MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 10, 1995, at 8:00 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 60, HB 74, HB 93
Executive Action: HB 46 TABLED

{Tape: 1; Side: A}

HEARING ON HB 74

Opening Statement by Sponsor:

REP. DON HOLLAND, HD 7, presented HB 74 and pointed out the additions and changes to the existing statute. He stated that there are occasions where frivolous trials come before a district court. The county is currently responsible for the costs in empaneling a jury. The intent here is to provide a judge the authority to require, at his discretion, on the occasions of a request for a jury trial, that those costs be paid by the party demanding the jury or be charged against the cost of the losing party. He called attention to 3-15-203, MCA, which deals with courts not of record which have the same language as section 1 (2) of the proposed bill.

Proponents' Testimony:

Gordon Morris, Director of the Association of Counties, made available a copy of 3-15-203(2), MCA, referred to by the sponsor. Since these statutes are limited to civil actions in courts of record, they do not infringe on anyone's right to trial by jury.

EXHIBIT 1

Mark Pinkerton, Rosebud County Commissioner, cited the case that brought the need of this bill to their attention.

Opponents' Testimony:

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, rose in opposition to the bill out of concern about its impact on the 7th Amendment of the Constitution and section 26 of the Montana State Constitution. **EXHIBIT 2**

Russell Hill, Executive Director of Montana Trial Lawyers (MCLA), presented testimony in opposition of HB 74. He took exception to the comment in previous testimony about the court's discretion in awarding jury fees and stated that his written testimony gives a suggested amendment that would discourage challenges to the constitutionality of the bill. **EXHIBIT 3**

Greg VanHorssen, State Farm Insurance Company, opposed HB 74 by echoing the previous concern about the constitutionality of this bill.

Jacqueline Lenmark, representing the American Insurance Association, opposed this bill. She said that the issues in civil cases in courts of record are not always "who is at fault" but rather "what caused the damages and how much the damages really are." In those situations there are two parties coming into the court with one already knowing he is the loser. It

becomes a question of how much compensation. The loser is already coming with a valid claim to be determined by the jury and would be assessed for exercising that right. This statute already exists for courts of limited jurisdiction where there are other procedural safeguards that are not present in courts of record. She urged that the committee not pass this bill.

Erik Thueson, attorney, spoke to the concern of frivolous lawsuits which would cost the taxpayer money. He suggested in order to keep the law from being overly broad and infringing on somebody's right to a jury trial, that the court make an express finding that it has determined that the lawsuit and the trial are frivolous. He also suggested that a provision be added that a judge consider the economic ability of the losing litigant to pay. He was not sure that the constitutionality of this bill could be saved on the basis of taxing people in one way or another for a jury trial. He cited historic sources in the establishment of the Constitution to support that the right to a jury trial is fundamental. He also cited *Am. Jur. IId* as a source which summarizes what happens where similar legislation has been proposed so that the committee could have a feel for what the courts might do if they write legislation that overly infringes upon the jury trial. He also said that there are better ways to fund government services. He added that he would discuss proposals which have been brought up in the past that would raise funds to handle the costs of jury trials.

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Questions From Committee Members and Responses:

REP. DANIEL MC GEE said that if the issue centers on the ability to pay with regard to constitutionality (i.e., if the person is able to pay), then the question of constitutionality is not at issue.

Mr. Hill agreed that that is the chief issue, but qualified it by saying that MCLA is still concerned about anything which would intimidate somebody away from filing a law suit.

REP. MC GEE asked who pays for the jury costs.

Mr. Hill replied that the court system itself pays.

REP. MC GEE said, "The taxpayers of the state of Montana pay currently."

Mr. Hill agreed.

REP. MC GEE said the language in the bill suggests to him that an agreement has been made prior to going to trial. He was citing from section 3-15-205, lines 11-17 as it is currently written as well as the proposed addition of subsection (2). He wondered why there is a constitutional question with regard to that section.

Mr. Hill said that section 1 addresses assessing a penalty against parties who have not acted correctly in the jury system, but that subsection (2) says that even if the person has acted correctly in all respects, that person can be ordered to pay jury fees.

REP. MC GEE said that as he reads these sections, the court will have discretion as to whether the taxpayers or the party requesting the jury trial would pay the costs.

Mr. Hill agreed that that is what subsection (2) would do, but he was not sure that section 1 currently does.

REP. MC GEE said that in his reading of section 26 of the Montana Constitution where it states, "it shall be inviolate," he cannot understand how the ability of a court to determine, at its discretion, whether the jury should be paid for by a party impinges upon the right to a jury trial.

Mr. Hill stated that court precedent has fairly soundly established the fact that if you are essentially denied the ability to exercise a right because of your inability to pay for that right, that it is unconstitutional. Subsection (2) gives the court authority to assess those fees even if the person can't pay.

REP. MC GEE said it occurs to him that we are asking the citizens of Montana, whether they are able to pay for it or not, to pick up the costs in a civil suit whether or not it is frivolous. Subsection (2) seems to be saying that the court may, not that it shall, and that the court would not only look at the individual's ability to pay, but also look at the state's (the taxpayers of the state) necessity to pay. He asked if the MTLA would have a better feeling for this legislation if qualifiers, as in the language **Mr. Thueson** suggested, were put in this bill.

Mr. Hill said that he thought he could say unequivocally that they would have a lot better feeling if those kinds of qualifiers were included.

REP. MC GEE asked if the sponsor would object to expanding subsection (2) to incorporate some of the language more or less suggested by **Mr. Thueson.**

REP. HOLLAND said that in an effort to bring this legislation to a satisfactory conclusion, any effort to provide for the constitutionality would be agreeable.

REP. ELLEN BERGMAN asked how much of the cost the county has to pay for these court costs and how much the state pays.

Mr. Pinkerton said that in the case he was talking about, the county paid the full bill.

REP. BERGMAN asked if that was normal.

Mr. Pinkerton said it was, though he could not say for sure that it is so 100% of the time.

REP. BERGMAN asked if it is up to the individual to decide whether they would receive a trial by jury rather than a group of people who decide whether a trial by jury is warranted.

Mr. Pinkerton said that he believes everyone has a right to a trial by jury.

REP. BERGMAN asked that **Mr. Hill** answer the question.

Mr. Hill said that his understanding is that both parties have a constitutional right in a civil action to request a jury trial. Defendants request jury trials more often than plaintiffs do because juries are very skeptical and conservative.

REP. DEB KOTTEL asked **Mr. Pinkerton** what led him to look at the particular case and come to the determination that it was frivolous.

Mr. Pinkerton said that they did not know the trial was going on when the person came in asking who was paying the bill. When they couldn't answer, they checked it out to find that the county was to pay the expense.

{Tape: 1; Side: a; Approx. Counter: 42.0}

REP. KOTTEL asked if the witness saw the possibility of small town politics motivating a judge and a county commissioner to use a system of tax as a way to influence that plaintiff away from a jury trial.

Mr. Pinkerton said he had more faith in judges and county attorneys than to expect them to use the system in that way.

REP. KOTTEL asked it were true that if someone were to file a frivolous lawsuit, the defendant, prior to filing an answer, could file a motion for dismissal for failure to state a cause of action. Then that motion could be approved and the judge could dismiss the lawsuit.

Mr. Hill said that was his understanding.

REP. KOTTEL asked if it were true that if facts are not in dispute in a lawsuit, either party would have an opportunity to file a motion for summary judgment and that summary judgment motion would be heard by a judge and there would be no jury.

Mr. Hill said that his understanding is that if no facts are in dispute, the parties don't have a right to a jury trial; it becomes a question of law.

MR. KOTTEL discussed the balance between the functions of the jury as the finders of fact and the judge as the decider of law and as such juries are to apply fact to law. She asked if this balance is what is being protected under the Constitution.

Mr. Hill said "Yes."

REP. KOTTEL asked if in the rural setting, the jury provides a measure of safeguard from political influence or conflict of interest that a single judge might have in being a member of that small town.

Mr. Hill said that he did not believe a judge would necessarily be biased or subject to undue influence. MTLA believes that having 12 common citizens who don't deal with these issues every day make a decision is a better vehicle for deciding disputes than one very competent and good faith judge.

REP. DUANE GRIMES addressed **Mr. Morris** about the constitutionality of the bill as well as a possible amendment regarding the requirement of the court to make a finding on the frivolous nature of the bill.

Mr. Morris said the intent of the legislation before the committee is not to only address the frivolous cases, but also to address those cases which can and should be decided solely by a judge in courts of record. He said that they are talking about civil actions involving amounts in excess of $5,000. Actions of less than $5,000 are settled in small claims court where it is possible under existing law for the requestor to be assessed the cost of a jury. This bill asks for the same responsibility from the courts of record.

REP. GRIMES asked if **Mr. Morris** had information about where other states are on this issue.

Mr. Morris said that he did not.

REP. GRIMES asked **Mr. VanHorssen** how he sees this affecting people represented by State Farm.

Mr. VanHorssen said their first concern was the removal of a right to a jury trial. Their position is that the simple act of asking for a jury trial as a constitutional right could be discouraged by the statute which would be enacted by this bill as drafted.

REP. GRIMES asked if **Mr. Thueson's** suggestion to require a finding of frivolousness would entail in terms of time and cost and due process issues.

Mr. Thueson said he imagined it would require a hearing for a determination. This hearing would be without a jury.

REP. BILL CAREY referred to **EXHIBIT 3,** page 2, and asked for an elaboration.

Mr. Thueson said it was a question of basic economics and arithmetic in that between the time someone either sustains property damage or personal injury and the time it goes to the jury trial may exceed three years. Essentially the person who caused the injury has had an interest-free loan for three years. The effect is that there is profit in delay because of depreciated money and no interest to pay.

REP. LIZ SMITH stated that she hears weekly from concerned citizens about their share of jurors fees. She asked if it is a percent of the person's wages that would cover jury fees.

Mr. Thueson said that it sounded like **REP. SMITH** was referring to a sliding scale based on the ability to pay. He believes that any branch of government should look carefully at whether or not they are imposing economic conditions upon the exercise of constitutional rights. Trial by jury is not a privilege, but is a right. Even with a sliding scale, there would probably be problems with the court later on. Therefore, this legislation needs to be examined to be sure it does not infringe on that right and will thus stand up in court.

REP. BRAD MOLNAR said that the new part, 3-15-205, MCA, already exists in 3-15-203, MCA. He asked why there is no constitutional issue under "203," which deals with small claims court in comparison to the issue raised under "205."

Mr. Crichton said that he could not answer that, but that it may have to do with dealing with a lesser level of jurisdiction and offense.

REP. MOLNAR said that since it is not a lesser constitutional right, he wanted to know if there was any awareness of anyone raising a constitutional issue on the small claims court where people are held responsible for their request for a jury in civil cases.

Mr. Crichton said that he was not.

REP. KOTTEL asked if assessing the cost of a jury demand in a justice court proceeding would be constitutional because in justice court there is a right for a trial date and in a district court there is a chance for a jury trial at a second level.

Mr. Hill said that made sense to him. His understanding was that those jury fees were not just blanket awards to the parties even in a justice or small claims action.

Closing by Sponsor:

REP. HOLLAND wanted the committee to know that there is no intent in this legislation to deny constitutional rights. However, if there is substantive concern, he would be interested in hearing from the committee how they could amend it so that it would be more acceptable to those who question the constitutionality of this bill.

CHAIRMAN CLARK closed the hearing on HB 74.

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HEARING ON 60

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, brought HB 60 for the committee's consideration. She explained that half the bill was lost and that the amendment, **EXHIBIT 4,** would be the first item to discuss and work into what is considered HB 60. This bill deals with the seriously mentally ill youth entering into a sex offender treatment program. She then "walked" the committee through the bill with the amendment.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services (DCHS), presented written testimony. In summary, the purpose of HB 60 is to solve a problem involving the Involuntary Mental Health Commitment law. Since there is currently no facility to serve the child, this would direct that process through the youth court and, if necessary, place the child with the Department of Family Services. He stated that they would be willing to look at the proposed amendments of those witnesses who have some concerns about the bill as proposed. **EXHIBIT 5**

Hank Hudson, Director, Department of Family Services (DFS), testified that they had worked with DCHS on this proposal. They recognize that the current statutory structure is not the appropriate way for mental health services to be accessed in cases involving an involuntary commitment. He did state that this situation occurs on rare occasions; but in cases where it does, the existing abuse and neglect statutes are insufficient to deal appropriately with the situation.

Candy Wimmer, Montana Board of Crime Control, said that DCHS had asked for her input in drafting the bill and she appeared at the hearing to offer support for the intent of the bill. She wanted to look at the proposed amendments to the bill though she did not believe the amendments would substantially change the intent of the bill.

{Tape: 1; Side:B}

Pat Melby, Rivendell Psychiatric Hospital, Butte, distributed a proposed amendment to HB 60 which addresses the situation involving families desiring an involuntary commitment to a facility of their own choosing without turning custody over to the state. With these amendments, they would support this bill and asked for a delay in executive action so that all the parties can collaborate on proposed amendments. **EXHIBIT 6**

Opponents' Testimony:

Andree Larose, Montana Advocacy Program, presented written testimony in opposition to HB 60. **EXHIBIT 7**

{Tape: 1; Side: B; Approx. Counter: 11.1}

Joy McGrath, Executive Director, Mental Health Association of Montana, said she was not truly in opposition to the bill but comes with many questions and concerns about the portions which direct the seriously mentally ill youth through the criminal court system to get treatment rather than to access the treatment system directly. By passing HB 60 with language that says the state relinquishes their responsibility to treat youth with serious mental illnesses, even though there is no state-funded, state-run youth treatment center, there is still a responsibility of the state to find treatment for them. They are interested and willing to work with departments to improve the bill to address these concerns. She said that **Bob Ross,** as the Director for the Mental Health Center in Billings, also raised concerns.

Informational Testimony:

EXHIBIT 8 is included as information testimony by **Mr. Anderson** in response to issues raised by the Montana Advocacy Program.

Questions From Committee Members and Responses:

REP. ELLEN BERGMAN asked the sponsor for the "bottom line" of the need for this bill.

Mr. Anderson said that the problem is that the Mental Health Law contains the potential for the commitment of a child. It becomes a very difficult situation to respond to even though these situations are rare since there is no facility for a child. In addition, that law does not make clear who has custody or responsibility for a child. They think this proposed law directs a solution in the cases where a parent cannot get their mentally ill child into the service needed.

REP. BERGMAN asked if, since there is no place to send these children, they are turned over to DFS in order to get through the system to receive help.

Mr. Anderson said that there is no state-operated system although there are private in-patient and residential facilities in Montana. Those are available through Medicaid funding and DFS does place some children in their custody in those facilities. He assumed that that would continue. There are also out-patient options such as group homes.

REP. BRAD MOLNAR asked why the possibility of an involuntary commitment must be removed based solely on serious mental disability when a child who is adjudicated to be a youth in need of supervision is under DFS custody even if the child shows not only criminal propensity but also some signs of serious emotional disability.

Mr. Anderson said that only in those cases where there is a dispute between the parent and child does the state need to step in and take custody to compel the child into treatment. There has to be some other breakdown in the family before the state should become involved.

REP. MOLNAR said he would discuss it with **Mr. Anderson** for further clarification, but he asked about the state placing a child in custody under Management Resources of Montana (MRM) and the tie-in with DFS.

Mr. Anderson said that DCHS has made an agreement with DFS that, through DCHS' definition of who qualifies for MRM, they will indicate that children who are found to be seriously mentally ill by the youth court would qualify for MRM services. He would not anticipate DFS placing a child with MRM, instead DFS who has one of these children in their custody would refer that child for the necessary treatment services they need under the MRM program. Then MRM would be the appropriate program to help finance those services to the extent that the parents are unable.

REP. MOLNAR asked if he just said that they are anticipating a role change, in that the child must first come through the court system to get into MRM.

Mr. Anderson said, "No, I did not mean to say that, if I said it." He said that their definition of who is eligible for MRM would include these children and would certainly include all kinds of other children as well. The vast number of children served under MRM are voluntary referrals. They would guarantee the eligibility of these particular children.

REP. LOREN SOFT asked if **Mr. Anderson** would concur with the amendments as submitted.

Mr. Anderson said that on a conceptual level, he agrees with them, but wanted to retain the right to consult with the other departments involved before full concurrence.

REP. SOFT asked for **Mr. Anderson's** response to the issues raised by **Mrs. Larose** about this tending to criminalize those youth who are in need of treatment because of serious mental illness.

Mr. Anderson said that his understanding is that the youth court is not considered a criminal court. His feeling is that the state is only being involved where the parents are unable to get the child the services needed. The appropriate court to handle that, he believes, is the youth court.

{Tape: 1; Side: B; Approx. Counter: 24.2}

REP. SOFT asked **Mr. Anderson** to address the concern about how adequate the level of training and experience probation officers might have for the extensive responsibilities in supervising mentally ill children. He also asked whether the department had talked with the probation officers about this addition to their workload.

Ms. Wimmer responded in the place of **Mr. Anderson** by saying that in her discussions with **Dick Meeker, Chief Probation Officer, Lewis and Clark County,** she found that the youth they are talking about are normally already under the supervision of the probation officers. The frustration they have experienced previously was that there was no clear means of commitment and no clear means of accessing public funding for youth who need inpatient psychiatric services. She said that she doesn't believe they are extending the responsibilities of probation officers.

REP. SOFT said that the wording tells him the probation officers are going to have to work with other individuals and public entities in order to complete their responsibilities.

Ms. Wimmer said that the language is not new and these are not new requirements.

REP. MOLNAR asked about definitions used in the bill on page 2 (iii) relating to the definition, "seriously mentally ill," as being those used by the state for adjudication purposes rather than mental health professionals. When a youth is found to be seriously mentally ill with criminal propensities, they are now sentenced to DFS and they need help but cannot go to Pine Hills or Mountain View. In those cases, they need to be sent to another institution. If the funds or space for them is not available, he wanted to know what happens to those youth.

John Paradis, DFS, that he could not answer that without consulting with the department. He did say that seriously mentally ill youth who commit criminal acts are generally not adjudicated as seriously mentally ill, they are usually adjudicated as delinquent youth and, therefore, go to Pine Hills.

REP. MOLNAR asked if **Mr. Paradis** would agree that they do not wind up adjudicated through the Youth Court Act currently as seriously mentally ill. Therefore, rather than placing them at Yellowstone Treatment Center or Pine Hills, they go back on the street because of this restriction.

Mr. Paradis replied that the youth court at this time does not determine an adjudication of seriously mentally ill. That is a mental health commitment terminology.

REP. MOLNAR agreed, but said that once they have been adjudicated they can't go to Pine Hills and there is no other place to put them, then the street is the only option.

Mr. Paradis said that if they have been determined seriously mentally ill, the answer is, "Yes." He said that it is extremely rare for a court to take a youth who has been adjudicated as delinquent or has committed a delinquent act and subsequently adjudicate him as seriously mentally ill although that is what the statutes say at this point. Under the current statute this would preclude that youth from placement in a correctional facility.

REP. MOLNAR clarified the preceding questions and answers by stating that the youth are not adjudicated seriously mentally through the youth court. But if they are called seriously mentally ill by a professional and also find themselves in the court system, then the court says they must be put away. If there is no place to put them; i.e., Pine Hills, the result is that the majority of them wind up back on the street.

Mr. Paradis answered, "Yes."

REP. SMITH asked why on page 4, line 13, the bill refers to a "person" rather than to "youth" or "juvenile." It seems out of context, but he wondered if that is intended to leave flexibility for a commitment to an acute care hospital perhaps.

Mr. Paradis said that was a question he would have to take back to the department and would get back to the committee on the differentiation between a "juvenile" and a "person" other than under the definitions in the Youth Court Act.

CHAIRMAN CLARK asked if this would aggravate the waiting list situation at DFS.

Mr. Paradis said that it would not if there are sufficient appropriations given to each region by the department and sufficient regional control of the placement of these youth.

<u>Closing by Sponsor</u>:

REP. KASTEN stated that she believed this would help bring the departments together to work for the betterment of the system.

She said they want to avoid duplication and to promote cooperation and thus obtain the best possible alternatives for the clients. She asked for a delay in executive action on this bill until they all can be brought together to agree on the changes. She clarified that objections to amendments by the departments referred to amendments they had not seen, not the one she submitted with the bill at the beginning of the hearing. She emphasized that passage of this bill is necessary to bring the statutes up to what is currently practiced.

{Tape: 1; Side: b; Approx. Counter: 35.7}

HEARING ON HB 93

Opening Statement by Sponsor:

REP. WILLIAM "RED" MENAHAN, HD 57, presented HB 93 on behalf of the Department of Corrections and Human Services (DCHS). He reserved the right to close.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services (DCHS), submitted his written testimony which is included as **EXHIBIT 9.**

Ginny Hill, DCHS staff psychiatrist, Montana State Hospital, gave her testimony which is submitted as **EXHIBIT 10.**

Andree Larose, Montana Advocacy Program, testified in general support of this bill and submitted their concerns in written testimony. **EXHIBIT 11**

Opponents' Testimony:

Kathy Standard, President, Meriweather Lewis Institute, presented written testimony in reference to their opposition specific wording to HB 93 though they support the intent of the bill. **EXHIBIT 12**

Questions From Committee Members and Responses:

REP. DEB KOTTEL asked for the current success rate in treating sexual offenders.

Dr. Hill said it was a controversial question because of the differing views of those who treat sex offenders. One statistic she reported was based on a report out of Oregon which said that

the longer a person stays in treatment, the lower the rate of recidivism and once the person in treatment makes it past 3-4 years, the rate is at about 25% recidivism.

REP. KOTTEL stated from her understanding, the rate can vary between 25-78%.

Dr. Hill said that in the first year, the rate is 55% and the second year 78%, and following the second year, the rate goes way down.

REP. KOTTEL asked that if that is true, she would like supportive statements to lines 29 and 30 which says, "upon the successful completion of the sex offender treatment program, the court may order a reduction of the sentence and the person is eligible for parole." She wondered if it would make more sense to offer treatment, but to let the person complete the sentence as ordered by the court.

Dr. Hill said that would be adequate. She thinks that some of those who provide treatment felt it would be better to maintain some type of judicial encouragement when they are discharged to follow through with treatment.

REP. KOTTEL asked if **Mr. Anderson** was familiar with the Inman case.

Mr. Anderson said he was only slightly familiar with it.

REP. KOTTEL said that this case involved the issue of fifth amendment constitutional rights to self-incrimination and the issue of double jeopardy in the sex offender program in Montana. She asked if those constitutional deficiencies would be present in this program.

Mr. Anderson said they would have to discuss that with legal staff to see if that is necessary. He understood that the case involved therapy that actually took place outside of the institution and double jeopardy in that the person had been re-institutionalized because of what he would or would not disclose in therapy. He sees that as different from cases this bill is addressing.

REP. KOTTEL asked if there is a constitutional problem of committing someone to a mental health facility without a civil commitment proceeding.

Mr. Anderson said, "Not that I am aware of." He said that his assumption was that this would give statutory authority to place that person in the program.

{Tape: 1; Side: B; Approx. Counter: 61.0}

REP. SOFT asked about the need for fiscal note.

Mr. Anderson replied that they are preparing a fiscal note.

REP. SOFT asked if it would cost about $219,000.

Mr. Anderson confirmed.

REP. SOFT asked if this included a request for additional staff.

Mr. Anderson replied that they propose to provide this service within their current FTE level by taking four currently vacant positions and re-configuring them into treatment professionals to work with this population along with the existing nursing staff. Part of the $219,000 is for training of the staff.

REP. SOFT asked how he sees this additional workload being handled by the existing FTEs.

Mr. Anderson said it would done by using what is called the Secure Care Unit at the Forensic Unit which is currently an under-utilized. Non-treatment positions which have been kept vacant would be used to create the specialized staff that would provide the care.

REP. SOFT was curious about the outcomes the Developmentally Disabled (DD) population has had in the Oregon model and wanted to know how long that program had been in operation.

Dr. Hill said that it had been in operation since 1979 and the recidivism rates she had quoted came from that program. Their research is in its infancy.

REP. SOFT asked about this being a 12-bed unit and the problems in mixing the populations.

Dr. Hill said that in treatment the various populations are mixed at this time under staff supervision.

REP. DANIEL MC GEE asked **Dr. Hill** if she currently works with sex offenders at the Montana State Hospital.

Dr. Hill said that she works with sex offenders, but she just provides the mental health care. She does not purport to be a sex offender expert. The persons they would want employed in this program would be members of the Montana Sex Offender Treatment Association.

REP. MC GEE asked if she advocates rehabilitation and prevention.

Dr. Hill said, "Yes, as best we can."

REP. MC GEE asked if the Oregon model discusses rehabilitation and/or prevention.

Dr. Hill said that it is the emphasis throughout the model and that the people in the program are there by their own request and desire for change.

REP. MC GEE asked for an elaboration on either rehabilitation, prevention or both.

Dr. Hill described the treatment process for the offender.

REP. MC GEE asked about the lack in the proposed bill regarding definitions for limited intelligence and references for seriously mentally ill.

Dr. Hill said that they would put in the definition of the seriously mentally ill from Title 53. The borderline intellectual functioning IQ of between 55-79 is what they would define as low-intellectual functioning. Much lower than that would qualify the person for treatment at the Montana Developmental Center.

REP. MC GEE asked **Dr. Hill** to supply the proposed language that would apply to those definitions to the committee.

Dr. Hill agreed to do so.

REP. MC GEE asked if there is any commonality between different groups of people in either background, exposure or any other factors that contribute to how a person becomes a sex offender.

Dr. Hill said that though it is more complex, there is probably some genetic proclivity and there is an environment of abuse and neglect growing up. There is the experience of being a victim. She said that the more they study it, the less they know.

REP. SHIELL ANDERSON asked if the $219,000 appropriation is contingent upon passing this bill.

Mr. Anderson said he guessed it is. He said that if it doesn't pass that would be a strong signal that the legislature does not support this program. Without the program, the appropriation would not be necessary.

REP. ANDERSON asked **Mr. Anderson** to work with the sponsor to provide the fiscal note. He also asked how many people this would affect and what happens to the them if this bill is not passed.

Mr. Anderson said that this would affect about 10-15 people spread among the three institutions. Each of the three institutions would do their best to meet the needs, but would not have a real focused program.

{Tape: 2; Side: A}

REP. ANDERSON asked about the sexual offender treatment program in place at the state prison.

Mr. Anderson said that program works with the people of normal intelligence who are not seriously mentally ill.

REP. ANDERSON asked if they have the available staff at the prison to adjust their program.

Mr. Anderson said that he did not know.

REP. ANDERSON redirected the question to **Mr. Day.**

Rick Day, Director, Department of Corrections and Human Services (DCHS), said that the prison does have a sex offender treatment program which is extremely overburdened at this time. They are requesting an increase in the staffing, but more important is the population they are dealing with. This population would be subject to victimization within the prison system and this program would not be productive there. They are scattered throughout the various institutions because the court system does not know where to properly place them. Court orders demanding treatment, which the department is not prepared to supply, bring this to the department's attention.

REP. MOLNAR said it was his understanding that there about 14 youthful sexual offenders at Pine Hills with no program. He asked if the money would be better spent with a higher rate of "cure" and a longer life outside than trying to work with people who have been sexual offenders for many years before there is treatment intervention.

Dr. Hill said that there is no cure. But, she said that what **REP. MOLNAR** said is a good point.

REP. MOLNAR wondered if there is a bill coming through that would address youthful offenders, and if not, would it be better to changing this to a DFS bill.

Dr. Hill said she understood that Rivendell of Butte is treating some sex offenders, but she did not know if that was residential treatment or outpatient treatment. She stated that she had confined her study to the adult population.

REP. LOREN SOFT asked what the average age of the clients of these 10-15 clients who have been identified by this program.

Dr. Hill responded, 20 to 30.

REP. SOFT asked if there is any problem with the language of the bill on page 2 on lines 27 and 28.

Dr. Hill suggested that it be modified so that there would be more support for this type of bill. She said that we can't change somebody who doesn't want to be changed.

REP. DUANE GRIMES referred to the language on lines 29 and 30 which talked about parole. He is concerned about how this bill affects sentencing and parole. He understood that the possibility of early parole would be mentioned as an incentive to the sex offender. He wondered if there would not be other incentives and how it would affect DCHS if this wording were not there.

Mr. Day said that this is a person who has been convicted of a criminal offense and consequently, the word, "voluntary," has various meanings. He did not think many in the system do things completely voluntarily. The department does not hinge the success of this program on the language relating to the opportunity for parole or reduction in sentence. But it does give the court an option to recognize progress in a particular case.

REP. LI. SMITH asked for confirmation of her understanding that there would be a point in time when people in this population would be returned to society upon completion of their sentence or be eligible for parole.

Mr. Anderson said there would.

REP. SMITH said prisoners would possibly be paroled untreated and then society would have to contend with them. Or they could receive some kind of treatment as an incentive for early parole rather than pay the sum of $50,000-$100,000 a year to sustain them in a facility. She asked for confirmation of this.

Mr. Anderson said that he believes that any people who fall into any of these categories in any of the institutions are receiving the best treatment and care these institutions can provide. They are proposing to create a specialized program which is developed specifically for dealing with the problems that that group has and thereby improve the changes, if those people are eventually released and are able to function in society without re-offending.

REP. SMITH said that therefore, in meeting society's needs, we would be taking the risk that we possibly will have a 25% chance that we will have less offenders in our society.

Mr. Anderson said he would not want to put a specific percentage on it, but certainly the chances would be increased in reducing re-offenses in society.

REP. SMITH asked what percentage would be more acceptable in our society because of this particular program versus the treatment that is now being provided.

Dr. Hill could not be specific, but stated, based on her case-by-case experience, it would be less.

REP. SOFT said he believes that it has not yet been proven conclusively whether sex offenders have a genetic predisposition or if this is a learned behavior. But, in his experience, aftercare is important. He questioned what follow-up program is available in the state currently for juvenile sexual offenders.

Mr. Anderson said he did not know.

REP. SOFT asked what types of follow-up programs are envisioned for the program proposed in this bill for people who have either completed the sexual offender treatment program or have completed their sentence. Further, he asked what kind of fiscal note would be attached to that.

Mr. Anderson said that part of the funding included in the budget request is for aftercare services for this group of people when they leave the program. The assumption is that these people will be eligible for either DD case management services or mental health case management services. Additionally, there would be funding under this program to purchase additional professional sex offender therapy services to supplement their aftercare services.

REP. JOAN HURDLE asked if the $290,000 is in the Governor's budget and, if so, where.

Mr. Anderson said it is in the Governor's budget under the DCHS budget request.

REP. AUBYN CURTISS asked if there is any facility with which the state could contract for getting this kind of rehabilitation and how much that would cost.

Mr. Anderson said that he was not aware of such a program within the state to serve this type of client.

REP. CURTISS asked if Rivendell and some of the others might be able to do that.

Mr. Anderson answered that this program is for adults and Rivendell currently serves children or adolescents. They would have to shift the focus of their primary client group to accommodate this program and they have not indicated an interest in doing that.

{Tape: 2; Side: A; Approx. Counter:18.2}

Closing by Sponsor:

REP. MENAHAN encouraged the committee to work with the department to clarify the items discussed. He commented on the costliness of treatment at Rivendell by comparison to the $219,000 that is being requested to fund this program. He said he had visited the facility at Boulder where this population is termed "naive

offenders" because of their low intelligence. There was no other place to put them or treat them so that they would not be preyed upon if placed in the prison system. He also agreed that there must be a plan for the youthful offender with normal intelligence.

CHAIRMAN CLARK said the committee would hold off on Executive Action until there is a fiscal note to go with the bill.

EXECUTIVE ACTION ON HB 46

Motion: REP. BILL TASH MOVED THAT HB 46 DO PASS.

Discussion: REP. KOTTEL presented an amendment to HB 46. **EXHIBIT 13**

Motion: REP. KOTTEL MOVED THE ADOPTION OF THE AMENDMENT.

Discussion: REP. MC GEE asked **REP. KOTTEL** to read how the line would then read with the amendment.

REP. KOTTEL first explained that her reasons for this amendment are based on her understanding that arson is limited to occupied structures. She felt that the bill went too far in the other extreme by including not only all other real property, but also included all other property, both tangible and intangible personal property. She is concerned that under Montana law, a person could convert personal property worth a dollar and only be convicted of a misdemeanor; but if a person chose to burn someone's personal property valued at only a few dollars, even inadvertently, that person could be convicted of a felony. The penalty for a conversion ought to be related to the value of the property converted, so that there is a parallel nature in the criminal code. Therefore, her amendment would provide that if a structure, a vehicle, crops, pasture, forests or other real property of any value are burned, the charge would be arson with a conviction of a felony. On the other hand, other personal property would have to be valued over $500 for it to be arson requiring a felony conviction.

REP. MC GEE said that in his opinion, in the case of someone who purposefully destroys property, no matter the value, it is criminal in nature.

REP. KOTTEL agreed that it is a crime, but thinks that it is the crime of criminal mischief or crime of conversion. She cited a hypothetical example involving a domestic disagreement where one party destroys a bundle of clothing valued at $25 and asked if that should be subject to a felony offense of arson even though it was done knowingly and in anger. She said she is trying to protect the abuse of this law in cases such as this by narrowing the language by means of her amendment.

REP. ANDERSON said that as it is now, a fairly clear and concise criminal code exists in terms of property offenses. All of those have the distinction between misdemeanor and felony. Although he agrees that if a crime is committed, punishment should follow, he thinks that passing this without the dollar limit will confuse the criminal code and be inconsistent.

REP. ELLEN BERGMAN asked if the sponsor had approved the amendment.

REP. KOTTEL said that she did not know though she had provided him with a copy of the amendment and he had not contacted her.

REP. ANDERSON said that he had talked with **John Connor** who did not think there was any problem with putting a $500 threshold on this.

REP. MOLNAR said that he likes the amendment because it goes to the bill itself. He said that if a felony trial is run on each and every act that includes fire, the county attorneys will opt to not prosecute. Without this amendment the criminal mischief label on this will be eliminated.

Vote: Motion to adopt the amendment carried by unanimous voice vote.

Motion: **REP. BILL TASH MOVED THAT HB 46 DO PASS AS AMENDED.**

Discussion: **REP. MOLNAR** said that currently per testimony, any of the things that would become arson as opposed to criminal mischief are currently punished at 10 years or $50,000. The frustration of the fire marshals who testified as well as of the sponsor of the bill is not with the fact that these things are not punishable, but that when they get to court, the judge doesn't give them 10 years anyway. To make this a 20-year sentence won't add one more day of jail. He went on record against the bill because it will not accomplish anything.

CHAIRMAN CLARK pointed out that the sentence is not a mandatory 20 years. The judge has the discretion to go from a year up to 20 years.

REP. MOLNAR said that he understood that, but stated that in the testimony, frustration was expressed that once apprehended, the person does not get a very long sentence.

{Tape: 2; Side: A; Approx. Counter: 36.9}

REP. SMITH cited a case of arson near Ovando which destroyed a large amount acreage and asked if there are other statutes in existence now to cover that type of arson.

REP. TASH said he believed there are statutes where the perpetrator is liable for those damages especially if it is

determined that he or she did set the fire even negligently.

REP. ANDERSON said that in place already is the criminal mischief statute which is divided between misdemeanor and felony and that in a situation like that, unless an occupied structure were involved, it would be prosecuted under the criminal mischief statute. There are probably provisions for restitution and a number of other things. In addressing the bill, he agreed with **REP. MOLNAR** that the passage of this bill would do nothing except to give an opportunity to get more federal money for the investigation and that it is an unnecessary and redundant bill that muddies the code although it is well-intentioned.

Vote: Motion to pass HB 46 as amended failed by a vote of 16-3, **REPS. WYATT, TASH AND MC CULLOCH** voting yea.

Vote/Motion: **REP. MOLNAR MOVED TO TABLE HB 46.** Motion carried unanimously.

REP. MC GEE MOVED TO ADJOURN.

{Comments: These minutes are complete on two 90-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:07 AM.

Bob Clark
REP. BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/16/95

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

Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; R.C.M. 1947, 93-1205(part); amd. Sec. 1, Ch. 92, L. 1989.

Cross-References

Persons drawn and approved to form jury, 25-7-205.

Manner of selection, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Number of jurors, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

3-15-107. Number in justices' courts. A jury in a justice's court, in misdemeanors, consists of six persons, but the parties may agree to a less number than six.

History: En. Sec. 225, C. Civ. Proc. 1895; re-en. Sec. 6335, Rev. C. 1907; re-en. Sec. 8888, R.C.M. 1921; re-en. Sec. 8888, R.C.M. 1935; R.C.M. 1947, 93-1206; amd. Sec. 5, Ch. 16, L. 1991.

Part 2
Jurors' Fees

3-15-201. Fees in courts of record. (1) A grand or trial jury panel member shall receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the county seat. Those jurors selected from the panel for a case shall receive an additional $13 a day while serving.

(2) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; re-en. Sec. 4933, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971; amd. Sec. 10, Ch. 439, L. 1975; amd. Sec. 16, Ch. 344, L. 1977; R.C.M. 1947, 25-401; amd. Sec. 1, Ch. 200, L. 1981.

Cross-References

Mileage allowance for jurors, 2-18-503, 2-18-504.

Clerk to keep record, 3-5-510.

Fee for arbitration panel similarly computed, 75-7-115.

3-15-202. Repealed. Sec. 7, Ch. 200, L. 1981.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913; re-en. Sec. 4934, R.C.M. 1921; re-en. Sec. 4934, R.C.M. 1935; R.C.M. 1947, 25-402.

3-15-203. Fees in courts not of record and coroner inquests. (1) A jury panel member in civil actions, criminal actions, and coroner inquests is entitled to a fee of $12 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the court. A jury panel member selected for a case is entitled to an additional $13 per day while serving.

(2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R.C.M. 1921; re-en. Sec. 4935, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971; amd. Sec. 17, Ch. 344, L. 1977; R.C.M. 1947, 25-403; amd. Sec. 1, Ch. 231, L. 1979; amd. Sec. 1, Ch. 334, L. 1985; amd. Sec. 9, Ch. 660, L. 1991.

3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a warrant signed by himself, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; R.C.M. 1947, 25-405; amd. Sec. 3, Ch. 379, L. 1963; amd. Sec. 2, Ch. 66, L. 1985.

Cross-References

Travel expenses, 2-18-503, 2-18-504.

Duties of Clerk of District Court, 3-5-510.

3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county general fund unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in such fund.

History: En. Sec. 1, Ch. 299, L. 1981; amd. Sec. 3, Ch. 66, L. 1985.

Cross-References

Costs, Title 25, ch. 10.

Part 3
Jurors — Competency ar

3-15-301. Who competent. A person is c
is a registered elector whose name appears
registered electors, as prepared by the county

History: Earlier statutes were Sec. 8, p. 506, Cc
1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. S
5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. P

EXHIBIT 1
DATE 1/10/95
HB 74

EXHIBIT 2
DATE 1/10/95
HB 74

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

HB 74

January 10, 1995

Robert Clark, Chairman
House Judiciary Committee

Mr. Chairman, Members of the Committee:

For the record my name is Scott Crichton, Executive Director of the American Civil Liberties Union of the ACLU of Montana.

I rise in opposition on HB 74 out of concern that it would infringe on the 7th amendment to the US Constitution, which states:

> "In suits at common law, where the value incontroversy shall excede twenty dollars, **the right of trial by jury shall be preserved,** and no fact tried to jury, shall be otherwise re-examined in any Court of the United States, than according to the rule of common law."

I also bring to your attention Section 26 of the Montana Constitution:

> **"Trial By Jury. The right of a trial by jury is secured to all and shall remain inviolate.** But upon the default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous."

This new section (2) amending 3-15-205 MCA raises questions in my mind as to whether or not we are placing further hurdles in the way of people who are already disadvantaged economically to have their "day in court". The language allowing that "the court may order that juror's fees be paid by the party demanding the jury or be taxed as costs against the losing party" seems broad, imprecise and discretionary without sufficient guidance.

The constitutional guarantees do not say a that a jury trial is a right to all those who can afford to pay jury costs. We are not talking about a luxury, we talking about a right that is explicitly "secure" and "that shall remain inviolate". As written, this bill could be placing further barriers against the poor and those who are on the fringes of the economy, inhibiting access to the judicial process and the full protections of the law and due process. I ask you to not pass HB 74. Thank you.

EXHIBIT 3
DATE 1/10/95
HB 74

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

January 10, 1995

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: HB 74

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to House Bill 74, allowing courts to assess jury fees in civil actions against the party demanding a jury or against the losing party.

MTLA strongly supports adequate funding for Montana's court system and recognizes the pressing need for new funding sources. MTLA welcomes Rep. Holland's effort to responsibly and fairly finance Montana courts. Perhaps most importantly, *MTLA recognizes that plaintiffs in tort cases fare much better than other Montana citizens, including small businesses and large corporations, under House Bill 74.*

Nevertheless, MTLA has several serious reservations about House Bill 74:

- **Because it does not require a court to consider a party's ability to pay jury fees, House Bill 74 is unconstitutional.** Even if this Committee concludes that the tax effectively imposed by House Bill 74 is reasonable, and even if this Committee rejects other alternative sources of funding for Montana courts, it must amend the bill to protect the fundamental rights of every Montanan to due process, access to the courts, and a jury trial. Attachment A cites relevant provisions of Montana's Constitution and derivative case law.

MTLA urges this Committee, before passing House Bill 74, to ensure that common Montana citizens with legitimate claims can afford the same justice as wealthy litigants. By adding the following amendment, or substantially similar

language, at line 19 of the bill, this Committee might discourage constitutional challenges to the new law:

"In ordering payment of jurors' fees, the court shall consider ability to pay."

- **House Bill 74 effectively taxes common Montana citizens for exercising their constitutional rights.** MTLA estimates that the cost of impanelling a jury amounts to roughly $500 the first day and $300 for every subsequent day. In other words, Montana citizens would face the unprecedented prospect of paying $1700 a week to exercise their constitutional rights under House Bill 74. Obviously, such overhead would burden middle-class Montanans more heavily than wealthy individual and corporations; not so obviously, perhaps, such overhead would also burden middle-class Montanans more heavily than the poorest Montanans, who would rarely pay jurors' fees even if assessed.

  Moreover, most of the new revenue raised by House Bill 74 would come, not from personal-injury lawsuits, but from other types of cases which make up the vast majority of civil cases in Montana and which (unlike personal-injury lawsuits) are increasing dramatically. Contract and real property disputes, for example, account for just as many Montana lawsuits as torts do. Debt-collection cases outnumber tort cases. And Montana courts handle more than twice as many debt-collection cases and more than four times as many domestic-relations cases as tort cases. Attachment B, based on statistics compiled by the Montana Supreme Court, compares the court burdens imposed by various types of cases.

- **Since jury fees account for *less than 3 percent* of Montana's district court budgets, other funding sources would provide more equitable, more stable and *more* financing for Montana courts.** Currently, for example, defendants can profit by forcing legitimate claims into court, *even when they lose*, because they retain use of any disputed funds during the litigation. An insurance company, for instance, often earns more in interest by denying policy benefits than it pays to defend itself in court. By requiring such stubborn defendants to pay interest on any amount which they should have paid in the first place, and by dedicating those interest payments to court funding (or other public purposes), the Legislature would (1) discourage needless litigation and (2) emphasize financial responsibility, not financial windfalls, for litigants who merely use Montana's courts as an investment strategy.

If I can provide more information or assistance to the Committee, please allow me to do so. Thank you again for allowing me to express MTLA's concerns about House Bill 74.

Respectfully,

Russell B. Hill, Executive Director

EXHIBIT 3
DATE 1/10/95
HB 74

Montana Constitution, Art. II, Sec. 4:

The dignity of the human being is inviolable. *No person shall be denied the equal protection of the laws.* Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, *social origin or condition,* or political or religious ideas.

See also *Merchants Association v. Conger*, 185 Mont. 552, 555 (1979): "Similarly, **while the undertaking may prevent some frivolous appeals, it also prevents meritorious appeals by the poor and does not prevent frivolous appeals by the rich."**

Montana Constitution, Art. II, Sec. 16:

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. . . . *Right and justice shall be administered without sale, denial, or delay.*

Montana Constitution, Art. II, Sec. 17:

No person shall be deprived of life, liberty, or property *without due process of law.*

See also *Ball v. Gee*, 243 Mont. 406, 411 (1990): "The Fourteenth Amendment to the United States Constitution and Article II, Section 17, of the Montana Constitution provide that no person shall be deprived of property without due process of law. For over a century, the United States Supreme Court has consistently held that before a citizen can be deprived of property, procedural due process guarantees that person a right to be notified and a right to be heard. . . . **As a right fundamental to due process, the state cannot abrogate that opportunity because of the owner's inability to pay."**

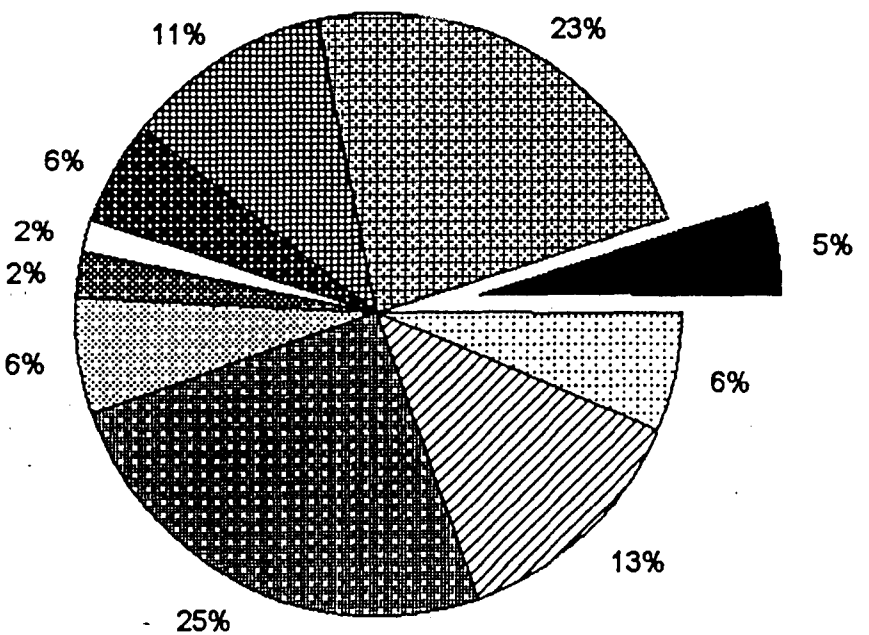
Montana Constitution, Art. II, Sec. 26:

The right of trial by jury is secured to all and shall remain inviolate. . . .

See also *Hammer v. Justice Court of L. & C. Co.*, 222 Mont. 35, 39 (1986): **The right to jury trial is not inviolate if it is accorded only to those who can afford to pay for it.** Jury trials should not be available in Montana on a pay-as-you-go basis."

ATTACHMENT A

Montana State Judicial Information System, 1991 Annual Report



- Tort (1518)
- Domestic (6967)
- Probate (3331)
- Juvenile (1724)
- Real Property (505)
- Contract (745)
- Debt (1849)
- Jurisdiction (7556)
- Criminal (4048)
- Other (1920)

ATTACHMENT B

EXHIBIT 4
DATE 1/10/95
HB 60

Amendments to House Bill No. 60
First Reading Copy

Requested by Rep. Kasten
For the Committee on the Judiciary

Prepared by John MacMaster
January 4, 1995

1. Title, line 5.
Following: "ENTITLED: "AN ACT"
Insert: "PROVIDING THAT A YOUTH COURT COMMITMENT OF A SERIOUSLY MENTALLY ILL YOUTH IS TO THE DEPARTMENT OF FAMILY SERVICES RATHER THAN TO A MENTAL HEALTH FACILITY; PROVIDING THAT IF A MINOR FAILS TO AGREE TO VOLUNTARY COMMITMENT TO A MENTAL HEALTH FACILITY, THE MINOR IS TREATED AS A YOUTH IN NEED OF SUPERVISION UNDER THE MONTANA YOUTH COURT ACT RATHER THAN AS THE SUBJECT OF A PROCEEDING UNDER THE INVOLUNTARY COMMITMENT LAWS;"

2. Title, line 7.
Following: line 6
Insert: "41-5-523, 53-21-112,"
Following: "53-21-121"
Insert: ","

3. Page 1.
Following: line 10
Insert: "**Section 1.** Section 41-5-523, MCA, is amended to read:
"**41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:
(a) place the youth on probation;
(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:
(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.
(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state

youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(iii) in the case of a youth adjudicated to be seriously mentally ill, as defined in 53-21-102, based on the testimony of a professional person, as defined in 53-21-102, the youth is entitled to all rights provided for adults under 53-21-114 through 53-21-119. The youth may not be committed to a state youth correctional facility. A youth adjudicated to be seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available under 53-21-127.

(c) order restitution by the youth or the youth's parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

~~(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~(k)~~ (j) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the

Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its

order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 53-21-112, MCA, is amended to read:

"**53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

(a) a facility that is not a state institution; or

(b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of ~~his~~ the minor's request as provided in 53-21-111(3). The minor ~~himself~~ personally may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor ~~patient~~ and ~~his~~ the minor's counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time ~~he~~ the minor is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of ~~his~~ the minor's parents or guardian to the voluntary admission, then the ~~application for admission~~ minor shall be treated as a ~~petition for involuntary commitment~~ youth in need or supervision under Title 41, chapter 5. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.""

Renumber: subsequent sections

EXHIBIT 5
DATE 1/10/95
HB 60

Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services

HB 60

Since 1987 there has been no state-operated psychiatric inpatient facility for children and adolescents.

At the time of the discontinuation of the Montana Youth Treatment Center, however, statutes were not changed to eliminate involuntary commitment of youth.

In 1988, the Department of Family Services was created to consolidate authority and responsibility for the custody of children and adolescents when the state must become involved in custody. Again, the statutes on involuntary commitment of youth were not changed at that time to make them consistent with the duties of the new department.

HB 60 completes that statutory changes needed to implement the policy directions of discontinuing state operated psychiatric inpatient services and placing authority for child custody with the Department of Family Services.

When a child is seriously mentally ill, the State normally does not become involved.

As with any serious illness, normally the family arranges for appropriate care without the assistance of government. If the family is indigent, assistance is available through the Medicaid program and through the Managing Resources Montana program administered by the Department of Corrections and Human Services.

The state should become involved in the custody of a youth only when there is abuse of neglect by the parents or when the youth is out of the control of his or her parents.

HB 60 eliminates the use of the mental health act to involuntarily treat a seriously mentally ill young person. The bill also allows the youth court to place the seriously mentally ill youth who is beyond the control of his parents in the custody of the Department of Family Services for appropriate placement. The Department of Corrections and Human Services has agreed with DFS that the treatment services needed by the youth declared seriously mentally ill by the Youth Court are appropriately funded under the Managing Resources Montana program.

We believe that HB 60 solves a problem of an involuntary commitment law which has no facility to commit to and provides for a system in which youth who require state involvement in the care are taken into the custody of DFS with services funded by the

state mental health agency.

EXHIBIT 6
DATE 1/10/95
HB 60

January 10, 1995 PEM

Proposed Amendment to House Bill 60

Page 4.
Following: line 15
Insert: "NEW SECTION. Section 3. **Commitment of persons under the age of 18.** A person under the age of 18 who is seriously mentally ill may be committed to the department of family services for treatment of the mental illness under 42-5-523. Notwithstanding the provisions of 42-5-523 and 53-21-112, a person under the age of 18 may be involuntarily committed to a mental health facility under the provisions of Title 53, chapter 21, however, no public funds may be expended for the treatment of the person's mental illness."

Proposed amendment to Rep. Kasten's amendments dated January 4, 1995.

On page 2 of amendments, propose that § 41-5-523(1)(b)(iii) read as follows:

"(iii) in the case of a youth adjudicated to be seriously mentally ill, as defined in 53-21-102, based on the testimony of a professional person, as defined in 53-21-102, the youth is entitled to all the rights provided for adults under 53-21-114 through 53-21-119. **A seriously mentally ill youth committed to the department under this section must receive treatment appropriate to the youth's mental health needs consistent with the disposition alternatives available under 53-21-127. A youth may not be committed to a state youth correctional facility. A youth adjudicated to be seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriated placement in response to the youth's mental health needs and consistent with the disposition alternatives available under 53-21-127.**"

Note: Bold language indicates how this proposed amendment differs from that of Rep. Kasten.

EXHIBIT 7
DATE 1/10/95
HB 60

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
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Fax #: (406)444-0261

January 10, 1995

Representative Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 60

Mr. Chairman and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in opposition to HB 60.

We have reviewed HB 60 and are very much concerned with its provisions.

1. Our greatest concern is that this bill criminalizes youth with serious mental illness. Under this legislation, youth with serious mental illness must first be adjudicated as a delinquent youth or youth in need of supervision under the Youth Court Act to access appropriate mental health services. A child's only crime may be that she is suicidal, yet she will be labeled a criminal, or at best, a problem youth. This is a great injustice to children and a giant step backward in the efforts to distinguish between criminal behavior and mental illness.

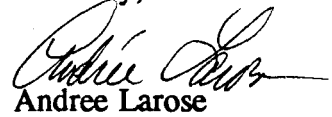
2. We have concerns about the constitutionality of this law and the manner in which we anticipate it will be applied. To access much needed mental health services, behaviors such as attempting suicide will form the basis for finding a child a "youth in need of supervision." "Youth in need of supervision" is the least stigmatizing label a child can receive under the Youth Court Act and it is defined as a child who commits an "offense prohibited by law." But also included as an unlawful offense is "behavior beyond the control of his parents." Thus, suicidal behaviors will become behaviors "beyond the control of his parents" and mental illness will be criminalized.

3. This bill is unnecessary. Currently, youth who do not voluntarily undertake mental health treatment may be committed to a mental health facility through the involuntary commitment procedures found in Title 53, Chapter 21. There is no need to change that procedure. If part of the intent is to prevent commitment of a minor to the state hospital, that, too, is unnecessary since the placement of children at the state hospital is already prohibited.

4. This bill commits seriously mentally ill youth to the Department of Family Services, rather than to a mental health facility. It is unclear what DFS will be able to do to serve these children and how their needs will be met. We are greatly concerned that these children may be placed on a waiting list, as are other children served by DFS, rather than being placed immediately in a mental health facility. It is also unclear why DCHS is shifting responsibility for seriously mentally ill children to DFS. We may not object to that shift per se, but since DCHS has assumed the leadership role in the provision of mental health services in this state, we question what policy changes or changes in mission have occurred to lead to this shift. More importantly, we question whether this change will negatively impact seriously mentally ill children. DCHS has responsibility under the Managing Resources Montana program for providing mental health services for seriously mentally ill children. Yet, it is unclear whether seriously mentally ill children committed to DFS under HB 60 would still receive services from MRM.

We urge you to vote against this bill. Thank you for your time.

Sincerely,



Andree Larose

EXHIBIT 8
DATE 1/10/95
HB 60

TO: Rep. Betty Lou Kasten

FROM: Dan Anderson, Administrator
Mental Health Division

RE: Response to HB 60 Issues Raised by Montana Advocacy Program

In her testimony (attached) Andree Larose raised four objections to HB 60. The following is my response to those points:

1. It is not true that a youth must be adjudicated in order to receive services. Most youth serviced under publicly funded programs are totally voluntary and this will not change. Adjudication of a youth would be necessary only if the youth were out of the control of the parents. Again, Youth Court action **is not** a prerequisite for public assistance in obtaining mental health services; it would be used only if the normal authority of the parents was not sufficient. Finally, the Youth Court is not considered a criminal court.

2. Attempting suicide would not be the basis for finding the child a "youth in need of supervision". Based on the suicide attempt the child would be eligible for the Managing Resources Montana (MRM) Program and could access that program. The youth court would only become involved if the youth would not cooperate with parental attempts to get help for the suicidal behavior. Some people would argue that the label "seriously mentally ill" is **more** stigmatizing than the label "youth is need of supervision".

3. The mental health act (Title 53, Chapter 21) does not establish, in the absence of a state facility for youth, a state agency with responsibility for custody of an involuntarily committed youth or for funding services. It is a "procedure" which leads nowhere.

4. Our proposal is not to shift responsibility for seriously mentally ill children to DFS. Rather, our proposal is to identified DFS as the agency responsible for custody of youth when the state must take on that responsibility. Department of Corrections and Human Services, through Managing Resources Montana (MRM), will provide for the treatment needs of the youth. We have agreed to make sure our definition of youth eligible for MRM includes all youth found to be seriously mentally ill through the youth court. Seriously mentally ill children committed to DFS under HB 60 would absolutely still receive services from MRM.

I hope my comments are helpful in understanding this Department's position on this bill. Please call me at 444-3969 if you have any other questions.

hb60memo

EXHIBIT 9
DATE 1/10/95
HB 93

Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services.

HB 93

This bill establishes a treatment program for convicted sex offenders who have low intelligence or serious mental illness and it allows the court to sentence the defendant to the custody of the Department of Correctional and Human services for placement in such a program.

There are individuals in three state institutions with low intelligence or serious mental illness who have committed sexual offenses : Montana Developmental Center, Montana State Hospital, and Montana State Prison. None of these institutions has a treatment program which is designed for this groups of offenders.

A Committee of clinical professionals from the three facilities have designed a program plan to meet the needs of these offenders and help to reduce the probability that they will re-offend. the program is focused particularly on offenders with IQs between 55 and 79. The program would also will serve sex offenders who have serious mental illness.

The Department of Corrections and Human Services proposes to provide this program within its current staffing level during the next biennium and has requested $219,736 in operational budget funds for the 96-97 biennium to pay for supplies and equipment, training, aftercare services, and patient food, clothing, etc.

During the 96-97 biennium this service will be provided at Montana State Hospital. Eventually, it will become part of the correctional system and will be housed in a correctional facility.

EXHIBIT 10
DATE 1/10/95
HB 93

HOUSE BILL #93

An act providing an alternative sentence for certain sex offenders; providing for a sex offender treatment program in the department of corrections and human services; and amending section 46-18-201, MCA.

Thank you for an opportunity to briefly review with you our recommendations for a specialized sex offender program targeted to treat predatory developmentally disabled and seriously mentally ill individuals convicted of a sexual offense.

Beginning two years ago, Mr. Day asked us to investigate treatment for this population at our state institutions. We found these individuals scattered throughout Montana State Prison, Montana State Hospital and the Montana Developmental Center. Treatment providers in all the institutions had concerns that the needs of these individuals were not being met. There is no sex offender program at Montana State Hospital. Montana State Prison has a program for the intellectually normal but not intellectually disadvantaged sex offender. Montana Developmental Center does have a social sexual awareness program for the naive offender but the staff there do not feel that there is adequate security at their facility to care for the predatory developmentally disabled offender. Soliciting input from institutional providers, the Board of Visitors and members of the Montana Sex Offender Treatment Association, the committee I served on proposed a specialized sex offender program that would be patterned after a similar such program at Oregon State Hospital. We envisioned a 12 bed in-patient component that would require a core of four specially trained treatment staff as well as the support services normally available in an

institution. A 30 day assessment period would determine suitability for the program. Given the multiple and often severe deficits characteristic of this population, a 2-4 year in-patient phase was anticipated to be followed by an at least 5 year less intensive follow up in the community. Treatment would be behaviorally focused utilizing repetition and experiential learning paradigms. Environmental restrictions would be lessened according to a level system which would reward sustained healthy attitudes and behaviors.

I am reminded daily in my work on the Montana State Hospital Forensic Unit of services that we need to provide to sex offenders and are not currently doing so. There are individuals sentenced to Montana State Hospital for sexual crimes who also have a serious mental illness. We are able to treat the symptoms of their mental illness but lack the staff with expertise to address their sexual problems. Many of them will serve their sentences without this issue being adequately addressed and will be at risk for reoffending once discharged.

Research supporting treatment for the predatory developmentally disabled and seriously mentally ill sex offender is in its infancy but does indicate a trend toward decreased recidivism the longer a person is in treatment. Given the far-reaching adverse consequences resulting from even one sexual offense, I believe it is imperative that we at least make an effort, using the best clinical information currently available, to provide sex offender treatment to the convicted predatory developmentally disabled and seriously mentally ill sex offender. As our laws are written, these individuals will eventually return to communities throughout Montana and without treatment, there will likely be more victims and more heartache. With treatment we will be able to maximize prevention of further sexual offenses and help those willing to be helped to lead a lifestyle which promotes self-competence and the rights of others.

EXHIBIT 10
DATE 1/10/95
HB 93

Over the years there have been several proposals for a specialized sex offender program recommended to the mental health leadership, but this is the first administration to take these recommendations seriously and be willing to develop such a program. Given the devestating impact of sexual crimes, everybody wins when practical support is given to programs emphasizing rehabilitation and prevention. Thank you.

Gthill MD
Staff Psychiatrist
Montana State Hospital

EXHIBIT 12
DATE 1/10/95
HB 93

MONTANA ADVOCACY PROGRAM, Inc.

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P.O. Box 1680
Helena, Montana 59624

(406)444-3889
1-800-245-4743
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Fax #: (406)444-0261

January 10, 1995

Representative Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 93

Mr. Chairman and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to provide additional information which the committee may find beneficial.

We have reviewed HB 93 and are concerned with some of its provisions.

1. First, I want to say that we wholeheartedly support the idea of creating a specialized program of sex offender treatment for persons with serious mental illness and for persons with developmental disabilities. But we are uncertain why the provision of a sex offender treatment program must be a sentencing option. The Department has the ability now to provide a sex offender treatment program for individuals with limited intelligence or serious mental illness now, without this bill.

2. A concern we have heard expressed by consumers is the mixing of people with limited intelligence and people with mental illness together for a therapeutic program. The program which must be designed for a person with limited intelligence is much different that the program for a person with a mental illness.

3. This bill does not define the term "limited intelligence," nor is it a term defined elsewhere in state law. There needs to be more specific language in the statute defining "limited intelligence." Nor is it clear whether the definition of the term "seriously mentally ill" will be the same as contained in 53-21-102. If not, there will be confusion. This term should be defined in the statute as well.

4. This bill gives the department broad authority to place a person in the treatment program at any time. There is no indication in the statute that an individual has the right to a hearing or appeal of this decision. This raises some constitutional questions about due process. One U.S. Supreme Court decision has held that a state cannot transfer an inmate to a mental health facility without the person's consent or without affording due process.

5. It is unclear who determines "successful completion" of the treatment program and how that determination is made.

6. One of our greatest concerns is that treatment of persons convicted of sexual offenses demands specialized treatment, yet the hospital has no proposal to add professional staff who are specially trained in sex offender treatment, nor any proposal to provide additional training for existing staff. Sex offender treatment by untrained professionals can be more dangerous than no treatment at all, because it leads to a false sense of security.

We support adoption of HB 93, but only with changes made consistent with these concerns. Thank you for your time.

Sincerely,

Andree Larose

EXHIBIT 12
DATE 1/10/95
HB 93

January 10, 1995

Mr. Chairman & members of the Judiciary Committee:

My name is Kathy Standard and I serve as President of the Meriwether Lewis Institute. The Meriwether Lewis Institute is the only non-profit Montana corporation created by and for people with mental illness. The Board of Directors, the Executive Director, and the voting membership are composed solely of people with mental illness. Our primary focuses are providing education and information about mental illness, and advocating for the rights and needs of all of us who have a mental illness.

I want to begin by saying I am in no way opposed to the intent of House Bill 93 - my concern is with language, definitions, and funding. It is my understanding that originally this bill was designed for sex offenders with mental illness and limited intelligence - a population known as "dually diagnosed". There was funding included to cover the cost of bringing in people specialized in understanding and treating sexual offenders to create the Programs, plus funding for hiring and training additional staff to implement the Programs.

As HB 93 now stands, there is no fiscal note with it to fund the necessary experts and train the necessary additional staff. The Department of Corrections & Human Services has indicated that they intend to implement this Sexual Offenders Program utilizing existing staff, without hiring a specialist in the field. I am not aware of any employees at Montana State Hospital who feel they currently have extra time on their hands. I am also aware that many of the current employees would not be effective working in a program for Sexual Offenders. Without appropriate funding, leadership, and training, HB 93 is only a good idea - it is not an adequate solution.

To verbally lump together people with low intelligence and people with mental illness can only increase the existing stigma against both groups. Most of us with a mental illness are of at least average intelligence, and many of my peers are in the superior intelligence range. What problems we have with learning are due to an illness that distorts our sense of reality and our ability to both process incoming data and relay it to others. Also, the medications we take for our illnesses may produce the same syptomology.

It is erroneous to assume that one Program could be effective for these two very different populations. It is my understanding that most sexual offenders have a predatory nature. People with certain mental illnesses also tend to be predators and verbally vicious folks who are unable to be supportive of others. It would be downright cruel to subject people with low intelligence to this population in a group setting; low intelligence does not make a person any less able to feel the pain being inflicted upon them. These two populations, sexual offenders with mental illness and sexual offenders with low intelligence, really have only one thing in common - they are both institutionalized and incarcerated for their underlying disability.

I question the appropriateness of the Department of Corrections & Human Services being able to "at any time place the person in the sex offender treatment program" (page 2, lines 27 & 28), when an ability to acknowledge guilt and a desire to change one's behavior are prerequisites to succeeding in such a program.

My last issue is with definitions: We have a legal definition for a person with serious mental illness. We have no legal definition for a "person with low intelligence". I believe that it does not serve the best interests or the rights of people with low intelligence to be defined by a rule, which can be rather easily changed, rather than a law.

In closing, I want to reiterate that I support the intent of HB 93, to provide a Sexual Offenders Program that would be designed to meet the needs of specific populations. However, this Bill needs to be reworked in order to meet that goal. Thank you.

EXHIBIT 13
DATE 1/10/95
HB 46

Amendments to House Bill No. 46
First Reading Copy

Requested by Rep. Kottell
For the Committee on the Judiciary

Prepared by John MacMaster
January 5, 1995

1. Title, line 4.
Strike: "ALL"

2. Title, line 5.
Following: the first "PROPERTY"
Insert: "NOT CURRENTLY INCLUDED"
Following: "AND"
Insert: "TO INCLUDE"

3. Title, line 6.
Following: "DECEPTION;"
Insert: "PROVIDING THAT ONLY PERSONAL PROPERTY, EXCEPT A VEHICLE, THAT EXCEEDS $500 IN VALUE MAY BE THE SUBJECT OF ARSON;"

4. Page 1, line 13.
Following: "vehicle,"
Insert: "personal property (other than a vehicle) that exceeds $500 in value,"
Following: "other"
Insert: "real"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1-10-95

BILL NO. HB 60 SPONSOR(S) Rep. Kasten

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mark Pinkerton Box 45 Ingomar MT 59039	Rosebud County	X	
Pat Melby	Riverdell Psych Hosp.	Neutral	
Andrie Laos	Mont. Advocacy Prog.		X
Cindy Wimmer	Mt. Board of Crime Cont.	X	
Bob Ross	Bigs Mental Health		X
Gloria Hermanson	Mt Psych. Assn		
Jay McGrath	Mental Health Ass'n		concerns
Dan Anderson	MH Divs.	X	
Ginny Hill	Dept Corrections & Human Services	X	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1-10-95

BILL NO. HB 93 SPONSOR(S) Rep. Menahan

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Kathy Standard	Meriwether Lewis Inst.		✓
Andrée Larose	Montana Advocacy Program	X	
Gloria Hermanson	MT Psych Assoc.		
Joey McGrath	Mental Health Assn	X	
Dan Anderson	MH Division	X	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1-10-95

BILL NO. HB 74 SPONSOR(S) Rep. Holland

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Russell B Hill	Mt Trial Lawyers		✓
Erik Thueson, Helena	self		✓
Jacqueline Lenmark	Am. Insurance Assoc		✓
Greg Van Horssen	State Farm Ins. Co		✓
Shaun Morris	MACO	✓	
Scott Crichton	ACLU		✓

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