MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on March 1, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary

Announcements/Discussion: None

HEARING ON HOUSE BILL 409

Presentation and Opening Statement by Sponsor:
Representative Susan Good of Great Falls, District 36, opened the hearing saying the bill clarified attorney privileges pertaining to clients. She said the privilege goes both ways.

List of Testifying Proponents and What Group they Represent:

William Conklin, Great Falls attorney, himself
C. W. Leapart, Helena attorney, himself
Sue Weingartner, Montana Defense Trial Lawyers

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Testimony:

William Conklin said he requested the bill because of a decision given by Judge Hatfield in which the judge said the client could give information on the stand or when being deposed regarding conversations between the client and the attorney. The judge said the client could give information told to him by his attorney. The reason for the decision, said Mr. Conklin, was because the statute only mentioned the attorney in the confidentiality statute. He proposed adding language stating that the client could not be forced to testify unless he waived his right to the confidentiality. He said it was part of the common law and has always held to be law in the past. He read from an encyclopedia of law regarding same. He felt the client-attorney relationship would suffer because there would no longer be confidence in the confidentiality of conversations between the two.

C. W. Leapart stood in support of the bill. He felt if this bill had been written in statute, the decision would not have been made. He felt it was up to the legislature to legislate and it was the legislature's job to clarify this portion of the law.

Sue Weingartner testified in favor of the bill.

Michael Sherwood distributed Exhibit 1, pages 1 through 5, telling why he opposed the bill. His opposition was based on the "bad faith" situation.

Questions From Committee Members: Senator Pinsoneault asked how Mr. Conklin would answer Mr. Sherwood's opposition.

Mr. Conklin said that, if it is thought that the client attorney privilege ends with the case, it is a drastic departure from common law. He said he questioned the wisdom of the two cases that were cited.

Senator Pinsoneault said there were exceptions and Mr. Conklin said they were for fraud and criminal acts. The client may waive his confidentiality privilege if he so chooses, said Mr. Conklin.

Closing by Sponsor: Rep. Good closed the hearing.

DISPOSITION OF HOUSE BILL 409

Discussion: Senator Yellowtail questioned the "bad faith" objection. He also thought the bill seemed too broad.

Mr. Conklin said there were exceptions. Even if a client said "I did what my lawyer told me," that would be an exception, in addition to fraud and criminal, according to Conklin. He said common law exists at this time. Then, said Sen. Yellowtail, why must this be added to statute. Mr. Conklin answered because judges "sometimes make mistakes."

Amendments and Votes: There were none.

Recommendation and Vote: Senator Beck MOVED that HOUSE BILL 409 BE CONCURRED IN. The MOTION CARRIED by a vote of 9 to 1, with Senator Yellowtail voting NO.

HEARING ON HOUSE BILL 87

Presentation and Opening Statement by Sponsor:

Representative Tom Kilpatrick of Laurel, District #85, said the bill was requested by the Department of Family Services. He said the department receives approximately $170,000 in grants from the federal government. In order to continue receiving them, state law must come into compliance with federal law. This bill is to amend certain definitions within the child abuse, neglect and dependency law. With these definitions, the department would be allowed to proceed with civil actions to protect children who are victims of sexual abuse by their parents, guardians or other persons responsible for their care. According to Rep. Kilpatrick, the only controversial part was on page 4, line 13 and it was amended in the House to add "imminent or substantial". He said "substantial" would be necessary to meet federal statute requirements. (Additional information left with the secretary concerning the bill -- Exhibit 5)

List of Testifying Proponents and What Group they Represent:

John Madsen, Department of Family Services

List of Testifying Opponents and What Group They Represent:

Walt Dupea, himself

Testimony:

John Madsen, presented written testimony to the committee and appeared as a proponent. (See Exhibit 2)

Walt Dupea appeared as an opponent saying "due process" should be added to law, so that people would have an opportunity to defend themselves against false accusations.

Questions From Committee Members: Senator Halligan said he would feel more confident leaving "imminent" in and removing "substantial". Mr. Madsen said it was inserted to comply with federal statute. At this point, he said, it was thought it would be better to use the word "substantial".

Senator Halligan asked Leslie Taylor if she had discussed the "due process" portion of law with Mr. Dupea. Leslie Taylor of the Department of Family Services said that was contained in other parts of the statute, and were not necessary in this bill. She said there was a "show cause" hearing required, in addition.

Chairman Crippen suggested that Leslie Taylor discuss this with Mr. Dupea.

Mr. Dupea said he knew people who were intimidated by the system and felt the public should be informed if there is statute which addressed "due process". He said he knew of a lady who had been fighting for custody for 8 years who might benefit by the statute.

Closing by Sponsor: Representative Kilpatrick closed the hearing.

DISPOSITION OF HOUSE BILL 87

Discussion: None

Amendments and Votes: Senator Halligan MOVED on page 4, line 13 to strike "IMMINENT AND"

Recommendation and Vote: Senator Halligan MOVED that House Bill 87 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 27

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody of Wolf Point, District 20, said that the bill adds aggravating circumstances in which the death penalty may be given to an offender. She said offenses of sexual assault, sexual intercourse without consent, deviate sexual conduct or incest when the victim was less than 18 years of age would be added. She told of the brutal death of an 8-year-old boy who had been sexually assaulted and murdered. She presented written testimony to the committee -- a letter from Susan Loehn, the Lincoln County Attorney to Mike Lavin at the Montana Board of Crime Control. (See Exhibit 3.) The letter expressed frustration at not being able to ask for the death penalty for the crime. She said the bill would not be a requirement, but would add an option. She said the bill came about when she was working with a group regarding proposed legislation for registration of sexual offenders. It was felt by the group that this bill should be drafted and presented to the legislature, she said.

List of Testifying Proponents and What Group they Represent:

Senator Eleanor Vaughn of Libby, District 1

List of Testifying Opponents and What Group They Represent:

Mignon Waterman, Association of Churches
John Ortwein, Montana Catholic Council

Testimony:

Senator Vaughn said she supported the bill. She said she did not feel the death penalty should be used indiscriminately, but feels the bill would grant the authority when appropriate.

Mignon Waterman said the Association of Churches opposed the bill because they were opposed to the death penalty. She said the council was not wishing to ignore violent crime nor condone it. However, she said that laws are drafted to protect society from killing should not approve of more killing. She said there is no conclusive evidence to prove that capital punishment deters crime.

John Ortwein presented written testimony to the committee in opposition to the bill. (See Exhibit 4.)

Questions From Committee Members: There were none.

Closing by Sponsor: Representative Cody said she felt the bill would discourage and address sexual assault against children. She urged passage of the bill.

DISPOSITION OF HOUSE BILL 27

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Beck MOVED that House Bill 27 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 178

Presentation and Opening Statement by Sponsor:
Representative Dorothy Cody, Wolf Point, House District 20, said the bill includes mental health professionals on the list of all professionals who would be required to report suspected child abuse or neglect. It clears up the ambiguity pertaining to what health professionals could or could not do. She said a Supreme Court case of Gross versus Meyers indicated that there should be a broad interpretation of the statute and provide immunity for mental health professionals to report. Meyers was a counsellor who reported sexual abuse she learned about from a client and later was taken to court.

List of Testifying Proponents and What Group they Represent:

Steve Waldron, Executive Director of Mental Health Centers
John Madsen, Department of Family Services
Frank Lane, Community Health Center

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Steve Waldron said that mental health centers have found some ambiguities in present law making it unclear whether or not they were required to report sexual abuse. It was felt there was a confusion because of the patient privilege allowing confidentiality. "Reasonable cause to suspect" was also a problem for the mental health centers. He felt this bill would aid the professionals in their decisions to report these cases.

John Madsen presented written testimony in favor of the bill (Exhibit 5).

Frank Lane said that, if a therapist learned about sexual abuse of children during a session, he felt he couldn't report it. If it was reported, he would probably be sued; or, if he didn't, he could also be sued. He felt this bill would clean up the law. He said that sexual offenders have a severe personality disorder. The sooner they are removed from the public and get them treatment, the fewer sex offenses will take place against children. He urged passage.

Questions From Committee Members: Senator Jenkins asked if there might be hesitancy of a sex offender coming in for treatment because of this bill. Mr. Lane said that sex offenders do not come in for treatment of that problem. They probably come in for stress or depression, but the fact that they are sex offenders usually comes out in the course of treatment. He felt that would be no problem. He also felt that sex offenders should not be out-patients when receiving treatment.

Closing by Sponsor: Representative Cody closed the hearing

DISPOSITION OF HOUSE BILL 178

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House Bill 178 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 80

Presentation and Opening Statement by Sponsor:
Representative Bill Strizich of Great Falls, District 41, opened the hearing saying the bill was requested by the Department of Family Services to change the confidentiality section of the child Abuse and Neglect statutes. If a youth sex offender had been a child sexual abuse victim, it may help clarify his current behavior to have that information known to the department. Having the information is critical in disposition of the case and treatment of the youth, he said.

List of Testifying Proponents and What Group they Represent:

John Madsen, Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Madsen presented written testimony to the committee (See Exhibit 6)

Questions From Committee Members: None

Closing by Sponsor: Rep. Strizich closed the hearing.

DISPOSITION OF HOUSE BILL 80

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED THAT House Bill 80 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION ON BILLS PREVIOUSLY HEARD

DISPOSITION OF HOUSE BILL 168

Discussion: Senator Crippen commented that the legislature had made serious studies of concurrent versus consecutive sentencing for offenses committed during parole. Senator Pinsoneault said that judges already have the authority to do consecutive sentencing. Senator Halligan said the sentencing is used as a negotiating tool and that it was difficult to get a judge to give consecutive sentencing. He thought it ought to be negotiated "out" rather than forcing the legislature to get it "in". Senator Bishop said it seems logical to do it this way, that the judge would still have discretion. Senator Pinsoneault said he thought it was a good bill. Senator Beck had reservations about the bill.

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 168 BE CONCURRED IN. The MOTION CARRIED by a vote of 6 to 4 with Senators Beck, Mazurek, Yellowtail and Crippen voting NO.

DISPOSITION OF SENATE BILL 431

Discussion: There was extensive study and discussion of the amendments proposed for the bill. The "VanValkenburg Amendments were distributed. Senator Van Valkenburg said he was on the Board of Directors of the Big Brothers and Sisters who operate a bingo operation 7 days a week to raise money for their projects. He hoped this type of organization would be taken into consideration in the study the bill. He said he had an alternative to amendment #9 with which the Department had problems. Jim Smith of the Department of Commerce thought the department of Justice would not have any problem with them. He said there might be concern with the language on the third line of the amendment "other than the operation of the game". He said it might be language that undesirable operators could use to cover other types of operations. Senator VanValkenburg said he attempted to deal with concerns of the committee in the previous executive session. He thought, however, that the bill should be enacted and the state should live with it for two years to see where it could be further improved.

Senator Mazurek said he was surprised about the size of

gambling activity in Montana. He wondered if it should be tax exempt, since it competes with commercial business. Senator VanValkenburg thought it ought to be exempt, because there is quite a distinction between charitable and commercial gambling. If taxed, 1/3 of the money would go into the tax coffers instead of to Big Brothers and Sisters, he said.

Senator Crippen asked what kind of operation was operated in Missoula by the Big Brothers and Sisters. Pat Martin, manager of the operation, said it operates 3 sets of bingo and has 5 keno machines.

Senator Jenkins asked if the operation was contracted out and Pat Martin said no, that she ran it. She said about 150 people played per day and that they took in about $2500 per day during the week and up to $3000 per day on weekends. She said that 75% of it goes back to the customers in cash prizes each day.

Senator Halligan said he preferred Senator Pinsoneault's Amendment #9.

Amendment and Votes: Senator Jenkins MOVED Senator Pinsoneault's amendment "revoke or suspend after investigation". Senator Mazurek was concerned with the "good faith" term. Jim Smith thought that broad or vague language like "good faith" might be warranted. The ingenuity of people trying to expand gambling had been witnessed during the past two years, he said. The MOTION CARRIED UNANIMOUSLY.

Senator Crippen said the way he read Senator VanValkenburg's amendment was that a charitable organization could not hire someone to come in and run a bingo business for them. Senator Crippen said that some charities have a bingo party once or twice a year and that they do hire professionals to run the short-term operation for them.

Amendment and Vote: Senator Halligan MOVED the original #9 with Senator Pinsoneault's language "commercially" included, striking after "determines", and taking out the "good faith" language. The MOTION CARRIED by a 9 to 1 vote with Senator Yellowtail voting NO.

Amendment and Vote: Senator Jenkins moved to include the Department of Justice in #9. The MOTION CARRIED UNANIMOUSLY.

Amendment and Vote: Senator Brown MOVED to say "on January 21" on page 44, line 17. The MOTION CARRIED UNANIMOUSLY.

Amendment and Vote: Discussion regarding the "grandfathering" clause brought out Valencia Lane's opinion that the clause would allow video, gambling and keno machines (all three) to be used. Senator Halligan wanted to add "except for poker." Senator Crippen said he would oppose adding any machines. Valencia gave qualifying language regarding poker machines, keeping them as they now are with restrictions which Senator Brown MOVED. The MOTION CARRIED by a vote of 7 to 3 with Senators Jenkins, Pinsoneault and Crippen voting NO.

Amendment and Vote: Senator Beck MOVED to allow 20 machines total - 10 keno and 10 poker, on page 45, line 14. The MOTION CARRIED by a vote of 7 to 3 with Senators Bishop, Halligan and Jenkins voting NO.

Recommendation and Vote: Senator Brown MOVED that Senate Bill 431 DO PASS AS AMENDED. The MOTION CARRIED on a vote of 7 to 3 with Senators Halligan, Jenkins and Crippen voting NO.

Comments by the Committee: Senator Halligan said he was concerned about the "little guy" who has one machine, line the gas station owner. He wondered if we had sufficient gambling in the state to establish a Gambling Board. Attorney General Marc Racicot said that gambling in Montana generates over $250,000,000 per year. He said that control was necessary and that the state could not safely operate gambling without passing this bill.

ADJOURNMENT

Adjournment At: 12:30 p. m.

SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj
minrj.301

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-1-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 87 (third reading copy -- blue), respectfully report that HB 87 be amended and as so amended be concurred in:

Sponsor: Kilpatrick (Halligan)

1. Page 4, line 13.
Following: "~~Imminent~~"
Strike: "IMMINENT AND"

AND AS AMENDED BE CONCURRED IN

Signed: ______________________
Bruce D. Crippen, Chairman

H.C. 3/1/89 3:53 p.m.

scrhb087.301

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 27 (third reading copy -- blue), respectfully report that HB 27 be concurred in.

Sponsor: Cody (Vaughn)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

3-1-89
4:53 p.m.

scjhb027.301

SENATE STANDING COMMITTEE REPORT

March 1, 1985

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 178 (third reading copy - blue), respectfully report that HB 178 be concurred in.

Sponsor: Cody (Vaughn)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

3:14 p.m.

scrhb178 .wpl

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 80 (third reading copy -- blue), respectfully report that HB 80 be concurred in.

Sponsor: Strizich (Walker)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

sclhb080.301

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 168 (third reading copy -- blue), respectfully report that HB 168 be concurred in.

Sponsor: Lee (Jenkins)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

3:11:89
4 p.m.

scrbb168.301

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary, having had under consideration SB 431 (second reading copy -- yellow), respectfully report that SB 431 be amended and as so amended do pass:

1. Title, line 10.
Following: "~~APPROPRIATION;~~"
Insert: "PROVIDING FOR A GAMING ADVISORY COUNCIL;"

2. Page 5, line 20.
Following: "are"
Insert: "randomly"

3. Page 7, line 24.
Following: "live card game""
Strike: ","
Insert: "or"
Following: ""card game""
Strike: ", or "game""

4. Page 9, line 14.
Following: ""Public"
Insert: "gambling"
Following: "means"
Insert: "gambling conducted in"

5. Page 9, line 20.
Following: "religious"
Strike: ", fraternal,"

6. Page 12, line 20.
Following: line 19
Insert: "(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 of this chapter."

7. Page 13, lines 7 and 8.
Following: "review" on line 7
Strike: remainder of line 7 through "department" on line 8

8. Page 15, line 18.
Following: "(3)"
Strike: "An application for a"
Insert: "A"

continued

9. Page 23, line 22.
Following: "activity"
Insert: ", except raffles as authorized in [section 41],"

10. Page 24, line 8.
Following: "A"
Insert: "person may not purposely or knowingly allow a"

11. Page 24, lines 8 and 9.
Following: "age" on line 8
Strike: remainder of line 8 through "permitted" on line 9

12. Page 24, line 16.
Strike: "[section 22]"
Insert: "23-5-104"

13. Page 24, line 18.
Following: "to"
Insert: "purposely or knowingly"

14. Page 24, line 19.
Following: "to"
Insert: "purposely or knowingly"

15. Page 26, line 22.
Following: "must"
Strike: ","

16. Page 26, line 23.
Following: "conviction"
Strike: ","
Following: "$5,000"
Strike: ","

17. Page 28, line 2.
Following: "may"
Strike: "only"

18. Page 28, line 4.
Following: "game"
Strike: "that"
Insert: "only if it"

19. Page 29, lines 11 through 13.
Following: "premises" on line 11
Strike: remainder of line 11 through "11)" on line 13

20. Page 30, line 1.
Following: "county"
Strike: ","

21. Page 30, line 4.
Following: "treasury."
Insert: "A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county."

22. Page 32, line 19.
Following: "may"
Strike: "only"

23. Page 32, line 20.
Following: "raffle"
Insert: "only if it is"

24. Page 33, line 7.
Following: "raffles."
Insert: "The department may revoke or suspend the permit of a qualified organization that, after investigation, the department determines is contracting with a nonqualified organization to operate live bingo, keno, or raffles in a predominantly commercial manner."

25. Page 35, line 12.
Strike: "unincorporated"
Insert: "incorporated"

26. Page 36, line 4.
Following: "~~exemption~~"
Insert: "-- permits -- exception"

27. Page 39, line 1.
Following: "restrictions"
Strike: "-- penalty"
Following: "."
Strike: "(1)"

28. Page 39, lines 7 and 8.
Strike: subsection (2) in its entirety

29. Page 40, line 16.
Following: "poker"
Strike: ","

30. Page 43, line 9.
Following: "may"
Strike: "only"
Following: "play"
Insert: "only"

31. Page 43, lines 13 through 15.
Following: "machines." on line 13
Strike: remainder of line 13 through "license." on line 15

32. Page 44, lines 17 through 19.
Following: "premises" on line 17
Strike: remainder of line 17 through "11]" on line 19

33. Page 44, line 21.
Following: "premises."
Insert: "A person who legally operated an establishment on January 1, 1989, for the principal purpose of gaming and has been granted an operator's license under [section 11] may be granted a permit for the placement of bingo and keno machines in his premises."

34. Page 45, line 16.
Following: "~~five~~"
Strike: "20"
Insert: "10 keno and bingo"

35. Page 45, line 17.
Following: line 16
Strike: "that are legal under this part"
Insert: "and 10 draw poker machines"

36. Page 45, lines 17 through 21.
Following: "part." on line 17
Strike: remainder of lines 17 through 21

37. Page 47, lines 12 and 13.
Following: "manufacturer-distributor" on line 12
Strike: remainder of line 12 through "equipment" on line 13

38. Page 49, line 20.
Following: "~~Each~~"
Strike: "A licensee"
Insert: "An operator issued a permit under this part"

39. Page 49, line 24.
Following: "~~Each~~"
Strike: "A licensee"
Insert: "An operator issued a permit under this part"

40. Page 50, line 4.
Following: "~~Each~~"
Strike: "A licensee"
Insert: "An operator issued a permit under this part"

41. Page 50, line 17.
Strike: "incorporated"

42. Page 52, line 3.
Following: "play"
Strike: "-- penalty"
Following: "."
Strike: "(1)"

43. Page 52, lines 9 and 10.
Strike: subsection (2) in its entirety

44. Page 54, lines 1 and 2.
Following: "with" on line 1
Strike: remainder of line 1 through "manipulating" on line 2

45. Page 54, lines 2 and 3.
Following: "(1)" on line 2
Strike: remainder of line 2 through "felony to" on line 3
Insert: "A person commits the offense of tampering with a video gambling machine if he purposely or knowingly"

46. Page 54, line 3.
Strike: first "manipulate"
Insert: "manipulates"
Strike: "attempt"
Insert: "attempts"
Strike: "conspire"
Insert: "conspires"

47. Page 54, line 20.
Strike: "$10"
Insert: "$1"

48. Page 58.
Following: line 5
Insert: "NEW SECTION. Section 64. Gaming advisory council -- allocation -- composition -- compensation -- annual report.

(1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with two representing the public at large, two representing local governments, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 2-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit an annual report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The annual report required under subsection (8)(a) must be affixed to the annual department report on gambling in the state.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council."

Renumber: subsequent sections

49. Page 60.
Following: line 6
Insert: "(6) [Section 64] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, apply to [section 64]."

AND AS AMENDED DO PASS

Signed: _____
Bruce D. Crippen, Chairman

3/21
3:54
p.m.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-1-89
HB BILL NO. 409

Testimony of Michael J. Sherwood, MTLA
Opposing House Bill No. 409

While Section 26-1-803 only speaks to examination of the attorney, the Montana supreme court has long recognized that the privilege is applicable to examination of the client as well.

In Kuiper v. District Court , a 1981 decision, the plaintiff had brought an action against Goodyear tire. Kuiper had served requests for admission upon the defendant and had attempted to orally examine executives of Goodyear regarding letters that were sent to them from an attorney for the defendant company.

Goodyear sought and obtained a protective order from the district court . The supreme court upheld that order as it pertained to legal advice of counsel, even though it was employees of Goodyear who were being examined and not the attorney.

A narrow exception to that general rule has also been recognized in this state. The cases of In re Bergerson, 112 F.R.D. 692 (D. Mont 1986) and Silva v. Fire Insurance Exchange, 112 F.R.D. 699 (D. Mont. 1986) both stand for the proposition that when a "first party" bad faith action is prosecuted against an insurer for tortious failure to settle within the policy limits of a liability policy, communications between the insurer and an attorney who also represented the insured in the original tort action against the insured are not privileged with respect to the insured.

The MTLA is concerned that this attempt to fix something which does not appear to be broken may result in the elimination of this narrow exception.

Exh. p.2

SENATE JUDICIARY
EXHIBIT NO. 1, p. 2
DATE 3-1-89
BILL NO. SB 409

Memo:

To: Senator Bruce Crippen

From: Michael Sherwood, MTLA

Re: HB 409
(409)

Contrary to Mr. Conklins representations the attorney client issue was discussed in Kuper. I attach a copy of both head notes and text from that case.

Mike Sherwood

cc: Members Senate Judiciary Committee

Dennis KUIPER, Relator and Appellant,

v.

The DISTRICT COURT OF the EIGHTH JUDICIAL DISTRICT OF the STATE OF MONTANA et al., Respondents.

No. 81-147.

Supreme Court of Montana.

Submitted June 10, 1981.

Decided Aug. 12, 1981.

Rehearing Denied Sept. 3, 1981.

Plaintiff served request for admission asking tire manufacturer to admit genuineness of documents in possession of both defendant and relator and sought by deposition to orally examine defendant's executives. The District Court granted protective order, thereby preventing relator from discovering documents and compelling answers. On relator's petition for writ of supervisory control, the Supreme Court, Morrison, J., held that: (1) order of trial court which prevented relator from using documents in relator's possession, for extrajudicial purposes, as well as in case of bar, had chilling effect upon First Amendment rights and would be subjected to close scrutiny; (2) no findings were made which would justify court order that "counsel for plaintiff are hereby prohibited from making any further use whatsoever of such privileged documents and exhibits in the action." and this portion of court's order unconstitutionally prescribed plaintiff's freedom of expression; (3) work product rule legitimately could form basis of protective order even though the "work product" was in possession of adverse party; and (4) public policy militated in favor of permitting discovery of facts surrounding "recall campaign" and investigation by National Highway Traffic Safety Administration.

Remanded.

1. Constitutional Law ⇐90.1(3)

Order of trial court which prevented relator from using documents in relator's possession, for extrajudicial purposes, as well as in case at bar, had chilling effect upon First Amendment rights and would be subjected to close scrutiny. U.S.C.A.Const. Amend. 1.

2. Pretrial Procedure ⇐136

Before trial court can enter protective order restraining free expression, court must find that harm posed by dissemination is substantial and serious, restraining order must be narrowly drawn and be precise and there must be no alternative means of protecting public interest which intrude less directly on expression.

3. Constitutional Law ⇐90.1(3)

Where no findings were made which justified court order that "counsel for plaintiff are hereby prohibited from making any further use whatsoever of such privileged documents and exhibits in this action," this portion of court's order unconstitutionally prescribed plaintiff's freedom of expression. U.S.C.A.Const. Amend. 1.

4. Witnesses ⇐219(3)

Defendant's response to court process did not constitute waiver of its right to assert that documents were privileged under attorney-client privilege and work-product rule.

5. Witnesses ⇐199(1)

Attorney-client privilege does relate to legal advice given by house counsel to corporate employer.

6. Pretrial Procedure ⇐357

Where contents of documents could not be accurately described as legal advice, documents were not protected by attorney-client privilege.

7. Pretrial Procedure ⇐387

Various exhibits, including communications between party not an attorney to liability carriers and liability carriers, were not protected by attorney-client privilege.

8. Witnesses ⇐198(2)

Work-product rule is broader in its application than attorney-client privilege, but it is not an absolute privilege; by its terms

cient to make this determination. Upon remand of this matter, the District Court is directed to hold a hearing with respect to evidence bearing upon the waiver question and to make findings accordingly.

The balance of our discussion concerning the attorney-client privilege and the application of the work product rule, will apply should the trial court find that a waiver has not occurred. If a waiver is found, then the existence of privilege is rendered moot.

The trial court's order dated March 13, 1981, granting a protective order to Goodyear, correctly identifies exhibit A as consisting of reports concerning closed product liability litigation prepared by Goodyear's in-house counsel. However, the order's reference to exhibit B as being a communication between house counsel Rigrish and other Goodyear personnel is inaccurate. Exhibit B is a brief note from a Goodyear employee denominated "Gerb" forwarding excerpts from a deposition taken in another "rim" case. Exhibits D and E are correctly identified as communications between house counsel Rigrish and other Goodyear personnel. The order mistakenly identifies exhibit J as being a communication between in-house lawyer Rigrish and Goodyear's liability carrier; exhibit J is a memorandum from one employee of a liability insurance company to another employee within the same company. Exhibit M is mistakenly identified in the order as a communication between lawyer Rigrish and Goodyear's liability carrier; exhibit M is a letter written by a representative of the Aetna Insurance Company addressed to Rigrish of Goodyear. Exhibits C, H, I, K and L are correctly identified in the order as being communications from Rigrish to liability insurance carriers. Exhibit G is correctly identified as a communication from Rigrish to retained counsel representing Goodyear in similar but unrelated litigation.

The subject matter and author of each exhibit is critical to determining whether attorney-client privilege is applicable. That privilege only applies statutorily in Montana to communications made by a client to his attorney and legal advice given in response thereto, during the course of professional employment. Section 26-1-803, MCA.

[5] Exhibit A is a compilation of case histories prepared by Rigrish for his superior at Goodyear. Attorney-client privilege does relate to legal advice given by house counsel to the corporate employer. *State ex rel. Union Oil Co. of Cal. v. District Court*,, supra.

[6] A careful study of each of the case histories contained in exhibit A shows that the contents of the document cannot be accurately characterized as "legal advice". Rigrish analyzed closed product liability files and reported to his superior the results obtained in each of those files. The files were closed at the time the document was prepared. The report was apparently made by Rigrish for the purpose of allowing his superior to evaluate his work and for the purpose of keeping corporate management advised about the history of product liability litigation. It is important to note that no legal advice is being given by Rigrish to his superior or corporate management with respect to pending litigation files. Under these circumstances the attorney-client privilege as statutorily defined in Montana, does not apply to exhibit A.

Exhibit B is correspondence from Goodyear personnel to Rigrish and, though the contents of the note are rather ambiguous, it would seem to be covered by attorney-client privilege. However, the enclosure appears to be deposition excerpts which would be part of the public record.

Exhibits D and E are letters from Rigrish to other Goodyear personnel. They appear to cover matters contemplated by the attorney-client privilege.

[7] Exhibits C, H, I, K and L are communications between Rigrish and personnel employed by Goodyear's liability carriers. Rigrish is not a lawyer for those liability carriers. There is no indication that the recipients of the communications are attorneys for Rigrish. Therefore, the attorney-client privilege does not apply to these documents.

Exhibit G is a communication from Goodyear to retained counsel. Exhibit G is clearly protected by the privilege. Exhibit J is a document prepared by an employee of the liability insurance company and forwarded to other personnel within the same insurance company. If any privilege exists, it exists for the benefit of that liability insurance company and would have to be claimed by that company.

Exhibit M is a communication from Aetna Insurance Company to Rigrish. Rigrish is not an attorney for Aetna Insurance Company and attorney-client privilege is, therefore, inapplicable.

Exhibits A, C, H, I, J, K, L and M are not covered by attorney-client privilege. Exhibits B, D, E and G may be protected.

[8, 9] The work product rule is broader in its application than the attorney-client privilege, but it is not an absolute privilege. By its terms the rule governs not only the attorney and his client, but also a party's representative, including his consultant, surety, indemnitor, insurer or agent. The rule protects materials prepared during litigation or in anticipation of litigation and provides for the disclosure of such material only upon a showing that the party seeking discovery has a substantial need for the material in preparation of the case and is unable, without undue hardship, to obtain the materials through other means. The rule further directs that the court protect against the disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Rule 26(b)(3), M.R.Civ.P., may afford protection to much of the documentary evidence here in dispute.

In applying the work product rule, we must make the following determinations: (1) Does the rule apply where material has been discovered and is in the possession of opposing counsel? (2) Does the rule apply to terminated litigation? (3) Does the rule apply where there is a claim but the reality of litigation may be very speculative?

[10–12] A literal interpretation of Rule 26(b)(3), M.R.Civ.P., would confine application of the rule to those instances where discovery is sought. Relator does not here seek discovery. Relator has possession of the subject documents and seeks only to lay foundation for those documents. We feel that the work product rule must be given a liberal interpretation in order to effectuate its purpose. The right granted under the rule can be waived and such a waiver will be the subject of the evidentiary hearing hereinbefore ordered. However, we here hold that the work product rule legitimately can form the basis of a protective order even though the "work product" is in the possession of the adverse party.

[13] The question of whether "terminated litigation" is contemplated by the work product rule, was determined in *In re Murphy* (8th Cir. 1977), 560 F.2d 326. In that case Chief Judge Gibson, writing for the court, said:

"In view of the *Hickman [v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451] rationale and the policies of Rule 26(b)(3), we conclude that the work product privilege applies to documents prepared in anticipation of terminated litigation. The primary purpose of the work product privilege is to assure that an attorney is not inhibited in his representation of his client by the fear that his files will be open to scrutiny upon demand of an opposing party. Counsel should be allowed to amass data and commit his opinions and thought processes to writing free of the concern that, at some later date, an opposing party may be entitled to secure any relevant work product documents merely on request and use them against his client. The work product privilege would be attenuated if it were limited to documents that were prepared in the case for which discovery is sought. What is needed, if we are to remain faithful to the articulated policies of *Hickman*, is a perpetual protection for work product, one that extends beyond the termination of the litigation for which the documents were prepared. Any less protection

March 1, 1989

TESTIMONY IN SUPPORT OF HB87

"AN ACT TO AMEND CERTAIN DEFINITIONS WITHIN THE CHILD ABUSE, NEGLECT AND DEPENDENCY LAW; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

John Madsen, Department of Family Services

The Department requests these changes to comply with provisions of Public Law 93-247, the Child Abuse Prevention and Treatment Act ("Model Act").

Montana DFS receives approximately $170,000 per year in federal child abuse and neglect money. Failure to bring these definitions into compliance with the federal regulations implementing the "Model Act" will cause the loss of that $170,000. This money is currently used by DFS to improve the child abuse and neglect prevention and treatment components of our program. For example, the money is used to train social workers, law enforcement officers, county attorneys, and medical professionals in all aspects of sexual abuse. The loss would be a substantial one to our program.

There are many changes in the bill, most of them technical in nature, to clean up the act.

SENATE JUDICIARY
EXHIBIT NO. 2 p. 2
DATE 3-1-89
BILL NO. HB 87

The first change I would like to note is that dealing with child sexual abuse and exploitation. This change will provide a clearer definition of the problem.

The most substantial and far reaching change found in the bill is that adding day care providers to the list of persons responsible. This change was brought about because of the child sexual abuse that has been discovered to be occurring nationwide in day care facilities. As has already been noted, Montana DFS already investigates complaints in day care facilities as part of its regulatory function.

The house made an amendment to the bill which if not changed will cause the loss of federal funds. Page 4 line 13 the word imminent was returned.

This change will alter the definition of 'threatened harm" and bring it out of compliance with the federal regulations. We have requested an official determination from the regional office in Denver. We will provide their answer when it arrives.

The other changes are technical in nature. I would be happy to answer questions about any of the changes in the bill.

Madsen

SENATE JUDICIARY
EXHIBIT NO. 2 pg. 3
DATE 3-1-89
BILL NO. HB 87

AMENDMENT TO HB 87 (THIRD READING)
PROPOSED BY THE DEPARTMENT OF FAMILY SERVICES

1. Page 4, line 13
Following: ~~imminent~~
Strike: IMMINENT AND

Rep. Dorothy Cody

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3/1/89
BILL NO. HB27

SUSAN LOEHN
COUNTY ATTORNEY
SCOTT B. SPENCER
DEPUTY

LINCOLN COUNTY ATTORNEY

LIBBY, MONTANA 59923

COURTHOUSE
512 CALIFORNIA AVENUE
(406) 293-2717

September 23, 1988

Mike Lavin
Administrator
Montana Board of Crime Control
Crime Control Division
303 N. Roberts, 4th Floor
Helena, Montana 59604

Dear Mr. Lavin:

I have received notice of the meeting which is going to be held November 16-17, 1988, in Helena regarding the "Information Exchange on Legislative Issues for the Criminal Justice System". I will be unable to attend that meeting, but I did want to share some of my concerns with you regarding the law concerning the death penalty, §46-18-301, et. seq.

My specific concern is with §46-18-303. M.C.A., aggravating circumstances in which the death penalty may be given to an offender. As you may recall, in August of 1987 a young boy, Ryan Van Luchene, who was 8 years old, was killed by Robert Hornback. The boy was sexually assaulted and was brutally murdered. It was very frustrating as a prosecutor not to be able to seek the death penalty in this case. Under the current state of the law aggravating circumstances do not include rape or the killing of a child as an aggravating circumstance. It seems a travesty of justice that a child's life can be taken in such a brutal and sickening way and that the prosecutor's office cannot seek the death penalty. This defendant, Robert Hornback, is a dangerous person, and we did the best we could to try to insure that he would not be released from prison for as long a period as possible.

In a crime such as this, there should be a possible sentence of death. In my opinion, the protection of society demands that a violent pedophile such as Robert Hornback be put to death; not for vengeance, but for the protection of our children. Criminal justice information supports the premise that child molesters repeat their predatory behavior until treatment or prison intervenes. A small number of number of pedophiles kill their victims either as part of the sexual act or as a way to escape detection.[1]

One of the greatest strengths of Montana law is its flexibility and its ability to change in response to changing social conditions. I respectfully ask that your agency look into a Legislative change which would allow the death penalty for the

murder of a child during a sexual assault. There are numerous citizens in Lincoln County, and I am sure in many other counties in Montana, who would support this change in the law. There have been many citizens in my county who were outraged to learn that the death penalty was not an option in the Robert Hornback case.

If there is anything I can do to help, please do not hesitate to call upon me.

Sincerely,

Susan Loehn
County Attorney

SL/cs

cc: Fred R. VanValkenburg
Senator Eleanor Vaughn
Representative Mary Lou Peterson
Representative Paula Darko

[1] Child Molesters: A Behavioral Analysis; National Center for Missing and Exploited Children, Behavioral Science Unit, Federal Bureau of Investigation. April 1987, 2nd Edition.

SENATE JUDICIARY
EXHIBIT NO. 4, 1
DATE 3-1-89
BILL NO. HB 27

Montana Catholic Conference

March 1, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

In 1974, out of a commitment to the value and dignity of human life, the U.S. Catholic Conference, by a substantial majority, voted to declare its opposition to capital punishment.

In 1982, the Montana Catholic Conference issued its own statement on its opposition to capital punishment. I have attached a copy of the Montana Catholic Conference statement to my testimony.

We have consistently testified in opposition to extensions of the death penalty in Montana. The reasons for our opposition to the death penalty are contained in our position paper. In summary, capital punishment is not the sole alternative for the protection of society. Life imprisonment without parole is another alternative. The death penalty is not a proven deterrent and does not allow for rehabilitation.

We have the greatest empathy for the victims of crime and their families, but yet we believe our state can find more appropriate methods than the death penalty to rectify the harm and pain that have been inflicted upon victims and their loved ones.

The Montana Catholic Conference would urge you to vote "no" on House Bill 27.

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VOL. 4, NO. 1
JANUARY, 1982

A STATEMENT OF THE MONTANA CATHOLIC CONFERENCE ON CAPITAL PUNISHMENT

The United States Catholic Conference, out of a commitment to the value and dignity of human life, has declared it's opposition to capital punishment. The following paper proposes to examine the issues involved and to provide support for the stand against capital punishment.

The first section of this paper provides a brief history and update of the death penalty. The second section discusses the purposes of criminal punishment, as commonly held, and their relationship to capital punishment. The next three sections deal with the following arguments: (1) Deterrence, (2) Caprice and Mistake, and (3) Cost. The last section deals with the Church and the Christian viewpoint on capital punishment.

I. THE DEATH PENALTY PAST AND PRESENT

Since time immemorial, societies have utilized the death penalty. The reasons for its use and the manner in which it has been used have changed, but the death penalty itself remains.

In the early colonies the death penalty was inflicted for a wide variety of reasons: stealing, selling guns to the Indians, witchcraft, murder, assault, rape, and kidnapping to mention a few. Hanging was a common method of execution, although history books disclose burnings at the stake and various torture methods of execution as well. Executions at this time were public and attended by vast numbers of people.

Previous to 1930, official records of executions were not kept. Since 1900, however, there have been somewhere near 7,000 executions in the United States. The year 1935 was a record year for executions; there were 199. Since 1930, executions have been carried out for seven different crimes: murder, rape, armed robbery, kidnapping, burglary, espionage and aggravated assault. The last execution, to be witnessed by the public, took place in Missoula, Montana in 1942.

The frequency of executions evenutally began to recede and we appeared to be moving away from use of the death penalty. By the late sixties most of Western Europe had abolished capital punishment. Britain abolished its death penalty in 1969. Although the United States did not abolish capital punishment, a moratorium of almost ten years began in 1968.

In 1972, the United States Supreme Court, in a five to four decision (Furman v Georgia), ruled that the death penalty, as then imposed, was capricious and discriminatory and therefore unconstitutional. Following this ruling, many states changed their statutes to a mandatory death penalty for certain crimes, hoping to meet the specifications of Furman. In 1976 the Supreme Court upheld the death penalty in Gregg v Georgia. The Georgia statute provided for a bifurcated approach for conviction and sentencing and also called for mandatory expedited review of all death sentences, as well as consideration of aggravating and mitigating circumstances. The court would later strike down mandatory death sentences in Woodson v North Carolina.

In 1977, the moratorium in the United States ended with the execution of Gary Gilmore in Utah. Since that time, three other persons have been executed: Jesse Bishop in Nevada, John Spenkelink in Florida, and Stephen Judy in Indiana. Since 1976, capital punishment has grown in popular support. Thirty eight states have enacted or reinstated capital punishment to date. There are presently 848 persons on death row across the nation.

Montana's death penalty statute has been revised and, having been patterned after Gregg, the current statute has been upheld. There are three persons on death row in Montana.

II. THE PURPOSE OF CRIMINAL PUNISHMENT

Punishment is commonly held to have four purposes. They are: (1) protection (of society), (2) retribution, (3) rehabilitation, and (4) deterrence. The first three items will be dealt with in this section. The fourth item, deterrence, will be dealt with separately as it remains the greatest topic of debate in the controversy over capital punishment.

A. Protection

With regard to protection of society, there is a definite alternative to capital punishment; that alternative, of course, is incarceration.

montana catholic conference
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"Life" imprisonment, however, rarely means "real" life in terms of years. The subject of parole inevitably arises. The chance of a paroled murderer repeating his crime is actually quite low. "A study of some 1158 released and paroled murderers in eights states (California, Connecticut, Maryland, Massachusetts, Michigan, New York, Ohio and Rhode Island) over the past several decades showed six committed another murder, and nine committed a crime of personal violence or some other felony."[4] That is slightly over one per cent.

For that person who continues to remain a threat to society (Charles Manson is perhaps an example) "real" life with no parole is still an alternative to execution.

B. **Retribution**

Retribution is defined as something administered or executed in recompense, to return in kind. It is defined by some as simply revenge. Part of the reasoning in the retribution theory includes Hegel's notion of establishing an equilibrium of restoring the state of being to what it had been before the crime was committed.[5] This, of course, is impossible because the victim cannot be restored. "We do not, in the name of the State, stab, shoot, throw acid, maim or mug persons convicted of such aggravated assaults. Where, then, is the rational logic for retention of the death penalty for inflicting death?"[6]

C. **Rehabilitation**

The purpose of rehabilitation is obviously forgone in a case of capital punishment.

III. DETERRENCE

The issue of deterrence is currently the most debated subject on the topic of capital punishment.

A. **The Criminal and the Crime**

We must consider whom we are trying to deter and some of the circumstances involved.

A great majority of homicides occur between persons who know each other. The risk of serious attack from family, friends, spouses and acquaintances is almost twice as great as it is from strangers. A large portion of murders involve alcohol. Murder is often a successful assault, the outcome depending on whether a weapon was present or not, and what type of a weapon it was.

There are different kinds of murders; ordinarily they fall into categories: (1) the premeditated killing, (2) the felon killing, and (3) the impulse killing.

1. ***Premeditated murder*** *— The person who methodically plans the demise of another human being is not deterred by the death penalty because he does* ***not plan to get caught.***
2. ***Felon murder*** *— The person who commits murder during the commission of a felony (burglary, rape, kidnapping) does not necessarily* ***plan*** *to kill. The homicide results when things do not go as planned and the criminal becomes desperate. The fear of being "caught" at this point, far outweighs the fear of execution. The possibility of being identified by a witness and consequently apprehended normally is what prompts the homicide.*
3. ***Impulse killing*** *— This type of murderer is even less likely to be deterred by the threat of a death penalty. Consumed with the passion of the moment, he gives no thought to the consequences of his actions.*

B. **Neither Swift Nor Sure**

"Theories of criminology stress that a necessary condition of deterrence is that there be swift and sure administration of the criminal law."[4]

The death penalty is not "sure." A person convicted of murder has a ninety eight per cent chance of not being executed. "In one five year period the FBI's Uniform Crime Report showed an average of 10,122 murders per year; the National Prisoner Statistics over the same period reported an average of 9 persons per year sentenced to death for murder."[6]

The death penalty is not "swift." "In 1970 the median time between imposition of the death sentence and the execution was 36.7 months."[6] One of the three persons on death row in Montana has been subject to pending execution since 1974.

Due to the very nature of the death penalty and our doubts about it, we have created a complex and lengthy legal procedure to safeguard the defendant. "Only the rare, unlucky defendant is likely to be executed when the process is all over."[7] (There are over fifty men in Montana State Prison for deliberate homicide, only three of them were chosen for death row.)

C. **The Studies**

The studies at present are held to be inconclusive. While revealing some interesting insights, they consist largely of uncontrolled data.

The most widely acclaimed study, done by Thorsten Sellin, compared the homicide rate in states with capital punishment with homicide rates in states without capital punishment. There were no statistical differences. In 1965 Sellin also compared prison murders. Taking eleven states, he found 59 prison murders committed in states with capital punishment and 43 murders committed in states without capital punishment.

An econometric study done by Issac Ehrlich suggested "an additional execution per year . . . **may** have resulted on the average in seven or eight fewer murders." This study has been rebutted by three prestigious teams of scholars who have since done further studies. "If anything, the thrust of the studies points to a counterdeterrent effect."[6]

A very recent study, published in October of 1980, traced the history of executions in New York between 1907 and 1963 and found that on the average there were **two additional homicides** in the month after an execution.

In 1969 Britain abolished capital punishment. Since that time, the statistical chances of being murdered remain the same, three in a million.

D. **Increases Violence**

The study, showing the additional homicides following an execution, would indicate that capital punishment actually increases violence.

Additional support for this idea lies in the theory of "capital punishment as a vehicle for suicide." Clinical psychiatrists believe there are cases in which a person chooses the commission of a capital crime as a means of committing suicide. "This kind of murderer is engaged in a 'terminal act', in which the killer does not fear death, he longs for death. What he fears is life, with its miseries and desperate conflicts. To such a one, prison is to be feared above all else, for it promises a continuation of the old miseries. Death by execution fits these psychological needs . . . , and the mere existance of the death penalty . . . encourages these pathological gambles with fate."[6]

George Bernard Shaw declared: "Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind."

IV. CAPRICE AND MISTAKE

Our criminal justice system is a human institution; it is not infallible. This system is the one we use to decide who will

live and who will die. If we make a mistake, capital punishment is irreversible.

The initial decision of whether or not to charge the defendant with a capital crime lies at the discretion of one man, the prosecutor. As the case proceeds, discretion also plays a role in the decisions on conviction, sentencing and clemency.

Human judgement is always susceptible to error. "Though the justice of God may indeed ordain that some should die, the justice of man is altogether and always insufficient for saying who these may be."[10]

V. THE COST

"A system of capital punishment is considerably more expensive than a criminal justice system without capital punishment, considering the financial expense on our courts and prisons."[11]

Every capital case will require a jury trial (10 times as many jury trials as in non capital cases) and most will require at least two jury trials. The selection of a jury takes longer than in a non capital case. The publicity which often accompanies a capital case may force the trial to be moved to another county which creates an added expense. The trial itself will be longer, more complex and more expensive. Appeals in capital cases go directly to the Supreme Court incurring a still greater expense.

A member of the Montana Attorney General's office gave the figure $65,000 as the cost for the jury trial and the first mandatory appeal in one Montana case. Usually there are many appeals. The cost becomes exorbitant.

The prison system, as well, suffers in a capital punishment system. "Additional security measures are needed to maintain a 'Death Row' section and the expenses of administering this unit add up to a cost substantially greater than the cost to retain them in prison for the rest of their lives . . .".[12]

With regard to cost, an additional point has been made with a somewhat different emphasis, "In every crime the first chief criminal is society. Capital punishment is too cheap and easy a way of absolving the guilty conscience of mankind. The criminal makes expiation by going to prison; society makes expiation by paying to keep him there."[13]

VI. THE CHURCH AND A CALL TO RESPECT LIFE

In 1969 the Vatican voided a forty year old law decreeing the death penalty for anyone attempting to assasinate the pope. No one was ever executed under that law. In 1974, the United States Catholic Conference declared its opposition to the reinstitution of capital punishment.

A. Respect for Life

Capital punishment aids the erosion of respect for life. The gift of life is God's alone, He is the author and sustainer of life. Bishop Rene Gracida of Pensocola-Tallahassee stated, "A society which vicariously pushes the button, pulls the switch or administers the lethal injection is brutalized thereby to the point of accepting deliberate, premeditated killing as a means of accomplishing an end which is construed as good."[14]

B. Redemption

The Christian purpose of punishment is reformatory, not vindictive. We are called to remember God's healing love and that human life is never beyond redemption. Christ came to save and not to condemn. St. Paul explains to the Romans, "Never repay evil with evil, but let everyone see that you are interested only in the highest ideals. Do all you can to live at peace with everyone. Never try to get revenge; leave that, my friends, to God's anger."

C. An Eye for an Eye — The Old and the New

Ancient Israel authorized the death penalty for a variety of crimes. The shedding of innocent blood was held to pollute the land and purification could be achieved only by the spilling of more blood. With regard to this tradition, Bishop Gracida offers some interesting insight:

> Perhaps the more ancient books of sacred scripture show that use of the death penalty was authorized by God only in the sense that these books show that other practices, common in those days but now believed to be immoral by Christians, were authorized by God. In other words, perhaps God merely permitted the use of the death penalty, as he merely permitted the practice of polygamy and merely permitted the practice of slavery, **until deepening of faith and a growing sense of human personal dignity, nurtured by faith, would lead to replacement of these practices by alternatives consonant with the natural law and the new law of Christ.** The law of Chirst does not replace natural law but fulfills and elevates it by assuming it into union with the grace of the Holy Spirit, who teaches and guides Christians from within. "[15]

Chist said, "You have learnt how it was said 'Eye for eye and tooth for tooth'; But I say this to you, offer the wicked man no resistance. On the contrary, if anyone hits you on the right check offer to him the other as well; if a man takes you to law and would have your tunic, let him have your cloak as well." (Mt. 5:38)

Bishop Gracida continues, "The spirit gives different gifts to Christians of every age, so that they might use the special opportunities of each age to redeem it."[16]

The Indiana Catholic Conference declared: "Throughout the course of history, the precious quality of human life has become more apparent to people of all faiths."

D. Christians and Civil Law

When we reflect upon the use of the death penalty, we are reminded of an execution which took place some 2000 years ago: "We have our law, and according to the law he must die." (Jn. 19:7) "And so Jesus, who was sinless and guilty of no crime, was adjudged to be guilty and was executed. Perhaps by planning our redemption through such a miscarriage of justice, God has revealed to us that the deliberate act by which society takes a human life in the name of 'law and order' is a heinous perversion of justice. The death of Jesus must serve to illuminate our minds as we examine the relationship between Christians and the civil law, especially law which imposes the death penalty."[17]

IN CONCLUSION

In summary, capital punishment is not the sole alternative for protection of society. A death penalty does not allow for rehabilitation. Capital punishment is not a proven deterrent. On the contrary, it may actually increase violence. In a capital case, there always exists a possibility for error. A system of capital punishment is lengthy, cumbersome and expensive.

The preceding statements are a response to some important issues regarding the death penalty. Ultimately, however, the Christian must examine this issue in light of the gospel vision. Therefore, out of a commitment to maintain respect for life, to preserve human dignity and to manifest the redemptive message of Christ, the Montana Catholic Conference declares its oppostion to capital punishment.

Ex 4, p.5

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*Marvin E. Wolfgang, "The Death Penalty: Social Philosophy and Social Science Research", **Criminal Law Bulletin, 1978**
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*Anthony Amsterdam, "The Case Against the Death Penalty", **Juris Doctor Magazine, 1971**
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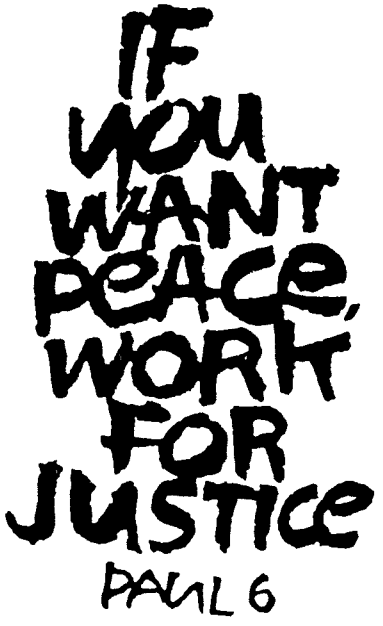
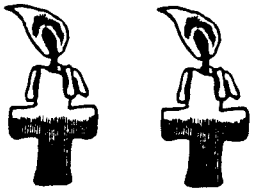
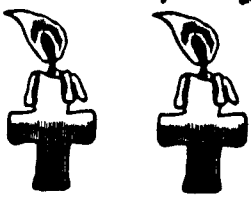
*Other statistics and figures obtained from: NAACP, Deputy Jim Blodgett — Montana State Prison, Mike McCarter — Montana Attorney General's Office.



Ex 4., p. 6



BEYOND ABOLITION OF THE DEATH PENALTY



By Patty Opitz

Out of a commitment to the value and dignity of human life, the Montana Catholic Conference has declared its opposition to the death penalty.

We see abolition of the death penalty as the most obvious step to be taken in fostering respect for life within the criminal justice system. We must not, however, see the accomplishment of that task as an end to our labor. Achievement of this goal cannot be the finale. To truly create a posture of respect for life and human dignity within the criminal justice system, we must also turn our attention to some even more difficult, and somewhat less obvious, challenges.

There are two major areas of concern we wish to address. The first challenge is to deal with the person presently on death row, the second challenge is to prevent others from joining him.

Death Row and Human Dignity

If capital punishment is abolished, the alternative for those persons on death row is life imprisonment. For them, and other chronic, violent offenders serving life sentences, an environment must be provided which is isolated from the rest of society. It is at this point where we, as a society, are faced with a choice. We can simply lock these people away and forget them, or we can attempt to provide an isolated environment for them which is also consistent with a regard for human dignity. At present, our prison system does not provide this kind of environment for the person serving a two year sentence, let alone the person who must be incarcerated for the rest of his natural life.

Our prisons are overcrowded and understaffed. (In Montana, the state prison was designed for 480 inmates. In October of 1981, the prison population was 686. The ratio of social workers to inmates is 100 to 1.)[1] Consequently, the very basic human needs for proper food, health care and sanitation are difficult to provide. Opportunities for recreation and education are limited. Adequate protection from physical abuse is deficient. As one prisoner put it: "A good day is when I get up, have three squares, and don't get wounded or raped."

The cages, the lack of privacy, the boredom, the oppression of the mind and spirit, the lonliness, the mistrust . . . all of these combine to make our prisons a dehumanizing and detrimental experience. Rehabilitation under these circumstances is highly unlikely.

We are a frightened and frustrated people. In August of 1980, there were 650 persons on death row across the nation. As of August 1981, there were 848.[2] In one year, we added 198 persons to death row. The soaring crime rate has created a public outcry for harsher sentences, mandatory sentences, more bars, more barbed wire, and more people on death row. "Of the 1.5 billion spent annually on 'correction' in the United States, 95% goes for custodial costs (iron bars, stone walls, guards), and 5% goes for education, health services and skill training."[3] In our frustration, we continue to react to crime in a fashion which simply does not work. Chief Justice Warren Burger recently stated: "To put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war. It is wrong. It is expensive. It is stupid."

We recommend alternatives to warehousing large numbers of prisoners. "Experts agree that only 20% of present Inmates represent a danger to society and must be securely confined."[4] The other 80%, persons convicted of nonviolent crimes, should make expiation through fines, restitution and community service. Further, "Fifty per cent of our combined jail and prison population consists of persons convicted of offenses in which the offender is actually the victim, i.e. alcohol, drugs, status offenses, gambling and prostitution."[5] These persons are more successfully dealt with through community based counseling centers and abuse programs.

Reducing our prison population is an economic plus, as well as a way to provide a humane environment for those few persons who must be retained in a maximum security facility indefinitely.

PREVENTION — ATTACKING THE ROOTS OF CRIMES

The second concern we must address is in the area of crime prevention. As stated earlier, we tend to react rather than act when dealing with crime. We must begin to reevaluate the society which produces one of the highest crime rates in the world. The roots of crime are poverty, ignorance and indifference. Discrimination, unemployment, family and neighborhood breakdown and lack of moral leadership are all contributing factors. We tolerate white collar crime. We allow false values, materialism and greed to take precedence in our society. The media glorifies violence. In the end, we suffer from loss of respect for human life and a lack of personal responsibility.

We will remain the victims of crime until we become involved. We begin by assessing our own values and attitudes as individuals. Have we simply accepted social injustice or are we concerned and involved? Have we allowed false values to shape our own lives? Do we really care about our brothers?

Crime and the criminal are everyone's problem and everyone's challenge. Christ said, "Come . . . Inherit the kingdom prepared for you from the creation of the world . . . For I was in prison and you came to visit me . . . Then the just will ask Him: 'Lord when did we visit you when you were in prison?' The King will answer them: 'I assure you, as often as you did it for the least of my brothers, you did it for me'". (Mt. 25:34ff)

[1] *Statistics obtained from Mont. Dept. of Institutions; Corrections Div.*
[2] *Statistics obtained from NAACP*
[3] ***Prisons and the Christian Conscience;*** *Washington State Catholic Conference; Apr. 1980*
[4] ***Alternatives to Prisons: Issues and Options;*** *"Institutional Corrections: The State of the Art"; by Lucien Zamorski; pg. 55; School of Social Work; University of Iowa; 1979*
[5] ***Alternatives to Prisons: Issues and Options;*** *"Cost of Imprisonment;" by Bob Gross; pg. 38; School of Social Work; University of Iowa; 1979*

March 1, 1989

TESTIMONY IN SUPPORT OF HB178

JOHN MADSEN
DEPARTMENT OF FAMILY SERVICES

The Department supports the changes as proposed in HB178. These changes will clarify that when a person knows or has reasonable cause to suspect child abuse they will report it and be protected by the provisions of 41-2-203 MCA.

Ex 5, p.2

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Region VIII
Federal Office Building
1961 Stout Street
Denver CO 80294

HB 87

March 1, 1989

Gary Walsh, Administrator
Program, Planning & Evaluation Division
Department of Family Services
P.O. Box 8005
Helena, Montana 59604

Dear Mr. Walsh:

This is response to your recent request that this office secure a legal opinion regarding proposed changes to Montana's child abuse and neglect statutes. We have secured an opinion of our Regional Counsel of which significant portions are included in this response.

> "The State of Montana has submitted draft legislation, proposing that the State's definition of "A person responsible for a child's welfare" be amended as follows:
>
> > "A person responsible for a child welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility, an employee of a public or private residential institution, facility, home or agency; or any other person legally responsible for the child's welfare in a residential setting.

HB 0087/02 (emphasis reflects the proposed change). "Day-care facility" is currently defined in the Montana statutes as:

> "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day-care home (as defined in § 53-4-501(2)(h)1), a day-care center (as defined in § 53-4-501(2)(c)1, or a group day-care home (as defined in § 53-4-501(2)(i)). It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

53-4-501(2), MCA (emphasis added). A copy of the referenced definitions is attached. We believe that the phrase "a staff person providing care in a day-care facility," as contained in the proposed legislation, when read in conjunction with the existing definition of "day-care facility," parallels the language contained 45 C.F.R. § 1320.2(d)(4)(1987).

Ex. 5, p. 3

You have further requested us to review the following proposed amendment to Montana's definition of "[t]hreatened harm," as it pertains to the definition of "child abuse and neglect":

> "Threatened harm to a child's health or welfare" means IMMINENT AND (sic) substantial risk of harm to the child's health or welfare.

HB 0087/02 (emphasis reflects the proposed change). The Federal regulations define "threatened harm to a child's health or welfare" as follows:

> "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

45 C.F.R. § 1340.2(d)(3)(1987). The proposed legislation closely parallels the Federal regulation, except that it adds the term "imminent." It is not necessary that the State adopt language identical to that § 1340.2, as long as the definition used in the State is the same in substance." 45 C.F.R. § 1340.14(b)(1987).

Significantly, the preamble to the Federal regulations states:

> "Threatened harm" is a part of the definition of child abuse and neglect in both the Act and regulations. The NPRM [notice of proposed rule-making] defined threatened harm to mean a substantial risk of harm to the child's health or welfare. The Act defines child abuse and neglect as to include acts or omissions including child abuse, sexual abuse and child neglect by persons responsible for a child's welfare under circumstances which indicate harm or threatened harm to the health or welfare of the child. (42 U.S.C. 5102). The reasons for the inclusion of "threatened harm" is based on the premise that society should not have to wait until a child is actually injured before corrective action is taken. At the same time we recognize that in some instances the harm that is threatened is not of a sufficient degree to necessitate State intervention. The term "substantial risk" is used to clarify that a State need not intervene until, in its judgment, the threat of harm to the child is real and significant.

48 Fed. Reg. 3698, 3700 (January 26, 1983). The State of Montana must assure our office that its inclusion of the term "imminent" in its proposed definition of "threatened harm" is not intended in any way to conflict with the above-stated purpose of the definition of "threatened harm" in the Federal regulation, but it is intended to convey the same connotation as the phrase "real and significant" used in the preamble.

Ex. 5, p. 4

If you have questions or comments regarding this letter, please call Bill Twine at (303) 844-3106.

Sincerely,

David C. Chapa
Regional Administrator
Office of Human Development Services

HB87

Ex 5.06

children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who has not attained the age of eighteen.

(2) (i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

~~(3) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.~~

(4) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care.

* * * * *

(4) Section 1340.3(b) is revised to provide the correct CFR citations as follows:

§ 1340.3 Applicability of Department-wide regulations.

* * * * *

(b) The following regulations are applicable to all contracts awarded under this part:

48 CFR Chapter 1—Federal Acquisition Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

5. Section 1340.13(a) is revised, and paragraph (c) is added to read as follows:

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual abuse" (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

* * * * *

(c) Except for any requirement under section 4(b)(2)(K) of the Act and § 1340.15 of this part pertaining to medical neglect, a State which, on October 9, 1984, did not meet the eligibility requirements of section 4(b)(2) of the Act and this part and thus did not receive a State grant in FY 1984 may apply for a waiver of any requirement. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

(1) State's whose legislatures meet annually may be granted a one-year waiver if OHDS finds that the State is making a good faith effort to comply with such requirement(s). This waiver is renewable for a second year if, based on additional documentation, the Secretary finds the State is making substantial progress to achieve compliance.

(2) States whose legislatures meet biennially may be granted a waiver for a non-renewable period of not more than two years if OHDS finds, based on documentation, the State is making a good faith effort to comply with any such requirement(s).

6. Section 1340.14(i) is revised as follows:

A. Paragraph (i)(1) and the introductory text of (i)(2) are republished;

B. Paragraph (i)(2)(viii) is amended by deleting the words "A person who is responsible for the child's welfare" and substituting the words "A person about whom a report has been made,";

C. Paragraphs (i)(3) and (i)(4) are redesignated as paragraphs (i)(4) and (i)(5), respectively; and

D. A new paragraph (i)(3) is added as follows:

§ 1340.14 Eligibility requirements.

* * * * * *

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

* * * * * *

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

* * * * *

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

* * * * *

7. The Office of Management and Budget Control Number is added to the end of § 1340.15 as follows:

§ 1340.15 Services and treatment for disabled infants.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 0980-0165.)

[FR Doc. 87-2410 Filed 2-5-87; 8:45 am]

BILLING CODE 4130-01-M

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 3-1-89
BILL NO. HB 80

March 1, 1989

TESTIMONY IN SUPPORT OF HOUSE BILL 80

AN ACT AUTHORIZING DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS TO YOUTH PROBATION OFFICERS.

John Madsen, Department of Family Services

The Department of Family Services has requested this change in the confidentiality section of the Child Abuse and Neglect statutes. 41-3-205 MCA

Currently, when a youth probation officer is working with a youth who was a Department of Family Services client, we are unable to divulge information protected by the statute. In many instances, the information we have may help clarify the youth's current behavior. For example, a youth sex offender may have been a child sexual abuse victim. Under the current statute DFS cannot, without specific court order, share this information.

The change proposed will allow the department to share confidential information with a youth probation officer, when that officer is working with a child who was a DFS client.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. _____ DATE 3-1-89

SPONSOR _____

	NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
409	William Conklin	Great Falls	X	
409	C.W. Leaphart	IDLOV	X	
487	Walt Dupea	Big Fork	Need Amendment	X
409	Sue Weingartner	MT Defense Trial Lawyers	X	
409	Mike Sherwood	MTLA		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. _____ DATE 3-1-89

SPONSOR _____

Bill #	NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
HB27	Senator Eleanor Vaughn		X	
HB27	Rep. Dorothy A. Cody	Wolf Point HD 20	✓	
HB178	Rep. Dorothy A. Cody	Wolf Point HD 20	✓	
HB 27	JOHN ORTWEIN	MT CATHOLIC CONF.		X
HB27	Mignon Waterman	MT. Assoc. of Churches		27 X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. _____ DATE 3-1-89

SPONSOR _____

	NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
31	PATRICIA MARTIN	MSLA (BIG BROS & SISTERS)		
80	John Madsen	Family Services	✓	
87	John Madsen	Family Services	✓	
178	John Madsen	Family Services	✓	
178	Steve Waldron	mental health Centers	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 House Bill No. 409 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN. YELLOWTAIL		✓
SEN. CRIPPEN	✓	
	9	1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Beck BCI passed

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 House Bill No. 168 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL		✓
SEN. CRIPPEN		✓

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Sen. Pinsoneault - Be Concurred On

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

#1

Date 3-1-89 Senate Bill No. 431 Time 11:35

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN	✓	
	10.	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: (Amendment) Jenkins Moved "revoke or suspend after investigation" Bins amend #9 UNA

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 Senate Bill No. 431 # Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN. YELLOWTAIL		✓
SEN. CRIPPEN	✓	
	9	1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Halligan - the original #9 with Senator Pinsoneault's "commercially" language, taking out "good faith", striking after "determines"

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

#3

Date 3-1-89 Senate Bill No. 431 Time

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

UNAN

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: D. include D of 9. #9 Be amended

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 Senate Bill No. 431 Time

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN. YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Brown p. 44 line 17 "on" Jan. 1 UNAN

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 Senate Bill No. 431 Time #5

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT		✓
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	7.	3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: DL Qualify grandfathering poker machines, keeping them as they now are. Restrict them

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 Senate Bill No. 431 #6 Time

NAME	YES	NO
SEN. BISHOP		✓
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN		✓
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN	✓	
	7.	3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Beck Mazurek 10 poker and 10 keno machines p. 45 line 14

Passed

SF-3 (Rev. 1987)

ROLL CALL VOTE

7

SENATE COMMITTEE JUDICIARY

Date 3-1-89 Senate Bill No. 431 Time 12:00

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN		✓
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	7.	3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: ~~Beck~~ Brown DPAA

SF-3 (Rev. 1987)