

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 17, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:

Hearing: SB 88, SB 90
Executive Action: SB 60, SB 65, SJR 3

HEARING ON SB 88

{Tape: 1; Side: A; Approx. Counter: 00}

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, Senate District 43, Cut Bank, presented SB 88, entitled "an act submitting to the qualified electors on Montana an amendment to Article II of the Montana Constitution to grant rights to crime victims." **SENATOR GAGE** told the committee

that he sponsored the bill at the request of The Montana Board of Crime Control, of which he is a member, and the American Legislative Exchange Council (ALEC), a nationwide organization of legislators. The senator serves on a criminal justice task force of the organization. This is a non-paying, non-reimbursing, on-your-own-effort with regard to service, he said, and he wanted the record to show that this is not a big windfall to **SENATOR GAGE**. One of the efforts of this task force was to address issues on a national scale, and hopefully, all the states are addressing these same issues, he said. One of the largest areas of concern was the issue that courts seem to be tilting the scales in favor of the accused and the perpetrators of crimes around the country. One of the justifications was that victims do not have constitutional rights, but merely statutory rights. The thrust of that effort from the ALEC task force was an attempt to get every state to adopt in their state constitution a position on victims' rights, so they will be constitutional rights, not statutory rights. It was felt that even a very limited victims' rights position in the constitution was better than most states currently have, he told the committee.

Proponents' Testimony:

Christine Shupe, Absarokee, testified that she was notified by phone last Friday, January 13, at 5:50 p.m., one day after what would have been her son's 24th birthday, telling her that the convicted murderer, John Miller, was going to be allowed to come to Absarokee to attend his grandfather's memorial service, which was postponed a month, until he was legally allowed a furlough for that day. She did not understand where her rights and her son's rights would fit in this scenario. The law needs to be changed, she said. People go on with their lives after a tragic death, she said, because they have to. They have husbands, wives, other children and they have to get back to normal as soon as possible. The people that make the laws don't go back and talk to the families, she asserted, and to find out what they have to cope with and what rights they don't have in our American society today. We have to start somewhere, and that was the reason for her appearance today, she said, to beg lawmakers to go back and talk to families, because it is not forgotten for even one day.

Her son was shot in the head and his body and that of another man, was transported to another area and burned beyond recognition. It cannot be worse, she said, not minimizing anyone else's tragedy. She could not understand how any convicted criminal could get out for a day for a funeral. She was not able to hold her son or write a letter to say, "I love you," she said. She said she would like to see the law changed.

Bobbie Thompson, formerly of Absarokee, presently from Pinehurst, Idaho, presented a picture to the committee of what her son looked like before he was murdered. He was with **Ms. Shoup's** son and was shot in the head and burned as well. The man who

perpetrated this crime has no remorse, she said. He said he was sorry he got caught. On the day of his sentencing he gave her a smirky smile and waved at her, she said. There is nothing in his heart but hate, she attested, and she could not believe that he would be able to get out of prison on a furlough. He is in prison on two life sentences and is not up for parole for 24 years. She said she was not notified of the furlough. She said she had no fear for herself, because when her son was killed, she had died, too. She has a family and a 15-year-old daughter to live for. She could not understand the rights of the criminal in this case. She needs to feel that the government is behind them, she testified. She urged passage of this bill.

Kate Cholwea, of the Montana Womens' Lobby, testified on behalf of the bill. Women often live in fear after rape and assault, she said, knowing they have rights to notification and input in regards to their assailant activities helps them manage this fear and have rights where previously they have been violated. She urged favorable consideration on the bill.

Informational Testimony:

SENATOR STEVE DOHERTY suggested that the committee might write a letter to the new prison administrator, **Mr. Day**, and ask what the circumstances were in Absarokee regarding this testimony. He would like to know what they are doing.

SENATOR BRUCE CRIPPEN said that the senator was certainly within his right as a legislator to inquire into the facts surrounding the circumstances as to what happened.

Questions From Committee Members and Responses:

SENATOR DOHERTY said that section (e), "granting victims the constitutional right to refuse an interview, deposition or other discovery request by the defendant or that the defendant's attorney," seems to be a direct conflict with the U.S. Constitution which guarantees that the accused shall have the right to meet the witnesses against him face-to-face. Which would have priority, he asked.

SENATOR GAGE said that would be left to the determination of the committee. It is difficult to address both the rights of the accused as well as the rights of the victims and the people left behind, he said.

SENATOR DOHERTY asked if any of the items in Section 36 were current Montana law and if problems existed in Montana with victims not being present or being notified about all criminal proceeding about which the defendant has a right to be present. He asked about statutory directives as opposed to the constitutional ones and the length of the proposed amendment to the constitution.

SENATOR GAGE said that everyone hesitates to put the kind of details into the Constitution that this proposal does. The Constitution itself is a directive for people of the state to use as a guideline in putting together statutory provisions. He was unsure of the kinds of violations in the state, but it wouldn't matter where it was, he said, the legal profession would pick those rulings out in support of their cases.

SENATOR MIKE HALLIGAN told **SENATOR GAGE** that in the 1980's they had passed a crime victims' compensation act of which he was the sponsor. There is statutory language on the books dealing with treatment of victims and witnesses that essentially parallels the language of this bill, he said, so that it is already in statute. If it were put into the Constitution he was concerned that it would be giving defendants more rights to appeal if it says the victim has the right to a speedy trial, then there is a conflict between the victim and the defendant's case that may not be ready for trial. There is room for some mischief here, he warned, and could foresee some potential for defense lawyers abusing the process rather than helping it. He asked **SENATOR GAGE** what parts of the statute of victims and witnesses he was not comfortable with? This bill would not have addressed the issue of the furlough that was heard, he said. He suggested something be added to the current statute to give the victims and families a role to play in the furlough decision.

SENATOR GAGE said there was considerable difference between statutory rights and constitutional rights. That's the whole thrust of this bill, he said. He said the possibility existed that the bill was too broad or had conflicts.

SENATOR RIC HOLDEN questioned **Christine Shupe** about whether or not the prison authorities had notified her prior to the furlough of Mr. Miller, to which she answered "no."

SENATOR LARRY BAER said he had a powerful compulsion to support the bill, however, in respect for **SENATOR DOHERTY'S** concern with the defendant's rights, and asked **Valencia Lane**, if she had an opinion on the bill.

Valencia Lane replied that the questions asked by some of the committee lawyers were pertinent in her estimation. An addition to the Constitution should be given careful thought. She used as an example line 14 and 15 involving the victim's fairness and dignity. She said in a trial situation an aggressive defense attorney or a curmudgeonly judge who as a rule does not give anyone in his courtroom a lot of fairness and dignity and respect, you could have a constitutional violation of rights.

SENATOR BAER said he would prefer to act from the heart, but would have to give respect to the law as well. He urged the committee to institute some modifications forthwith to clean up the concerns so the bill could be passed as soon as possible.

SENATOR LINDA NELSON asked **SENATOR GAGE** if existing statute does not provide sufficient protection for victims' rights and if it was important to elevate it to a constitutional level?

SENATOR GAGE said that it seemed to be the feeling around the country that the courts seem to be slanting toward the accused, who have plenty of constitutional provisions in regard to their rights but without regard to the victims' rights. The constitutional provision overrides the victims' rights, he said.

SENATOR NELSON asked if it was standard language that everyone in the task force might be taking back to their states?

SENATOR GAGE replied, "yes".

SENATOR NELSON further inquired if there were any differentiation between crimes perpetrated by juveniles, which were often heinous enough to be treated as adults, but many don't necessarily have those impacts, she said. She wondered about the difference between juvenile and adult and if he would like to make a distinction.

SENATOR GAGE stated he did not know.

SENATOR NELSON asked why they were addressing some of these things (three bills in two days, she said) via the constitution instead of doing it through the statute. She worried about the size of the constitution and the codes. She was late to the meeting and missed the explanation, she said.

SENATOR GAGE reiterated his opening statement.

CHAIRMAN CRIPPEN asked the senator if he didn't agree that these changes would not have significantly helped the situation described for the committee. Rules come from statute, not the constitution, he said. He said there was a possibility that the committee could put something of a principal, not substantive form in the constitution. The constitution deals in principles and leaves the substantive aspect to be in the law, which you can apply in the form of rules. There was also the possibility of an amendment to the victims' rights legislation that we have on the books now, he said, but the title would not cover that. The deadline had passed, so a committee bill might be a possibility, he said. He asked the senator to be available.

SENATOR GAGE agreed, both to the availability and also the reference that it would not have affected the situation the committee had just heard, however, he said it gives the committee some idea of the frustration out there among the survivors. They are looking for something stronger than statute and stronger law enforcement he said. He asked the committee to take what the witnesses said to heart and look at the balance of constitutional provisions in Montana and do what they could in that light.

Closing by Sponsor:

SENATOR GAGE said he would use the aforementioned discussion as his closing. He equated this question with Indian affairs, he said, in that they're a mess in this country. People don't want to touch them, they're hard to deal with. If you do something for one situation, you make people mad. This situation is the same, he said, and people tend to shy away from things that are difficult to handle and difficult to do. That does not serve society well, however, he said, and that's the reason for the proposal. We need to take a hard, tough look at this. He urged favorable consideration on the bill to add to the comfort level of the victims in this country.

{Tape: 1; Side:B; Approx. Counter: 3.5}

HEARING ON SB 90Opening Statement by Sponsor:

SENATOR LARRY BAER, Senate District 38, Bigfork, opened SB 90, entitled, "an act providing immunity from liability to certain firearms safety instructors for the conduct, acts, and omissions of students taught according to certain standards" by saying that he thought it was a good public policy and safety bill regarding firearms instructors who have expressed a concern and a reluctance for acting in their abilities to educate people in the safe and proper handling of firearms because of liability possibilities. It is a bill that impacts our society today, particularly in the state of Montana where many people enjoy hunting and shooting sports. Those of us who do, also accept responsibility and accountability for advancing the proper handling and safe use of those firearms by young people who would not necessarily receive that instruction from their homes, he said. There are a great number of qualified instructors who would volunteer their time and abilities to facilitate this goal, but because of the liability clause, they are reluctant to do so. It has been argued that their liability is limited, he said, but the vicarious liability of one of these instructors is a fact and anyone could sue them, take them to court, cost them a lot of money, even though they would probably be acquitted of the charge. He said he thought if society really cared about proper gun safety, and was less concerned with commercial exploitation of the law, we should pass this bill.

Gary S. Marbut, Missoula, represented the Montana Shooting Sports Association, Western Montana Fish and Game Association, the National Rifle Association of America, Gun Owners of America and the National Citizens' Committee for the Right the Keep and Bear Arms. He said that total membership of the groups he was representing was between 30,000 and 40,000 people in Montana.

He expressed concern about gun safety. The Montana Shooting Sports Association five years ago embarked upon a program to recruit and train instructors so they could have widespread gun safety training in Montana. A serious barrier was quickly found to exist, however, that people were unwilling to serve as instructors in that they perceived that their personal assets were exposed to liability should there be some kind of misadventure affecting one of the people they had trained. They are still hopeful of having that program if the legislature would be willing to give them what has been done for equestrian operations and ski areas, which he believed, is suitable public policy. Also, on the national scene he thought there was a move in the legal community and also among the gun people to use liability as a tool to fight gun ownership, the theory being that if you launch lawsuits and cost people lots of money, it will depress the need for the ownership of firearms. That has extended to suing gun instructors because someone has a misadventure with a gun. This measure was before the last session, he said, and was opposed by the Department of Fish, Wildlife and Parks. The reason for the opposition was the stipulation that instructors had to meet minimum standards which included one hour of live fire practice at the range. The bill was amended, but too late, he said. That requirement has been taken out of this proposal, he said, and he urged the committee's support of the bill.

A.M. (Bud) Elwell, representing the Montana Weapons Collectors' Society and the Northwest Arms Collectors, spoke in favor of the bill. He related similar complaints: the reluctance of instructors to go through the courts, tying up time, costing money and putting personal assets at risk. Safety is of the utmost concern to the people at the gun shows, he said.

Ralph Lloyd, representing himself, spoke in favor of the bill. He said he had been a hunter safety instructor for 30 years. He said he taught small groups and was nervous about instructing large groups or people he doesn't know.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers' Association, opposed SB 90. He read from written testimony.
[EXHIBIT 1]

Questions From Committee Members and Responses:

SENATOR HOLDEN asked **Mr. Hill** about a point of his handout. He asked if his organization is saying that they will not bring in an instructor because of what a student does wrong?

Mr. Hill replied in the negative. He said a gun instructor could be held liable under current law, but not simply for the acts of the students. An instructor might be liable for having the students in a live fire line shoot in the wrong direction, for

instance, or has a hangover and forgets the gun is loaded, resulting in a shooting. If the instructor's mistake is a cause of the injury or damage, then he would be liable. But, if he follows proper procedures and a kid goes off the deep end and shoots another kid, for example, he would not be liable.

SENATOR REINY JABS asked **Mr. Hill** about his remark that in Subsection 2, an instructor might be more liable.

Mr. Hill told the senator that it has to do with a change that has more problems than it solves. The 1993 bill had extensive language about what constitutes reasonable and contemporary standards for an instructor. That's been taken out, and now lines 19-21 say they have to maintain sufficient records and demonstrate that particular identified students have been instructed according to reasonable standards. He said it would raise the possibility of litigation. The previous bill defined what reasonable standards were, he said, this bill does not.

SENATOR DOHERTY asked **SENATOR BAER** if there had been one lawsuit in Montana filed on these grounds?

SENATOR BAER said he was not aware of any, but had not researched it.

SENATOR HALLIGAN asked **Mr. Marbut** why that criteria was left out of this bill.

Mr. Marbut said it was opposed by DFWP because it required the instructor to take the students to the range for a minimum of one hour of live fire instruction. The DFWP do not require their instructors to do that, and felt that their instructors might quit if faced with the possibility. Also, the trial lawyers had testified last session that those standards would increase liability, so they took them out this time.

SENATOR HOLDEN asked **Mr. Hill** if he would support lines 19, 20, and 21 entirely to become more comfortable?

Mr. Hill answered that they would not be comfortable with the bill even if they did strike the lines. There was no demonstrated need, he said, and he thought that subsection 2 would create problems, even from a proponents' perspective.

CHAIRMAN CRIPPEN asked **Mr. Marbut** about the record-keeping provision in Section 2. Should there be an injury, he said, and the instructor did not keep records, he would go to trial, even though everything he did in teaching was reasonable.

Mr. Marbut said he would be willing to strike that subsection, but thought it was a fair minimum. The Montana Shooting Sports Association requires class rosters, he said, as well as curriculum, that it was the standard in the industry. It would be simple for any instructor to meet those criteria, but if the

committee chose, he would strike them.

CHAIRMAN CRIPPEN asked **Mr. Hill** about his statement that no gun instructor was currently liable under Montana law. He asked for a specific code section that specifically states that.

Mr. Hill said his impression was that it was based on common law.

CHAIRMAN CRIPPEN thought that one of them was missing the point. The bill is before the fact, he said, before we even get to the question of liability, this bill refers to immunity. Immunity is before the fact, so you do have to make presumptions if you're going to grant immunity to a class of citizens.

Mr. Hill agreed with the chairman's point, but failed to see the distinction.

SENATOR JABS asked **Mr. Marbut** about skiers and other people having the immunity.

Mr. Marbut told the senator that this immunity has been granted in other sessions to equestrian operations and to ski areas and felt there was a public purpose for doing that. He thought there was an equally good reason for granting immunity to firearms' instructors.

Closing by Sponsor:

SENATOR BAER told the committee that this was not a legal evidentiary hearing and was perplexed about the legal fairies that had been put forth at this hearing. He was also disturbed by an inference or implication that people that support this bill are serving some special interest of their own, other than the promotion of safety in our society. If there was a self-interest served, he could just as well accuse the trial lawyers of trying to do away with a lot of business that would come to them, which he was not doing, he said. He urged the committee to consider the safety ramifications of the bill. Whether or not we indemnify firearms safety instructors, he said, they still would be subject to being brought before judiciary in a lawsuit, but this would strengthen his position to where he would not be apprehensive or reluctant to serve as an instructor to promote the proper handling of firearms.

EXECUTIVE ACTION ON SJR 3

Motion: **SENATOR AL BISHOP** MOVED TO ADOPT THE AMENDMENTS AS CONTAINED IN EXHIBIT 2.

Discussion: **SENATOR SUE BARTLETT** asked if both sets of amendments would be included in the motion. **Valencia Lane** instructed the committee that she had rolled **SENATOR BENEDICT'S**

two sets of amendments into one, labeled sj000303.av1.

SENATOR BARTLETT said that the requirement to send copies to all the states seemed to add unnecessary expense since they were urging the U.S. House and Senate to pay attention. By adding 50 other states, it added postage costs, she said.

CHAIRMAN CRIPPEN said that since this is a nationwide approach to the tenth amendment, he thought that was why they should put other states on notice. They had in the past sent joint resolutions to other states, he said.

SENATOR BARTLETT said she had been successful in asking other sponsors of resolutions to decrease the number of copies littering the country.

Vote: The motion carried unanimously on an oral vote.

Discussion: **SENATOR DOHERTY** explained the second amendment proposed.

Motion: **SENATOR DOHERTY** MOVED TO ADOPT THE AMENDMENTS AS CONTAINED IN EXHIBIT 3.

Discussion: **SENATOR BAER** in response to **CHAIRMAN CRIPPEN'S** request for opinion answered that he had no problem with the amendment. The Constitution was created by the people, he said. He said he would support **SENATOR DOHERTY'S** amendment.

SENATOR BARTLETT read from amendment 10: "the powers not delegated to the United State by the Constitution nor prohibited to the states are reserved to the states' respectively or to the people."

Vote: The motion carried unanimously on an oral vote.

Motion: **SENATOR BAER** MOVED SJR 3 DO PASS AS AMENDED.

Discussion: **SENATOR DOHERTY** said that if this were a national movement, he wanted to know what outfit they were signing up with before he signed on.

CHAIRMAN CRIPPEN explained that **SENATOR DOHERTY'S** amendment phrased it as concisely as anything: the people, he said.

SENATOR DOHERTY conceded that it was a nationwide movement, but explained that of a bunch of people on the west side of Great Falls, not a single one raised the issue with him.

SENATOR BARTLETT raised some points that came from the court case that is cited in this resolution. She quoted, "the constitution permits both the federal government and the states to enact legislation regarding the disposal of low-level radioactive waste," and "the Constitution enables the federal government to

preempt state regulation contrary to federal interest and permits the federal government to hold out incentives to the states as a means of encouraging them to adopt suggested regulatory schemes." In another section, she said it talked about, "the residents of the state retain the ultimate decision as to whether or not the states will comply. If a states citizens view federal policy as sufficiently contrary to local interest, they may elect to decline a federal grant. If states' residents would prefer their government to devote its attention and resources to problems other than those deemed important by congress, they may choose to have the federal government rather than the state bear the expense of a federally mandated regulatory program and they may continue to supplement that program to the extent that state law is not preempted, state officials under this scheme remain accountable to the people." Clearly, the case law history and the interpretations of the 10th amendment and the relative powers of the federal and state governments have made it clear that the states retain an option in almost all instances, the one area the federal law struck down that the court decision cited in the resolution was a place where the congress had overstepped the boundaries of the 10th amendment and was found to be unconstitutional, but the bulk of the statute and its scheme for encouraging the states to comply with federal interests, was upheld as fully constitutional. So, she said, she saw a tempest in a teapot in trying to point fingers at the federal government. If, in fact, we disagree with something the federal government is trying to encourage, then it is at the state level and specifically based on the case law and the state legislature that we choose not to go along.

CHAIRMAN CRIPPEN gave his explanation of why the 10th amendment was enacted in the first place. It was a simple matter of fear, he said. They had been involved in a bureaucracy of a different nature and they feared a centralized government, and that fear prompted the drafting of the 10th amendment, clearly stating that those powers not delegated to the federal government shall be retained by the states and its people.

SENATOR DOHERTY said that although the resolution speaks, "many federal mandates are directly in violation of the 10th amendment, no specifics are cited, he said. He quoted, "the states are demonstrably treated as agents of the federal government." He did not know if that was true, but if they were, it was only because the states acquiesced in that treatment, he said. In the case cited by **SENATOR BENEDICT**, the Resource Conservation Recovery Act (RCRA), there were two out of the three aspects of that lawsuit that were upheld as fully constitutional, he said.

{Tape: Ran Out, Changed. Tape 2; Side A; Counter: 00}

In the cited case of N.Y. vs. the U.S., he said, the power of the federal government was upheld in 66% of the lawsuit. He thought they needed to be concerned about the centralized power of the federal government, however, he was also concerned that the

banner of states' rights has been used as a banner to hide many scurrilous activities in our country's past. He was willing to march behind the banner of states' rights, but he was not willing to march behind some of the scurrilous activities, he said.

CHAIRMAN CRIPPEN told **SENATOR DOHERTY** that if he saw any scurrilous activities running around, he would trust to him to notify the committee immediately.

Vote: The **MOTION CARRIED** 9 to 2 on a roll call vote.

EXECUTIVE ACTION ON SB 60

Discussion: **CHAIRMAN CRIPPEN** explained that his bill, on behalf of the Montana Sheriffs' and Peace Officers, at first addressed all their concerns, but later needed an amendment. They made many changes to existing law, and they found many of the items they could live with as is.

Valencia Lane explained that the amendment put Subsection 2 back to the original language. The only changes not taken from Subsection 2 were Legislative Council clean-up, she said, while substantive changes in Subsection 2 were taken out and replaced with existing language.

Motion: **CHAIRMAN CRIPPEN** MOVED TO ADOPT AMENDMENTS AS CONTAINED IN EXHIBIT 4.

Vote: The **MOTION PASSED UNANIMOUSLY** by oral vote.

Motion: **SENATOR BISHOP** MOVED THAT SB 60 DO PASS AS AMENDED.

Discussion: **SENATOR GROSFIELD** asked the chairman what was meant by tenure rights in a sheriffs' office. He did not see it specifically spelled out in the statutes and wondered if it was subject to some kind of bargaining agreement.

CHAIRMAN CRIPPEN said it was existing law that deals with police departments. Through bargaining, their rights under contract, the right to be notified if they're to be RIF'd, would have to be respected. This bill would just put the deputies in the same position. It is a matter of fairness, and any time you consolidate, there is always worry about what will happen. These worries mushroom and it ultimately impedes the proposal, he said.

SENATOR GROSFIELD questioned tenure rights, if police officers and deputies come into a consolidation together with two different sets of rights, and they are guaranteed the same rights coming in, but that doesn't mean they would be treated the same.

CHAIRMAN CRIPPEN said that was true.

SENATOR GROSFIELD question that the net effect would be to require whoever has the lesser tenure rights to go to the higher tenure rights. Under current law, he understood that they would have to go up to the higher rights involved.

CHAIRMAN CRIPPEN did not agree, because he said that they had the same as what they went in with. But without this law, he said, the deputy sheriffs don't have any tenure rights.

SENATOR GROSFIELD In a hypothetical case of the consolidation of Yellowstone County, he said, you could not treat the deputies and police officers the same, because their contracts would have been different coming into the consolidation. So the higher contract would have to be honored for everyone.

CHAIRMAN CRIPPEN said that might be the natural effect, but that this bill just says that they can't deal with the deputies with less than what they had coming in.

SENATOR BISHOP could foresee a third set of tenure rights. As the first police officers and deputies phase out, there would be one unified contract with the entire force then, too.

CHAIRMAN CRIPPEN said that he thought in the Butte-Silver Bow case, they had a single enforcement agency, they had a single set of tenure rights, done through the bargaining process. This bill would protect that process.

SENATOR NELSON said the purpose of consolidation is a smaller department. Under this bill, how would you reduce the force?

CHAIRMAN CRIPPEN thought that reductions would be part of the tenure rights. This bill just says that you have to take into account the deputy sheriffs, too. Now, they would RIF the deputies and the question would be moot.

SENATOR NELSON said that perhaps they were not looking at consolidation as a way of reducing, but merely efficiency.

CHAIRMAN CRIPPEN hoped that would be the main reason. Right now, from an attrition standpoint though, he said, it would not be fair.

Kathy McGowan said the point was not to prohibit deputy sheriffs from being RIF'd alone, but basically it would bring the police officers and deputy sheriffs to an even starting point. If a new government decided on the reduction, they would take equally from the sheriffs side and the police side, considering seniority or whatever they consider.

SENATOR GROSFIELD asked what job tenure rights meant.

Valencia Lake said that it was left in there after the amendments to reflect the title requirements.

Kathy McGowan said she had read "job tenure rights" to read "job rights", the right to the job, precluding reductions, etc.

Valencia Lane said it was possible to leave the word "tenure" out.

CHAIRMAN CRIPPEN said that in Line 14, it was present law. Tenure is an all-encompassing description and deals with the rights as a police officer. They may deal with time-in-service as well as other rights. He had no trouble keeping it in.

Vote: Motion that SB 60 DO PASS AS AMENDED CARRIED 10-1 on an oral vote.

EXECUTIVE ACTION ON SB 65

Motion: SENATOR DOHERTY MOVED TO ACCEPT THE AMENDMENT AS CONTAINED IN EXHIBIT 5.

Discussion: SENATOR GROSFIELD asked if an out-of-state attorney had a direct economic interest, this bill would not define them?

SENATOR DOHERTY said that it would give the courts guidance about what would be a special circumstance.

SENATOR GROSFIELD used Micron as an example, if they had a lawyer that did their business.

SENATOR DOHERTY said if the lawyer was an officer of that company, he would have to apply, but the court would look at that and in a special circumstance would let him in.

SENATOR NELSON said in her area, many people used North Dakota attorneys. Would it affect them?

SENATOR DOHERTY said yes, it would. He said after a certain attorney had been before a judge ten times, the judge might decide it was time for the attorney to take the bar exam.

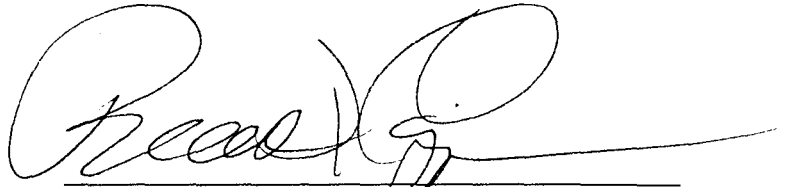
Vote: The MOTION PASSED UNANIMOUSLY on an oral vote.

Motion: SENATOR DOHERTY MOVED THAT SB 65 DO PASS AS AMENDED.

Vote: The MOTION PASSED 9-2 on a roll call vote.

ADJOURNMENT

Adjournment: CHAIRMAN CRIPPEN adjourned the meeting at
12:05 p.m.



BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

Insert: "the police"

10. Page 1, line 26.

Following: "police"

Strike: "and sheriff's"

Following: "officers"

Strike: "and deputy"

11. Page 1, line 27.

Strike: "sheriffs"

Following: "the"

Strike: "consolidated county"

12. Page 1, line 28.

Following: "police"

Strike: "and sheriff's"

Following: "the"

Strike: "consolidated county"

13. Page 1, line 29.

Following: "~~officer~~"

Strike: "law"

14. Page 1, line 30.

Strike: "enforcement"

Insert: "police officer"

15. Page 2, line 1.

Following: "~~police~~"

Strike: "law enforcement"

Insert: "police"

16. Page 2, line 2.

Following: "in"

Strike: "counties and"

-END-

SENATE STANDING COMMITTEE REPORT

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January 17, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 60 (first reading copy -- white), respectfully report that SB 60 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.

Following: "THE"

Insert: "JOB TENURE"

2. Page 1, line 16.

Strike: "or deputy sheriff"

Following: "police"

Strike: "law enforcement"

Insert: "police"

3. Page 1, line 18.

Following: "police"

Strike: "law enforcement"

Insert: "police"

Strike: "the county or"

4. Page 1, line 19.

Strike: "in"

5. Page 1, line 20.

Strike: "or sheriff's"

6. Page 1, line 21.

Strike: "consolidated county"

7. Page 1, line 22.

Following: "officer"

Strike: "or deputy sheriff"

Following: "police"

Strike: "or sheriff's"



8. Page 1, line 23.

Strike: "the county or in"

9. Page 1, lines 24 and 25.

Following: "~~such police~~" on line 24

Strike: remainder of line 24 through "enforcement" on line 25

 Amd. Coord.
 Sec. of Senate

141348SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 17, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJR 3 (first reading copy -- white), respectfully report that SJR 3 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Strike: "URGING"

Insert: "DEMANDING THAT"

Following: "CONGRESS"

Strike: "TO"

2. Page 1, line 12.

Following: "by the"

Strike: "states specifically"

Insert: "people"

Following: "be"

Strike: "an"

Insert: "their"

Following: "agent"

Strike: "of the states"

3. Page 1, line 30.

Following: "as"

Strike: "a request"

Insert: "notice and demand"

4. Page 2, line 2.

Following: "to"

Insert: ": (1)"


5. Page 2, line 4.

Following: "Delegation"

Insert: "; and

(2) the presiding officer of the
Nebraska Legislature and the Speaker of the
House and the President of the Senate of each
other state"

-END-


Amd. Coord.
Sec. of Senate

141334SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-17-95 BILL NO. SJR 3 NUMBER 1

MOTION: _____

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT		✓
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		✓
SHARON ESTRADA		
LORENTS GROSFIELD		
MIKE HALLIGAN	✓	
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON	✓	

SEN:1995

wp:rlclvote.man

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 17, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 65 (first reading copy -- white), respectfully report that SB 65 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 22.

Following: "appear"

Insert: "or otherwise seeks to appear"

2. Page 2, line 3.

Following: "application."

Insert: "Special circumstances include but are not limited to situations in which an out-of-state attorney has a direct and substantial economic interest in an entity that is a party to a matter before a Montana court or is a director of or an officer, shareholder, or partner in the entity."

3. Page 2, line 7.

Following: first "application"

Strike: "and of the notice of hearing of the application"

Following: "cause"

Insert: "for which permission to appear is sought"

4. Page 2, line 22.

Strike: "5th"

Insert: "10th"

5. Page 2, line 27.

Following: "the"

Insert: "district court fund or, if no district court fund exists, to the"

Following: "fund"

Strike: "to be used"

Following: "for"

Insert: "district"

Following: "court"

Strike: "expenses"

Insert: "operations"

6. Page 3, lines 7 through 9.

Strike: subsection (f) in its entirety




Amd. Coord.
Sec. of Senate

141357SC.SPV

-END-

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-17-95 BILL NO. SB 60 NUMBER 2

MOTION: SENATOR BISHOP MOVED THAT SB 60 DO
PASS AS AMENDED.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
LORENTS GROSFIELD		✓
MIKE HALLIGAN	✓	
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON	✓	

DATE 1-17-95 BILL NO. SB 65 NUMBER 3

MOTION: SENATOR DOWNEY Moved That SB 65 DO PASS.

SEN:1995
wp:rlclvote.man

90-1

Directors:

Wade Dahood
 Director Emeritus
 D. Beck
 Elizabeth A. Best
 Michael D. Cok
 Mark S. Connell
 Michael W. Cotter
 Patricia O. Cotter
 Karl J. Englund
 Robert S. Fain, Jr.
 Victor R. Halverson, Jr.
 Gene R. Jarussi
 Peter M. Meloy
 John M. Morrison
 Gregory S. Munro
 David R. Paoli
 Michael E. Wheat

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

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 1
 DATE 1-17-95
 BILL NO. SB 90

Officers:

Gregory S. Munro
 President
 Michael E. Wheat
 President-Elect
 Gene R. Jarussi
 Vice President
 John M. Morrison
 Secretary-Treasurer
 William A. Rossbach
 Governor
 Paul M. Warren
 Governor

January 17, 1995

Sen. Bruce Crippen, Chair
 Senate Judiciary Committee
 Room 325, State Capitol
 Helena, MT 59620

RE: Senate Bill 90

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 90, which would insulate firearms safety instructors from accountability for their mistakes.

Background. Senate Bill 90 closely resembles a bill which came before the 1993 Legislature, SB 224. The Senate Judiciary Committee tabled that bill after hearing testimony from the Montana Department of Fish, Wildlife and Parks (FWP) that the state agency had experienced no difficulty in attracting gun-safety instructors because of fear of liability.

Senate Bill 90. MTLA opposes Senate Bill 90 because:

- *No gun-safety instructor is legally liable under current Montana law for the acts or omissions of their students.* Instructors, like all other Montana citizens, are only liable for their own acts or omissions. The carelessness of a student is not automatically attributable to the instructor.
- Senate Bill 90 immunizes gun-safety instructors in circumstances which have *nothing to do with gun-safety instruction*. For example, under Senate Bill 90, an instructor can evade responsibility for carelessly allowing a student to drive a vehicle.

- Unlike the bill before the 1993 Legislature, SB 90 applies only to private gun-safety instructors, not to those who happen to be "employed by a governmental entity." Ironically, this distinction between instructors ignores the rigid requirements for FWP-sanctioned gun-safety courses and instead immunizes instructors who (1) need not meet such criteria and/or (2) offer gun-safety instruction for profit rather than as volunteers.

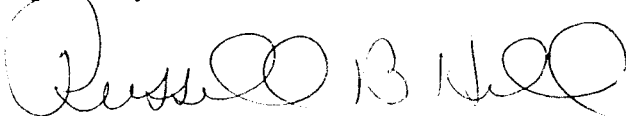
• Subsection (2) of SB 90, at lines 19-21, essentially repeats a provision in the bill which came before the 1993 Legislature. By conditioning immunity upon an instructor's maintenance of "sufficient records to demonstrate that particular identified students have been instructed according to reasonable standards," Senate Bill 90 will encourage litigation over issues (such as sufficiency of records, reasonable standards of instruction, and the relevance of "particular identified students") which have little or nothing to do with an instructor's fault in a specific accident.

Moreover, in the 1993 bill, the requirement that instructors "maintain sufficient records" clearly referred to a definition section in the earlier bill outlining criteria for reasonable instruction (i.e., minimum of 5 hours of classroom instruction in specified topics, minimum of 1 hour of live-fire shooting practice, etc.). *Senate Bill 90, however, contains no such criteria.* Consequently, subsection (2) operates very differently in the 1995 bill and may, in fact, subject gun-safety instructors to increased liability.

Finally, MTLA challenges two assumptions in Senate Bill 90: first, that regardless of legal realities, the mere "perception of potential exposure to liability for the conduct, acts, or omissions of students" is sufficient justification for granting special legislative favors to private gun-safety instructors; second, that statutory immunity is needed to "improve the quality and availability of firearms safety instruction in Montana."

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's support for Senate Bill 7.

Respectfully,



Russell B. Hill
Executive Director

2

Amendments to Senate Joint Resolution No. 3

First Reading Copy (white)

SENATE JUDICIARY COMMITTEE

Requested by Senator Benedict
For the Committee on Judiciary

EXHIBIT NO. 2

DATE 1-17-95

Prepared by Valencia Lane
(as previously prepared by Greg Petesch)
January 11, 1995

SR# NO. 5123

1. Title, line 5.

Strike: "URGING"

Insert: "DEMANDING THAT"

Following: "CONGRESS"

Strike: "TO"

2. Page 1, line 30.

Following: "as"

Strike: "a request"

Insert: "notice and demand"

3. Page 2, line 2.

Following: "to"

Insert: ": (1) "

4. Page 2, line 4.

Following: "Delegation"

Insert: "; and

(2) the presiding officer of the
Nebraska Legislature and the Speaker of the
House and the President of the Senate of each
other state"

Amendments to Senate Joint Resolution No. 3
First Reading Copy (white)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
January 11, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 1-17-95

BILL NO. SJR 3

1. Page 1, line 12.
Following: "by the"
Strike: "states specifically"
Insert: "people"
Following: "be"
Strike: "an"
Insert: "their"
Following: "agent"
Strike: "of the states"

SENATE JOINT RESOLUTION NO. 3

INTRODUCED BY BENEDICT

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ^{DEMANDING THAT} ~~URGING~~ CONGRESS TO RECOGNIZE STATES' RIGHTS UNDER THE 10TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

WHEREAS, the 10th amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people"; and

WHEREAS, the scope of power defined by the 10th amendment means that the federal government was created by the ~~states specifically~~ ^{People} to be ~~an agent of the states~~ ^{their}; and (Doherty)

WHEREAS, today, in 1995, the states are demonstrably treated as agents of the federal government; and

WHEREAS, many federal mandates are directly in violation of the 10th amendment; and

WHEREAS, the United States Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and

WHEREAS, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the State of Montana claim sovereignty under the 10th amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States.

(2) That this resolution serve as notice and demand to the federal government, as our agent, to cease and desist, effective immediately, imposing mandates that are beyond the scope of its constitutionally delegated powers.

(3) That this resolution serve as a ^{notice and demand} ~~request~~ to the federal government to review existing mandates

1 that usurp state sovereignty and to repeal those mandates.

2 BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the
3 President of the United States, the Speaker of the United States House of Representatives, the President
4 of the United States Senate, and the members of Montana's Congressional Delegation.

5 -END-

: (1)
and
(2) the presiding
offices of the Nebraska
Legislature and the
President of the Senate
of each other state

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. ~~4~~

DATE 1-17-95

BILL NO. SB60

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 1-17-95

BILL NO. SB60

Amendments to Senate Bill No. 60
First Reading Copy

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
January 16, 1995

1. Title, line 4.

Following: "THE"

Insert: "JOB TENURE"

2. Page 1, line 16.

Strike: "or deputy sheriff"

Following: "police"

Strike: "law enforcement"

Insert: "police"

3. Page 1, line 18.

Following: "police"

Strike: "law enforcement"

Insert: "police"

Strike: "the county or"

4. Page 1, line 19.

Strike: "in"

5. Page 1, line 20.

Strike: "or sheriff's"

6. Page 1, line 21.

Strike: "consolidated county"

7. Page 1, line 22.

Following: "officer"

Strike: "or deputy sheriff"

Following: "police"

Strike: "or sheriff's"

8. Page 1, line 23.

Strike: "the county or in"

9. Page 1, lines 24 and 25.

Following: "such police" on line 24

Strike: remainder of line 24 through "enforcement" on line 25

Insert: "the police"

10. Page 1, line 26.

Following: "police"

Strike: "and sheriff's"

Following: "officers"

Strike: "and deputy"

11. Page 1, line 27.

Strike: "sheriffs"
Following: "the"
Strike: "consolidated county"

12. Page 1, line 28.
Following: "police"
Strike: "and sheriff's"
Following: "the"
Strike: "consolidated county"

13. Page 1, line 29.
Following: "~~officer~~"
Strike: "law"

14. Page 1, line 30.
Strike: "enforcement"
Insert: "police officer"

15. Page 2, line 1.
Following: "~~police~~"
Strike: "law enforcement"
Insert: "police"

16. Page 2, line 2.
Following: "in"
Strike: "counties and"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. ~~6567~~

DATE 1-17-95

FILE NO. 5865

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 1-17-95

FILE NO. 5865

Amendments to Senate Bill No. 65
First Reading Copy

Requested by Senator Doherty & Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
January 17, 1995

1. Page 1, line 22.

Following: "appear"

Insert: "or otherwise seeks to appear"

2. Page 2, line 3.

Following: "application."

Insert: "Special circumstances include but are not limited to situations in which an out-of-state attorney has a direct and substantial economic interest in an entity that is a party to a matter before a Montana court or is a director of or an officer, shareholder, or partner in the entity."

3. Page 2, line 7.

Following: first "application"

Strike: "and of the notice of hearing of the application"

Following: "cause"

Insert: "for which permission to appear is sought"

4. Page 2, line 22.

Strike: "5th"

Insert: "10th"

5. Page 2, line 27.

Following: "the"

Insert: "district court fund or, if no district court fund exists, to the"

Following: "fund"

Strike: "to be used"

Following: "for"

Insert: "district"

Following: "court"

Strike: "expenses"

Insert: "operations"

6. Page 3, lines 7 through 9.

Strike: subsection (f) in its entirety

SENATE BILL NO. 65
 INTRODUCED BY Doherty Kelly

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN ATTORNEY WHO IS NOT LICENSED IN MONTANA TO FILE AN APPLICATION AND PAY A FEE TO MAKE AN APPEARANCE IN A DISTRICT COURT OR THE SUPREME COURT IN MONTANA; PROVIDING FOR DISTRIBUTION OF THE FEE; REQUIRING THE CLERK OF THE SUPREME COURT TO MAKE A REPORT OF THE APPLICATIONS; AND AMENDING SECTION 37-61-208, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-61-208, MCA, is amended to read:

"37-61-208. Admission of attorneys from other states -- eligibility -- application -- fee -- discipline.

(1) ~~Every~~ A citizen of the United States or ~~person~~ resident of this state who has ~~bona fide~~ declared his or her ~~the~~ intention to become a citizen in the manner required by law and who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of ~~his or her the~~ license and satisfactory evidence of good moral character, ~~but the~~ The court may examine the applicant as to ~~his or her the~~ the applicant's qualifications.

(2) (a) ~~However, any~~ A person who is ~~not a nonresident of~~ admitted as an attorney in the state of Montana and, who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country, and who has been retained to appear in a particular cause pending in a district court or the supreme court of this state may, upon motion of any attorney admitted to practice in the courts of this state, in the discretion of the court, be permitted by the court upon written application to appear as attorney counsel pro hac vice in any an action or proceeding in such the court if an attorney admitted to practice in the courts of this state is associated as attorney of record, and A counsel pro hac vice shall, when so permitted, be is entitled to the same rights and privileges and ~~be is~~ subject to the same duties and obligations with respect to ~~such the~~ actions or proceedings as an attorney duly admitted to practice in the courts of this state. A person is not eligible to appear as counsel pro hac vice under this section if the person is a resident of Montana, is regularly employed in Montana, or is regularly engaged

(b) Each individual wishing to appear as counsel pro hac vice in a court in this state shall file with the court in which permission is sought and, concurrently, with the clerk of the supreme court if application is made to a district court, a verified application, together with proof of service by mail of a copy of the application and of the notice of hearing of the application, upon all parties who have appeared in the cause. The application and accompanying fee must be submitted 15 days prior to any appearance in the court, and the fee may not be waived absent clearly extraordinary circumstances. The application must state:

(vi) the name, address, and telephone number of the active member of the state bar of Montana
the attorney of record.

(d) The clerk of the supreme court shall annually produce a report of applications made under this section and shall provide a copy of the report to the office of the state bar of Montana and the commission on practice and make it available to the public, upon request.

(e) A person admitted to appear as counsel pro hac vice under this section is subject to the jurisdiction of the Montana courts with respect to Montana law governing the conduct of attorneys to the same extent as an attorney admitted to practice in the courts of this state. The person shall study and comply with the standards of professional conduct required of attorneys admitted to practice in Montana and is subject to the disciplinary jurisdiction of the commission on practice with respect to any acts performed in the course of the appearance.

~~(f) This section does not preclude the supreme court from permitting argument in a particular case from a person who is not admitted to practice in Montana, who is licensed to practice in another jurisdiction, and who possesses special expertise in the particular field affected by the proceeding."~~

-END-

DATE 1-17-95

SENATE COMMITTEE ON State Judiciary

BILLS BEING HEARD TODAY: SB-88- SB-90

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Christine Shupe	Sen. Holden ^{GACE}	88	X	
Quake Lundbeck	Sen. Holden ^{GACE}	88	X	
Bobbie Thomson	Sen. Holden ^{GACE}	88	X	
DAVID J. THOMPSON JR	Sen. Holden ^{GACE}	88	X	
GARY S. MARBUT	MSSA, NRA, GOA, CCRKBA, WMFGA	90	X	
MARIAN STEVENSON	Young stockgrowers	88		
Lon + Vicki Kunkauf, Terry	Young Stockgrowers			
Craig + Leslie Iverson	Young Stockgrowers			
Sharon Stevenson	young stockgrower	88	X	
Clint + Adana Stevenson		88	X	
Russell B Hill	MTLA	90		✓
A.M. (Bud) Elwell	WCSM / NWAC	SB 90	✓	
Kate Cholewa	MT Nonres Lobby	SB 88	✓	
Ralph Lloyd	Self	SB 90	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY