

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on March 1, 1989, at 8:02 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

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

Announcements/Discussion: Rep. Brown announced the committee would hear SB 38, SB 66, SB 314, SB 199, SB 266 and then take executive action.

HEARING ON SENATE BILL 38

Presentation and Opening Statement by Sponsor:

Sen. Regan opened the hearing saying that SB 38 is an act that requires the Department of Institutions to develop the comprehensive plan for a womens' prison. This arose because of a report that was given to the Legislative Finance Committee. It was called to their attention that the old Nurses dormitory which had been converted to a prison in 1982 was no longer adequate. It had been remodeled to accommodate 30 inmates. The population was hovering around 45 inmates. They can't control the population. They can deny admissions or have early release but even that is not an option because the pre-release beds that are provided for women are filled to capacity and there are twice as many pre-release beds for women as there are for men. It is inadequate in size and in service. It was a temporary solution made with the cost factor in mind. The heart of this bill is to consider building a new facility, as well as other alternatives. They do not necessarily have to build a brand new prison, but they must provide a facility that will give adequate educational opportunities, treatment and employment opportunities. Furthermore, such a facility would comply with the standards published by the American Correctional Association's commission on accreditation for corrections. They are to report back to the next legislature and will then be faced with some action. This will not be an expensive project. It is already being financed as part of a federal grant. The Department of

Institutions, along with the Criminal Justice and Correction Advisory Council will be involved in the study and hopefully come up with some good conclusions.

Testifying Proponents and Who They Represent:

John Ortwein, Montana Catholic Conference
Dan Russell, Administrator of Division of Corrections
Brenda Nordlund, Montana Womens Lobby
Mignon Waterman, Montana Association of Churches

Proponent Testimony:

John Ortwein spoke in favor of SB 38. (See EXHIBIT 1)

Dan Russell spoke in support of SB 38. He told the committee the department now has two facilities which house female inmates, the Billings pre-release center which was opened in 1978 as a minimum security community program which houses twelve women and the Womens Correctional Center which was opened in May of 1982 using the old nurses dormitory on the campus of the Montana State Hospital at Warm Springs. The Womens Correctional Center was designed to house 30 women and yesterday there were 48 women in that facility. The adult female population has increased steadily since 1981. There has been a 141% increase in the population from 1981 to the present. Given those rates of increase their future female population by 1991 will be 79 women and at least 103 by 1993. They've outgrown the Womens Correctional Center and expansion of that facility is simply not possible.

Brenda Nordlund said the Montana Womens Lobby thinks it is very important that SB 38 be passed. Women can no longer be treated as an afterthought to the criminal justice system. The female inmate population is growing and has reached its institutional limits. SB 38 provides an alternative to study a measured approach to how they will deal with the burgeoning population of female inmates in the state. The current restrictions on space are causing limitations on visitation with family. If a measured study is not conducted there are 8th amendment violations awaiting.

Mignon Waterman spoke in favor of SB 38. The Montana Association of Churches feels it is important that any programs that deal with prisoners have long term solutions and programs for rehabilitation. There really is no alternative in Montana right now. The situation must be studied.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Sen. Regan closed.

DISPOSITION OF SENATE BILL 38

Motion: Rep. Wyatt moved SB 38 BE CONCURRED IN. Rep. Addy seconded the motion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion and CARRIED with a unanimous vote.

Motion: Rep. Addy moved SB 66 BE CONCURRED IN. Rep. Eudaily seconded the motion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion SB 66 BE CONCURRED IN CARRIED with Rep. Hannah voting No.

HEARING ON SENATE BILL 314

Presentation and Opening Statement by Sponsor:

Sen. Regan opened the hearing saying that it's somewhat ironic that we are celebrating our centennial and for 25 years we've had a new constitution which prohibits discrimination and yet we find country clubs in Montana that prohibit membership by women. In today's world women have entered the professions in business and yet they are being denied access to a facility where businesses are transactions. Many corporations by memberships for their executives and when it comes to a woman, you can't buy the membership because she can't get in the club. This bill is patterned after a New York ordinance which was challenged and withstood that challenge in the U.S. Supreme Court. So, the bill has been proven to be a workable solution. Instead of depending on the Human Rights Commission or judicial review in the court, a better thing to do is to have the state refuse a liquor license to a club that discriminates.

Testifying Proponents and Who They Represent:

Brenda Nordlund, Montana Womens Lobby
Ann MacIntyre, Administrator of Human Rights Division

Proponent Testimony:

Brenda Nordlund told the committee there are three reasons why SB 314 should be passed. First, we have a constitutional

mandate. Contrary to what our founding fathers said, some truths are not self evident. While it's true in the State of Montana that we have a prohibition against discrimination on the basis of sex, it's evident that that proscription alone is not enough to insure that discrimination on the basis of sex will no longer continue. Women are denied business and social opportunities because they are denied membership to country clubs. Women should be allowed the access that men are allowed. There is no public benefit derived from continued exclusion of women from clubs.

Ann MacIntyre said SB 314 would provide some important clarifications to the existing public accommodations provisions of the Human Rights Act. Cases have been filed with the commission in the past over the issues of country clubs.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Addy asked if there is an immediate effective date on passage and approval. Sen. Regan said yes that would be appropriate. Discrimination should not be allowed to continue.

Rep. Rice asked why fraternal organizations are exempt from the provision pertaining to liquor licenses. Sen. Regan responded that where there is a demonstrated need to knock down a barrier, it should take place. However, there are fraternal organizations and there is the right of free association. This bill is narrowly drawn to allow admission into something that really is a public club.

Rep. Addy asked why there is a difference between a country club and a fraternal organization. He said virtually every Elks club in the state has a bar that is open to the public and most of them have a restaurant and that is not a fraternal function, it too is commerce. Why should they be excluded? Sen. Regan said she was trying to be reasonable in drafting the bill. She said it is not her intent to invade the Lions, Elks, Moose and other such clubs, it is simply addressing clubs of 100 or more.

Rep. Brown said he has a concern given all the DUI laws and other strong measures of that regard, it seems entirely possible that we'll be in a prohibition situation which would mean without a liquor license they could discriminate, right? Sen. Regan said without a liquor license they are pretty

much out of business.

Closing by Sponsor: Sen. Regan closed.

DISPOSITION ON SENATE BILL 314

Motion: Rep. Brooke moved SB 314 BE CONCURRED IN, motion seconded by Rep. Wyatt.

Discussion: Rep. Aafedt commented that if there was a club in Great Falls that didn't want him as a member, he wouldn't want to be a member. There was brief discussion regarding whether fraternal organizations should be excluded from the bill. The consensus was to leave the bill as it is written, excluding fraternal organizations with less than 100 members.

Amendments, Discussion, and Votes: None.

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

HEARING ON SENATE BILL 66

Presentation and Opening Statement by Sponsor:

Sen. Jacobson opened the hearing saying that SB 66 was introduced at the request of the Montana Education Association due to some concerns they had in Missoula. It had been the practice around the state to allow people who work with children who are going to be interviewed in an abuse case to allow a school personnel representative to be at the interview. This was mostly for the comfort of the child who doesn't usually know the rest of the abuse team. There was an Attorney General's opinion in April of 1987 saying that school staff members would not be allowed to be at the interviews because they were not specifically named in the laws. This bill is a permissive bill to allow, when it's appropriate, for the social worker, the county attorney or the peace officer conducting the interview to allow school personnel to be there.

Testifying Proponents and Who They Represent:

Toni Niklas, Montana Education Association
Gail Graham, Office of Public Instruction
John Madsen, Department of Family Services

Proponent Testimony:

Toni Niklas spoke in favor of SB 66 on behalf of the Montana Education Association (See EXHIBIT 2). Ms. Niklas also presented a letter of written testimony from Linda Zimmerman, a school psychologist for Missoula School District #1 (EXHIBIT 3). She also provided a copy of the

opinion from the Montana Administrative Register (EXHIBIT 4).

Gail Graham rose in support of SB 66 saying that during the trauma of being involved in a child abuse investigation a child needs the support of the school and of special school employees. That is the very least we can do for that child.

John Madsen spoke in favor of SB 66 (See EXHIBIT 5).

Testifying Opponents and Who They Represent:

Walt Dupea, Citizen of Big Fork

Opponent Testimony:

Walt Dupea spoke in opposition to SB 66 (See EXHIBIT 6).

Questions From Committee Members:

Rep. Addy asked John Madsen how social workers feel about the requirement to have teachers present at the interview. John Madsen said the language in the bill is permissive. It allows the social worker to ask the teacher to be present during the interview and that is acceptable to social workers as long as they have the ability to make the decision.

Rep. Eudaily said he has a problem with the wording on page 2 that says "if considered appropriate by the social worker, county attorney or peace officer then the school employee may be in on the interview". He said he's had these people come into his building many times and while he didn't know what they were there for, neither did the child. Many times they are strangers to the child. He asked why the rights of the child don't demand that somebody be there rather than if the social worker or policeman wants somebody there. He said he wouldn't let one of those interviews go on in his school without a school employee there.

Mr. Madsen said there is an issue of confidentiality of the family. It is very necessary to keep the information and allegations protected and to protect the family. Only those people who absolutely need to know should have that information. Any time that insurance or protection can be provided to the child so that he will disclose the information, we like to have a person there.

Closing by Sponsor: Sen. Jacobson said the bill would allow for any school employee who was chosen to be present at the interview and would not refer only to teachers. This bill is simply attempting to put into law what is now being practiced.

DISPOSITION OF SENATE BILL 66

Motion: Rep. Addy moved SB 66 BE CONCURRED IN, motion seconded by Rep. Eudaily.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion and CARRIED with Rep. Hannah voting No.

HEARING ON SENATE BILL 199

Presentation and Opening Statement by Sponsor:

Sen. Walker opened the hearing saying that SB 199 is a bill that makes, by statute, the office of the securities commission a criminal justice agency. They need that designation so they can participate with other people who fall within the Criminal Justice Act.

Testifying Proponents and Who They Represent:

Susan Witte, State Auditor's Office

Proponent Testimony:

Susan Witte spoke in support of SB 199 (EXHIBIT 7). Ms. Witte also provided the committee with seven letters in support of the bill (See EXHIBITS 8-14).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Hannah asked Sen. Walker why the Governor can't just designate this. Sen. Walker said he does but during the transitional phase when a new Governor is coming in there is a phase in which they may not get the appointment for a period of time. They don't want this to hold up an investigation.

Closing by Sponsor: Sen. Walker said this is a necessary piece of legislation. It's a consumer protection agency and we do want the dissemination of information going from one body to another.

DISPOSITION OF SENATE BILL 199

Motion: Rep. Strizich moved SB 199 BE CONCURRED IN. Rep. Darko seconded the motion.

Discussion: Rep. Eudaily said if this is statutory the person in charge, the securities commissioner, would be a vacant position until the new one was appointed or some action was taken by the new Governor. They couldn't do anything anyway. Rep. Brown said the State Auditor is the securities commissioner so there wouldn't be any loss in transition there.

Rep. Hannah asked if there has ever been a problem with this authority being denied. Susan Witte said there hasn't been a problem with getting the designation at the beginning of every term. The reason it would be better to be by statute is that it insures the ongoing confidentiality.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion and CARRIED with Rep.'s Hannah and Eudaily voting against the motion.

HEARING ON SENATE BILL 266

Presentation and Opening Statement by Sponsor:

Sen. Walker opened saying that SB 266 has a long history. This bill would deal with people who sell tobacco products, and with minors who purchase and/or possess tobacco products. There are enough people who die every day from cancer related to tobacco products to fill two 747 jets. Almost 700 people a day die from the use of tobacco products. We must try in all earnest to protect young people. That is what this bill attempts to do.

Testifying Proponents and Who They Represent:

Tom Maddox, Montana Association of Tobacco and Candy Distributors
Charles Brooks, Montana Retail Association
Toni Jensen, Rocky Mountain Tobacco Free Challenge
Earl Thomas, Director of American Lung Association

Proponent Testimony:

Tom Maddox spoke in favor of SB 266. He said this is the right thing to do for the children of Montana and it's the right thing to do for parents who need help in counseling their children. In the juvenile section of the code, there is a section that gives a clear mandate. 41-3-101 says, "It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by those responsible for their care and protection." The philosophy and guidelines

for protection of our children is clear. This bill is the right thing to do.

Charles Brooks said that SB 266 is a workable bill for the retail community. He said the Montana Retail Association supports the bill and urges the committee to do so also.

Toni Jensen spoke in favor of SB 266 (See EXHIBIT 15).

Earl Thomas, on behalf of the American Lung Association, spoke in support of SB 266 (EXHIBIT 16).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Mercer asked if the effective date should be moved up to the start of school instead of October 1 so that there isn't a problem with rule changes during the school year. Sen. Walker said that was a good idea.

Rep. Brooke asked Sen. Walker if the grocery stores and dispensers of tobacco products would be carding people. Sen. Walker said yes, he would assume that they would.

Rep. Brown asked Sen. Walker if children would be able to buy tobacco products for their parents or grandparents. Sen. Walker said no. An adult over the age of 18 would have to make the purchase.

Rep. Addy asked Mr. Maddox what hardships would be imposed upon his principals if we were to prohibit vending machines in areas frequented by minors unaccompanied by adults. Mr. Maddox said his principals are not vendors, they are warehouse distributors.

Closing by Sponsor: Sen. Walker said that 41 other states already have similar laws. He provided a statistical handout (EXHIBIT 17). He said he talked to the Senate Pages to get a youth perspective of the bill. They said it was a good bill that was long overdue. When asked why, they talked about things like not being able to take a drink in the drinking fountain at school without seeing cigarette butts and chew. He also talked to teachers also. We are charged by statutes to make sure that the welfare of children is a top priority.

DISPOSITION OF SENATE BILL 266

Motion: Rep. Addy moved SB 266 BE CONCURRED IN. Rep. Darko seconded the motion.

Discussion: Rep. Brown said there are all kinds of public problems with this bill. If a child is sent into the grocery store to get six items and the parent smokes, the child would not be able to get the cigarettes along with the dog food and other items. He said he doesn't feel a child smoking in school is sufficient to bring in police officers.

Rep. Boharski commented that along the same lines a child cannot pick up a six pack of beer at the grocery store either, nor can he sit in the school bathroom drinking beer.

Rep. Brooke said that as a parent this would just add to the burdens they already have when they have teenage children.

Rep. Gould said as soon as you make it against the law for a teenager to have a pack of cigarettes, he'll see if he can get away with it. There are enough problems with teenagers now that the situation doesn't need to be complicated.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Gould made a substitute motion to TABLE SB 266, motion seconded by Rep. McDonough. A Roll Call Vote was taken and CARRIED with 9 voting aye, and 8 voting nay.

ADJOURNMENT

Adjournment At: 9:35 a.m.


REP. DAVE BROWN, Chairman

DB/je

4808.min

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 1, 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

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 38 (first reading copy -- white) be concurred in .

Signed: _____
Dave Brown, Chairman


[REP. WYATT WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 314 (first reading reference copy -- blue) be
concurred in .

Signed: 
Dave Brown, Chairman

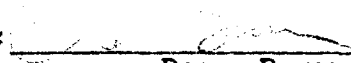
[REP. BROOKE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 66 (first reading reference copy -- blue) be
concurred in .

Signed: 
Dave Brown, Chairman

[REP. ADDY WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 199 (first reading reference copy -- blue) be concurred in .

Signed: Dave Brown, Chairman

[REP. STRIZICH WILL CARRY THIS BILL ON THE HOUSE FLOOR]



The Big Sky Country

3-1-89

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

HELENA ADDRESS:
CAPITOL STATION
HELENA, MONTANA 59620

HOME ADDRESS:
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE: (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
LOCAL GOVERNMENT
RULES

TO: John Vincent, Speaker of the House

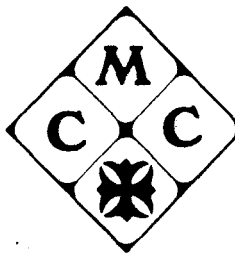
FROM: Dave Brown, Chairman, House Judiciary Committee

DATE: March 1, 1989

SUBJECT: Senate Bill 266

The House Judiciary Committee has TABLED SB 266.

DB/je



Montana Catholic Conference

EXHIBIT

DATE 3-1-89

38

March 1, 1989

CHAIRMAN BROWN AND THE HOUSE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. In this capacity I serve as the liasion for the two Roman Catholic Bishops of Montana on matters of public policy.

In recent years, the "get tough on crime" mentality has resulted in enormous prison population growth. Much attention in recent months was given to the State Prison in Deer Lodge, while the women's facility in Warm Springs was widely overlooked.

We support expanded education, treatment, and employment training opportunities for the women at Warm Springs. We also support other alternatives than confinement for women inmates, including intensive supervision whenever applicable.

Due to the increased inmate population and condition of the facility, we support the drafting of a comprehensive plan to most effectively house female inmates.



Tel. (406) 442-5761

P.O. BOX 1708

530 N. EWING

HELENA, MONTANA 59624



Mr. Chairman, members of the committee:

My name is Toni Niklas and I am representing the Montana Education Association.

This bill was initiated by our vice president, Margo Voermans, who is a third grade teacher in Missoula. Due to circumstances beyond her control, she is not able to testify here today. She has asked that I speak for her in support of this legislation.

I would like to give you a brief overview of what has happened in the past as far as teachers involvement in neglect cases, what happens now, and why we would like to change the existing law.

As you well know, teachers, by the sheer nature of their position, develop strong bonds of mutual trust and understanding with their students. As a result, some students regard their teachers as their strongest ally. In the case of abused children, the teacher may be the only person to turn to in an effort to seek some help or relief from the situation. A teacher may be the only person in that child's life that is trusted enough to disclose such painful information as sexual or physical abuse.

Current law mandates that if information regarding abuse and neglect is disclosed, the teacher or school employee must immediately report it to Family Services.

From there, a social worker schedules an interview with the child at the school to further investigate the case.

In the past, teachers would accompany the child to the interview to provide for a source of support and encouragement to the child. An interview such as this is often times the most frightening part of seeking relief from an abusive situation. The social worker is a stranger and more often than not, the child will retreat to within him or herself and refuse to give any information. Having the trusted teacher there for support made the child feel less vulnerable and more comfortable with giving the pertinent information.

In 1987, the Attorney General stated that having a school staff member present at the interview was unlawful and, in fact, was prohibited under the current code.

So now, teachers and school personnel are not allowed to participate in matters of abuse and neglect outside of reporting the information to Family Services.

As you can well imagine, we now have cases where an individual will tell a trusted school employee about their abuse, but when it comes time for the interview, it is too difficult and the risk is too great for them to talk and disclose information to the social worker. When this happens the process of helping the child is greatly hindered, if not stopped altogether.

We have come up with this legislation in order to allow teachers or other school employees that may gain the confidence of the children to participate in these interviews of abuse and neglect. A teacher can then encourage the child that the social worker is a friend and only wants to help them. Since the teacher is the one the child trusted in the first place, it makes it a little easier for the child to have confidence in a total stranger, if their trusted friend is present for the interview.

The bill is relatively simple. It addresses what has happened in the past, takes care of the Attorney General's opinion, and will allow for better care of children. We ask for your support and concurrence on SB66.



EXHIBIT 3

DATE 3-1-89

SB 66

215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

January 9, 1989

To Whom It May Concern:

I am writing in support of Senate Bill 66, sponsored by Jacobson. As a school psychologist for the past eight years, I have experienced many situations in which an abused child would have more comfortably and accurately disclosed their experiences to a social worker had I or their teacher been present to offer emotional support.

One specific case comes to mind, involving a 14 year old female, residing in the Bitterroot Valley. This girl had been physically and sexually abused by her father. She freely discussed this with me and her P.E. teacher, but would not tell the social workers after we reported it. I warned them that I felt she may harm herself if they didn't get her out of the home, but still she would not talk to the social workers. In one month she shot herself in the stomach. While in the hospital she finally told an M.D. and social worker.

I feel this could have been avoided, had I been allowed to be present at the initial social service interview.

Sincerely,

Linda Zimmerman, Ph. D.
School Psychologist
Missoula School Dist. #1
Missoula, MT



EXHIBIT 3
DATE 3-1-89
SB 66

215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

January 10, 1989

To Whom It May Concern:

I am writing to express support for Senate Bill 66 to be reviewed by the Education Committee on 1-11-89. As a social worker in the public school district I act as a consultant to teachers in the area of child abuse and neglect. It has come to my attention in almost every reported case that school personnel are excluded when the child is interviewed by the county social workers. This appears to cause conflict for both the child and the teacher who has reported the abuse. The child views the teacher as a known entity and someone he/she can trust. It is apparent to me that the county worker who is a stranger to the child would get a much more accurate set of details from the child if that child's comfort level is increased by the presence of the known teacher.

Thank you for considering this piece of legislation that I strongly endorse.

Sincerely,

Marianne Moon, MSW
Licensed School Social Worker

MM/dh

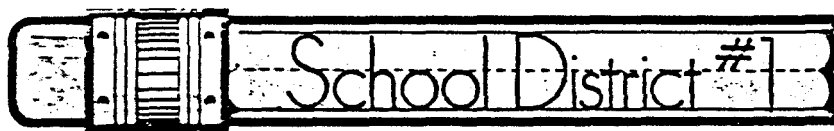


EXHIBIT 3
DATE 3-1-89
HB SB 66

215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

January 10, 1989

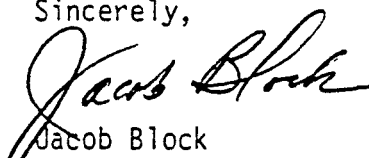
Senator Swede Hammond, Chairman
Senate Education Committee
State Capitol
Helena, MT 59620

Dear Senator Hammond:

Missoula School District #1 was informed by Attorney General Mike Greely on April 22, 1987 that school staff members are prohibited from being present in a child's interview by Division of Family Services (formerly Social Rehabilitation Services) personnel investigating child abuse or neglect cases. Attorney General Greely further informed us that although the Legislature had amended the applicable statutes regarding access to abuse or neglect records, school staff members were not expressly mentioned in these amendments. It was further suggested that we contact legislators regarding proposed changes.

Prior to this interpretation it had been the practice of School District #1 to allow the child the option of having a school employee present when conferring with DFS (SRS) officials. Notwithstanding Attorney General Greely's opinion, the District continues to have concern that DFS personnel who arrive at school for an interview are regarded as total strangers by the children. District personnel clearly understand the need for confidentiality; however, students who disclose such information need the opportunity of having the support of a trusted teacher, counselor or other school employee. It is, therefore, requested that the Legislature consider amending the appropriate provisions, Sections 41-3-108, 41-5-201, 41-3-202 and 41-3-205, Montana Codes Annotated, to allow DFS personnel to grant school personnel access to the initial conference in cases of child/abuse neglect.

Sincerely,


Jacob Block
Superintendent

DATE 3-1-89

MB 66

-164-

VOLUME NO. 42

OPINION NO. 2.

CHILD ABUSE - School staff members attending investigative interviews;
PRIVACY - School staff members attending investigative interviews of reportedly abused and neglected children;
SCHOOL DISTRICTS - Policy requiring school staff members to attend investigative interviews of reportedly abused and neglected children;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - School staff members attending investigative interviews of reportedly abused and neglected children;
TEACHERS - Attending investigative interviews of reportedly abused and neglected children;
MONTANA CODE ANNOTATED - Title 41, chapter 3; sections 41-3-108, 41-3-201, 41-3-202, 41-3-205;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 49 (1986).

Held: A school district policy requiring that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is prohibited.

19 January 1987

Scott B. Spencer
Deputy Lincoln County Attorney
Court House, 512 California Avenue
Libby MT 59923

Dear Mr. Spencer:

You have requested my opinion on the following issue:

Whether a school district policy which requires that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is in conflict with section 41-3-205, MCA.

Montana Administrative Register

3-2/13/87

March 1, 1989

TESTIMONY IN SUPPORT OF SB66

"AN ACT ALLOWING SCHOOL EMPLOYEES TO PARTICIPATE IN INTERVIEWS OF CHILDREN IN KINDERGARTEN THROUGH 8TH GRADE IN ABUSE OR NEGLECT INVESTIGATIONS"

John Madsen, Department of Family Services

The Department of Family Services supports the amendment as proposed in SB66.

During the course of child abuse investigations, it is sometimes necessary to interview a child at school. It would be helpful in some cases to be able to have the teacher or nurse -- a school employee the child respects and feels comfortable with-- present during the interview. The subject matter of many of the interviews is quite often uncomfortable for the child to discuss, and a person who the child knows can help the child feel more at ease in disclosing the information necessary to determine if the child is an abused or neglected child.

The investigating social worker must have the authority to decide if a school employee is to be involved, and to designate which school employee is to be involved.

EXHIBIT 6
DATE 3-1-89
SB 66

Walt Dupea

8585 Hwy. 35 - Bigfork, Montana 59911
406-837-5753

Ref. SB-23 - SB-66

Honorable *Dave Brown*

No one wants to see anyone abused, especially a child.

We must also be careful not to abuse parents.

I have talked to several people in Western Montana, who have been accused of Child Abuse and without exception they tell me they have been intimidated. All have told me that unless they could get some guarantee from reprisal, they would not testify.

It is proven, that at least one half of sexually abused accusations are false. In Montana your name still stays on the records of suspects.

In order to protect the innocent we need to make Video Tapes of all interviews and they must be made available to all.

The following statement must be included in these bills:

"The first, and subsequent, interviews of the child shall be videotaped, and said videotape recording shall be available for both the prosecution and the defense of the accused."

We must have a due process, so a person can have Trial by Jury of peers, and be able to subpoena evidence to prove innocence.

I am enclosing papers that illustrate and verify my arguments.

If anyone wants the complete text of my research I will supply it.

Thank you for helping to improve these bills.

Sincerely,

Walt Dupea

Walt Dupea

I received a letter from a social worker saying she wanted to visit me on a certain date at a certain time. This has been within the last three years. The letter gave no explanation as to why she wanted to visit. She did not show up for the appointment nor did she call. I knew of no reason why she wanted to see me. About 7 - 10 days later she showed up at my home. (There never was any phone call or contact from her during that time.) She then told me that she had heard about one of my daughters having been sexually molested in the past. (The courts had satisfactorily dealt with the person who had done this.) She said she wanted to ask me some questions. I have no idea how she knew about this episode involving my daughter. In the course of questioning she asked me if I had ever been sexually molested. She asked if my daughter had had any psychological counseling for her experience. I replied that she hadn't, but that my daughter was told by me that she could pray to God about it and talk to any Christian adult if she wanted. The social worker gave me a very questioning look. She didn't question verbally, though, what I said. I was told that I should take her in for psychological counseling. After this, the social worker left. She called back in about 30 days to ask if I had decided to take my daughter in for the counseling. I said "No!" The social worker then proceeded to tell me very forcefully that if I didn't take my daughter in that she and my other children would be taken away from me. The worker sounded angry and incensed that I had not immediately agreed with her. I then told her that I wanted to talk to my pastor first. The worker then just kind of grunted. At no time did the worker tell me by what authority she could take away my children. I decided soon thereafter to take my daughter in. First I alone talked to the psychologist. The second time I took my daughter in and sat in on the session with the psychologist. The psychologist was very well satisfied that my daughter did not need psychological counseling and that our Christian approach to this matter was entirely satisfactory.

(continued)

The psychologist said there was no need to be there. We never heard from anyone else about this. My concern is that the social worker could threaten to take away my children. Also, my concern is that my Christian approach to this was unacceptable to her and therefore, I had to agree to a government-mandated approach. This is contrary to my first amendment religious freedom guaranteed in the U. S. Constitution. These workers must be restricted.

Because I am concerned about any new threat to take away my children, I wish to remain anonymous.

Defense Considerations in the Child as Witness in Allegations of Sexual Abuse.

Part I. Witnesses in General: How We Measure Credibility

Louis Kiefer

ABSTRACT: *Although the false allegation of child sexual abuse does not always start with a child, the child becomes the key to unlocking the mystery of why the allegations are made, and what validity, if any, should be given to the statements made by a young child. The following article is published in three parts: Part I deals with how we measure credibility. The legal competency of the child witness and the manner by which a child learns through the interrogation process is discussed. The conclusion is that children under age ten are incompetent and poor witnesses but attorneys should prepare carefully in these cases. Several practice tips are given.*

The dogma of the child abuse industry is that children never lie about abuse. According to Dr. Roland Summit, in a paper entitled, *The Child Sexual Abuse Accommodation Syndrome*, children do not fabricate the kinds of explicit manipulations they divulge in complaints or interrogations, and "... very few children, no more than two or three per thousand, have ever been found to exaggerate or to invent claims of sexual molestation."⁽¹⁾

However, if a child recants, it is because they have been "manipulated" into telling something that is not true. This, of course suggests that children do not lie about child abuse but will lie if they deny sexual abuse. That means that all children can be pressured into telling a lie, but only to deny abuse. This obviously is nonsense and, yet, this nonsense has become the dogma of mental health professionals who frequently investigate these matters. The result is a Catch 22 situation for if a child says it didn't happen, it happened.⁽²⁾ This is consistent with another dogma of child abuse professionals. Since

some abusers deny being abusers, anyone who denies being an abuser is an abuser, as are those who admit to being abusers. In fact, my experience shows that the more vehemently the client denies having abused, the stronger the presumption that he or she is guilty.

If children never lie about abuse, why is it that the figures show, as a minimum, 60 percent of all allegations are unsubstantiated and may be as high as 77 percent when associated with divorce and custody proceedings?^(3,4)

If children never lie about abuse, why were over a hundred counts and all charges against five of seven defendants of the McMartin School dropped, and why were over a hundred counts and all charges against 24 of the 25 defendants dropped in Jordan, Minnesota?⁽⁵⁾

The following is testimony from a preliminary hearing in the McMartin Day School case, which is still pending in California. The witness is eight years old.⁽⁶⁾

It begins with the judge qualifying the witness of the issue of competency:

"Good morning James," *the judge greets him.*
"Can you hear me?"

"Yes."

"Do you promise that everything you tell will be the truth?"

"Yes."

"Miss Rubin (the prosecutor) is going to ask you some questions. Can you see me?"

"Yes."

"How old are you today?"

"Eight."

"Do you know the difference between telling the truth and a lie?"

"Yes."

"What is the difference?"

"Well...telling the truth is telling what happened and telling a lie is telling something that

Louis Kiefer is an Attorney at Law and can be contacted at 60 Washington Street, Suite 1403, Hartford Connecticut, 06106

One Hundred Cases of Unfounded Child Sexual Abuse: A Survey and Recommendations

LeRoy Schultz

ABSTRACT: *One hundred questionnaires were completed by persons who had been falsely charged with child sexual abuse. Almost all falsely charged persons experienced family breakdown, loss of employment, deterioration of physical or emotional health, and/or welfare dependency. All reported little sympathy and no victim welfare services in their community. It is argued that persons found "not guilty" as determined by the study are a victim type because of the trial-induced trauma and therefore require social services. Recommendations are made toward prevention of their victimization and trauma.*

This century has seen a considerable increase in the power of the state to intervene in the lives of children and their families. Increasing state involvement was, for much of this period, seen as beneficial for children and society. The proper physical and emotional care of children became areas of official and professional concern. Official policy could be crudely encapsulated in the statement that the well-nurtured child becomes the responsible and well-balanced adult. Therefore, parents failing to provide for the emotional and physical needs, as defined by the state (or interest groups who impact state policy), of their children have become increasingly "at risk" of state intervention, including, as a final resort, taking children away and convicting (parents) of the criminal offense.

All well and good so far. But it is how policies are implemented that makes the difference in this country. There is increasing skepticism over our present child welfare policies' philosophical underpinning. There is belief that the law favors the state rather than the child or the parents, that there is poor

quality of state care, that the present system is poor at protecting children and protecting the parent's legal status and constitutional rights, and that the system is not functioning well and has damaging consequences for some children and parents.

Along with protecting children whose parents are not providing proper care, children and families should have the legal right to protection from unnecessary and intrusive state intervention. Is justice for the child to be rendered only at the expense of justice for the parent(s)?

Child protection agencies investigate more than one million suspected cases of abuse or neglect each year (National Center for Juvenile Justice, 1981). These agencies institute approximately 150,000 court proceedings yearly to establish state supervision of children alleged to be abused or neglected (National Study, 1981) and of this total only 8% represent alleged sexual abuse of children or adolescents. One study indicated that of each 576 sexual abuse allegations, approximately 267 may be false allegations or very questionable, usually described as "unfounded" (Young, 1985). (See also Abramczyk, 1985; Hepworth, 1983; Besharov, 1985 a & b for similar figures).

A major party to the community's response to suspected child/adolescent sexual abuse is the court system (civil or criminal), one of the most democratic institutions of a civilized society. The court's function is to prevent undue state interference in family privacy, or to order intervention by others, or to intervene itself when there is a need to protect a child or family. However, since the inception of the Child Abuse Prevention and Treatment Act of 1974, very few communities have had enough professional investigators (De Paulo, Zuckerman, & Rosenthal, 1980) or resources to carry out its mandates. This causes system overload, professional burnout and legal stress on well-intentioned service providers (Roberts, 1978; Hutchison, 1986).

LeRoy Schultz is a professor of social work at West Virginia University.

Behavior of Abused and Non-Abused Children in Interviews With Anatomically Correct Dolls

William McIver II, Hollida Wakefield, Ralph Underwager

ABSTRACT: *Fifty non-abused and ten abused children were given anatomically-correct dolls and their behaviors were observed. None of the abused children had been previously interviewed or treated for sexual abuse. For seven of the children, following the initial portion of the interview, the interviewer deliberately used leading questions, cues, modeling and reinforcement in an attempt to elicit sexual behaviors with the dolls.*

There were no differences in the behavior and responses to the dolls between the abused and the non-abused children. In general, the children did not identify the gender of the dolls on the basis of primary sexual characteristics. However, two-fifths of the children spontaneously talked about and/or touched the dolls' genitals and three-fifths placed the dolls in clear sexual positions and/or played with the dolls in an overtly aggressive manner. Six of the seven children who were given leading questions, cues, modeling and reinforcement responded by performing the behaviors that were cued, modeled and reinforced.

The authors conclude that information obtained by the use of dolls in interviews to assess whether a child has been sexually abused will probably be misleading. The dolls are likely to increase the error and decrease the reliability of the information gathered.

Introduction

The so-called anatomically correct dolls are widely used as diagnostic tools with children in cases of alleged sexual abuse. They are used by

William McIver is a psychologist in private practice. His address is 1910 Norwood, Eugene Oregon, 97401.

Hollida Wakefield is a licensed psychologist and Ralph Underwager is a licensed consulting psychologist at the Institute for Psychological Therapies, 2344 Nicollet Avenue South, Suite 170, Minneapolis, Minnesota 55404.

social workers, police, prosecutors, and sometimes by parents. They are generally used with children ages two through six, although some workers have used them with children from 18 months to 11 years of age. We have a videotape of an interrogation in which a social worker used the dolls with a 17-year-old female with a history of three abortions.

These dolls are made of plastic or cotton and are usually about 20 to 25 inches in length. Pubic hair is simulated with dark embroidery or synthetic fur. The breasts of the mature females protrude and the boy and mature male dolls have penises. These penises are often disproportionately large, although this is less true of the more recent dolls. There are representations of oral and anal openings and the female dolls have crude representations of the pubic area and vaginal openings. The penis is able to fit into any of these openings. The dolls are dressed in easily removable clothing. There is generally a mature male and female doll and a boy and girl doll which lack the pubic hair and large breasts. The dolls may be purchased from manufacturers or handmade by someone. There is no standardization for their design.

These dolls were originally used in therapy as toys and as aids in helping sexually abused children deal with the experience. But now they have come to be used as diagnostic tools in the investigation of suspected cases of sexual abuse. They are routinely used by some mental health professionals in the assessment of a child and claims are made that the type of doll play can prove sexual abuse. Yet their reliability and validity have not been established.

Their use has been based on the assumption that children who have been sexually abused will demonstrate sexual behaviors with the dolls which children who have not been sexually abused will not demonstrate. Underlining this assumption are several other assumptions:

1. Children will identify gender (or the "sex" of the dolls) on the basis of primary sexual characteristics. That is,

Susan C. Witte
State Auditor's Office

EXHIBIT 7

DATE 3-1-89

SB 199

TESTIMONY ON SENATE BILL 199
STATE AUDITOR'S OFFICE

A criminal justice agency is eligible to share confidential criminal justice information with other criminal justice agencies. A state agency may be designated a criminal justice agency by executive order of the Governor or by statute. The method through which an agency is designated a criminal justice agency has no effect on the agency's powers.

Since September 7, 1983, the Montana Securities Department has been a criminal justice agency by executive order. The Montana Securities Department does not wish to continue to seek an executive order at the beginning of each gubernatorial term. If Senate Bill 199 passes, the Montana Securities Department will be a criminal justice agency by statute, it will no longer have to seek an executive order, and it will remain eligible to share confidential criminal justice information.

Senate Bill 199 has the support of the County Attorneys of Beaverhead, Cascade, Gallatin, Missoula, and Yellowstone Counties, the Missoula County Sheriff's Office, and the United States Attorney's Office for the District of Montana. Letters from those agencies have been provided to the Committee.

The Montana Securities Department's continued ability to share confidential criminal justice information is critical to protecting Montana investors. The State Auditor consequently urges this committee to give Senate Bill 199 a "do pass" recommendation.



U.S. Department of Justice

EXHIBIT 8
DATE 3-1-89
BB 199

United States Attorney
District of Montana

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Post Office Box 1478
Billings, Montana 59103

406/657-6101
FTS/585-6101

January 17, 1989

Senator Mike Walker
Room 138, State Capitol
Helena, MT 59401

RE: Designation of the Montana Securities Department
A Criminal Justice Agency

Dear Senator Walker:

This letter is to state that, as United States Attorney, I give my unqualified support to the legislation you have proposed designating the Montana Securities Department as a Criminal Justice Agency pursuant to MCA 44-5-103(7)(b) and as an amendment to 30-10-304.

White collar crime is the fastest growing criminal activity prosecuted by this office. We have had numerous occasions to work with the Montana Securities Department, and have pursued successful federal criminal prosecutions as a direct result of that department's outstanding investigative ability.


I totally concur that the Montana Securities Department should be statutorily designated a Criminal Justice Agency, rather than total reliance on executive order. Status as a Criminal Justice Agency, recognized statutorily, would logically resolve many potential problems and specifically the ability to gather information on investigative subjects from other law enforcement agencies, both state and federal. It will further enhance the Montana Securities Department with the ability to ensure the confidentiality of investigative files.

EXHIBIT 8
DATE 3-1-89
HB SB 199

The Montana Securities Department doing criminal investigation certainly should have the statutory designation of a Criminal Justice Agency.

If I can be of any further assistance in this legislation, please advise.

Sincerely,


PETE DUNBAR
United States Attorney

PD:sh

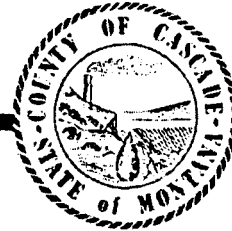
cc: Montana Securities Department
Room 270, Sam W. Mitchell Bldg.
Helena, MT

EXHIBIT 9
DATE 3-1-89
SB 199

Cascade County

State of Montana

TELEPHONE: (406) 761-8700



Courthouse
Great Falls, Montana 59401

Office of the County Attorney

PATRICK L. PAUL

January 17, 1989

Senator Mike Walker
c/o Kathy Irigoin
Montana Securities Department
P. O. Box 4009
Helena, Montana 59604

Re: Bill designating Montana Securities Department
as a Criminal Justice Agency

Dear Senator Walker:

This letter is provided to express my support for the legislation which would designate the Montana Securities Department as a criminal justice agency.

My office has worked with the Securities Department on criminal prosecutions of Securities Act violators. The fraudulent activities of those criminals caused thousands of dollars of loss to Cascade County taxpayers. The competent investigative staff of the Securities Department has been an invaluable tool in prosecuting those cases and recouping those losses. Securities fraud investigations require particularized knowledge of financial records and procedure associated with the securities industry. Local law enforcement training programs generally do not involve this type of training.

If the Securities Department was not a criminal justice agency, our office could not share confidential criminal justice information with it, and the prosecution of these cases would therefore be much more cumbersome. At the same time, the Securities Department would not be able to gather valuable criminal justice information and share it with prosecutors around the state in order to combat the fraud.

EXHIBIT 9
DATE 3-1-89
HB SB 199

Senator Mike Walker
January 17, 1989
Page 2

A statute designating the Securities Department as a criminal justice agency will provide continued confidence in the prosecution-investigation relationship described above. An executive order which must be reviewed with each new gubernatorial term does not instill that confidence. I urge you to vote in favor of this legislation.

Sincerely,



PATRICK L. PAUL
CASCADE COUNTY ATTORNEY

PLP/mb

County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508
(406) 256-2870

EXHIBIT 10
DATE 3-1-89



- ☐ Criminal Division
- ☐ Civil Division
- ☐ Deferred Prosecution

- ☐ Victim/Witness Assistance
- ☐ Child Support Enforcement

January 16, 1989

Senator Mike Walker
Montana Senate
Helena, MT 59620

Re: Securities Department/Criminal Justice Agency

Dear Senator:

I want you to know that I fully support the proposed legislation designating the securities department of the state auditor's office as a criminal justice agency.

The investigation and prosecution of securities violations requires sharing criminal justice information between the securities department and the prosecutors.

We have had the opportunity with the department on previous cases and are impressed with their professional conduct. They should be statutorily designated as a criminal justice agency rather than by an executive order.

Very truly yours,

Harold F. Hanser
Harold F. Hanser,
County Attorney

HFH/cr

GALLATIN COUNTY

OFFICE OF THE ATTORNEY

615 SOUTH 16th AVENUE
LAW AND JUSTICE CENTER
BOZEMAN, MONTANA 59715
TELEPHONE: (406) 585-1410

MIKE SALVAGNI
COUNTY ATTORNEY

EXHIBIT 11
DATE 3-1-89
SB 199



January 11, 1989

Senator Mike Walker
Montana State Senate
Capitol Station
Helena, MT 59620

Dear Senator Walker:

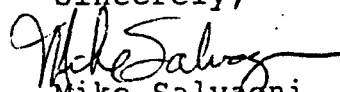
I am writing this letter to express my support for legislation to designate the Montana Securities Department a criminal justice agency. As the county attorney of Gallatin County I have had the opportunity to work closely with the staff of the Securities Department in the investigation and prosecution of two major cases in Gallatin County involving violations of the Montana Securities Act. After the Department's thorough investigations and total cooperation with my office, both defendants were convicted of the violations. One was placed on probation for six years and ordered to reimburse the Department \$29,540 for the costs of the investigation. The other defendant was sentenced to the Montana State Prison for 15 years with 10 years suspended and ordered to pay restitution to his victims in the amount of \$317,783.

While the Montana Securities Department is designated a criminal justice agency pursuant to an executive order, I think that it would be appropriate for the Department to be designated a criminal justice agency by the Legislature. Designation of the Montana Securities Department as a criminal justice agency enables the agency to gather information on subjects from other law enforcement agencies and provides the Department with the means of insuring confidentiality of its investigation files.

While the Department may operate as a criminal justice agency by executive order, it is my belief that statutory designation would be a recognition by the Legislature of the significance of the criminal investigative function of the Montana Securities Department.

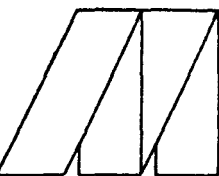
Your consideration of my support of this legislation is appreciated. If you need any information from me, please do not hesitate to contact me. Thank you.

Sincerely,


Mike Salvagni
County Attorney

bkl

cc: Andrea "Andy" Bennett, Montana State Auditor, P. O. Box 4009,
Helena, MT 59604



MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

EXHIBIT 12

DATE 3-1-89

SE 199

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

January 11, 1988

Honorable Mike Walker
State Senator
c/o Commissioner of Securities
State Auditor's Office
P. O. Box 4009
Helena, MT 59604

Re: Criminal Justice Agency Status for
Montana Securities Department

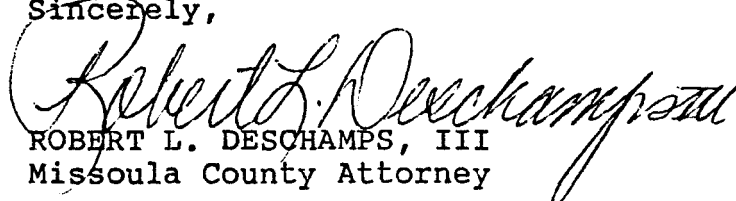
Dear Senator Walker:

I strongly support legislation to statutorily establish the Securities Department of the State Auditor's Office as a criminal justice agency.

My office and other county and other county attorneys work with Securities Department personnel on a regular basis in dealing with very serious securities fraud cases that involve many thousands of dollars literally stolen from scores of victims across the State of Montana. These cases frequently result in successful felony prosecutions and significant prison sentences for convicted defendants. Under these circumstances it is obvious that the Securities Department has functioned as a de facto criminal justice agency for years. Frankly I am surprised that the Securities Department has not always been statutorily recognized as such since criminal investigations are a major part of that Departments responsibilities.

Because of recent federal and state laws severely restricting access to criminal history and criminal investigative information by entities that are not specifically designated to be criminal justice agencies the Securities Department effectiveness is in serious danger of being compromised. Accordingly, I not only support the proposed legislation, but also believe it is a matter of significant public safety and welfare that it be enacted into law.

Sincerely,


ROBERT L. DESCHAMPS, III
Missoula County Attorney

RLD/jln

MISSOULA COUNTY

EXHIBIT 13
DATE 3-1-89
#B 199

DANIEL L. MAGONE
SHERIFF

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

DOUG CHASE
UNDERSHERIFF

January 16, 1989

Andrea "Andy" Bennett
Commissioner of Securities
Sam W. Mitchell Building
P.O. Box 4009
Helena, Montana 59604

Dear Andrea:

I have consulted with my staff and we wish to go on record in support of designating the Montana Securities Department a criminal justice agency pursuant to 44-5-103(7)(b), M.C.A.

We have worked in conjunction with your office in several investigations, and feel that it would be beneficial to both of our departments if you are so designated.

Please feel free to call upon us for assistance in matters of mutual interest.

Sincerely,

Daniel L. Magone

DANIEL L. MAGONE
SHERIFF

DLM/ms

RECEIVED
STAFF AUDITORS
OFFICE
JAN 17 8 48 AM '89
HELENA, MONT.



OFFICE OF THE COUNTY ATTORNEY
BEAVERHEAD COUNTY, MONTANA

2 SOUTH PACIFIC, CL #2
DILLON, MONTANA 59725
(406) 683-4306

January 4, 1989

EXHIBIT 14
DATE 3-1-89
JB 199

THOMAS R. SCOTT
COUNTY ATTORNEY
W. CECIL JONES
DEPUTY
CALVIN ERB
DEPUTY

Senator Mike Walker
Montana Securities Department
Sam W. Mitchell Building
P.O. Box 409
Helena, Montana 59604

RE: DESIGNATION OF MONTANA SECURITIES DEPARTMENT
AS A CRIMINAL JUSTICE AGENCY

Dear Senator Walker:

I have been contacted by the State Auditor's Office to respond to perspective legislation to amend Section 30-10-304, M.C.A., to provide that the Montana Securities Department be designated a Criminal Justice Agency pursuant to Section 44-5-103(7)(b), M.C.A.

As County Attorney for Beaverhead County, I have had specific contact with the Montana Securities Department and the administration and enforcement of the Securities Act of Montana under Title 30, Chapter 10, Part 1. From my contact with the Montana Securities Department it is readily apparent that criminal violation of the Montana Securities Act must be investigated and enforced by a specific agency with specific expertise in securities laws. One may not expect to find such specific expertise in the rural sheriff's offices or police departments of Montana.

As the County Attorney for Beaverhead County, I wholly support any legislation which would designate the Montana Securities Department a Criminal Justice Agency for the purpose of enforcing the Securities Act of Montana. If you have any questions, please feel free to contact me.

Sincerely yours,

Thomas R. Scott
Thomas R. Scott
Beaverhead County Attorney

TRS/clgh

15
DATE 3-1-89
SB 266

WITNESS STATEMENT

NAME Toni Jensen BILL NO. SB266
ADDRESS 422 Holten, Helena
WHOM DO YOU REPRESENT? Rocky Mountain Tobacco-free Challenge
SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: mr. chairman and members of this
committee, I am Toni Jensen, coordination
of the Rocky Mountain Tobacco Free Challenge,
a program operated by the State Department
of Health and Environmental Sciences. I am here
to speak on behalf of SB266.

We all know smoking is not appropriate
behavior for children, however, each day
4,000 young people begin smoking.
According to the American Academy of
Pediatrics, 90% of American smokers
began the habit before the age of 20, and
the average beginning age for smoking is
14 years.

I believe that it is time for Montana
to establish a policy that will prohibit
easy access to such substances by minors
and I urge you all to support SB266

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

16
DATE 3-1-89
SB 266

WITNESS STATEMENT

NAME Earl Homer BILL NO. Senate Bill 266
ADDRESS 825 Helena Ave
WHOM DO YOU REPRESENT? American Lung Assn of Montana
SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

Mr Chairman and members of the committee
The American Lung Assn of Montana supports
Senate Bill 266 for three reasons.

1. It would be a deterrent to the sale of
tobacco products and consequently result
in fewer young consumers.

2. Senate Bill 266 would clarify a misunderstanding
that exists in the general public. Many feel
the regulation already exists because they have
seen the sticker on cigarette machines which
said put on by the manufacturer I assume

3. Senate Bill 266 would support recent action
recommended by the Surgeon General's report
issued Jan 25, 1989. One of his major recommendations
is that a national minimum age be set for the use
of cigarettes and other tobacco products. Forty two
States as of January 1, 1988 already restrict the sale
of cigarettes to minors.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINORS

August 1, 1985

TOBACCO MERCHANTS ASSOCIATION OF THE U.S.
GUIDE TO TOBACCO TAXES

MINORS

August 1, 1985

EXHIBIT 17
DATE 3-1-89
BR 266

TOBACCO SALES TO AND USE BY MINORS: STATE RESTRICTIONS

	Sales to minors		Use or Possession	
	Prohibited	Age	Prohibited	Age
*Alabama (a)	Yes	Under 19	No provision	--
Alaska	Yes	Under 16	No provision	--
Arizona	Yes	Under 18	Yes (1)	Under 18
Arkansas	Yes (2)	Under 18	No provision	--
California	Yes (3)	Under 18	Yes	(4)
Colorado	No provision	--	No provision	--
Connecticut	Yes	Under 16	No provision	--
Delaware	Yes	Under 17	No provision	--
*District of Columbia	Yes	Under 16	No provision	--
*Florida (c)	Yes	Under 18	(6)	Under 18
Georgia	No provision	--	No provision	--
Hawaii	Yes	Under 15	No provision	--
Idaho	Yes	Under 18	Yes (1)	Under 18
Illinois	Yes (5)	Under 18	Yes (1)	Under 18
Indiana	Yes	Under 16	No provision	--
Iowa	Yes (5)	Under 18	(6) (7)	Under 18
Kansas (a)	Yes	Under 18	Yes	Under 18
Kentucky	No provision	--	No provision	--
Louisiana	No provision	--	No provision	--
Maine	Yes	Under 18	No provision	--
*Maryland	Yes (5)	Under 16	No provision	--
Massachusetts (b)	Yes (2)	Under 18	No provision	--
Michigan	Yes	Under 18	Yes	Under 18
Minnesota	Yes	Under 18	Yes	Under 18
Mississippi	Yes (5)	Under 18	No provision	--
Missouri (a)	Yes	Under 18	Yes	Under 18
Montana	No provision	--	No provision	--
Nebraska	Yes	Under 18	Yes	Under 18
Nevada	Yes (5) (3)	Under 18	No provision	--
New Hampshire	No provision	--	No provision	--
New Jersey	Yes	Under 16	No provision	--
New Mexico	Yes (5) (8)	Under 18	No provision	--
New York	Yes	Under 18	No provision	--
North Carolina (a)	Yes	Under 17	No provision	--
North Dakota	Yes	Under 18	Yes	Under 18
Ohio	Yes	Under 18	No provision	--
*Oklahoma (a) (d)	Yes	Under 18	(6)	Under 18
Oregon	Yes	Under 18	Yes	Under 18
Pennsylvania	Yes	Under 16	No provision	--
Rhode Island (a)	Yes	Under 16	Yes	Under 16
South Carolina	Yes	Under 18	(6)	Under 18
South Dakota (10)	No provision	--	No provision	--
Tennessee	Yes	Under 18	No provision	--
Texas	Yes (5)	Under 16	No provision	--
Utah	Yes	Under 19	No provision	--
Vermont	Yes (5)	Under 17	No provision	--
Virginia	No provision	--	No provision	--
Washington	Yes	Under 18	No provision	--
West Virginia	Yes	Under 18	Yes	Under 18
Wisconsin	No provision	--	No provision	--
Wyoming	Yes	Under 18	No provision	--

(a) Restriction limited to cigarettes and cigarette papers or wrappers only.

(b) For tobacco products except cigarettes the minimum age is 16 years.

(c) Effective 10/01/85, will apply to all tobacco or clove products.

(d) Effective 11/01/85, will apply to all tobacco products.

(1) Includes a prohibition against the purchase of cigarettes by minors (in Illinois without written order of parent or guardian), as well as use or possession.

(2) If other than by parent or guardian.

(3) However, inmates in State correction institutions 16 or over, with consent of parent or guardian, may be furnished tobacco and tobacco products.

(4) 18 and over, in junior college, if not permitted by Governing Board.

(5) Except by consent (generally written) of parent or guardian.

(6) Minors smoking or in possession of cigarettes are required to give source of cigarettes; use or possession not otherwise regulated.

(7) In addition, high school students may not smoke.

(8) And any pupil in State.

(9) Purchase or possession by misrepresentation of age is a misdemeanor.

(10) Municipalities authorized to prohibit the sale or gift of cigarettes and their use by minors.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 38DATE MARCH 1, 1989SPONSOR SENATOR REGAN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
JOHN ORTWEIN	MT CATHOLIC CONF	X	
Brenda Nordlund	MT Women's Lobby	X	
Lillian Waterman	MT- Assoc. of Churches	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

BILL NO. SENATE BILL 314

DATE MARCH 1, 1989

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 66DATE March 1SPONSOR SEN. JACOBSON

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Gail Gray	Office of Public Instruction	✓	
Walt Dupea	Self		
Toni Niklas	Need Amendment Montana Education Assoc.	✓	
John Madsen	D F S	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

COMMITTEE

DATE MARCH 1, 1989

SPONSOR SENATOR WALKER

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

BILL NO. SENATE BILL 266

DATE MARCH 1, 1989

SPONSOR SENATOR WALKER

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE MARCH 1, 1989

BILL NO. SB 266

NUMBER 1.

NAME	AYE	NAY
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		
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

9

8

Julie Empe
Secretary

Dave Brown
Chairman

Motion:

Motion made by Rep. Gould to TABLE,
seconded by Rep. McDONOUGH. MOTION CARRIED.