undersigned does hereby certify that a true copy of the above Notice was personally served upon the above-named defendant, together with three forms of application for Review as above recited on this date, together with a copy of the Judgment in this cause.

.....
Clerk

.....
By Deputy

Name and address of Clerk to whom completed Application for Review of Sentence (Montana Sentence Review Form No. 2) must be mailed:

.....
Clerk of the District Court

.....

.....

MONTANA SENTENCE REVIEW FORM NO. 2

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT
COUNTY OF .....

STATE OF MONTANA,

Plaintiff,

vs.

APPLICATION FOR REVIEW OF SENTENCE

....., Defendant.

TO: The Clerk of the above-captioned court:

The above-named defendant states:

(1) That on the ..... day of ....., 19....., I was sentenced in the above-entitled action to serve ..... years in the State Prison of Montana.

(2) That I request that the Sentence Review Division of the Supreme Court of Montana review my sentence.

(3) That I consent and agree that by making this application for review, my sentence may be increased, decreased or affirmed without change, and that there is no appeal from the decision herein to be made.

DATED this ..... day of ....., 19..... .

.....
Petitioner

Instructions to the Defendant:

If you decide to file this application you will mail the original to the Clerk of the District Court for the county from which you were sentenced. The Clerk's address appears on Form No. 1.

MONTANA SENTENCE REVIEW FORM NO. 3

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT
OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF ..... .

STATE OF MONTANA,
Plaintiff,

vs.

.....
Defendant.

CLERK'S CERTIFICATE AND STATEMENT

TO: THE SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA,

The undersigned Clerk of the District Court does hereby certify and state:

(1) That the enclosed file in Cause No. ..... is the entire case file in such matter, with the exception of exhibits offered during the trial, which are not forwarded.

(a) A pre-sentence investigation was conducted and a report prepared. Yes_____ No_____.
(b) A copy of the pre-sentence report is in the court file. Yes_____ No_____.
(c) The sentence involved a plea bargain agreement. Yes_____ No_____.
(d) The plea bargain agreement was in written form and the original of same is in the court file. Yes_____ No_____.
(e) A transcript was made of the sentencing hearing where the plea bargain agreement (whether written or oral) was discussed. Yes_____ No_____.
(f) A copy of the transcript is in the court file. Yes_____ No_____.

If any document referred to is not in the court file, it is forwarded with the file if it is available.

(2) That any and all exhibits offered in this cause at the sentencing hearing, including medical and psychiatric reports, are included with the file.

(3) That copies of Montana Sentence Review Form No. 2, Application for Review of Sentence, have been served upon the Judge who sentenced the defendant and upon the County Attorney for the county from which defendant was sentenced.

DATED: .....

.....
Clerk

.....
By Deputy

The District Court Clerk shall mail this form, together with the complete court file to:

Court Administrator's Office
Sentence Review Division
Montana Supreme Court
Room 237-Mitchell Building
Helena, MT 59620

Within five (5) days of receipt of Application for Review of Sentence.

HB 439
Exhibit G
2/3/83

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

The A.C.L. U. of Montana is opposed to HB 439. The ACLU believes that the sentenace review division of the Montana Supreme Court serves as a vital function of the judicial process. The sentenance review division is important for the purposes of consistency in the sentencing process.

Two people can be convicted for the same crime under somewhat similiar circumstances and still have extreme differences in their sentence, i.e., one person gets 5 years and another 40 years. The sentence review division in these cases tries to establish equal ~~[illegible]~~ for those in question. Thus, the balance of scales become stable and not tipped unevenly or unjustly ~~BECAUSE~~ JUSTICES' PARTICULAR DISPOSITION, SENTENCES

Finially, what will happen if people do not have this process? Will this not cause more appeals to be heard by the State Supreme Court?

HB 439
Exhibit H
2/3/83

THE SUPREME COURT OF MONTANA

FRANK I. HASWELL
CHIEF JUSTICE

CAPITOL STATION
HELENA, MONTANA 59620
TELEPHONE (406) 449-2626

TO: All Members of the House Judiciary Committee

FROM: Karen Sedlock, Secretary
Sentence Review Division

DATE: February 2, 1983

RE: House Bill 439

Hon. Joseph Gary, Chairman of the Sentence Review Division, asked me to forward this letter to you in hopes that you will take the time to read it prior to the Feb. 3rd hearing on House Bill 439, which intends to abolish the Sentence Review Division of the Montana Supreme Court.

Eighteenth Judicial District

JOSEPH B. GARY
DISTRICT JUDGE

IONE T. DANIELS
COURT REPORTER

January 5, 1983

The Honorable Michael Greely
Attorney General of the State
of Montana
Capitol Station
Helena, Montana 59620

Dear Mr. Greely:

Approximately a week or two ago I saw your Chief Deputy, Marc Racicot, on television at which time he made the statement that it was the Attorney General's intention as well as the County Attorney's Association to attempt to repeal the Sentence Review Board law which provides for review of sentences.

I am on the Sentence Review Board and have been for two years and will be chairman for the coming year and I would like to urge you to reconsider the actions that Mr. Racicot stated that you intend to take.

First of all, Mr. Racicot made a statement on television to the effect that the county attorneys did not feel that they received a fair hearing before the Sentence Review Board and secondly that the county attorneys were too busy to appear before the Board to protest the reductions in sentences that are being asked for. I am not familiar with all of the counties in the State of Montana, but I do know that Missoula County has a county attorney and at least ten deputies and Gallatin County, which is considerably smaller, has a county attorney and four full time deputies.

I also know that on several occasions when the county attorney felt strongly enough about it, that an attorney appeared before the Sentence Review Board to object to a reduction. In addition, we have received letters from various county attorneys objecting to the sentences and the reasons why and we have certainly given them complete attention and credit and while I do not have statistics, I would be inclined to say that if they went to the effort to object to the reduction in sentence we certainly listened to the same and probably did not reduce the sentence.

If you have any statistics to the contrary, I would be happy to remand my statement in that effect. I cannot state with absolute accuracy the correctness of the statement, but I certainly know that we take into account any letter that the county attorneys send objecting to the decrease of any sentence.

Secondly, I feel, personally, after being on the Sentence Review Board for two years, that the Board is a healthy outlet for the prisoners to file an application. When a prisoner feels that he has been discriminated against for similar crimes in different districts, he is dissatisfied, disgruntled and probably mutinous. We have had several, and by this I mean more than two or three, instances wherein the county attorney has written to us stating that they felt the sentence was too severe and the same should be reduced. Also, we have reviewed sentences wherein the crime charged was the possession of $150.00 worth of marijuana and the sentence was as severe as twenty years in the penitentiary. I believe you can understand how a man that has received this sentence must feel when the maximum sentence for manslaughter is ten years. This in my opinion, and in the opinion of the authorities at the National Judicial College, creates disillusionment, disgust with the legal system, and increases the apptitude toward crime because they feel that "the state owes me some 19 years". I personally feel that we have conscientiously examined each case within the perimeters of the law and find that many of the districts are remiss in failing to supply us with a sentence review and reasons for the sentencing. Each county attorney is notified, as well as the district judge, when the sentence is up for review and each county attorney and district judge has certainly the right to write to us or appear if they wish. I would estimate that in the number of cases we have received we have had only about five letters from county attorneys. Therefore, if the county attorneys feel that strenuously about the law that they feel that it should be repealed I feel that they should be more diligent in objecting to the sentence review at the time it is to appear before us.

From an economic standpoint, I feel that your actions would be disastrous. As you know, our sentence review is final and there is no appeal from the same. If you repeal our Board then the only appeal that a prisoner has is to the Supreme Court and this makes the Supreme Court a Sentence Review Board. Since approximately 95% of the defendants that come before my district are indigent and require public defenders, the county of Gallatin or any other county would have the burden of the cost of appeal of both the attorney and the transcript imposed upon the county, and the cost would be extremely onerous. While we cannot equate justice with money, but it is certainly an important feature to consider.

Lastly, you must admit that in the State of Montana with 32 District Judges, that you are going to have a great disparity of sentencing among these 32 judges. We carefully weigh the background of each individual sentence, of each individual defendant, the sentence received and do attempt, if we have similar circumstances and similar backgrounds, to attempt to equalize the same. This at least gives the prisoners a feeling that they have had an opportunity to be heard and if they meet the criteria of the Sentence Review Board and the rules and regulations promulgated thereby as well as the law, that they will have an opportunity to have their sentence reduced or considered. In addition, we have the authority to raise sentences, which, since I have been on the Board, has happened in two occasions.

I am only going to be on the Board for an additional year and the abolishing of the same would not appreciably effect me. I do not like the job; I find it very depressing and I would prefer not to go to the prison for eight to twelve days a year to sit and hear these tragic cases, one after the other. However, in the overall administration of justice I think Montana has been a leader in the country in adopting the Sentence Review Board. To take an emotional standpoint, and take the attitude of "getting even with the judges", I feel would be detrimental to the administration of justice in the State of Montana and do not feel that the Attorney General or the county attorney's office should intelligently pursue an attempt to repeal this act.

We are scheduling the March session for March 15, 16 and 17 and would welcome you, Mr. Racicot, or any other member of your staff to attend any or all of the sessions. I have not seen any attorney from your staff attend any of our sessions during the two years I have been on the Board and we would certainly welcome you.

I am sending a copy of this letter to other members of the Sentence Review Board as well as the legislaturs from Gallatin County and would appreciate your remarks or Mr. Racicot's remarks as to why you feel the Sentence Review Board act should be repealed.

Very truly yours,

JOSEPH B. GARY
District Court Judge

JBG/dds

cc: The Honorable Mark P. Sullivan
The Honorable John S. Henson
The Honorable Leonard H. Langen
Senator Paul F. Boylan
Senator Dorothy Eck
Senator Leo Lane
Representative Robert A. Ellerd
Representative Kenneth Nordtvedt
Representative Walter R. Sales
Representative John Vincent
Representative Norm Wallin

HB439
Exhibit I
2/3/83

LEONARD H. LANGEN
DISTRICT JUDGE
SEVENTEENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA

P. O. BOX 1110
GLASGOW, MONT. 59230
TELEPHONE: 228-2221

January 28, 1983

Hon. Ted Schye
House Chambers
Capitol Station
Helena, MT 59620

RE: HOUSE BILL 439 (an act to abolish the Sentence Review Division)

Dear Ted:

I urge you to vote against House Bill 439 which intends to abolish the Sentence Review Division of the Supreme Court.

I am enclosing a copy of a letter dated January 5, 1983, addressed to the Attorney General of the State of Montana written by Judge Joseph B. Gary, District Judge of the Eighteenth Judicial District, which letter also opposes the passage of House Bill 439. Judge Gary is now the Chairman of the Sentence Review Division.

I just completed three years service on the Sentence Review Division and was the Chairman thereof during the year 1982.

Judge Gary will appear before your committee on the morning of February 3rd to personally testify, and I support each and every thing that he will tell you at that time.

I had intended to appear in person and testify on February 3rd. However, I was called to sit on the Supreme Court beginning at 1:00 p.m. on February 3rd and because of this I had to rearrange my schedule and find that during the morning of February 3rd I will be traveling in route from Glasgow to Helena and probably will not arrive in Helena in time to testify.

Therefore, I shall now set forth a few additional reasons as to why I am opposed to the abolishment of Sentence Review.

I can not say that service on Sentence Review was pleasant work. In fact, I found the work to be more tiring from an emotional standpoint than any other work I have performed.

I was a Special Agent of the FBI for 12½ years. I became a Special Agent before World War II when there were less than 1,000 of us in the whole world. In those early years, work was demanding, dangerous and the hours were extremely long and generally included a seven-day week.

Yet, after one three-day session of Sentence Review plus the two day travel time for me to get to Deer Lodge and return to Glasgow left me more exhausted than any similar period during my FBI experience.

Now, let me take you through a sample three-day period of Sentence Review.

We would have about 20 young men per day (most of them under 25 years of age) appearing before us, one after the other, who had gotten themselves into unimaginable difficulties which not only effected their young lives for all the years to come, but also the lives of their victims.

We three judges on Sentence Review were called upon to make scores of decisions each day which not only effected the future of these young offenders, but also effected the attitude of the victims toward the law and effected the rights of society as a whole.

Now that I have served my three years in this work, I look back with pride upon the work which we performed. Each year, one judge retired from Sentence Review and a replacement was appointed. Each of us who served came from widely divergent backgrounds and with the usual variety of divergent prejudices and opinions which all individuals possess.

Each of us approached each individual case with diligence and thoroughness.

We each diligently reviewed all of the background information contained in the court file which was supposed to include the pre-sentence report, a transcript of the sentencing hearing, a copy of the judgment of conviction, a copy of the results of mental and social studies relating to the offender and his criminal record. The reasons for the sentence imposed were supposed to be set forth by the judge and should have appeared in the formal signed judgment or in the transcript of the sentencing hearing.

We then listened to the testimony of the offender who came before us and listened to the argument of the attorney, who usually was a law student from the law school who was participating in the law school defender project.

Immediately following the hearing, the three of us went into session and dictated our decision as to whether the judgment originally imposed should be sustained or whether it should be reduced or whether it should be increased.

In my first year of Sentence Review, I found the judges to be very lax in setting forth the reasons for the sentence imposed.

In some of these cases we decreased the sentence whereupon each of the three-judge panel would receive a severe letter of criticism from the prosecuting attorney and from the sentencing judge wherein he would complain bitterly about our decision.

Immediately this became a "horror story" to be passed on at County Attorney Association meetings and in private discussions between the judges and attorneys and probably precipitated some of the opposition to Sentence Review which has prompted House Bill 439.

I generally responded to these letters of criticism by suggesting that the disgruntled judge and disappointed county attorney could better devote his time if he would write his letter concerning the sentence to be reviewed before the hearing instead of afterwards.

It is something like the old proverb which states something to the effect that it is better and easier to save the horse before the barn is burned.

I believe that the message finally took hold. During my third and last year on Sentence Review, we found most of the files contained detailed reasons set forth by the sentencing judge explaining the reasons for the sentence imposed. We also received many letters from county attorneys and from judges before the hearing instead of afterwards. All of this was very helpful.

Even the worst offender is entitled to be advised the reasons for the sentence he receives. This is particularly true where the sentences are stacked and the terms are long. For example, a offender might be found guilty of three counts of burglary and be sentenced to ten years on each count, said terms to be served consecutively. This means a total sentence of thirty (30) years. The offender loses confidence in the system when he finds that his cellmate was also found guilty on three counts of burglary and also received ten years on each count, but he was ordered to serve his sentences concurrently. (This would mean a total of ten years.)

During my three year term on Sentence Review, I must have reviewed the sentences of almost 1,000 offenders. Obviously, this made me far more experienced in the sentencing process statewide than the judge who imposes 30 or 40 sentences during the course of a year.

In addition, the decisions rendered by Sentence Review were the product of the collective thinking of three highly experienced judges as opposed to the thinking of a single judge sitting alone.

I think this matter of collective thinking is important and particularly when it is the collective thinking of three highly experienced judges. I believe that this leads to more uniformity in sentencing.

I further believe that Sentence Review added to the concept providing fair and equal justice in the criminal justice field. It also contributes to the concept of the appearance of rendering justice which can somtimes be as important as actually rendering justice.

By "getting the appearance of justice" we increase the confidence of those who come into contact with the criminal justice system that the system is fair and renders justice equally.

If you abolish Sentence Review, it will increase the work of the Supreme Court. They will then have to hear more appeals on this subject.

During my last year on Sentence Review, I received seven or eight calls from court administrators, judges and attorneys in other states who asked to be informed concerning our experience with Sentence Review. When I explained our work and what we were trying to do, I received a very enthusiastic response and each caller said that he was going to try to promote similar legislation in his state.

There will be a few disgruntled county attorneys and maybe a judge or two who will testify that Sentence Review should be abolished and each will have a "horror story" to relate to you. My response to such criticism is to say that you can not adequately judge our work by such criticism. I would encourage such critics to come sit with Sentence Review for three or four days during the next session, and I am sure this experience would change his mind.

From my part, I am proud of the work that I and my fellow judges performed during the last three years, and I feel that I have benefited from the experience and from the contacts with my two fellow judges.

I urge you and the members of your committee to oppose House Bill 439.

I am sending additional copies of this letter as well as additional copies of the letter dated January 5th from Judge Gary. I ask that you distribute these to some of your fellow committee members.

Sincerely,

Leonard H. Langen
District Judge

LHL:jh

NB 439
Exhibit J
2/3/83

WITNESS STATEMENT

Name ROBERT W. MINTO, JR. Committee On _____

Address P.O. Box 4747 Date _____

Representing SELF Support _____

Bill No. 439 Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The system works as is.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 439 DATE 2/3/83

SPONSOR Rep. Hand

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
WES. KRAWCZYK	HELENA	A.C.L.U. of MONT		HB 439
J.C. WEINGARTNER	HELENA	Ex Comm. - State Bar		—
Mike Abley	Helena	Supreme Court		✓
Robert Menke	Missoula	Self		✓

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 481 DATE 2/3/83

SPONSOR Rep. Phillips

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Scully	Bozeman	Dept. Hwy & Police Dept.	X	
William Black	Helena	MT. Chiefs of Police Assn	X	
Bob Ash	Forsyth	Robert F Ash	X	
D.W. Myhra	Great Falls	HB 481	X	

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 438 DATE 2/3/83

SPONSOR Rep. Hand

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 430 DATE 2/3/83

SPONSOR Rep. Hannah

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
L Majerus	Helena	Dept. of Justice	✓	
Mark Hunsaker	Townsend	MMA	✓	

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 433 DATE 2/3/83

SPONSOR Rep. Mueller

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Terry Bleyhl	Ennis	Self	✓	

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 440 DATE 2/3/83

SPONSOR Rep. Hand

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Wes. Krawczyk	Helena	A.C.L.U. of Mont		HB 440
Karla Gray		MTLA		X
Glenn Maynard	Helena	Attorney General	X	

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