MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG,** on February 16, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: Rep. Karyl Winslow (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 574, HB 525, HB 507, HB 573, HB 506, HB 582, HB 518, HB 590
Executive Action:	HB 573, HB 506, HB 525, HB 574, HB 518, HB 555, HB 561, HB 551, HB 466, HB 228, HB 335

HEARING ON HB 574

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, stated that, while HB 574 doesn't look like much on paper, it is really very important. The Defendant Appellate Program is the office that provides legal representation on behalf of defendants in criminal cases who are appealing to the Montana Supreme Court. It's a very cost-saving, very important mechanism in the delivery of our justice system.

Proponents' Testimony:

Randi Hood, Chairman of the State Bar Committee on Public Defender Services, Chief Public Defender for Lewis and Clark County, said that two years ago a public defender office was established in response to needs conveyed in a survey of all public defenders and judges throughout the state of Montana. The public defender office has three goals: 1) to make appellate services easily available throughout the state; 2) to provide those services more efficiently; and 3) to ensure that services provided are competent and done in a cost-effective way.

Honorable Dorothy McCarter, District Court Judge and Chairperson of the Appellate Court Commission, said that, because the Appellate Defender office did not become operational until the spring of 1992, it hasn't collected statistics about the success of the program. However, in a very short time, the appellate defenders have been kept very busy, thanks to the increase in crime and criminal prosecution in the state. This means the Commission can look forward to a steady increase in cases.

William F. Hooks, State Appellate Defender, Helena, provided written testimony. **EXHIBIT 1**

Gordon Morris, Director, Montana Association of Counties, said that MACo supported the 1991 bill as it was introduced to create the Appellate Defenders Commission. He indicated that this is county money. Seven percent goes towards the District Court Reimbursement Program, and the Program is projected to make $100,000 a year.

John Conner, Prosecutor, Attorney General's Office and appearing on behalf of the Montana County Attorney's Association, told the committee it is in the best interest of the state to have competent defense services, as well as prosecution services, because the provision of competent defense services impacts the financial standpoint for subsequent development of cases. The Attorney General's office believes this program provides indigent people in the state of Montana with a very competent appellate defense system.

On record in support of HB 574:

Beth Baker, Assistant Attorney General, Department of Justice
George Bousliman, Executive Director, State Bar of Montana
Patrick Chenovick, Administrator, State Supreme Court
Sally Johnson, Deputy Director, Department of Corrections and Human Services

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SMITH asked **Mr. Morris** what organization covers the cost of this program. **Mr. Morris** said the budget comes from moneys collected from the registration of motor vehicles. Of the 2 percent registration fee, 7 percent of that money goes into the district court program to pay for county expenses associated with criminal cases before the District Court.

Closing by Sponsor: None

HEARING ON HB 525

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena. HB 525 is the companion bill to the tax bill heard on the House floor regarding district courts. **SEN. DOHERTY** took over the discussion for **REP. RICE.**

Proponents' Testimony:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, introduced HB 525 as a product of the Montana Association of Counties and the State Parks Association. The District Courts in Montana are state courts, and they're funded, primarily, through local tax revenues; this causes a problem. They're trying to fund the public courts, and he believes it's important to look at this in the long term.

Gordon Morris, Director, Montana Association of Counties, pointed out that there's $33,000 from Vehicle Division money to support the effort towards the District Court program. In addition to that, an estimated $25,000 would come from donations, gifts and grants.

John D. Stephenson, Jr., Attorney, Great Falls, and Chairman, District Court Funding Committee, presented written testimony. **EXHIBIT 2**

Joy Bruck, League of Women Voters and member of The Bar Association Committee, presented written testimony. **EXHIBIT 3**

On record in support of HB 525:

Patrick Chenovick, Administrator, State Supreme Court
Craig Hoppe, Montana Magistrates Association

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. VOGEL asked **Mr. Stephenson** what states have unified systems and whether it would be better to adopt the best part of their systems rather than spending $15,000 studying Montana's system. **Mr. Stephenson** said South Dakota and Idaho are fully unified, and North Dakota and Utah are partially unified; part of the program assignment is to study those states' systems and choose the best parts.

REP. CLARK asked **Mr. Hoppe** if there is a way to cut back expenses so that the unification can be implemented. **Mr. Hoppe** said they may cut back the number of non-attorney judges, and many of the counties have streamlined the jurisdiction of the judicial system.

REP. SMITH asked **Mr. Stephenson** if there will still be elections for judges, and how much control the people will have in this part of the judgement. **Mr. Stephenson** said the district judges in the states that adopt this bill will still be elected and some are still appointed.

Closing by Sponsor: None

HEARING ON HB 507

Opening Statement by Sponsor:

REP. TIM SAYLES, House District 61, Missoula, said he sponsored HB 507 on behalf of the Montana Officials Association. This bill is an act limiting the liability of sports officials and creating the criminal offense of assault upon a sports official.

Proponents' Testimony:

Glen Welch, member of Montana Officials Association, Missoula, said he has officiated high school football, basketball and numerous high school state conference competitions for over 21 years. He said HB 507 will provide protection for officials who are subject to more and more lawsuits. **Mr. Welch** is concerned because officials are extremely vulnerable in this situation, and it could be a liability issue. He related that currently 13 states have passed similar legislation, and other states treat these offenses as high misdemeanor or a felony.

Bill Fleiner, Board member of Montana Sheriffs and Peace Officers Association, said he is also a football official with the Montana Officials Association. When he became an official, he discovered that officiating paralleled law enforcement. One of the things officials are not aware of are group dynamics with regards to crowd control activities. Most often, they will be at the root of inspiring an unruly crowd. On the law enforcement side, when working with the type of activity, peace officers have the ability to pick those people out and handle those problems in a varied number of ways. Liability against sports officials is becoming mainstream.

Don McIntyre, Attorney and basketball official, Helena, noted that, as an attorney, he can understand that someone who is injured would like to find a responsible partner. Unfortunately, sports officials are being paid $20-$40 to officiate games; if they are liable for players' injuries, they must protect themselves against lawsuits. Some members of the legislature believe the assault portion of the bill is already covered by current statute. In fact, criminal code, 45-5-201, does provide an assault statute that includes this exact language; that has been extended particularly for sports officials. By reading the statute, it looks like officials would be covered under 45-5-201 as it stands. The only difference between the two is the penalty itself. The penalty, with respect to the sports officials, is raised by $500 and an additional six months incarceration. What HB 507 fails to do is deal with victims less than 14 years of age. He asked the committee to add a subsection that list sports officials less than 14 years of age, and continue to carry that particular provision. Another concern, with respect to assault upon sports officials, is it does not include aggravated assault and felony assault. He urged that amendments be added that would include the crimes of aggravated assault and felony assault upon sports officials.

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association (MTLA), said that MTLA has a problem with the liability provision. **Mr. Hill's** understanding of what the bill attempts to do is to protect officials from being sued on the

basis of the outcome of a game, and trial lawyers have no objection to that immunity. The MTLA's concern is the chance of personal injury on the field, and they believe there should be a reasonable standard of care around the people involved. **Mr. Hill** said **REP. SAYLES'** amendment should address this. **EXHIBIT 4**

Questions From Committee Members and Responses:

REP. WHALEN asked **Mr. McIntyre** if there is officiating insurance available or whether this is a risk officials take upon themselves. **Mr. McIntyre** said there has not been a lot of litigation with respect to this subject in Montana, but it is becoming more common throughout the United States that officials be covered by liability insurance. He related that most officials work in varsity sports for only $40 a game, and that isn't enough to pay for adequate coverage. **REP. WHALEN** asked if the Montana Officials Association, Montana High School Association, or an association that governs the officials carry insurance. **Mr. McIntyre** said the Montana High School Association does carry insurance that covers activities of officials.

REP. TOOLE said this approach has the possibility of creating a negligent situation. He wonders if it may be better to have an indemnity clause as opposed to changes in the liability standard in the bill. **Mr. McIntyre** said an indemnity clause is an option, and he will certainly consider it in the 1995 session.

Closing by Sponsor: None

HEARING ON HB 573

Opening Statement by Sponsor:

REP. MIKE KADAS, House District 55, Missoula, said that HB 573 is a bill revising the residential landlord and tenant laws. He addressed two new sections of the bill, sections 4 and 5. Section 4 states that a tenant cannot sublet without letting the landlord know about it, and section 5 states that tenants must provide the landlord keys if new locks are put on the door.

Proponents' Testimony:

Melissa Case, Montana Peoples Action (MPA), stated that MPA spent the year 1992 deliberating a case involving tenants and landlords and this legislation is the result of that case.

On record in support of HB 573 but not testifying:

Steve Mandeville, Legislative Chairman for Montana Association of Realtors

Tootie Welker, Montana Alliance for Progressive Policy

Greg Van Horssen, Income Property Managers Association and Montana Landlords Association

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 506

Opening Statement by Sponsor:

REP. TASH, House District 73, Dillon, said this bill allows a religious group or nonprofit organization to hold a raffle for which the prize is real property certified in writing by a licensed appraiser to be worth more than $5,000.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 582

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, said that the concealed weapons law was passed in the 1991 Montana legislature. HB 582 is an attempt to amend a few provisions. Amendments added are on page 3, lines 16-19; page 4, line 25 and continued on page 5, lines 1-5; and page 5, section 2, lines 6-14.

Proponents' Testimony:

Bill Fleiner, Board member of the Montana Sheriffs and Peace Officers Association, said he believes that **REP. BROWN** has done a very good job trying to resolve conflict within a varied number of groups, and he hopes this is the last time that the MSPOA will

support any more changes to the concealed weapons bill. It is easy to carry weapons in Montana; people can walk downtown with an unloaded weapon or carry it in a vehicle, but ordinances require that it cannot be loaded. Last time this issue was dealt with, it was reported that sportsman, hunters, fishermen, and recreationists were allowed to carry concealed weapons after being in that activity.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. VOGEL referred to page 3, lines 16-17, "At the time the application is denied, the sheriff shall give the applicant a written statement of the reasonable cause upon which the denial is based and of the basis for and evidence supporting the reasonable cause finding." He asked **REP. BROWN** what would constitute reasonable cause. **REP. BROWN** said that the only thing the act says is that the action must be reasonable with supporting evidence. Wwhatever the basis for denial is, it needs to be written down.

Closing by Sponsor:

REP. BROWN distributed a letter from **Gary S. Marbut, President, Montana Shooting Sports Association. EXHIBIT 5** He agrees with **Mr. Fleiner** that hopefully, HB 582 will finish the fine tuning in this legislation.

HEARING ON HB 518

Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, said that HB 518 extends the coverage under Title 50 to the effect that in-hospital medical staff committee and the members, agents, or employees of the committee may not disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of the committee.

Proponents' Testimony:

Jim Ahrens, Montana Hospital Association, made it clear that health care information is very sensitive and that he was not aware that health care information was published for any reasons other than evaluating the matters of medical care. He supports the bill because it prohibits the use of health care information for political purposes.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. SMITH asked if a specific case has led to the need for this bill. **REP. WHALEN** said there has not been a specific case to his knowledge. He believes the reason this bill is necessary is because of the increasing interest in health care in this state; he wants to make sure those issues are dealt with when or if the legislature decides to draft a bill for health care covering the people of Montana.

Closing by Sponsor:

REP. WHALEN said that, when first introduced, HB 518 was not drafted properly. He had convinced the people who originally drafted the bill that it was not very effective legislation.

HEARING ON HB 590

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said that HB 590 brings the federal Americans with Disabilities Act (ADA) into state statutes. Montana has had a history of tracking civil rights legislation at the national level and implementing it in the state. Literally, this bill imports the substance of the Americans With Disabilities Act.

Proponents' Testimony:

Ben Havdahl, State Coordinator, Self Help for Hard of Hearing People, provided written testimony. **EXHIBIT 6**

Michael Wagner, Advocacy Coordinator, Coalition of Montanans Concerned With Disabilities, said that the ADA has to do with employment. **Mr. Wagner** related that 66 percent of persons with disabilities are unemployed, and less than 15 percent work full-time. He also wanted to make it clear to the committee, and the audience, that this is not a "quota" bill. An unqualified disabled person cannot fill a position unless that disabled person is qualified.

June Hermanson, President, Montana Centers for Independent Living, said that, over the years in Montana, many disabled communities have come forward on various legislative issues, and she has seen their needs and what they perceive their needs to be as separate groups and entities. There are still needs for rehabilitation, education and training, building access and public accommodations. People with disabilities want to be active members in the community. This bill is significant and implements federal law into Montana law.

On record to support HB 590:

Melissa Case, Montana Community Labor Lines and Montana Peoples Action

Paul Peterson, employee for Montana Summit, a volunteer for the Coalition of Montanans Concerned With Disabilities

Opponents' Testimony: None.

Informational Testimony:

Debra Fulton, Administrator, General Services Division, Department of Administration (DOA), did not testify on behalf of the DOA as a proponent of an opponent, but she discussed the effect of this bill on her department. She referred to page 8, line 4 and offered an amendment. **EXHIBIT 7** The bill is based upon "reasonable accommodation," and it lists the reasonable accommodations. In the federal statute, the language is "reasonable accommodation may include making existing facilities used by employees accessible..." DOA believes that is an important distinction.

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked **David Rusoff, Attorney, Montana Human Rights Commission,** whether this bill goes any further than the federal ADA. **Mr. Rusoff** said it does not, and that the language that **Ms. Fulton** proposed was not included in the bill because it was probably an oversight. **Mr. Rusoff** did not see any other oversights in the bill. He did notice the only difference in this bill compared to the federal bill would be making the language in HB 590 consistent with other terms already used in the Human Rights Act. For instance, the Human Rights Act uses the term "physically handicapped" rather than disability, and this committee has a bill before it which would change those terms to substitute the terms used in the ADA to physical disability.

Closing by Sponsor:

REP. TOOLE believes this bill brings to Montana an enforcement of the law under federal requirements. He does not have any desire to make HB 590 any different from federal law.

EXECUTIVE ACTION ON HB 573

Motion/Vote: **REP. VOGEL MOVED HB 573 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 506

Motion/Vote: **REP. WYATT MOVED HB 506 DO PASS.** Motion carried 17-1 with **REP. VOGEL** voting no.

EXECUTIVE ACTION ON HB 525

Motion/Vote: **REP. WHALEN MOVED HB 525 DO PASS.** Motion carried 14-4 with **REPS. BROWN, VOGEL, CLARK** and **SMITH** voting no.

EXECUTIVE ACTION ON HB 574

Motion/Vote: **REP. WHALEN MOVED HB 574 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 518

Motion: **REP. VOGEL MOVED HB 518 DO PASS.**

Motion: **REP. WHALEN** moved amendments. **EXHIBIT 8**

Discussion:

CHAIRMAN FAGG asked if **REP. WHALEN** intended the penalty to be a misdemeanor as the bill states -- $10,000 rather than $1,000. **REP. WHALEN** said that language was taken directly out of Title 50, Chapter 16, Section 551, and it makes this a form of the offense already provided in statute. **REP. WHALEN** asked **Mr. MacMaster** to clarify the penalty. **Mr. MacMaster** said the penalty provided for the offense under the bill is the same as current penalty that is already in the existing section. Under the law, if sentenced to one or more years to the State Prison, it's a felony; if the sentence is anything else, it's a misdemeanor. In other words, if a sentence is under a year in a state prison or any length of time in a county jail, it's a misdemeanor.

REPS. BROOKE, SMITH, and **WYATT** noted their concern for how the bill was processed, and what its intentions are. They feel this is a very strong attack on the ethical codes of health care providers. They believe more time needs to be spent on the bill, and it needs drastic changes. They asked to defer action 24 hours.

Motion/Vote: **REP. BROOKE MOVED HB 518 BE TABLED.** Motion failed, and executive action was deferred 24 hours. Executive action was completed on February 18, 1993.

EXECUTIVE ACTION ON HB 555

Motion: **REP. BROWN MOVED HB 555 DO PASS.**

Discussion:

REP. BROWN referred to page 6, line 8 on certifications. He believes there is a conflict between the DOA saying the impact is going to cost them $170,000 and the Department of Social and Rehabilitation Services (SRS) saying the proposed impact would be no problem.

Motion/Vote: **CHAIRMAN FAGG** moved an amendment to strike "certification" from the bill on page 6, simply because it will cost SRS $170,000. Motion passed 15-3 with **REPS. BROWN, BIRD,** and **WYATT** voting no.

Motion/Vote: **REP. BROWN MOVED HB 555 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 561

Motion/Vote: **REP. BROWN MOVED HB 561 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 551

Motion: **REP. GRIMES MOVED HB 551 DO PASS.**

Discussion:

REP. VOGEL asked **Mr. MacMaster** to explain the amendments. The amendments were proposed by **Darryl Bruno, Department of Corrections (DOC).** The intent of the amendments is to tighten up the language of exactly what drug information course would be taken by drug offenders. On line 11 and 12, where it refers to "dangerous drug information" course, it would say "dangerous drug information course," and then add: "at a chemical dependency program approved as provided in 53-24-208." Section 53-24-208, under the DOC, approves government and private sector chemical dependency information courses.

The other amendment would be added at the end of that sentence indicating that the program the offender would have to attend would be at the discretion of the sentencing court and the certified chemical dependency counselor who teaches the program.

Motion/Vote: **CHAIRMAN FAGG** moved the amendments. Motion carried unanimously.

Motion/Vote: REP. BROWN MOVED HB 551 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 466

Motion: REP. VOGEL MOVED HB 466 DO PASS.

Discussion:

REP. VOGEL said **Russell Hill, Montana Trial Lawyers Association,** gave testimony in support of the bill and had no problem with it as long as minor corrections were made in the form of an amendment. The amendment would read as follows on page 1, line 13, number 1, insert: A broker/owner is not liable for the acts of a broker/associate. A broker/associate is not supervised by the broker/owner unless the broker/owner's own conduct is negligent, willful or wanton. **Mr. Hill** commented that the amendment satisfies all his concerns on the assumption that **Mr. Hopgood, Montana Realtors Association,** was correct that there is non-existing duty of a broker/owner to supervise a broker/associate.

REP. TOOLE believes there is still no distinction between a sales associate and a broker/associate. They both have to take a test, and they both work for someone. Broker/associates work in all different kinds of capacities, and the ones he's seen are considered "glorified" sales people.

REP. VOGEL would add the same language on page 8, line 3 -- after "the acts of a broker/associate," insert: "who is not supervised by the broker/owner" to make it complete in both areas.

Motion/Vote: CHAIRMAN FAGG moved the amendment. Motion carried 16-2 with **REPS. BIRD** and **TOOLE** voting no.

Motion: REP. BROWN MOVED A SUBSTITUTE MOTION TO TABLE.

CHAIRMAN FAGG opposed the table motion and explained the purpose of the bill. If there is a broker/associate who has no supervision or is not supervised in any way by a broker/owner, how can and why should a broker/owner be held responsible for that broker/associate's liability? The broker/associate should be held responsible for his/her own liability. When a person takes a test and becomes a broker/associate, that at least implies that the broker/associate has more responsibility. **CHAIRMAN FAGG** reminded the committee, if this bill passes, the sales associate is still going to be under the control of the broker, and the broker will be responsible for the sales associate's misconduct. But the reason realtors want this bill is that the broker doesn't have any supervisory control, for the most part, over broker/associates. **CHAIRMAN FAGG** believes it is only appropriate that the broker/associate be responsible for his or her own actions.

REP. GRIMES said he believes in clear, supervisory levels; he thinks a lot of these issues can be solved through agreements. He does not think this issue should be in statute and could be solved though agreements.

REP. WYATT said she is concerned that the non-informed consumer will be hurt by this bill. They have no way of telling the difference between an owner or associate unless a person is educated in that area. She strongly opposes the bill.

REP. BIRD asked whether the Board of Realty Regulators has rule-making authority to advise this supervision issue. **Mr. MacMaster** said that, while the Board of Realty Regulators has rule-making authority, they can't adopt a rule unless the rule relates to specific statute. There would have to be a statute saying that the broker/owner does not have the duty to supervise.

Vote: **HB 466 TO BE TABLED.** Motion carried 11-6. Those voting no were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, RICE,** and **SMITH. REP. WINSLOW** was excused from voting.

EXECUTIVE ACTION ON HB 228

Motion: **REP. TOOLE MOVED HB 228 DO PASS AS AMENDED.**

Discussion:

REP. TOOLE said this bill was sent to him by **Child Support Enforcement Services (CSES)** before the session began. There are very few differences between this bill with these amendments and the actual uniform laws. **REP. TOOLE** doesn't think there's anything substantive in the bill.

REPS. BROWN and **VOGEL** expressed concern that a uniform law shouldn't require 17 pages of amendments after two rewrites. They are not comfortable voting on this bill.

REP. TOOLE said the amendments were prepared to bring the bill back to uniform law. **REP. TOOLE** received a letter from **John McCabe, Uniform Laws Commission in Chicago,** stating that he had reviewed the amendments and was satisfied that the amendments would make the bill uniform law again.

REP. TASH asked **Mr. MacMaster** if he or **Greg Petesch, Legislative Council,** wrote the amendments for **REP. TOOLE. Mr. Petesch** wrote the amendments, and every sentence does track the uniform laws. **Mr. MacMaster** thought it was important for the committee to know that **Mr. Petesch** is one of the Montana Uniform Law Commissioners.

CHAIRMAN FAGG asked **REP. TOOLE** why the original uniform law was changed. **REP. TOOLE** said when he was asked to introduce the bill, he thought it was necessary and important to get the CSES

people involved with drafting the bill to adapt to the uniform laws.

Motion/Vote: **REP. TOOLE** moved the amendments. Motion carried unanimously.

Motion/Vote: **REP. TOOLE MOVED HB 228 DO PASS AS AMENDED.** Motion carried 15-3 with **REPS. CLARK, TASH** and **VOGEL** voting no.

EXECUTIVE ACTION ON HB 335

Motion: **REP. TOOLE MOVED HB 335 DO PASS.**

Discussion:

REP. TOOLE explained that HB 335 makes a number of changes in existing child support laws that provide for a lien procedure or forfeiture of personal property; it allows for child support to be paid to the child's relative if he or she is a shared guardian and is aware of child support payments. The only opposition to this bill is based on concern about subpoenas and orders, and that was discussed in the February 12 hearing (see February 12 minutes).

REP. BIRD referred to page 23, section 12, and asked **REP. TOOLE** if this language will infringe upon the Privacy Act. **REP. TOOLE** said implications available from CSES pointed out that those privacy provisions did not impact state agencies which are allowed to see the information; if the bill passes, it will not infringe on the Privacy Act. **REP. BIRD** asked for **Mr. MacMaster's** opinion. **Mr. MacMaster** stated that, while that has been mentioned as a problem, he didn't know if it was or not. He has heard that the federal government forbids these financial lending institutions from giving out this information. **CHAIRMAN FAGG** said that the amendment by MIB addresses **REP. BIRD'S** concern.

Motion: **REP. FAGG** moved the amendment by **Montana Independent Bankers.**

Discussion:

REP. BROWN said he believes the language proposed by MIB is preferable than the amendments proposed by **REP. TOOLE** in the effort to solve the situation. Basically, the information must still be given, but it absolves that person from any liability that might accrue for divulging the information.

REP. TOOLE prefers his amendment rather than MIB's, because their amendment requires the court to get an investigative subpoena. He said he is concerned about several issues. First, the bank would have to go to court to initiate an investigation; and secondly, the court would give an order to the bank rather than a request for information. CSES agreed with the suggestion that

there needed to be a directive or order, but did not agree it should have to come from the court.

REP. GRIMES said that, given the number of child support cases the courts have to process, he is looking for a more acceptable manner than having to overburden the court systems. He proposes a third amendment on the basis of a compromise to satisfy the needs of the bankers to protect themselves. No specific amendment was offered.

Motion/Vote: **CHAIRMAN FAGG** moved the amendments drafted by the **Montana Independent Bankers**. Motion carried 11-6 with **REPS. BROOKE, GRIMES, MCCULLOCH, RUSSELL, TOOLE,** and **WYATT** voting no. **REP. WINSLOW** was excused from voting.

REP. BIRD asked **REP. TOOLE** to explain amendment 5. He said it simply protects the person who buys property from someone who owes child support, and it is the type of property that the bankers, by checking the central files, won't have to seize. If the buyers file for that property, and are not aware of the support lien, they still could buy that property through that lien.

Motion/Vote: **CHAIRMAN FAGG** moved amendment 5. Motion carried unanimously.

REP. BROWN asked **REP. TOOLE** if amendment 4 has been written for technical correction purposes, and **REP. TOOLE** said yes.

Motion/Vote: **REP. TOOLE** moved amendment 4. Motion carried unanimously.

Motion/Vote: **REP. TOOLE** moved an amendment to strike "may" and insert "shall" on page 62, line 14. Motion carried unanimously.

REP. BROWN said page 23, section 12 and a number of other areas in the bill seem to be redundant in the fact that similar or identical language appeared in **REP. BOHLINGER's** bill. He wondered whether, since the language is similar in both bills, a coordinating instruction should be added.

Mr. MacMaster said he wrote **REP. BOHLINGER'S** bill and doesn't know who wrote HB 335, but CSES asked him to include a coordinating instruction in the **BOHLINGER** bill saying that if that bill and HB 335 both passed, then the provisions in this bill would include suspending a person's license. This relates only to suspending the professional occupation license. **REP. BOHLINGER'S** license suspension would suspend all state licenses or permits.

REP. BROOKE proposed to appoint a conference committee to coordinate and amend these bills and any other bills after transmittal that have similar or identical language.

Vote: HB 335 DO PASS. Motion carried unanimously with **REP. WINSLOW** excused from voting.

ADJOURNMENT

Adjournment: 12:00 p.m.

Russell Fagg

REP. RUSSELL FAGG, Chairman

Beth Miksche

BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow			✓
Rep. Diana Wyatt	✓		

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HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 561 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 506 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 525 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:
Yes 14 . No 4 .

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 573 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:
Yes 15, No 0.

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 574 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

Yes 7 . No 3 .

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 555 (first reading copy -- white) do pass as amended .

Signed: _____

Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "REQUIRING GOVERNMENTAL ENTITIES TO PAY FOR CERTIFICATIONS;"

2. Title, line 13.
Following: "25-1-201"
Strike: ", 25-10-405,"

3. Page 5, line 23, through page 6, line 9.
Strike: section 2 in its entirety
Renumber: subsequent sections

-END-

Committee Vote:
Yes /1, No 0.

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 551 (first reading copy -- white) do pass as amended.

Signed: ______________________
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 13.
Following: "course"
Insert: "offered by a chemical dependency program"

2. Page 1, line 14.
Following: "services"
Insert: "under 53-24-208"
Following: "."
Insert: "The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment."

-END-

Committee Vote:
Yes ___, No ___.

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HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 228 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 11.
Following: "SECTIONS"
Insert: "40-4-210,"

2. Title, line 13.
Following: "40-5-142,"
Insert: "40-5-202, 40-5-226, 40-5-231, 40-5-263,"
Following: "40-5-272,"
Strike: "AND"

3. Title, line 14.
Following: "40-5-431,"
Insert: "AND 40-6-109,"

4. Page 1, line 20.
Following: line 19
Insert: "WHEREAS, the United States Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws intend [section 21] to require a state support enforcement agency, in a Uniform Interstate Family Support Act (UIFSA) proceeding, to provide locator services upon the request of any individual; and

WHEREAS, the Department of Social and Rehabilitation Services is charged under [section 21] with providing locator services and does not receive a state general fund appropriation for providing locator services; and

WHEREAS, in enacting [section 21] the Legislature of the State of Montana intends the Department of Social and Rehabilitation Services to establish a fee schedule under 40-5-210 for locator services provided to an individual under [section 21]."

Committee Vote:
Yes ___, No ___.

5. Page 3, lines 21 and 22.
Following: "part" on line 21
Strike: remainder of line 21 through "," on line 22

6. Page 3, line 24.
Strike: "or"

7. Page 3, line 25.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

8. Page 4, line 22.
Strike: ","
Insert: "or"

9. Page 4, line 24 through page 5, line 1.
Following: "obligee" on page 4, line 24
Strike: remainder of page 4, line 24 through "Act" on page 5, line 1

10. Page 5, line 4.
Following: "individual"
Strike: remainder of line 4

11. Page 5, lines 6 and 7.
Following: the first "child" on line 6
Strike: remainder of line 6 through "Act" on line 7

12. Page 5, lines 19 through 21.
Following: "." on line 19
Strike: remainder of line 19 through line 21 in their entirety

13. Page 6, lines 6 through 8.
Following: "part" on line 6
Strike: remainder of line 6 through "Act," on line 8

14. Page 6, line 9.
Strike: "or"

15. Page 6, line 10.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

16. Page 7, line 22.
Strike: "health insurance,"

17. Page 8, lines 5 through 11
Following: "." on line 5.
Strike: strike remainder of line 5 through line 11 in its entirety

18. Page 11, lines 9 through 13.
Strike: subsection (3) in its entirety

19. Page 12, lines 7 and 8.
Following: "state" on line 7
Strike: remainder of line 7 through "with" on line 8
Insert: "pursuant to a law substantially similar to"

20. Page 12, lines 20 and 21.
Following: "has" on line 20
Strike: remainder of line 20 through "has" on line 21

21. Page 13, lines 15 through 18.
Following: "(2)" on line 15
Strike: remainder of line 15 through "." on line 18

22. Page 14, lines 2 and 3.
Following: "(3)" on line 2
Strike: remainder of line 2 through ", a" on line 3
Insert: "A"

23. Page 14, line 4.
Following: "state"
Insert: "that lacks continuing, exclusive jurisdiction over a spousal support order"

24. Page 16, lines 1 and 2.
Following: "~~person~~" on line 1
Strike: remainder of line 1 through "to" on line 2

25. Page 16, lines 6 and 7.
Following: "~~person~~" on line 6
Strike: remainder of line 6 through "to" on line 7

26. Page 19, line 9.
Strike: "obligee"
Insert: "individual"

27. Page 20, line 8.
Following: "~~the~~"
Insert: "(1)"

28. Page 20, line 16.
Strike: "(1)"

Insert: "(a)"

29. Page 20, line 21.
Strike: "(2)"
Insert: "(b)"

30. Page 21, line 4.
Following: "."
Insert: "(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4[, and 5]. In all other cases, the district court is the initiating tribunal."

31. Page 21, lines 9 through 12.
Following: "shall" on line 9
Strike: remainder of line 9 through "," on line 12

32. Page 23, line 4.
Following: "."
Insert: "(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

33. Page 24, line 2.
Following: "tribunal,"
Insert: "promptly"

34. Page 24, line 5.
Following: "attorney,"
Insert: "promptly"

35. Page 24, line 9.
Following: "create"
Insert: "or negate"

36. Page 24, line 13.
Following: line 12
Insert: "(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4[, and 5]. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

37. Page 25, line 3.
Strike: "and"

38. Page 25, line 6.
Following: "states"
Insert: ";"

39. Page 25, line 12.
Strike: "."

40. Page 26.
Following: line 7
Insert: "(3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

41. Page 26, line 24.
Strike: "obligee"
Insert: "individual"

42. Page 27, line 3.
Strike: "obligee"
Insert: "individual"

43. Page 27, lines 4 and 5.
Strike: "obligee"
Insert: "individual"

44. Page 27, lines 23 and 24.
Following: "a" on line 23
Strike: remainder of line 23 through "Act" on line 24
Insert: "support enforcement"

45. Page 28, lines 9 through 11.
Following: "(1)" on line 9

Strike: remainder of line 9 through "40-5-210" on line 11
Insert: "The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part"

46. Page 28, line 12.
Strike: "In all other cases, if"
Insert: "If"

47. Page 29, line 6.
Following: line 5
Insert: "(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

48. Page 29, lines 8 and 9.
Strike: "finally" on line 8
Insert: "previously"
Following: "determined" on line 8
Strike: remainder of line 8 through "or" on line 9

49. Page 29, lines 18 and 19.
Following: "forms" on line 18
Strike: remainder of line 18 through "agencies" on line 19

50. Page 30, line 15.
Strike: "an appropriate"
Insert: "a"

51. Page 31, line 25.
Strike: "authorized by law to receive support payments"

52. Page 32, line 2.
Following: "order"
Insert: "as directed under this part"
Following: "or"
Strike: "appropriate"

53. Page 33, lines 2 through 4.
Following: "(1)" on line 2
Strike: remainder of line 2 through ", a" on line 4
Insert: "A"

54. Page 33, line 7.
Strike: "the department"
Insert: "a support enforcement agency of this state"

55. Page 33, line 8.
Strike: "department"
Insert: "support enforcement agency"

56. Page 33, lines 16 and 17.
Strike: "department" on line 16
Insert: "support enforcement agency"
Following: "to" on line 16
Strike: remainder of line 16 through "4" on line 17
Insert: "this part"

57. Page 34, line 22 through page 35, line 1.
Following: "state" on page 34, line 22
Strike: remainder of line 22 through "cases" on page 35, line 1
Renumber: subsequent subsections

58. Page 35, line 2.
Strike: "clerk of"
Insert: "department of social and rehabilitation services pursuant to 40-5-263 or to"
Following: "the"
Insert: "district"

59. Page 44, line 15.
Strike: "and enforce"

60. Page 44, lines 16 and 17.
Strike: "request or" on line 16
Following: "registration"
Strike: remainder of line 16 through "part" on line 17
Insert: ", for the purpose of enforcement"

61. Page 45, lines 4 through 9.
Following: "law" on line 4
Strike: remainder of line 4 through "1" on line 9

62. Page 45, line 10.
Following: line 9
Insert: "(3) A proceeding to determine parentage directed to:
(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and
(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

63. Page 45, line 25.
Following: ";"
Insert: "or"

64. Page 46, lines 2 through 5.
Strike: line 2 through "order" on line 5
Insert: "40-5-231"

65. Page 48, line 15.
Following: line 14
Insert: "Section 52. Section 40-4-210, MCA, is amended to read:

"40-4-210. Child support jurisdiction -- nonresident ~~parent~~ individual. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident ~~parent~~ individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the ~~nonresident parent has resided with the child in~~ individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) ~~(a)~~ the ~~nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and~~

~~(b) the other party to the marital relationship or~~ individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child ~~resides~~ within this state;

~~(3)~~ (4) the child was ~~conceived or~~ adopted within this state when at least one parent was a resident; ~~or~~

(5) the individual resided in this state and provided

prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

~~(4)~~ (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."

Section 53. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the

Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. ~~No~~ An obligee may not act to prejudice the rights of the department while ~~such~~ services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 54. Section 40-5-236, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- ~~place~~ time -- determinations -- failure to appear -- entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) ~~At the discretion of the hearing officer, the administrative hearing may be held:~~

~~(a) in the county of residence or other county convenient to the obligor or obligee; or~~

~~(b) in the county in which the department or any of its offices are located.~~

~~(3)~~ If a hearing is requested, it must be scheduled within 20 days.

~~(4)~~ (3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ the determination.

~~(5)~~ (4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

~~(6)~~ (5) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the

notice.

~~(7)~~ (6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8)~~ (7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(9)~~ (8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

~~(10)~~ (9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

~~(11)~~ (10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each

modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

~~(12)~~ (11) For the purposes of income withholding provided for in subsection ~~(11)~~ (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 55. Section 40-5-231, MCA, is amended to read:

"40-5-231. ~~Establishment of paternity -- jurisdiction~~ Jurisdiction and venue. (1) For purposes of an administrative action brought under ~~40-5-231 through 40-5-237~~ this part, personal jurisdiction is established in the department over any ~~person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of this~~

~~4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father~~ individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the ~~persons~~ individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a

hearing under ~~40-5-231 through 40-5-237~~ this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

Section 56. Section 40-5-263, MCA, is amended to read:

"40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be

made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement

services to a resident of this state, the director or ~~his~~ the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter."

Section 57. Section 40-6-109, MCA, is amended to read:

"40-6-109. Jurisdiction -- venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over ~~any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure~~ an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering an general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of ~~his~~ the father's estate have been or could be commenced.""
Renumber: subsequent sections

66. Page 49, line 3.
Following: line 2
Insert: "
NEW SECTION. Section 60. Coordination. If neither Senate Bill No. 217 nor __ Bill No. __ [LC 969] is passed and approved, then the bracketed language in [section 18(3) and section 21(4)] is void and the code commissioner shall make necessary changes in grammar."
Renumber: subsequent section

-END-

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 335 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 23, line 16.
Following: "and"
Insert: ", except as provided in subsection (6),"

2. Page 25, line 16.
Following: line 15
Insert: "(6) If a financial institution defined in 31-1-111 as a regulated lender possesses information described in subsection (2)(i), (2)(j), or (2)(k) that relates to a person who is the subject of an inquiry by the department, the financial institution need only tell the department that it possesses information the department seeks. The department may apply for an investigative subpoena under 46-4-301, stating in the prosecutor's affidavit in support of the subpoena that assets or resources of the obligor do or may exist and that the administration of justice requires the financial institution to disclose the information."

3. Page 44, line 24.
Strike: "23"
Insert: "27"

4. Page 62, line 1.
Following: "entity"
Insert: "and to the clerk and recorder of each county in which real estate is located in which the obligor has an interest"

5. Page 62, line 11.
Following: line 10
Insert: "(e) Except as provided in subsection (7), a buyer for value of an obligor's personal property who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Committee Vote:

6. Page 62, line 14.
Strike: "may"
Insert: "shall"

-END-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 228 NUMBER 18

MOTION: HB 228 DP pass carried 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 466 NUMBER 18

MOTION: Rep. Vogel's amendment carried 16-2

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	16	2

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 335 NUMBER 17

MOTION: HB 335 DO Pass. Motion carried 17-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	Excused	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. HB 335 NUMBER 17

MOTION: Banker's Assoc. Amendment carried 11-6

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	Excused	
Rep. Diana Wyatt		✓
	11	6

EXHIBIT 1
DATE 2-16-93
HB574

OFFICE OF THE APPELLATE DEFENDER

STAN STEPHENS, GOVERNOR

WILLIAM F. HOOKS
APPELLATE DEFENDER
Suite 104
208 North Montana

STATE OF MONTANA

Mailing Address: Capitol Station, Helena, MT 59620

(406) 449-4122

SUMMARY OF OPERATION AND ACTIVITIES

Office of the Appellate Defender
William F. Hooks
State Appellate Defender
208 North Montana, Suite 104
Helena, Montana

Personnel. The office of the Montana Appellate Defender, located in Helena, is staffed by two people: an attorney and a paralegal.

Activities to date. The appellate defender is charged by statute with the responsibility for appeals to the state supreme court, and post-conviction proceedings in state courts, for indigent defendants.

We filed our first appellant's brief with the state Supreme Court on June 24, 1992. Since then, and as of February 16, we have

-filed a total of 11 appellant's briefs

-reviewed 2 cases at the request of the Supreme Court, and filed briefs in each case

-filed a brief as *amicus curiae* at the invitation of the Supreme Court

-filed 6 reply briefs in our own cases

-filed 2 reply briefs at the request of other counsel

-filed 2 petitions for post-conviction relief and briefs, and been appointed in three other post-conviction cases.

During the past several months we have also

-developed a "brief bank" by which trial and appellate counsel around the state can submit and exchange briefs and legal memoranda on topical issues

-researched and gathered information on standards for trial and appellate counsel

-prepared a roster of trial and appellate attorneys for use by the courts

-provided information to a number of individuals, both inmates and family members, concerning possible options and remedies.

Caseload. We currently have 28 active cases, either on appeal or in post-conviction status. The National Legal Aid and Defender Association (NLADA), has developed recommended caseload standards which take into account not only the number of cases, but also the extent of work the various types of cases require. Based on these recommended standards, we have already exceeded the recommended annual caseload. By the end of our first year in full operation, we may double the recommended caseload.

Our caseload will increase significantly in the coming year, as our office has been appointed either as sole appellate counsel or co-counsel in three appeals stemming from the prison riot trial, and will be appointed in similar fashion to the remaining appeals.

In the past eight months, we have handled virtually every type of felony offense, from a death penalty appeal to sale of dangerous drugs to sexual assault to felony theft. We have pending cases from courts in Glendive, Libby, Deer Lodge, Chinook, Billings, Bozeman, Helena, Hamilton, Sidney and Kalispell.

The State's duty to provide indigent defense services.

1. Defense services must be provided to indigent defendants on appeal to the state Supreme Court.

By law, a person convicted of a felony offense in Montana has an automatic right to appeal that conviction to the state Supreme Court. §46-20-104, MCA. If a person is indigent and thus cannot afford to retain an attorney for purposes of appeal, the state must provide an attorney to handle the

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appeal. The United States Supreme Court has declared that an indigent has a constitutional right to the assistance of counsel on an appeal. *Douglas v. California*, 372 U.S. 353 (1963); *Evitts v. Lucey*, 469 U.S. 387 (1985).

The right to counsel means the right to effective, conflict - free assistance of counsel. *Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986).

If appellate counsel feels that there are no nonfrivolous issues to be raised on appeal, counsel should so inform the court and ask for permission to withdraw as counsel. *Anders v. California*, 386 U.S. 738 (1967).

2. Defense services must be provided to indigent persons in certain post-conviction proceedings.

§46-21-201, MCA requires that the judge in a post-conviction proceeding shall appoint counsel for an indigent petitioner "if a hearing [on the petition] is required or the interests of justice require" appointment.

3. Cases for which appellate defender assumes responsibility

§46-8-212, MCA requires the appellate defender to assume responsibility for appeals from district court, and petitions for post-conviction relief from district court, for indigent defendants after conviction, in three circumstances:

a) when the defendant alleges that ineffective assistance of counsel resulted in conviction;

b) a district judge or supreme court justice finds further representation by appointed counsel would not serve the interests of justice;

c) when the appellate defender agrees to assist in or assume responsibility for appeal.

The cost of criminal defense services. According to statistics compiled by the U.S. Department of Justice, Montana had an estimated caseload of 10,000 indigent defense cases. Montana had the 6th highest percentage increase in indigent defense caseload from 1982-1986, with a 95% increase. The average amount paid by the state per case was $413, and this amount was the fourth highest in the nation.

Copies of letters from Chief Justice Turnage, District Judges, and attorneys with whom we have worked are attached to this summary. We would be happy to answer any questions or comments and to discuss our office. We can be found at the Capitol One Center, 208 North Montana, Suite 104, 449-4122.

William F. Hooks
State Appellate Defender

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DATE 2-16-93
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THE SUPREME COURT OF MONTANA

J.A. TURNAGE
CHIEF JUSTICE

JUSTICE BUILDING
215 NORTH SANDERS
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-5490

February 3, 1993

William F. Hooks, Esq.
Appellate Defender
Capitol Station
Helena, MT 59620

Dear Mr. Hooks:

Thank you for your letter concerning the legislation to remove the sunset provision in the Appellate Defender legislation.

I certainly would approve the continuation of the program and the removal of the sunset language together with reasonable and adequate appropriation to support the project.

In your letter you noted that no bill had as yet been introduced. It would be appreciated if you would keep me advised, and I will, in turn, tell our Court Administrator that I would request his stating my position before the appropriate committee.

I may suggest that you may also wish to keep George Bousliman, Executive Director of the State Bar, advised with a request that the State Bar also support the Appellate Defender program.

Sincerely,

J. A. Turnage
Chief Justice

JAT:rap

William J. Speare
District Judge
Billings, Montana 59101

THIRTEENTH JUDICIAL DISTRICT

COUNTIES:

BIG HORN
CARBON
STILLWATER
TREASURE
YELLOWSTONE

January 29, 1993.

Randi Hood
Attorney at Law
Lewis & Clark County Courthouse
228 Broadway
Helena, MT 59623

RE: Office of State Appellate Defender.

Dear Ms. Hood:

On January 26, I received a letter from William F. Hooks, the Appellate Defender. I assume that you are familiar with the contents of that letter which was dated January 22, 1993. The thrust of the letter is to request comments upon proposed legislation which would allow this office to continue. Let me say that I have not seen the proposed legislation so I am really not certain what it all entails. On the other hand, I do see a need for this particular office.

We have a substantial volume of business in this Judicial District affecting criminals. We have a modified public defender system. In short, we still retain certain features of a contract principle for court appointed attorneys. Nonetheless the budget is fixed for the representation of the defendants, at the start of the year. I know that the situation involving conflict between trial counsel and the client occurs too many times. Certainly at that point an independent counsel is desirable, and I believe necessary. I do not believe that the budgetary costs to the State, or the county really change. In short, if a court here has to appoint somebody outside of the public defender situation to handle an appeal, due to conflict, the person will have to be paid and the money will ultimately come either through the state reimbursement to the county or the county itself will have to pay a certain portion thereof. These cases are not that numerous but it certainly seems to me that there existence argues strongly in favor of the appellate defender office.

I think another consideration which should be brought to everyones attention is the fact that the office has been in existence for such a short time that I would doubt that there are any adequate statistics available to show the worth or lack of worth of this

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office. I cannot help but believe that once we have that type of data, that it would become quite clear that the office would be of great value. It should be located in Helena and it should have access to the attorney generals office as they would necessarily have to be engaged in the same situations. On the other hand, the separation is necessary just due to the nature of defendant and prosecutor.

I really have no knowledge on how the office has worked in post conviction proceedings. It seems to me that in post conviction proceedings, in general, it would be easier to be handled from Helena than from Billings. Once the proceeding is started, the attorney general must necessarily be notified of the post conviction proceedings and he must necessarily rely upon the county attorney for certain information. In the situation at Billings, I would assume that the appellant defender could rely upon and expect cooperation from the public defenders office. Again it would be my guess that in most post conviction proceedings there is at least a representation that the trial attorney has failed in some respect. Again, I point out that I have had no experience with this situation and if I have had none, then I assume that there is little data to determine the worth of an appellant defender for post conviction proceedings. I suspect that the value would be great.

I am uncertain that any of the above is what Mr. Hooks was soliciting in his letter of January 22, 1993. I just want to make clear to the commission my thoughts that the potential of great value exists in this office, the state expense should not be increased so long as the counties are being reimbursed by the state, and that it is entirely too soon to have factual information to evaluate the worth of the office. Again, I would suspect that in some of these cases merely an independent review of the appeal and the conclusion of the appellant defender that the appeal is not merited, would save substantial sums.

Sincerely,

William J. Speare
DISTRICT JUDGE

WJS/cjc

James E. Purcell
District Judge

Paul L. Grant
Court Reporter

Robert G. McCarthy
Law Clerk

Bev. Ogolin
Court Secretary

State of Montana Second Judicial District

Silver Bow County

Butte, Montana 59701
723-8262 Ext. 288

February 2, 1993

William F. Hooks
State Appellate Defender
Suite 104, 208 North Montana
Capitol Station
Helena, MT 59620

Re : Office of the State Appellate Defender

Dear Bill:

Thank you for your letter of January 22, 1993 relative to the above matter.

It's obvious to me that your office has a tremendous case load simply because of the fact that most of the large cities in Montana and probably some of the smaller ones, all have public defender offices which have and will continue to generate many appeals to the Supreme Court.

It would be a grave injustice to terminate the appellate defender in June or any other time for that matter. Just the cases that have come out of the prison riot may be enough to suggest the continuation of the office and its employees. But looking at the increase in the number of district court matters handled by the public defenders in Butte-Silver Bow County, leads me to believe that as our population increases and the economic stability of the State decreases, the number of crimes will increase and both the public defender and the appellate defender will be called upon to devote more time to the indigent defendant.

Bill, please feel free to use my name as a supporter of the appellate defender project and the continuation of the enabling legislation. I am by carbon copy of this letter, informing the Butte-Silver Bow legislative delegation of my support.

If there is anything else I can do, please let me hear from you.

Sincerely,

James E. Purcell
District Judge
Second Judicial District

cc: Butte Silver Bow Legislative Delegation

EXHIBIT #1
DATE 2-16-93
HB-574

TED L. MIZNER
JUDGE OF THE DISTRICT COURT
409 Missouri Avenue
Deer Lodge, Montana 59722
(406) 846-3680, ext. 38
(406) 563-8421, ext. 222

THIRD JUDICIAL DISTRICT
Deer Lodge, Powell and
Granite Counties

BEVERLY GIANNONATTI
Court Reporter

February 1, 1993

William F. Hooks, Appellate Defender
Capitol Station
Helena, MT 59620

RE: Appellate Defender Office Legislation #LC1320

Dear Mr. Hooks:

I am writing in response to your letter of January 22, 1993. I do support the legislation which provides for the continued operation of the appellate defender officer. Your office has provided a solution to the many problems that arise with regard to criminal appeals. It certainly has been helpful to me, and I'm sure to most of the district court judges, to have someone to turn to for assistance with these "problem" appeals.

Although I don't have dollar figures, I expect that your program is also cost effective for the state. I know in my district many of the cases in which you are involved are prison appeals which would otherwise require paying private counsel. As you also know, I intend to appoint you as co-counsel to assist with the appeals from the riot cases. I am sure that your involvement will save the state considerable expense and help hold the cost of these estimated seven appeals to a minimum. Finally, I believe that the quality of your representation has resulted in cases being decided correctly the first time thereby avoiding costly and time-consuming relitigation.

If I can be of further assistance, please don't hesitate to contact me.

Sincerely,

Ted L. Mizner

District Court Judge

TLM:jj

State of Montana

District Court

First Judicial District
County Courthouse
Helena, Montana 59601

February 1, 1993

William F. Hooks
Appellate Defender
Suite 104
108 North Montana
Helena MT 59620

Re: Appellate Defender Office, LC 1320

Dear Bill:

We are writing this letter to let you know of our enthusiastic support of the continuation of the Office of the Appellate Defender. We are aware that the office will sunset next June unless the Legislature permits it to continue.

It is well known in the judicial community that all criminal defendants are constitutionally entitled to representation in their criminal appeals and in various post conviction and habeas corpus proceedings. Most criminal defendants are indigent and obtain court appointed counsel, with all costs assumed by the State. Your office has saved the state significant amounts of money by representing many of those indigent defendants at a cost that is much less than the cost of appointed private attorneys.

We judges also know the numbers of criminal prosecutions and appeals are increasing each year and your office can easily anticipate a significant increase in case load over the next few years. Your request for funding to add an attorney makes a lot of sense, since it would save the state money, even over the next few years.

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You have done a remarkable job in setting up your office and developing a full case load in less than one year. We heartily support the continuation and expansion of your office.

Sincerely,

DOROTHY McCARTER
District Court Judge

THOMAS C. HONZEL
District Court Judge

JEFFREY M. SHERLOCK
District Court Judge

DM/TCH/JMS/tws

hooks.lt2

Nineteenth Judicial District

Lincoln County

ROBERT S. KELLER
DISTRICT JUDGE
PAM STARKE
Court Administrator

BERNIE COPELAND
Court Reporter
STEVE DALBY
Law Clerk

January 28, 1993

Randi Hood, Esq.
Lewis & Clark County Courthouse
228 Broadway
Helena, MT 59623

Re: Appellate Defender Office

Dear Randi,

I understand that the legislation by which the appellate defender office was created contained "sunset" language which will terminate the office at the end of this fiscal year. I also understand that there is proposed legislation that will remove the "sunset" provision, and permit the office to continue. And, I understand there is proposed legislation which would authorize funds for the purpose of hiring another attorney in that office. I am in favor of both pieces of proposed legislation.

We have long needed such an office, and I think Bill Hooks is doing an excellent job in that office. It comes as no surprise that he needs help, and I am sure that he needs more than just one additional person.

If you will let me know the House or Senate Bill Number when the legislation is introduced, I will write to my Senator and Representative. However, this letter may be used at any hearing on this legislation.

With best kind personal regards.

Sincerely,

Robert S. Keller
District Judge

SPANGELO LAW OFFICES

Waldo N. Spangelo
James W. Spangelo

ATTORNEYS AT LAW
Bank of Montana, Havre
P.O. Box 190
Havre, Montana 59501

Telephone 406/265-4321

EXHIBIT #1
DATE 2-16-93
HB-574

February 1, 1993

William F. Hooks
Appellate Defender
Appellate Defender's Office
Capitol Station
Helena, MT 59620

RE: Appellate Defender Program

Dear Mr. Hooks:

It is with great pleasure that I write this letter in support of continuing the Appellate Defender Program.

My contacts with your office, and there have been several, show that you are prompt, courteous and helpful. Since it is extremely difficult to do in-depth legal research in our small rural counties, your office is of great assistance. Also, it is helpful on appeals to have someone who also does appeals to talk to and exchange information with.

Further, your capacity to be appointed to complicated post conviction relief cases is a real advantage in our small rural counties where most of the attorneys have developed conflicts or don't have the expertise for these kinds of cases.

I have been public defender for Hill and Blaine Counties on and off for the last eight years. Prior to that I was city attorney and city of Havre prosecutor for four years. While city attorney I was able to lobby through legislature requiring the attorney general 's office to train local city attorneys. I still have people come up and thank me for that bill. The only criticism I have, is that you should have seminars for public defenders, to focus on our particular problems, something like MONTCLIRC did before it folded.

Good luck.

Yours sincerely,

James W. Spangelo

JWS:jln

Julie Macek
Attorney at Law

Norwest Bank Building
21 3rd Street North, Suite 412
Great Falls, Montana 59401
Telephone (406) 727-5050
Fax (406) 727-3794

February 1, 1993

William F. Hooks
State Appellate Defender
Suite 104, Capitol Station
Helena, MT 59620

RE: Office of the State Appellate Defender

Dear Mr. Hooks:

Thank-you for keeping me informed as to the status of the Appellate Defender System. I am writing to you so that you may pass my concern on to others regarding the continued operation of the State Appellate Defender's Office.

As Chief Public Defender for Cascade County, I am very concerned about any elimination of the Appellate Defender's Office. The Appellate Defender's Office as been a vital part of our Public Defender Program. Prior to the Appellate Defender's Program, appeals were routinely continued due to the tremendous case load that we were attempting to cover and the lack of man power to devote the time and energy an appeal takes which is in direct conflict with the number of court appearances each attorney puts in each day. I would have no hesitancy in indicating that the services that you provide are essential. I would also not hesitate in the least to indicate that, if this service is not continued, not only will the Public Defender's Offices be overwhelmed and unable to keep up with the appellate case load, but we will also see many persons' rights to the courts denied because of this situation.

I would be happy to lend my support to Bill LC 1320 and if I can be of any further assistance, please do not hesitate to call me.

Sincerely yours,

Julie Macek

JULIE MACEK
Attorney at Law

JAM/akp

EXHIBIT #1
DATE 2-16-93
HB HB-574

DAVID W. HARMAN
LAWYER
120 W. Sixth Street
Libby, Montana 59923

(406) 293-3788

January 26, 1993

Mr. William F. Hooks
Office of the Appellate Defender
Department of Administration
Capitol Station
Helena, Mt 59620

Re: Appellate Public Defenders Office

Dear Mr. Hooks:

I am writing in support of the continuation of the State Appellate Public Defender's Office, which, unless legislation is passed, is set to expire in June, 1993. Because I have had extensive criminal law experience, I do get appointed to represent indigent defendants. It seems like most of my appointed felony cases go to jury trial. On an appointed basis, I am clearly obligated to appeal about 50% of the cases I try and lose on the District Court level. At the Trial Court level, the court cuts my hourly rate by one-half. This continues on through the appeal and is a real financial burden.

Emotionally, it is a real burden to handle these cases on appeal, especially when the County Attorney who tried the case at the District Court level is no longer burdened with the case and the appeal is being handled by a staff of lawyers at the attorney general's office. In addition, infrequently appointed counsel has to devote significantly more time to appeal research than an experienced appellate defender does.

My experience confirms what is "out there". In Montana, violent crimes will increase, random violence will increase and the case load on the appellate level will increase - with more, not fewer, death penalty cases requiring appellate review. A State Appellate Public Defenders office is clearly the most efficient and productive mechanism to handle this increasing load of

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William F. Hooks
January 26, 1993
Page 2

indigent criminal appeals. It is primarily for these reasons that I support the continuation of the State Appellate Public Defenders Office.

Very truly yours,

David W. Harman

DWH/lss

EXHIBIT 5
DATE 2-16-93
HB 525

REPORT OF THE

DISTRICT COURT FUNDING COMMITTEE

A Proposal to Study Court Unification

STATE BAR OF MONTANA

December, 1992

A PROPOSAL TO STUDY COURT UNIFICATION

I. THE NEED TO IMPROVE AND STRENGTHEN THE JUDICIARY BRANCH OF GOVERNMENT IN MONTANA

The District Court Funding Committee of the State Bar of Montana was organized in 1990 to study and recommend solutions to a funding crisis which had developed in the district courts of the State of Montana. The membership of the committee is as follows:

John D. Stephenson, Jr. - Chairman - Attorney, Great Falls
*The Honorable Dale Cox - District Judge - Glendive
M. David Hoffman - Attorney - State Representative
Ted O. Lympus - County Attorney - Flathead County (Now District Judge)
Joseph Mazurek - Attorney - State Senator
Stephen Doherty - Attorney - State Senator
The Honorable Tom Olson - District Judge - Bozeman
Joy Bruck - Past President - Montana League of Women Voters
James H. Goetz - Attorney - Bozeman
Janet Kelly - Commissioner - Custer County
Lori Maloney - Clerk of Court - Butte-Silver Bow
Harry Mitchell - Commissioner - Cascade County
**Damon L. Gannett - President - State Bar of Montana - Attorney
Jim Rice - State Representative - Helena
Nels Swandal - County Attorney - Park County

*Replaced by The Honorable Joel G. Roth - District Judge-Great Falls
**Succeeded by James Johnson and Sherry Matteucci

The Committee conducted an extensive study on the funding of district courts in the State of Montana and concluded that the district courts face significant long term funding problems which will continue to worsen until such time as the Legislature overhauls the funding mechanisms for the district courts.

The Committee found that 36 counties in Montana were having serious financial problems in operating their courts. These 36 counties experienced financial shortfalls wherein their annual

district court expenditures exceeded the annual revenues which could be raised from state reimbursement, grant-in-aid programs, the county district court mill levy and miscellaneous revenues designated by statute for the district courts. In other words, 36 counties had to dip into other funds, borrow money, register warrants or resort to other such measures to fund their district courts. In a legal opinion given to the committee by member James Goetz, it was concluded that the present district court funding system suffers from the same types of inequities which led the school foundation funding program to be declared unconstitutional by the Montana Supreme Court.

The Committee drafted a bill, known as House Bill 312, which was introduced to the 1991 Legislature. As proposed, this bill would have required the State to assume a greater share of the funding for the district courts. Specifically, it would have required the State to be ultimately responsible for funding the district courts if applicable funding sources from the counties became inadequate. It also would have required the State to assume responsibility for juvenile probation expenses as part of the state reimbursement funding which presently reimburses counties for criminal trial expenses. House Bill 312 did not pass in its proposed version, but the Legislature did pass an amended version which allowed counties the option to impose an additional 0.5% vehicle tax. Fifty percent of the proceeds is allocated to the county. The remaining fifty percent is allocated among the cities, towns and outlying areas within the county upon the basis of

population. The county's share of these proceeds can be used for such purposes as the county designates, including, but not limited to, district courts. Many counties saw this tax as a rare opportunity to gain additional revenue for other governmental operations, and their district courts did not receive assistance.

In fiscal year 1992, 32 counties opted to assess additional vehicle taxes under House Bill 312. Seven counties used these funds exclusively to offset court costs, seven counties used the funds for both district court and county purposes, and 18 counties used these funds exclusively for county expenses other than district court costs. Figures for fiscal year 1993 indicate increasing reliance upon HB312 for district court purposes. Thirty seven counties will impose the local option vehicle tax in fiscal year 1993. Thirteen intend to use these funds exclusively for district court purposes, six intend to use these funds for both district court and other purposes while 18 intend to use these funds for purposes other than the district courts. Several counties relied extensively upon this new revenue source to supplement district court funds in fiscal year 1992; Cascade County assessed $450,000; Lake County $78,000; Lewis and Clark County $402,000; Lincoln County $130,000; Missoula County $480,000; and Ravalli County $137,000. Statewide a total of $2,110,646 in optional light vehicle tax funds assessed in fiscal year 1992 was spent on the district courts. This amount is approximately 12½% of total district court expenditures for that year which totalled $16,710,497. Despite improvement in revenues thirty-five counties

in Montana report district court budget shortfalls in fiscal year 1992, compared to thirty-six as reported in the 1990 study. The total amount of the shortfall dropped to $1,467,666, compared to $3,410,927 in 1990.

In a survey conducted in October 1991 the State Bar asked district court judges, clerks of court and county commissioners throughout Montana, several questions pertaining to district court funding and House Bill 312. The committee received 72 responses: 38 responded that present district court funding in their judicial districts or county was adequate whereas 34 replied no; 50 favored making House Bill 312 permanent whereas 18 responded no; 49 stated that district court financial support is primarily a state responsibility whereas 21 responded no.

Although House Bill 312 has helped many counties fund district court operations, this law is scheduled to expire on July 30, 1993 (61-3-537 M.C.A.). Members of the Legislature expressed a desire that the Committee engage in a more comprehensive study of the funding of the court system and to provide a long term solution to court funding problems.

Accordingly, the Committee has been reconstituted in 1992 and is presently studying potential long range solutions to the court funding problem. Throughout, it has been the unanimous opinion of all members of the Committee that the primary responsibility for funding the district courts rests with the State of Montana rather than the localities where the courts are located. It is also the belief of the Committee that the long range solution

to the problem may lie in a unified court system. The Committee plans to ask the 1993 Legislature to enact a bill creating a commission to study and recommend legislation establishing a unified judicial system. The Committee will also ask the Legislature to extend House Bill 312 until a unified system can be approved.

II. FEATURES OF A UNIFIED COURT SYSTEM

At the present time many states have what are characterized as "unified judicial systems." There is no single meaning to this term and unified court systems are set up in different manners in different states. However, characteristics of unified court systems generally are as follows:

(a) There is a centralized administration of all state courts administered by a central authority. This could be the chief justice, or a judicial council, working together with the office of the court administrator.

(b) There is a single level of trial courts. Courts of limited jurisdiction may be abolished. Matters formerly heard by courts of limited jurisdiction are heard either by district court judges or by lawyer or non-lawyer magistrates who are officials of the district court.

(c) The majority of all court operations are funded by the state.

(d) The Clerk and district court employees would be accountable to the central administration, even though the office of Clerk of Court would continue to be an elected position.[1]

The advantages which would flow from a unified court system would be several.

(a) The judiciary would be acting as a unified whole, instead of as localized autonomous entities.

(b) The judiciary budget would be approved by the Legislature for the operation of all of the court functions in the state. District courts and courts of limited jurisdiction would no longer negotiate with county or city commissioners for their budgets.

(c) There would be centralized and uniform accounting of court budgets and functions.

(d) There would be more flexibility in assigning judges and magistrates where the work is needed. In addition to hearing minor cases, lawyer magistrates could hear discovery motions and hold settlement conferences, much like the federal magistrates do today.

---

[1] In South Dakota the clerk's office has changed from an elected position to an appointed position. A June 1992 survey conducted by the Montana Association of Clerks of Court revealed that 46 clerks favor election while 10 favor appointments. As to the issue of court unification 27 clerks supported the concept, 17 were opposed, and 12 were undecided.

(e) The judicial branch would become much more visible as a third branch of government. This would help the judicial branch obtain more public recognition and respect.

Proposals to unify the court system in Montana have been made on previous occasions. The subject was debated in the 1972 constitutional convention and during the 1983 legislative session a bill was introduced in the Senate to unify the Montana courts. The bill was tabled and a committee was appointed to further study the matter. The committee concluded that there was little support for court unification at that time but did recommend legislation which ultimately established the present state reimbursement program for criminal trial expenses.

III. THE EXISTING COURT SYSTEM IN MONTANA

1. The Montana Supreme Court

The Montana Supreme Court consists of a chief justice and six associate justices. The Supreme Court hears appeals from district courts and has original jurisdiction to issue certain types of writs. The Montana Constitution gives the Supreme Court "general supervisory control over all other courts" but as noted below, this power is issued through the issuance of writs on a case-by-case basis, and does not involve integral, continuance administrative control or supervision by the Supreme Court of lower state courts. In addition, the Supreme Court has authority to make rules governing rules of trial and appellate procedure and to

regulate the admission to the Bar and the conduct of attorneys. Supreme Court operations are funded entirely by the state.

2. The State District Courts

There are district courts located in each county of the state. The district courts are organized into 21 judicial districts staffed by 37 district judges. District courts have general jurisdiction to hear all civil cases, all felony cases, all misdemeanor cases, all probate matters, all divorce cases, and many other matters. In addition, the district courts hear appeals from the courts of limited jurisdiction. District courts receive funding from a variety of sources, but the major portion of their funding is derived from county mill levies. In fiscal year 1992 district court budgets statewide total approximately $16.2 million. These budgets pay for the expenses of the clerk of court, jury and witness fees, judicial support staff salaries, indigents defense costs and juvenile probation expenses. Judges salaries are paid directly by the state and are not included within the district court budgets. Of the $16.2 million, approximately $2.3 million is provided by the state reimbursement program for certain criminal court expenses. More than 50% of district court funding is provided through the district court county mill levy pursuant to §7-6-2511 M.C.A. The "Grant-In-Aid" program administered by the state provided only $25,000 to the courts in 1991, and is budgeted to provide only $55,000 in 1992. Other district court funds were generated by revenues received from licenses, permits, filing fees. As noted in the Committee's 1990 report and herein, these funding

sources are not sufficient in many counties to fund all of the expenses of the district court system and in 36 counties which experienced district court funding shortfalls, it was necessary to make up the shortfall from other sources, such as other county budgets, supplemental funds, borrowing or registering warrants. In fiscal year 1990, fees paid to the clerks of court were approximately $1.7 million. Of this amount, approximately 51% was retained by the county; the remaining 49% was remitted to the state treasury.

3. Justice of the Peace Courts

The Montana Constitution requires that there be at least one justice of the peace court in each county. Presently, there are 77 justices of the peace in Montana, but 32 of these also act as city judges. Justice of the peace courts have jurisdiction over civil disputes involving amounts not exceeding $5,000 and misdemeanors with fines not to exceed $500 ($1,000 in cases of fish and game violations) and imprisonment not exceeding six months. In fiscal year 1990 justice of the peace court budgets were approximately $4.0 million and revenues raised by these courts were approximately $5.2 million. Fifty percent of the revenues are retained by the county; the remaining 50% are forwarded to the state treasurer and are used for the state general fund, the Department of Fish, Wildlife and Parks, the State Highway Traffic Education Program, the Department of Livestock, the Crime Victims Compensation Fund, and the Department of Family Services.

4. City and Municipal Courts

Presently there are 96 city courts and one municipal court in Montana. City courts have concurrent jurisdiction with the justice courts of most civil matters involving not more than $5,000 and misdemeanors involving imprisonment of six months or less and fines not exceeding $500. In addition, city courts have exclusive jurisdiction over disputes involving city ordinances and matters involving the collection of city taxes, or other monies owing to the city not exceeding $5,000. Montana statutes also allow for the creation of municipal courts in cities that have a population of 10,000 or more. In cities where a municipal court is established the office of city judge is abolished. A municipal court judge must have the same qualifications as a district court judge, but has the same jurisdiction as a justice of the peace. At this time only the city of Missoula operates a municipal court. Revenues raised by city and municipal courts in fiscal year 1990 were approximately $3.8 million.

5. Water Courts

The Montana Water Court was created by the 1991 legislative session to expedite and facilitate the adjudication of existing water rights pursuant to the water adjudication program set up under the 1973 Water Use Act. The state has been divided into four water divisions and the statute provides for one water judge to adjudicate each division. There is also a chief water judge. In addition, five water masters and four clerks are employed by the water court. Funding for the water court is

derived from various revenue sources which include coal tax money, resource indemnity trust money and various other sources of bond and income revenues.

6. Workers' Compensation Court

The Workers' Compensation Court was created by statute on July 1, 1975, to adjudicate disputes arising out of the workers' compensation program. The workers' compensation court has exclusive jurisdiction over disputes arising under the workers' compensation laws. The workers' compensation court is also provided with a staff which includes one or more hearing examiners.

7. Clerks of the District Court

Every county in Montana has a clerk of the district court, which is an elected position in each county except Anaconda-Deer Lodge where the clerk is appointed. Clerks maintain complete records of cases filed and proceedings conducted in the district court within their respective counties. In addition, district court clerks issue marriage licenses and have administrative responsibilities for jury selection, citizenship and naturalization records.

8. Clerk of the Supreme Court

The clerk of the Montana Supreme Court is an elected position. The clerk maintains the files and records of the Montana Supreme Court, collects the annual attorney license tax, and maintains the role of Montana attorneys.

9. Office of the Court Administrator

The office of the court administrator was created in the 1977 legislative session. The court administrator is appointed by the Supreme Court and holds the position at the pleasure of the court. The court administrator assists the Supreme Court in preparing judicial budget proposals, monitoring and managing the judicial budget, coordinating judicial educational services, providing central staff services to various boards and commission, and providing long range planning and research for statewide judicial needs.

IV. A COMPARISON WITH OUR NEIGHBORING STATES

South Dakota and Idaho have unified court systems in place. Utah has accomplished major changes in its judicial system and is headed toward a unified system. The State of North Dakota is currently in the process of unifying and consolidating its trial courts.

South Dakota has a population comparable to Montana and like Montana is predominately rural with large open spaces. It has 67 counties and at one time had 67 county judges together with numerous justice of the peace courts and city courts. A commission to study court unification was established in 1960 and 10 years later an acceptable court unification procedure was presented for approval. This was approved by constitutional amendment in November of 1972 and implemented in 1975. The changes in the judicial system were enacted over a three year period. The

district courts and limited jurisdiction courts in South Dakota were abolished and eight judicial circuits were created. There are presently 36 circuit court judges, seven law magistrates and eight part-time law magistrates. Each circuit has a presiding circuit judge who, in addition to judicial duties, helps administer affairs in that circuit. The circuit court judges, who are comparable to our district court judges, have jurisdiction to hear all trial matters including traffic tickets, municipal ordinance violations and other matters that are traditionally handled by limited jurisdiction courts. In practice, however, magistrates decide these matters. In addition, the clerks of court in each county act as lay magistrates and generally handle non-contested matters formerly handled by justice courts and city courts. At first, counties paid about fifty percent of the cost of the unified system, but gradually the state assumed more and more of the funding responsibility and at the present time the state assumes all of the responsibility for court funding except that counties pay for courthouse facilities, jurors fees and costs of indigent defense.

Idaho has 44 counties divided into seven judicial districts. In 1969 Idaho abolished probate courts, police courts and justice of the peace courts and implemented a one level unified trial court in each county. Instead of 300 limited jurisdiction judges, many of whom were part-time and untrained, there are now 60 full-time lawyer judges and trained non-lawyer judges who serve as magistrates of the district courts. In addition, there are 33

district judges. In each district, there is a supervising judge who handles administrative tasks within that district. The Idaho Supreme Court has ultimate authority for supervising and administering the Idaho court system.

Utah has estimated that if it had not adopted a reorganization plan, it would have been necessary to add 22 additional trial court judges plus support staff and additional facilities in order to keep pace with existing case loads. The projected cost would have been in excess of $18 million. By adopting a reorganization plan, the number of additional judges was reduced to four and the actual costs incurred during the same time period were slightly in excess of $3 million, representing a savings of $15 million to the taxpayers.

North Dakota has district courts of general jurisdiction and county courts of limited jurisdiction similar to Montana's justice of the peace courts except that county courts hear probate matters. Under legislation now in effect the North Dakota county courts will be abolished and their functions will be assumed by the district courts. There are presently 53 district court and county court judges. After the completion of a transition period which ends on January 2, 2001, there will be 42 district court judges and county courts and county judges will cease to exist. North Dakota has seven judicial districts. District court operations in North Dakota are funded by the state from the general fund. The district court budget includes all juvenile court and probation expenses

including the salaries of referees who act as juvenile court judges.

V. A LOOK AT MONTANA

Montana has 21 judicial districts and 37 district judges, once a new judge takes office in Ravalli County on January 1, 1993. The 19th, 20th and 21st districts have been added in recent years, the most recent addition being the 21st district in Ravalli County in 1991. There are 153 limited jurisdictions in Montana staffed by 121 limited jurisdiction judges, of which 36 are full-time. Some of these limited jurisdiction judges cover more than one jurisdiction.

Montana has adopted some elements of a unified system. The district courts are courts of general jurisdiction and most of the judicial districts encompass several counties. The office of court administrator was established in 1975, and this office provides administrative direction for the Supreme Court and a number of lower court functions. As of 1991 the court administrator's office reviews and approves the state reimbursement program for criminal court costs incurred by district courts. The office of the court administrator also coordinates the meetings of the various study commissions established by the Supreme Court. One of these is the Commission of Courts of Limited Jurisdiction which assists in setting general policies for limited jurisdiction courts. Limited jurisdiction judges are required to receive over 50 hours a year of training as of 1990 and are required to take a

written certification test. The office of the court administrator has also worked in implementing uniform data retrieval systems for use by both the district courts and limited jurisdiction courts. The Clerks of Court, through their association, have worked together to improve the uniformity and efficiency of their offices throughout Montana.

However, for the most part Montana trial courts operate autonomously. District court judges and clerks of court negotiate with their respective county commissioners to set district court budgets each year. Justices of the peace negotiate their budgets with county commissioners and city judges with their respective city councils or commissions.

Although the Montana Constitution provides that the Montana Supreme Court has "general supervisory control over all other courts" this power is exercised principally through the writ of supervisory control. That is, the power is invoked by individual litigants who request the Supreme Court to address particular problems in cases pending before the district court. It is used where no route of appeal exists, and is often used as a substitute for interlocutory appeals. Occasionally the writ has been used to apportion case loads among district judges in multi-judge districts and to compel district judges to perform their judicial duties. The power has never been used as a basis for integral, continuous administrative control or supervision by the Supreme Court of lower state courts. Although efforts were made in the 1972 constitu-

tional convention to broaden this power to include a "judicial administrative provision" this was not adopted.

In fact, present statutory provisions give the governor power to intervene in the courts in certain situations. M.C.A. §35-5-111 provides that the governor has the right to compel a district court judge to take assignments in another district; M.C.A. §3-5-112 provides that the governor has the right to compel any district court judge to hold court in any county wherein the elected presiding judge fails to hold court for any reason.

As seen above, there is overlapping jurisdiction among the district court and courts of limited jurisdiction for certain types of cases. A civil case involving $5,000 or less which arises within a particular city could be filed in that city's court, or in the justice of the peace court, or in district court. The same is true with misdemeanor violations involving not more than six months imprisonment or a $500 fine.

Furthermore, the courts in Montana are "compartmentalized" each operating autonomously in handling matters within its particular jurisdiction. A district judge in a single judge district must handle all of the matters filed in that district court. Many judges in Montana do not have law clerks because of insufficient funding. Justices of the peace or municipal judges within the same county handle their own workloads, without assistance from the district courts, nor can these judges lend assistance to the district judge, or to each other.

Montana's approach to expanding workloads for district judges has been to create new judicial districts and to create new judge positions. Each judicial district must be created or reshaped by an act of the Legislature rendering the system more inflexible. In 1984 there were 19 judicial districts staffed by 32 district judges. As of January 1, 1993, there will be 21 judicial districts staffed by 37 district judges.

In states with unified systems, where all of the judicial officials work together, judges can be assigned where they are most needed within their districts, and magistrates, can work together with the district judges to best handle the judicial business within their particular jurisdictions.

VI. WILL A UNIFIED JUDICIAL SYSTEM SOLVE COURT FUNDING PROBLEMS?

This Committee is not prepared to say that a unified judicial system will in itself solve court funding problems. However, the committee notes that the court system, when viewed as a whole, generates a significant amount of revenue.

Justice of the peace courts in Montana generate $5.2 million annually in revenue; city courts $3.8 million, and district courts $1.7 million from filing fees collected pursuant to Section 25-1-201 alone. The total approaches $12 million annually. All of these courts taken together cost a total of approximately $20 million per year to operate. Thus, Montana trial courts, viewed as a whole, generate revenue which approximates sixty percent of their

operating expenses, although much of the money raised is used for purposes other than court operations.

In addition, the district courts collect and disburse substantial sums for child support payments and monies held in trust for various purposes. In fiscal year 1991 child support payments handled by the district courts totalled $14,897,544 while trust fund accounts totalled $5,222,919. None of this money is used for court operations or other public purposes, but the collection and disbursement of these funds is an important public service.

The unified court system in South Dakota, a state with a population similar to that of Montana, raised over $30 million in revenue in 1990, when child support payments were included. In Idaho, total trial court costs approximated $23 million in 1987, and the court system generated nearly $16 million in revenues. Like Montana, the money generated by the court systems in South Dakota and Idaho is widely disbursed, and most of it is used for purposes other than court operations. In fact, serious conflicts of interest would arise if courts were required to fund their activities from revenues generated by fines, filing fees and other court activities. However, when the courts are viewed as a unified whole which produce revenue equal to a major part of their expenses, the Legislature and the public can then appreciate that the courts raise a significant amount of money for a variety of important public purposes.

The Committee further believes that a unified system may be able to operate more efficiently than our present fragmented system. Montana's approach to handling expanded workloads has been to create new district judge positions and create new judicial districts. This simply leads to further fragmentation of the judicial system. Montana judges, at present, are the lowest paid in the United States. However, even at their present pay scales, the creation of an additional judge post is very expensive. In addition to an annual salary, each new judge must have an office, a law library, a secretary, a word processor, and hopefully a law clerk in order to perform his or her duties effectively. The unified system would provide more flexibility in staffing. Magistrates, working as part of the district court, could hear not only traffic violations, but could also act much as federal magistrates presently act in hearing motions, conducting settlement conferences in other matters. Many routine probate and divorce matters do not require the services of a highly trained district judge, and could easily be handled by a magistrate. However, at the present time only the district judge can hear these matters.

With a more efficient centralized system, it would not be necessary to keep adding new district judges. With centralized state funding for the court system, the judicial system would be financially accountable to the Legislature. State, county and city governments could be relieved of the burden of court expenses, and some of the revenue now channeled for such court expenses, could be directed to the state treasury to help offset court costs.

VII. CONCLUSION

In summary, it is the Committee's position that the funding of the court system should rest primarily with the state. The unified judicial system, with a central budget presented to the Legislature, would be financially accountable to the Legislature. Judicial resources could be used efficiently to provide better service to the people of Montana at a reasonable cost. A unified system would achieve efficiencies in services and costs which cannot be achieved under the present fragmented court system.

The Committee recognizes that a unified court system would involve major legal changes and the Committee believes that these changes can best be implemented if all segments of the judicial system which will be affected as well as the public can be involved in studying and implementing these changes. The Committee does not have the time or resources to study this problem in detail and believes that a comprehensive study can only be done through a legislatively authorized and funded study committee.

Accordingly, the Committee recommends that the Legislature pass the draft bill establishing and funding a study committee to determine the feasibility of a unified court system in Montana (attachment A). Attachment B is a budget for the proposed commission. During the interim, in order to alleviate district court funding shortfalls, the Committee recommends that the Legislature extend H.B. 312, passed by the 1991 Legislature (attachment C).

REFERENCES

Article VII, Constitution of Montana.

Title 3, Montana Code Annotated.

Report of the District Court Funding Committee - State Bar of Montana - December 10, 1990.

Annual Report of the Montana Judicial System - calendar year 1990 - J. A. Turnage, Chief Justice.

The Judicial Article: What Went Wrong? - Gene M. Bowman, Montana Law Review, Vol. 51, No. 2, Summer 1990.

Court Unification in Montana; A Report to the 49th Legislature Joint Interim Subcommittee No. 3 - December 1984 - Montana Legislative Council.

South Dakota Courts - The State of the Judiciary and 1990 Annual Report of the South Dakota Unified Judicial System - Chief Justice Robert A. Miller - January 1991.

Utah State Courts - Annual Report - 1992.

Guide to the Idaho Courts - June 1989.

Report of William G. Bohn, North Dakota Court Administrator, April 26, 1991.

Montana Association of Counties - Statistics of District Court revenues and expenditures, and use of HB312 funds.

In addition, the Committee received considerable statistical material from Jim Oppedahl, Court Administrator's office, from Gordon Morris and Sandra Oitzinger of the Montana Association of Counties and from George Bousliman of the State Bar. The Committee also received valuable telephone input from the court administrators of North Dakota, South Dakota, and Utah concerning their respective judicial systems.

EXHIBIT #2 ATTACHMENT A
DATE 2-16-93
HB-525

DRAFT

AN ACT GENERALLY RELATING TO JUDICIAL ORGANIZATION AND FINANCING; ESTABLISHING A JUDICIAL UNIFICATION AND FINANCE COMMISSION TO CONDUCT A STUDY OF THE JUDICIARY; PROVIDING FOR THE SELECTION OF 13 MEMBERS TO SERVE ON THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Judicial unification and finance commission.** (1) There is a 13 member judicial unification and finance commission consisting of three public members appointed by the governor; two members appointed by the chief justice of the supreme court; one member appointed by the speaker of the house of representatives, who shall be a member of the house of representatives; one member appointed by the president of the senate, who shall be a member of the senate; and one member each who shall be appointed by the following organizations: the Montana judges association, the Montana magistrates association; the Montana association of clerks of court; the State Bar of Montana; the league of cities and towns; and the Montana association of counties.

(2) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(3) Any vacancy occurring on the commission must be filled in the same manner as the original appointment.

(4) The members shall select a chairman from among themselves.

Section 2. **Meetings.** (1) The chairman shall schedule meetings of the commission as considered necessary. The chairman shall give notice of the time and place of the meetings to members of the commission. The director shall report progress on the study to date at each meeting.

(2) The commission may adopt any necessary rules of procedure for the conduct of its meetings.

Section 3. **Reimbursement of expenses.** Members of the commission must be reimbursed in accordance with 2-18-501 for actual and necessary expenses incurred in attending meetings or conducting business.

Section 4. **Staff and facilities.** (1) The commission shall appoint and fix the compensation for a director who, subject to approval of the commission, may hire necessary staff and enter into contracts for services if necessary.

(2) The department of administration shall provide necessary meeting facilities in the capitol for the commission and office space, equipment, and supplies for its staff.

Section 5. **Powers and duties -recommendations- report.** (1) The commission shall make a detailed and thorough study of the judiciary and of the possible unification and future funding thereof. For this purpose the commission is authorized to secure directly from any agency, board, or commission or from any independent organization any information, suggestions, estimates, and statistics, and each such agency, board, commission, or organization shall furnish such information upon request made by the chairman of the commission.

(2) The commission shall submit a written report to the legislature no later than December 1, 1994, which shall include recommendations for any necessary implementing legislation.

Section 6. **Funding -- appropriation.** (1) The commission may receive gifts, grants, or donations. The money received must be used for fulfilling the duties of the commission, for reimbursing the expenses of commission members, or for providing staff for the commission. The money received must be deposited in a special revenue fund to the credit of the commission. There is appropriated to the commission from the special revenue fund an amount not to exceed $50,000.

(2) There is appropriated $159,650 from the general fund to the commission created by this act for the biennium ending June 30, 1995, to be used only as needed to supplement the funding available under subsection (1).

Section 7. **Effective date.** (1) This act is effective on passage and approval.

DRAFT BUDGET
COURT UNIFICATION/FINANCE STUDY COMMISSION

	FY 1993-94	FY 1994-95
Income:		
Contributions	$2,275	$2,275
Appropriation	76,925	82,725
Expenses:		
Contracted Services	60,000	63,000
Travel (4 Committee meetings a year)	7,200	7,500
Printing	2,500	3,500
Supplies	1,500	1,600
Copying	1,500	1,600
Telephone	2,300	2,400
Postage	1,000	2,000
Equipment Rental	1,200	1,300
Office Rental	2,000	2,100
TOTALS	$79,200	$85,000

EXHIBIT #2
DATE 2-16-93
HB-525

ATTACHMENT C

DRAFT

AN ACT RELATING TO FUNDING DISTRICT COURTS; EXTENDING THE DATE FOR TERMINATION OF THE PROVISIONS OF CHAPTER 749, LAWS OF 1991.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4 of Chapter 749, laws of 1991, is amended to read:

Section 4. **Termination.** This act terminates June 30, 1995.

EXHIBIT
DATE 2-16-93
HB 525

HOUSE BILL 525
FEBRUARY 16, 1993

When the State Bar Association created a committee to look at district court funding, I was asked to be a part of that committee, representing the League of Women Voters of Montana. I was the State President of the League at the time. The League began to study the Judicial Article of the Constitution in 1973, and have continued to update their positions since that time. Over the years, the League has often lobbied on judicial legislation.

The Bar Association Committee began by looking at the funding of district courts, but realized that the problem went deeper than just determining and resolving the funding responsibilities. The organization of the judicial system needed to be looked at as well. It was said very well, I think, by Jean Bowman, in an article she wrote for the Montana Law Review....."everyone must focus on the purpose of our legal system, which is the administration of justice - equally, fairly, and with dispatch." Our committee decided the best way to do this was to ask the legislature to allow the establishment of a broad based commission to look at unification, funding of the courts, and other matters relating to more efficiency within the administration of the court system, and to allow this committee to be funded with both public and private funds.

I served on the Legislative Reorganization Committee several years ago. It was composed of both legislative and non-legislative members, and funded with both public and private funds. The diverse composition and funding of this committee seemed to work very well.

I think the time has come to move toward some significant changes within the judicial system administration. It stands to reason that a streamlined, more efficient, and better coordinated judicial system can only improve the administration of justice, and, I believe, will be more cost effective, as well.

We ask that you support and pass HB 525.

Joy Bruck
LWV of Montana
1601 Illinois
Helena, MT 59601

EXHIBIT 4
DATE 2-16-93
HB 507

Amendment to HB 507
Requested by Representative Sayles

Drafted by Paul Fossum
February 6, 1993

1. Page 1, line 13
Following: "officiating"
Insert: "that is alleged to have affected the outcome of the contest"

Montana Shooting Sports Association

P.O. Box 4924 • Missoula, Montana 59806 • (406) 549-1252 • FAX (406) 251-3824

Asserting the Rights of Gun Owners in Montana

EXHIBIT 5
DATE 2-16-93
HB 582

February 13, 1993

Representative Russell Fagg, Chairman
and Members of the
House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Chairman Fagg and Members,

Last session, the Legislature passed HB825, a long-needed revision of the process by which concealed weapon permits are applied for and issued in Montana. Although HB825 was a huge improvement over the previous process, two years of use of this new process have demonstrated that it wants some minor adjustments. This session's HB582 constitutes those adjustments.

HB582 is introduced at the request of the Montana Shooting Sports Association, and is supported by the following organizations:

National Rifle Association,
Gun Owners of America,
Citizens Committee for the Right to Keep and Bear Arms,
Western Montana Fish and Game Association, and
Big Sky Practical Shooting Club.

Together, these organizations represent about 40,000 interested gun owners in Montana.

We recommend HB582 highly to the House Judiciary Committee. We request that after having considered HB582, you give it a DO PASS.

Thank you for your consideration.

Sincerely yours,

Gary S. Marbut
President

EXHIBIT 10
DATE 2-16-93
HB 590

Statement to House Judiciary Committee
HB 590 - Date submitted: February 16, 1993
Ben Havdahl - State Coordinator, Self Help For Hard of Hearing People

Mr. Chairman. Members of the Committee. For the record my name is Ben Havdahl. I live in Helena and am the State Coordinator for a national organization representing the concerns of the hard of hearing, called Self Help For Hard of Hearing People Inc. with headquarters in Bethesda, MD.

I am here on my personal cognizant to support the adoption of HB 590 even though I am registered as a lobbyist for the Montana Motor Carriers Association, a most accommodating employer.

I commend this Legislature and committee for its positive support for this bill enacting significant provisions of the Americans With Disabilities Act. The ADA, is thus truly a landmark civil rights bill. It will open up all aspects of American life to individuals with disabilities—employment opportunities, State and local government services, public accommodations, transportation, and the telephone system.

I have taken the liberty of attaching background information sheets on the ADA to my statement printed on colored paper. Hopefully they will be of benefit.

Although HB 590 stresses the ADA provisions dealing with employment and public accommodations, it deserves similar recognition in Montana. Montana has already adopted legislation in 1989 by Rep. Diana Wyatt which, as you may know, established the successful telecommunications dual party relay program of the ADA for Montana. I served as chairman of that program for three years and it has truly proved its worth to many impaired Montana citizens.

As many of you know I am severally hard of hearing and depend on hearing aids coupled with an assistive device and the use of systems to enable me better understand what is being said especially here in the Legislature. In that struggle, many times, after what I have learned is fact being said, I find that I am probably just as well off not knowing.... It is a little ironic to me that this hearing on this bill is in a committee hearing room that is not equipped with an assistive listening system for the hard of hearing. So I brought my own.

That is not to say that this Legislature has not be accommodating in that area. It has and very much so. A listening system has been installed in the House and Senate Chambers and in the large Senate hearing room. Without these, I could not have continued to function as a lobbyist. So I am grateful. Also I noticed the installation of a "text telephone" next to the pay phone on the first floor.

Which brings me to my point about HB 590. The bill does an excellent job of enacting the basic employment and public accommodations provisions of the ADA. The emphasis in the bill appears to me to be on the physical handicap accommodations which I fully support.

The only specific reference I found to hearing impairment is on page 18 of HB 590 in sub paragraph (d) referencing architectural barriers and "communication barriers". The sub paragraph (c) above that speaks of "absence of auxiliary aids and services", but HB 590 fails to include a definition of those terms.

The ADA defines "Auxiliary Aids and Services" and I would urge this committee to amend the bill to include that definition. It is as follows:

The term "auxiliary aids and services" includes: (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions."

With that definition added, HB 590 becomes more clear in its ability to deal with those public accommodations that affect hearing and sight impaired people.

Mr. Chairman I would thank you and the committee for this opportunity to speak in support of HB 590.

Nationally, the ADA, establishes "a clear and comprehensive prohibition of discrimination on the basis of disability." Taken in combination with previously existing disability rights law, it provides a sound legal framework for the practical implementation of the inalienable right of all people with disabilities to participate equally in the mainstream of society. ADA is only the beginning. It is not a solution. Rather, it is an essential foundation on which solutions will be constructed.

And for Montana HB 590 offers that same foundation. Thank you.

EXHIBIT # 6
DATE 2-16-93
HB-370

SHHH *INFORMATION SHEET.....* REQUIREMENTS
AMERICANS WITH DISABILITIES ACT

Self Help for Hard of Hearing People, Inc. - 7800 Wisconsin Avenue - Bethesda, MD 20814 - (301) 657 2248 - (301) 657 2249 TT

AMERICANS WITH DISABILITIES ACT REQUIREMENTS - Summary Fact Sheet

Employment

• Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.

• Employers can ask about one's ability to perform a job, but cannot inquire if someone has a disability or subject a person to tests that tend to screen out people with disabilities.

• Employers will need to provide "reasonable accommodation" to individuals with disabilities. This includes steps such as job restructuring and modification of equipment.

• Employers do not need to provide accommodations that impose an "undue hardship" on business operations.

Who needs to comply?

• All employers with 25 or more employees must comply, effective July 26,1992.

• All employers with 15-24 employees must comply, effective July 26,1994.

Transportation

• New public transit buses ordered after August 26,1990, must be accessible to individuals with disabilities.

• Transit authorities must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed route bus services, unless an undue burden would result.

• Existing rail systems must have one accessible car per train by July 26,1995.

• New rail cars ordered after August 26,1990, must be accessible.

• New bus and train stations must be accessible.

• Key stations in rapid, light, and commuter rail systems must be made accessible by July 26,1993, with extensions up to 20 years for commuter rail (30 years for rapid and light rail).

• All existing Amtrak stations must be accessible by July 26, 2010.

Public Accommodations

• Private entities such as restaurants, hotels, and retail stores may not discriminate against individuals with disabilities, effective January 26,1992.

• Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result.

• Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.

• All new construction and alterations of facilities must be accessible.

State and Local Government

• State and'local governments may not discriminate against qualified individuals with disabilities.

• All government facilities, services, and communications must be accessible consistent with the requirements of Section 504 of the Rehabilitation Act of 1973. Effective Date: January 26, 1992.

Telecommunications

• Companies offering telephone service to the general public must offer telephone relay services to individuals who use Telecommunications Devices for the Deaf (TDD's) or similar devices. Effective Date: July 26,1993.

SHHH *INFORMATION SHEET.....* *What it is and what it does.*

AMERICANS WITH DISABILITIES ACT

Self Help for Hard of Hearing People, Inc. - 7800 Wisconsin Avenue - Bethesda, MD 20814 - (301) 657 2248 - (301) 657 2249 TT

The Americans With Disabilities Act - What it is and What it does.

Introduction

Throughout all of reported history until recent decades, people perceived as having significant disabilities have been treated as sub-humans. At worst they were killed or left as beggar-outcasts to die, at best they were cared for through subsistence welfare, out of sight and mind in institutions and back rooms.

With the development of modern medicine and social responsibility, millions of 20th Century humans are surviving previously fatal conditions and living on with significant disabilities. These individuals have a great potential to be happy, productive members of their communities. However, our best efforts to fulfill this potential have been consistently limited by a massive residue of prejudice and paternalism.

Our society is still infected by an insidious, now almost subconscious assumption that people with disabilities are less than fully human, and therefore are not fully eligible for the opportunities, services and support systems which are available to other people as a matter of right.

The Americans with Disabilities Act establishes "a clear and comprehensive prohibition of discrimination on the basis of disability." Taken in combination with previously existing disability rights law, it provides a sound legal framework for the practical implementation of the inalienable right of all people with disabilities to participate equally in the mainstream of society.

But ADA is only the beginning. It is not a solution. Rather, it is an essential foundation on which solutions will be constructed.

The ADA, is thus truly a landmark civil rights bill. It will open up all aspects of American life to individuals with disabilities—employment opportunities, State and local government services, public accommodations, transportation, and the telephone system.

Legislative History

The first version of the ADA was developed by the National Council on Disability in 1986. A bill, was introduced in 1988 during the 100th Congress. Public awareness of the effects of discrimination on the basis of disability was achieved by holding 63 hearings on the ADA in every State in this country.

During the 1988 Presidential election campaign, then-Vice President George Bush endorsed the ADA and became its chief advocate.

The ADA was reintroduced, in a modified form, in May 1989. After extensive negotiations between the Senate and the Administration. The Senate passed an amended version of the ADA in September, 1989. The House of Representatives passed its version of the bill in May, 1990.

Because the House and Senate had passed differing versions of the ADA, further congressional action was necessary. The House and Senate held two different conferences on the ADA. The House completed its action on the ADA in July, 1990, passing the ADA by a vote of 377-28. The next day the Senate completed its action on the ADA and passed the bill by a vote of 91-6.

The ADA legislative process was exceptionally complex, and there was powerful opposition on a very large number of issues. Strong supporting groups and disability community were successful in protecting the principle of full equality.

The ADA became law on July 26, 1990, when it was signed by President Bush on the South Lawn of the White House in front of almost 3,000 persons, a record number for any bill signing ceremony. In signing the bill, President Bush pledged that we, as a nation, "will not accept, we will not excuse, we will not tolerate discrimination in America."

The ADA provides civil rights protections for persons with disabilities that are parallel to those that have been established by the Federal government for women and minorities. The ADA is thus an amalgam of two great civil rights statutes: the Civil Rights Act of 1964 and the title V of the Rehabilitation Act of 1973. The ADA can best be understood by reviewing its chief provisions.

Employment

A central provision of the ADA is the prohibition of discrimination against individuals with disabilities in public and private sector employment. Title I of the ADA requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer.

Accommodations include a wide variety of actions—making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, reassigning an employee to a vacant position, and providing readers or interpreters. The proliferation of the computer and the technological advances has been instrumental in providing efficient and inexpensive job accommodations.

The ADA prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity.

The ADA also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of medical examinations after a job offer has been made—if the results of the medical exam are kept confidential, if all persons offered employment are required to take the exam, and if the results are not used to discriminate. Employers are permitted, at any time, to inquire about the ability of a job applicant or employee to perform job-related functions.

Transportation

The ADA says individuals with disabilities have to have access to transportation. The promise of nondiscrimination in employment and accessible public accommodations would be an illusory one if accessible transportation were unavailable. The ADA provides access by requiring that all new public buses be accessible to persons with disabilities. No retrofitting of existing buses is required by the ADA.

The ADA further requires transit authorities to provide supplementary special transportation services to those individuals with disabilities who cannot use fixed route bus services. The ADA tempers this requirement and strikes a responsible balance between providing accessible transportation and protecting the economic viability of local transit providers.

Accessibility requirements in over-the-road buses will be the subject of an in-depth study required by the ADA. Allowing sufficient time to complete the needed study, the ADA requires that new over-the-road buses ordered on or after six years from enactment (seven years for small companies) must be accessible. It permits the extension of the deadlines by one year, if appropriate.

In the area of rail transportation, the ADA requires that all new rail vehicles and all new rail stations must be accessible. In addition, existing rail systems must have one accessible car per train within five years from enactment.

Addressing existing rail stations, the ADA gives Amtrak 20 years to achieve accessibility in all of its stations. In addition, the ADA requires that existing "key stations" for rapid rail (subways), commuter rail, and light rail (trolleys) be made accessible within three years.

Public Accommodations and Services by Private Entities

Title III of the ADA covers public accommodations and services by private entities providing access to the mainstream of everyday life. Coverage is extended to the entire range of private entities that affect commerce. From aquariums to zoos, the ADA sweeps within its reach the broad spectrum of sales, rental, and service establishments, as well as educational institutions, recreational facilities, and social service centers.

The ADA outlaws the use of eligibility criteria that tend to screen out individuals with disabilities, unless necessary for the operation of the public accommodation. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering its premises.

The ADA also requires public accommodations to make reasonable modifications in policies, practices, and procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation. For example, it would be discriminatory for a restaurant to refuse to modify a "no pets" rule for persons who use guide dogs including Hearing Dogs.

The ADA does not impose unlimited requirements on public accommodations. The requirements for retrofitting existing facilities are minimal. A physical barrier need only be removed when its removal is "readily achievable."

The bill requires provision of auxiliary aids, those devices necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if their provision will not result in an undue burden on the business.

Thus, under the ADA, a restaurant would not be required to provide menus in Braille for blind patrons, if the waiters in the restaurant were willing to read the menu. This auxiliary aid requirement is a flexible one. A public accommodation can choose among various alternatives as long as the result is effective communication.

The ADA's most rigorous accessibility requirements apply to new construction and alterations. All new construction and alterations in public accommodation, as well as in commercial facilities such as office buildings, must be accessible.

However, facilities that have less than 3,000 square feet per story or are less than three stories high need not install elevators, unless the building contains a shopping center, mall, or the professional offices of health care providers.

Religious Entities

The ADA exempts religious organizations or entities controlled by religious organizations from the public accommodations requirements of the Act. It also appropriately permits a religious entity to hire members of its own faith and to require employees to conform to the religious tenets of the employer.

Coverage of Drugs

The bill is fully consistent with the nation's commitment to the eradication of the scourge of illegal drug use.

It allows employers to prohibit the use of alcohol or illegal drugs at the workplace by all employees, to require that employees conform their behavior to the requirements of the Drug-Free Workplace Act, and to hold drug users or alcoholics to the same qualification standards applied to others. The ADA excludes people who currently use illegal drugs from its protections, but does prohibit discrimination against recovering drug addicts and alcoholics.

Enforcement and Remedies

With respect to employment, the ADA provides the remedies available under title VII of the Civil Rights Act of 1964, including administrative enforcement by the Equal Employment Opportunity Commission. After those remedies are exhausted, there is a right to sue in Federal court for injunctive relief and monetary relief in the form of backpay. Because title VII does not now include compensatory and punitive damages, these forms of relief are not available under the ADA.

With respect to public accommodations, the bill limits relief available in private suits to injunctive relief, attorney's fees, and court costs. The ADA avoids unnecessary fiscal incentives for private litigation by barring compensatory or punitive damages, while ensuring that individual plaintiffs are not deterred from bringing meritorious suits.

Telecommunications Relay System

The ADA amends the Communications Act of 1934 to require that telephone companies provide telecommunications relay services. The relay services must permit speech or hearing-impaired individuals who use TDD's or other non-voice terminal devices opportunities for communication that are equivalent to those provided to other customers.

Technical Assistance

Under the ADA, the Attorney General will oversee government-wide technical assistance activities. The Department of Justice will consult with the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the National Council on Disability and the President's Committee on Employment of People with Disabilities, among others, in this effort.

EXHIBIT #6
DATE 2-16-93
HB-590

SHHH *INFORMATION SHEET.....* **Telecommunications Access**

AMERICANS WITH DISABILITIES ACT

Self Help for Hard of Hearing People, Inc. - 7800 Wisconsin Avenue - Bethesda, MD 20814 - (301) 657 2248 - (301) 657 2249 TT

TELECOMMUNICATIONS ACCESS

ADA Requires Telephone Industry to Provide Relay Service

By July 26,1993, as mandated by Title 4 of the Americans with Disabilities Act (ADA), telecommunications relay services enabling hearing impaired and speech impaired persons to use the telephone, must be in full operation throughout the entire United States. In the interim, as telecommunications relay standards are being developed by the Federal Communications Commission (FCC), and as the states are working to comply with the law, where do we, the hard of hearing community, go from here?

Is our task accomplished? No! Far from it. In fact, while federal law can and does mandate accessibility, only you and I, the consumer, can ensure usage.

How many of the millions of hard of hearing people in our country today are aware of and excitedly awaiting this major breakthrough in communications access for hearing impaired people? Ironically, not a significant number of us...as yet. Those last two words, "as yet," are extremely important.

Now is the time to prepare ourselves for, and begin using, this new technology. Now is the time to start reaping the benefits of the federally mandated dual party relay service being made available to those of us who can no longer use, or have difficulty using, the standard telephone.

Why Now?

Because approximately 37 states, **including Montana**, have already installed or are in the process of installing a relay center. Once installed, the state relay center is accessible every day, 24 hours a day. The relay service uses "text telephones" (TTs) and specially trained relay operators ("communications facilitators") to enable those of us who are hard of hearing to "talk" by telephone to other people, and enables others to call us and "talk" to us via our TTs by talking on the telephone using the "Voice Carry Over" (VCO) feature of the relay or by typing the message.

Montana's Committee On Telecommunications - Resolution To Encourage The Hard-Of-Hearing To Use Dual Party Relay.

The Governor's Committee on Telecommunications Services is responsible for administering the statewide telephone access program for telephone handicapped people.

Most hard-or-hearing Montanans do not yet know what they are missing when it comes to the "ease" of talking on the telephone. Most still struggle with hearing every little word, which often times makes talking on the phone an unpleasant experience.

Montana's *"Telephone Access Program"*, created by the 1989 Montana Legislature, and funded by a ten cent monthly fee on all telephone users in the state, has been busy since November of 1990, placing "specialized equipment" with every Montana citizen, free of charge, who is hearing or speech impaired.

Relay services around the country and in Montana are the bridge between those that can hear and those that cannot. It provides the link between regular telephone users and the hearing impaired that use text telephones (TT). To date, over 600 Montanans have taken advantage of this new service, logging over 42,000 telephone calls during the first year. However, the number of hard-of-hearing people using the relay is not what it should be.

Those numbers are pretty amazing when one considers that many of the callers, due to a hearing or speech impairment, were not always able to make a simple phone call without the help from friends or family.

There are estimated to be 26,000 Montanans with hearing impairments, the big percentage of whom are hard-of-hearing.

The Montana Committee on Telecommunications Services, recognizing that the needs of the hard-of-hearing were not being fully met by the relay service, passed a "resolution" challenging all telephone equipment manufacturers to develop a standard telephone for use by the hard-of-hearing that does not require a keyboard common to current TT's. More specifically, standard telephones should be built with a "VCO SCREEN". This would allow hard-of-hearing people to communicate through relay services using their voice, without a needing to "type it out".

The resolution was distributed nationwide in an effort to solicit support from other hearing impaired user groups, as well as the telephone manufacturers. The response from states and manufacurers has been supportive. Maryland, Virginia, New Jersey, California, Washington, Illinois, New York, ULTRATEC, and AT&T have gone on record In support of this idea.

In the words of one representative, "The Montana Resolution is really making hay. Let's hope and pray that the manufacturers of telephone equipment are listening and we can foresee the day when all telephones are built with a "VCO SCREEN" as standard equipment.

Freedom in Phoning

For those of us who have difficulty using, or who can no longer use, the standard voice phone, the tremendous liberating effect of being able to place and receive our own telephone calls through the dual relay, cannot be described: it must be experienced. Do you want to book a flight? Go ahead. Do you want to order a pizza yourself? You can do it.

By becoming familiar with and using your state's relay service, you are, in effect, taking one small step forward for yourself, and "one giant step" in communications access on behalf of all hearing impaired people. By using the facilities provided, you validate the viability of research, new developments, and services and technologies of benefit to that huge segment of the population with hearing loss. And, in the process, you regain a measure of that treasured independence that hearing loss often denies us. By freeing ourselves, we also free our family members.

We must take those initial, hesitant, but, nevertheless, forward steps to learn about, and use, TTs and telecommunication relay services. We—with the absolutely magnificent support and step-by step help of the specially trained relay service telephone operators— can turn our "telephone nightmares" into "the joy of telephoning.

The independence that our hearing loss deprived us of, can be regained . . . but we must reach out and grasp it ourselves. You say, "I don't have a TT." Or, "No one I know has a TT." Or, "My family and friends don't even know what a TT is!"

So! Is that any reason not to acquire and demonstrate—to family, friends, business associates—the magic of telecommunications accessibility?

Once acquired, how do you go about using your TT to place or access a call through your state relay center?

The service is fast and easy to use. All calls are billed as though they're regular telephone calls, at telephone company rates. There are no extra charges. Individuals using the relay center will receive a telephone discount for long distance or toll calls after contacting their phone company for this service.

Another item for consideration as we review this new communications option is the matter of affordability or cost of a TT if you do not already have one. Some state programs, including Montana's provide TTs amplifiers at no charge.

Finally, demonstrate your interest and your accountability for your own hearing needs by educating yourself about the progress of the relay service in your own state. Your action in this regard indeed speaks louder than words—and you can let your voice be heard in your state's legislative and enactment offices.

Educate yourself; use the facilities provided; and demonstrate your gratitude. You have nothing to lose but your inability to make a phone call yourself.

With the passage and implementation of the ADA, hearing impaired persons can now continue their progress into a new decade of communications accessibility.

EXHIBIT 7
DATE 2-16-93
HB 590

Proposed Amendment to HB 590
Introduced Copy

1. Page 8, line ~~18~~ 4
Following: "Reasonable accommodation"
Insert: "may include:"
Strike: "includes:"

EXHIBIT X
DATE 2-16-93
AB 518

Amendments to House Bill No. 518
First Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
February 15, 1993

1. Title, line 6.
Strike: "SECTIONS 50-16-204 AND"
Insert: "SECTION"

2. Page 1, line 10 through line 3 of page 2.
Strike: "**Section 1.**" on page 1, line 10 through ", or the hospital" on line 3 of page 2
Insert: "NEW SECTION. **Section 1. Political use of health care information prohibited.** A health care provider may not use health care information"

3. Page 2, line 22.
Strike: "50-16-204(2)"
Insert: "[section 1]"

4. Page 2, line 23.
Strike: "$500"
Insert: "$10,000"

5. Page 2, line 24.
Strike: "6 months"
Insert: "1 year"

6. Page 2, line 25.
Following: line 24
Insert: "NEW SECTION. **Section 3. {standard} Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 1]."

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 590

DATE Feb. 16, 1993 SPONSOR(S) H. Toole

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
June Hermanson 1206 12th Ave E Polson, MT	Montana Centers for Independent Living	✓	
Debra Fulton	General Services Division Dept of Adm	amend	
Michael Regnier 1010 Fairview Av. Missoula, MT	Coalition of Montanans Concerned w/Disabilities	✓	
Paul Peterson, Missoula, MT	" " " " "	✓	
Melissa Case	Montana Peoples Action	✓	
Ben Havdahl	Helena Self Help Hard of Hearing	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 518

DATE Feb. 16, 1993 SPONSOR(S) T. Whalen

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Russ Ritter	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 582

DATE Feb. 16, 1993 SPONSOR(S) D. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
SERGE MYERS	self	X	
A. M. (Bud) Elwell	WCSA - NWWC MSSA NRA	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 506

DATE Feb. 16, 1993 SPONSOR(S) B. Tash

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gloria Hermanson	Ass Standb w/the Future	Neutral	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 573

DATE Feb. 16, 1993 SPONSOR(S) M. Kadas

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Greg Van Norsser	IPMA/MLA	✓	
Steve Mandeville	MT Assoc Realtors	X	
Tooko Welker	MAPP	✓	
Melissa Case	Montana Peoples Action	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 507

DATE Feb. 16, 1993 SPONSOR(S) T. Sayles

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 525

DATE Feb. 16, 1993 SPONSOR(S) J. Rice

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PATRICK CHENOVICK	SUPREME COURT	X	
Joy BRUCK	LEAGUE OF WOMEN VOTERS	✓	
GEORGE BOUSLIMAN	STATE BAR	✓	
Sally Johnson	Dept of Corrections & Human Services	X	
Gordon Morris	MACO	X	
Steve Doherty	SD 20	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 574

DATE Feb. 16, 1993 SPONSOR(S) J. Rice

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PATRICK CHENOVICK	SUPREME COURT	X	
William Hooks	Appellate Defender Office	X	
GEORGE BOUSLIMAN	STATE BAR	X	
BETH BAKER	DEPT OF JUSTICE	✓	
John Connor	MC County Atty Assn	✓	
Dorothy McCarter	Appellate Def. Office	✓	
Phyllis Hood	St Bar Public Def Committee	✓	
Gordon Morris	MACo	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.