

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BOB CLARK**, on January 18, 1995, at  
8:05 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 Boharski  
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 69, HB 135  
Executive Action: NONE

{Tape: 1; Side: A}

HEARING ON HB 69

Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 80, introduced HB 69 which includes in its intent the notification of victims of crime of an escape or release of an offender; and if it doesn't jeopardize a pending investigation, it deals with the release of information about the case. It is also intends to cover restitution to a victim as well as to provide protection from future harm.

Proponents' Testimony:

Joe Mazurek, Attorney General, said that while there is agreement that crime victims should be an integral part of the criminal justice system, they are often overlooked in the technicalities and procedures of the criminal process. He outlined the various incidents and history of working with the current law which have contributed to the drafting of HB 69 which seeks to remedy the problems. He distributed EXHIBIT 1 which explained the Department of Justice position on this bill. He pointed out that the Attorney General is directed to assume initial duties under this statute and is prepared to do so within current resources.

He presented proposed amendments prepared by Beth Baker to the committee and discussed the concepts of the amendments. EXHIBIT 2

Gene Kiser, Montana Board of Crime Control (MBCC), submitted his testimony in support of HB 69. He outlined MBCC's administrative responsibilities with the passage of HB 69. EXHIBIT 3

{Tape: 1; Side: A; Approx. Counter: 16.7.}

John Connor, Montana County Attorney's Association, appeared in support of HB 69. He reviewed this bill while it was being drafted to offer perspectives from the standpoint of a criminal prosecutor which relate to protecting the integrity of the case. He believes there are adequate protections provided in the bill to maintain the integrity of a case being prosecuted.

Dave Ohler, Legal Counsel, Department of Corrections and Human Services (DCHS), spoke as a proponent representing DCHS. While DCHS recognizes there a number of responsibilities added to the department by this bill, it is willing and able to assume those responsibilities.

Suzanne Hall spoke in favor of HB 69. She is a victim of a crime committed in Gallatin County. She gave a background of her experience as a crime victim and her frustration and fear in dealing unsuccessfully with the legal system while she was being harassed and threatened by another person. She felt that it

ultimately was her knowledge of the law and subsequent pressure brought to bear on the legal system that changed the circumstances and prosecution of her case. She felt there should be an advocate within the system for crime victims. She felt that essential elements to this legislation are the notification of a defendant's release from jail including the timing of such release, keeping victim information confidential from the defendant, and the victim having access to some information about the defendant and the proceedings as well as the reasons for some requirements (such as blood samples for DNA testing) of the victims. She felt that the Attorney General should also provide information about rights and services for crime victims just as defendants are informed of their rights. She wanted a victim impact statement at the time of sentencing and that this time be restricted from final questioning of the victim. She felt that misdemeanor crimes should be covered under this statute.

**Pari LeCoure, President, Missoula Neighborhood Network**, stated that she was a victim of crime. She described the circumstances of two crimes which involved her as a family member. She also discussed the emotional and economic impact of crimes on a family. She presented **EXHIBITS 4 - 7** as further testimony.

*{Tape: 1; Side: A; Approx. Counter: 38.6}*

**Marion Stevenson** presented testimony of her experience as a victim of crime in Hobson, Montana, in support of HB 69.  
**EXHIBIT 8**

**Matthew Dale, Executive Director, Friendship Center, Helena, Montana**, shared the increase in numbers of battered women and their children served by the Friendship Center in the past year. He said that the Center believes this is a good bill because it attempts to replace the secret and tightly controlled environment a victim had been living in with a more open communication and sharing of information with the victim. He said that "knowledge is power" and they want to provide the victim all the power possible. An additional welcomed change is the expansion of the Victim Assistance Program provided under this bill.

**David Hemion, Mental Health Association**, spoke in support of HB 69, specifically that portion of the bill which improves coverage for mental health counseling and therapy.

**Opponents' Testimony:**

None.

**Informational Testimony:**

**EXHIBITS 9, 10, and 11** are submitted as informational testimony.

**Questions From Committee Members and Responses:**

**REP. BRAD MOLNAR** asked if filing bankruptcy would discharge a restitution order.

**Mr. Mazurek** said that he believed it would, but he would like to look that up specifically and get the answer to the committee.

**REP. MOLNAR** said that these were not juveniles, but they would be attempting to allow them to discharge restitution orders through community service which would not retribute the victim. He asked if it would make sense to strike community service from the bill since with this amendment there would be a lifetime to collect.

**Mr. Mazurek** said that the reason for that option is that the court will always be required to look at the person's ability to pay. He said the 1991 legislature added an amendment which provided that victim's provisions also applies to juveniles.

**REP. MOLNAR** gave the example of a person who completed their time of imprisonment and community service following release and then wins the lottery. He asked if the victim could come back on that.

**Mr. Mazurek** said that the court would have to take that into account and that is something which can be considered. Under the bill it is required to be considered at the time of probation or parole. The court would have to find that there is no possibility that this person has the capability of earning money at any time in their lifetime before it would absolutely rule out restitution. This bill requires restitution and for the court to consider the ability to pay now or in the future.

**REP. MOLNAR** asked if the bill is enforceable if the criminal moves out of state.

**Mr. Mazurek** said, "Yes, in this respect; any sentencing order or an order of restitution which the effect of a judgment is entitled to full faith and credit beyond the boundaries of this state."

**REP. DEB KOTTEL** directed the committee's and sponsor's attention to page 23 of the bill, line 3, section 31 (46-24-201) and wondered what the intent was in including the defendant in that line regarding information about the case since this section deals with services to the victim. She asked if the defendant would have the right to ask about any records of treatment, for instance, or other confidential information.

**Beth Baker, Staff Attorney, Department of Justice,** said that this section is about information that the Attorney General is going to give to the victim. It requires that the Attorney General advise the victim of what information the defendant is going to get during the case as well. The defendant will receive witness

statements. Regarding the bankruptcy issue, she cited a case in 1986, Kelly vs Robinson decided by the U. S. Supreme Court, which held that in a Chapter 7 bankruptcy, restitution was not a dischargeable debt, because of a provision in the bankruptcy code.

**REP. KOTTEL** cited 46-24-201 (1), MCA, which ensures that a victim of crime receives emergency social benefits, and asked if that provision would be carried out at the expense of the state and if the county does not have those types of services, what obligation that would put on law enforcement to provide them.

**Ms. Baker** replied that the only change being made in current law is editorial and that section refers only to emergency medical services requiring law enforcement to get them to a hospital. She did not think that it obligated the state to pay their expenses other than what they might be entitled to under the Victims Compensation Program.

**REP. KOTTEL** pointed out that the bill uses the word, "accountable" on page 13, lines 6 and 7, and also on page 24. She wanted to know if this was being used in a criminally accountable sense or a broader sense of civil accountability.

**Ms. Baker** explained the definition of accountability in title 45 is criminal as it is defined under 45-1-301, MCA.

**REP. KOTTEL** discussed the extent of determination of compensatory damages in terms of values of intangible issues and wondered if the intent was to only consider out-of-pocket damages, where the limits were.

**Ms. Baker** answered that what is included in the law in regard to restitution is addressed in section 15 of the bill on page 12. It gets confusing since principles of criminal and civil law are being mixed. She went on to explain this section. The bill seeks to guard against the restitution hearing turning into a full civil trial. Therefore, loss is limited to special and not general damages and those damages are clarified in this section.

**REP. KOTTEL** said that she noticed that included in the bill is the right for insurance companies to subrogate claims against what the victim would receive. She asked if her interpretation of what that would mean was correct.

**Ms. Baker** said that she believed that the insurance company is only entitled to subrogation once the victim had recovered all of the losses. She said that was addressed in other sections of the law.

**REP. KOTTEL** cited 46-18-201 (2), MCA, on page 8, lines 22-25 and on 46-18-241, MCA, pages 22 and 25 as seeming to be contemporaneous decisions by the court at the time the restitution order is made. She wanted to know if at a later time, when the financial

circumstances of the defendant had changed, would the court have the ability to change the restitution order into community service or to waive any part of the order.

**Ms. Baker** said that there are provisions in the law for waiver or modification of restitution if the defendant becomes unable to pay. Language is inserted in the bill to cover this possibility. At the time of sentencing, the court must consider the ability to pay, but the court has some latitude in determining the future ability.

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**REP. DUANE GRIMES** in response to testimony by **Ms. Hall**, said that he did not see an opportunity for final questioning by the defense at rebuttal.

**Mr. Connor** said that if a victim wishes to be heard at the time of final sentencing, there isn't any uniform methodology by which that is presented. Normally, when the victim just makes a statement to the court, there isn't an examination of the victim by either the prosecution or the defense. If the person testifies as a witness, cross examination is allowed. These are subjects the prosecution has an obligation to discuss with the victim beforehand and presents the options and ramifications of taking a particular course of action. Currently the law contemplates allowing the victim to present the information in whatever form he or she wishes to the court and give the defendant an opportunity to respond or rebut that information.

**REP. GRIMES** asked if **Mr. Connor's** assessment would result in potential further appeals if there were not an opportunity given for a cross examination.

**Mr. Connor** replied that as a prosecutor he is always concerned about eliminating possible appeal issues. He believes that by giving everyone a chance to be heard who wants to be future problems are eliminated.

**REP. GRIMES** referred to the section on page 20 which deals with how restitution affects parole. He wanted to know if the restitution ordered by a court be considered in a prisoner's sentence and if so, would the failure of that restitution allow for earlier and more frequent paroles.

**Ms. Baker** directed the committee to page 17, 46-23-215, MCA, and also to section 28 of the bill, and she explained how the language in these sections addresses these concerns.

**REP. SHIELL ANDERSON** pointed out that page 6, section 8 of the bill addresses **Ms. Stevenson's** concern about the court discussing the contents of the pre-sentencing report with the victim of the offense. He asked if victim is defined anywhere in the code which would include or exclude family members of the victim of

the crime.

**Ms. Baker** said that this is one of the sections being addressed and broadened by their amendments 3 and 4. Later on page 12 of the bill, line 30, victim is defined and would include family members. Under general principles of statutory construction, those definitions can be applied elsewhere in the code unless they are defined differently somewhere else.

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**REP. KOTTEL** referred to number 11 of the fiscal note and how it would impact counties costs for workers compensation insurance covering everyone who does community service.

**Mr. Connor** said that he was not competent to talk about the fiscal impact of community service. Community service programs are not something new to this bill and the fiscal impact is negligible for them. Supervision is done by local law enforcement normally and not through DCHS.

**REP. KOTTEL** said that she understood that because of the way the workers' compensation law is written, the county has to pay workers' compensation costs on people who are doing community service and that has increasingly become an expense for the county. She asked if the counties pay workers' compensation costs for people doing community service in the county.

**Mr. Connor** said he could not answer that but would find out and get it back to the committee.

*{Tape: 1; Side: B}*

**CHAIRMAN CLARK** referred to page 13, line 27 and asked why only one third of the money a person earns in prison is designated for restitution instead of one half.

**Ms. Baker** said that one third came directly out of the Uniform Crime Victims Act, but it could be raised to one half if that is felt to be appropriate.

**Mr. Ohler** said that currently inmates who are able to afford things like over-the-counter medications are required to pay for them. DCHS is also looking at co-payment requirement for access to medical services. The department would urge that whatever amount is placed in the bill, that it not be all of the inmate's account which would remove the incentive for them to work.

**CHAIRMAN CLARK** asked if general assistance payments being paid to someone who is out of prison and under supervision but unable or unwilling to work would be subject to the victim's restitution.

**Ms. Baker** said that it would depend on where the money was coming from. She found that they would need a specific exemption in

federal law for benefits that are federally related. There is such an exemption for child support where that can be taken out of veteran's benefits and AFDC. She did not know if the need for an exemption would apply to state benefits, but it would to federal benefits.

**REP. MOLNAR** remembered that last session there was a bill that said that workers' compensation did not have to be paid for an inmate who works in the prison. He asked if that bill had passed and if it is currently how prisoners are handled.

**Mr. Ohler** answered that they are not required to pay workers' compensation for inmates employed in the prison.

**REP. MOLNAR** asked if that could be applied to community service.

**Mr. Ohler** said that he was not familiar with community services law and if there was a different application.

**REP. MOLNAR** asked if the prisoner who is injured while working in the prison is made whole medically without other compensation.

**Mr. Ohler** said that currently DCHS is required to provide medical care and services to inmates who are in custody. The department is looking at internal workers' compensation at this time.

**REP. KOTTEL** read the code relating to workers' compensation which says that a person performing community service for a nonprofit organization is subject to workers' compensation.

**REP. DANIEL MC GEE** asked if it is correct that an inmate who chooses not to work is allowed that choice.

**Mr. Ohler** said that is correct.

**REP. MC GEE** asked, in the case of an individual who has been found guilty and is assigned to community service through a county which is paying workers' compensation is injured, if the state would be paying all the costs.

**Ms. Baker** said that 45-9-204, MCA, addresses most of these questions. Summarized, it says that if the court imposes mandatory service or community service with a public or private agency supervising the service, treatment, or education program in which the defendant is participating, they are immune from liability to the defendant for any acts or omissions which may have occurred within the course of the supervision. The immunity does not extend to gross negligence or intentional acts. The immunity for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.



**REP. WILLIAM BOHARSKI** referred to section 28, subsection 3 at the top of page 21 in asking about the length of time the restitution scheduled can be in place. He asked if there were amendments to that section.

**Ms. Baker** said there was no amendment to that section, but that 27-2-201, MCA, is being amended to allow an action to enforce a restitution order to be brought at any time during the offender's lifetime. Even though the state supervision may have ended, a civil action to enforce that order can be brought at any time.

**REP. BOHARSKI** asked about the defendant who is ordered to pay the restitution doesn't pay it in full by the time the state supervision ends, if then the victim would enter into some sort of a civil proceeding against the criminal. He wanted to know if he was correct in saying that the court could go ahead and order that restitution be paid by the defendant even though they are no longer under state supervision.

**Ms. Baker** directed his attention to page 14, in section 46-18-247 (3), MCA, to answer his question. The victim would not have to bring a separate civil suit. Title 27, the remedies title, has a whole set of laws on how to collect on judgments and those can be used since these cases would involve a judgment in favor of the state.

**REP. BOHARSKI** asked if it is determined that the offender doesn't have the money or assets to pay restitution and the court orders community service, how the victim benefits as a result of that community service being performed.

**Ms. Baker** said that the intent of this bill is to ensure some kind of accountability for all of the offenders. As a practical matter many have no money, nor will they have money, but they believe that is not an excuse and that they should still be accountable. The community service is there to remind them that they are accountable for this crime which is committed against all of society. There is also a provision in the bill, page 13, section 16, subsection 4, where with the consent of the victim, the offender could be ordered to perform a service directly for the victim.

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**REP. BOHARSKI** asked if the offender does community service for a county which would otherwise be contracted to someone else, could some of that money that has been saved be directed to the victim to help compensate them.

**Ms. Baker** said that they had considered that option, but felt that it would cause some fiscal impact because right now the county is not paying for those types of services. In many cases, the service is something that the county would not have done because it is not a priority. There is no money changing hands.

REP. BOHARSKI asked if it is possible to order an offender while they are under supervision or after they are under supervision to do some sort of work to pay that restitution even if the offender does not want to.

Ms. Baker said that the court loses jurisdiction over the offender after the period of state supervision. Beyond that the court would not be able to impose any duty on the offender. During the period of state supervision, language in the bill covers circumstances beyond the offender's control. It is the ability to pay that the court considers, not whether the offender wants to or not.

REP. BOHARSKI asked if it becomes a condition of parole.

Ms. Baker answered, "Right."

Closing by Sponsor:

REP. FISHER addressed the concerns brought up during the question and answer period regarding the notification of victims of upcoming release of the offender by directing the committee to section 36 of the bill. She said that this bill clarifies when victim's impact statements must be allowed. She also clarified the intent of the bill in regards to the portion of the earnings which would be set aside for restitution.

{Tape: 1; Side: B; Approx. Counter: 22.2}

HEARING ON HB 135

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, said that this bill allows the Department of Justice to represent the state in all bankruptcy proceedings. He explained that each executive branch agency is responsible for their own collections. Many times bankruptcy is a specialty and outside counsel is often hired to deal with these cases. He described how this costs the state and how other states have benefited by pursuing bankruptcy cases within the department. The proposal would include a sunset clause which would allow a study of the workability of this centralizing of bankruptcy legal services in Montana.

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney General, spoke as a proponent of HB 135. He reviewed the current system and outlined the need for this measure. He distributed written testimony with an attachment from the federal bankruptcy trustee as which strongly recommends support of the creation of a bankruptcy unit in the Department of Justice. EXHIBIT 12

He also discussed the Department of Revenue's interest in the passage of this bill, as well as the other state agencies which would benefit by HB 135. The proposal is to centralize the legal representation for bankruptcy claims and to hire expert bankruptcy counsel in the Attorney General's office to provide that representation. Through this proposal Montana's reputation in bankruptcy court will be enhanced and collection in these cases increased. A pilot project will be established to prove the significance of the creation of such a unit in Montana. The confidence the department has demonstrated in the project he believes is substantiated by sunsetting this proposal and by the inclusion of it in their budget.

He discussed various cases which affected state agencies which would have had a different outcome and lower costs to the state had this bankruptcy unit been in place at the time of their disposition.

*{Tape: 1; Side: B; Approx. Counter: 37.8}*

**Dave Woodgerd, Chief Counsel, Department of Revenue**, distributed written testimony and spoke in support of HB 135.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**REP. LINDA MC CULLOCH** asked if there are provisions in place for tracking the information necessary to come back to document for the legislature in two years the success of this unit.

**Mr. Tweeten** said that they don't have an accurate accounting of how much money is not being collected right now in bankruptcy cases. The Department of Revenue is relatively sophisticated in its identification of claims, but they and the unemployment insurance program are the only sources which review all the bankruptcy claims in Montana and cross check them against their accounts receivables to see if there are debts owed to the state which are not being reported. They plan to closely track the cases that the attorneys work on and keep an account of the amount that is recovered in each of these cases and come back in two years to report on those. They believe they will be able to demonstrate an enhanced recovery which will justify the cost.

**REP. MC GEE** asked if an attorney licensed in Montana could represent Montana in other states.

**Mr. Tweeten** said that attorneys who appear in other states are either required to be members of the bar of that state or to associate with local counsel.

**REP. MC GEE** asked if this meant that as these cases arise in other states, it would be incumbent upon Montana attorneys to become licensed in other states; and, if so, what would be the cost.

**Mr. Tweeten** replied that the practice generally has been to hire private counsel from those jurisdictions to appear at a cost upwards of \$100 per hour. The National Association of Attorney's General has a program focusing on bankruptcy with respect to state governments. There are bankruptcy contacts in the Attorney General's offices in the various states and many of these states have a cooperative agreement which saves having to hire outside counsel at no cost except for travel.

**REP. MC GEE** asked if a Montana attorney would need to be present in those courts.

**Mr. Tweeten** said it is not necessary in every case though there would be somewhere it would be important to be present.

**REP. MC GEE** said that one argument for this bill is the cost savings, but it sounded as if that can already be done by this agreement with other states' Attorney General offices.

**Mr. Tweeten** replied that he was not wrong about that. But he felt that they could do that more effectively if they were centralized.

**REP. MC GEE** inquired whether it would be more difficult for the attorney at the Department of Revenue to effect this liaison with the out-of-state Attorney General's office than it would be for an attorney from the Montana Attorney General's office.

**Mr. Tweeten** said he thought it would be easier and did not know how complicated it would be for an attorney of another state agency to make that arrangement.

**REP. MC GEE** said that Attorney General Mazurek had alluded to better service through a more centralized staff. He asked if this action would help to either consolidate the attorneys more under the Attorney General's office and if this would cause the elimination or absorption of other attorney's jobs in other departments. Or, he asked, would this just be an "add on."

**Mr. Tweeten** answered that the Attorney General and the Governor have been jointly engaged in a study of state legal services and the decentralized system that exists. The Attorney General feels strongly that some centralization of legal services would improve the efficiency of state government. One recommendation coming from that study is that certain specialized areas of law ought to be centralized in the Attorney General's office, bankruptcy being one which was specifically identified.

With respect to staffing and other agencies of state government,

he said that they would be supplanting to a certain extent some legal representation which is being done by the agencies now. No agency has a full FTE that handles bankruptcy and so fractions of FTE's workloads would be taken. He did not know how that would be reflected in those agencies. They are not proposing to transfer legal resources into the Attorney General's office.

**REP. MC GEE** asked how many attorneys they are planning to hire.

**Mr. Tweeten** said they plan to hire two attorneys, a paralegal and a secretary. The budget authority for that is \$150,000 per fiscal year.

**REP. BOHARSKI** asked if there was any idea of the amount of money and/or FTEs in other agencies which would be affected as the specific duties of attorneys are centralized.

**REP. COBB** said that he had not yet seen that proposal, but when it comes through the Appropriations Committee will look seriously at moving FTEs from other agencies. The bill is written to say that if funding is not granted, they cannot do what is proposed. The Appropriations Committee is also going to look at how much money was collected the three years prior to this program and compare that with the costs and revenue collected from the beginning of the program to determine whether the program will continue or sunset.

*{Tape: 1; Side: B; Approx. Counter: 55.7}*

**REP. DIANA WYATT** inquired about the proprietary accounts and the \$150,000 with the 2 FTEs, plus the secretary. It was her understanding that not many attorneys work in this specialized field for less than \$90,000. This caused her to question how they will find attorneys qualified in bankruptcy law who will work for the amount the state will pay them. She also wanted to know if they were planning to balance the FTE and the money from proprietary accounts in terms of contracted service.

**Mr. Tweeten** said that the study showed that the pay scale for lawyers in state government as compared to lawyers in any other employment is inadequate. Other states which have implemented this program have faced the same problem and they would pattern their hiring by those states' experience. They would look for somebody with three to five years experience representing clients in bankruptcy matters in hiring the lead attorney. He said that they are relatively confident that they would be successful in recruiting someone for the amount they can pay who would fit that profile.

He said that they are not setting up proprietary accounts at present, but it is being funded according to the proposal from the general fund. In two years, assuming the program passes the test by paying for itself, they will come back with a proposal as

to how to fund it. That proposal could take a variety of shapes.

**REP. LOREN SOFT** asked **Mr. Woodgerd's** opinion about the effect of centralization in the Attorney General's office would be a bigger return than was outlined in his testimony.

**Mr. Woodgerd** said that the Attorney General believes it will and he thinks that is accurate. He said that with the addition of a paralegal in the centralization proposal, research would be more complete and accurate. This is something that the Department of Revenue does not presently do.

**REP. AUBYN CURTISS** asked **Mr. Woodgerd** to define Montana's interest in the Orange County case and if this proposal would have put us in a better position to protect that interest.

**Mr. Woodgerd** said that he did not know much about the details of that case as yet. But he did believe that this bill would help because it would provide an attorney with more experience in the bankruptcy area better able to represent Montana.

**REP. KOTTEL** asked if it is the responsibility of the bankruptcy trustee to gather, inventory and preserve assets for the benefit of the creditor and if they are saying that they do not adequately do their job at the present time.

**Mr. Woodgerd** said that is an accurate job description for the trustee. He said that he did not believe that they have enough people to do that job.

**Closing by Sponsor:**

**REP. COBB** reiterated that this bill is contingent upon funding. He said that if they are going to make it work they have to get it up and running since it will sunset in two years. He stated that the background information that is needed by an out-of-state Attorney General to pursue a case has been provided in the past by an outside attorney because the attorneys of state agencies do not have the time to do the research.

**CHAIRMAN CLARK** said that committee action on HB 135 would be delayed until a fiscal note is provided.

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

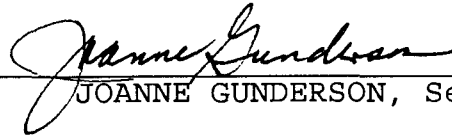
*Comments: This set of minutes is complete on one 90-minute tape.*

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 10:45 AM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

# HOUSE OF REPRESENTATIVES

## Judiciary

ROLL CALL

DATE 1/18/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ <i>late</i>		✓
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	✓		



**DEPARTMENT OF JUSTICE  
MONTANA BOARD OF CRIME CONTROL  
House Bill 69: Victims' Rights**

Purpose

- To provide victims of crime with better access to information about the criminal justice system and the proceedings involved in the case
- To require consideration of the victim's interest by the courts and the parole board at critical stages in the proceedings
- To require payment of restitution whenever the victim has incurred monetary loss and the offender has the ability to contribute something to the payment of restitution

Background

Montana law currently provides for services and compensation to victims of crime, and allows a court to order restitution in some cases. However, the criminal procedure code does not expressly recognize that the protection of crime victims is part of the correctional policy of the state, and restitution is limited to cases in which a deferred or suspended sentence is imposed. Our laws governing the treatment of crime victims are good, but experience has shown room for improvement.

Provisions

► *Access to Information:*

Requires notice to victims of felony and violent misdemeanor offenses of:

- name and phone number of prosecutor and investigating officer
- the process for obtaining a protective order from a court
- the crime charged
- date, time, and location of all court proceedings
- appeal or post-conviction proceedings pursued by the offender
- release, escape, parole, pardon or death of the offender

Allows the prosecutor to discuss with the victim investigative information and contents of the presentence investigation report.

Requires that victim be allowed to attend pretrial proceedings that are closed to the public unless exclusion of the victim is necessary to protect the fairness of the trial or the victim's safety.

► *Consideration of Victim's Interest:*

Recognizes protection of victim and restoration of victim's losses as part of the correctional policy of the state.

Clarifies that victim impact statements must be allowed:

- by the sentencing judge at time of sentencing
- by the sentencing judge in death penalty sentencing hearings
- by the parole board when considering an offender's parole eligibility
- by the court or parole board when considering an offender's request to reduce or waive restitution

Requires consideration of the protection of the victim:

- by the court when imposing restrictions on an offender as part of the sentence
- by the court before allowing a sex offender who assaulted a child to be treated in a community setting
- by the court before ordering conditional discharge of a probationer from supervision before expiration of the sentence
- by the parole board before ordering conditional discharge of a parolee from supervision before expiration of the sentence

Prohibits an employer from discharging a victim or a member of the victim's family for participating in criminal proceedings at the prosecutor's request.

► *Payment of Restitution:*

Requires that restitution be imposed as a condition of any sentence if the victim has sustained pecuniary loss; allows the court to impose community service if, due to circumstances beyond the offender's control, the offender is unable to pay.

Allows restitution to be satisfied by:

- forfeiture of the offender's assets
- return of property to the victim
- payment of up to 1/3 of prison earnings
- services provided to the victim or other designated person (with victim's consent)

Requires that restitution be imposed as a condition of parole if part of the original sentence.

Requires allocation of payments made by the offender to give first priority to restitution:

- 50% of all money collected from the offender is applied toward restitution until fully paid
- the other 50% is applied toward other fines and costs ordered by the court

► *Victims' Compensation:*

Increases allowable funeral and burial benefits to \$3,500

Increases benefit to secondary victim for mental health treatment to \$2,000

CABINET 2  
DATE 1/18/95  
HB 69

Amendments to House Bill 69  
First Reading Copy

Requested by Department of Justice  
Prepared by  
Beth Baker, Department of Justice

1. Title, line 7.  
Following: "OFFENDER;"  
Insert: "PROVIDING THAT AN ACTION TO ENFORCE A JUDGMENT OF RESTITUTION MAY BE BROUGHT AT ANY TIME DURING THE LIFETIME OF THE OFFENDER;"  
Following: "SECTIONS"  
Insert: "27-2-201,"

2. Page 1, line 16.  
Following: line 15  
Insert: "Section 1. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) Except as provided in ~~subsection~~ subsections (3) and (4), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.

(4) An action brought under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which the restitution remains unpaid."

Renumber: Remaining sections

3. Page 6, line 12.  
Following: "may"  
Strike: "discuss"  
Insert: "disclose"

4. Page 6, line 14.  
Following: "report"  
Strike: "with"  
Insert: "to"

5. Page 14, line 3.  
Strike: "officer of the board of crime control"

(over)

6. Page, 14, line 4.  
Following: "payment."  
Insert: "In cases where the victim has received compensation under Title 53, chapter 9, the court may also order an officer of the board of crime control to supervise the making of restitution and to report to the court any default in payment."
7. Page 23, line 12.  
Following: "[section"  
Strike: "36"  
Insert: "37"
8. Page 24, line 29.  
Following: "[section"  
Strike: "35"  
Insert: "36"
9. Page 24, line 30.  
Following: "[section"  
Strike: "36"  
Insert: "37:"
10. Page 25, line 3.  
Following the first "[section"  
Strike: "35"  
Insert: "36"  
Following the second "[section"  
Strike: "36"  
Insert: "37"
11. Page 25, line 6.  
Following the first "[section"  
Strike: "35"  
Insert: "36"  
Following the second "[section"  
Strike: "36"  
Insert: "37"
12. Page 27, line 10.  
Following: "[Section"  
Strike: "3"  
Insert: "4"
13. Page 27, line 12.  
Following: "[section"  
Strike: "3"  
Insert: "4"
14. Page 27, line 13.  
Following: "[Section"  
Strike: "20"  
Insert: "21"

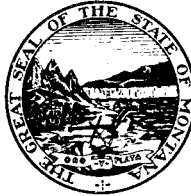
15. Page 27, line 14.  
Following: "[section"  
Strike: "20"  
Insert: "21"
16. Page 27, line 15.  
Following: "[Sections"  
Strike: "35"  
Insert: "36"  
Following: "through"  
Strike: "37"  
Insert: "38"
16. Page 27, line 16.  
Following: "[sections"  
Strike: "35"  
Insert: "36"  
Following: "through"  
Strike: "37"  
Insert: "38"
17. Page 27, line 23.  
Following: "[Sections  
Strike: "10, 13"  
Insert: "11, 14"  
Following the first "and"  
Strike: "21"  
Insert: "22"

STATE OF MONTANA  
**DEPARTMENT OF JUSTICE**  
**BOARD OF CRIME CONTROL**

303 North Roberts - PO Box 201408 - Helena, MT 59620-1408

EXHIBIT 3  
DATE 1/18/95  
HB 69

Joseph P. Mazurek  
Attorney General



Phone (406) 444-3604  
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**HB 69: REVISE CRIME VICTIMS' LAWS**

**SPONSOR: REPRESENTATIVE MARJORIE FISHER**

Testimony: Gene Kiser  
Montana Board of Crime Control  
444-3604

The Montana Board of Crime Control is the state agency responsible for the administration of the Crime Victim Compensation Act of Montana and the Victims of Crime Act funds. Additionally, the Board will assume administrative responsibility for the Violence Against Women Act funds that will be coming to Montana during the coming fiscal year. These funds will be used to provide monetary assistance to local law enforcement and prosecution in developing and implementing more effective policies and services for preventing and responding to violent crimes.

The Board has direct contact with victims through the Crime Victim Compensation program.

This program provides assistance to victims who have been injured as the result of criminal act.

Direct contact with victims on a daily basis has provided us with insight into the trauma and difficulties victims face. We believe that the sections enumerated in HB 69 address many of the /problems currently encountered by victims in the criminal justice process. It also allows crime victims to receive compensation for funeral expenses in cases of homicide and mental health for secondary victims in cases of child sexual assault.

Because of my 30 years experience in law enforcement in the largest metropolitan area in the state, I have witnessed first hand the frustration and anger victims express due to the inadequacies and failures of the criminal justice system. Victims, traumatized by the crime itself are further victimized by being cast into an unfamiliar, impersonal criminal justice system replete with long-standing barriers. It is critical victims be informed of and included in the criminal justice proceedings by taking an active role in the process thus restoring their faith in the system.

**HB 69: REVISE CRIME VICTIMS' LAWS**

Page 2

When victims are given the opportunity to be involved in their own case they are often more cooperative and this allows them to regain some control of their lives.

Too many times the criminal justice system is accused of focusing more attention on the rights of the accused to the exclusion of the rights of the victim. This bill will allow the concerns of the victims to be brought into the process in a more comprehensive manner than ever before.

Many of the barriers victims face will be addressed and corrected with the passage of HB 69.

The Board of Crime Control supports this legislation.

Thank you.

EXHIBIT 4  
DATE 1/18/95  
HB 69

## Neighborhood Watch

We have recently been hearing much about preventive programs for crime control. Can you imagine some our neighbors in neighboring states, putting bars on their windows, alarms and other devises in their homes and autos for protection? And when crime happens, the neighbors have no information to give, because they are not familiar with their neighbors names or habits. Who is the incarcerated, not the criminal but the innocent victims of crime. We are still in a position to prevent that way of life in our community, but only if we work **together** with our neighbors, schools and law enforcement staff.

Two successful programs we as a community can get more involved in, to prevent crime in our community are the Neighborhood Watch, where neighbors take turns patrolling their own areas and DARE, a program to teach our youth to say no to negative peer pressure and to build a comfortable relationship with our law enforcement. To explain why they work so well, we need to go back 30 years and re-think how our families and neighborhoods functioned at that time. During the pre-70's era, a family was less transient, employment and families kept many of us in one place. The advantage being that neighbors became familiar with each others habits, as well as comings and goings. If you needed something, you most likely would call on the assistance of a neighbor. If your children went to play, you were comfortable with the knowledge, your neighbors would be keeping watch for potential dangers, and you in turn would do the same for them.

Today, with job markets ever changing and moving much more accessible to us, we have spread out to new areas, often leaving the comforts of familiarity behind. It's interesting that one of reasons people move here, is the sense of community they feel. Yet, having come from areas where it was not in your best interests to get involved closely with neighbors, it becomes difficult to break the acquired habits we so disliked in the areas we came from.

What we are proposing is some simple community minded examples of how we can all have a neighborhood watch, that becomes a comfortable way of life and can eliminate crime or at least give us some control over it.

1. When a new neighbor moves in, make the effort to introduce yourself, involve your other neighbors in this process. Find out what they do, how many children they have, etc. Let them know, how your neighborhood functions. Encourage them to become a part of the "family" on your block or area. I have always had a open door policy for my neighbors, if they need anything I try to assist, house watching, babysitting, picking up mail, and even keeping an eye on what is normal behavior, who is gone the most, etc. When you put up a barrier, out of fear or habit, you put yourself and your neighbors at risk for crime.

2. When your children bring home new friends, take the time to get to know them and



their parents, letting each other know what your rules and expectations are. Then follow up, it isn't a matter of distrust, it's showing just how much you care. If they are going to a function or spending the night, make a simple call to ask if the arrangements made are satisfactory with the other parents. Remember our youth, we experimented with authority and our children are no different.

3. Schools are to educate, not to babysit or raise our children. Go to the schools, get to know the staff and the teachers, become familiar with the school curriculum. Learn the names of the other students, spend a lunch hour, or what ever time you have at the school. Strangers are easier to spot, if the children are familiar with the parents and staff. Get involved with and endorse the DARE program when it comes to the classroom.

4. If you see something suspicious anywhere, report it. Our police can only do as much as we allow them to do. If we never call, they can't act. Suspicious behavior when reported gives our law enforcement a leverage on crime watch areas. (i.e. if they receive several calls on an unfamiliar car or person wandering around, they can put extra patrols to that area.)

Safe communities come from close neighborhood associations with one another. These associations are the one effective and inexpensive tool we have, to bringing down our crime rates, building strong and safe communities as well as resolving local concerns and issues.

For additional information on how your neighborhood can start a Neighborhood Watch program or for information on what the DARE program can do for our youth, call 523-4668, or call OCD to find a neighborhood association in your area, or information on how to start one. the DARE and Neighborhood Watch programs are designed to get your neighborhood on the track of safe living. We need to all learn to "just say NO", and get involved, then crime will decline. DARE starts our youth in the positive direction at an early age, a Neighborhood Watch program is the preventive measure to assist our law enforcement for safe community living



Pari Le Coure

EXHIBIT 5  
DATE 1/18/95  
HB 69

Pari Le Coure  
1119 Lincolnwood  
Missoula, MT. 59802  
543-3649  
November 11, 1994

ATT. EDITORIAL

LETTER TO THE  
EDITOR -

In reviewing the 1991 statistics from the Bureau of Justice, I find that 50 % of the violent state prisoners are recidivists. Also, 59% of the state prisoners have at least a high school education. Add the fact that in the same statistics, only 16.3% were armed with a gun during their current offense, yet over 50% were under the influence of alcohol and or drugs, would it not suggest that we are going in the wrong direction in resolving crime in our communities?

With the elections over, we should be rolling up our sleeves and making the necessary changes to ensure a positive sense of security, in our homes and in our community. Our elected officials need to be responsive to our needs, not the desires of the criminals who have victimized us.

The Governors Crime package needs to be passed with the support of the people. Proposed are the following:

"Truth in Sentencing", if sentenced to 10 years they will serve ten years. Why should they be awarded "good time" when they have violated the rights of another? The incentive to be good is before the crime, the victims get a life sentence of fear and pain, without any "good time".

"Prison Reform", this doesn't need explaining after the media coverage of the Becky Richards / Micky Campbell episodes. Put yourselves in the shoes of the victims to that crime, and how they must feel seeing her get the privileges that are not available to their son and brother. Looking at the statistics on recidivism and education, we are going in the wrong direction. "Prison Resorts" as called in the Readers Digest, should not be another entitlement we pay for. Clean and safe, is all that is necessary. And they should be working to earn their way, don't we?

"Lifetime Restitution", far too often the victim and the victims family are forgotten. The emotional and financial impacts are astronomical. There are thousands of criminals, who have "profited" financially from committing crimes!

"Lifetime registration of sexual offenders", with 226 registered sex offenders in Missoula County since 1990, need more be said!

" Revision of the Youth Court Act ", our youth offenders need to be accountable for their criminal actions, we as a society tend to excuse the actions of our youth, for varied reasons and our youth know the laws and how they are protected by them. Making our youth more accountable and responsible for their actions is a step in the right direction.

"Limit Appeals", let's face it how many appeals did the victims get? We pay for those appeals with clogged courts, court costs, etc.

We need to contact our elected officials and get involved in our futures and our youths futures. Remember, Crime in our community will only be eliminated, when those who are not impacted by crime, become as enraged as those who are.

  
572-2149

Pari LeCoure  
1119 Lincolnwood  
Missoula, Mt. 59802  
543-3649

What is going on here? We have two people tragically murdered, two families trying to deal with the shock and pain of losing their loved ones, two children who have lost tremendously, and we are cheering and supporting the suspect!?

We have a football great, that has been afforded a financially comfortable life, because of the adulation the public has given him, that is now the prime suspect in two gruesome murders, and the public is drawn to him and his defense, not the victims. Take a deep breath, and re-think this media staged event, by answering the following questions to yourselves:

Who will ultimately profit from this murder? The children, who have lost both parents, due to rage, jealousy or hatred? The parents of the victims, who will be living out the remainder of their lives not understanding why, with the longing to hear their childrens voice once again, to touch them? The remaining family and friends who loved them and now have a void in their lives?

What will this cost us the taxpayers, to try this sensationalized case? What cost's will the surviving family endure both monetarily and emotionally?

Are we seeking the excitement of the tackle or the justice for the murdered victims? What does this say about us as a society? That we have been reduced to the thrill of the kill, just as our Roman ancestors did with the arena sports (i.e. lion dens, gladiator sports)?

Have we witnessed preferential treatment, to a convicted and repeated domestic abuser, and are we condoning it?

What's the point of all the efforts to place laws like the Brady Bill and the 3 Strikes your out, the National Crime Bill, Our Montana Crime Bill, when the accused gets all the attention not the victims?

I leave your thoughts with this, "Justice will only be served when those who are not injured by crime, feel as indignant as those who are." Written by Solomen 635-577 B.C.


Pari LeCoure

*Printed in Missoulian*

EXHIBIT 5  
DATE 1-18-95  
HB 69

Pari Le Coure  
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543-3649  
November 19, 1994

In the Missoulian we saw the tragic results of hatred with the little seven year old mortally wounded in Sarajevo, little Nirmen Divovic didn't have any hatred, only fear, yet hatred took his little life. With all this tragedy occurring daily in our world, it saddens me to also read in the Missoulian, that a court has barred graduation prayers in San Francisco, even with the majority of the students wanting it. In light of the mess we are living in, maybe the prayers wouldn't be such a bad idea. Obviously things haven't improved and have only worsened since the right to prayer in schools was taken from our rights to freedom of speech. At this point what have we got to lose by trying what the majority wants?

  
Pari Le Coure

Steve Woodard,

How could anyone not cry seeing the picture of little Nirmen, all the results of the unwillingness of a few to try a resolve problems and obstacles, without hatred and violence. Sadly we are not immune in our own country.

PARI LE COURE  
1119 Lincolnwood  
Missoula, MT. 59802  
543-3649

33.5 **billion** dollars to do what?! To fund more prisons, give us 100,000 new law enforcement officers ( just how many would be given to us in Montana?), and fund social programs and gun controls ( knives and other weapons were the majority weapon of choice in weapon robberies during 1987-1990)!!

It doesn't take a genius to understand that the criminal is the problem, not the weapons, not over crowded prisons or the lack of law enforcement. If we want to lower our crime rate in this country, then let's spend the money to send a strong message to the potential criminals, that we the people of the U.S., have had enough and will not continue living in fear, we will not continue to place alarm systems in our cars or in our homes, we will not build homes with bars on **our** windows for protection. That it is our right to have freedom and safety, not the criminals.

I've said it before, by todays standards most of us came from dysfunctional homes. Yet, the majority of us know the basic differences between right and wrong. Why are we allowing the minority to victimize us? We, as a nation, should be demanding our rights to live without fear of becoming a statistic. The median loss per crime in 1992, was \$524 ( this includes crimes involving no loss). The number of victims receiving medical care due crimes of violence was 1,419,940. The amount of economic loss in 1992 for all crimes was \$17,646,000,000. Youth violence has increased, what is wrong with teaching the basic principles of respect and responsibility for your actions at a young age, to curb our rising crime rate. As long as we continue doing what we are doing, we will continue to get what we get.

Pari Le Coure

As I sit at my desk, I glance up at the picture of my best friend and brother, a simple reminder of the 36 years we shared together and apart. We laughed, shared sorrows, had so many wonderful experiences. Now, I have only the simple material reminders and a chest full of memories, to go forward with.

On Jan. 24th, 1992, I and my family became the surviving victims of crime, my brother while on a vacation, was stripped of his right to live, at the hands of still an unknown. A person so filled with hatred or pain, that he decided to inflict his frustrations on another human being. His problems, have now become the pain we live with daily, and will have to endure for the remainder of our lives. How can I ever forget, the final good-byes, my Father, a proud and well- respected man, crumpled and sobbing over my brothers casket, My Mother stiff with shock and grief unable to respond to anyone, my little son placing in the casket, a drawing he had made for his special Uncle. A part of me died, when they closed the casket for the last time. He was suppose to grow old with me, I had envisioned the future as a time when we would share our many years of memories together, as we had been since his birth. Now, we have to go forward without him. This is the emotional impact, that crime has on the survivors.

The less heard about impact is the financial impacts, not just to the survivors but to our system. Here are some examples:

It can costs as much and more than \$5,000 to investigate a homicide, the lab work, investigators wages, records, court orders for information, traveling time, etc. Now add to that the following:

What does it cost to have a court appointed attorney represent a criminal? Well, it could be many thousands, what about the judge? the jury costs? the court recorder costs, the prosecuting attorney? the filing costs? travel costs? And ultimately the costs of incarcerating, educating, providing benefits most of us have to work for to "punish?" the criminal? The costs of appeals both monetarily and in time for the access to the over-booked courts, the list goes on and on. That's just another part of it.....

The victims survivors monetary costs are never thought of, listed are some figures given to me by families of victims...

Example A. hospital costs, \$3,650.. funeral costs, \$3,265.... counseling for the children of victim \$35.00 an hour per child, in this case there are 3. Social Security paid to the children at \$306.00 per child a month.

B. Counseling \$175.00 an hour, for a total of \$10,000 so far. Hiring of private Detective to assist in resolving case, \$10,000. Days missed at work, 46 at \$100 a day. Sold home at a loss, because of the painful reminders of daughter, funeral costs \$3,543.

C. My brother death, \$1,113 emergency services fee, hospital \$2,942, air fare to bring my brother home and family, approximately \$2,500. Funeral \$5,200( his internment was 47 miles from church) lost wages of family members approx. \$ 2,000+, phone calls, hundreds of dollars... medical and prescription costs running into the thousands for all the family due to the emotional trauma related to the unsolved homicide. And we are still spending money for phone calls and correspondence to resolve his case.

Statistically, 90% of marriages fail after a murder in the family.

Can we afford to wait for 3 strikes? These financial burdens are borne by every taxpayer, from the day of the crime and well into the future. Haven't we had enough? Solomen wrote during his lifetime 635 BC to 577 BC, --: " Justice will only be served when those who are not injured by crime, feel as indignant as those who are" and yet what have learned from these words of wisdom. If you think it will never happen to you, well, so did I, none of us are immune. I have been told we have the highest crime rate in the world, would the fact that we have so many wonderful benefits for our criminals, be part of the answer? How would you respond to 3 strikes? Saying, "well it's better than nothing"? "We have to be fair to the criminals?" Who was there to give rights to the victims? Did they receive 3 chances? Think about it, and get indignant!

The first step, is to confront our youth offenders, they need to be accountable and responsible for their actions, before the age of 18. We are seeing a rise in violent crimes with our youth in the State of Montana. Based on statistics formulated by the Statistical Analysis Center, of the Montana Board of Crime Control, which shows an increase from 1992 of 8.9% for crimes against persons, to 15.2% in 1993. We also had 10,414 juvenile referrals in 1993. Our youth offenders, have the potential to become the adult offenders, can we realistically afford to endure the costs of 10,414 adult offenders, after paying for the costs of prosecuting them as youths?

The two key words that need to be brought into any reform we do, are ACCOUNTABILITY AND RESPONSIBILITY FOR THEIR ACTIONS. If what ever we propose does not address those two words, then we have failed to do what is being asked by the majority of our law abiding citizens.

Pari LeCoure

Increasing fees for gun dealers and "3 strikes your out"? These seem like mundane and futile attempts to solve a crime spree that has little to do with the ability to purchase guns in a legal market. Raising fees on legal business' will target a very small portion of the problem and waiting until a criminal has committed a crime 3 TIMES?! is too late. If one careful researched the base contributor of most major crimes, they would find it to be, alcohol and drugs.

It was stated to me, by a physician, that if alcohol was new on the market and the FDA were to determine the health risks in todays society, that alcohol would be banned. Of course, we had an unsuccessful attempt at prohibition and we have yet to control, drug use and abuse. So how do we address the on-going root of this countries continuing rise in crimes? It's by learning and administering solutions on how to control alcohol and drug abuse, also to re-instate the importance of family and community values. We have treatment centers in our society, that can be successful if, A.) the abuser is willing to change B.) If they can find the funding to attend an extremely expensive treatment program. But, as a society, we need to make it clear, on what is acceptable behavior in our communities. We can not condone one form of bad behavior then chastise another, and expect our youth and potential criminals to understand our message. Consistency, has been determined to be a positive in child rearing, so why not set that, as a standard, for our laws on prosecuting criminals and a standard on what is acceptable behavior in our society.

I recently wrote down a list of friends and family who have died in the last decade, and found that alcohol and drugs were the main contributor to a majority of their deaths, whether it was murder, suicide, accidental or health related. How many people do you know who have succumbed to a life of tragedy, illness, had accidents, financial problems or death because of substance use or abuse? So why do we as a society condone and excuse these behaviors, then seek ways on how to stop crimes from being committed? Are we not being hypocritical?

Concerns addressing the expense of incarceration and the limited space in our prisons have have been brought up over and over. If we set a standard, with no chance of expensive and lengthy litigation which results in: deferred and reduced sentences, plea bargains and appeals, etc., could we not then better use those monies, that we, the taxpayers are doling out, to increase space, if needed and fund rehabilitation programs that could eventually cut down the rate of repeat offenders and the space needed for them? Also, if a potential criminal knows ahead of time " if you dance, you WILL pay the fiddler" with no if, adds or but's, just maybe, they might think twice about doing something that will give an absolute conviction instead of a possible conviction, if applied.

Our laws of today, are set up with so many variables, that if one can access a good attorney, a lenient judge or sympathetic jury, one can virtually get away with murder. ( Site the case in the Missoulian " Acquitted Killer finally confesses", of the man who killed his wife, was acquitted and can not be re-tried for it). Sure there are cases that would not warrant absolutes in penalties, but they would be minimal compared to the many offenders, who society would benefit from, if stricter guidelines for sentencing were absolutes.

Our law enforcement staff, who continually put their lives and safety on the line for us, need us the taxpayers and citizens, to be the ones lobbying our elected



lawmakers for crime control, not special interest groups who have their own agenda. Isn't it time the majority made the laws and corrected a on-going and increasing problem in our country?

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EXHIBIT 5  
DATE 1-18-95  
HB 69

November 15, 1993

Yes, there is a death penalty in Montana and all of our other states. Our courts and our system give this sentence not to the criminals, who have the rights to delayed trials, taxpayer given attorneys, leniency, good behavior time and appeals processes. This death penalty goes to the survivors of the victims of such heinous crimes.

It begins when they are first told of the death, in addition to the shock that one usually encounters with any death experience, homicide survivors also have to deal with media, investigators, courts, and the mass of emotions not only from within themselves, but from everyone surrounding them. It's a slow death process, that eats at every part of you. The mother and father, who spent so many years nurturing and protecting their loved children, are stripped to the bone in one brutal and selfless moment. The siblings who loved and bonded with the victim, they are torn inside and out and lost. For the other loved ones in the victims lives, they are raped of the love a child may of had, the love and partnership the spouse or loved one may of enjoyed for years to come. This is the death sentence given to millions in our educated and fair society, it's a slow death, with little recourse in our current justice system.

The saddest part of this sentence, is there is little or no compassion for the ache in the hearts and frustration homicide survivors through live daily. They, who have given so much to the victims during their lives, are now the forgotten ones. For obvious reasons, they are left out of the details in an investigation, they are the ones who are at times, the least welcome in the courts. After all, we must keep the focus on the accused, don't they deserve a fair trial? I find it unbelievable that one never hears about the unfair trial given to the victim, just before life was taken from them and all of their loved ones who have been left behind to relive the horror and agony of the crime over and over.

We are all responsible for allowing this to continue, and believe me, none of us is immune, I know! I witnessed and felt the pain and frustration in my own family when a senseless murder was committed on a very dear and loving nephew, only to see the accused go free! Why!? Because of our system for JUSTICE?!?! Now, I am actively involved in my own brothers homicide investigation, who died at the hands of an unknown at this point in the investigation. I thought I was alone, until I found a network of new friends from all over the country, who are dealing with the same kind of on-going personal anguish over thier loss and frustration with the system that deals with un-justice, as we now know it.

What do we watch on TV and read in books? We focus on the sensationalized, media grabbing event, the criminal and his life story. Do we want to hear about the grieving and confused family, and how it impacts them emtionally and financially? Do we want to hear about the victim? Why no, it might not sell as much, or it maybe is too close to home for us. Some of the special interest groups of todays world, look for leniency for criminals and in crimes, because of dysfunctional family situations, etc., By todays standards, wouldn't that include just about any one of us, in one degree or another?

Yet most of us know capital crime is wrong.

Our judicial system is to prosecute not coddle, WE need to stand up and make it happen. I add to an editorial written on Nov.15,1993 from Missoula, Montana, in part, "Without the judiciary's will to carry out capital punishment, it's a waste of (everyones) time and money to issue death sentences in Montana. Better to sentence our worst offenders to life in prison, without the possibility of parole ( and with the loss of all priviledges, as they gave to the victim and surviving family)- eliminating a lot of redundant appeals in the process (which add further grief to the survivors and courts)- than to go through the charade of pretending to have a death penalty. We should be procesecuting the criminal, not persecuting even further, the victim and homicide survivors and our public, as we have allowed in todays world!

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Pari Le Coure  
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December 29, 1994

Open Letter to the ACLU and the U.S. Department of Justice:

Although I sympathize greatly with the victims and the victims families, ( of which I know one family) who were impacted with the loss of life, due to the callous and unfeeling acts of a few during the riots at the Montana State prison. I have to question the lawsuit against the state for unsafe and unhealthy conditions. It appears to me, that the conditions for our prisoners are better in the areas of "rights", than their victims that put them in the prison system. We have labeled "dangerous offenders", that have the "rights" to attend various programs in the rehabilitation areas, they have the "rights" to attend educational programs, they have the "rights" to file appeal after appeal with our judicial system, ( at the expense of the victims and victims families tax dollars), they have the "rights" to medical aid paid for by the taxpayers. They have the "rights" to "good time" and "rewards" that take them out of the prison system for those privileges. The list could go on and on.

On December 25, 1988 my nephew, who was 22 was denied the "right" to live, at the hands of a person, who ended up having all the "rights" in our court system. With our current guidelines in prosecuting, the accused was able to walk free after taking a life, and left all the emotional and financial burdens on the surviving family. On January 24, 1992, my dearest brother was denied the "right" to live, by a person(s), yet unknown. In my brothers case, again our current guidelines make an arrest difficult. Our family has had to bear the burdens of all the emotional trauma as well as the ongoing expenses incurred by the loss of my brother, yes, even paying outrageous sums for mental-health care.

We are working people, who pay our taxes and try to abide by the law, yet the very government we are helping to support has forgotten us and our loved ones. Our dearly missed loved ones, have become just another statistic in the growing number of innocents, denied the very "rights" our criminals are demanding. When will it be our turn? Who will represent us? The legal system? Only, if all is in order and we have the money to hire the professionals needed. Victims Aid is available, but can only go so far with the amount of victims in todays society.

It doesn't take an "Einstein" to figure, that our court systems are bogged down with redundant and ridiculous cases, which prevent the very people we have hired, the ability to perform their jobs in a proficient manner ( I am referring to our tax dollar employees, as well as out of the pocket expenses for additional legal representation). Our loved ones didn't get the opportunity to receive "free" medical, dental and mental health care, as well as "free" access to adequate housing. One thing that has amazed and humored me, is the fact that the "overcrowded" prisons, are not brought about by law abiding, taxpaying citizens, those conditions are brought about by the very people who are complaining the most, the incarcerated! When will it become a standard, that

violating the "rights" of others is not acceptable in our society and will no longer be excused or tolerated?!

The very title, American Civil Liberties Union, would suggest the group is defending the wrong people. We are truly the victimized, not the incarcerated or the accused, who had the same choices we have, to not victimize the innocent.

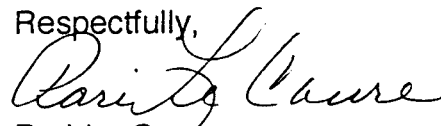
The Federal Justice Department, again the title leaves doubts among our victims and survivors as to who the Justice Department is truly representing. Charging that, "inmates are being deprived of "rights", privileges or immunities secured or protected by the United States Constitution." ( quote from the Missoulian article, Dec. 29, 1994), leaves much to be desired by the victims and survivors from courts and judicial system, who has not given the same "rights" to us.

I plead with you, to re-think your suit, which will further burden our courts and prevent the financing and execution of proper sentencing in crimes against the innocent. What good is it to sentence someone to 25 years, knowing they will serve only 25% of it, at the most? What good is it, to supply 3 meals, medical benefits, warm and comfortable sleeping, educational and recreating facilities, with no requirements from the incarcerated to financially contribute to those expenses paid for by the innocent victims and survivors tax dollars? Somewhere along the road to finding a balance in our system, the ACLU and the Federal Justice Dept. have forgotten the very people who are suffering daily, whose lives have been altered indefinitely, and who will "pay" the consequences of those acts derived from the need of "power and control" by another, long after the courts have released the incarcerated. Some justice!

I've said this many times before, by today's standards, most of us come from dysfunctional families, yet the majority of us know and follow the law the best we can and would not willingly inflict harm on others. When a hard working citizen has something as small as rake stolen, he feels violated and it has an impact on his "rights" to live without fear and freedom for life. Our law enforcement staff, should the "rights" to perform their duties, with full support from the judicial system. I often wonder why we don't honor them more, with the knowledge that they risk their lives daily to try to protect us, only to see the their "rights" to safety constantly being restricted, by the "rights" of the accused.

I look daily at the picture of my brother smiling back at me at my desk, thinking about the fact that he never received 3 chances to live, he never received even one appeal, he never received any "rights" to live out his life with his family, in a nice warm and comfortable facility, with 3 meals and all of the benefits given to him ( he had to work to eat and receive any benefit in life) and the saddest thing of all is, only his family and the limited by "rights" law enforcement staff, are working in his behalf now. The pain of being impacted by crime can lessen in time, but it will never go away. I thank you for taking the time to consider my thoughts, which are the same thoughts of thousands and thousands of victims to crime.

Respectfully,



Pari Le Courte

c.c.

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American Civil Liberties Union  
U. S. Justice Department  
Senator Conrad Burns  
Representative Pat Williams  
Governor Marc Racicot  
Rick Day, Montana State Corrections Department  
Missoulian  
Great Falls Tribune  
The Daily Record  
The Billings Gazette  
Bozeman Chronicle  
The Washington Post

EXHIBIT 7  
DATE 9/18/95  
HB 129

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To be introduced for Crime Bill and Prison Reform.....

A requirement for all inmates to successfully complete a course on Power and Control Management and monitoring program, prior to parole hearings.

This program would be a generalized program to confront the personalities that promote criminal behavior patterns. One common trait that all inmates and potential inmates has, is the need to control and the desire for dysfunctional power over their victims and/or families. Stress Management and learning to control the dysfunctions within them, that become the under lying motives for committing the crimes, is one positive way to confront recidivism. The funding for this programs could come from the recently passed Federal Crime Bill, which has much funding for prison treatment programs.

Currently we have programs for sex offenders, alcohol and drug treatment, but they are condensed and targeted.

Sex Offenders should be required to be enrolled in an extensive program that requires at least one year of treatment and one year of follow-up treatment and monitoring by a registered therapist. ( Lifetime registration and monitoring is currently being proposed in the Montana Republican Party Crime Bill, this should be an amendment to that proposed bill.)

Also, the sex offender should have felony charges against them, for the following first time offenses: 1. any sexual offense against a minor, that involves penetration or physical/ emotional trauma. 2. Any offense that inflicts bodily harm on the victim (i.e. physical abuse or force that causes external or internal injuries). Misdemeanors should only be for 1st offense, that does not incorporate the above listed 1 and 2.(i.e. fondling, exposure,etc.) but should include the full sex offender treatment program. It was also suggested, but but civil rights would not allow it, that after the 3rd offense of a sex crime the death penalty would be in order. I would like to modify that by suggesting, that after a 3rd offense, life in prison or house arrest with a body monitoring system placed on the criminal at all times.

Alcohol/Drug treatment programs should require a follow-up monitoring program, that includes meetings and testing after they leave the prison. With the proposed Power and Control Management Course, a recommendation should be made to continue meetings after leaving the prison, with joint monitoring by staff and probation boards. It seems the environment of the prison, is not conducive to the success of treatment in the "real" world, with that we should encourage follow-up treatments, re-introduction into society. Again, the funding should be appropriated from the Federal Crime Bill funding.

I fully support the Republican Party Crime Bill, which was introduced and voted on during the 1994 Republican Convention and will do all I can to promote the passing of the entire bill.

Mr. Chairman; members of the committee

My name is Marian Stevenson. I'm from Hobson, Mt.

On March 27, 1994 my life ended.

My husband, Wayne Stevenson was killed. He was ambushed from the dark and shot six times by an employee on our Central Montana ranch.

In the past 9 1/2 months I have learned more than I ever wanted to know about the criminal justice system.

The inequity of access to information soon became apparent to me. When an arrest is made it seems the law is heavily weighted towards the rights of the defendant. Victims or their families are often denied information that is available to prosecuting and defense attorneys and to the defendant.

We are fortunate here in Montana to have many people in law enforcement, and investigation and prosecution that are caring, compassionate and dedicated to doing their jobs in a competent and professional manner.

Assistant Attorney General, Mr. John Connor and his staff were very careful to keep me informed about what they could <sup>regarding the case</sup> ~~Some~~ attorneys are not that considerate.



I can only imagine how horrible it would be to open a newspaper or turn on the radio or TV and in that manner learn of a bail hearing or other court proceeding being scheduled.

For this reason I believe this legislation and the victims rights that it insures is necessary.

Wayne and I were married for 34 1/2 years. We lived together, loved together, worked together; shared our lives completely and I feel it should be my right to be informed about what happened, how it happened, and to be made aware of all legal proceedings. I did not want to be protected from unpleasant details. This crime was done to me as well as to my husband. Wayne's life was stolen from him by a brutal, senseless act and my life with him was destroyed.

A question I had early on was - how did my husband die? Having shared our life together so completely I was in agony not knowing what happened in his last moments. Since the only living witness was the defendant and he was not talking - I asked the authorities if they could explain to me what

3.

the evidence indicated had taken place. It was important to me to know as much as possible about what had happened. I feel very strongly that this should be a right available to victims.

In our case the defendant entered a guilty plea shortly before the trial was set to begin. Then the judge ordered a pre-sentencing report. This report is done by a probation officer. In the course of his investigation for this report, the defendant was interviewed, I was interviewed, I believe the defendant's wife, and possibly others were interviewed.

We were informed that family and friends could write letters or written statements to the Court expressing their opinions and comments on the case.

Many family members and friends did so. This report was given to the judge and the sentence he handed down was based on this report along with verbal testimony given at the sentencing and on information from previous Court proceedings.

This pre-sentencing report is made

4.

available to the judge; to the prosecuting attorney; to the defense attorney and to the defendant; but it is withheld from the victim. I was told that this is a sealed document and could be released to me only by orders of the judge after the sentencing had taken place.

The judge denied our request for release of this information. In the judge's comments regarding the denial he indicated he wished to spare us further pain and we should cherish the good memories.

What could be in this report that could possibly cause us any more pain than we have already been through? And why should someone else decide what we can or cannot know about this crime that has torn our lives apart?

Only Mr. Connor's assurance that he would willingly release the report to me if he could legally do so keeps me from imagining that there must be something terrible contained within it. Why can the defendant see this but not the victim?

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I hope that by letting you see a glimpse of our pain and what we have endured you will have gained some insight into what a victim goes through. And that you will give careful consideration to this proposed legislation.

Thank you

DRAFT - CRIME BILL

This Draft represents what is considered to be fair and equitable to perpetrator, victim and society alike.

As a preface to this Draft, an overall policy statement is indicated in order to make clear how various elements of this Draft fit together and benefit the whole.

The overall considerations should be accountability, exploitation, safety, healing and prevention. It is critical that we enact laws that promote what works.

What is it that we wish to accomplish? Is it vengeance, retaliation and/or exchanging exploitation for exploitation? Or do we want rehabilitation, healing and safety for the public, as nearly as that can be achieved?

What does it take to reduce crime, violence and suffering?

Someone said that our penal system is based on the axiom that if you make someone feel bad enough, long enough they are rehabilitated. Sadly, that is not true. Most of our prisons are revolving doors. Meanwhile, sex offenders reoffend. Domestic violence abusers abuse or murder, as many of them have threatened or promised to do upon being released from prison. Sociopaths find new ways to fool, deceive and further their lifestyle, only to wreak their havoc again and again on those in their path that threaten or thwart their goals. Seriously mentally ill prisoners, without help, or monitoring, are like loose canons on an unsuspecting public. Consequently, this draft attempts to implement some laws that address all these issues, and give us a real chance to do something positive, innovative and creative.

The laws and/or measures should always address five main areas:

1. ACCOUNTABILITY
2. EXPLOITATION
3. SAFETY
4. HEALING
5. PREVENTION

ACCOUNTABILITY means accountability for everyone. Perpetrators cannot be rehabilitated unless they own what they have done. This should be the overriding concern of any rehab program. Victims can assist in this process by being willing to charge and/or identify how they have been abused or harmed. In-prison confrontational procedures that allow perpetrator and victim alike to face one another, address feelings and reactions pertaining to the crimes committed and the consequences of those crimes are but one way to begin the process. We must make it safe for victims of domestic violence, for example, to charge abusers without fear of retaliation at a later date.

DRAFT - CRIME BILL (Continued)

2. EXPLOITATION - Anything that exploits another human being, whether perpetrator, victim or society at large, is wrong, destructive and demoralizing. Laws already on the books that are exploitive, like the sexual deviant law, should be repealed and new laws should scrutinize the basic tenets involved, and be sure, that one form of exploitation is not exchanged for another.

3. SAFETY - Society has a right to expect safety from those who seriously offend and intrude on the rights of others and cause bodily harm. There are many safety issues that could be enacted and enforced in terms of monitoring systems. For example, sex offender could be required to report to counselors and/or parole officers during their lifetime in an effort to prevent any recurrent tendencies once they are released from prison, and successfully completed a rehabilitation program. Two to four times a year, depending on the offense, would not be excessive. Domestic violence abusers who still threaten wives or girlfriends upon their release from prison could be monitored with radio bracelets as to their whereabouts.

4. HEALING - There are numerous things that can be done to promote healing for perpetrator, victim and society alike. Mandatory counseling, support groups, physical and mental examinations, reporting of crimes, monitoring systems, returns to prison, revocation of rights and privileges garnered for good behavior if violated, emphasis on research of criminal behavior and anti-social tendencies as well as organic dysfunction. Sociopaths are extremely difficult to treat; however, many of them would cooperate with any attempts to understand their behavior.

5. PREVENTION - What all of this is about is prevention. So how do we prevent crime and protect the public in the best possible way we can? We prevent by identifying and recognizing symptoms, signs and organic dysfunction. History tells us that many things being successfully treated today were once thought to be impossible or nearly impossible to treat. Witness alcoholism, drug addiction, epilepsy, depression, etc. Violent aggressive behavior, serial killers have yet to be well understood. The status of current research tells us that organic dysfunction as well as some other clues may be responsible. If we want to find answers, then further study and research is indicated - even mandatory.

# Inmates earn no sympathy

By PHILIP A. FRANSDEN

# The victim, too, must speak out

By PARI LE COURE

“Hate and discontent” are the feelings in the prison, as quoted to Bob Anez of the Associated Press, but these are the same feelings that put our inmates in prison. Interestingly, these same feelings are transferred to their victims. Prison is an ugly grand finale to a life of hate and discontent, but seeing a loved one placed in a grave, as the result of the “hate and discontent” by another, is also very difficult to live with.

The victims of crime always get the maximum sentence. Being placed in an 8-by-12 cell is very much like living forever without your loved one. You start each day surrounded by memories, discontent, sometimes hate, sometimes an aching pain inside you, but always with a deep and never-ending sorrow within you. Some of us stop feeling and just go through the motions of life, waiting out our sentences until our time on earth has ended. Others of us join self-help groups, some become crusaders, but all of us have to dramatically re-adjust our lives to live with the ongoing void the crime committed has left with us.

Once again, we are hearing about the criminals and the problems they face, but not the victims and all the obstacles they have to daily endure for the remainder of their lives. Victims are not as outgoing about sharing the daily agony they feel. To constantly relive those painful moments of when the crime was committed, as well as the months and years it may take to put the perpetrators in prison, is very hard emotionally and physically. There are deep scars left when a crime is committed, and in some cases by the very system we have put together to represent us. We have the U.S. Justice Department suing the state for the prisoners’ “rights;” we have the American Civil Liberties Union speaking out for the “rights” of the convicts, as well as many other special-interest groups working around the clock to represent the convicted. As a victim (friend and family become victims, as well) to the crime committed, you feel helpless, very lonely and unrepresented at a time when you need the most support.

As in every death announcement, all your friends and family are around for a while. Then, one by one, everyone’s lives go back to the routine, except yours. It is natural to be frightened of the results of crime; it is very hard to find the words of consolation to give to someone who has been violated by crime, so out of helplessness we retract. The result is friends and families coping, without any understanding, with the loss and the continuing reminders of that loss during the investigation, the trial, during the sentencing and incarceration, before they can even begin the “normal grieving process.”

Until we, the victims, become more vocal and learn to express the void crime has left in our lives, we will not be heard. It just may be that in expressing our pain more will be done to represent us; the unaffected will have a better understanding of the trauma we endure daily and be able to reach out to us without feeling so helpless. No one is without feelings of some kind and the criminals and representative groups may have a better understanding of our silent quest for justice and normalcy in our lives if we come forward.

If you are a “victim” to crime, please speak out. Our legislators need to hear from us now and our peers deserve to understand us better.

*Pari Le Coure lives in Missoula.*

Reading the article “Hard Time” has given me the occasion to make some queries.

First, what conditions should criminals receive? A lighthearted, activity-filled leisure atmosphere? No. Prison should be hard and I have no sympathy for the pillagers of mankind who live there. They have murdered, beaten and raped; they are thugs.

Second, is the Missoulian trying to make us feel sorry for these prisoners? How can I feel sorry for Tom Hernandez, a murderer? How can I feel sorry for Terry Langford, a death row prisoner who audaciously comments, “It’s not the hotel that everybody thinks it is?” Or what about Marvin Jacobson, convicted of sexual assault multiple times?

The criminal may be defined as one who denies the right of life or the right of trust. The criminal achieves their status by the following methods: murder, denying a person’s right to live; assault, destroying the trust of a person towards others; and rape, which also destroys the trust of a person.

The criminal denies the victim of his life and dignity as a human being. The act of the criminal is permanent and cannot be reversed by such trifling things as sums of money, penance, or time spent in the jails.

What should be done with the criminal? They should be confined from the rest of society and made to labor, producing goods for society. They do not have the right to demand freedom, leisure, income, or other rights given to the non criminal.

It’s time for the press to stop the propagandism of making people feel sorry for the criminal. The criminal has no room for complaint. They deserve the punishment they have received and much more.

The Missoulian (and other presses, as well) should report crimes committed and promulgate harsh penalties; penalties worthy of the crime. I feel no sympathy, only disgust, towards the criminal. The people and press together must expose crime for what it is and punish criminals; we must move towards a securer life.

*Philip A. Frandsen writes from East Missoula.*

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DATE 1/18/95  
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# AVP

## Alternatives to Violence Project :

This is a multicultural organization of volunteers offering experiential workshops that empower individuals to liberate themselves and others from the burden of violence.

Our fundamental belief is that there is a power for peace in everyone, and that this power has the ability to transform violence.

AVP builds on a spiritual base of respect and caring for self and others, working both in prisons and with groups in the community.

Montana AVP  
P.O.Box 5605, Missoula MT 59806  
542-3658



## WHAT KIND OF PROGRAM IS AVP?

An **experiential program** offering shared exercises that can help people change their lives.

A **community program** for all who would like to take part. Sometimes workshops feature specific community organizations like social service agencies, youth groups, or churches.

A **prison program**, helping inmates learn new skills and attitudes that lead to fulfilling and crime-free lives. In time, inmate trainers take major responsibility in prison workshops.

A **program for everybody** -- though founded by Quakers out of their belief in the inborn power for peace in everyone, it draws participants and trainers from all religions, races and walks of life.

An **intensive learning experience** in the form of three-day workshops (20 participants maximum) on these *three levels*.

### (1) THE BASIC WORKSHOP

Step-by-step exercises, including role-playing, focus on primary conflict resolution skills. Main themes include:

**Affirmation** -- build self-esteem and trust.

**Communication** -- improve skills of listening and assertive expression.

**Cooperation & community** -- practice cooperative relations that can reduce competitive striving.

**Creative conflict resolution** -- get in touch with inner *transforming power* to resolve hostile or violent situations.

### (2) THE ADVANCED WORKSHOP

People take the Basic only one time but the Advanced Workshops vary according to the themes the participants choose and they can be taken repeatedly. Themes from threatening and violent situations that may be the focus include:

**Fear** -- investigate hidden fears that usually underlie anger, jealousy and prejudice.

**Anger** -- look at personal situations that trigger your anger.

**Communication** -- develop ability to communicate in tense situations.

**Stereotyping** -- build awareness of stereotyping, bias and prejudice in everyday relations.

**Power and Powerlessness** -- help individuals to get in touch with their inner power and to understand external power sources and structures.

**Forgiveness** -- lay groundwork for true reconciliation and freedom from guilt.

### (3) THE TRAINING FOR TRAINERS WORKSHOP

Begin by participating in the Basic Workshop. If you find that you would like to become a facilitator yourself, take this workshop, which focuses on team leadership methods and group process skills for presenting AVP exercises.

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## HISTORY

### BELIEFS & APPROACH

We believe there is in the universe a power able to transform hostility and destructiveness into cooperation and community, and to do justice among us. We believe that power is everywhere -- in us, in our opponents, in the world around us. We believe people can tune in to it and that, when we do, it enables us and our opponents to realize our birthright of peace and dignity.

We believe there are certain individual and group dynamics that permit tuning in to this power, and that these dynamics can be learned and used by all people everywhere to build more constructive lives and healthier societies. AVP is our way of sharing these beliefs and these dynamics in order to bring this about.

Ours is a process of seeking and sharing, and not of teaching. We do not bring answers to the people we work with. We do not have their answers. But we believe that their answers lie buried in the same place as their questions and their problems--within themselves. Our job is to provide a stimulus and a seeker-friendly environment for them to search for solutions within themselves.

People come to us with lifetimes of experiences behind them. We believe all this experience is valuable and it can be built on to make new lives. We try to draw out those experiences and to help people look at them. In doing so, we find ourselves in a constant process of learning.

The Alternatives to Violence Project began in 1975 in New York. An inmate group at Green Haven Prison was working with youth gangs and teenagers at risk but they were having difficulty communicating their message about the consequences of violence. They sought help from the Quakers to conduct a workshop for them.

This was so successful that requests were received for more, and AVP was born and quickly grew. AVP currently does hundreds of workshops each year in New York State Prisons.

It soon became evident that the program designed for prison inmates could be useful to everyone. Community people began to seek the AVP training, and workshops for the general public are now a regular part of the program.

The program has spread to many other states and countries. The newly formed international organization of AVP supports local branches with visitors, trainers' manuals, a newsletter, and national conferences.

Members of Missoula Friends Meeting (Quakers) organized Montana AVP in autumn 1992. After generous advice and visits from Washington State and New York State trainers, we now have Montana facilitators for all three levels of workshop.

We aim regularly to run prison and community workshops. Also, we hope to find, as other states often have, audiences for the regular or modified workshops among battered women, probationers, elementary pupils, teens at risk, and so forth. AVP also can serve as an impetus and resource to mediation programs in the community and in the schools.

## FROM INMATE PARTICIPANTS

*I realize now that my ego was assaulted when I committed the crime I'm here for now. If I would have rationalized things then I would not be here now. I won't forget what I have learned by you helping me to see this.*

*I had a great time and I didn't want it to end. It is almost like a big family losing their home and splitting up. . . . I learned a lot about myself.*

*Thank you for showing us how to divert our violent attitudes into a positive and peaceful outcome. . . . I looked inside of me and found a loving and caring me.*

*If there is such a thing as a miraculous change, than I can truthfully say that it was through AVP. I began to grow from a person filled with hate, anger and despair into a person who believes that he, too, is responsible for the protection, preservation and enrichment of humanity.*

*It repairs my heart, so I dare to be part of the community outside again and don't have to have a minimal lifestyle anymore due to a lack of trust. It prevents me from going insane inside prison, something I have been very worried about.*

## FROM COMMUNITY PARTICIPANTS

*Most important learning: that TP [AVP's "transforming power"] can work not just in prisons or Central America but also in our everyday lives.*

*Thank you for the most impact-full weekend of my life.*

*AVP has been the basis of great growth and change in my life. It has helped me in my career and family life.*

*I liked the program and I got a great deal out of it. I know I will use it for the rest of my life. Thank you very much for what you have done to change my outlook on life.*

*Friends asked me why I attended an AVP workshop, since I didn't seem like a violent person. A lot of violence I carry is directed towards myself in the form of self-criticism. AVP is helping me see that and is helping me change.*

## FROM AN AVP TRAINER

*I have seen an incest perpetrator turn his life around completely and go on to be instrumental in the healing of other incest victims through what was learned in AVP. It is powerful to see a person come to life in this process.*

EXHIBIT 12  
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HB 135

## DEPARTMENT OF JUSTICE House Bill 135: Bankruptcy Representation

Purpose: To give the Attorney General authority to represent the state's interest in bankruptcy matters.

### Background

Currently, each executive branch agency is responsible for collecting any money owed the agency. Collection disputes frequently involve bankrupt debtors. Because bankruptcy law is a specialty, general practitioners who do not practice frequently in bankruptcy court are unlikely to be effective in collecting the money due from bankruptcy estates.

### Estimated Revenue

The federal bankruptcy trustee has noted that the State and its agencies are inconsistent in their efforts to pursue bankrupt debtors, and that the State is losing many thousands of dollars annually as a result. While an accurate count of the uncollected money is impossible, a recent survey by the bankruptcy trustee showed that, in a four-month period from August to November 1994, bankruptcy cases were filed in the Montana federal bankruptcy court involving 115 debts to state agencies, including the Department of Revenue, the Department of Labor and Industry, and the Guaranteed Student Loan program. The total amount reported exceeded \$258,000.

The amount of debt reported in these schedules is frequently not entirely accurate, and it is the nature of bankruptcy that it may not be possible to collect the entire amount owed. However, many debts owed the State are for taxes of various kinds and, under federal bankruptcy law, these are priority claims entitled to be satisfied before other creditors are paid. If the State pursues these claims aggressively, it is reasonable to project that significant amounts will be recovered.

### Creation of a Bankruptcy Unit

House Bill 135 adds representation in bankruptcy matters to the duties of the Attorney General under Mont. Code Ann. § 2-15-501. This proposal is also part of the Department of Justice's budget, and funds for creation of a bankruptcy unit are in the Governor's proposed budget. Preliminary approval was given this proposal by the Joint Appropriations Subcommittee on Institutions.

--over--

Other states that have recently centralized their bankruptcy collection attorneys have recovered significant funds. In Texas, the legislature created a bankruptcy unit consisting of nine attorneys and support staff. In one fiscal year, state collections in bankruptcy cases increased by over \$30 million. While Montana can reasonably expect a much smaller return due to our smaller population base, the Department of Justice believes that, with a modest initial investment, the State can recover many times the cost of this program over time.

#### Termination Date

The unit is designed to sunset in two years if it fails to pay its way through collections.

If the unit collects sufficient funds to pay its own way, it could be set up on a proprietary account. A percentage of the money collected would be set aside to pay for the operation of the unit each biennium, with the balance accounted for under existing statutes and practices.

#### Coordination With House Bill 2

HB 135 will be void if House Bill 2 does not include an appropriation to implement the bankruptcy collection unit in the Attorney General's Office.



U. S. Department of Justice

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Office of the United States Trustee

DEC 07 1993

District of Montana

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December 6, 1993

Hon. Joseph P. Mazurek  
Attorney General  
State of Montana  
Post Office Box 201401  
Helena, MT 59620-1401

Re: State Participation in Bankruptcy

Dear Joe:

My apologies for not addressing this correspondence to you earlier. Since visiting with you I have been to New York, Seattle, Washington, D.C., and several points in between. My attention has been preoccupied by a troublesome trustee on Long Island who I was charged with investigating. And I have participated in a few seminars since our visit. In fact, as an indication of the interest state agencies have in the bankruptcy area, I am giving two presentations in Helena on December 15, 1993. First, I will be talking to the Public Law Section of the State Bar; followed by a talk to the staff of the Secretary of State's Office. I am encouraged by the recognition shown by government employees of the importance of a greater knowledge and involvement in this field of law.

Perhaps it is no coincidence that an article recently appeared in the "American Bankruptcy Institute Journal" authored by Dan Morales, the Attorney General for the State of Texas, entitled "The 'New' State Attorneys General: The Sleeping Giants Awake." (I have enclosed a copy.) The point of Mr. Morales' remarks is that state agencies must devote the time and resources necessary to adequately protect the States' interests in bankruptcy cases. "The simple truth," Mr. Morales states, "is that increased budget expenditures in bankruptcy collections pay for themselves many times over in terms of returns to state treasuries." Mr. Morales concludes his article with the statement that "proactive participation in bankruptcy cases is absolutely necessary to success in the bankruptcy system, and absolutely vital in this economy... (Given) the size of the current deficits at both the state and federal level... the

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States simply cannot afford to let any potential source of revenue go untapped." I emphatically agree. It is time Montana begins to "flex its muscles".

My review of a list of Montana state departmental legal offices suggests that the following agencies have routine exposure to bankruptcy cases: Agriculture; Auditor; Commerce; Fish, Wildlife & Parks; Health and Environmental Sciences; Justice; Labor & Industry; Natural Resources and Conservation; Public Service Commission; Revenue; Secretary of State; Compensation Mutual Insurance Fund; State Lands; and the University System. Most of these agencies sent people to a seminar I taught in February of this year for state employees, and all in attendance agreed that consolidation of legal resources for representation of Montana in bankruptcy cases would be most helpful, given the unique and sometimes perplexing nature of bankruptcy law.

Two agencies that are increasingly active in the context of bankruptcy cases are Revenue and Environmental Sciences. The former is a creditor in some fashion or another in practically every case filed in Montana (and, no doubt, to some extent in cases filed in other states); and the latter is encountering more and more instances of debtors attempting to "dump" their toxic waste problems on a bankruptcy trustee. And, frequently county treasurers are involved in liquidation and reorganization cases as creditors as a result of real or personal property tax obligations owed by bankruptcy debtors. For years, treasurers could be counted on to acquiesce to any kind of treatment proposed in Chapter 11, 12 or 13 plans due to their non-involvement.

I strongly believe that state and county governments would benefit greatly by the creation of a position within your office dedicated, at least in part, to handling the majority of the bankruptcy issues which involve such governments. A person filling this position could take the time to attend seminars and read the latest literature; could come to know the players in Montana and the "rules of the road"; and could be the contact for the State with the rest of the bankruptcy bar. Such a person would not be snowballed by a cagey debtor's attorney's attempt to stick it to the State through the numerous loopholes available under the Bankruptcy Code. Such a person might even pay a visit to the Bankruptcy Section of Texas' Collections Division, to learn first-hand how Texas has established a workable structure to deal with bankruptcy.

I would urge the State's new bankruptcy expert, when designated, to join the American Bankruptcy Institute, the National Association of Bankruptcy Trustees, and other such

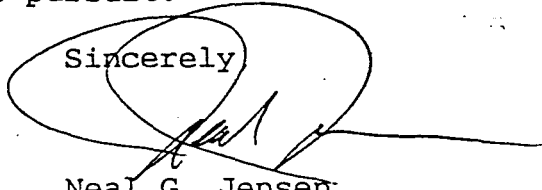
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organizations devoted to disseminating useful and timely information about the latest issues being litigated in this arena. As an example of the "good stuff" that can be regularly found in the ABI Journal, I enclose copies of several articles dealing with environmental subjects found in the monthly section entitled "Toxins-Are-Us". I know that Laura Bassein and Cassandra Noble would be interested in these materials and would ask that you pass them along. A review of these articles will confirm the regular involvement of state agencies in "messy" bankruptcy cases. I also enclose a brochure for a treatise entitled Environmental Obligations in Bankruptcy, published by Warren Gorham Lamont, which also publishes the very best one volume work on bankruptcy I have ever found: The Bankruptcy Law Manual, which is annually supplemented. These and other books on the subject should be procured for the State Law Library, if they have not been already. Only a well-armed State can hope to defend itself and its taxpayers in Bankruptcy Court these days. Montana needs to pump up its muscles for what lies ahead. And I remain more than willing to act as an exercise trainer in this endeavor.

I hope the enclosed materials will provide additional insight into the various ways bankruptcy impacts on state and local governments. For an even better understanding, perhaps I could poll my audiences on December 15, to find out what agency attorneys themselves see as the government's involvement in bankruptcy cases. If you desire more information on this subject or any other assistance in your attempt to implement a bankruptcy specialist within your office please feel free to give me a call. Good luck in this most important pursuit.

Sincerely



Neal G. Jensen  
Assistant U.S. Trustee



EXHIBIT 13  
DATE 1/18/95  
HB 135

## TESTIMONY IN SUPPORT OF HB 135

Department of Revenue  
January 18, 1995

The Department of Revenue supports HB 135. We would like to provide the committee with some background concerning the current Department of Revenue process since the Department does the majority of the bankruptcy work in state government.

The Department must review every bankruptcy which is filed in the State of Montana to determine whether the debtor owes any taxes. In addition, we review many out-of-state bankruptcies when we have been listed as a creditor by the debtor. This review process is computerized as much as possible but requires close cooperation and communication with each one of the tax divisions within the Department. The accounts receivable for each and every tax administered by the Department must be reviewed to determine whether the debtor owes any taxes.

If it is determined that the debtor owes the state any taxes, a claim is prepared and filed with the bankruptcy court. Once the claim is filed with the bankruptcy court it must be monitored to ensure that the state receives it's share of the estate, if any. In addition, the staff must constantly look for new debts and update the claims as necessary. Again, there is a constant need for communication with the divisions during the process.

This task is performed on a part time basis by two administrative assistants and one administrative officer. Their total time is approximately one FTE. In 1994, the staff worked on approximately 1,500 claims and collected about \$147,000 in debts. The claims totaled about \$3.2 million.

The Department's attorney's spend very little time representing the state in bankruptcy court. Once in a while a case will require attorney time but it is less than one-tenth of an FTE.

It is our understanding, from talking to the Department of Justice that the current process at the Department of Revenue will remain the same as far as the claim filing process is concerned. However, the Department's attorneys would no longer be required to represent the Department before the bankruptcy court. The Department supports this concept. It makes sense to have attorneys in the Attorney General's Office with expertise in Bankruptcy work. It also makes sense to have the claim filing process remain in the Department of Revenue because of the close cooperation and communication necessary.

We would be happy to answer any questions.

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

7/18/95

BILL NO. HB 135

SPONSOR(S)

Rep. Cobb

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Chris Tweeten	Dept of Justice	X	
Dave Woodgerd	Dept. of Revenue	X	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 1/18/95

BILL NO. HB 69 SPONSOR(S) Rep. Fisher

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Connor	MT County Attys Assn	X	
PARI LELLOURE	Missoula Victims	X	
MARIAN STEVENSON	HOBSON, Victim	X	
Suzanne Hall	Bozeman / Victim	X	
Adana Stevenson	Hobson Victim	X	
Sharon Stevenson	Hobson / Victim	X	
David Hemion	Mental Health Assoc.	✓	
GENE KISER	MBCC	✓	
DAVE OHLER	Dept. of Corrections	✓	
Marye Fisher	Rep	X	
MATTHEW DALE	FRIENDSHIP CENTERS OF MONTANA	X	

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