MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 27, 1989, at 8:04 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Mary McDonough

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown distributed a letter to the Committee from Gordon Morris expressing his disappointment regarding the action taken on HB 98 (EXHIBIT 1).

HEARING ON HOUSE BILL 201

Presentation and Opening Statement by Sponsor: Rep. Spaeth, House District 84 stated that the main reason HB 201 is being proposed is to implement the residency requirement of judges particularly in cities and small towns. This bill eliminates the residency requirement of city judges in third class towns, and allows the town to enter into an agreement with the county for the services of a J.P. or with another city. The way the bill is presently written, the town can enter into an agreement with the county or another city. The town of Boulder has entered directly into an agreement with the Justice of the Peace involved, and there is a proposed amendment that will allow that action to continue. Rep. Spaeth stated that he is in full support of this amendment.

List of Testifying Proponents and What Group They Represent:

Alec Hansen, Mont. League of Cities and Towns
Wally Jewell, Mont. Magistrates Association

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Alec Hansen, in favor of HB 201 stated that the purpose of this bill is simply to save money. Many of the small towns in Montana cannot afford the expense of having their own judge. By combining with other towns or by using a Justice of the Peace, they will save salaries, training expenses and other costs. Under this law it makes it possible for the small towns of Montana to afford a judge. The proposed amendment (EXHIBIT 2) would simply make it possible for a town or third class city to contract with the judge, rather than going through another city, town, or county. The reason for this amendment is because the town of Boulder has been contracting directly with the judge. If they are not allowed to continue to do that, the judge will not receive the additional money that he is getting from Boulder and will not continue to serve as J.P. for Jefferson County or for Boulder's judge. Mr. Hansen urged the committee to approve the amendment and give considerable thought to the passing of HB 201.

Wally Jewell presented to the committee a written statement (EXHIBIT 3) as well as expressed his approval of the proposed amendments.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 201

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 201.

HEARING ON HOUSE BILL 185

Presentation and Opening Statement by Sponsor: Rep. Whalen, House District 93 stated that the basic purpose of HB 185 is to change the present practice of individuals being picked up that require mental health care. This

bill will require a mental evaluation and possibly placement in a mental health facility. If there is not a mental health facility immediately available, the person will be prohibited from being placed in a detention facility or jail unless there is no other alternative. It also requires that a telephone call be made every 12 hours to try and find a facility that is available, as well as transporting that person within 4 hours of finding a facility. Rep. Whalen commented that there will be several amendments introduced for this bill, one being on Page 5. Where it is listed as "public mental health facility", it would be better read as "mental health facility" to comply with the language in the title and code sections. In addition, Page 5, Line 25. Change to read "as soon as practical".

List of Testifying Proponents and What Group They Represent:

Tom Posey, National Alliance for the Mentally Ill
Susan Stefan, Mental Health and Law Project
Mary Gallagher, Board of Visitors
Kelly Moorse, Executive Director of the Board of Visitors
John McCrea, Mental Health Facilities
Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers
Howard Gipe, Flathead County Commissioner
Winnfred Storh, Mental Health Advisory Council, AMI Parent
Cliff Murphy, Mental Health Association of Montana
Lowry Risdahl, Missoula resident
Lucy Roberts, President of the Alliance for the Mentally Ill in Missoula
Kathy Roberson, Kalispell resident
Michael Sherwood, Montana Trial Lawyers Association
Laura Risdahl, Missoula resident
David Mosley, President of the Flathead Consumer Council

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Tom Posey commented that HB 185 is an attempt to address an issue that is both legal and steet in human compassion. Persons falling under this pending legislation are not being held for a criminal act, but have already been declared mentally ill by a professional as provided for in Montana law and should be viewed as needing treatment, not incarceration. Holding someone who may

already be confused and agitated in jails only exasperates the illness and prolongs the time that it will take to alleviate the crisis state if what does in fact exist. Since the development of Montana's Mental Health Code in the early 1970's, one of the guiding principles has been the concept of holding only in the least restrictive environment. A solitary confinement cell can no way be construed to meet that requirement. Holding someone in jail decreases the chance for an attempt at some type of self inflicted injury, and in fact, Mr. Posey is aware that at least 7 people have died in jail during the past year while being held for commitment proceedings. The intent of Montana Law has always been not to use jails as treatment facilities, but to use them only as a possible alternative. This bill only reduces the possibility of that use out of convenience. Mr. Posey presented to the Committee a copy of the Montana Alliance for the Mentally Ill bulletin which, in fact, discusses what is now called the most modern facility in the State, the Rubber Cell in Kalispell (EXHIBIT 4). He feels the article points out quite vividly how the Rubber Cell is certainly not a treatment facility and possibly not even humane under our system of justice.

Susan Stefan, Mary Gallagher, and Kelly Moorse each prepared individual testimonies and submitted them before the Committee (EXHIBITS 5, 6, 7).

John McCrea voiced his support of HB 185 in its entirety and submitted before the Committee a written testimony (Exhibit 8).

Sheriff Chuck O'Reilly stated that those in law enforcement are well aware that they do not have the facilities or training necessary to adequately deal with these types of prisoners. The course of steps that takes place when they get a call of a possible mental health patient is as follows: 1.) The officers respond with full knowledge that this person may very well be harmful to himself or others and precautions are taken. 2.) The person is picked-up and brought to the jail where they are strip searched. 3.) They are then placed in solitary cell to protect themselves as well as other prisoners. Sheriff O'Reilly expressed that the problem with these types of patients is that they need to have care every minute of every day, 24 hours a day. He stated that even though they recognize that local government costs could be increased by having to transport this particular patient an extra one or two hundred miles, he feels it is comparing pennies vs the

total dollar liability they must face if the person becomes injured or injures staff.

Howard Gipe stated that he was in opposition to this bill but hearing the proposed amendments has since changed his mind and supports HB 185 as amended. He stated that one of the problems lies within the mental health facility as they often times are not interested in a patient unless they are paying customers.

Winnfred Storli, speaking as a family member stated that taking a mentally ill person to jail is like taking them to the least therapeutic and most restrictive holding place possible. A jail will not better their condition, only worsen it.

Cliff Murphy, on behalf of the Mental Health Assoc. of Montana as well as the National Mental Health Assoc. voiced his opposition to the housing of mental health patients in jail at any time. As a parent of a son who committed himself voluntarily to a mental health facility, Mr. Murphy personally feels that if his son had been picked-up by the police that he may not be alive today.

Lowry Risdahl, speaking as the father of a mentally ill son reviewed with the Committee the background of his son within the past year. Up until a year ago his son was doing rather well, where then he was picked-up in Butte and confined in jail for writing bad checks. The trial judge ordered that his son leave Butte so he moved to Missoula where there was a repeated incidence. He was once again thrown in jail and once again turned loose. Still, no help was ever offered for this mans problem. Similar occurrences continued to take place and the son was on trial faced with a possibility of having to go to Deer Lodge. Finally, the parents of this man learned of what had been going on and informed the court appointed attorney that he should be admitted to Warm Springs. The judge then dropped the criminal case against their son and filed a civil commitment proceeding and placed their son in Warm Springs. Mr. Risdahl stated that if when his son was first placed in jail, if someone would have recognized that he needed help and taken some action, he probably would not have had to go to the extremes that he did. His son did not belong in jail, he belonged in a facility where he could get some help to prevent this occurrence from happening again.

Kathy Roberson, a resident of Kalispell, Montana and a manic depressant schizo-effective, expressed to the committee

her personal experiences as being mentally ill. Her most recent incidence, she was picked-up by the city police at Glacier View Hospital where she was visiting a friend and they took her to the county jail. She was held there for 6 days where she underwent very painful and traumatic actions. Kathy mentioned that there was one particular jailer that would continually beat her up whenever he was on duty because he did not like her attitude. She was not acting the way that he wanted her to act. He strangled her, he threw her against the walls, and he hit her as well as doing several other things. Kathy stated that she might as well have been raped. She does not think that that is a proper way to treat a person, especially a young lady with a serious mental illness. While Kathy was at Warm Springs and being placed in an isolation unit, she accidentally kicked a nurse who fell on her left side and was injured quite severely. Kathy is now facing charges in Anaconda. The fact is, Kathy did not intentionally hurt this nurse, therefore, mentally ill patients should not be placed in a facility where more pain and suffering can be inflicted upon them by persons who do not understand what mental illness means.

Michael Sherwood stated that in his experience as a plaintiff attorney and as someone who has represented mentally ill people, he expressed how pitiful the treatment towards mentally ill people is within our state. Addressing the issue of money, he stated that it is going to be expensive to pass this bill; however, it is going to be more expensive if it is not passed. The trial lawyers are committed to getting these people out of jail and into a facility where they can get the help that they need and require.

Lucy Roberts, Laura Risdahl and Dave Mosley each gave a brief statement in agreement with the above mentioned proponents.

James Winningham submitted before the Committee a written testimony expressing his support for HB 185 (EXHIBIT 9).

Questions From Committee Members: Rep. Boharski questioned Rep. Whalen as to what the cost of this legislation would amount to. Rep. Whalen responded that a figure would be hard to determine at this point because of the number of people that may be involved.

Rep. Stickney questioned how many mental health facilities does Montana have? Mr. Posey answered that if this bill passed, it would impact each facility that has a

psychiatric unit.

Rep. Eudaily referring to the mental health facility responding to a patient only when they determined it as an emergency wondered if there should be a provision to require the facility to make arrangements for evaluation so the patient can get more immediate attention. Steve Waldron, Executive Director of the Montana Council of Mental Health Centers replied to Rep. Eudaily's question by stating to him that one of the problems they have is that some counties in the state are not part of the community mental health system. If the burden is going to be placed on the county then the county must be responsible for the cost of finding a certified professional person to do the evaluation. If the burden is going to be placed on the facility to do the evaluation in those counties where there are facilities who refuse to participate in the mental health community system is asking a whole lot.

Rep. Aafedt questioned how a law enforcement agency could respond to a mental health facility if they don't even know that the person needs mental health care? Mr. Posey stated that this bill addresses only those people that have been declared mentally ill. In the case of someone being brought in with behavioral problems and the sheriff determining that they needed a diagnosis, the bill would have no effect until a professional declared them mentally ill.

Closing by Sponsor: Rep. Whalen stated that prior to carrying this bill he did not understand many of the issues that were involved with people that have mental health problems. We as a society often times don't understand or act out of misunderstanding against those that do have some type of physical or mental disability. We are finding more and more that there are a host of diseases and as a society we are becoming sensitized to them and reacting in a positive way. Many people don't fully understand the implications of what a mental health disability can be for an individual and acting out of that misunderstanding sometimes we unintentionally mistreat these people. Rep. Whalen urged the Committee to keep in mind the testimony they heard before them and act towards it in a positive way.

DISPOSITION OF HOUSE BILL 185

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 185.

HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor: Rep. Strizich, House District 41 stated that HB 265 is being presented on behalf of the Dept. of Family Services as a housekeeping measure. It is in response to confusion which has arisen partly due to amendments of the youth court act that was introduced by three separate bills during the 1987 Session. Alternatives for disposition of children who come before the youth court are not completely clear. This bill is to clarify the confusion of the amendments that were introduced in 1987. There is no intention of this bill to substantially effect the law itself.

List of Testifying Proponents and What Group They Represent:

Leslie Taylor, Dept. of Family Services
Mona Jamison, Montana Juvenile Probation Association
Howard Gipe, Flathead County Commissioner

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Leslie Taylor, in favor of HB 265 submitted before the Committee a written testimony accompanied by proposed amendments (EXHIBIT 10).

Mona Jamison, speaking on behalf of the Montana Juvenile Probation Association urged support of HB 265.

Howard Gipe asked of the Committee to look favorably upon the proposed legislation as it mainly serves as a housekeeping bill.

Questions From Committee Members: Rep. Boharski questioned page 3, lines 20-21. Regarding the part that has been added "does not obligate the Dept. without the Dept.'s approval". Rep. Boharski stated that it appears that the old subsection C is written as "does not obligate funding from the Dept. without the Dept.'s approval." Ms. Taylor stated that the discrepancy was her error and she would have no objection to returning the words

"funding from" to make the language identical.

Rep. Boharski continued by asking what is done with a youth that needs the Dept.'s services and the Dept. doesn't think that they have the money to take care of them? Does the youth have to be detained by the County because the Dept. doesn't think that they can afford to take care of them? Ms. Taylor stated that under the youth court act this positional section, the court can commit the youth to the Department. Once the court commits the youth to the Dept., the Dept. is responsible for any services provided.

Closing by Sponsor: In closing, Rep. Strizich stressed to the Committee that the concept is to remove duplicated language and reorganize specific sections. He hopes that with the passage of this bill it will help to clarify things for those people that work with the youth court act on a day-to-day basis.

DISPOSITION OF HOUSE BILL 265

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 265.

HEARING ON HOUSE BILL 232

Presentation and Opening Statement by Sponsor: Rep. Dave Brown, House District 72 stated that the proposed bill is an attempt to raise the fees to a level in the Clerk of the Courts Office to help pay actual cost. Page 1 clarifies that a petition for legal separation will have a fee of $100.00 which is the same amount as a petition for a dissolution of marriage. This changes a clarification as well as a remedy a problem which has inadvertently resulted from the present fee schedule. The complexity of legal separation requires as much work to the judicial system as well as the judge, yet the fee schedule presently provides for a fee of $60.00. There is an ability to convert the legal separation petition to a petition for dissolution at

any time within 6 months of the payment with an additional $25.00 fee. Accordingly, by filing for legal separation first and converting the dissolution, the fee is only $85.00 rather than $100.00. These fees are primarily to keep up with the costs of running the office.

List of Testifying Proponents and What Group They Represent:

Tom Harrison, Montana Clerks of Court Association
Lori Maloney, Clerk of the District Court, Butte
Gordon Morris, Montana Association of Counties

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Tom Harrison stated that it would appear that this bill is a result of a committee that represents an attempt to update and bring these fees more in line with the actual work effort and time that their office is expected to perform in various matters. Mr. Harrison briefly described two amendments that he had drafted for the bill (EXHIBIT 11) and presented to the committee.

Lori Maloney submitted to the committee a written testimony voicing her support of HB 232 (EXHIBIT 12).

Gordon Morris verbally presented to the Committee a written testimony of Kathleen D. Breuer, Clerk of District Court in Missoula as being recorded in favor of HB 232 (EXHIBIT 13).

Questions From Committee Members: Rep. Hannah stated to Mr. Morris that it appeared to him they were looking at about $600,000.00 for the biennium in increased costs. His question is if it is expected that there will be any corresponding reduction in the general tax levy from the counties? Mr. Morris pointed to the fact that district courts across the State of Montana, from the standpoint of the mandatory statutory mill levy limitations are currently maxed out. This would in fact lend financial assistance to the district courts to meet the obligations that they are faced with. He would not suggest that the money be viewed in terms of providing immediate direct property tax relief.

Closing by Sponsor: Rep. Brown closed.

DISPOSITION OF HOUSE BILL 232

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken.

HEARING ON HOUSE BILL 197

Presentation and Opening Statement by Sponsor: Rep. Addy, House District 94 stated that HB 197 is intended to clarify all of the changes that were made to that section of the law during the 1987 Session.

List of Testifying Proponents and What Group They Represent:

Leslie Taylor, Dept. of Family Services
Shaun Byrne, Rivendell of Billings

List of Testifying Opponents and What Group They Represent:

Susan Stefan, Mental Health Law Project
Mary Gallagher, Mental Disabilities Board of Visitors

Testimony:

Leslie Taylor submitted before the committee her written statement voicing her support of HB 197 (EXHIBIT 14).

Shaun Byrne stated that Rivendell of Billings feels that this is a very workable system and encouraged the passage of HB 197.

Susan Stefan, in opposition to HB 197 presented a written statement (EXHIBIT 15) accompanied by further documentation (EXHIBITS 16 and 17).

Mary Gallagher, also in opposition to HB 197 submitted a written testimony for the Committee's review (EXHIBIT 18).

Questions From Committee Members: Rep. Hannah questioned Ms. Taylor as to the definition of a "professional person" as it states on Line 17. Ms. Taylor stated that a professional person under existing Montana law is either a physician or person certified by the Dept. of Institutions. It requires that the person have

mental health training, pass a written evaluation and that they are certified by the Department. It is the person under the existing law that evaluates both adult and children and makes a recommendation to the court regarding whether the person is mentally ill or seriously mentally ill.

Closing by Sponsor: Rep. Addy closed.

DISPOSITION OF HOUSE BILL 197

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken.

DISPOSITION OF HOUSE BILL 201

Motion: Rep. Addy made a DO PASS motion, seconded by Rep. Aafedt.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:05 a.m.

REP. DAVE BROWN, Chairman

DB/je

2308.MIN

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 27, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 30, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 201 (first reading copy -- white) do pass .

Signed: _____

Dave Brown, Chairman

EXHIBIT 1
DATE Jan. 27, 1989
HB 98-Rep. Ellison

MONTANA
ASSOCIATION OF
COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

January 26, 1989

Chairman Dave Brown and Members
House Judiciary Committee

RE: HB 98, Sponsor - Representative Orval S. Ellison

I was disappointed, as you probably know, by the committee's decision to table HB 98. I had hoped that the "concept" would get additional consideration through a subcommittee review. As one opponent to the bill said, "while the bill has problems, they are curable."

With that in mind, I would suggest that if the concept is not ruled out in your opinion, then maybe a fixed percent could be established for local government funding of either district court or jail/detention services provided by counties and currently supported by property taxes.

I have attached a copy of the Colorado Code. You will note in subsection (4) "one-third of all reasonable damages collected pursuant to this section shall be paid into the state general fund." I would recommend the money be allocated to counties to alleviate the crisis in either court or jail funding. I certainly think there is room for negotiation, if negotiations are an option.

Yours for good government,

Gordon Morris
MACo Executive Director

GM/mrp

cc: Representative Ellison
Enclosure

If not requested in the complaint interest is waived. Plaintiffs not having demanded interest prior to the entry of judgment, waived this demand which the section provides must be made in the complaint. Clark v. Hicks, 127 Colo. 25, 252 P.2d 1067 (1953).

It is sufficient to demand interest in the prayer for relief. A prayer is a necessary part of a claim for relief under C.R.C.P. 8 and where the prayer is for "interest and costs of suit", it is sufficient to meet the requirements of this section entitling a plaintiff to interest on the verdict from the date of filing a complaint. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

To permit an amendment of the complaint to add interest more than 10 days after the judgment had been entered was error. Clark v. Hicks, 127 Colo. 25, 252 P.2d 1067 (1953); Green v. Hoffman, 126 Colo. 104, 251 P.2d 933 (1952).

III. INAPPLICABLE ACTIONS.

This section does not apply to property or contractual damage. The Colorado statute distinguishes between damages arising from personal injury and contractual or property damages. Interest is not permitted from the date of filing of the complaint where property damages are involved. Stemple v. Phillips Petroleum Co., 430 F.2d 178 (10th Cir. 1970).

Court may not add prejudgment interest to accepted offer of judgment. When, in a personal injury action, a plaintiff accepts an offer of judgment, the court is precluded from adding prejudgment interest to the amount agreed upon by the parties. Heid v. Destefano, 41 Colo. App. 436, 586 P.2d 246 (1978).

Interest is not recoverable in an action for damages occasioned by fraud and deceit. Moreland v. Austin, 138 Colo. 78, 330 P.2d 136 (1958); Holland Furnace Co. v. Robson, 157 Colo. 347, 402 P.2d 628 (1965).

Nor in action for breach of warranty. Interest is only recoverable in the absence of contract, in the cases enumerated in this section. An action in damage for a breach of warranty is not one of the enumerated cases. Denver Horse Importing Co. v. Schafer, 58 Colo. 376, 147 P. 367 (1915).

Nor in an action for false representations. Interest is a creature of statute, and this section makes no provision for interest on unliquidated damages which may be awarded in actions for false representations. Moreland v. Austin, 138 Colo. 78, 330 P.2d 136 (1958).

Interest will not be awarded against a municipal corporation. The word "corporation" as used in this section does not include a municipal corporation. City of Boulder v. Stewardson, 67 Colo. 582, 189 P. 1 (1920).

For inapplicability to nonresident injured in his own state with Colorado merely as forum, see Stemple v. Phillips Petroleum Co., 430 F.2d 178 (10th Cir. 1970).

13-21-102. Exemplary damages. (1) (a) In all civil actions in which damages are assessed by a jury for a wrong done to the person or to personal or real property, and the injury complained of is attended by circumstances of fraud, malice, or willful and wanton conduct, the jury, in addition to the actual damages sustained by such party, may award him reasonable exemplary damages. The amount of such reasonable exemplary damages shall not exceed an amount which is equal to the amount of the actual damages awarded to the injured party.

(b) As used in this section, "willful and wanton conduct" means conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff.

(2) Notwithstanding the provisions of subsection (1) of this section, the court may reduce or disallow the award of exemplary damages to the extent that:

(a) The deterrent effect of the damages has been accomplished; or

(b) The conduct which resulted in the award has ceased; or

(c) The purpose of such damages has otherwise been served.

(3) Notwithstanding the provisions of subsection (1) of this section, the court may increase any award of exemplary damages, to a sum not to exceed three times the amount of actual damages, if it is shown that:

(a) The defendant has continued the behavior or repeated the action which is the subject of the claim against the defendant in a willful and wanton manner, either against the plaintiff or another person or persons, during the pendency of the case; or

(b) The defendant has acted in a willful and wanton manner during the pendency of the action in a manner which has further aggravated the damages of the plaintiff when the defendant knew or should have known such action would produce aggravation.

(4) One-third of all reasonable damages collected pursuant to this section shall be paid into the state general fund. The remaining two-thirds of such damages collected shall be paid to the injured party. Nothing in this subsection (4) shall be construed to give the general fund any interest in the claim for exemplary damages or in the litigation itself at any time prior to payment becoming due.

(5) Unless otherwise provided by law, exemplary damages shall not be awarded in administrative or arbitration proceedings, even if the award or decision is enforced or approved in an action commenced in a court.

(6) In any civil action in which exemplary damages may be awarded, evidence of the income or net worth of a party shall not be considered in determining the appropriateness or amount of such damages.

Source: L. 1889, p. 64, § 1; R. S. 08, § 2067; C. L. § 6307; CSA, C. 50, § 6; CRS 53, § 41-2-2; C.R.S. 1963, § 41-2-2; L. 86, p. 675, § 1.

I. General Consideration.
II. Essential Elements.
III. Amount.
IV. Pleading and Practice.
V. Against Whom Awarded.

I. GENERAL CONSIDERATION.

Cross references. For exemplary damages, see also C.R.C.P. 101(d).

Am. Jur.2d. See 22 Am. Jur.2d, Damages, §§ 236, 238, 242-245, 249, 250, 267, 268.

C.J.S. See 25 C.J.S., Damages, § 53.

Law reviews. For comment on Starkey v. Dameron, appearing below, see 6 Rocky Mt. L. Rev. 81 (1933). For note, "Need Punitive Damages Be Proportionate to Compensatory Damages?", see 23 Rocky Mt. L. Rev. 206 (1950). For note, "Exemplary Damages in Colorado — Punitive or Puny?", see 35 U. Colo. L. Rev. 394 (1963). For comment on Kohl v. Graham, appearing below, see 36 U. Colo. L. Rev. 283 (1964). For article, "Trade Secret Litigation: Injunctions and Other Equitable Remedies", see 48 U. Colo. L. Rev. 189 (1977). For casenote, "Palmer v. A.H. Robins Co.: Problems with Punitive Damages in Products Liability Actions", see 57 U. Colo. L. Rev. 135 (1985). For article, "Help for Colorado Trade Secret Owners", see 15 Colo. Law. 1993 (1986). For article, "Tort Reform's Impact on Contract Law", see 15 Colo. Law. 2206 (1986).

Legislative purpose behind this section is to avoid purely punitive civil awards. Wagner v. Dan Unfug Motors, Inc., 35 Colo. App. 102, 529 P.2d 656 (1974).

Punitive damages in civil action not double punishment. Although punitive damages are awarded in civil cases in order to punish the defendant, an award of punitive damages in a civil action does not constitute a prohibited "double punishment", as the double punishment prohibition applies only to criminal actions. E. F. Hutton & Co. v. Anderson, 42 Colo. App. 497, 596 P.2d 413 (1979).

Nor violative of equal protection. Allowing punitive damages in a civil action does not violate one's right to equal protection of the law. E. F. Hutton & Co. v. Anderson, 42 Colo. App. 497, 596 P.2d 413 (1979).

Section not void for vagueness. Statutory terms "circumstances of fraud" and "a wanton and reckless disregard" are sufficiently clear to persons of ordinary intelligence to afford a practical guide for behavior and are capable of application in an even-handed manner. Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

Federal constitutional proscription against cruel and unusual punishment not applicable to a civil proceeding involving a punitive damages claim ancillary to a civil cause of action. Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

EXHIBIT 2
DATE Jan. 27, 1989
HB 201-Rep. Spaeth

Amends House Bill 201

Line 13 Page 2
After with: insert the judge or

EXHIBIT 3
DATE Jan. 27, 1989
HB 201-Pen. Spaeth

WITNESS STATEMENT

NAME Wally Jewell BILL NO. HB201

ADDRESS 520 Tamarack, Helena

WHOM DO YOU REPRESENT? Mt. Magistrates Assoc.

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

HB201 would facilitate the admin. of justice in that it would allow some of Montana's smaller more rural communities to be able to afford a judge, even if that judge might only serve part time. This measure would also save these more rural areas money in that they could contract for a part time judge.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34
Rev. 1985

EXHIBIT 4
DATE Jan. 27, 1989
HB 185-Rep. Whalen

MonAMI

Montana Alliance for the Mentally Ill **Winter 1989**

MENTAL HEALTH SYSTEM RANKED 40TH

Montana was ranked 40th in the quality of care it provides its residents in a newly released report "Care of the Seriously Mentally Ill" published jointly by the Public Citizen Health Research Group and National Alliance for the Mentally Ill. The narrative of Montana's assessment follows here in its entirety.

Montana has shown a willingness to spend money on its public programs for the mentally ill, currently spending $33.05 per capita which is more than twice as much as neighboring Idaho. Its generosity does not get it much more, however, for a variety of reasons.

The state hospital in Warm Springs has problems, is neither accredited nor certified, and has been considered for legal action by civil rights groups. A recent salary increase for some hospital staff may make it easier to attract competent professionals. The real problem in the system, however, is the five community mental health centers which have shown little interest in serving the seriously mentally ill. Instead they concentrate their resources on providing counseling services to individuals with far less serious problems. In a state as big and as sparsely populated as Montana, imaginative efforts (e.g. the use of public health nurses) are necessary to follow mentally ill individuals who may live 100 miles from the nearest facility. Services for mentally children are even more deficient than those for adults although there are recent signs of increased interest.

The strongest part of Montana's services for the the mentally ill is the presence of four rehabilitation clubhouses in Helena, Kalispell, Missoula and Great Falls; the last two are said to be especially good. Beyond these there is very little in vocational or other rehabilitative services available. Housing for the mentally ill consists primarily of a few group homes and other residences connected to the CMHCs; many more facilities are needed.

If Montana hopes to move ahead it will need a vision of where it is going. Currently the Department of Institutions, the Council of Mental Health Centers and consumers under the Alliance for the Mentally Ill are often at cross purposes and occasionally at each other's throats. It is possible to provide quality services to the seriously mentally ill in a large, sparsely populated area as the Province of Saskatchewan to the north of Montana has clearly demonstrated. A newly created State Mental Health Advisory Council and planning process holds some promise for the future.

MHLP
MENTAL HEALTH
LAW PROJECT

EXHIBIT 5
DATE JAN. 27, 1989
HB 185-Rep. Whalen

TESTIMONY OF SUSAN STEFAN

ON HOUSE BILL 185

Before the House Committee on the Judiciary

January 27, 1989

Mr. Chairman, Members of the Committee, my name is Susan Stefan. I am a Staff Attorney with the Mental Health Law Project, a non-profit organization which advocates for mentally ill and mentally retarded people across the country. We have been involved on the state and federal level with legislative efforts to benefit mentally disabled people for fifteen years.

The legislation before you today will benefit both mentally ill people who should not be locked in jail cells and sheriffs whose jobs are difficult enough without having to provide safety or protection for mentally ill individuals, let alone the treatment these individuals desperately need when they are in crisis. The bill before you will also save lives, because mentally ill people die in jail cells - they do all over the country, and they have in Montana. Finally, this bill cures a situation in Montana which is very likely unconstitutional.

It is important to emphasize that if a person is displaying symptoms of mental illness, he or she may need a physical exam, may need medication of a certain specific kind, may need to talk to a trained professional. These interventions are particularly crucial at the beginning of an acute episode of psychosis. It is particularly harmful for a mentally ill person to be put into a jail cell, not knowing why they are in jail, receiving no support or caring treatment, and becoming more confused and disoriented and deteriorating until they are far worse off than they were initially. Rapid treatment is very important early if a mentally ill person is in crisis. And the capacity to treat is there - there is a mental health center within two hours of any location in Montana. In many ways, holding a person in a jail cell who is acutely mentally ill is analogous to one of you having a heart attack or a stroke and being taken to jail rather than to the hospital for treatment.

2021 L Street NW, Suite 800, Washington DC 20036-4909, (202) 467-5730, Fax: (202) 223-0409

EXHIBIT 5
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By expecting Sheriffs to hold mentally ill people in their Jails, you are asking the sheriffs to do something beyond their job description or training. It is tragic for everyone concerned for mentally ill person to go through a crisis with no one able to provide any treatment. Mentally ill people are in so much

pain they may mutilate or even kill themselves. Sherriffs do not have the wherewithal to predict or prevent this. Yet once they have a mentally ill person in their jail, they are legally obligated to provide this care, just as they are to provide medical care to physically ill inmates.

Finally, as I said before, holding mentally ill people in jails is probably unconstitutional. The Eleventh Circuit, which includes Florida, Georgia, and Alabama, held the practice unconstitutional in 1984 in a case called Lynch v. Baxley, 744 F2d 1452 (11th Cir 1984). The Court noted that "temporary confinement in jail is particulary harmful to those who are mentally ill." It found that:

> Jail exacerbates the mental problems of the people detained there and thereby lengthens the time it takes to treat them. The individuals who have been held in jail are often angry and harder to treat because they do not understand why they were detained in jail. Jail detention can lead to a greaterdegree of psychosis where it already exists and can possibly create such psychosis where it does not.

744 F2d at 1458.

In another case in the Second Circuit, in 1986, the Court said that it "had no quarrel" with the reasoning that "jail is for incarceration of criminals and so persons who were only awaiting involuntary commitment proceedings could not be `punished' by being detained in jails. To so punish persons awaiting involuntary commitment did not bear any relation to the purpose of their confinement." Doe v. Gaughan 808 F.2d 871, 879 (2nd Cir. 1986). I have also been informed recently that this issue is being litigated in Mississippi.

It has been argued that in some places mental health facilities do not exist. In fact, facilities more appropriate than jails do exist for mentally ill people; many hospitals have beds available. If the person is truly violent and out of control, they should be taken at once to the state hospital, since that is where they will likely go in any event. As the court in Lynch v. Baxley held, a person must be detained in "the nearest State, regional, community, county or private hospital or mental health facility which provides quarters for mentally ill patients." 744 F2d at 1462. These options are all more appropriate than a jail cell.

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To summarize, the current practice of keeping mentally ill individuals in jails in Montana is devastating for the individual and his or her relatives; places a burden on Sheriffs which is unfair and unjustified; has led to deaths and may lead to more; and is probably unconstitutional under the United States Constitution. I urge you to correct this tragic situation by reporting this bill favorably.

Thank you.

ment following a consecutive adult sentence, but rather with whether the Parole Commission must follow a judge's recommendation concerning a YCA parole revocation sentence. We are dealing not with a youth offender who is in prison and then sentenced to a consecutive adult term, but with a youth offender on parole who is subsequently sentenced to an adult term. The facts in *Ralston* are thus clearly distinguishable from those in this case.

The *Ralston* Court held that only the sentencing judge, not the Bureau of Prisons, could make the decision whether a youth could receive any further benefit from YCA treatment. *Ralston*, 454 U.S. at 213, 102 S.Ct. at 241. The *Ralston* Court did not, however, hold that a sentencing judge's recommendation concerning a subsequent parole revocation question is binding on the Parole Commission. For the above-stated reasons, we hold that the Parole Commission's decision to revoke King's parole and allow the 1974 YCA sentence to run until expiration in October, 1984, was not violative of the *Ralston* decision.

Under the dictates set forth by the Supreme Court in *Addonizio*, we hold that a parole revocation decision rests with the Parole Commission. A sentencing judge's recommendation or hope concerning a parole revocation question is not binding on the Parole Commission. The Parole Commission, in this case, acted within its discretion when it revoked King's parole and ordered the 1974 YCA sentence to run until expiration in October, 1984. We thus affirm.

AFFIRMED.

Jean P. LYNCH, individually and on behalf of all persons similarly situated, Plaintiff,

Jesse M. Hughes, et al., Intervening Plaintiffs-Appellants,

v.

William J. BAXLEY, etc., et al., Defendants-Appellees.

No. 82-7346.

United States Court of Appeals, Eleventh Circuit.

Oct. 26, 1984.

After remand, 651 F.2d 387, the United States District Court for the Middle District of Alabama, Robert E. Varner, Chief Judge, determined that individual seeking to represent class action to enjoin Alabama state officials from detaining in county jails persons awaiting involuntary civil commitment proceedings had standing. The Court of Appeals, Clark, Circuit Judge, which had retained jurisdiction over action pending determination on standing issue, then held that use of jails for purpose of detaining persons awaiting involuntary civil commitment proceedings violated those persons' substantive and procedural due process rights.

Reversed and remanded.

1. Federal Civil Procedure ⇐103

Any plaintiff attempting to invoke power of a federal court must demonstrate a personal stake in outcome of controversy so as to assure that concrete adverseness which sharpens presentation of issues and thereby enables court to resolve constitutional questions.

2. Federal Civil Procedure ⇐103

A demonstration of a plaintiff's personal stake in outcome of controversy sufficient to invoke power of a federal court is made by plaintiff's showing that he has sustained or is immediately in danger of sustaining some direct injury and that inju-

EXHIBIT 6
DATE JAN. 27, 1989
HB 185-Rep. Whalen

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION
STATE OF MONTANA
(406) 444-3955
HELENA, MONTANA 59620

TESTIMONY ON HOUSE BILL 185

Mr. Chairman, Members of the Committee, my name is Mary Gallagher. I am a staff attorney for the Mental Disabilities Board of Visitors, Legal Services Program at Montana State Hospital.

I am here in support of House Bill 185 because I believe a mental health facility, not a jail is the more therapeutic and appropriate place to detain the seriously mentally ill persons who come through our system.

I am acquainted with patients at Warm Springs who have come to the Hospital after being held in a county jail sometimes for several weeks. If the person was at all psychotic, the isolation and deprivation of being detained in a jail cell for days or weeks, served only to aggravate and intensify their psychotic symptoms. When this happens, it naturally takes much longer for the person to stabilize and return to the community.

Additionally, patients frequently come to our office to find out why they have been punished by being jailed when they have committed no crime. It is difficult to explain to them that jail-in their instance-because they are mentally ill-was not punishment-it was simply what someone was calling the "least restrictive alternative". Jail by any other name is still punishment to them.

I urge you to support this bill.

EXHIBIT 7
DATE Jan. 27, 1989
HB 185-Rep. Whalen

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444 3955

HELENA, MONTANA 59620

Testimony on House Bill 185

Mr. Chairman, Members of the Committee, For the record, my name is Kelly Moorse. In my twelve years as the Director of the Mental Disabilities Board of Visitors I have had occasion to review patient care and treatment at the state institutions and mental health facilities. In addition, our duties include responding to rights and treatment related issues.

I urge your careful consideration of this bill. Perhaps the best example of why this bill is needed is reflected in two cases. The first is a woman with a serious mental illness in her fifties. She was picked up at her home by two police cars to take her to her involuntary court commitment. She was frightened and embarrassed. She was taken from her home by four police and held in jail, because she refused to cooperate with her involuntary court hearing. She spent a week in jail, with no medication and continue to deteriorate. Without the proper treatment in jail, (medication) her hospitalization at Warm Springs was longer than usual.

The second case involved a man in his eighties. He was held in jail for wandering into someone's home. Since there was no room at the state hospital, he was kept in the jail for more than two weeks. The concern of the jailers (who contacted mental health authorities), was crucial. In addition to the medical attention he was in need of mental health services.

I urge your do pass on this bill.

MENTAL HEALTH PROTECTION AND ADVOCACY PROGRAM

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Helena, Montana 59601

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1-800-245-4743

EXHIBIT 8
DATE Jan. 27, 1989
HB 185-Rep. Whalen

January 27, 1989

Testimony of John McCrea
House Judiciary Committee
Re: House Bill 185

Mr. Chairman, and members of the Committee, my name is John McCrea. I represent the Mental Health Protection and Advocacy Program for the Mentally Ill. For the record, I support the intent and purpose of House Bill 185 in its entirety. My position provides me the opportunity to have observed first hand the inappropriate, demeaning and frightful expereince of someone whose mental disorder was described, when apprehended by the police, as resulting from intoxication. In fact, this person, a woman in her 30's, suffers from Huntington's chorea. This person spent eight days confined to a jail cell. To further illustrate my concern regarding the current law, this person graduated with honors from a University, holds a Ph.D. with honors in clinical psychology, and worked at a medical facility until she was diagnosed with Huntington's chorea. Due to the progressive stages of her disability, she has experienced confinement in jail, and commitment proceedings for her protection and safety. If you understand Huntington's chorea, or understand a person with diabetes, or understand someone who experiences grand mal seizures, then I would hope that we may understand the significance of House Bill 185.

EXHIBIT 8
DATE 1-27-89
HB 185

Testimony of John McCrea - HB 185

HB 185 is long overdue in serving its primary purpose and intent. There is current discussion and opposition by some county officials to HB 185 because of the cost involved in detaining a person in a mental health facility instead of jail. I would ask these individuals to place themselves in the position of a person who is not only challenged by a mental disorder or mental illness, but is detained in jail, not because of a criminal offense, but because of a disability misunderstood and because competent caring professionals are impeded by our current laws and by those who lack awareness and understanding. Please consider the impact of this bill before you, and the possible ramifications that continue for those individuals who are unable to represent or protect themselves because of disabilities that are often misunderstood and misinterpreted.

Thank you Mr. Chairman and members of the committee.

EXHIBIT 9

DATE Jan. 27, 1989

HB 185-Rep. Whalen

JAMES POWELL WINNINGHAM JR
39 O'BRIEN AVENUE
WHITEFISH, MT 59937

Good Morning, Members of the Committee.

I am deeply grateful to you for the opportunity to speak in favor of HB 185.

As I am unable to attend this hearing due to the unusual time constraints of my job, I would like my comments to be made by audio tape. I have provided copies of the text for the members.

My name is James Powell Winningham, Jr.. I am a Manic Depressive, which means I possess a genetically inherited behavioral disorder. I follow a permanent dosage regimen of Lithium, and I am completely stabilized. I'm a native of Arizona which, as you may know, is dead last in the nation in per-capita funding for mental health. My wife and I have recently relocated to Whitefish. While attempting to find some help for a new friend, I discovered the Flathead Alliance for the Mentally Ill, and the Consumer's Council. I have recently joined the Council, and I've been elected Council Awareness Leader, and one of my duties is to act as a public speaking advocate for the Council in changing the perceptions of the public with regard to Mental Health. It is in that capacity that I address you today, as well as a past recipient of the kind of treatment this bill seeks to eradicate.

My first-hand experience with the incarceration vs. hospitalization question happened in 1976. I was having my first serious manic breakdown at the time, and I sat down in someone else's car. Sat down in it. In Arizona, that's attempted Grand Theft Auto. The compassionate car owner and the prosecutor pressed charges all the way to the trial.

After my arrest, the trip downtown to the county tank was interrupted by a visit with the FBI, who needed to talk to me about a bomb threat phoned in to the technical school at which I was arrested. I was the convienient crazy that day, I guess. And no, I didn't make any bomb threats.

After the chat with the FBI, I was processed into the county jail and put into a cell about eight feet square with a murderer, a robber, and a rapist. My size is the only thing that kept them away from me, I think. That, and the constant stream of irrational gibberish coming out of my mouth.

Soon I came to the attention of the medical people on the cellblock. They did not transfer me to the hospital. They just put me in a cell by myself. Mind you, all this time I had at my disposal items which I could use to kill myself and others around me had I been so inclined. And I was very, very insane.

The fellows on the other side of the wall in the cell next to my new one apparently didn't like my attitude, and as I reached my hand out to take the offered cigarette, it was smashed by a long, hard, sticklike device invented to turn the channels on the TV from inside the cell. The effects linger still today. The next thing I knew, flaming newspapers were being heaved around the wall into my cell over and over again. The guards were nowhere to be found until I filled my rubber-covered mattress with water from the shower. I then got a new cell without a mattress or a shower.

Another full day passed, and once in a while a nurse would try to feed me some Thorazine. At that point a bucketful wouldn't have worked.

So after almost four days of this, I was just as manic as the day I was arrested, and I was finally transferred to the Maricopa County Hospital Jail Ward, where I was introduced to leather restraints. I had become so sick that I tried to either eat or destroy my bedding and clothing, so I spent the next ten days tied naked to a metal bedframe lying in my own waste, and freezing at night when the refrigeration dropped the temperature to the mid-fifties. They finally tried Lithium, and within 72 hours I was beginning to recover. Now comes the good news and bad news bit. You're not very crazy any more, but you're still under arrest. I was returned to the County Jail. I was put in a cell with eight other criminals who watched as I was given the wrong medications in the wrong dosage at the wrong time by indifferent guards. For instance, I was ordered to take ten Thorazine at one time, and luckily for me I was able to drop most of them on the mattresses covering the floor of the cell on the way over to the sink. My junkie bunkies became fast friends after that. My father finally bailed me out because he could see I was in danger of slipping back into the dark mists of mania. Six weeks later I went back to work. The restraints had crushed the nerves in my left wrist, temporararily ending my career as a guitar player, so I had to learn a new trade. Six months later I was found not guilty by reason of insanity. Three days after that I had to tell my new boss that I had to check into the County Psych ward for three days to prove I was no longer a danger to myself or others. How would you have done it?

My point is: If a competent psychiatric diagnosis could have been made prior to the incarceration, it would have been patently obvious that I was not criminally inclined, and the real danger to myself and others was after I was jailed, and not before. I know that the process of erasing the stigma of mental illness is as hard for us to do as it is for you to understand, but I heartily applaud the effort evidenced by HB 185 as a sign that this long sad night of ignorance and discrimination might one day end, and I totally support it's passage. Thank you.

EXHIBIT 10
DATE Jan. 27, 1989
HB 265-Rep. Strizich

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 265
REVISION AND REORGANIZATION OF DISPOSITIONAL OPTIONS UNDER THE YOUTH COURT ACT

Submitted by Leslie Taylor
Legal Counsel for the Department of Family Services

The Department requested this bill to revise and reorganize the dispositional alternatives under the Youth Court Act because of the confusion which has arisen regarding this section of the law. In the last legislative session, Section 41-5-523, MCA, was amended by three different bills. As a result, the dispositional alternatives available to the court were not clear. In an effort to clarify what the alternatives are and to provide further explanation of some of the sections, the Department has proposed HB 265. The bill is not intended to produce any major changes. It is intended solely to provide clarification and reorganization of the existing sections.

On page 1, the bill clarifies that the court can commit the youth to the Department if the youth is in need of placement outside of his home. This is consistent with existing practice and the intent of the amendments made in the last legislative session.

On page 2, the term "youth correctional facility" is substituted for "physical confinement in an appropriate facility." The Youth Court judge may specify placement in a youth correctional facility as part of his order. Since the Department has interpreted this section to mean the youth correctional facilities, the bill changes the wording to be more specific and to avoid confusion.

On page 3, duplicative language under subsection (c) is removed and combined with subsection (i). A new paragraph (2) is inserted which incorporates all the restrictions on the Department in determining placement. Rather then having these restrictions sprinkled throughout the section, they are combined together in the new subsection (2).

Pages 5 and 6 contain minor changes, including removal of the Order of Commitment. The Order of Commitment in the code is not consistent with the existing law because it fails to specify whether the youth is a youth in need of supervision or a delinquent youth and contains only the finding that the youth "is a suitable person to be committed to the Department of Family

EXHIBIT 10
DATE 1-27-89
HB 265

Services." Since most judges fashion their own orders in such cases anyway, the Order need not be contained in the statute.

The bill will better clarify the options available to the Youth Court and the Department in determining the appropriate disposition of troubled youths. By removing duplicative material, reorganizing the sections and clarifying the existing ambiguities, it is hoped the bill will result in a law that is more understandable to the people who work with it on a daily basis.

EXHIBIT 11
DATE Jan. 27, 1989
HB 232-Rep. D. Brown

Amend House Bill No. 232 - Introduced Bill as follows:

1. Page 3, line 5,
   Change Section 1:
   Following: "(2) except as provided in subsections"
   Insert: "(1)(d) through (1)(i) and

2. Page 4, lines 14 and 15.
   Delete lines 14 and 15.
   Renumber following two subparagraphs.

Jan. 27, 1989

HB 232-Rep. D. Brown

LORI MALONEY

CLERK OF THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF SILVER BOW

Butte, MT 59701

Phone: 723-8262 Ext. 289-290

ARTCRAFT, BUTTE

January 26, 1989

House Judiciary Committee
State Capitol, Capitol Station
Helena, Montana 59620

Re: Passage of H.B. 232

Dear Member:

House Bill 232 is legislation requested by the Clerks of District Court Association.

Basically, this is "Housecleaning" for the most part.

In section 25-1-201(1)(a) MCA - we have a problem. Attorneys are able to pay $60.00 for a Legal Separation, then go into Court, petition for a Dissolution of Marriage without paying additional fees. We would like to amend this section by making these type of civil actions all $100.00, and generate more revenue for the State. $75.00 of each petition would go to the State General Fund.

Section 25-1-20(1)(d,e,f,g & i) MCA. These are services of the Clerk and his or her staff that do not require the service of the District Judge. These cost local government for staff wages, supplies and postage. We, the Clerks of Court Association, feel these small fees should be retained 100% at the local level to assist in offsetting local court costs.

We would like to see sections 25-1-201(1)(h) and 27-9-103 be amended to the same fee ($25.00) as Section 25-1-201(1)(c). These judgments all require the same amount of time and it would make the costs uniform.

Section 25-1-20(1)(i)MCA regarding issuing an execution or order of sale. The $2.00 fee is too low, $5.00 would be more appropriate. The Clerk is responsible for determining the unsatisfied amount before executing an execution or order of sale. We feel a $5.00 fee would be more appropriate.

Over 600 concealed weapon permits were issued in 1988 by the District Courts in Montana. At this time section 45-8-319 MCA makes no provision for a fee upon filing the petition or issuance of the permit. This association would like to see a fee of $25.00 established. There is a great deal of time spent by the Clerks in preparation and in issuing these permits.

I wish to urge you to pass HB 232.

Thank you.

Sincerely,

Lori Maloney

Member of the MACDC
Legislative Committee

MISSOULA COUNTY

COUNTY OF MISSOULA, STATE OF MONTANA

OFFICE OF THE CLERK OF THE DISTRICT COURT

MISSOULA, MONTANA

KATHLEEN D. BREUER

25 January 89

EXHIBIT 13

DATE Jan. 27, 1989

HB 232-Rep. D. Brown

House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Committee Members:

I am writing to request your support for HB 232.

It will be presented in hearing on January 27th by Rep. Dave Brown (D-Butte). I am not sure as to the order of presentation, but would sincerely appreciate whatever you could do to enable passage.

The changes presented in this particular bill would have a financial impact on every county, not to mention the State General fund.

Thank-you, in advance for your consideration and assistance in ensuring this be seriously considered for passage.

Sincerely,

Kathleen D. Breuer

KATHLEEN D. BREUER
CLERK OF DISTRICT COURT

Jan. 27, 1989
HB 197-Rep. Addy

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 197
AN ACT REVISING THE PROCEDURE FOR THE VOLUNTARY COMMITMENT OF MINORS TO A MENTAL HEALTH FACILITY

Submitted by Leslie Taylor
Legal Counsel for the Department of Family Services

The Department of Family Services requested this bill to clarify the procedures for the voluntary admission of minors to mental health facilities. The current law specifies that youths 16 years of age or older can consent to admission to a mental health facility, but fails to specify procedures for the voluntary admission of youths under the age of 16.

A 1979 U.S. Supreme Court decision, Parham v. J.R., 422 U.S. 2493, ruled that a youth facing admission to a psychiatric hospital is entitled to due process even when his parents or guardian sought the admission on his behalf. The Court ruled that "[t]he risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a 'neutral factfinder' to determine whether the statutory requirements for admission are satisfied." The Court found that the factfinder need not be "law trained or a judicial or administrative officer" and upheld the Georgia system which allowed the admitting psychiatrist to act as the "neutral factfinder." The Court applied the same requirements when the state sought to admit a child who is a ward of the state.

The Department has legal custody of a number of children who are in need of in-patient psychiatric treatment. Because of the ambiguity of the existing law and the Parham decision, the Department's policy has been to request the county attorney to file an involuntary commitment petition before placing children under the age of 16 in the Rivendell or Shodair psychiatric units. However, there have been situations where the youth did not meet the strict definition of seriously mentally ill (i.e. "danger to self or others"), but was in need of in-patient psychiatric treatment. Some mental health professionals felt uncomfortable labelling a child as "seriously mentally ill" just to obtain the treatment they felt was necessary.

The Department met with the attorneys representing Rivendell and the Board of Visitors to come up with a method for voluntary commitment which would facilitate commitment of those youths needing in-patient psychiatric care in a manner which was consistent with the Parham case. HB 197 is the result of those discussions.

EXHIBIT 14
DATE 1-27-89
HB 197

The bill clarifies that the parent, guardian or other person legally responsible for a minor may commit the youth to a mental health facility, other than a state institution, if a "professional person" certifies that the minor is mentally ill, seriously mentally ill or emotionally disturbed, and placement in the mental health facility is the least restrictive environment available for treatment. The certification must be submitted to the facility along with the written consent of the parent, guardian or person legally responsible for the youth and the consent of the youth if he is over the age of 16.

The facility may not accept a youth unless the certification and consents are submitted and the facility must keep records to document compliance with the requirements of the law. If the youth fails to join in the consent of his parents, an involuntary proceeding must be initiated before the youth can be committed.

This bill provides a workable system for the voluntary admission of youths needing in-patient psychiatric treatment while meeting the constitutional requirements for due process. The bill also clarifies the Department's authority to place youths who are under the Department's legal custody in mental health facilities. By developing a streamlined procedure which meets the constitutional requirements, the work of the department social workers, county attorneys and the courts can be simplified and children can receive needed treatment. For these reasons, the Department of Family Services asks you to give HB 197 your favorable consideration.

MHLP
MENTAL HEALTH
LAW PROJECT

EXHIBIT 15
DATE Jan. 27, 1989
HB 197-Rep. Addy

TESTIMONY OF SUSAN STEFAN

ON HOUSE BILL 197

Before the House Committee on the Judiciary

January 27, 1989

The principal subjects of this bill are the procedures and substantive standards which should apply when children are committed to mental institutions. This is an extremely difficult and complex area. At least five groups have identifiable interests: the children; their parents or relatives; psychiatrists and mental health professionals; private for-profit psychiatric hospitals for children; and the State.

I would like to preface my remarks by noting that institutionalization is especially drastic for a child. This is true no matter how excellent the care that a child receives at the institution. He or she is still separated from family and friends, still locked in an institution which may be far from home, still out of school and in a strange and unfamiliar place. He or she is not developing the social skills to interact in the real workd, but of necessity is adapting to an institutional environment.

The United States Supreme Court has spoken on this issue twice: in In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) the Court declared that a child was entitled to procedural protections if he or she was to be deprived of liberty, regardless of whether the deprivation of libarty was for the purposes of punishment, rehabilitation or treatment. In Parham v. J.R., 99 S.Ct. 2493 (1979), the Supreme Court recognized that a child does have liberty interests, not only in physical freedom but in freedom from the stigma associated with institutionalization. The Supreme Court has held that these liberty interests prevent a child's parents from being able to commit the child voluntarily to a hospital without some kind of check or oversight. Although the Court recognized that most parents have only their children's best interests at heart, and that parents have considerable liberty in raising their children as they see fit, it held that this was not enough to override the child's interest in avoiding unnecessary hospitalization.

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The Court required a neutral fact-finder, a physician or psychiatrist or a team with a physician or psychiatrist applying specific, explicit state standards governing hospitalization of children. The Court held that a childs' rights were violated if the same people who made the decision to admit the child also made up the standards for admission.

The Court placed a great deal of emphasis on those two areas: the neutrality and medical expertise of the fact-finder, and the specificity of the state standards.

One of the major difficulties with this bill is that it runs afoul of those central concerns expressed by the Supreme Court. It permits "a professional person" who may not be a psychiatrist or even a doctor, to certify that a child is mentally ill or seriously mentally ill, which are diagnoses requiring medical training. Worse still, it allows a "professional person" to certify that a child is "emotionally disturbed" as set out in §53-4-101 (3). There are two problems with using this definition. First, if you read the bill in conjunction with the statute, there is a possibility that a non-medical professional person would certify to the admitting hospital that another non-medical professional person had found the child emotionally disturbed, without ever even personally examining the child. Even worse, the "emotionally disturbed" definition is particularly inappropriate for institutionalizing children. The definition at §53-4-101(3) refers to §20-7-401(4), which is a definition of an emotionally handicapped child for the purpose of receiving special education services under the Education for aLL Handicapped Children Act. This law was designed to <u>return</u> children to the mainstream classroom, to integrate children with their non-handicapped peers as much as possible. The Act contemplated that most of the children who met the definition would live at home and go to school. To use this definition as a criteria for institutionalizing children is utterly contrary to the intention of the Act and of those who wrote this definition in the first place.

The third problem with this bill is that it would permit a professional person from the institution receiving the child to write the certification. In a situation where the receiving institution is a private for-profit hospital, which as I understand it would be virtually all the time in Montana because the state hospital does not accept children, this raises serious questions about the neutrality of the fact-finder. The fact-

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finder should be someone wholly independent of the institution, with no institutional ties whatever. I would recommend solving these problems by deleting Section 1(a)(ii), and by changing Line 17 to read "if a doctor or psychiatrist not associated with the facility submits a written report to the facility."

There is one other suggestion I have to make as to an amendment to the bill. Section 7 creates a right for a minor under 16 who does not consent to hospitalization to have a court hearing, but section 4 dealing with written consents to hospitalization makes no provision for a minor under 16 to consent or not to consent. This can be amended easily by adding to Section 4(a) before the semicolon the words "and of the minor. "

Thank you for this opportunity to present my testimony.

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Full Text of Opinions

No. 75-1690

James Parham, Individually and as Commissioner of the Department of Human Resources, et al., Appellants, *v.* J. L. and J. R., Minors, Etc. | On Appeal from the United States District Court for the Middle District of Georgia.

[June 20, 1979]

Syllabus

Appellees, children being treated in a Georgia state mental hospital, instituted in Federal District Court a class action suit against Georgia mental health officials. Appellees sought a declaratory judgment that Georgia's procedures for voluntary commitment of children under the age of 18 to state mental hospitals violated the Due Process Clause of the Fourteenth Amendment, and requested an injunction against their future enforcement. Under the Georgia statute providing for the voluntary admission of children to state regional hospitals, admission begins with an application for hospitalization signed by a parent or guardian and, upon application, the superintendent of the hospital is authorized to admit temporarily any child for "observation and diagnosis." If after observation the superintendent finds "evidence of mental illness" and that the child is "suitable for treatment" in the hospital, the child may be admitted "for such period and under such conditions as may be authorized by law." Under Georgia's mental health statute, any child who has been hospitalized for more than five days may be discharged at the request of a parent or guardian, and the hospital superintendent, even without a request for discharge, has an affirmative duty to release any child "who has recovered from his mental illness or who has sufficiently improved that the superintendent determines that hospitalization of the patient is no longer desirable." The District Court held that Georgia's statutory scheme was unconstitutional because it failed to protect adequately the appellees' due process rights and that the process due included at least the right after notice to an adversary-type hearing before an impartial tribunal.

Held: The District Court erred in holding unconstitutional the State's procedures for admitting a child for treatment to a state mental hospital, since on the record in this case, Georgia's medical factfinding processes are consistent with constitutional guarantees.

(a) Testing challenged state procedures under a due process claim requires a balancing of (i) the private interest that will be affected by the official action; (ii) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (iii) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Cf. *Mathews* v. *Eldridge*, 424 U. S. 319, 335; *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 848–849.

(b) Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, and assuming that a person has a protectible interest in not being erroneously labeled as mentally ill, parents—who have traditional interests in and responsibility for the upbringing of their child—retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. However, the child's rights and the nature of the commitment decision are such that parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Wisconsin* v. *Yoder*, 406 U. S. 205; *Prince* v. *Massachusetts*, 321 U. S. 158; *Meyer* v. *Nebraska*, 262 U. S. 390. *Planned Parenthood of Missouri* v. *Danforth*, 428 U. S. 52, distinguished.

(c) The State has significant interests in confining the use of costly mental health facilities to cases of genuine need, in not imposing unnecessary procedural obstacles that may discourage the mentally ill or their families from seeking needed psychiatric assistance, and in allocating priority to the diagnosis and treatment of patients as soon as they are admitted to a hospital rather than to time-consuming preadmission procedures.

(d) The risk of error [illegible] to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied, see *Goldberg* v. *Kelly*, 397 U. S. 254, 271; *Morrissey* v. *Brewer*, 408 U. S. 471, 489, and to probe the child's background. The decisionmaker must have the authority to refuse to admit any child who does not satisfy the medical standards for admission. The need for continuing commitment must be reviewed periodically.

(e) Due process does not require that the neutral factfinder be law-trained or a judicial or administrative officer; nor is it necessary that the admitting physician conduct a formal or quasi-formal adversary hearing or that the hearing be conducted by someone other than the admitting physician. While the medical decisionmaking process may not be error free, nevertheless the independent medical decisionmaking process, which includes a thorough psychiatric investigation followed by additional periodic review of a child's condition will identify children who should not be admitted; risks of error will not be significantly reduced by a more formal, judicial-type hearing.

(f) Georgia's practices, as described in the record, comport with minimum due process requirements. The state statute envisions a careful diagnostic medical inquiry to be conducted by the admitting physician at each regional hospital. Georgia's procedures are not "arbitrary" in the sense that a single physician or other professional has the "unbridled discretion" to commit a child to a regional hospital. While Georgia's general administrative and statutory scheme for the voluntary commitment of children is not unconstitutional, the District Court, on remand, may consider any individual claims that the initial admissions of particular children did not meet due process standards, and may also consider whether the various hospitals' procedures for periodic review of their patients' need for institutional care are sufficient to justify *continuing* a voluntary commitment.

(g) The differences between the situation where the child is a ward of the State of Georgia and the State requests his admission to a state mental hospital, and the situation where the child's natural parents request his admission, do not justify requiring different procedures at the time of the child's initial admission to the hospital.

412 F. Supp. 112, reversed and remanded.

BURGER, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. STEWART, J., filed an opinion concurring in the judgment. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and STEVENS, JJ., joined.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this appeal is what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment.

I

(a) Appellee,[1] J. R., a child being treated in a Georgia state mental hospital, was a plaintiff in this class-action[2] suit based on 42 U. S. C. § 1983, in the District Court for the Middle District of Georgia. Appellants are the State's Commissioner

[1] Pending our review one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

[2] The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1 Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.

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Mental Health Law Project

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FACT SHEET

Description: The Mental Health Law Project (MHLP) is a Washington-based public-interest organization advocating for the rights of mentally disabled children and adults in the United States.

Founded: MHLP was founded in 1972. It grew out of the successful cooperation of specialized attorneys and concerned mental health and retardation professionals in *Wyatt v. Stickney*, the Alabama lawsuit that first established a constitutional right to treatment for people confined in mental institutions.

Mission: For 15 years, MHLP has been a national leader in establishing and protecting the rights of people labeled "mentally" or "developmentally" disabled. The broad goals of the Project are (1) assuring humane and appropriate care for mentally disabled children and adults who are confined in psychiatric hospitals and retardation facilities, and (2) improving the scope and quality of services available to mentally disabled people in the community.

Activities:

■ **Test-case litigation.** MHLP has represented individual plaintiffs and national consumer and professional associations in landmark lawsuits that have established the right to liberty (*Donaldson v. O'Connor*), the right to protection from harm (*NYSARC v. Carey*--the "Willowbrook case"), the right to education (*Mills v. Board of Education*), the right to treatment in the least restrictive setting (*Dixon v. Weinberger*), minimum standards for operation of community-based facilities and services (*Wuori v. Zitnay*), and the requirement of "clear and convincing proof" that confinement is necessary before a person can be civilly committed to an institution (*Addington v. Texas*). More recently, precedent-setting MHLP cases, *Mental Health Association of Minnesota v. Heckler* and *New York City v. Bowen*, halted arbitrary denial of the federal disability benefits on which hundreds of thousands of mentally disabled adults rely to obtain essential services in the community.

■ **Policy advocacy.** By combining test-case litigation with federal policy advocacy and backup support for advocates in every state, MHLP has generated national concern about the plight of mentally disabled citizens and brought them under the protection of our nation's laws. The *Mills* decision, for instance, was the acknowledged impetus for the Education for All Handicapped Children Act (PL 94-142), a $1.4 billion federal program which now assures every handicapped child services through the public education system. And the Minnesota and New York disability cases, with a third in Utah, strongly supported the campaign that led to the Social Security Disability Reform Act of 1984.

[more]

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Because the integration of mentally disabled people into the mainstream of society cannot succeed without adequate community-based services, much of the Project's current advocacy is aimed at expanding low-cost housing, special education programs and community mental health services.

■ **Educational outreach.** MHLP maintains an active public education program to inform lawyers and other advocates, clients, parents, service providers, judges and policymakers about new developments affecting mentally disabled citizens. A primary channel for this communication is MHLP's newsletters. *The Mental Health Law Project's UPDATE*, published bimonthly, is sent to 2,300 subscribers, who make an annual contribution of $25 or more, and without charge to more than 600 nonprofit groups actively engaged in advocacy for disabled people. *The Mental Health Law Project's ALERT* is issue-specific. This occasional newsletter is sent to more than 7,000 individuals and organizations interested in mental disability and civil rights issues.

MHLP's director and other staff have often testified before congressional committees and other legislative and policy-making bodies, and frequently address national and state organizations' conferences on legal and policy issues affecting mentally disabled people. In addition, MHLP has conducted training programs on legal advocacy for mental health and mental retardation professionals, lawyers and other advocates around the country.

MHLP staff regularly publish legal and social-policy research in leading journals and work with local and national media to increase public understanding of the legal problems facing mentally disabled people.

Funding sources: Almost all of the Project's work is made possible by foundations and private individuals. MHLP's largest funder is the John D. and Catherine T. MacArthur Foundation.

# # #

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CHILDREN'S ADVOCACY

MHLP has always given special attention to problems facing mentally disabled children and their families. Twenty years ago, many handicapped children were excluded from the nation's public schools. In 1972, a constitutional right to education was established by landmark litigation, including MHLP's *Mills v. Board of Education.* Nationwide reform became a reality in the Education for All Handicapped Children Act (Public Law 94-142), which today provides $1.6 billion to serve more than four million handicapped children.

MHLP played a leadership role in successful implementation of PL 94-142. Now we are focusing on a group not covered by the act: infants and preschool children who are disabled or at risk of disability, for whom early intervention can make a vital difference. During the past year, MHLP staff worked with parents, professionals and advocates in Maryland to develop a statewide advocacy coalition to seek coordination of the range of health and social services needed by these young children and their families.

BENCHMARKS

- 1972 -- *Mills v. Board of Education* establishes the right of all handicapped children to appropriate education through the public school system.
- 1974 -- *Morales v. Turman* establishes the right to treatment for juveniles in states youth facilities.
- 1975 -- Education for All Handicapped Children Act, PL 94-142, mandates free, appropriate education and related services for all handicapped children.
- 1980 -- The Education Advocates Coalition, formed in 1979 by MHLP and the Children's Defense Fund to improve enforcement of PL 94-142, reports on failures of federal compliance. As a direct result, the Secretary of Education reorganizes compliance activities and improves federal monitoring.
- 1982 -- The Supreme Court defines handicapped students' right to services "individually designed to provide educational benefit," in *Hendrick Hudson School District v. Rowley.*
- 1983 -- The Education Advocates Coalition mounts a national campaign opposing proposed new PL 94-142 rules that would gut the law's protections for many disabled children. The proposed rules are withdrawn.
- 1984 -- In *Tatro v. Irving School District*, the Supreme Court upholds the right of handicapped children to education-related services under PL 94-142.
- 1984 -- MHLP and 39 other national groups request revision of inappropriate SSI criteria for disabled children that leave thousands of severely disabled children in low-income families ineligible for Medicaid.
- 1986 -- A workgroup convened by the Social Security Administration submits entirely new children's mental disability standards, based on childhood developmental stages. As a workgroup member, MHLP drafted the criteria for infants and young children.
- 1986 -- The Education of the Handicapped Amendments (PL 99-457) create a new program of funding for states to develop coordinated early intervention systems for children from birth through age two.
- 1987 -- Parents, advocates and providers in Maryland who have worked with MHLP form the Maryland Alliance for Early Intervention, a coalition to guide state planning for a coordinated EI system.

AND IN THE FUTURE . . . Formation of a national early intervention advocacy coalition and a national EI center; coordination of federal programs serving young children at risk of disability and their families; administrative advocacy, and litigation if necessary, to assure promulgation and implementation of new children's SSI eligibility criteria.

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COMMUNITY WATCH

MHLP has long fought housing discrimination against people with mental disabilities. Recently, advocates and providers around the country have increasingly sought MHLP's assistance to overcome exclusionary zoning and other barriers to group homes, halfway houses and independent-living arrangements. Now we have begun a comprehensive housing-advocacy program, Community Watch.

Community Watch works to generate community-living opportunities through two forms of activity by MHLP staff: (1) national advocacy to promote adequate housing for mentally disabled poor people and challenge exclusionary practices that impede its development, and (2) as a national resource, legal consultation and assistance to public and private providers, including families, in overcoming legal, economic and bureaucratic barriers to the development of quality housing programs.

BENCHMARKS

- 1974 -- A federal court declares, in *Stoner v. Miller*, that a restrictive zoning ordinance excluding psychiatric patients from a town's hotels unconstitutionally violates patients' right to travel.

- 1979 -- MHLP publishes a handbook, *Combatting Exclusionary Zoning: The Right of Handicapped People to Live in the Community* (now out of print).

- 1982 -- Advocacy by MHLP for 15 national provider and consumer groups results in HUD's first designation of mentally ill people as eligible for Section 202 housing and funding of units specifically for them.

- 1985 -- A city cannot use its zoning power to discriminate against mentally retarded people, the Supreme Court holds in *Cleburne v. Cleburne Living Center, Inc.* MHLP was of counsel to attorneys for the Texas group home.

- 1985-1987 -- MHLP's annotated bibliography of studies and other materials documents that group homes for mentally disabled people have no negative effect on property values or neighborhood characteristics. Advocates and providers across the country use this research to win zoning battles.

- 1987 -- The McKinney Homeless Assistance Act allocates $45 million for transitional and permanent housing for mentally disabled people, especially deinstitutionalized people who are homeless.

- 1987 -- Settlement of *Lieberman v. Greenwich Board of Tax Review* prohibits tax policies that stigmatize mentally disabled people. MHLP brought the case in 1985 with the Connecticut Attorney General.

- 1987 -- Ashland, Kentucky, repeals discriminatory zoning actions excluding mentally ill people after MHLP filed a challenge in federal court.

- 1987 -- Congress passes its first housing bill since 1980, restructuring the Section 202 program and targeting 15% or $100 million (whichever is more) for projects for people with handicaps. The 1988 appropriation raises the proportion to 25%, providing funds for 2,550 units and targeting the extra money "primarily for the homeless deinstitutionalized mentally ill."

AND AHEAD . . . New challenges to exclusionary barriers; a pamphlet about HUD rules; a comprehensive manual of research, pleadings, sample zoning-commission testimony, funding approaches, etc.; model zoning codes; a data bank of advocacy successes (and problems to avoid); a training conference; a national coalition around community-living opportunities for children and adults with mental disabilities.

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INSTITUTIONS WATCH

In its first decade, MHLP established legal protections for mentally ill and mentally retarded people who were confined in public institutions or proposed for confinement through the civil commitment process. Today a national system of advocates is available to institutionalized mentally disabled people. Much of our work in this area is now in response to requests by these advocates for consultation, technical assistance, litigation backup and, in a few cases, serving as co-counsel.

MHLP today seeks new approaches to protect institutionalized people from neglect and new legal strategies to vindicate their rights.

BENCHMARKS

- 1972 -- Federal District Judge Frank Johnson orders minimum standards for care and treatment to enforce the right to treatment established in *Wyatt v. Stickney*.

- 1973 -- *New York State Association for Retarded Children v. Rockefeller* establishes the right to protection from harm for all residents of Willowbrook State School, a mental retardation facility. A 1975 consent decree lists detailed standards for habilitation at the institution and requires transfer of residents to community settings.

- 1975 -- In *O'Connor v. Donaldson*, the Supreme Court upholds the right of a non-dangerous mentally disabled person to freedom from custodial confinement.

- 1977 -- States name protection and advocacy (P&A) systems for developmentally disabled people, established under the Developmental Disabilities Assistance and Bill of Rights Act. For four years MHLP is a designated national support center for P&As.

- 1978 -- The *Wuori v. Zitnay consent order* establishes detailed standards for both institutional and community-based programs for mentally retarded people.

- 1979 -- A competent patient's right to refuse psychotropic drugs in a nonemergency situation is established in *Rogers v. Okin*, a Massachusetts case in which MHLP was *amicus*. State law later codifies the right.

- 1980 -- The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Department of Justice to bring actions in federal court to protect the constitutional rights of residents of state institutions.

- 1982 -- In *Youngberg v. Romeo*, the Supreme Court upholds a right to "minimally adequate" treatment for a mentally disabled resident to be free from restraint.

- 1985 -- Settlement of *Coe v. Hughes* establishes a state-funded system of legal assistance for patients in all of Maryland's mental institutions.

- 1986 -- The Protection and Advocacy for Mentally Ill Individuals Act funds state P&As to represent mentally ill people in all kinds of residential settings. NIMH and the P&As' national association choose MHLP to run the first national training for the new P&As.

- 1987 -- The settlement in *Kennedy v. Rehabilitation Centers, Inc.*, a civil rights case about a youth who died in a Medicaid-funded facility, wins recognition that a mentally retarded patient is entitled to the same quality of care as anyone else.

AND IN THE FUTURE . . . Guidelines for use of psychotropic drugs in ICF/MR facilities; protections in the civil commitment process; enforcement of the CRIPA mandate to protect institutionalized people; strategies to require the development of less restrictive placements.

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ADVOCACY FOR HOMELESS PEOPLE

In January 1985, MHLP convened a task force of staff members with national legal services support centers and programs for homeless people to design an action agenda for addressing some of the problems facing homeless people in the United States. The task force set two priorities: national legislation to help homeless people and prevent homelessness and a manual for shelter and food-program workers, to help them assist homeless people in obtaining federal and state benefits.

MHLP advocacy for homeless people has evolved in the context of the task force agenda. We stress access to housing in conjunction with other essential services, including mental health care where homeless people are -- not in clinics, but in shelters and on the streets. MHLP has developed the manual and is preparing state-specific versions.

BENCHMARKS

- December 1985 -- The Ad Hoc Committee on the Homeless of the District of Columbia Bar sponsors a workshop on legal issues facing homeless people. The workshop becomes the springboard for development of a volunteer lawyer program serving homeless people in city shelters.

- June 1986 -- The Homeless Persons Survival Act, drafted by MHLP and other task force members and promoted by the National Coalition for the Homeless, is introduced by Senators Moynihan and Gore, and in the House by Rep. Leland and 36 co-sponsors.

- July 1986 -- The Washington Legal Clinic for the Homeless is organized by the Ad Hoc Committee, with support by the D.C. Bar Foundation. As its trustee, MHLP helps it hire staff, train more volunteers and obtain other support.

- November 1986 -- Sections of the Survival Act become law as part of other legislation: a $5-million demonstration program for transitional housing for homeless people; $10 million in emergency shelter grants; protections against denial of eligibility for federal benefits for lack of a fixed address; a provision allowing shelter residents to qualify for food stamps; priority of homeless people for vocational services through the Job Training Partnership Act.

- December 1986 -- MHLP's manual on rights and entitlements of homeless people is completed. The first state version, for the District of Columbia, is used in training of Washington Legal Clinic volunteers.

- July 1987 -- The Stewart B. McKinney Homeless Assistance Act authorizes $500 million to help homeless people. The 1987 appropriation includes $45 million for transitional and permanent housing for disabled people, especially those who have been deinstitutionalized, and for community mental health services.

AND AHEAD . . . Production and distribution of more state manuals; technical support for bar associations replicating the Washington Legal Clinic; continued assistance to congressional staff drafting proposals for homeless people who are mentally ill.

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SOCIAL SECURITY ADVOCACY

MHLP began its Social Security advocacy program in 1982, as an effort to restore fairness to the federal government's administration of the supplemental security income (SSI) and disability insurance (SSDI) programs -- two entitlements under the Social Security Act on which many mentally disabled people rely for the necessities of life in the community. Through a coordinated campaign of public information, test-case litigation and policy advocacy, this program won broad reforms benefiting hundreds of thousands of mentally disabled people.

BENCHMARKS

- Fall 1981 -- MHLP convenes national disability organizations to discuss reports of severely disabled recipients' being abruptly and arbitrarily dropped from the rolls. *MHLP's ALERT* newsletter describes the problem and asks advocates, families and recipients for case histories.

- March 1982 -- National disability groups and the 100-member Save Our Security coalition issue a report, authored by MHLP, on wholesale terminations of eligibility.

- December 1982 -- In *Mental Health Association of Minnesota v. Schweiker (MHAM)*, the federal district court finds Social Security Administration policies illegal and orders restoration of benefits to class members in six midwestern states and reevaluation of all mental-disability claims under new and more appropriate standards.

- January 1983 -- SSA issues new instructions to its district offices for mental-disability determinations, based on the *MHAM* requirements. Later in the year the agency assembles a work group, including MHLP, to draft new standards and procedures for making these determinations.

- November 1983 -- The 8th Circuit upholds the district court's decision in *MHAM*.

- January 1984 -- In *City of New York v. Heckler*, the federal court orders SSA to restore benefits to mentally disabled people in New York State who had been denied eligibility or dropped from the rolls.

- April 1984 -- HHS Secretary Heckler halts all reviews of continuing disability.

- October 1984 -- Congress passes the Social Security Disability Benefits Reform Act.

- March 1985 -- SSA releases statistics showing effects of the *MHAM* order: a startling increase in the number of mentally impaired claimants found eligible in the 11 months after SSA sent its district offices new instructions for deciding these claims.

- August 1985 -- SSA issues new "listings of mental disorder" (standards and procedures for mental disability claims), developed by the work group.

- June 1986 -- In *Bowen v. City of New York*, a unanimous Supreme Court rejects arguments that plaintiffs should have pursued administrative remedies and orders SSA to pay retroactive benefits to all of the 14,000 class members found eligible under the new mental disability standards.

- October 1986 -- The Employment Opportunities for Disabled Americans Act provides continuation of Medicaid and special cash benefits on a diminishing scale for employed SSI recipients whose continued ability to work depends on them.

- June 1987 -- MHLP starts a program in New York to locate and assist the 14,000 *City of New York* class members in obtaining their back benefits and to design a model for them to invest in permanent housing.

AND IN THE FUTURE . . . Investigation of reported problems with SSA implementation of the Reform Act and the new mental disability standards; administrative advocacy or renewed litigation to assure compliance.

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NEW YORK
OUTREACH, ASSISTANCE AND HOUSING

In 1983 the Mental Health Law Project brought a class-action lawsuit in federal court on behalf of all mentally ill people in New York State who lost or were denied Social Security disability insurance (SSDI) or supplemental security income (SSI) benefits between 1980 and 1983. The lawsuit, now called *City of New York v. Bowen*, charged the Social Security Administration with using arbitrary and unlawful procedures to determine eligibility for these federal entitlements. In January 1984, the federal district court ordered SSA to redecide each case, using new and proper procedures. This decision was upheld in 1986 by the United States Supreme Court.

The Supreme Court's unanimous ruling will produce one of the largest entitlement-program awards on record. As many as 14,000 New Yorkers could receive retroactive benefits ranging from $3,000 to $30,000. The aggregate amount is estimated at $40 million or more.

To obtain these back benefits, members of the class in *City of New York* will have to reapply to SSA. They must show that their mental impairment, at the time their application was denied or their existing eligibility was terminated, would have met the new standards for disability. SSA is sending notices to all class members it has been able to identify, telling them how to apply for these benefits.

However, many class members may never see these notices. Others may have difficulty collecting the necessary evidence of their disability between 1980 and 1983. MHLP is operating a statewide outreach effort to locate class members and coordinate assistance to them in applying for their awards. Our New York staff is training mental health and social services providers, advocates, legal services and local government workers to assist the class members in applying for their back benefits and pursuing all appropriate appeals.

Many mentally disabled people who were dropped from SSA's rolls or denied benefits lost stable living arrangements or became homeless. Those who are SSI recipients (more than half) will lose current SSI benefits if they have more than $1,900 left nine months after receiving their awards. A home is one of the few assets that does not count against current benefits. MHLP therefore plans to create opportunities for class members to invest their back benefits in permanent housing.

With special support by the Robert Wood Johnson Foundation, MHLP is working with experts in housing development on a model to generate permanent supportive housing for members of the *City of New York* class and other mentally disabled people. MHLP will work with local mental health and social service agencies to coordinate the development of housing with health, support and vocational services needed by the residents.

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ADVOCACY FOR MENTALLY DISABLED WOMEN, MEMBERS OF MINORITY GROUPS AND ELDERLY PEOPLE

MHLP's advocacy for people with mental disabilities and little or no income, by establishing the rights of mentally disabled people and improving the delivery of services to them, has benefited all members of our constituent population. But additional and particular problems confront women, members of racial and ethnic minorities and elderly clients of the mental health system. We have begun to investigate some of these issues and explore litigation and policy strategies to establish the rights of these citizens. For example:

▪ For mothers and their children

Instead of providing services that could enable many mentally disabled women to care for their infants and young children, the public mental health system often arbitrarily separates mothers from their children. The separation is "voluntary," so it is often indefinite, leaving the mother with no legal recourse and the child in long-term foster care.

Working with lawyers appointed to represent children in foster care, we are attempting to enforce requirements in the federal Child Welfare and Adoption Assistance Act that efforts be made to reunify families. MHLP staff have also obtained funding for a pilot program in the District of Columbia--a residential and social-support program for mentally ill mothers with their infants.

▪ For members of racial and ethnic minority groups

In a mental health system geared to and run by a white, anglo culture, mentally disabled black Americans, hispanics, native Americans and people of other ethnic minorities are often misdiagnosed. The result for many is inappropriate treatment. And virtually all minority consumers of public mental health services receive inferior care, often provided in segregated settings by less trained and less qualified staff.

MHLP has begun a program, under a contract with the National Institute of Mental Health, to examine many of the specific problems that prevent low-income black and hispanic people from obtaining either adequate mental health services or effective advocacy and to encourage state protection and advocacy (P&A) systems to reach out to and serve these populations.

▪ For elderly people

Elderly people who seek mental health care are far more likely than younger clients to be institutionalized. And once in an institution or nursing home, there they stay because they are automatically considered incapable of benefiting from community living.

With support by the Retirement Research Foundation, MHLP's Dixon Implementation Monitoring Committee (a group of experts and community leaders charged with monitoring compliance with an order for the creation of a comprehensive community mental health system) has studied the needs of 300 elderly long-term patients in St. Elizabeths Hospital in the District of Columbia. We are now designing alternative programs to serve these patients in the community, with client and family participation in planning for the transition and training of both hospital and community staff.

Ex 17 1-27-89

Mental Health Law Project

2021 L Street NW Suite 800 Washington DC 20036-4909 [202] 467-5730

THE
MENTAL HEALTH LAW PROJECT'S
GENERAL ADVOCACY

Most of our other programs have evolved out of work begun through MHLP's general advocacy program. It includes research of new issues that come to our attention, litigation of issues that do not fall within our special programs and broad policy initiatives covering a range of areas. The primary focus of this program, however, is educational.

Our general program enables MHLP staff to respond adequately to a wide range of requests for consultation, legal analysis, assistance, referral, information and training -- more than a thousand a year from lawyers and other advocates, clients, families of disabled people, teachers and students, mental health and mental retardation and health care professionals, judges, policymakers, administrators, journalists and television producers, union officials, realtors, planners, philanthropists . . .the list often seems endless.

Some of these responses generate significant activity -- which sometimes leads to a new MHLP program. Examples are the advocacy-support centers MHLP has operated: for state protection and advocacy (P&A) systems for developmentally disabled people, with federal grants between 1977 and 1981, and for legal services field offices, under contract to the Legal Services Corporation from 1980 through 1985. Another example is our current Community Watch program, which grew out of requests by parent groups, advocates and providers for information and assistance in overcoming housing discrimination.

Other requests lead MHLP staff members to research and write articles for publication in professional journals (in the field of mental health as well as law), and to serve on the governing boards of related organizations and as members of important public-policy committees and task forces. MHLP staff attorneys, in particular, often speak or take part in panels and workshops at conferences sponsored by the major national organizations working with disabled people. We accept these invitations, and similar requests by local groups, whenever time allows and the topic is germane to our work.

An especially critical general program activity is fundraising for all MHLP operations. Most support for our work is contributed by private foundations in general program grants ranging from $1,000 for one year to $2 million over five years. However, we are gratified that more than 3,000 individuals make personal contributions to MHLP each year. Other friends support MHLP through workplace-giving programs (federal employees in the Combined Federal Campaign, Maryland State employees in their state's contribution drive, and associates in Washington law firms through a campaign by the Alliance for Justice). Each donor of more than $25 receives *The Mental Health Law Project's UPDATE*, published six times a year--another function of our general program.

EXHIBIT 18
DATE Jan. 27, 1989
HB 197-Rep. Addy

OFFICE OF THE GOVERNOR

MENTAL DISABILITIES BOARD OF VISITORS

TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-3955

HELENA, MONTANA 59620

TESTIMONY ON HOUSE BILL 197

Mr. Chairman, Members of the Committee, my name is Mary Gallagher. I am a staff attorney for the Mental Disabilities Board of Visitors Legal Services Program at Montana State Hospital in Warm Springs. Our office is charged with representing patients at the hospital, and through contract with the Mental Health Protection and Advocacy Program, I receive referrals regarding the commitment of youth throughout the State.

The primary goal of HB 197 is to clarify the procedures and statutory standards under which a minor may be "voluntarily" committed to a mental institution. I believe this clarification is necessary. However, this bill also reduces, unnecessarily, some of the statutory protections for minors which currently exists in Montana law.

I would like to note that although this bill is labeled "A Bill For the Voluntary Admission of Minors", an admission of a minor involves the "consent" of the parents, the child and the facility. The current voluntary commitment law acknowledges the need for the consent of these parties at the initial admission stage and it provides for the minor to have a voice when he seeks to be released from the institution. This bill does not allow the voice of a minor under 16 to be heard once the minor is in the facility.

Additionally, this bill does not adequately address an important concern of whether a minor gives voluntary consent or is coerced into signing an admission form. I have had contact with minors who have been institutionalized on so-called voluntary placements when in fact they never wanted to be placed into an institution. When a minor is not seriously mentally ill, such a placement is less than therapeutic by most any standard. Statutory access to an advocate or other person could help a minor to independently access his rights. A fundamental liberty interest and a right to consent to a voluntary placement mean little if minors are not informed of these rights, are not required to sign off on the admission form (minor under 16), or are coerced into entering an institution.

If the goal of this bill is to provide for the mental health needs of our youth, these treatment needs can only be enhanced by ensuring that the liberty interests of our more vulnerable citizens are adequately addressed. I have attached a list of proposed amendments which we believe will address the concerns that Ms. Stefan and I have discussed.

Thank you for the opportunity to address these issues with you.

EXHIBIT 18
DATE 2-27-89
HB 197

Proposed Amendments regarding House Bill 197

53-21-112 PROPOSED AMENDMENTS

53-21-112 (1) REPLACE "PROFESSIONAL PERSON" WITH "LICENSED PSYCHIATRIST OR PSYCHOLOGIST" AND ADD "NOT ASSOCIATED WITH THE ADMITTING FACILITY"

(1)(a)(i) AFTER "SERIOUSLY MENTALLY ILL " ADD "AS DEFINED IN 53-21-102".

(1)(a)(ii) DELETE "(ii) AND EMOTIONALLY DISTURBED CHILD AS DEFINED IN 53-4-101

53-21-112(4)

RENUMBER FIRST SENTENCE AS 4 (a) AND AFTER "PRESCRIBED BY THE" DELETE "FACILITY" AND REPLACE WITH "DEPARTMENT OF INSTITUTIONS" AND ADD "SHALL BE COMPLETED PRIOR TO ADMISSION OF THE MINOR".

RENUMBER SECOND SENTENCE AS 4 (b) AND AFTER "UNDER 16 YEARS OF AGE" ADD "AND MINOR UNDER 16 YEARS OF AGE".

RENUMBER 4 (a) AS 4(b)(i) AND AFTER "THE WRITTEN CONSENT" ADD "OR REFUSAL".

RENUMBER 4(b) AS 4(b)(ii) AND AFTER "THE WRITTEN CONSENT" ADD "OR REFUSAL".

ADD NEW SUBSECTION: "4(b)(iii) THE FACILITY SHALL VERIFY ON THE ADMISSION FORM THAT THE MINOR HAS BEEN INFORMED OF THE RIGHT TO GIVE OR WITHHOLD CONSENT TO ADMISSION TO THE FACILITY AND THE CONSEQUENCES OF EACH DECISION HAVE BEEN DISCUSSED WITH THE MINOR. NOTICE OF THE SUBSTANCE OF THIS SECTION AND THE RIGHT TO COUNSEL SHALL BE SET FORTH IN A CONSPICOUS LOCATION ON THE FORM.

ADD NEW SUBSECTION: "4(b) (iv) THE REPORT REFERRED TO IN 53-21-112(2) SHALL BE ATTACHED TO THE ADMISSION FORM.

ADD NEW SUBSECTION: "4(b)(v) THE ADMISSION FORM SHALL ALSO STATE THAT THE MINOR SHALL HAVE THE RIGHT TO CONTACT ANY ADVOCACY SERVICE, AGENCY,ATTORNEY OR OTHER PERSON OF THEIR CHOICE TO INDEPENDENTLY DISCUSS THE POTENTIAL ADMISSION AND PROVISIONS SHALL BE MADE BY THE FACILITY FOR THE MINOR'S ACCESS TO THE ABOVE.

EXHIBIT 18
DATE 2-27-89
HB 197

53-21-112(6)

6 a(i) after "minor himself" delete "if he is 16 years of age or older"

6 (b) after "16 years of age" add "and the minor under 16 years of age";

Change "6" months to "3" months.

Add "A periodic review must occur monthly and may not be waived".

Label the last sentence as 6(c) and DELETE "COUNSEL MUST BE APPOINTED " and ADD "THE DISTRICT COURT SHALL APPOINT COUNSEL"

53-21-112 (7)

after "or guardian" either delete "or other person" or add "or other person legally responsible"

delete wording after "right to counsel" and up to "..shall be explained" since this is stated in proposed amendment subsection § 4 above.

PROPOSED NEW SECTION

"Facility to Maintain Admission Records"

A mental health facility may not accept a minor for treatment unless the provisions of 53-21-111 and this section have been followed. The facility is responsible for maintaining records of compliance with the requirements of 53-21-111 and this section. The Mental Disabilities Board of Visitors shall have access to these records and may monitor these provisions pursuant to 53-21-104.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 185 DATE JAN. 27, 1989

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Thomas M. Posey	17 W. Meadow Billings, MT	X	
Chuck O'Reilly	Mt Sheriffs & Peace Officers	X	
Jean E. Sharkey	6407 Siesta Missoula	X	
Lucy M Roberts	President Missoula-AMI 2001 Wylie Missoula	X	
Lowry Risdahl	2405 39th St Missoula, MT	X	
Laura Risdahl	2405 39th Missoula, MT	X	
Howard W. Gipe	Flathead Co. Comm	✓	
Susan Stefan	Mental Health Law Project Washington DC	X	
John McCrea	Mental Health Pro & Adv.	X	
Mary Gallagher	MD Board of Visitors	X	
Kelly Moore	Board of Visitors	✓	
Tom [illegible]	Sheriffs Assoc.		
Winn Fred Stark	AMI Parent		
Kathy Roberson	119 Garland St. Kalispell MT		
David Mosley	President Flathead Consumer Council	X	
Jeff Murphy	Mental Health Assoc. MT	X	
Joan Kelbich	Mont Mental Health Couns.	X	
Mike Sherwood	MTLA	X	
Curt Petty	Mt Sheriffs & Peace Officers	+	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 265 DATE JAN. 27, 1989

SPONSOR REP. STRIZICH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Howard W Gipe	Flathead Co.	✓	
Mona Jamison	Helena	✓	
Leslie Taylor	Dept of Family Services	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 232 DATE JAN. 27, 1989

SPONSOR REP. DAVE BROWN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Judson Morris	MTCo.		
Tom Hannon	Helena - Mt Chamber	✓	
Lori Maloney	Butte, Mt	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 197 DATE JAN. 27, 1989

SPONSOR REP. ADDY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Leslie Taylor	Dept of Family Services	✓	
Shaun Byrne	Rivendell of Billings	✓	
Mary Gallagher	MH Board of Visitors		X
Susan Stefan	Mental Health Law Project		X
Kelly Moore	Board of Visitors		X
Cliff Murphy	Mental Health Assoc MT.		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 201 DATE JAN. 27, 1989

SPONSOR REP. GARY SPAETH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
WALLY JEWELL	MT. MAG. ASSOC.	*	
ALEC HANSEN	MLCT	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.