MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 3, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 157, HB 214, HB 256, HB 271
Executive Action: HB 160 POSTPONE ACTION

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 160

Motion: REP. JOAN HURDLE MOVED HB 160 DO PASS.

Motion/Vote: REP. AUBYN CURTISS MOVED TO AMEND HB 160, LINE 22, PAGE 2 FOLLOWING "SUFFICIENT" INSERT "AND MAY AT ANY TIME WITHDRAW THE PERMISSION." The motion carried 9 - 5, REPS. WYATT, KOTTEL, CAREY, HURDLE, MC CULLOCH voting no.

{Tape: 1; Side: A; Approx. Counter: 5.6; Comments: There is considerable informal committee conversation prior to discussion on the bill.}

Motion: REP. DANIEL MC GEE MOVED HB 160 DO PASS AS AMENDED.

Discussion: REP. DEB KOTTEL felt this bill represents a turf battle between federal and state officers which should not be fought out in the legislative branch. She also believed there have always been excesses by law enforcement through history and though she does not approve of them, she did not think the solution was to "handcuff" all federal law enforcement while enhancing the power of another area of law enforcement. She felt it would create an unequal balance. She quoted testimony from the hearing and cited her sense that it came from people who do not respect the government or understand that law enforcement is done by humans and that mistakes are made or that when mistakes occur they need to be admonished under remedies that are available under civil rights laws. She would have preferred a resolution instead of the bill to admonish the federal government about federal law enforcement excesses.

She asked the staff attorney if it is constitutional to give the power to a county official to regulate and control matters of federal jurisdiction involving law enforcement.

John MacMaster said in his opinion if the bill passed, it would get into federal court and the federal court would probably say under the U. S. Constitution it is not constitutional.

REP. DIANA WYATT believed that a resolution would have served a similar purpose. She condemned any illegal acts against U. S. citizens, but she felt there were appropriate times for federal enforcement agencies to come into the state to do what is appropriate and legal and that it was not within the legislature's purview constitutionally to make those changes. She opposed this legislation.

REP. BILL CAREY agreed with the previous opponents and was uncomfortable with the wording on page 2, subsection 2, line 4. He felt that section 3 flies in the face of two hundred years of constitutional law and could not support it.

REP. DUANE GRIMES asked the sponsor if she had considered a resolution and if not, why not.

REP. CURTISS said she had not because she did not feel a resolution had enough teeth in it. She thought some of the committee was missing the point. She said that there is a system of dual federalism in operation and the federal government is not the all-powerful agent of the people. "**REP. KOTTEL** is right," she said, "it is a turf battle, there is no doubt about it." She submitted that the Boston Tea Party was provoked by something not so severe as was what is going on in our country. She presented documentation of rules written from the *Federal Registry* which were pertinent and supported her reasoning behind the bill. Some of those would have permitted Forest Service personnel to arrest without warrants as well as to expand their authority in other ways. These changes nearly went unchallenged and she believed this helped to substantiate the need for this bill. She cited other similar incidents which were less well-known than Waco and Ruby Ridge. She said that those whose testimonies were objectionable to some committee members appeared because they are concerned about their second amendment rights and had reason to believe that there is reason to fear the nullification of those rights. She was concerned about federal agents entering the state and triggering some event which would result in marshall law being declared.

REP. GRIMES asked if it would tamper with her intent if they altered line 22 on page 1 from written permission to written notice to avoid the potential unconstitutional issue.

REP. CURTISS said she was not sure. She did not think it was as strong. It provides that if there was some sort of impropriety occurring at the local sheriff's office, they could appeal to the attorney general's office to cover that contingency.

REP. SHIELL ANDERSON asked the committee to turn to page 3, lines 6 through 9 which requires the county attorney to prosecute violations claims made by the county sheriff. He recalled that **Mr. Marbut** had admitted that this might cause some problems as well as the penalty section above.

Motion: **REP. ANDERSON MOVED TO AMEND HB 160 BY STRIKING SECTION 3.**

Discussion: **REP. WILLIAM BOHARSKI** asked **Mr. MacMaster** if it would be unconstitutional to require the federal law enforcement official to secure permission from the sheriff or the attorney general. He pointed out that it does not prevent them from carrying out their duty, but just to acknowledge the sovereignty of the state by taking this step.

Mr. MacMaster said that he does not like the overbearing attitude of the federal government and its mandates, but quoted article 6 of the U. S. Constitution as support of his view that a state law

requiring federal agents to get permission from a sheriff would attempt to override a federal law. He asked what would happen if the sheriff said no when the attempt is to arrest someone for the violation of a federal law.

REP. BOHARSKI wondered if the bill could be crafted in such a way to keep the teeth in it.

REP. ANDERSON said he felt the county prosecutor has the obligation to follow-up on those violations he believed he could win, but cannot do that if there is no case.

REP. BOHARSKI asked if the county attorney has the discretion to look at the bill, if passed, and determine not to prosecute.

REP. ANDERSON said he understood that the county attorney would have to prosecute until it was found unconstitutional.

REP. CURTISS asked if it was not possible for county attorneys to appeal to special prosecutors in the Attorney General's office for assistance when they have problems.

CHAIRMAN BOB CLARK believed that was true.

REP. HURDLE called for the question.

Vote: The motion failed, 6-11, REPS. ANDERSON, BOHARSKI, MC GEE, AHNER, TREXLER and GRIMES voting aye.

Motion: REP. ANDERSON MOVED TO STRIKE THE REMEDIES SECTION, LINES 28 - 30 ON PAGE 2 AND LINES 1-3 ON PAGE 3.

Discussion: REP. ANDERSON explained his reasons for the amendment. He felt that the elements of kidnapping as discussed in other sections of the code could be satisfied in all situations of attempted arrest and that it would be difficult to prosecute for theft if a seizure or attempted seizure occurred. If this amendment were to pass, the committee would have to come up with some other remedy.

REP. CURTISS cited an example in Sanders County where a man went to his mailbox and did not come back. It was later discovered that he had been apprehended by people not in uniform driving unmarked vehicles. The man's wife lost her baby as a result of the stress and there were no charges brought against those who abducted him. Because of such examples, she would resist the amendment.

REP. BOHARSKI asked if the bill were to pass and a federal law enforcement person were not to abide by the terms of this act, would that meet the conditions of kidnapping as in the example **REP. CURTISS** cited.

REP. ANDERSON said it was quite possible in that case it might meet those conditions, but there would perhaps be a civil rights violation rather than a kidnapping. They would be dealing with federal officers with authority to do what they are doing, but it would take them out of civil penalties and put them into the criminal code where they may have botched the job or have simply operated without the permission of the sheriff. He suggested a rewording of the amendment.

Motion/Vote: REP. BOHARSKI MOVED A SUBSTITUTE AMENDMENT TO CHANGE THE SENTENCE TO READ, "AN ARREST OR SEARCH OR SEIZURE OR ATTEMPTED ARREST OR SEIZURE IN VIOLATION OF [SECTION 2] IS UNLAWFUL, AND INDIVIDUALS INVOLVED MUST BE CHARGED WITH ANY APPLICABLE CRIMINAL OFFENSE IN TITLE 45." The motion carried 11 - 6, REPS. WYATT, KOTTEL, HURDLE, CAREY, MC CULLOCH and SHEA voting no.

{Tape: 1; Side: a; Approx. Counter: 46.7; Comments: Proxy votes are recorded on tape, written proxies were not submitted to the secretary.}

Discussion: REP. ANDERSON said he felt it was a very well-intentioned bill but he felt it was still unworkable even with the amendment because of the requirement for a prosecutor to prosecute any cases the sheriff was determining that the prosecutor would have any luck in winning. The sheriff might be vengeful and it would be wrong to take that discretion away from the prosecutor. He thought there were problems with the constitutionality of the bill and if it were in the form of a resolution, it would be a better approach. He did not want to set the state up in a position to have to battle it in court. He would like for it to be constitutional, but sincerely thought it was not. He felt that to amendment it to be notice to a sheriff, would help it to pass the constitutional test.

REP. HURDLE asked **REP. CURTISS** to provide her with the specific sources of information and organizations which back her in this bill.

REP. CURTISS cited specific documents she had read though she did not have copies of them with her. She said she was not involved in any organization. She said that **Gary Marbut** had assisted in drafting the bill and there are people who are concerned that unless something like this passes there will be incidents in Montana. She said people trust their local sheriffs to protect their civil rights and in his absence, when people out of uniform arrive in unmarked vehicles, people in Montana are going to shoot.

REP. HURDLE asked for an exact source of the information.

REP. CURTISS cited the testimony of **Sheriff Prince** from Ravalli County. She said she had the written documentation of the incident she had cited earlier and said she would provide that information.

Motion: REP. BOHARSKI MOVED A CONCEPTUAL AMENDMENT TO REQUIRE FEDERAL AGENTS TO SUBMIT WRITTEN NOTIFICATION TO LOCAL LAW ENFORCEMENT OF THEIR INTENTION.

REP. CURTISS resisted the amendment because she thought that until the committee would have something written in front them, they would not be able to take action and wanted to call for the question on the bill and if it failed, then she would move to reconsider.

REP. GRIMES concurred with the amendment believing it would still have some teeth in it by requiring a written notice but staying away from the constitutional issue of authority and powers in the permission issue.

REP. MC GEE asked if it was appropriate to table the bill pending the working out of the amendment.

CHAIRMAN CLARK wanted to continue to discuss the bill before considering further action. He reminded the committee that the sheriff is the chief law enforcement officer in the county. Therefore, they would not be giving him any more power. He spoke to the reference of mistakes by federal officers and said that though some are mistakes, other incidents are deliberate in nature. He cited examples to prove the difference. He could not comprehend why law enforcement agents have to wear ski masks. He agreed that some who testified at the hearing went overboard in their testimony and side line remarks, but he admonished the committee to overlook the excesses of those people and to keep in mind the people who were asking the committee to pass the bill because of their real concerns.

He was concerned about what message would be sent to federal officers who are in the minority who exceed their authority. He pointed out that the bill addresses arrests, searches and seizures but not interference with any investigations with the operation of those officers by requiring them to notify local law enforcement of their intentions and documentation backing up their intended actions. The bill simply asks for courtesy.

He recalled Presidential Executive Orders referenced by **REP. CURTISS** which forced every school district in the nation to adopt a policy and this is one of the things freedom loving people in the country fear because they have nothing to say about them until the next election.

{Tape: 1; Side: B}

He was aware that when constitutional issues are addressed, they ignore the fact that people's constitutional rights are being "trashed by some over-zealous officers, but when we come to do anything about it, they can hide behind the Constitution. Isn't that interesting?" He thought they needed to pass the bill if for no other reason than to send a message.

REP. ANDERSON said he felt they were united in a common purpose and the argument was over semantics. He agreed that federal officials should talk to local officials first since they know the people involved. He explained his reasons for wanting to postpone action to work out the amendment which would send a message that would also withstand constitutional muster and stand the test of time.

REP. BOHARSKI asked if the Chairman was speaking to the amendment or the way the bill was drafted at this point.

CHAIRMAN CLARK said his comments were to the bill as drafted and apologized for getting off the amendment.

REP. BOHARSKI asked if he would support what the amendment proposed to do.

CHAIRMAN CLARK said he would support postponing action on the bill until an amendment could be worked out to reach its intended aim and one that the committee would agree on.

REP. BOHARSKI said that if the amendment failed, it was his feeling that it would be the will of the committee to do nothing and would not want to put in the work on the bill to make it workable if this motion failed.

REP. HURDLE thanked **REP. CURTISS** for the offer for documentation and also asked for documentation from **CHAIRMAN CLARK** for incidents he cited. She wanted them before voting on the bill.

Vote: The motion carried 12 - 6, REPS. WYATT, CAREY, SHEA, HURDLE, KOTTEL and MC CULLOCH voting no.

REP. BOHARSKI volunteered to work on the amendment with others for the committee's consideration.

CHAIRMAN CLARK said that **Mr. MacMaster** had the language drafted and asked that they work together on it.

Motion/Vote: REP. ANDERSON MOVED TO POSTPONE ACTION ON HB 160 UNTIL THE BILL CAN BE PUT IN A FORM THAT THE COMMITTEE CAN HANDLE. The motion carried unanimously.

{Tape: 1; Side: B; Approx. Counter: 8.3}

HEARING ON HB 256

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, brought HB 256 with the intent to add a felony conviction to the current DUI law. It would brand the drivers license of all convicted individuals and establish a surcharge the court fines to buy jaws of life equipment for the

counties. He gave background on the current law and submitted written testimony. **EXHIBIT 1**

The sponsor also submitted a copy of a news article as part of his testimony to demonstrate the need for this legislation. **EXHIBIT 2**

Proponents' Testimony:

James Lofftus, President of the Montana Fire Districts Association, was interested in the portion of the bill which would provide for the jaws of life and urged support of HB 256.

Brenda Nordlund, Department of Justice, declared that this bill was similar to a proposal by the DUI Task Force which would make a DUI a felony. The concept had also been endorsed by the law enforcement advisory committee which advises the attorney general. They were supporting the concept of this bill. On behalf of the Motor Vehicle Division, she spoke about the brand for DUI convictions and passed out a brochure developed by them to show where it would be placed. She also addressed the discrepancy in the fiscal note and explained it to the committee. She urged the concurrence of the committee to make DUIs a felony offense.

Ron Ashabraner, State Farm Insurance Companies, supported the bill and talked about the affect of DUIs on insurance rates.

Tom Huddleston provided written testimony of his experience as a driver who formerly drove while intoxicated. **EXHIBIT 4**

Henry Hibbard, Great Falls, asked for a further strengthening of the bill and suggested three ways to accomplish it:

1. The first offense DUI driver be given a $500 fine, 80 hours of community service and loss of drivers license and vehicle for 90 days and one-half of these fees to be given to the victims' fund, the other half to the counties to fund the equipment, as well as the insurance company being notified of the offense;

2. The second offense DUI driver be fined $2,500, six months in jail and insurance company notified with loss of vehicle and drivers license; and

3. The third offense DUI driver receive permanent loss of drivers license, permanent loss of car, two years in jail and $5,000 fine.

REP. MC GEE, HD 21, went on record as supporting HB 256.

REP. BILL CAREY, HD 67, testified that he'd lost a nephew who was killed by a repeat DUI offender.

REP. BRAD MOLNAR, HD 22, gave testimony of constituents who were victims of a juvenile DUI offender who had received 33 separate sentences to community service and had, while being drunk, killed someone. He pointed out the numbers of lives ruined, including the offender's as a result of waiting for that length of time to act.

Fritzi Cole-Brown said she did not think anything the committee could do would be strong enough and recounted her own experience as a victim of a drunk driver and the unfair settlement of the case.

Opponents' Testimony:

None

Informational Testimony:

A letter from John Campbell was submitted in support of HB 256. **EXHIBIT 5**

{Tape: 1; Side: B; Approx. Counter: 43.4}

Questions From Committee Members and Responses:

REP. MC GEE asked the sponsor why the bill waits for the fourth DUI.

REP. SOMERVILLE said after consultation and consideration with two different judges who have deliberated in these cases and had suggested from their experience settling on the fourth DUI. He drafted it that way, but had no problem with changing it. He did not want to lose making a DUI a felony by restricting it or making it unacceptable to Montanans.

REP. MC GEE referred to the amendments by **Mr. Hibbard** and asked if the sponsor was disposed to something along those lines.

REP. SOMERVILLE responded that he had not put much thought into the first, second, or third offenses, but he would submit to the committee as a whole if they wanted to change some of those sentences or fines but would want to work with the committee so that the intent of the bill was not lost.

REP. LOREN SOFT was concerned about being realistic about how these things are carried out. He stated that many of the offenders don't have money, fines are not collected and there seems little that can be done. He asked if the bill was realistic and how would the fines be collected. He compared the new law with the old and saw that the money goes anywhere but where it should go. He also discussed the fact that the prisons are full and asked if the sponsor was amenable to an alternative of community service.

REP. SOMERVILLE recalled his conversations with the judge in his drafting of the bill and other conversations with the county sheriff in Flathead County in reaching the conclusions for determining the sentencing and fines.

REP. BILL TASH asked about a companion bill that was mentioned by **Brenda Nordlund.**

Ms. Nordlund explained the differences between HB 256 and other bills which would be coming up on DUI issues.

REP. TASH asked about the concept of branding the drivers licenses.

Ms. Nordlund discussed the options.

REP. CAREY also asked about the fourth offense before the penalties apply under this bill.

Ms. Nordlund noted that DUI laws are currently structured in a type of tiered system and it is the third and subsequent offense where vehicle forfeiture kicks in and it is consistent with current tiering.

REP. LIZ SMITH asked **Mr. Huddleston** whether the one through three steps would have been helpful in his case.

Mr. Huddleston said his "gut" reaction to it relied on how he has seen the system work through legal advice on how to get around the convictions. The bottom line for him was that the penalties have to be rather harsh, concrete and inflexible so as not to enable the offender to continue. He said their disease is insidious and the greatest problem of treating it is their own denial and so the consequences must be great enough for them not to hide.

REP. SMITH referred to the recommendations by **Mr. Hibbard** and asked if those penalties would have had an influence in stopping his behavior.

Mr. Huddleston said they would not. He would have paid the fine and too often they are able to buy themselves out of their consequences.

REP. SMITH asked if there is a first, second or third offense penalty in the DUI task force bill.

Ms. Nordlund reviewed the series of bills coming from that study. These bills will be carried by **SEN. AL BISHOP.**

{Tape: 2; Side: A}

REP. HURDLE submitted that having a drivers license is not a necessity and testified to the fact that it is falsely assumed that people must have one.

REP. SOMERVILLE said he did not have a good argument why a drivers license should not be taken away from DUI offenders for a period of time other than there is no adequate mass transit system in Montana.

REP. HURDLE wondered if it would be more appropriate for the funds to be allocated to treatment programs or monitoring anklets and asked the sponsor if he would have any problem with providing funds for treating the disease.

REP. SOMERVILLE said he did not know how the portion of the bill which deals with the allocation of the funds was done. He had no complaints about trying to divert some of it, but all the proponents and opponents for the division of the funds would have to agree to any changes. He agreed that diversion of funds into a treatment program would be a good thing to do.

CHAIRMAN CLARK recalled that during the beginning of his time as a highway patrol officer, drivers licenses were branded. The ACLU and some defense attorneys objected and it was declared unconstitutional, consequently it was removed. He wondered if that same problem would arise with this proposal.

Ms. Nordlund said she was not able to independently confirm that there was litigation over that point and felt it is a legitimate concern that it could be a constitutional violation of a person's right to individual privacy that could be only outweighed by a compelling state interest. She would not be surprised to see a legal challenge to the license brandings.

CHAIRMAN CLARK said it was the threat of litigation rather than an actual court case.

Scott Crichton, ACLU, said he had no understanding of the history of the issue. The ACLU had not discussed it as a priority issue.

CHAIRMAN CLARK asked if he personally would anticipate such an action.

Mr. Crichton said that if someone came to the ACLU with a complaint of an infringement of their right to privacy, they would give it the same kind of consideration they give any complaint that is brought to their attention.

REP. ANDERSON asked if the branding served any purpose other than as a deterrent.

Ms. Nordlund did not feel prepared to answer the question, but said that the sponsor had researched the concept in drafting the bill.

REP. SOMERVILLE said he felt three things were important in branding the drivers license:

1. Notify the law enforcement official that the individual has had a problem before with DUI. Montana does not have a computer system to track these items,

2. Every time the individual looks at it, they will be reminded that they had committed an irresponsible act, and

3. Bartenders will have a way to avoid the liability of serving a known DUI offender.

REP. ANDERSON asked if they should amend the bill to allow that they will stamp the license for reckless driving, speeding tickets, theft and any other offense.

REP. SOMERVILLE answered, "No."

REP. BOHARSKI asked about the possibility of providing judges with a notary-type stamp for branding the licenses without sending them back to motor vehicles.

REP. SOMERVILLE said sometimes the licenses are suspended and the court would take the license and send it to the drivers license bureau and the individual would have to pay a fee to get a replacement license. They did not see that as much of a problem.

REP. BOHARSKI asked if they had looked into the concept of posting notice in the newspaper for people convicted of DUI.

REP. SOMERVILLE replied that there are many ideas, but they wanted to stick to some basic ideas to get into law that they thought would help.

REP. BOHARSKI saw an additional cost to local government to enforce these penalties and he wondered about using the funds collected to help offset the costs of incarceration.

REP. SOMERVILLE said it was a good idea to divert funds for helping defray the costs of incarceration, but in talking with fire departments it is apparent that they need funds for the purchase of the jaws of life equipment especially in the rural areas. He maintained that he did not want to avoid that need.

Closing by Sponsor:

REP. SOMERVILLE said in closing that the most serious problem on the highways is the drunk driver. He emphasized the intent of the bill to deter these drivers through making it a felony and branding the licenses.

{Tape: 2; Side: A; Approx. Counter: 22.8}

HEARING ON HB 271

Opening Statement by Sponsor:

REP. LINDA MC CULLOCH, HD 70, introduced HB 271. The bill's intent is to meet the needs of two people who have filed for divorce, have no children and small debts. She said they should be able to prepare and file dissolution papers themselves and receive a divorce without court hearings unless the judge finds it necessary. Under previously passed summary divorce law, the elimination of a court hearing was not addressed. This bill intends to accomplish that.

Proponents' Testimony:

Bruce Barrett, Director, ASUM Legal Services, provided written testimony in support of HB 271. He gave extensive history and explanation of his reasons for supporting the bill. He cited the overloading of the district courts and anticipated that their opposition to the bill had to do with additional requirements for mailing the decrees. **EXHIBIT 6**

Brien Barnett, Legislative Liaison for ASUM, submitted written testimony in support of his testimony for HB 271. He said some students marry for economic purposes to gain student aid when entering college and then find it was not a good idea. This bill would allow them to complete a divorce more simply. **EXHIBIT 7**

Vivian Marie said she had worked for many years for legal services which provide legal aid for the indigent. She said though the numbers are small who take advantage of the information they distribute in summary divorce packets, it fills a need and eases a burden. She said she had witnessed the court proceedings and felt part of the process to be unnecessary in time and cost. She also addressed the issue of the surety of receipt of mailed divorce decrees as being irrelevant.

{Tape: 2; Side: A; Approx. Counter: 42.3}

Opponents' Testimony:

Bob Gilbert, Montana Association of Clerks of District Court, said they don't mind doing work they are paid for and don't want to become "the divorce court, the express lane of the supermarket, so to say, fill out the papers, file it, it's over with. We've cheapened the sanctity of marriage to the point that it is now a contractual agreement." The clerks don't want to be put in that position and don't mind doing the paperwork. The form is not a bad one except that it no longer has to be signed under oath and it doesn't ask if there are children. He requested that at least the people be asked to appear before a judge who has to make that final decision. He said they shouldn't enter into marriage lightly or go out the same say. He

felt the bill was saying, "let's make it more convenient to get divorced."

Questions From Committee Members and Responses:

REP. KOTTEL had received a letter from a clerk of the court who objected to page 2, line 14 that requires mailing the decree which would place an additional cost on the court system without compensation.

Mr. Gilbert did not think the cost would be large, but if this bill was going to pass it should be up to the individuals to pay the postage rather than the taxpayers.

REP. MC GEE asked **Mr. Barnett** to clarify what he had said about some people marrying to take advantage of certain school funding. He further wanted to know what kinds of funding that included.

Mr. Barnett said it was commonly recognized that this takes place. Generally that type of funding is in regard to federal funding such as Pell Grants. By combining their incomes and doing various other things, they are recognized by the federal government as a family which therefore rewards them more than an individual student.

REP. MC GEE restated **Mr. Barnett's** testimony which **Mr. Barnett** affirmed.

REP. MC GEE was concerned that people enter into marriage to receive federal funding.

Mr. Barnett said his testimony was that this is a recognition that this does happen and it is something that they regret but that he was not saying this should be condoned though it is a reality.

REP. MC GEE recognized that **Mr. Barnett** did not say he condoned it, but that he was asking the committee to pass into law a bill that would facilitate their getting out of that position once they entered into specifically to receive funding.

Mr. Barnett clarified that the bill is not a means of making it easier for them, but that example was used to point out that when it does occur a court proceeding is unnecessary because they will go through with the divorce anyway.

REP. MC GEE asked a series of question concerning the witness's personal experience with marriage and his view of what a vow entails.

Mr. Barnett said, putting his own background and convictions aside, they were dealing with a reality that is far different.

REP. MC GEE asked why, if a vow is significant, on line 17 a person would take a vow to get married and then not even sign under oath that the parties want a dissolution of marriage.

Mr. Barnett said the reason is that it is something that is entered into by both parties and is simply being run through the channels up to the court.

REP. CAREY asked **Mr. Barrett** why this would not be signed under oath.

Mr. Barrett said that line 17 removes the words, "to be signed under oath." The reason is that the clerks of the court had objected earlier that they didn't use the identical language for normal divorces. At the top, in the introduction, it says the parties have to file a verified (notarized)petition. It has always been under oath and it still is. The procedure includes the verification that there are no children.

REP. CURTISS wanted to know how this bill differed from the one that had been presented earlier.

Mr. Barrett said the first bill said that after the people had signed something under oath, reached an agreement, had the agreement verified by a notary and filed it with the court, waited 20 days without objection, it would be entered automatically. The opponents said they did not like the idea of it being automatic and that the parties should come in for a hearing. The difference between this bill is that after 20 days the parties either do or do not enter a courtroom and spend the brief time before a judge. That is what the proponents of this bill are trying to eliminate. He said the opponents want to maintain a court hearing and avoid a postage stamp. He said he would cooperate with the committee to draft an amendment requiring the parties to provide the postage. He commented that he had never handled a divorce where the parties had married for the simple reason that they were trying to get a scholarship or financial aid.

REP. CURTISS said another concern was that under the current system there is a requirement for payment of $45 for registering the decree of dissolution and if this bill passed, that would not be allowed. The concern becomes one of unfunded mandates.

Mr. Barrett said that is a valid concern. He felt it could be addressed by having the parties who want a summary divorce proceeding to pay the entire fee including the judgment entry fee and if it took extra language to do that, he would be happy to work that out. He expressed his view that these are not really the issues behind the opposition, but that they anticipate they will have extra work, a concept which he rebutted.

Closing by Sponsor:

REP. MC CULLOCH closed with remarks that the issue is about the procedure involved after a couple have already filed for divorce, court loads and priorities rather than divorce or the convenience of divorce. She said the bill would serve to reduce clogging in the courts, take away anxiety involved in unnecessary court hearings and it will reduce the costs of attorney fees which are not necessary in these cases. She said neither she nor the proponents advocate divorce, but they advocate saving the use of the courts for those who have committed a crime.

{Tape: 2; Side: B}

CHAIRMAN CLARK remarked that the committee would hear HB 214 and HB 157 together since there would be an attempt to combine them due to their similarities. He relinquished the chair to **VICE CHAIRMAN ANDERSON.**

HEARING ON HB 214 and HB 157

Opening Statement by Sponsors:

REP. KOTTEL, HD 45, presented HB 214 as one which asks for lifetime registration of violent offenders. She stated that Montana's current law requiring registration of sex offenders is only for a ten-year period of time. Failure to register currently is a misdemeanor. HB 214 asks that registration become lifetime, that all violent crimes be included and makes failure to register a felony. She elaborated on those points.

REP. MATT DENNY, HD 63, brought before the committee HB 157 which provides for life sentencing and lifetime registration and supervision of sex offenders. The bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. He elaborated on the provision for life sentencing to the corrections system which is not subject to reduction in recognition that sex offenders are not curable, and on the provision for lifetime supervision and registration for continuing education and treatment of the offender. The bill also increases the penalties for failure to register or to participate in treatment programs. It also provides for protection of the general public while protecting the privacy of the offender.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services, (DCHS), said HB 157 addresses all the components necessary to deal with sex offenders. He felt it was an innovative approach designed to provide an effective method to respond to those who have committed a sexual offense. He felt the combination of lifetime registration with supervision and treatment would

provide for a safer Montana. On behalf of the Governor and the department, he urged the committee's support.

Dave Ohler, DCHS, offered some technical amendments to HB 157 and explained them. **EXHIBIT 8**

John Connor, Montana County Attorneys Association, appeared as a proponent of HB 157 on behalf of the Department of Justice and the Attorney General's Council on Law Enforcement. He cited the need for this legislation is enhanced by the fact that one-third of the sex offenders leave prison by means of discharge rather than parole without having completed the sex offender program. They also support HB 214 and especially like the provision of the notification of victims.

{Tape: 2; Side: B; Approx. Counter: 24.0}

Informational Testimony:

A letter from **Mike Salvagni, Gallatin County Attorney,** was presented as a proponent by **Mr. Connor. EXHIBIT 9**

Proponents' Testimony Continued:

Henry Hibbard appeared to support HB 214 and suggested an amendment that any person who deals with children or health care for the elderly be fingerprinted as part of a background check to be used as consideration for employment (not a requirement).

Becky Malensek testified concerning her personal experience with the early release of her former husband convicted of a sexual offense who did not take advantage of treatment while incarcerated. She emphasized that stronger follow-up is necessary to protect children from those who will re-offend. She also discussed the disparity between the protected rights of the offender versus the rights of victims and potential victims.

Jane Christman rose in support of HBs 157 and 214. She testified about the death of her son eight years ago at the hands of a released repeat sex offender, Robert Hornbeck.

Derek VanLuchene testified in support of HBs 157 and 214 as the brother of the eight-year-old boy who was murdered in Libby. He currently is a member of law enforcement and testified from the perspective of a victim as well as from his profession.

Ron Silvers, Vice President, Montana Sex Offender Treatment Association, strongly supported these bills. He said the Association takes these issues seriously and described how they address them. He said they do not view lifetime supervision as a punishment, but as an obligation and responsibility.

CHAIRMAN CLARK resumed the chair.

Sandy Heaton, Sex Offender Therapist at Montana State Prison, shared some of her experiences from having worked with both incarcerated and non-incarcerated sex offenders. She spoke as a proponent and agreed with previous testimony. She elaborated on the triggers for the offense.

John Strandel, Cascade County Undersheriff, Montana Peace Officer's Association, served on the subcommittee which reviewed the sex offenders information which was being presented. He rose in support of both bills and specifically testified to facts concerning sex offenders.

Dana Ball reiterated her testimony that she did not think there could be enough laws passed to protect society from sex criminals. She elaborated on the testimony concerning her son who was victimized over a long period of time by a sex offender and his lifetime maintenance as a victim resulting in intense treatment and continual supervision.

{Tape: 2; Side: B; Approx. Counter: 54.2}

Mike Ferriter, Chief of Community Correction Bureau, DCHS, presented written testimony in support of HB 157. **EXHIBIT 10**

John Thomas, Chairman, State Parole Board, spoke in support of HB 157 and gave the committee their current guidelines in consideration of release of sex offenders.

Opponents' Testimony:

Scott Crichton, Executive Director, ACLU, reluctantly rose in opposition to both HB 157 and HB 214. He submitted written testimony. He said that though it is well-intended, he doubted it would achieve the results hoped for. **EXHIBITS 11 and 12**

{Tape: 3; Side: A; Approx. Counter: 10.8; Comments: }

Questions From Committee Members and Responses:

REP. TASH asked **Mr. Crichton** if this legislation would result in litigation.

Mr. Crichton said he believed it would.

REP. TASH asked if, in the case of people who haven't had proper rehabilitation, that wasn't an encroachment on their civil liberties.

Mr. Crichton thought that the need for people to admit to their crimes is central for their successful treatment. He felt that impediments to that in treatment result when they are required to give self-incriminating evidence of offenses committed for which they have not been convicted.

REP. TASH asked **Mr. Crichton** to be specific in the areas of treatment he found lacking in regards to rehabilitation.

Mr. Crichton said his sense was they need more resources attached to both sex treatment inside and outside the criminal justice system including fiscal relief.

REP. MC GEE asked **Ms. Heaton** to comment on the elements included in the treatment program described by **Mrs. Ball** in testimony.

Ms. Heaton refuted the element described by **Mrs. Ball** and went on to elaborate on what is included.

REP. MC GEE asked what kinds of costs are involved in a continuing treatment program for sexual offenders.

Ms. Heaton said her understanding was that the intent was that the offender would finish his primary treatment and then would go on an aftercare status determined by the therapists and probation and parole. She did not feel the cost would be great.

REP. MC GEE asked **REP. DENNY** who would pay for treatment for lifetime sexual offenders.

REP. DENNY said the actual outlays for treatment are not covered under this bill.

REP. MC GEE asked if this would apply to existing sexual offenders.

REP. DENNY said the life sentencing portion would not apply to current convicts. He believed life registration would apply upon their release.

{Tape: 3; Side: A; Approx. Counter: 23.3}

REP. MC GEE noted that article 2, section 3 of the Montana Constitution refers to the rights of people and the corresponding responsibilities; and article 2, section 22 speaks to cruel and unusual punishment; and article 2, section 28 speaks to state supervision before rights are restored. Given those three sections, he asked **Mr. Crichton** if he felt there would be a constitutional challenge to lifetime registration for sexual offenders.

Mr. Crichton said his understanding was that it could be questioned if registration was regulatory in nature or punishment.

REP. MC GEE asked if a murderer is sentenced to life in prison for the crime, would the ACLU consider that cruel and unusual punishment.

Mr. Crichton thought the definition of cruel and unusual punishment was defined constitutionally about what the state metes out to its citizens. He recalled that the Bill of Rights was to protect citizens from its government from having too much power and influence in their private lives.

REP. MC GEE asked if he considered it cruel and unusual punishment when a person is convicted of deliberate homicide and sentenced to the Montana State Prison for life.

Mr. Crichton said he would look each case differently as he expected the court would do. Sentencing someone to life imprisonment isn't in and of itself cruel and unusual punishment. Some instances warrant it.

REP. MC GEE asked if the legislature deemed it appropriate to equate other crimes to deliberate homicide necessitating life imprisonment, would he consider that cruel and unusual punishment.

Mr. Crichton answered, "Sentencing somebody to life but then holding the responsibility for the commitment for life could be construed as trying to end-run the state's constitutional protection that once you have served your time, you are reinstated as a citizen. It appears to me that you are saying that we want to control you for life but you are on your own until you screw up and then we'll control you some more by bringing you back in our custody."

REP. MC GEE asked him to tell this committee what is meant by corresponding responsibilities [in reference to article 2, section 3,] to those individual rights. He read this section to the members of the committee.

Mr. Crichton responded that he probably has a higher sense of responsibility than the average citizen in terms of what is a responsibility in participating in the government and being a productive member of the community. At what point an offender is finished with his punishment is in question. He said he understood that it cannot be determined if a victim is ever finished with carrying the burden of being victimized. He said that the criminal justice system seems open-ended in this regard. He said that from a civil liberties standpoint it is problematic to view the numbers and types of crimes the state will be given the authority to track.

REP. MC GEE referred to article 2, section 28 to discuss the rights of the convicted. "Full rights are restored by termination of state supervision for any offense against the state." He asked if life sentencing would work toward prevention.

Mr. Crichton said he saw the principles of prevention and reformation as linked and they needed to look toward the

potential of people becoming productive members of society. People who are deemed likely to re-offend can be kept behind bars through the criminal justice system. He was concerned about saying, "Once a sex offender, always a sex offender." He questioned this as the way to get at sexual victimization in the society. He was not sure placing a deterrent at the front end is convincing.

REP. SOFT asked how long **Ms. Heaton** had been working with sex offenders at the prison and further asked about some types of treatment and asked her for data about follow-up success rates.

Ms. Heaton answered that she had worked with the program 15-16 years. She said their data is not complete, but she elaborated on the experience she could and said that these data were accompanied with disclaimers.

REP. SOFT asked if they would be establishing more data with regards to recidivism or success in treatment.

Ms. Heaton said they were working on it.

REP. SOFT wondered if these bills would prove helpful in gathering more accurate data.

Ms. Heaton said it should though it would not be 100%.

REP. SOFT asked **Mr. Ohler** how they would be tracked and would this program be effective.

Mr. Ohler said a key component to registration is supervision and that is the reason the bill requires lifetime supervision of sex offenders.

REP. SOFT wanted to go on record as mandating that there is a very strict way to follow up and for that data to come back to the next legislature.

{Tape: 3; Side: A; Approx. Counter: 45.7}

REP. SMITH asked **Mrs. Ball** for details about his follow-up care and need for supervision. **Mrs. Ball** detailed his current treatment and ongoing problems.

REP. SMITH asked if his treatment program included sexual fantasy and masturbation which was referred to in earlier testimony.

Mrs. Ball said she was challenged by the hospital where her son was treated to obtain a copy of the sex offenders treatment program that is used in the Montana State Prison system where his perpetrator was sent. She related the difficulty in obtaining it and there is a section written by **Michael Scolatti** referring to that. She could not affirm that they are using that part of the treatment. Her son's treatment did not include it.

REP. SMITH was concerned about leaving the responsibility to the offender to register. She asked about the follow up to registration as required in this bill.

Ms. Heaton said most of that takes place in the community. They will sign a registration release when they leave the prison and they are expected to sign up when they get into a community. When they are on parole follow up is very easy. It is a problem when someone discharges their sentence and they are not under any jurisdiction.

REP. SMITH asked if the community follow up programs are like AA meetings.

Ms. Heaton said the Montana Sex Offender Treatment Association programs are much like what is used in the prison.

REP. SMITH wanted to know if they use the 12-step concept.

Ms. Heaton said not all use that concept though some do.

REP. SMITH asked how many sex offenders in the prison are under treatment and whether it is a volunteer program.

Ms. Heaton replied approximately 100 were in voluntary treatment.

REP. SMITH cited the statistics that 40 enter prison and 30 leave per month and wanted to know how many are sex offenders who have completed treatment. She also asked if there was a waiting list.

Ms. Heaton said she could not answer the first question and that there is a long waiting list causing several months to a year to get into the treatment program.

REP. SMITH asked if the co-dependency program is related to the sex offender program.

Ms. Heaton said they were separate programs but they share inmates in common. It is not uncommon for them to have chemical dependency issues and sex offender issues but are dealt with in different groups.

REP. SMITH questioned the retroactivity concept and how that would work.

Ms. Heaton said she did not know the legalities of a retroactive concept, but that supervision and registration isn't all punitive.

REP. MOLNAR asked a question on behalf of **REP. CHRIS AHNER** from **Mrs. Ball** if her son were to become a perpetrator, would she have any problems saying that he would have to be under lifetime supervision.

Mrs. Ball answered, "As his mother, if he became a perpetrator, I would have a problem if there were no laws to protect his victims and I would have a problem if there was nothing I could do except pray that he didn't kill somebody. As a mother I would want every law in place that could give him some boundaries. He has none, he doesn't know right from wrong when it comes to sexual acting out because he never learned."

{Tape: 3; Side: B}

REP. MOLNAR asked **Mr. Crichton** on behalf of **REP. AHNER** if the offender is given the choice between imprisonment and castration, would that still be infringing upon their rights.

Mr. Crichton said he did not know how to answer that. It seemed to him that would raise the question of cruel and unusual punishment.

REP. MOLNAR re-asked **REP. AHNER'S** question in terms of the choice between lifetime imprisonment or lifetime supervision with mandatory treatment and whether that was a violation of their constitutional rights.

Mr. Crichton said ultimately that would be the kind of thing the supreme court would take a look at as laws like this are put in place and enforced.

Closing by Sponsors:

REP. KOTTEL submitted a summary of laws of selected states which have sex offender registration. **EXHIBIT 13** She cited a constitutional challenge in Washington which had a retroactive provision in it and that the constitutionality of that ex post facto law was upheld in their Supreme Court. She said she believed that the scales of justice have tipped toward the criminal and that these bills are a start to bring those scales back into balance.

REP. DENNY was reminded as he participated in the hearing that many voices say the problem can't be solved this way, but he had not seen any realistic alternatives. He believed these bills represented those alternatives. He closed by quoting, "We need to think about the rights of the children and the victims."

CHAIRMAN CLARK said these two bills would be put in a subcommittee of both sponsors and **REP. MC GEE** who would meet to combine the bills to present to the committee as a workable solution.

Motion: **REP. CAREY MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:05 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		✓
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 2/3/95
HB 256

3 February 1995

SUBJECT: DUI/Felony Addition

1. INTENT: This bill is designed to add a felony conviction to the current DUI laws, brand the driver licenses of all convicted individuals with the words "convicted DUI - date", and establish a surcharge on the court fines to buy jaws of life equipment for the counties.

2. BACKGROUND: The current law states that on the third and subsequent convictions, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000.

This bill says to the individual receiving a third conviction, that this is your last chance at receiving a misdemeanor. In discussions with Judge Ted Lympus, Judge Stewart Stadler (JP), and Flathead County Attorney Tom Esch, they all state that the folks they see on the fourth and subsequent DUI convictions need stiffer punishments and need to be placed in a follow-up system. These folks usually are not wealthy, so fining them really does nothing, neither does taking their cars away, what must be done to get their attention is the threat that they will do hard time in the state pen. And what is of utmost importance, when they receive this felony and after they are out of county or state prison, there is a follow-up system for the courts. When convicted of a felony, you can be placed on parole, and while on parole the courts can follow-up to ensure you stay enrolled in the designated programs.

First I would like you to remember that bad check writers can be convicted of a felony, but drivers under the influence of alcohol or drugs can not be. The DUIs are the potential killers on our highways, who do you want behind bars.

3. PROPOSED CHANGES:

a. On page 2, we have added that the fourth or subsequent conviction shall be a felony.

b. On page 3, we have added that upon conviction the court will take the DUI's drivers license, and when a duplicate license is issued it will state "DUI conviction (date)". This will do a couple things:

(1) If in the future the individual is stopped by a law enforcement officer, the officer will immediately know that the individual has had a DUI conviction within the last five years.

(2) Every time the individual has to look at their drivers license, they will be reminded that they were once irresponsible, thus causing them to think twice about doing it again.

SUBJECT: DUI/Felony Addition

(3) Additionally, if the individual happens to be checked in a bar, tavern, or restaurant; then the bartenders will be alerted that this individual has had problems in the past and for their own liability should watch them closer than their other customers. This may help protect them from liability lawsuits. Some may consider this to harsh and you may hear some concern about this, but remember DUIs are potential killers.

c. On page 4 and 5, a 10% surcharge is added to any fines received for driving under the influence. These funds will be provided to the county sheriff to purchase 'jaws of life' type equipment. This equipment can then be given to a fire department of the sheriffs choosing.

d. On the Fiscal Note, I want to point out a couple things. First, the Department of Justice provided me a report that stated from 27 January 1994 to 1995, there were 389 fourth convictions of DUI and 200 fourth convictions of per se and DUIs. This is a total of 589 individuals who would be effected by this change in the law. A lot larger number that the 90 individuals indicated in assumption one of the Fiscal Note. Second this would drive the total cost to house the individuals up to $600,780 and the state would receive $589,000 in fines. Therefore, the Fiscal Note is a little off. I also am a realist and know some of these individuals will never be able to pay their fines. It would probably be good to estimate this would cost the state $250,000(+) each year to house these individuals and have them on probation. I think we should request another Fiscal Note.

4. PROPONENTS:
   a. Speaker John Mercer
   b. Letters
   c. ?

5. OPPONENTS:
   a. none at this time

6. CLOSING REMARKS: I thank you for a good hearing on this very important bill. We have killers out there on our highways and we must do more to get them to change their driving habits. I strongly believe that by making the fourth DUI a felony you have placed a very large hammer over their heads which hopefully will stop a majority of those 589 individuals from driving under the influence. I believe by marking the driver license you may stop the first time offender from driving under the influence ever again. I urge you do pass this legislation. Thank you.

Roger J. Somerville
Representative, HD 78 - Kalispell

EXHIBIT 6
DATE 2/3/95
HB 258

Doctor pleads guilty to negligent homicide

Prosecutors call for 10 years in prison

By RON SELDEN
for the Missoulian

POLSON – Lake County prosecutors will seek a 20-year prison term, with 10 years suspended, for a Kalispell doctor who pleaded guilty Wednesday to two counts of negligent homicide.

With his hands fidgeting, Dr. John J. Miller entered the pleas in Polson before District Court Judge C.B. McNeil, who tentatively accepted the parameters of a proposed sentencing agreement drawn up by prosecutors and defense attorney Milton Datsopoulos of Missoula.

Miller, 52, faces the charges for driving drunk on Highway 93 north of Elmo last Aug. 19 and slamming his vehicle into a pickup carrying Polson residents Anita Meyers and Jana Campbell. Both teen-agers died of injuries suffered in the crash.


Anita Myers


Jana Campbell

After the wreck, Miller was suspended as director of the Kalispell Regional Hospital's emergency room.

Along with the prison time, County Attorney Kim Christopher proposes that Miller pay for medical and funeral expenses incurred by the victims' families and perform 500 hours of community service "oriented toward speaking engagements in schools or community DUI prevention programs," court documents show.

In addition, the proposal states, Miller would be expected to "attend and participate in DUI victims' impact panels," and comply with all recommendations of the alcohol-treatment program in prison, if he serves time.

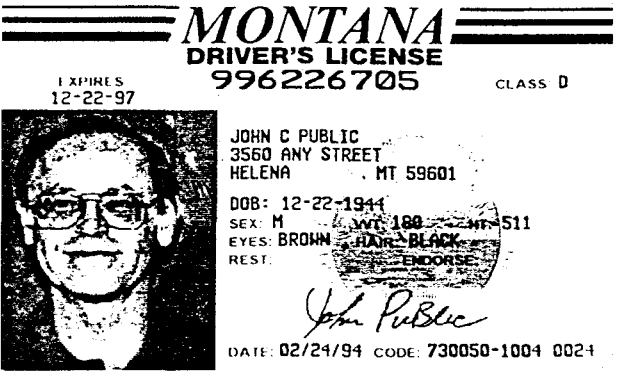
Miller also would be expected to adhere to a variety of other probation restrictions, records show.

The documents state that Miller reserves the right to make his own recommendations at the Feb. 23 sentencing hearing.

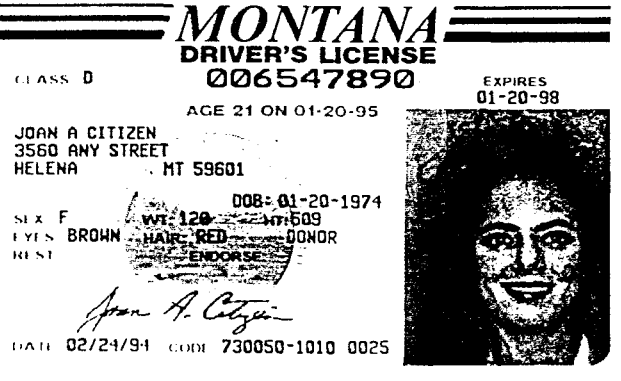
At Wednesday's hearing, Judge McNeil said he'll stay within the parameters of the agreement "in absence of any material surprises" in an ordered pre-sentence investigation. In part, McNeil said, the investigation must determine whether Miller has committed any alcohol-related offenses elsewhere.

Miller is still undergoing treatment at a specialized alcohol-abuse program in Georgia, and McNeil granted a request that Miller soon be transferred to an after-care facility in Florida.

Regular Driver's License

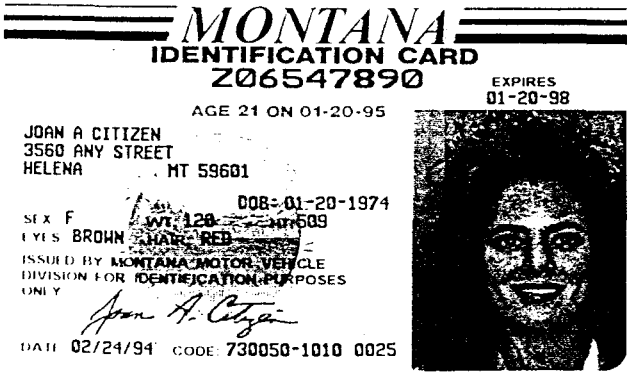


- State seal hologram security feature covers name, birthdate and a portion of photo.
- Photo on left indicates holder is 21 or older.

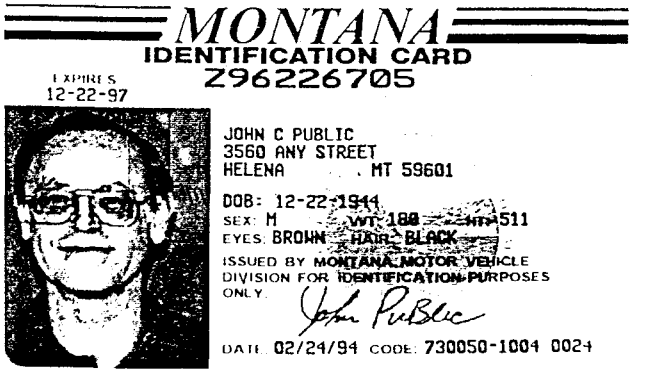


- "Under 21" license/ID card indicates date the holder turns 21.
- Photo on right side indicates holder is under 21.

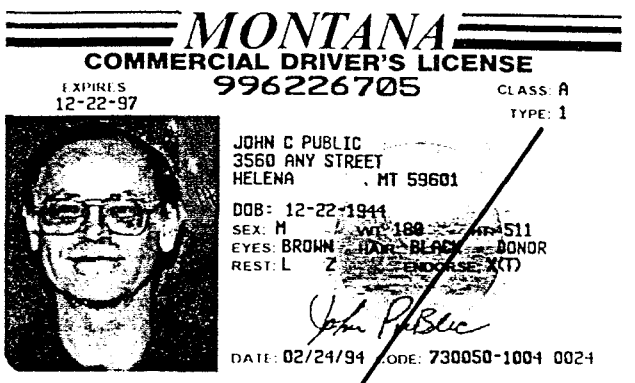
Identification Cards



- All photo backgrounds are blue.



Commercial License



Class/Type of License

REVERSE OF ALL LICENSES

DRIVER LICENSE CLASS, ENDORSEMENTS & RESTRICTION CODES

A — ANY COMBINATION OF 2 OR MORE VEH. OVER 26,000 LBS.
B — SINGLE VEHICLE OVER 26,000 LBS. GVW OR SCHOOL BUS — OR BUS TRANSPORTING MORE THAN 15 PASS. INCL. DRIVER
(C) — SINGLE VEHICLE LESS 26,000 LBS. WITH HAZ. MATERIAL OR — TRANSPORT MORE THAN 15 PASSENGERS INCLUDING DRIVER
D — NON-COMMERCIAL — INTERSTATE OR INTRASTATE

COMMERCIAL-TYPE 1-INTERSTATE TYPE 2-INTRASTATE.

N — TANK H—HAZ. (T)-DBL/TPL P-PASSENGER X-HAZ/TNK M-MC

(A) AIR BRAKE
D — DAYLIGHT HRS.
E — MECH. AIDS
H — SPEED 45,55 ON INTERSTATE
L — CORRECTIVE LENS
P — PROVISIONAL
M — LEFT OUTSIDE MIRROR
T — AUTOMATIC TRANSMISSION
W — NO INCLEMENT WEATHER
Z — CONTACT DISPATCH

- Magnetic stripe encoded with information from front of license.
- Restrictions/endorsements shown on back.
- "Z" indicates other restrictions/ endorsements not shown on reverse side.

What to Look For

roperly identify someone, you need e than a valid license. By taking the fol- ng steps, you can take advantage of the in security features of the new Montana er's license and identification card:

Does the photo on the card depict the person who is using the card?

Does the description of height, weight, eye and hair color, and age on the li- ense match the person?

Ask the person's date of birth. Does the nswer match the date on the license?

Check the signatures. Do they match?

Has the license been altered in any way?

When passed through a point-of-sale reader, does the information from the magnetic stripe match the information on the face of the card?

When you Cannot Verify Someone's Identity

DO NOT attempt to detain or pursue the person.

Write down a complete description of the person immediately. Include estimated height, weight, color of eyes and hair, complexion and appearance.

If the person leaves in a vehicle, try to get the license number and description of the vehicle.

one gives you an altered license or ID card, contact your local law enforcement agency.

If you have any questions regarding the new license or ID card, please call the Motor Vehicle Division in Helena, or contact your local Driver Examiner.

Dean Roberts, Administrator
Motor Vehicle Division

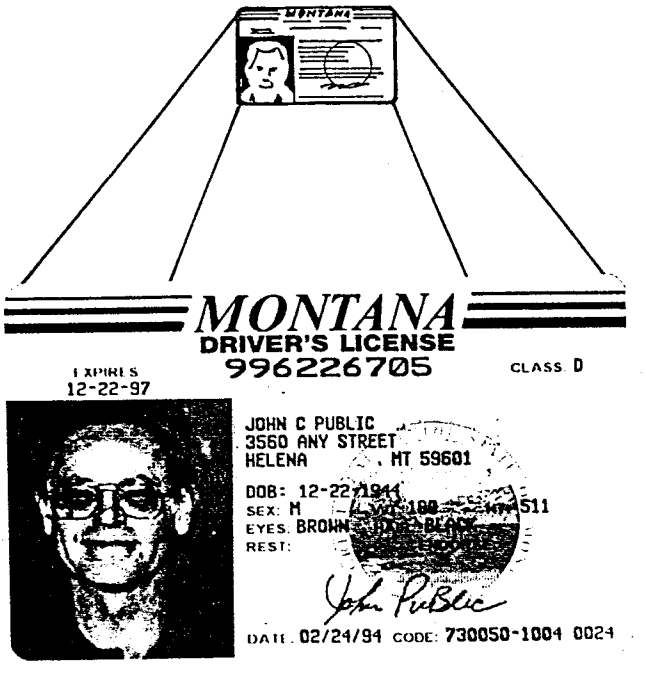
Department of Justice
Motor Vehicle Division
PO Box 201419
Helena, MT 59620-1419

(406) 444-3292

50,000 copies of this public document were published at an estimated cost of 7¢ per copy, for a total cost of $3,500.00, which includes $3,500.00 for printing and $.00 for distribution.

PRESENTING

a New Driver's License and I.D. Card for Montana



Beginning in 1994, Montana residents were issued NEW driver's licenses and identification cards.

The new licenses will be better laminated and contain both a hologram and magnetic stripe, to prevent tampering. The new licensing system also provides for computer storage of the individual's photo and signature for use in duplicating and renewing licenses and for use by law enforcement officers.

EXHIBIT 4
DATE 2/3/95
HB 256

TESTIMONY ON HB 256

Submitted By: Tom Huddleston
Representing: Helena City Commission
Lewis & Clark DUI Task Force

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE. I'M HERE TODAY TO SPEAK IN FAVOR OF HB256 AND ALL LEGISLATION THAT STRENGTHENS ENFORCEMENT AND DENOTES APPROPRIATE CONSEQUENCES FOR DUI INFRACTIONS. I COME BEFORE YOU ON BEHALF OF THE HELENA CITY COMMISSION AND THE LEWIS AND CLARK DUI TASK FORCE. I'VE BEEN A MEMBER OF THE CITY COMMISSION FOR SEVEN YEARS AND THE TASK FORCE FOR THREE.

IT SHOULD BE OBVIOUS WHY I WOULD ENCOURAGE ENFORCEMENT AND CONSEQUENCES FOR REPEATED CONVICTIONS OF DUI LAWS. DRUNK DRIVING IS A SERIOUS PROBLEM IN OUR STATE AND DRUNK DRIVERS KILL AND MAIM. REPEAT OFFENDERS IGNORE THE IMPOSED CONSEQUENCES AND BECOME UNINSURED AND UNLICENSED, BUT STILL DRIVERS WHO DRINK. TOO MANY OF US CONTINUE TO SEE THIS AS A SOCIAL PROBLEM AND WHISPER AGAINST THE FANATICS WHO CONTINUE TO CALL FOR MORE AND STIFFER LAWS. AFTER ALL, THERE BUT FOR THE GRACE OF GOD, GO I.

I'D LIKE TO TALK TO YOU ABOUT THAT NOTION. IT'S ONE THAT I SHARED FOR A LONG TIME. I WOULD LIKE TO PROPOSE THAT IF YOU ENACT THIS BILL AND OTHERS LIKE IT, YOU WILL NOT ONLY BE SERVING OUR COMMUNITIES, YOU WILL ALSO SERVE THE OFFENDER. I AM AN ALCOHOLIC AND WAS A PROBLEM DRINKER FOR FIFTEEN YEARS. DURING THAT TIME I DROVE AND DRANK. AFTER LONG NIGHTS AT PARTIES OR THE BARS. EVEN ON WEEKEND TRIPS ACROSS THE STATE. THERE, BUT FOR THE GRACE OF GOD...NO, I DIDN'T HAVE AN ACCIDENT WHILE DRIVING THAT HURT ANYONE. BUT I DID PARK ON MY SIDEWALK. RAN INTO FENCES. LEFT MY ENGINE RUNNING WHILE I SLEPT IN THE CAB. AND JOKED THROUGHOUT. BRAGGED ABOUT HOW "OLE BETSY" KNEW THE WAY HOME. ALL I HAD TO DO WAS PUT THE KEY IN AND SHE DID THE REST. WE LAUGHED THEN.

THREE YEARS AGO, I GOT LUCKY. I COMMITTED ANOTHER KIND OF STUPID DRUNK TRICK, BROKE THE LAW AND HAD THE CONSEQUENCES ENFORCED. FOR THE FIRST TIME, SOCIETY DIDN'T ENABLE ME TO CONTINUE MY FORM OF SOCIAL BEHAVIOR. INSTEAD, SOCIETY SAID "CLEAN UP OR GO AWAY." THERE WERE NO EARS TO HEAR MY LAME EXCUSES OR PLEAS FOR MORE TIME. WELL, I WENT AWAY AND CLEANED UP. I GOT HELP. TODAY, I START ANOTHER CHAPTER IN MY FOURTH YEAR OF RECOVERY. AND MY LIFE IS FULL. I HAVE A LOVELY FAMILY AND A BRAND NEW GRANDDAUGHTER. I LIVE IN A GREAT COMMUNITY AND STATE AND I CONTRIBUTE. I REDISCOVERED THAT THE WEEK HAS SEVEN DAYS AND I ENJOY THEM ALL. AND IN EACH OF THEM, I AM IN CONTROL OF EVERYTHING THAT I DO OR USE.

ON BEHALF OF ALL OF MY BROTHERS AND SISTERS WHO ARE NOT IN CONTROL, PLEASE DO NOT ENABLE THEM ANY LONGER. SAVE THEIR LIVES AND YOURS. PLEASE MAKE THE CONSEQUENCES MEANINGFUL FOR RECOVERY FOR THEM TOO.

THANK YOU.

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To @Roger Somerville	From John Campbell
Co. Cap Hol Station	Co.
Dept. H O 78	Phone # 883-2661
Fax # 1-900-225-1600	Fax # 883-4002

EXHIBIT 5
DATE 2/3/95
HB 256

Dear Roger & Committee Members:

My name is John Campbell. I am the water and sewer superintendent for the City of Polson. I am also an 18 year veteran of the Polson Fire Dept. and Jaws of Life.

I felt I should write to you when I heard of your bill to strengthen Drunk Driving Laws. I would like to give my full support to HB 256.

I became interested in current DUI Laws and how to make them tougher about 5 months ago. On Aug. 19 1994 my sixteen year old daughter, Jana Campbell and her friend Anita Myers were coming home from the rodeo in Kalispell. Their day of fun was ended when they were hit head on by a drunk doctor. He crossed a double, double yellow line to pass at a speed of 85 to 90 mph. This doctor was the head of the emergency room of Kalispell Regional Hospital. His blood alcohol level was .23 ! Anita died instantly but Jana suffered for two days at the hospital before dying. This doctor has slioped through the system for years. Even though he admitted guilt last week to two counts of deliberate homicide, when this is all over he still will not have a DUI on his record.

You should all be commended for your efforts to make these laws tougher. All Montana will benefit from your work.

Sincerely: John Campbell

My name is Jill Campbell. My daughter was only 16 on Aug. 19 1994 when DR. John Miller choose to drink and drive. Not only did he take my only daughter, but he took her good friend Anita's.

I can not help but wonder if our DUI laws were different maybe I would not have gone through two days of hell. Watching and praying that Jana would regain consciousness and knowing that the doctor that did this was still walking around free. You never think something like this can happen to you.

If you pass HB 256 and it can stop just one family from going through what we had to, it will be well worth it.

On Section 3 #5, If you could include somewhere to have part of the money go toward buying hand held breath analysis machines for officers. If in 1994 officers had one of these in there car Dr. Miller might not have gotten out of his DUI. Plus in 1989 and 91 his careless driving tickets could have been DUI'S and he might have been off our roads.

Thank You: Jill Campbell

EXHIBIT 6
DATE 2/3/95
HB 271

Bruce B. Barrett
330 Blue Heron Lane
Missoula, MT 59801
(406) 542 2563
fax 542 2590

IN SUPPORT OF SUMMARY DIVORCE BILL AMENDMENTS

TESTIMONY OF BRUCE BARRETT, DIRECTOR, ASUM LEGAL SERVICES--MISSOULA MONTANA

I appear today in support of the proposed amendments to the Summary Dissolution Law in House Bill 271.

The first Summary Dissolution Law was proposed several sessions ago. The idea behind it was simple enough. In uncomplicated divorces, where there were no children, and little debts and property, there was to be a shortened procedure. Under that procedure the parties could jointly agree to ask the Courts for a Summary Dissolution. They filed a Petition, and at the end of a waiting period, the divorce was to be granted automatically by the Courts. No Court Hearing was required.

During that first introduction to the legislature, several amendments were made to the law. The filing fee was increased. Changes were made to the Petition requirements. But the biggest change was one proposed by the Clerks of Court. That change required a Hearing before a Summary Dissolution was granted.

This requirement of a Hearing defeated much of the purpose behind the new law. The whole idea is to make the procedure streamlined, and pull it out of the Legal System. Uncomplicated, uncontested divorces take up precious time and resources from an overburdened Court system. This is why a number of lawyers, including the Montana Trial Lawyers, supported the original bill that was introduced.

The main proponents of these changes were the Montana Clerks of Court. They oppose a divorce without a Hearing. They have also, over the years, proposed a number of other changes to the bill. Since this bill was considered during the last legislature, we have been in communication with the Clerks of Court. They sent Jeff Weldon a letter with all of their objections and suggestions regarding this law. The bill as it stands now before the 1995 Legislature has in it every change the Clerks of Court have asked for over the years. The filing fee is the same as traditional dissolutions, even though the involvement of the Court is much

smaller and argues for a smaller fee. Other statistical and language requirements have been added at their request.

But the Clerks' request that a Court Hearing still be required guts the meaning and purpose of the law. With a Hearing requirement, and the other changes the Clerks proposed, the logistics of getting a Summary Divorce are as complicated as the traditional type of Divorce.

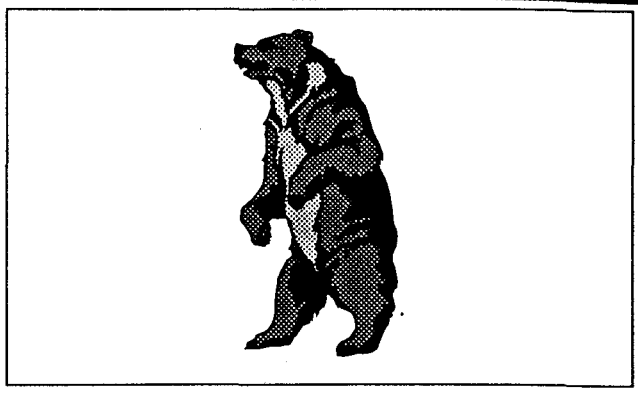
The sticking point for the Clerks seems to be they do not want to have to calendar and mail out a Final Divorce Decree to the couple once the divorce is final. They claim people will not be smart enough to know they are divorced without a Hearing, in spite of the clear language of the law and the forms these couples are provided. Recently the Committee received a letter from a Clerk saying the Clerks should not have to pay postage to send couples their divorce decree, in spite of the costly fees paid to the Clerk of Court for filing these simple papers. The system is successful in other states, and calendaring and mailing out the Decree after the waiting period is simply part of the system.

We should offer this simple and expedited procedure to the limited number of couples who qualify. It will save the Courts time and money. It will provide desperately needed Court time to the many other litigants who so desperately need access to the Courtrooms. I urge you to pass these amendments and complete the process of setting up a true Summary Dissolution system in Montana.

2/3/95

EXHIBIT 7
DATE 2/3/95
HB 271

Testimony to the House Judiciary Cmte. on behalf of the Associated Students of the University of Montana. Presented by Brien Barnett, legislative liason for ASUM.
2/3/95
~~1/27/95~~



Mr. Chairman (Madam Chairwoman), Members of the committee. Good morning!

I come before you today representing the Associated Students of the University of Montana. ASUM requests that you approve the summary dissolution procedures outlined in this Bill. I must say before anything else that we do not (let me repeat) DO NOT, wish to make divorce easy or somehow degrade the institution of marriage. That is not our intent.

We merely wish to remove from the courts a process which is fairly simplified where there are irreconcilable differences between married persons who have ONE: No children and TWO: No/or little debt, generally nothing more than a few hundred dollars in savings and a vehicle. This procedure would not encourage divorce, but rather, lessen the painful experience of courtroom confrontation. Under this bill, married university students mutually seeking a divorce would still be required to complete the processing up to the court hearing. If either party wishes to appear before the judge, or if the court requires either party to appear, this bill would not disallow that appearance. It merely keeps our courts from being cluttered with cases more easily closed at the Clerk of Courts office. There is no added paperwork beyond mailing the certificate of divorce to the individual parties.

Again, Mr. Chairman (Madam chairman) We want to make clear that we intend no harm to the institution of marriage, but instead propose this as an alternative to going into the courtroom to obtain a decree for an otherwise finished process.

Thank you for your time and consideration.

EXHIBIT 8
DATE 2/3/95
HB 157

AMENDMENTS TO HOUSE BILL 157 AS INTRODUCED

1. Page 6, line 13
   Strike: "45-5-505,"

2. Page 7, line 3.
   Strike: "Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender was convicted."

3. Page 7, line 3.
   Following: line 3
   Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available."

EXHIBIT 4
DATE 2/3/95 ATTY GENERAL
HB 157

Gallatin County, Montana

Mike Salvagni
County Attorney
615 South 16th Avenue - Room 202
Bozeman, Montana 59715
Telephone: (406) 585-1410
FAX: (406) 585-1429

February 2, 1995

Rep. Bob Clark, Chairman
Judiciary Committee
Montana House of Representatives
State Capitol
Helena, MT 59701

Re: House Bill 157

Dear Rep. Clark and Members of the Committee:

I planned to be at your hearing on House Bill 157 relating to life time supervision and registration for sex offenders. Because of a conflict with a court hearing I am unable to attend.

House Bill 157 is extremely important to me as a grandparent, citizen and prosecutor. I am presently serving my 13th year as Gallatin County Attorney. As chair of the Sex Offender Subcommittee of the Governor's Advisory Council on Corrections and Criminal Justice Policy I had the opportunity to participate in the drafting of the legislation. I have discussed the legislation with Rep. Denny and apologize to him for my absence from your hearing.

From the experts and my experiences I have learned that sex offenders are not cured. While their behavior may be controlled through treatment, there are many who may require life time incarceration or supervision.

In 1987 I prosecuted a 53 year old defendant for incest. 11 years earlier he began having sexual intercourse with his 10 year old daughter. At 21 years old she had the courage to tell someone about her father's repulsive sexual conduct. He pled guilty and was sentenced to 10 years in prison. At his sentencing he told the judge that his young daughter's participation was a 50/50 situation. He stated that she was at no time disgusted, humiliated nor unwilling to participate. The defendant would not participate in the sexual offender treatment program at prison, served his time and was discharged on July 24, 1992. This man came out of the prison with the same revolting attitude and beliefs that he had when he was caught. I submit that no community is safe from the exploitive and abusive conduct of this man or any person like him. Life time supervision should have been an option for the sentencing of this defendant.

The protection of the public also requires that sex offenders be mandated to register for life. The rule should be life, not 10 years. Failure to register should be punished with severity, not merely a slap on the hand. We also need a process for community notification.

I encourage your support and passage of House Bill 157.

Sincerely,

Mike Salvagni
County Attorney

EXHIBIT 10
DATE 2/3/95
HB 157

Mr. Chairman, Members of the Committee. I am Mike Ferriter, Chief of the Community Corrections Bureau. I am here to support HB 157. As the Bureau Chief of Community Corrections I am responsible for the community supervision of offenders placed on probation and parole.

One of the main components of the Probation and Parole Bureau's mission is to promote public safety through quality supervision. The life time supervision of sex offenders truly falls within the perimeters of our mission. The Probation and Parole Bureau has a very well-trained and professional staff, and is prepared to offer the public quality and long-term supervision of sex offenders, if and when they are placed in the community.

I urge your support of HB 157, as it is the responsible thing to do for the protection of our communities, as well as to aid sex offenders in their attempts to maintain sex offender treatment.

Thank you.

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EXHIBIT 11
DATE 2/3/95
HB 157

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 3, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 157.

First, each of the proposed amendments sets up confusing dual schemes for punishment for sex offenses: either a term of years in Montana State Prison or a life commitment to the Department of Corrections and Human Services. No standards are provided to give rational guidance to the court. This will surely lead to arbitrary decisions. Due process and equal protection concerns are overwhelming.

Second, as we voiced concern in the hearing on HB 161, the proposed revision to 45-5-625(1)(e) which would punish the knowing possession of "any visual or print medium in which children are engaged in sexual conduct, actual or simulated" seems to me to clearly violate the First Amendment. This statute would not only make possession of Romeo and Juliet a felony, but would also make teaching courses in juvenile delinquency or sex education risky. Such a law also has obvious commerce clause implications in that virtually all such material travels in interstate commerce and our law, if passed, may impose an unlawful burden. Concomitant with this are supremacy clause problems.

Third, lifetime registration of sexual offenders, even those who have served their full sentence, may violate Montana's constitution. Article II, Sec. 22 provides a prohibition against cruel and unusual punishment. Section 28 provides for the full restoration of rights upon termination of state supervision., i.e., termination of one's sentence.

Finally, the dissemination of information to the public is repugnant to me. Article II, Section 4, Montana Constitution expressly provides: "the dignity of the human being is inviolable." making this type of information available to the press and vigilante type groups simply does not square with that principle. Furthermore, Article II, Section 10 guarantees the right of individual privacy which cannot be violated absent a showing of a compelling state interest. The proposed legislation does not even begin to comport with that.

This bill is essentially a lawyer's relief act. If the legislature wants to provide endless opportunity for litigation with its horrible financial cost to the state, this bill will do it.

EXHIBIT 12
DATE 2/3/95
HB 214

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 3, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 214.

Most of the comments I made on HB 157 would apply to HB 214. Additionally there is a real ex post facto problem in Section 15 which would make this registration apply retroactively to all persons who have ever been convicted. This is clearly a punitive bill. The lifetime registration, I think, is violative of our Constitution's restoration rights. Furthermore, even though the convicted person would be eligible after ten years to petition the court for relief from that obligation, I believe this is a draconian measure. Such a petition would be public and would undoubtedly cause press coverage and public furor. It would make the individual subject to a witch hunt. It would violate the rights to privacy and human dignity. Furthermore, it is unlikely to have any effect on the crime rate. This kind of knee jerk response to what is obviously a problem does more harm than good.

Worse, the new Section 12 which provides for release of the information if the release is "necessary for public protection" is obviously an ill-reasoned attempt at legislation. The Constitution states that individual privacy shall be inviolate absent a compelling state interest. There is no compelling state interest requirement in this section and, perhaps worse, it would appear that this section would authorize a clerk to release whatever he or she thought was "necessary for public protection." There are no judicial safeguards, nor are there any standards set forth which would allow anyone, much less a low level staff member, to determine what factors should be reviewed in deciding whether or not release was necessary. The immunity provisions may in fact encourage release.

These bills simply contradict our basic sentencing policy of the State of Montana. Section 46-18-101(2), Montana Code Annotated sets forth the basic policy of the state of Montana. It reads:

> The correctional policy of the State of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon each individual the responsibility for

> obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

Neither HB 157 or HB 214 is at all consistent with the ideas of rehabilitation and consideration of individual characteristics, circumstances, needs and potentialities. Rather, each contains a blanket assumption that every person who is convicted of a sex crime will be and remains a sexual pervert for life. That simply is not true.

59033

Prepared by the North Dakota
Legislative Council staff for

May 1994

EXHIBIT 12
DATE 2/3/95
HB 214

SEX OFFENDER REGISTRATION LAWS - SUMMARY OF LAWS OF SELECTED STATES

BACKGROUND

At least 21 states (Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Ohio, Rhode Island, Tennessee, Utah, and Washington) have enacted sex offender registration laws. Each state has different requirements as to who must register, how they register, how long the offenders must be registered, and penalties for failure to register. The majority of the statutes appear to apply to all types of sex offenders who have at least one conviction; some apply only after two or more convictions; and some apply only to people who have sexually assaulted or abused children or minors.

Most laws require courts or correctional officials to inform an offender of the duty to register. Many require a state official to have the offender sign a form acknowledging that the offender has been so informed. Frequently, the official must obtain the offender's anticipated address upon release and forward it to a law enforcement agency, but that does not eliminate the offender's duty to report. The laws usually require the offender to report whenever the offender moves.

The duty to report is usually for a fixed period, most often 10 years. It appears that only one state, Louisiana, explicitly makes the reporting information available to the public, while most states keep the information confidential and available only to law enforcement officials.

PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS

Most of the states with sex offender registration laws impose a penalty for violation of the registration requirement. With the exception of Alabama, Arizona, and Washington, the remainder of the states with sex offender registration laws classify a violation as a misdemeanor. These penalties range from 90 days to one year in prison, a fine, or both.

Several states impose a harsher penalty for subsequent violations of the registration requirement. In Alabama a violation carries a penalty of one to five years in prison and a fine of up to $1,000. The penalty for a violation in Arizona is a Class 6 felony, which carries a maximum penalty of one year in prison for a first offense. In Washington a violation is a Class C felony, which carries a maximum penalty of five years in prison or a fine

or both, if the original crime committed was a Class A felony. If the crime committed was other than a Class A felony, then violation of the registration requirement is a gross misdemeanor.

SELECTED STATES' LAWS

North Dakota

In North Dakota a person is required to register if convicted of sexual imposition, gross sexual imposition, corruption or solicitation of a minor, sexual abuse of wards, sexual assault, or incest.

Any sex offender released by a facility or institution where the person required to register is confined must be informed of the duty to register. The official in charge of the facility must obtain the offender's expected address upon discharge, parole, or release. The official must forward the information to the Attorney General. The Attorney General must forward the information to the appropriate law enforcement agency having jurisdiction.

The person required to register must comply with the requirement for 10 years after conviction or after release from incarceration, whichever is later. Failure to comply with the registration requirement is a Class A misdemeanor punishable by a maximum penalty of one year imprisonment, a fine of $1,000, or both.

Registration information, which includes a statement, photograph, and fingerprints, is open to inspection by the public.

Arkansas

The Arkansas law applies to persons who have been convicted a second or subsequent time of one of the following offenses when the victim is under 18 years of age: rape, first and second degree carnal abuse, first degree sexual abuse, first and second degree violation of a minor, and incest. The law also applies to violations of prior Arkansas law or substantially equivalent offenses in other states. Upon conviction, the court must certify that the person is a habitual child sex offender.

A habitual child sex offender must register with the municipal police chief, or the sheriff if the offender lives in a rural area, within 30 days of moving into a county. The offender must give written notification to the agency where the offender is registered within 10 days of relocating to a new residence and the agency must report the new address to the Arkansas State Police and the new local law enforcement agency.

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HB 214

The duty to register continues for 10 years from the date of conviction or the date of parole, discharge, or release, whichever is later. The courts and the person in charge of a prison, hospital, or other institution must explain the duty to register to any habitual child sex offender over which they have charge. They must require the offender to sign a form; obtain the offender's expected new residence address; and provide copies of the form to the offender, the state police, and the local law enforcement agency. The information is closed to the public and may only be obtained by law enforcement officers and individuals specifically authorized by law.

Louisiana

The Louisiana law defines a sex offense as rape and sexual battery, bigamy and incest, sexual offenses involving a minor, and crimes against nature. Any adult who has plead guilty to or been convicted of a sex offense must register with the parish sheriff where the offender lives. Within 45 days of establishing residence in Louisiana or 30 days after conviction or release, the individual must provide the sheriff with the following information: name, address, place of employment, conviction information, Social Security number, aliases, a photograph, and fingerprints.

The offender is required to give written notification to the sheriff within 10 days of the change of address. If the offender moves to a new parish, the offender is also required to notify the sheriff of the new parish in which the offender relocates.

An offender who fails to register is subject to a fine of up to $1,000, imprisonment for up to one year, or both. For a second or subsequent offense, the penalty increases to imprisonment for up to three years with no parole, probation, or suspension of the sentence.

The Louisiana law requires the court to give written notification of the registration requirements to anyone charged with a sex offense. Similar notification must be given by the Department of Public Safety and Corrections when a sex offender is released from prison. The department must also give written notice of the registration requirement to persons renewing their driver's license or identification card, or when persons from other jurisdictions apply for a Louisiana driver's license or identification card.

The law specifies that the registration requirement applies for 10 years from the date of conviction or the date of release from an institution or facility, whichever is later. An offender may petition the court to be relieved of the duty to register. The court must consider the nature of the offense, the offender's preconviction and postconviction behavior, and other factors.

The court can grant relief only on clear and convincing evidence that future registration will not serve the law's purpose.

The law specifically authorizes all criminal justice agencies, including the court, to release relevant and necessary information regarding sex offenders to the public whenever the release is necessary for public protection.

Montana

In Montana a sexual offender is anyone convicted of sexual assault against a victim under 16 years of age, intercourse without consent, deviate sexual conduct, incest, or sexual abuse of children.

Any sexual offender released by the Department of Corrections and Human Services or Family Services Department must be informed, in writing, prior to release, of the offender's duty to register. The releasing official must obtain the offender's expected address and report it to the corrections department, which must forward it to the appropriate local law enforcement agency. The offender must register with the local police chief or sheriff within 14 days of moving into a county. Any registered person who moves must, within 10 days, notify the law enforcement agency. The law enforcement agency is required to notify the appropriate new law enforcement agency that the person will be relocating in the area. It is unclear from the statute as to whether this includes notification of law enforcement agencies if the offender moves out of state.

The duty to register lasts for 10 years. Any person who knowingly fails to register is subject to 90 days in prison, a fine of up to $250, or both.

Rhode Island

In Rhode Island any person convicted of a sexual offense under Rhode Island law, or of first degree sexual assault in another state, must register with the local chief of police within 60 days. The law requires officials of any jail, prison, state hospital, or any other institution where a convicted sex offender or mentally disordered sex offender has been confined to inform the inmate before release, discharge, or parole of the offender's duty to register. The official must require the person to read and sign a form stating that the duty to register has been explained to the offender. The official must obtain the address where the person expects to live and report it to the Attorney General.

Courts have the same duty to inform, obtain a signed acknowledgment, obtain an address, and forward information to the Attorney General and law enforcement agencies for offenders released on

EXHIBIT 13
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HB 214

probation or otherwise discharged from the court system. In addition, youths who have been adjudicated guilty of a sex offense are subject to the registration requirement when they are discharged from the state training school.

Anyone subject to registration who moves must notify, within 10 days, the law enforcement agency and provide the agency with the anticipated new address. The law enforcement agency must inform the appropriate law enforcement agency in the jurisdiction where the offender is relocating. Failure to register is a misdemeanor punishable by 90 days in jail and one year of probation.

Registration information consists of fingerprints, a photograph, and a written statement of the registrant as required by the Attorney General. These records are kept confidential and only available to law enforcement officials.

Tennessee

The Tennessee Bureau of Investigation is required to establish "a central registry of sexual offenders modeled after statutes in other states." The registry must include (1) validated offenders from files of the Department of Human Services; (2) persons arrested for sexual offenses; and (3) persons convicted of sexual offenses.

The law requires the Correction, Youth Development, and Human Services departments and local law enforcement agencies to cooperate in creating and updating the registry.

Utah

The Utah law applies to persons convicted of incest and a wide variety of sexual offenses committed against both adults and children, persons committed to a state mental hospital after committing sex offenses, and persons convicted of a comparable crime in another state.

The law requires the Department of Corrections to collect, analyze, and maintain information on sex offenders and sex offenses. All law enforcement agencies must inform the department of all sex offense reports, complaints, and arrests. Within 10 days of conviction, the court must inform the department and forward a copy of the judgment and sentence. All sex offenders must be registered by the department upon a sentence to probation, commitment to a correctional facility, parole, release to a community program, and termination of parole or probation. The registration requirement lasts for five years from the end of the sentence.

Sex offender registration information is confidential and only available to law enforcement agencies and the state Education Department. A sex offender who knowingly fails to register is guilty of a Class A misdemeanor and must serve not less than 90 days in prison and at least one year of probation.

California

California has the oldest sex offender registration program in the United States. Since 1947 persons convicted in California of certain sex offenses have been required to register. A person determined to be a mentally disordered sex offender or convicted in another state of a sex offense is also required to register. California statutes have been recently revised and now direct a sex offender, along with other requirements, to provide a blood and saliva sample at the time of registration for DNA identification purposes.

Nevada

In Nevada not only are sex offenders required to register, but any person convicted in any state of a felony offense that is punishable by imprisonment of one year or more must also register.

Alabama

In Alabama, "a person who has been convicted of a felony more than twice must register," as well as all sex offenders.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.3.95

BILL NO. 256 SPONSOR(S) Rep. Somerville

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
RON ASHABRANER	STATE FARM INS	✓	
JAMES A. LOFTUS	MT FIRE DIST ASSN	✓	
Tom Huddleston	City of Helena	✓	
Brenda Nordlund	Dept of Justice	✓	
Henry Hochhalter	1019-8th Ave So #A	✓	
J. J. Cole-Brown	private citizen 6260 Head Rd.	✓	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.3.95

BILL NO. 271 SPONSOR(S) Rep. McCulloch

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bob Gilbert	MT. Ass'n Clerks of Dist Court		X
Barra Barnett	ASUM Legal Svcs	X	
Brien Barnett	ASUM	X	
Susan Marie		X	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.3.95

BILL NO. HB 157 SPONSOR(S) Rep. Denny

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Denny	HD63	✓	
John Connor	MT County Attys Dept of Justice	—	
Jane Christman		—	
Derek Van Juchem		✓	
Ron Silvers	LPC Private Practice	✓	
Sandy Heater	MT State Prison therapist		
Scott Crichton	ACLU MT		✓
John E Thomas	BOP	✓	
Dave Owen	Dept of Corrections	—	
Becky Nalenseк		✓	

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

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.3.95

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jane Christmen		✓	
Derek VanAuchem		✓	
Becky Malesek		✓	
Scott Crichton	ACLU/MT		✓
Dan Eldridge	1019 8th Ave So #	X	
John G Thomas	BOP	X	

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