

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 13, 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 356, HB 357, HB 443, HB 457, HB 474
Executive Action: HB 186 POSTPONE ACTION
HB 311 DO PASS AS AMENDED
HB 474 DO PASS AS AMENDED
HB 457 DO PASS AS AMENDED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 311

Motion: REP. BILL TASH MOVED HB 311 DO PASS.

Motion: REP. AUBYN CURTISS MOVED THE AMENDMENTS. EXHIBIT 1

Discussion: REP. DEB KOTTEL asked what they would be doing to the breadth or the scope of the bill by adding the words, "or damaging," on page 2, line 15.

Mona Frank, without objection from the committee, clarified the reason for the wording was that the Montana Constitution says, "taken or damaged."

REP. TASH after reviewing the amendments and his notes from the hearing, he thought many of the amendments were needed to parallel federal legislation and to narrow the scope of the administrative rules procedure to help the department carry out its responsibility. He referred to amendment 6, lines 28 and 29 to illustrate the reason for the amendments.

REP. KOTTEL further clarified some of the amendments.

Vote: The motion carried 12 - 4, REPS. CAREY, HURDLE, KOTTEL and MC CULLOCH voted no. REPS. WYATT, SHEA and SMITH were absent at the time of the vote.

Motion: REP. DANIEL MC GEE MOVED HB 311 DO PASS AS AMENDED.

Discussion: REP. BRAD MOLNAR said he remembered that the intent of the bill was to instruct the department to consider the takings implications before taking action while not impeding their ability to take action. The committee affirmed that.

REP. TASH recalled that the amendments clarified the conceptual amendments offered at the time of hearing.

John MacMaster said that was essentially correct. The substance of the amendments was the same as the sponsor's conceptual amendments.

REP. KOTTEL asked if the amendments proposed by the Wildlife Federation were included and was informed that they were not.

REP. BILL CAREY directed the committee's attention to the technical notation on the fiscal note for this bill which stated that there may be an imposition of a just compensation obligation as a result of litigation over the constitutionality of the bill.

CHAIRMAN CLARK felt the amendments cleared up those issues.

Vote: The motion carried 14 - 3, REPS. CAREY, HURDLE, and MC CULLOCH voted no. REPS. WYATT and SHEA were absent at the time of the vote.

Informational Testimony: EXHIBIT 2 was submitted for the committee's consideration.

{Tape: 1; Side: A; Approx. Counter: 27.2}

EXECUTIVE ACTION ON HB 186

Motion: REP. WILLIAM BOHARSKI MOVED HB 186 DO PASS.

Discussion: REP. BOHARSKI and the committee discussed striking of the "dependent" language starting on page 2, line 10 and page 3, line 14.

REP. DUANE GRIMES referred to exhibits which stated that it was overly broad and that this was clean-up language.

REP. LOREN SOFT remembered that the controversial part of the bill was page 10, section 9, subsection 1.

REP. KOTTEL read that the immunity from prosecution was provided from giving information. She did not read it to make social workers immune from their failure to act, but rather immune upon their giving information. She objected to the new language in section 2.

CHAIRMAN BOB CLARK said the rebuttable presumption language was current language.

REP. MC GEE wanted to make adjustments in the wording regarding rebuttable presumptions.

REP. GRIMES reminded the committee that the process of modifying the bill was not final with this committee's deliberation.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 11, LINE 1 AFTER "THE PERSON" INSERT "WAS GROSSLY NEGLIGENT," AND STRIKE LINES 3 - 6 ON THAT PAGE AND ON PAGE 10, LINE 27 TO REINSERT "ANYONE" AND STRIKE "A POLICE OFFICER, DEPARTMENT EMPLOYEE OR COUNTY ATTORNEY."

Discussion: REP. KOTTEL explained her amendment.

REP. GRIMES asked if she would be willing to change her amendment by adding after 41-3-205, MCA, "as substantiated by the department."

REP. KOTTEL agreed to that as a friendly amendment.

REP. JOAN HURDLE spoke against that amendment since she had some real questions about how the department went about the process of substantiation. She wanted to strike that whole portion of the bill.

Motion: REP. KOTTEL MADE A SUBSTITUTE MOTION TO AMEND PAGE 10, LINES 27 AND 28, REINSERT THE WORD, "ANYONE," STRIKE "POLICE OFFICER, DEPARTMENT EMPLOYEE OR COUNTY ATTORNEY."

Discussion: REP. KOTTEL was asked to explain her reason which she said were that it was immunity from liability which was not just investigative but also in reporting any incident. It was originally included to protect people other than government employees who reported incidents of child abuse.

REP. MOLNAR gave a history of a case to substantiate his objections to the amendment.

REP. KOTTEL felt her second amendment which would add the words, "grossly negligent in the investigation process," would clear up his problem with it by holding people liable who don't exercise reason in furthering the investigation process. She called attention to those who would be furnishing the information as being covered by her amendment.

REP. MC GEE asked for the definitive difference between negligent and grossly negligent in law.

Mr. MacMaster described that difference.

REP. MC GEE and REP. KOTTEL continued to discuss the differences in the terms.

Vote: The motion on the first amendment carried unanimously.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 11, LINE 1, AFTER THE WORDS, "A PERSON," INSERT "WAS GROSSLY NEGLIGENT,."

Discussion: REP. BOHARSKI and REP. KOTTEL discussed her amendment. The committee continued to discuss the definitions and application of negligence versus gross negligence.

Vote: The motion carried unanimously.

Motion: REP. MC GEE MOVED TO POSTPONE ACTION ON HB 186. The motion carried.

{Tape: 1; Side: A; Approx. Counter: 56.7}

Information: EXHIBIT 3 was submitted by REP. LIZ SMITH for the committee's information which related to HB 157.

HEARING ON HB 443Opening Statement by Sponsor:

SPEAKER OF THE HOUSE, REP. JOHN MERCER, presented HB 443 at the request of one of his constituents. It dealt with the Unfair Claims Practices Act in Montana. He explained the intent of the bill was to expand the definition of when an individual can bring action in a situation as expressed on page 2 lines 14 through 19 where medical expenses and property damages and claims for lost wages have not been paid even though liability is reasonably clear. Further, it addressed this situation when the person would be forced to settle for an amount for considerably less than fair because of their financial duress. This bill also asked for attorney fees in that type of a case. He pointed out some technical changes needed on the bill.

Proponents' Testimony:

Keith McCurdy described a typical situation which prompted the drafting of this bill. He presented excerpts from cases which are characteristic. **EXHIBIT 4**

{Tape: 1; Side: B}

He said this bill would not apply unless the liability is reasonably certain.

John Morrison, Montana Trial Lawyers Association (MTLA), distributed copies of documents which demonstrated the current lack of obligation of a defendant to make advance payment even though liability was established. **EXHIBIT 5** He said the situation which presents the worst problem occurs when the injured person is poor and does not have resources of their own to pay medical expenses and are therefore forced to settle the case for less than full value. He asked the committee to strike the second paragraph, subsection (o)(i) of the bill which pertained to the economic duress of the injured person because it provided for benefits to poor people only. It seemed to him that whether a person is poor or not, if liability is reasonably clear and that there may be arguments about how badly injured the person is, there is no argument about the value of their lost wages or medical bills. He agreed with the sponsor that 33-18-242, MCA, needed further amendments.

Opponents' Testimony:

Ron Ashabraner, State Farm Insurance, opposed HB 443 primarily because the bill would be difficult to implement in any meaningful fashion, would raise the cost of insurance in Montana and would result in unnecessary litigation. State Farm's policy is to settle all claims as promptly as possible; however, he said there are some instances in which settlement of claims requires additional time. Under those circumstances the language of HB

443 would become problematic. He said that section 1 created an unfair claims settlement practice which would be based upon whether liability had become reasonably clear within a reasonable time of submission of the claim. He felt that was unfairly subjective.

{Tape: 1; Side: B; Approx. Counter: 11.6}

Tanya Ask, Blue Cross and Blue Shield of Montana (BC/BS), presented a copy of proposed amendments and explained them to the committee. **EXHIBIT 6**

Jacqueline Lenmark, American Insurance Association (AIA), opposed HB 443 and the amendments submitted by MTLA and the sponsor. She said that her practice involves defense work for Montanans who are insured and are sued by other Montanans or other entities. AIA opposed it strenuously because it is not confined to first party claims. Their concern was focused on the effort to give a right of action to a third party. The insurance was purchased to protect assets and after policy limits have been exhausted then those personal assets would be assessed toward recovery of any liability. If an insurance company were required to pay out the policy limits in advance of determination of liability or extent of damages, every advance payment would go against the policy coverage. It is the insurance company's responsibility to protect personal assets. This bill would change the purpose of insurance to protect the other party rather than the holder of the policy. This would result in increased litigation.

Montana is the only state which has codified an independent right of action for the third party against the insured. This state has also codified the right to punitive damages and an action against an insurance company for not settling promptly when liability is reasonably clear. For these reasons, AIA believed this legislation was unnecessary. However, AIA believed that the sponsor had identified a problem in Montana and urged the committee to wait for another bill to be sponsored by **REP. BOHLINGER** which would address the issue.

Denny Moreen, American Council of Life Insurance (ACLI), appeared in opposition to HB 443. He said that although it was drafted to address a particular problem, it had nothing in it that indicated that it would not apply to life insurance companies. It would create something unique in Montana in that it would grant attorneys' fees in an action against an insurance company. He explained how life insurance policies work and the proposed bill's negative effect.

Questions From Committee Members and Responses:

REP. TASH wondered if the amendments offered by BC/BS were necessary because they were covered in the title of the bill.

Ms. Ask said the language was not clear that attorneys' fees could be awarded to the other party.

REP. SHIELL ANDERSON addressed the BC/BS amendments.

Mr. McCurdy responded that the people he represented had no objection to the prevailing party paying the attorneys' fees. He thought that had been contemplated in the drafting of the bill.

REP. ANDERSON also asked about including the new provision for failure to pay medical expenses into the independent cause of action.

Mr. McCurdy said the current law requires, as was indicated by some of the opponents, that the carriers are currently under an obligation under this act to settle these claims reasonably fairly and expeditiously, but that has extended up to two or three years. Without an independent cause of action, if liability is reasonably certain, there is no way to enforce the bill.

REP. ANDERSON asked him to address the suggested amendment which would remove subsection 2.

Mr. McCurdy proposed the bill because he was concerned about people who had no place to turn and no other way to raise the money necessary to pay the medical bills. Premature settlements become necessary to meet obligations for medical bills and to provide transportation and to cover wage loss.

REP. ANDERSON asked the sponsor if he intended subsection (o) on page 3 line 5 to allow a court or jury to award damages.

SPEAKER MERCER said he did.

{Tape: 1; Side: B; Approx. Counter: 28.3}

REP. MOLNAR asked if it was found that the person was also liable and there was no conviction of the defendant, and advance payment had been made, would the plaintiff have to return the money to the insurance company.

Mr. McCurdy said he had never seen a case where liability was reversed.

REP. MOLNAR said in his experience the judge has the option of awarding attorneys' fees but this would take that option away. He asked why that option should be taken from the judge.

Mr. McCurdy said attorneys' fees are not allowable in the state of Montana except in very rare cases where the law specifically provides the option of awarding attorneys' fees. He said this bill did not mandate the award by a judge, but that the attorneys' fees could be recovered by the prevailing party.

REP. MOLNAR pointed out that the title said that it was required and Mr. McCurdy said that needed to be changed for consistency.

REP. MOLNAR stated that then the judge would determine the reasonable amount of fees rather than what the attorney might charge.

Mr. McCurdy described that there would be a hearing for both sides to present their facts and the judge would make the ultimate decision.

REP. DEBBIE SHEA asked what MTLA's position was on "reasonably clear."

Mr. Morrison understood the concern of the committee in the determination that liability was reasonably clear. The important thing to understand was that this proposed section would be an extension of what exists in 33-18-201(6), MCA, which says that when liability is reasonably clear, no person may fail to promptly, fairly and equitably settle the claim. He explained that the negotiations include a determination whether liability is reasonably clear and what is fair and equitable in a settlement. This bill would take away the second question so that determination of the value of the whole case would not need to be established to take care of the expenses as they occur.

Closing by Sponsor:

SPEAKER MERCER described this as a battle between trial lawyers and the insurance industry. But he asked the committee to consider that it was not about either, but about fair claim practices in Montana. He felt the majority of arguments against the bill prove too much and were made against the Unfair Claims Practices Act originally. In his mind the purpose of insurance was to cover injuries. He said the amendments were of a high stake nature.

HEARING ON HB 474

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, introduced HB 474 which would provide for probation officer training. He said they had done an audit in June 1992 which revealed a difference between Youth Court operation activities among the 21 judicial districts. Youth which were ordered to make restitution amounts varied substantially between districts. It was also determined that a probation officer was required to obtain 16 hours of training per year but there was no established statewide training for them and so there was a wide variation in that area. This would provide the Board of Crime Control with the rule to establish standards of procedures for juvenile probation officer training and certification and examination requirements.

Proponents' Testimony:

Gene Kiser, Montana Board of Crime Control (MBCC), supported this legislation which would enable them to adopt rules to issue certification to juvenile probation and parole officers.

Mary Ellerd, Montana Juvenile Probation Officers' Association, supported the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC GEE asked the sponsor what the fiscal impact would be.

Candy Wimmer, Montana Board of Crime Control, testified that amendments were being prepared and said that MBCC was responsible for delivering the training. The amendments would make that responsibility go to the Montana Law Enforcement Academy. There was no significant impact on the budget expected and there was no particular impact on the MBCC budget.

REP. SOFT asked the sponsor if he had said that the audit showed that a number of probation officers had not even received 16 hours of required training.

REP. COBB replied that some had received less than the 16 hours.

REP. SOFT asked if the purpose of the bill was to put more teeth into the requirement and the sponsor agreed by explaining why.

REP. SOFT said he did not see where this bill would do that more than current law already does.

REP. COBB said the Department of Justice would be given this responsibility and that the funding of the law enforcement academy would provide it. The purpose was also to make the standards uniform so that the training was consistent.

REP. SOFT asked if there was a penalty for not following through.

REP. COBB replied that from an audit standpoint they cannot mandate it, but they could remedy what the audit showed as inconsistent training.

REP. MOLNAR referred to the audit's report that the annual convention was used to satisfy the requirement for training. He asked if they were looking at training over and above the annual convention.

Mr. Kiser said they would not consider the conference as the 16 hours of training. The certification process would have to examine the course content offered at the conference and insure that it was in fact 16 hours of training. The training could occur at the conference, but the overall conference would not serve to satisfy the requirement.

REP. MOLNAR asked if they did use the annual conference for that purpose, how they planned to institute it.

Mr. Kiser said the conference itself would come up with the training program and they would provide an instructor and/or training personnel from the academy might teach at that conference.

REP. MOLNAR asked how they would handle cases where a person could not attend the convention.

Mr. Kiser responded that it would be similar to how coroners' or law enforcement training is handled. There would be a rule-making process to address it which would include proof of cause for not attending the conference and then a determination of how to provide it to them.

Closing by Sponsor:

REP. COBB clarified the bill's intent to address the committee's concerns about how to determine what a 16-hour course is comprised of.

HEARING ON HB 457

Opening Statement by Sponsor:

REP. STEVE VICK, HD 31, described HB 457 as having a straightforward purpose to curb the use of tobacco products among the youth. He described the reasoning behind the setting of fines and their collection and distribution.

Proponents' Testimony:

Dennis Hardin, School Board Trustee, Bozeman, described a growing problem among youth in the use of tobacco. He distributed a packet of information on the dangers and effect of the use of tobacco. He described each part of the information. **EXHIBIT 7**

He said the bill had broad support from legislators on both sides of the aisle. The Tobacco Institute provided a brochure which demonstrated their support of this legislation. **EXHIBIT 8**

Not to be construed as being in possession are underaged persons working in an establishment who might be stocking shelves. The

bill would not impact shopkeepers, but rather would free, them by saying that the offender bears the brunt of responsibility.

{Tape: 2; Side: A}

Mr. Hardin expressed the growing concern with smokeless tobacco use in the United States among youth. He said *JOE CAMEL* is a significant icon for youth at age 6, nearly equal with *MICKY MOUSE* which he described as a stunning report of the amounts of advertising through cartoons exposing the children to the promotion of tobacco use. He shared a testimony from Woodridge, Illinois which has a similar law that said, ".....youngsters under the age of 18 have about as much chance of buying a pack of cigarettes as they do of buying a bottle of Vodka."

Susan Palermo, Health Educator, Lewis and Clark City-County Health Department, submitted written testimony. **EXHIBIT 9**

Bryan Dunn, Assistant Superintendent of Schools, Bozeman, presented his testimony. He testified to the change in the gathering of gangs which were once centered around the use of marijuana and now they are centered around tobacco. **EXHIBIT 10** He said the bill alone would not end the problem, but a message must be sent to kids that using tobacco is wrong and dangerous to their health.

Mike Salvagni, Gallatin County Attorney, supported HB 457 and understood that the County Attorneys' Association had no objection to the bill. He felt the impact of the bill on his office and that of other county attorneys in additional workload was far outweighed by the need to protect youth from the devastating effects of using tobacco. He proposed an amendment which came without objection from the sponsor which would clarify concurrent jurisdictions. **EXHIBIT 11**

Mike Clayton, Bozeman Public Schools Prevention Coordinator, said he had worked last year with 144 students who were involved with alcohol, marijuana or other drug use. He made four points:

1. The majority of them smoked. Research indicates that tobacco is a gateway drug,
2. Smoking rates among adolescents has been going up in just the past two to three years while it has been dropping among adults (he gave statistics),
3. Only in the past two years students have begun to say that they "loved" tobacco while they say they don't like alcohol or marijuana, and
4. The DARE Program is effective, but students are shocked to discover that tobacco is not illegal for them to use and they believe it should be.

Rachael DeLong, as a high school student, supported HB 457 because, she said, tobacco is a drug. She discussed how the students can easily acquire and use tobacco.

John McCrea, American Lung Association, supported the bill.

Connie Jungmann, Executive Director, Montana Dental Association, stood in support of HB 457 because tobacco usage adversely affects oral health. One-fourth of all dental patients are smokers or users of tobacco products. Children or youths need to be persuaded to not begin using tobacco products at all.

Larry Akey, Smokeless Tobacco Council, said that while they might disagree with some of the statistics offered and dispute some of the studies that tobacco is a gateway drug or some of the morbidity statistics, they would not dispute that tobacco is an adult product.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON**.

REP. BILL TASH, HD 34, rose in favor of the bill as a recovering tobacco addict. He had had a cancer scare and switched to smokeless tobacco and found himself a great deal more addicted to that than to smoking tobacco.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, supported the bill. She said they owe it to the children to restrict tobacco from minors. She shared information about the advertising industry coupled with the tobacco industry in appealing to children.

REP. BOB CLARK, HD 8, DARE Officer, said that the focus of DARE is on drugs. Drugs are defined as any substance other than a food that affects the way the mind and body work. Under that definition, tobacco is a drug, he said. He said they key on tobacco, alcohol and marijuana in the program because they are the most abused drugs in that order. He substantiated previous testimony that children question why tobacco is still legal while it produces so much harm. They want to know why it is not illegal to adults as well as to children. He explained some cases he personally had knowledge of where youngsters who smoked and were supplied by a parent.

Mary Ellerd, Montana Juvenile Probation Officers' Association, leant their support to this bill and to the proposed amendments.

CHAIRMAN CLARK resumed the chair.

REP. CHRIS AHNER, HD 51, testified from personal experience with family members' ill health as a result of tobacco use in support of this legislation.

Informational Testimony:

A petition in favor of HB 457 was submitted as **EXHIBIT 12**.

Saco Schools Drug Educational Coordinator, **Tamara Crowder**, submitted a letter in support of HB 457. **EXHIBIT 13**

Opponents' Testimony:

None

{Tape: 2; Side: A; Approx. Counter: 34.0; Comments: The battery on the recorder failed near this point during the hearing. A portion of the question and answer exchange between REP. KOTTEL and the sponsor is limited.}

Questions From Committee Members and Responses:

REP. KOTTEL said subsection 4 concerned her because it looked like entrepreneurial law enforcement and wanted to know if there were other statutes where the arresting police officer would get a direct benefit from the arrest because the fine would go directly into their account to benefit their department.

REP. VICK did not believe the statute did that. He said it would benefit the general fund at the local government level. It would not go directly to the sheriff's department or the police department.

REP. KOTTEL asked about a fiscal note and the sponsor said one had been ordered, but it was not available as yet.

REP. KOTTEL expressed her concern about lines 16 and 17 because due process for adjudication of youths in need of care is quite expensive.

REP. VICK could not respond to that concern. He deferred the question.

Mr. Salvagni said a youth in need of supervision could only be removed from their parents' care if they committed an act of delinquency.

REP. KOTTEL and Mr. Salvagni discussed 41-3-1122, MCA, and its application to this act.

REP. SOFT referred to the letter included in **EXHIBIT 7** from the Missoula County Health Department disclosing that tobacco costs Montana \$10.6 million in Medicaid and asked for substantiation of those figures and how those costs had occurred.

Mr. Hardin said he understood that was her personal research and that included all of the lung-related expenditures for Medicaid during that year.

Mona Jamison, American Lung Association, said those particular figures were generated by the Department of Social and Rehabilitation Services (SRS). She understood they were not prepared for any bill.

REP. MOLNAR asked if the amendments were adopted, would that take care of the concerns about lines 16 and 17 previously discussed.

Mr. Salvagni said the amendments were intended to make it clear that the city court and the justice of the peace court would have jurisdiction over this offense. When something is defined as a crime committed by a juvenile, that is a non-adult crime. Youth in need of supervision is defined as a status kind of offender. Subsection (b) is then redundant in that regard, but this makes it absolutely clear that under the Youth Court Act, it establishes jurisdiction over youth. In subsection (2) of the amendment alcohol and gambling violations are clearly within the jurisdiction of those courts. He did not think it would be so clear if they didn't put tobacco products in there. He thought that subsection (2)(a) of proposed HB 457 would provide a loophole and someone could challenge the jurisdiction of the city court to consider this crime.

REP. MOLNAR asked if (b) were struck, would that leave the offense more like a traffic fine where the youth could go to a lower court, pay his fine and be done without burdening the Youth Court with this sort of offense.

Mr. Salvagni said currently the Youth Court has concurrent jurisdiction with the city court on alcohol violations. The youth could be prosecuted in the Justice of the Peace Court or proceeded against on a petition asking the Youth Court to designate the juvenile as a youth in need of supervision. Most of those cases are brought in the city or justice court. A traffic violation could be brought into the Youth Court as well though as a practical matter that is not done.

Probably the juvenile would be cited into the city court; however there might be situations where the juvenile would have such a severe problem with the abuse of tobacco that the jurisdiction of the Youth Court would be appropriate. Those are discretionary sorts of decisions. If subsection (b) were removed, it would not mean the Youth Court would not have jurisdiction because of the definition of a youth-in-need-of-supervision in the Youth Court Act. He wanted to make it clear that it would require the cooperation of the city attorney as well as the county attorney.

REP. KOTTEL stated that they would be making tobacco illegal for minors not because it causes diminished capacity but because it would harm themselves and is a health issue.

Mr. Salvagni said he was not an expert on the effects of tobacco. From his own experience he had seen what tobacco can do to

people. It is a health issue relating to an individual which could have an affect on society as well.

REP. KOTTEL said then they were talking about the health issue because society might have to pay a cost in increased health care.

Mr. Salvagni said that might be a result.

REP. KOTTEL asked if he would support "a chocolate donut ban or butter cholesterol control or other types of things because the highest rate for incidents has to do with heart disease and couch potatoism (sic) and potato chips....." Her concern was, "If tobacco is seen like red meat or donuts or other things, ingesting it does not hurt others in terms of diminished capacity, it hurts the person ingesting it and in turn might raise health care costs for society as a whole and is this one step in a long step of lifestyle discrimination types of issues being raised in the coming years?"

Mr. Salvagni did not believe the discussion could be limited to diminished capacity sorts of issues, but the larger picture. He likened smoking cigarettes by a youngster to one who is drinking alcohol rather than comparing smoking a cigarettes to eating a chocolate donut.

Closing by Sponsor:

REP. VICK thought the committee needed to keep in mind that this is just a piece of the puzzle. He did not think that in its passage, all teen smoking would disappear. He mentioned the wide range of support for the bill. He sought to dispel the myth that tobacco use is decreasing and he thought this would help prevent its use among youth.

{Tape: 2; Side: A; Approx. Counter: 54.0}

EXECUTIVE ACTION ON HB 474

Motion: REP. ANDERSON MOVED HB 474 DO PASS.

Discussion: Mr. MacMaster discussed the amendments proposed by the sponsor.

Motion: REP. GRIMES MOVED ADOPTION OF THE AMENDMENTS.

Discussion: REP. HURDLE asked if that meant the Department of Justice would provide the course for the certification.

Mr. MacMaster said that was correct except that the Board would not be approving the Department of Justice course, it would approve courses offered by government agencies other than the Department of Justice or courses offered by private agencies.

Vote: The motion carried unanimously.

Motion: REP. MC CULLOCH MOVED HB 474 DO PASS AS AMENDED.

Discussion: REP. SOFT said he hoped that the bill would make the 16 hours of training mandatory even though 40 training hours would be optional.

Vote: The motion carried unanimously, 17 - 0. (REP. MC GEE voted by proxy and REPS. SHEA and WYATT were absent.)

EXECUTIVE ACTION ON HB 457

Motion: REP. AHNER MOVED HB 457 DO PASS.

Motion/Vote: REP. ANDERSON MOVED TO ADOPT AMENDMENTS. EXHIBIT 11
The motion carried unanimously.

Motion/Vote: REP. TASH MOVED HB 457 DO PASS AS AMENDED. The motion carried unanimously, 17 - 0. (REP. MC GEE voted by proxy and REPS. SHEA and WYATT were absent.)

{Tape: 2; Side: B}

CHAIRMAN CLARK appointed a subcommittee to look at the juvenile bills. REP. MOLNAR, Chairman, REP. KOTTEL and REP. SOFT were appointed.

HEARING ON HB 356 & HB 357

Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, HD 79, combined his opening remarks for both HB 356 and HB 357. HB 356 was called the "truth-in-sentencing bill." He said there are complicated formulas for figuring out how long it is that an offender will serve in prison when sentenced for a crime as well as defining "good time" and when an inmate would start parole. The first intent in HB 356 is to eliminate the formula which was built into the statutes over the years. The "good time" formula and the classifications of dangerous and nondangerous would be eliminated. Further, a percentage of the sentence would be established before eligibility for parole would be considered. He explained the sections of the bill and presented his arguments for it.

HB 357 would set up a study commission because the rules should not be changed in the middle of the game and everyone needs to be involved in the changes. HB 357's fiscal note was smaller than it ought to be because of the cost of conducting the study. But in comparison with the costs of incarceration, the cost of a study commission to be sure implementation of new sentencing laws is done correctly has value worth considering.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services (DCHS), presented his testimony on behalf of the department and the Governor in favor of HB 356 and HB 357. **EXHIBITS 14 and 15** He circulated a variety of statistical reports to the committee in consideration of these bills. **EXHIBITS 16 - 19**

John Connor, Department of Justice, Montana County Attorneys' Association and member of Governor's Advisory Council on Corrections and Correctional Policy, spoke in support of the companion bills. He said that **Judge Sherlock** who was the chairman of the Governor's Advisory Council had asked that his support also be voiced to the committee. He described the current system as an "absolute mess." He said it was a classic example of how legislation becomes a mess when it is put together through a piecemeal process over a period of years. As a member of the truth-in-sentencing subcommittee, they were initially interested in just throwing out the "good time" concept and described the reasoning behind that and the reasons for changing that approach. He described the inconsistencies in the system and the process for arriving at the intent and content of the proposed legislation in HBs 356 and 357.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON**.

{Tape: 2; Side: B; Approx. Counter: 40.5}

Anita Richards, testified in support of the bills as a victim of murder and of the current system. **EXHIBITS 20 and 21**

Sharon Bakerson, Majority Against Child Molestation (MACeM), supported the bills. She questioned the effectiveness of the elimination of the dangerous/nondangerous categories on other bills being considered and when it would become effective and how it would be handled in the interim. She expressed worry that persons currently incarcerated would be paroled without regard to their threat to society.

Mike Salvagni, Gallatin County Attorney, rose in support of the two bills. He also served on the Governor's Advisory Council and chaired the Sex Offenders' Subcommittee. He expressed his frustration with the current system which he characterized as a "fraud." He said the designations of dangerous and nondangerous offenders was a fallacy and nothing more than a component in a formula to determine parole eligibility having nothing to do with whether or not an offender is dangerous or nondangerous. He shared examples to support his testimony. He felt these bills were the beginning of the process to restore confidence in the criminal justice system. He endorsed HB 357 as a means by which sentencing guidelines can be examined clearly by all three branches. He strongly urged support.

Craig Thomas, Executive Director, Board of Pardons, rose on behalf of the Board of Pardons in support of both bills. These bills would directly impact how the Board does business and they had significant input into the drafting of the bill. He cited his experience in the law enforcement field and with the current frustrating process of pardons. He addressed the dangerous/non-dangerous designations as being confusing and irrelevant to the actual process.

Laurie Koutnik, Executive Director, Montana Christian Coalition, gave testimony in favor of passage of HB 356 and HB 357.

EXHIBIT 22

{Tape: 3; Side: A}

Ron Richards spoke as a proponent of HBs 356 and 357. He said they will bring sentencing in line with what judges' and prosecutors' intentions are as well as what the people perceive about sentencing. He believed they would simplify the parole process. "Good time" behavior in prison should be expected and not rewarded. To make it work, he felt it would be imperative that the legislature repeal the "good time" allowance so that the bill would have continuity. He did not believe it was good to empower an administrator to grant "good time" for whatever reason he might choose which could include an attempt to reduce the prison population. He recognized that this as well as other legislation before this session would cost a significant amount of money, but he and other Montanans were prepared to pay it. He pointed out that there is no legislative oversight in corrections policy. He said that though the DCHS director is a cabinet level position, for the department to do its job, the legislature must mandate that punishment be sure, timely and consistent. He cited DCHS policy 553 as an example in support of dropping the dangerous offender categorization. He believed sentencing should reflect the severity of the crime and is the tool by which the legal system meters out punishment for crime. He said that HB 356 attempted to do this and was a common-sense approach which would work much better than the existing sentencing procedure. He felt the commission which would be established by HB 357 was imperative.

CHAIRMAN CLARK resumed the chair.

{Tape: 3; Side: A; Approximate counter: 8.5.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. ANDERSON asked how effective the "good time" system is in controlling inmates' behavior and how "bad time" would work in

increasing the sentences. He questioned how in taking away all "good time" parole administratively would work.

Mr. Day responded that the role of "good time" in the system and its effectiveness is a split decision. That was why they were advocating the sentencing commission to take another look at it. The general feeling was that "good time" had the advantage in encouraging inmates to participate in rehabilitative programs and a disadvantage might be that there are inmates who are not sincere in their participation. In eliminating "good time" those programs would continue to be needed for successful parole board completion and their incentive would be for parole eligibility rather than accumulation of "good time." Though "good time" might have merit, it was felt to be generally nonproductive in rehabilitation.

REP. ANDERSON asked how often the Parole Board meets so that the sentencing can be adjusted to reflect consequences for "bad time."

Mr. Day said that the department does not increase sentences. Under revised "good time" an inmate would be sentenced and then "good time" would be awarded on a day-for-day basis. Then the department would administer it by reducing the "good time" for disciplinary violations in the system. There is a hearing system which would provide the method for taking away the "good time." The Board meets monthly. When a prisoner becomes eligible, the Board evaluates their individual case and assesses whether they would be successful on parole.

REP. ANDERSON had been concerned that at the effective date, there would be a large number of parole hearings. He understood that the department essentially increases the sentences by taking away "good time" without a parole hearing.

Mr. Day said they actually extend the time they are in prison under their original sentence. They can't arbitrarily extend the sentence itself.

REP. ANDERSON referred to page 3, line 18 and the effective date and wondered if it would be reduced to one-fourth at the time the "good time" would be removed.

Mr. Day said they were not really reducing anything. Under the nondangerous designation, they are eligible for parole in one quarter of the sentence less "good time," which means one eighth. Under current law, if they are designated dangerous, it is one-half less "good time," which means one quarter. Actually the bill would eliminate the minimum for nondangerous offenders. The minimum for consideration is the dangerous offender time but it is in clear terms so they all know what it means; i.e., 25%. On the "good time" they did not phase that in because of the current system. Any persons currently incarcerated cannot lose anything that would be _____ (inaudible). Essentially the

department can't take away time previous statute ordered to them. In clarifying "good time" they were cleaning up the "mess" over the two year period [before the new law becomes effective] and creating a flat system which will not result in legal actions. Then "good time" would be eliminated. This would impact the prison population and they are planning for that by hoping to have new prison cells on line in the spring of 1997.

REP. TASH asked if those same parole eligibility criteria would provide the necessary incentives for prisoner involvement in programs.

Mr. Day felt it would. He would not say that it was without concern about the role of "good time" as a time-honored tradition. That was also reason for taking the time with the sentencing commission to look at the issues prior to the next session and the implementation date.

REP. MC GEE asked if serving one-fourth of a prisoner's full time was an appropriate percentage if they did not have to worry about the numbers of prisoners in the facility.

Mr. Day said he couldn't separate himself enough from law enforcement to answer it clearly and that he did not know because in some cases, 25% was advisable and in other cases parole should not ever be granted. The Board would have to make those determinations at the time.

REP. MC GEE referred to the suggested amendment to page 2 regarding victims being notified of escape or release.

Mr. Day said they do that now and would have no objection to including it in the statute.

{Tape: 3; Side: A; Approx. Counter: 20.9}

Closing by Sponsor:

REP. BOHARSKI said victim notification was covered under separate legislation already passed out of the committee. He addressed the confusion about the dangerous/nondangerous designations and the intent of this bill to clarify it. He said it was frustrating that it could not be fixed overnight, but they were on the right track and as the process progresses, it would find resolve. He urged the passage of both bills.

Motion: **REP. MC GEE 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, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/13/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ late 11 AM	✓	
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	✓ late 8 AM	✓	
Rep. Liz Smith	✓ late 7:30	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that House Bill 311 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 10.

Following: line 9

Insert: "STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the attorney general authority to develop guidelines for state agencies to follow in identifying and evaluating agency actions with taking implications. The attorney general, using a public process, should develop an orderly, consistent, internal management process for state agencies to evaluate the effects of proposed actions on private property. Consistent with the Montana and United States constitutions, the attorney general should consider the following issues in developing guidelines:

(1) whether there is a constitutionally protected property right that will be affected;

(2) whether the proposed action would substantially advance a legitimate state interest;

(3) whether the action would deprive the owner of economically viable use of the property or result in a temporary or permanent physical invasion of the property;

(4) whether the action would damage the property;

(5) whether the action would require a property owner to dedicate a portion of the property to a public use or to grant an easement; and

(6) whether in balance, benefits of the proposed action justify the burden on private property. In addition, the

Committee Vote:

Yes 14, No 3.

371318SC.Hbk

attorney general may consider any other factors that bear upon the determination of whether a compensable taking has occurred, including new case law."

2. Page 1, line 17.

Following: "taken"

Insert: "or damaged"

Following: "owner"

Insert: "in accordance with the meaning ascribed to these concepts by the United States supreme court and the Montana supreme court"

3. Page 1, lines 18 and 27.

Following: "taking"

Insert: "or damaging"

4. Page 1, line 21.

Following: "taking" in two places

Insert: "or damaging"

5. Page 1, line 28.

Strike: "license"

6. Page 1, lines 28 and 29.

Strike: ", or dedication" on line 28 through "property" on line 29

Insert: "pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution"

7. Page 2, line 6.

Strike: "and personal"

Following: "property"

Insert: ", including but not limited to water rights"

8. Page 2, line 9.

Following: "Taking"

Insert: "or damaging"

Strike: "of all or part of the use or economic value"

9. Page 2, line lines 13 and 15.

Strike: "Each state agency"

Insert: "The attorney general"

10. Page 2, line 14.

Strike: "adopt"

Insert: "provide to state agencies"

Strike: "it"
Insert: "the agencies"

11. Page 2, line 15.
Following: "taking"
Insert: "or damaging"
Strike: "its"
Insert: "the"

12. Page 2, line 17 through page 3, line 5.
Strike: "a state" on page 2, line 17, through page 3, line 5
Insert: "the attorney general shall include a provision that
state agencies should consider and follow obligations
imposed by the 5th and 14th amendments to the Constitution
of the United States and Article II, section 29, of the
Montana constitution, as construed by the United States
supreme court and the Montana supreme court, when
considering and implementing an action with taking or
damaging implications in order to avoid unanticipated and
undue burdens on the state treasury."

13. Page 3, lines 9, 11, 14, 15, 17, and 19.
Following: "taking"
Insert: "or damaging"

14. Page 3, line 13.
Strike: "a"
Insert: "an immediate"

15. Page 3, line 14.
Strike: "state agency's"
Insert: "attorney general's"

16. Page 3, lines 22 through 26.
Strike: "must be" on line 22 through line 26
Insert: "for a proposed action with taking or damaging
implications must be given to the governor before the action
is taken, except that an action to avoid an immediate threat
to public health or safety may be taken before the impact
assessment is completed and the assessment may be reported
to the governor after the action is taken."

-END-



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 474 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 14.

Strike: "board of crime control"

Insert: "department of justice"

2. Page 1, line 18.

Following: "approved by the board"

Insert: "of crime control"

Following: "available, the"

Strike: "board"

Insert: "department"

3. Page 2, line 12.

Strike: "offered"

Insert: "conducted by the department of justice"

-END-

Committee Vote:
Yes 12, No 0.

371515SC.Hdh



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 457** (first reading copy -- white) **do pass as amended.**

Signed: *Bob Clark*
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 14.
Strike: "board of crime control"
Insert: "department of justice"
2. Page 1, line 18.
Following: "approved by the board"
Insert: "of crime control"
Following: "available, the"
Strike: "board"
Insert: "department"
3. Page 2, line 12.
Strike: "offered"
Insert: "conducted by the department of justice"

-END-

DS.
Committee Vote:
Yes 17, No 0.

371516SC.Hdh

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

2/13/95

I request to be excused from the

Judiciary

Committee meeting this date because of other commitments. I desire

to leave my proxy vote with

Loren Soft

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
474 amendment	X	
457 amendment	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep.

(Signature)

[Handwritten Signature]

Amendments to House Bill No. 311
First Reading Copy

Requested by Rep. Grinde
For the Committee on the Judiciary

Prepared by John MacMaster
February 10, 1995

1. Page 1, line 10.
Following: line 9
Insert:

"STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the attorney general authority to develop guidelines for state agencies to follow in identifying and evaluating agency actions with taking implications. The attorney general, using a public process, should develop an orderly, consistent, internal management process for state agencies to evaluate the effects of proposed actions on private property. Consistent with the Montana and United States constitutions, the attorney general should consider the following issues in developing guidelines:

(1) whether there is a constitutionally protected property right that will be affected;

(2) whether the proposed action would substantially advance a legitimate state interest;

(3) whether the action would deprive the owner of economically viable use of the property or result in a temporary or permanent physical invasion of the property;

(4) whether the action would damage the property;

(5) whether the action would require a property owner to dedicate a portion of the property to a public use or to grant an easement; and

(6) whether in balance, benefits of the proposed action justify the burden on private property. In addition, the attorney general may consider any other factors that bear upon the determination of whether a compensable taking has occurred, including new case law."

2. Page 1, line 17.

Following: "taken"

Insert: "or damaged"

Following: "owner"

Insert: "in accordance with the meaning ascribed to these concepts by the United States supreme court and the Montana supreme court"

3. Page 1, lines 18 and 27.

Following: "taking"

Insert: "or damaging"

4. Page 1, line 21.

Following: "taking" in two places

Insert: "or damaging"

5. Page 1, line 28.

Strike: "license"

6. Page 1, lines 28 and 29.

Strike: ", or dedication" on line 28 through "property" on line 29

Insert: "pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution"

7. Page 2, line 6.

Strike: "and personal"

Following: "property"

Insert: ", including but not limited to water rights"

8. Page 2, line 9.

Following: "Taking"

Insert: "or damaging"

Strike: "of all or part of the use or economic value"

9. Page 2, line lines 13 and 15.

Strike: "Each state agency"

Insert: "The attorney general"

10. Page 2, line 14.

Strike: "adopt"

Insert: "provide to state agencies"

Strike: "it"

Insert: "the agencies"

11. Page 2, line 15.

Following: "taking"

Insert: "or damaging"

Strike: "its"

Insert: "the"

12. Page 2, line 17 through page 3, line 5.

Strike: "a state" on page 2, line 17, through page 3, line 5

Insert: "the attorney general shall include a provision that state agencies should consider and follow obligations imposed by the 5th and 14th amendments to the Constitution of the United States and Article II, section 29, of the Montana constitution, as construed by the United States supreme court and the Montana supreme court, when considering and implementing an action with taking or damaging implications in order to avoid unanticipated and undue burdens on the state treasury."

13. Page 3, lines 9, 11, 14, 15, 17, and 19.

Following: "taking"

Insert: "or damaging"

14. Page 3, line 13.

Strike: "a"

Insert: "an immediate"

15. Page 3, line 14.

Strike: "state agency's"

Insert: "attorney general's"

16. Page 3, lines 22 through 26.

Strike: "must be" on line 22 through line 26

Insert: "for a proposed action with taking or damaging
implications must be given to the governor before the action
is taken, except that an action to avoid an immediate threat
to public health or safety may be taken before the impact
assessment is completed and the assessment may be reported
to the governor after the action is taken."

Northern Plains Resource Council

EXHIBIT 2
DATE 2/13/95
HB 311

Testimony on HB311 House Judiciary Committee January 31, 1995

Mr. Chairman and members of the committee. My name is Ted Lange and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to HB311 because of the costs it may impose on state government and because we do not believe it will promote balanced assessments of the pros and cons of government actions.

NPRC believes that if this bill is passed, there must be adequate funds appropriated to fund the takings assessment process, as well as the costs of the flurry of litigation that may follow. As it is, state agencies often do not seem to have adequate resources to get their jobs done. This bill must not further burden the agencies.

NPRC is also concerned that HB311 oversimplifies the issue of how government actions impact private property. The bill requires the consideration of alternatives to government actions, but it is not clear that all the pros and cons of each alternative will be fairly considered. We do not believe this is a black and white issue. There are Government actions that **protect** private property values, there are actions that **impact** property values and there are also actions that actually **enhance** property values. But probably the most common situation in the real world is that many government actions do all three at the same time.

For instance, a regulation to protect air quality may restrict the use, profitability and value of a polluter's oil refinery. At the same time, however, it may protect the property values and health of many nearby residents. If it actually succeeds in improving air quality, it may very well increase property values in the local community.

The opposite scenario exists right now in Fallon County, where members of our local affiliate are concerned about the Ross Management Company's proposal to operate an incinerator to burn PCB-contaminated electrical transformers. Ross has already constructed a facility in Baker though they are not yet permitted. Most of our members in the area are agricultural producers, concerned that the threat of contamination from the incinerator may make their beef and other products unmarketable. Their concerns are greatly increased by the fact that Ross has been banned from operating in Washington state for three years because of their track record of serious violations at a similar operation there. There have already been at least two local producers whose buyers have told them they may stop buying from them if Ross starts incinerating.

If the state grants Ross an operating permit, that will be a government action with potentially serious private property impacts for the area's farmers and ranchers. Under HB311, it appears that **Ross** would be able to claim a takings if they are *denied* a permit. But it is unclear whether local farmers and ranchers would have any recourse if Ross *is* permitted and they lose some or all of the value of their products.

We are concerned that if HB311 is passed in its present form, government agencies will fail to give balanced consideration to the true costs and benefits of their actions as they scramble to avoid takings lawsuits. The result could be paralysis in some agencies.

We believe it is not the legislature's place to direct the courts as to what is or is not a Takings under the Constitution. This issue has historically been left up to the courts and it should remain that way. We urge you to vote NO on HB311. Thank you.

EXHIBIT 3
DATE 2/13/95
HB H/157

TO: RICK DAY, BILL FUROIS
FROM: TED CLACK *Jed*
RE: ADMISSIONS AND POPULATION OF MONTANA FELONY SEX
OFFENDERS AND PERMANENT SEX OFFENDER REGISTRY
DATE: 20 SEPTEMBER 1994

The September 15, 1994 population of felony sex offenders in various DCHS corrections programs was:

Prison	401
Probation	524
Parole	38
Total	963

Admissions of felony sex offenders to various DCHS corrections programs in FY1994 were:

Prison	82
Probation	141
Parole	12
Total	235

Average admissions of felony sex offenders to various DCHS corrections programs in FY 1991-1994 were:

Prison	84
Probation	126
Parole	14
Total	224

Average "new" admissions of felony sex offenders to various DCHS corrections programs in FY 1991-1994 = $84 + 126 = 210$ (Parole admissions already have been counted as admissions to the system in earlier years). The average annual increase in "new" admissions of this type is +6.6 percent per year. Assuming that 210 admissions is a legitimate starting base and that admissions of this sort will increase at the average rate of the past few years, future system admissions of felony sex offenders will be approximately:

1996	1997	1998	1999	2000
239	254	271	289	308

The current P&P caseload is 81.3 offenders per officer. Depending on the rate at which judges commit felony sex offenders to the proposed permanent sex offender registry, and assuming that the DCHS intends to keep the P&P caseload unchanged, the annual P&P officer FTE effect of a permanent registry, by percent committed to the registry, might be:

	FISCAL YEAR				
	1996	1997	1998	1999	2000
50%	1.5	1.6	1.7	1.8	1.9
100%	2.9	3.1	3.3	3.6	3.8

CUMULATIVE TOTAL OFFENDERS IN PROPOSED PERMANENT SEX OFFENDER REGISTRY, BY COMMITMENT RATE. FISCAL YEARS 1995 - 2000.

	FISCAL YEAR				
	1996	1997	1998	1999	2000
50%	120	247	382	527	681
100%	239	493	764	1053	1361

CUMULATIVE TOTAL P&P OFFICER FTE EFFECT OF PROPOSED PERMANENT SEX OFFENDER REGISTRY, BY COMMITMENT RATE. FISCAL YEARS 1995 - 2000.

	FISCAL YEAR				
	1996	1997	1998	1999	2000
50%	1.5	3.0	4.7	6.5	8.4
100%	2.9	6.1	9.4	13.0	16.7

AS A POINT OF INTEREST, THERE WERE 1333 SEX OFFENDERS IN THE DCHS SEX OFFENDER REGISTRY ON 14 SEPTEMBER 1994, OF WHOM 963 WERE UNDER ACTIVE SUPERVISION.

EXHIBIT 4
DATE 2/13/95
HB 443

Debra D. MARZOLF, individually and
as Guardian Ad Litem for Deana
Marzolf, a Minor, Plaintiff,

v.

Chad HOOVER and Farmers Insurance
Exchange, Defendants.

No. CV-84-12-GF.

United States District Court,
D. Montana,
Great Falls Division.

July 31, 198

The original of this document is stored at
the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

MEMORANDUM AND ORDER

HATFIELD, District Judge.

[4] In Count III of her Amended Complaint, the plaintiff asserts the existence of a common law duty running from an insurer to a third-party claimant, a duty separate and independent from the obligation imposed upon an insurer by § 33-18-201, M.C.A. (1979). No such duty, however, exists under Montana law, and *Klaudt v. Flink, supra*, does not alter this conclusion. Granted, a fiduciary duty runs from the insurer to its insured by virtue of the contract of insurance extant between the two, *see, Thompson v. State Farm Mutual Automobile Ins. Co., supra*, but the only duty running from an insurer to a third-party claimant is that imposed upon the insurer by § 33-18-201, M.C.A. (1979). Accordingly, I find that Count III of plaintiff's Amended Complaint fails to state a claim cognizable under Montana law.

Mont. Code Ann. § 33-18-242 she will be entitled to recover all damages proximately caused by Defendant's violations of subsection (4) and (6) of § 33-18-201. Such damages may include damages for the emotional distress she suffered because of Defendant's violations of § 33-18-201.

Finally, Defendant argues that Plaintiff's fifth cause of action and Paragraphs XIII and XIV of Plaintiff's second amended complaint should be dismissed because they state a claim for Rule 11 sanctions, and Rule 11 does not create a private cause of action. Plaintiff contends that Rule 11 provides a guideline for the kind of wrongs that contribute to a bad faith claim and urges the court to use this claim as a standard for determining that Plaintiff can recover attorney's fees incurred in the underlying suit. The court has already determined that Plaintiff is not entitled to attorney's fees. Accordingly, Plaintiff's fifth cause of action and Paragraphs XIII and XIV are hereby dismissed for failure to state a claim upon which relief can be granted.

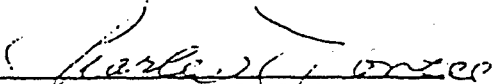
For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion to dismiss Plaintiff's complaint is GRANTED as to the second, third, and fifth causes of action, and DENIED as to the first cause of action.

IT IS FURTHER ORDERED that Defendant's motion to strike is GRANTED as to all references to Defendant's duty to make advance payments of medical bills and lost wages, and as to all references to attorney's fees, and DENIED as to references to Defendant's duty to settle.

IT IS FURTHER ORDERED that Plaintiff shall file a third amended complaint, in accordance with this order, on or before January 14, 1991. Defendant shall file a responsive pleading within fifteen (15) days of receipt of Plaintiff's amended complaint.

The clerk is directed forthwith to notify counsel of entry of this order.

Done and dated this 19 day of December, 1990.



CHARLES C. LOVELL
United States District Judge

EXHIBIT 6
DATE 2/13/95
HB 443

PROPOSED AMENDMENTS TO HB-443
BY BLUE CROSS AND BLUE SHIELD OF MONTANA

Section 1, page 2, lines 20 - 21 Strike subsection. Renumber section.

Section 2, page 2, line 26 following renumbered (1)(m), now (13) add "(15)"

Section 2, page 3, add a new subsection: " (9) Attorney fees and costs must be awarded to the successful party in the event the claimant brings an action under this section."

Renumber internal citations.

Misc info

EXHIBIT 7
DATE 2/13/95
HB 457

Smoking Kills More Americans Each Year Than Alcohol, Cocaine, Crack, Heroin, Homicide, Suicide, Car Accidents, Fires, and AIDS combined.

Approximate Number of Deaths:

Smoking	434,000*
Alcohol (incl. drunk driving)	105,000*
Car Accidents (incl. drunk driving)	49,000*
Fires	4,000*
AIDS	31,000*
Heroin and Morphine	2,400*
Suicide	31,000*
Homicide	22,000*
Cocaine and Crack	3,300*

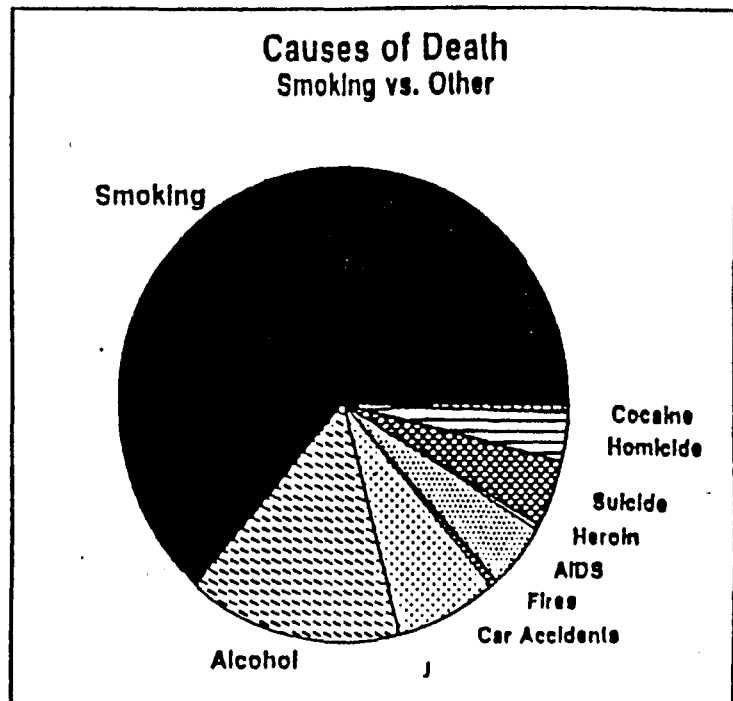
*U.S. Centers For Disease Control, 1988 data

*U.S. Centers For Disease Control, 1987 data

*National Safety Council, 1989 data

*U.S. Centers For Disease Control, 1990 data

*National Center For Health Statistics, 1988 data



The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 8
DATE 2/13/95
HB 457

IT'S THE LAW

**WE DO NOT SELL
TOBACCO PRODUCTS
TO PERSONS UNDER 18**

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.



LEWIS AND CLARK

CITY-COUNTY HEALTH DEPARTMENT

1930 Ninth Avenue Suite 207

Helena, Montana 59601

Telephone 4-HEALTH or dial 406-443-2584

EXHIBIT 9
DATE 2/13/95
TB 457

Mr. Chairman and members of the committee, my name is Susan Palermo. I'm a health educator at the Lewis and Clark City-County Health Department.

Tobacco is the single most preventable cause of death in the United States. 3,000 young people start smoking every day and they'll have a hard time quitting since tobacco is more than twice as addicting as cocaine.

Public health is prevention and HB 457 can help prevent young people from smoking. Similar bills have been enacted in Missoula, Montana (1970), and Woodridge, Illinois, to name two specific communities.

Smoking rates among adolescents in Woodridge dropped sharply after a tough anti-tobacco law, which includes holding minors accountable for their actions, was passed there in 1989.

If HB 457 prevents one young person from smoking, it will have performed an important public health service.

**Testimony presented February 13, 1995, by:
Susan Palermo, Health Educator
Lewis and Clark City-County Health Department
Helena, MT 59601**



EXHIBIT 10
DATE 2/13/95
HB 457

W. Bryan Dunn, Ed.D.
Assistant Superintendent

Bozeman Public Schools
404 West Main, P.O. Box 520
Bozeman, Montana 59771-0520

Phone: (406) 585-1548
Fax: (406) 585-1504

February 10, 1995

State of Montana Legislators
House of Representatives and Senate
Helena, MT

Dear Legislator:

Between this legislative session and the next, almost 3,000 Montanans will die from lung diseases--most of them as the result of tobacco use. While the tobacco industry will try to convince you that tobacco is not the cause, they are about the only group left to make that claim. Most of these people started using tobacco as teenagers. As an educator, I'm shocked to see the number of kids starting down that path. As a legislator, I hope you are, too. We can, and must, do something about this terrible loss of human lives.

My interest was piqued when the evidence became overwhelming that tobacco is an addictive drug and that it is one of if not the most dangerous drug available to kids; that almost every smoker started smoking as a teenager; and that the number of teens who start smoking is increasing dramatically. That evidence compels me to act. You, as a legislator, are in a powerful position and can do more than I can.

The students I've talked with around the state do not believe that tobacco is a dangerous drug. They tell me, for example, that alcohol is illegal, as are marijuana and cocaine, but that it is totally legal for them to use any tobacco product. They say that, if tobacco use were dangerous, it would be illegal.

You'll probably hear the argument that making tobacco illegal won't make a lot of difference. If that's all we do, that may be true. But making tobacco illegal is a place to start. We then need to follow up with an aggressive educational and media campaign explaining why it's illegal and encourage police and the courts to enforce the law.

With a concerted effort we can make a real difference and you, as a legislator, can leave this session knowing that in all probability you've not only made good law but that you've saved the lives of dozens (if not hundreds) of people.

Sincerely,

A handwritten signature in cursive script that reads "Bryan Dunn".

W. Bryan Dunn, Ed.D.
Assistant Superintendent

BD/sb

EXHIBIT 11
DATE 2/13/95
HB 457

Suggested amendment to Section 41-5-203, MCA, as it relates to possession of tobacco products by minors legislation.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products and gambling violations alleged to have been committed by a youth.

EXHIBIT 12
DATE 2/13/95
HB 457

WE the undersigned health care professionals support House Bill 457, an Act prohibiting the possession and consumption of tobacco by minors.

WE support this bill as an effort to reduce tobacco use and to inhibit its devastating effects on people's health. A similar law in Woodridge, Illinois is credited with a sharp reduction in smoking among adolescents.

PLEASE vote YES on House Bill 457.

Kimberly E Kotar
Name

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Telephone number

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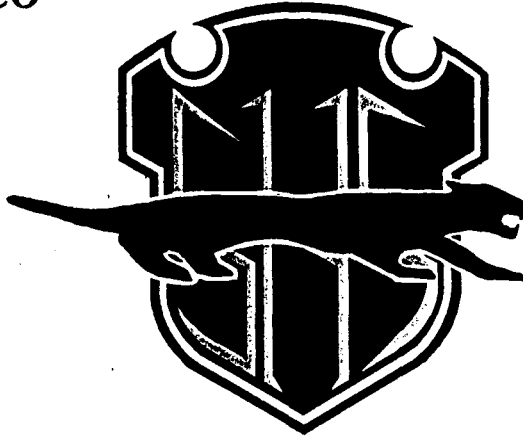
Telephone number

SACO

PANTHER

SCHOOLS

P.O. Box 298
321 Highway 243
Saco, MT 59261



District #12
Phillips County
(406) 527-3531

EXHIBIT 13
DATE 2/13/95
HB 457

Mr. Chairman and members of the committee, for the record my name is Tamara Crowder. I am the Drug Educational Coordinator for Saco Public Schools. I am here in support of House Bill 457.

Over the last three years we have notice an significant increase in the use of tobacco products by our students. It seems that there is the miss conception that tobacco isn't a drug, but a recreational pass time here in Montana. Those of use in the field of drug education however know it to be a gateway drug; that is a drug used as a stepping stone to the use and abuse of harder drugs! Our youth don't realize how addictive tobacco is until they try to kick the habit.

It is our belief that if House Bill 457 is passed minors will be deterred in the use of tobacco products. As it stands Montanans youth can use all the tobacco products that they can get there hands on, and I am here to tell you that they are having no trouble obtaining tobacco goods even though the sale of which is illegal to minors.

I encourage your support for the passage of this bill.

WE CAN'T HIDE OUR PANTHER PRIDE!

EXHIBIT 14
DATE 2/13/95
HB 356

February 12, 1995

Testimony HB 356
Truth in Sentencing

Hearing House Judiciary

February 13, 1995

"Truth in Sentencing" a politically popular phrase but just exactly how can we achieve it and how do we know what we have is not working. Let's take just a moment to take a look at what we have now.

Suppose a criminal offender was sentenced to 12 years in prison. Sounds simple enough and you may assume under the current law this means he or she stays 12 years at ~~Montana State~~ Prison. Not so, our system allows for good time to be applied to reduce the sentence; however, the amount the inmate earns varies widely 15 days a month if the inmate is involved in an industries program, 13 days if enrolled in school, 3 days if in self improvement and even 10 days per month in maximum security. As you can see the rate that

good time reduces time served will change almost daily.

Now where are we with our 12 year sentence. Would you believe under the present system after applying good time and considering the average inmate this would mean given a 12 year sentence the inmate would serve approximately 6 years to discharge.; but given the various good time calculations I just referred to how would anyone including the victim, judge and offender really know the minimum length of time to be served in a correctional institution.

Suppose at this point I've given you a basic idea of how to calculate good time and you feel more comfortable with the system. But hold on because we are not done yet. Actually the offender with the 12 year sentence may not serve the six years. Why, because the system also allows for parole. So let's take another look at the 12 year sentence. If sentence is 12 years we must first know if the judge imposed a dangerous designation if not then the offender is eligible for parole in three years. But not so because the statute requires that good time apply to parole eligibility which means the

offender would be eligible in 1 1/2 years.

What has this all done to our original sentence of 12 years. Essentially it is possible that a 12 year sentence could mean only 1 1/2 years in prison or less as an inmate within 2 years of parole is eligible for pre-release placement.

If I have confused you at this point, let me throw a few other points in. Actually, an offender sentenced to an longer period will be eligible for parole in 17 1/2 years and a life sentence could actually mean 15 years under the current law.

Where has all this gotten us. According to Corrections Yearbook statistics Montana's average length of sentence is 150 months which is the highest in the United States. In addition, our average time served of 44 months is the longest of the eight mountain states. However, our percentage of sentence served is below average. Consequently, Montana's criminal offenders, when compared to the performance of other states, serve a significant portion of their sentence. But given our length of sentence the public sees a system in which

the offender serves only a small percentage of the prison sentence.

I hope this example has described the problem. The Governor, the Department and the Governor's Council on Corrections and Criminal Justice believe HB 356 begins to provide solutions. If passed the bill would reform the good time system to essentially go to "bad time". An inmate would receive a flat day for day good time grant and would lose the good time only for disciplinary reasons. So up front all would know a sentence of 12 years would mean a minimum of 6 years in the institutional system. If the inmate incurred disciplinary violations the time would increase. In addition, the parole eligibility would be governed through a flat 25% which essentially equals the present dangerous designation requirement. Finally, by the end of January 1997 good time would be eliminated entirely for any offender sentenced to prison.

So if you accept this legislation after January 1997 an offender sentenced to 12 years would either serve the 12 years or at

least 3 if granted parole during the first year of eligibility and be on parole supervision for 9 years.

You might wonder what is the impact on our overcrowded system. That has been taken into consideration. This bill is a TRUTH bill not a mandatory sentencing bill. The legislation was designed to simplify sentencing so everyone could understand but do so in a way that allowed us to operate ~~under~~ within the resources requested through the Governor's executive budget. The first steps to reform good time and move to a flat percentage for parole eligibility reflect a neutral impact on populations. The step of removing good time depends largely on the sentencing patterns of Judges. If judges continue to sentence under today length of sentence then the corrections population expansion will be dramatic. If ,however, judges respond to the elimination of good time and flat parole eligibility then the average length of sentence will drop and the impact on prison population will be more controlled.

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However, can we just predict a change in sentencing patterns

will be forthcoming, will the elimination of good time have a negative impact on rehabilitation, and do we really know what the public believes are appropriate penalties for criminal behavior. I would say no and that is why ^{Companion bill} HB 357 which establishes a SENTENCING COMMISSION is critical to the task of reforming our criminal justice system to meet public expectations and accomplish truth in sentencing .

HB 356 ^{+ 357} represents a thoughtful approach designed by representatives of the Judiciary, public, law enforcement and the corrections system. Consequently, on behalf of the Governor and the Department I hope you will ^{Vote} do pass .

February 12, 1995

Testimony HB 357
Hearing House Judiciary

February 13, 1995

Crime, punishment and public expectations are all important topics to our own personal safety, how we invest limited resources and the kind of society we create for our children. ^(X) I believe we would all agree that in order to be effective our criminal justice system must be firm, fair and decisive. Criminal offenders must be held accountable ^{and} ~~a~~ some must be separated from society for life. But the hard part is how to achieve this goal while continuing to recognize the individual freedom, circumstance, and choices involved in human behavior.

(
To make our discussion even more challenging let me put forth a few examples:

I
If ~~it~~ were to describe a criminal offense
which ^{involved} ~~involved~~ deliberate stalking and a
premeditated vicious murder I'm guessing
this committee will have alot of common
ground regarding the appropriate penalty.

However, if I described a criminal offense
which included an unemployed alcoholic,
from an abusive family who out of
negliegence in a vehicle or in a bar fight
caused the death of an innocent victim the
picture may not be so clear.

If I described a offender who is 19 but has
committed two previous burglaries or an
offender who has 3 childern and a drug
habit and is found guilty of felony theft,
again, the answers may not be so clear.

All these criminal acts are wrong and
deserve firm and fair punishment from
society; but as well, each involves a
myraid of individual circumstances that may
need to be considered before we pass

judgment.

This may seem ~~as~~ a long way around to get to HB 357; but in all the rhetoric about crime have we really taken the time to ask those we serve to help develop the appropriate penalties. Have we taken the time to ensure those we serve have the information necessary to make informed decisions about something as important and costly as crime and punishment.

HB 357 establishes a sentencing commission whose task is to involve the public at the community level in these important decisions. As we reshape government and work to respond more effectively to the public isn't it time we quit guessing and established a process to really ask and then build a system to respond to those wishes.

HB 357 provides that opportunity for a thoughtful approach to give guidance to

judges, evaluate good time, consider
correctional resources to improve public
safety and the restoration of victims of
crime. Consequently, on behalf of the
Governor and the Department I hope you will
vote do pass on HB 357 + H B 356

EXHIBIT 16
DATE 2/13/95
HB 356 & 357

TO: RICK DAY
FROM: TED CLACK *fed*
RE: TIME SERVED ON PRISON SENTENCES
DATE: 13 FEBRUARY 1995

The following data describe the average sentence, the average time served and the average percent of sentence served by inmates released in fiscal years 1990 through 1994.

	FISCAL YEAR				
	1994	1993	1992	1991	1990
AVG. SNT. YRS	9.6	10.6	9.4	9.8	9.4
AVG. YRS. SERVED	3.65	3.79	3.37	3.52	3.22
AVG. PCT. SERVED	38	36	36	36	34

AVERAGE SENTENCE LENGTH, IN MONTHS, OF PRISON
ADMISSIONS IN EIGHT MOUNTAIN WEST STATES.

1989 - 1993.

STATE	1993	1992	1991	1990	1989
ARIZONA	53.6	57.4	*	56.4	53.7
COLORADO	81.8	75.7	79.1	80.0	85.0
IDAHO	81.0	80.0	83.0	81.3	80.0
MONTANA	150.0	124.8	126.0	133.2	138.0
NEVADA	127.2	151.2	*	75.0	*
NEW MEXICO	57.0	62.0	*	60.0	43.0
UTAH	*	*	*	*	*
WYOMING	69.4	85.0	<58.0	69.5	89.0

AVERAGE RELEASE LENGTH OF STAY, IN MONTHS, OF INMATES
RELEASED FROM PRISON IN EIGHT MOUNTAIN WEST STATES.

1989 - 1993.

STATE	1993	1992	1991	1990	1989
ARIZONA	26.3	27.0	24.0	24.0	24.0
COLORADO	22.0	22.0	22.0	21.0	25.0
IDAHO	39.0	41.0	40.7	42.0	41.4
MONTANA	44.4	39.7	41.0	37.1	36.9
NEVADA	23.8	22.3	*	54.0	36.0
NEW MEXICO	15.2	16.1	33.0	24.0	15.0
UTAH	26.6	28.5	17.0	25.0	24.4
WYOMING	25.4	29.0	28.2	29.5	26.0

SOURCE: CORRECTIONS YEARBOOK, CRIMINAL JUSTICE INSTITUTE, INC.
and DCHS data.

EXHIBIT 18
DATE 2/13/95
HB 356 & 357

AVERAGE LENGTH OF STAY IN MONTHS OF RELEASED PRISON INMATES:
EIGHT MOUNTAIN STATES. 1989 - 1993.

RELEASE LENGTH OF STAY IN MONTHS					
STATE	1993	1992	1991	1990	1989
ARIZONA	26.3	27.0	24.0	24.0	24.0
COLORADO	22.0	22.0	22.0	21.0	25.0
IDAHO	39.0	41.0	40.7	42.0	41.4
MONTANA	44.4	39.7	41.0	37.1	36.9
NEVADA	23.8	22.3	*	54.0	36.0
NEW MEXICO	15.2	16.1	33.0	24.0	16.0
UTAH	26.6	28.5	17.0	25.0	24.4
WYOMING	25.4	29.0	28.2	29.5	26.0

SOURCE: THE CORRECTIONS YEARBOOK. CRIMINAL JUSTICE INSTITUTE

* Data not available from Nevada corrections office.

EXHIBIT 19
DATE 2/13/95
HB 356 & 357

RELATIVE RANKS OF EIGHT MOUNTAIN WEST STATES:

AVERAGE SENTENCE LENGTH OF PRISON ADMISSIONS.

RANK	1993	1992	1991	1990	1989
1	MONTANA	NEVADA	MONTANA	MONTANA	MONTANA
2	NEVADA	MONTANA	IDAHO	IDAHO	WYOMING
3	COLORADO	WYOMING	COLORADO	COLORADO	COLORADO
4	IDAHO	IDAHO	WYOMING	NEVADA	IDAHO
5	WYOMING	COLORADO	*	WYOMING	ARIZONA
6	NEW MEX.	NEW MEX.	*	NEW MEX.	NEW MEX.
7	ARIZONA	ARIZONA	*	ARIZONA	*
8	*	*	*	*	*

* Data not available for some years from corrections offices in Arizona, Idaho, Nevada, New Mexico, Utah

356

MY NAME IS ANITA M. RICHARDS

MY ADDRESS IS BOX 498, SEELEY LAKE, MT. 59868

I LIVE IN SEELEY LAKE, MONTANA AND HAVE LIVED THERE FOR 32 YEARS.

I AM AM MARRIED TO DANIEL R. RICHARDS AND HAVE BEEN MARRIED TO HIM FOR 33 YEARS.

I AM THE STEP-MOTHER TO JAMES A. RICHARDS, WHO WAS SHOT AND KILLED BY HIS WIFE BECKY RICHARDS.

I MARRIED RON WHEN JIM WAS 4 YEARS OLD. JIM WAS KILLED MARCH 5, 1992 AND WOULD HAVE BEEN 34 YEARS OLD ON MARCH 26, 1992.

I AM A VICTUM OF MURDER.

MY FAMILY HAD TO SUFFER AT THE TIME OF OUR SON'S DEATH.

MY FAMILY HAD TO SUFFER DURNING THE TIME OF THE TRIAL AND THE CONVICTION OF BECKY RICHARDS, WHO WAS SENT TO THE MONTANA WOMEN'S CORRECTIONAL CENTER FOR LIFE PLUS ~~75~~ YEARS.

WHEN BECKY WAS SENTENCED TO WCC I THOUGHT, NOW WE CAN START GREIVING AND HEALING FROM JIM'S DEATH.

GUESS WHAT! WE CAN'T DO THAT, YET.

UNDER THE PRESENT CORRECTIONAL ADMINISTATION, WE AS VICTUMS DO NOT UNDERSTAND HOW "GOOD TIME" CREDITS ARE CACULATED.

WE DO NOT AGREE WITH A POLICY THAT LETS BECKY GO FROM A COLSE CLASSIFICATION TO MINNIUM-UNRESTRICTED IN 1 1/2 YEARS.

WE DO NOT AGREE TO A POLICY THAT LETS OUR GRANDCHILDREN STAY OVERNIGHT FROM FRIDAY NIGHT TO SUNDAY AT WCC.

WE HAVE HAD TO ENDURE THE RED LOBSTER, THE MICKY GAMBLE', THE 4 HOUR POOL PARTY AND MUCH, MUCH MORE.

I WANT TO PUBLICLY THANK GOVERNOR ROSKO FOR MEETING WITH MY FAMILY AND TAKING WHAT WAS THEN, AN IMMIDIATE APPROPORATE ACTION.

I WANT TO THANK RICK DAY FOR CALLING US WHEN MICKY GAMBLE MET WITH THE THREE INMATES FOR LUNCH.

I WANT TO THANK JOHN CONNOR, CANDYCE NEWBOUGHER, SALLY JOHNSON, JAN BUSHAY AND SO MANY OTHER STAFF MEMBERS, WHO HAVE SO GRACEFULLY HELPED UP PERSONALLY OR ON THE TELEPHONE.

ON YOUR HOUSE BILL 356, I WOULD LIKE YOU TO ADMEND:

SECTION 1

-- PAGE 2 --

I WOULD LIKE TO SEE ADDED TO THAT NOTIFICATION:

(F) PERSONS WHO ARE VICTIMS, AND WHO ARE ON FILE WITH THE
DEPARTMENT OF CORRECTIONS SHALL BE NOTIFIED OF ESCAPE OR RELEASE.

SECTION:???

ABOLISHING THE DESIGNATION OF CRIMINALS AS DANGEROUS OR
NONDANGEROUS OFFENDEERS.

IF THE ADMINISTRATION CONTINUES TO USE THE POINT SYSTEM THAT
CLASSIFIES AN INMATE, REMOVING THIS DESIGNATION WOULD TAKE AWAY
POINTS FOR CLASSIFICATION.

I DO NOT AGREE WITH TAKING AWAY THESE POINTS.

I AM HERE TODAY ASKING YOU TO PASS HOUSE BILL 356, AS AMENDED,
THUS MAKING A BETTER TRUTH AND SENTENCING BILL.

THANK YOU...

EXHIBIT 21

DATE 2/13/95

HB 357

357

MY NAME IS ANITA M. RICHARDS

MY ADDRESS IS BOX 498, SEELEY LAKE, MT. 59868

I LIVE IN SEELEY LAKE, MONTANA AND HAVE LIVED THERE FOR 32 YEARS.

I AM AM MARRIED TO DANIEL R. RICHARDS AND HAVE BEEN MARRIED TO HIM FOR 33 YEARS.

I AM THE STEP-MOTHER TO JAMES A. RICHARDS, WHO WAS SHOT AND KILLED BY HIS WIFE BECKY RICHARDS.

I MARRIED RON WHEN JIM WAS 4 YEARS OLD. JIM WAS KILLED MARCH 5, 1992 AND WOULD HAVE BEEN 34 YEARS OLD ON MARCH 26, 1992.

I AM A VICTIM OF MURDER.

MY FAMILY HAD TO SUFFER AT THE TIME OF OUR SON'S DEATH.

MY FAMILY HAD TO SUFFER DURNING THE TIME OF THE TRIAL AND THE CONVICTION OF BECKY RICHARDS, WHO WAS SENT TO THE MONTANA WOMEN'S CORRECTIONAL CENTER FOR ~~30 YEARS~~.
Life plus 60 years

MY FAMILY IS NOW SUFFERING UNDER THE CURRENT LEGISLATION AND CORRECTIONAL POLICIES THAT ARE NOW IN PLACE IN MONTANA.

THERE IS NO LEGISLATIVE OVERSIGHT OVER THE CORRECTIONS POLICIES.

THERE SHOULD BE OVERSIGHT TO THESE POLICIES. SOMEONE HAS TO BE RESONSIBLE AND ACCOUNTABLE TO MAKE SURE POLICIES ARE ESTABLISHED AND FOLLOWED. I AM REQUESTING YOU BE THAT BODY.

I AM HERE TODAY ASKING YOU TO PASS HOUSE BILL 357, TO ENACT A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES, GUIDELINES, AND THE EFFECTS OF SENTENCES.

THANK YOU...

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and I rise in support of Rep. Boharski's HB 356.

Citizens across this country are tired of the increasing crime and violence we have experienced over the past several years. One of the reasons conservative candidates did well at the elections last fall was their campaign to be tough on crime. Montanans want that too. In fact, in our survey of legislative candidates before the November elections, ninety-three percent of you answered "support" to the statement "Truth in sentencing" law that defines exact length of incarceration, while four percent were undecided, and three percent did not respond to the statement at all. Republicans as well as Democrats such as Sen. Mike Halligan and former Sen. Tom Towe agreed that "truth in sentencing" was an idea whose time had come.

People are tired of seeing sentences handed down only to see the criminals back on the street without having to serve the time given them. "Early out" makes a mockery of the system. Where's the fairness to the victims and their families? Why waste the time of handing down meaningless sentences? Now days criminals can quickly calculate how much time they'll have to serve of a sentence.

I submit that prison time is designed to separate criminals from society so that they are unable to commit the crime again. Secondly, there is the matter of retribution: exacting just punishment . . . An aspect of the criminal justice system that has been long forgotten in our country. Third, there must be deterrence from a future life of crime coupled with rehabilitation when possible.

Today, about forty percent of violent offenders aren't even sent to prison. And the ones that do spend only a short time. The prison system has lost sight of the deterrent effect. While the federal prisons were made tougher in the 80's, the state prisons have loosened their systems. The federal systems have worked. In fact criminals fear the federal system. Where is that fear in the state's system?

The root cause of crime is the breakdown of the moral order of our society. While we need to address these issues that lead to crime, we must not forget to deter others by making the punishment fit the crime. Every prisoner must know that if you break the law, there will be a set time of incarceration that is non-negotiable. Judges are apt to be more consist in sentencing as well. Thirty years is thirty years. There must be consequences for actions. Let's get tough on crime. I strongly encourage you to pass HB 356.

Respectfully submitted:
Laurie Koutnik, Executive Director
Christian Coalition of Montana
2/13/95

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.13.95

BILL NO. HB 443 SPONSOR(S) Speaker Mercer

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jaqueline Denmark	Am. Ins. Ass'n		X
Jeff She			
Bob Chabraner	State Farm Ins		X
Denny Moreen	ACLI		✓

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 2.13.95

BILL NO. HB 474 SPONSOR(S) Rep. Cobb

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
GENE KISER	W/B CC	✓	
MARY ELLERD	MT FVA	✓	
Candy Wimmer	MBCC	✓	

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

HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2-13-95

BILL NO. HB 457 SPONSOR(S) Rep. Vick

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
MARY FLEER	MT POA	✓	
Laure Kautak	Christian Coalition MT	✓	
Mike Salvagni	Gallatin County Attorney	✓	
Mike Clayton	Bozeman Public Schools Prevention Coordinator	✓	
BRYAN DUNN	Bozeman Schools	✓	
Dennis HARDIN	BUSINESSMAN SCHOOL BOARD TRUSTEE, BZM	✓	
Ann Palermo	Lewis & Clark City Co. Health Dept.	✓	
Connie Jungmann	MT Dental Assn	✓	
Mona Jamison	American Lung Assoc. of MT		
Phae Cantrell	Bozeman Public Schools	✓	
LARRY AKEL	SMOKELESS TOBACCO COUNCIL	✓	
John McCrea	The American Lung Assoc.	✓	
Rachael DeLong	MTI	✓	

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

HR:1993

wp:visbcom.man

CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.10.2.13.95

BILL NO. HB 356 SPONSOR(S) Rep Boharski

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mike Salvagni	Gallatin County Attorney	✓	
Enita Richards	Seeley Lake	✓	
Sharon Bakerson	MA C e M	✓ P	
Janet Gay	MSP	✓	
✓ Dave Ohler	Corrections	✓	
John Connor	MCA Dept of Justice	✓	
✓ RON RICHARDS	MY SELF	✓	
Craig Thomas	BOARD OF PAROONS	✓	

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 2.18.95

BILL NO. HB 357 SPONSOR(S) Rep. Boharski

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mike Salvaggi	Gallatin County Attorney	✓	
Gunter Richards	Seelen Lockman	✓	
Sharon Bakerson	MACEM	✓	
Laurie Kautak	Gunther Coalition of MT	✓	
Jeff Sherlock			
Craig Thomas	Board of Pardons	✓	
Janet Miller	MSA	✓	
PAUL OWEN	Corrections	✓	
Donna Crawford			
JOHN CONNOR	MCAA Dept of Justice	✓	
RON RICHARDS	MY SELF	✓	
Craig Thomas	BOARD OF PARDONS	✓	

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

HR:1993

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