MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 19, 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 E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

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

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

Committee Business Summary:

Hearing:	SB 6, HB 150, HB 198
Executive Action:	SB 6 BE CONCURRED IN
	HB 69 DO PASS AS AMENDED

{Tape: 1; Side: A}

HEARING ON SB 6

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, began the hearing on SB 6 by outlining the intent of the bill which would repeal the sunset clause to the action of the legislature in 1979 and again in 1987 which added two justices to the Montana Supreme Court. The caseload increase which brought about this addition to the Supreme Court has not abated and this bill seeks to repeal the sunset clause and make the number sitting on the Montana Supreme Court six associate justices plus one chief justice. Should the caseload be reduced or should some other reason arise for a reduction of the court, the legislature has that authority through the 1972 Constitution by article 7, section 3.

Proponents' Testimony:

Chief Justice Jean Turnage spoke in support of SB 6 and submitted his written testimony. **EXHIBIT 1**

Honorable James Nelson, Justice, Montana Supreme Court, provided the committee with written testimony containing statistics for the court which supports the continued need for the additional justices. **EXHIBIT 2**

Honorable Karla Gray, Justice, Montana Supreme Court, appeared as a proponent of SB 6. She said this bill was not about judges and certainly not about lawyers, but it was about the people of Montana including the businesses, ranches, schools and other entities of Montana which would have to wait for rulings on their cases and concerns.

Chris Tweeten, Chief Deputy Attorney General, represented the Attorney General in his strong support of SB 6.

John Connor, Montana County Attorneys Association, said the passage of this bill would be imperative for the continued maintenance of a workable and healthy criminal justice system.

Robert Phillips, President, State Bar of Montana, spoke on behalf of the attorneys of Montana who support this bill and gave their reasons which reflect previous testimony relating to the requirements of the Montana Constitution which promote the workload for the Supreme Court of this state.

Jim Rice, Judiciary Unification and Finance Commission (JUFC), voiced his support of SB 6 and the recommendation of JUFC for its passage.

Gordon Morris, Director, Montana Association of Counties (MACO), lent MACO's support of JUFC's recommendations concerning SB 6.

Jacqueline Lenmark, State Bar of Montana, urged the committee to concur in the passage of SB 6.

Bob Gilbert, Montana Magistrates Association, spoke especially in favor of eliminating the sunset clause from this bill to reduce the cost of the legislation process to keep the court at this level.

Jerome Anderson, Attorney, felt that it would be detrimental to the general public and the judicial court system to revert to a smaller court.

Stuart Kellner, Montana Defense Trial Lawyers, joined the previous proponents in support of SB 6.

Russell Hill, Montana Trial Lawyers Association, supported the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Counter: 33.5}

REP. LOREN SOFT asked why the Montana Supreme Court cannot deny cases on appeal.

Justice Nelson answered that constitutionally they are required to decide all cases submitted to the Supreme Court and required to decide them by written opinion.

REP. SOFT asked what would happen if that were to be changed.

Justice Nelson said it would allow the court some ability to screen cases to determine which cases would actually be decided by issuing an opinion after hearing oral arguments. Montana is one of 14 states which does not have an intermediate appellate court. Often intermediate appellate courts screen the cases. He said that though this might provide them with the ability to not issue written opinions on each case, the cases would still have to be read, screened and a decision made as to whether or not they would be dealt with by way of written opinion. It would reduce the workload somewhat.

REP. SOFT asked if the states with intermediate appellate courts have a situation where the Supreme Court can deny on appeal.

Justice Nelson could not answer the question specifically. Generally the function of intermediate courts is to act as a screening mechanism. Statistically when a state gets to a population of about one million, and the filings of the highest

appellate court level reach 800, intermediate appellate court structures are established.

REP. DANIEL MC GEE asked how many cases are appealed by prisoners who are represented by law students.

Justice Nelson said he had not seen any prisoner appeals per se by law students. They include prisoner appeals which are handled by attorneys or post conviction relief cases which are usually handled pro se.

REP. MC GEE asked how many of those cases the Supreme Court has to deal with on an annual basis.

Justice Nelson said he could not quote an accurate number but in 1993 about 33%+ were criminal cases of which a rough estimate of 10% were prisoner pro se post conviction relief.

Closing by Sponsor:

SEN. CRIPPEN commended the bill to the committee for its passage.

EXECUTIVE ACTION ON SB 6

Motion: REP. SHIELL ANDERSON MOVED SB 6 BE CONCURRED IN.

Discussion: REP. WILLIAM BOHARSKI asked what the Montana Supreme Court caseload is in comparison to other state Supreme Court caseloads.

Justice Nelson answered, without objection from the committee, it was his understanding from his study of a publication supplied by the State Court Institute that the Montana Supreme Court handles on an average-per-judge basis as high or higher than any other appellate court in the United States. Federal appellate court judges are responsible for about 30 opinions per year per judge. Montana Supreme Court caseload on a per judge basis is 50 - 60 per year.

Vote: The motion carried unanimously 19 - 0.

REP. ANDERSON will carry SB 6 on the House floor.

HEARING ON HB 150

Opening Statement by Sponsor:

REP. CHRIS AHNER, HD 51, said that HB 150 gives judges more control in placement of youth.

Proponents' Testimony:

Gail Keil, Department of Family Services (DFS), Juvenile Corrections Division, spoke in support of the bill and submitted written testimony. **EXHIBIT 3**

{Tape: 1; Side: A; Approx. Counter: 49.1}

Candy Wimmer, Montana Board of Crime Control, rose in support of this bill. She said that in previous years the function of the Youth Placement Committee has been inconsistent and judges have had to make dispositions to DFS not knowing for certain where those youth would be placed after their commitment to the department. She felt this bill would help alleviate the distrust and increase communication between the courts and the department.

Al Davis, Administrator, Juvenile Corrections Division, DFS, said he and a nationally known circuit judge had traveled around the state visiting independently with district judges relative to issues of concern. Three issues surfaced which he believes this bill responds to. Judges want authority restored which they feel they lost with the creation of DFS, they want to know where the youth are going and what is going to happen to them and for how long. They want information to support the decisions they are making. He felt it was important for youth courts to court order other issues relative to the needs of the youth such as parental involvement, treatment, as well as parental contribution of their support and care. **EXHIBIT 4**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LIZ SMITH recalled that at the 1993 session there was to be a review board appointed by the Supreme Court which would review changes in youth placement. She asked if that was correct.

Ms. Keil referred the question.

Ann Gilke, Legal Counsel, DFS, said she believed the reference was to the Citizen Review Board which is a private project to take over the duties of the current Foster Care Review Board. That board is directed at children who are youth in need of care and does not apply to delinquent youth or the youth in need of supervision.

REP. SMITH asked if there is anyone representing the family on the review committee being established by this bill.

Ms. Gilke said the list did not specifically include parents, but it is not an exclusive list and its intent is not to exclude family involvement.

REP. SMITH asked if there would be any objection to specifically including parents or someone from the general public who would be concerned for the youth along with the governmental persons listed.

Ms. Gilke answered that there was no objection as a general principle. They would have to be sure that it was consistent with the confidentiality statutes and there wasn't any conflict with the Youth Court Act.

REP. CLIFF TREXLER drew attention to page 1, line 24 where "representative of the department" had been changed to "representatives of the department." He asked if the way this is written would weight the committee with several members from the department and only one from other areas of interest.

Ms. Keil said they wanted this bill to say "representatives" because a youth is committed to DFS supervision by the youth court and is placed at a secure facility and then will go to the supervision of juvenile parole officers. Up to that time, those people were not involved with the delinquent youth. To deal with the fragmentation of case management and to strengthen the continuum of care, they strongly support that those people be present at the meeting when the youth is committed to the department so that case management and family involvement can begin there.

REP. TREXLER asked if it would be possible to have several departmental members on this committee as opposed to perhaps one probation officer and one representative from the school district.

Ms. Keil answered that it would be possible. This list is not inclusive, but just delineates the five professions represented.

REP. SOFT asked **Ms. Keil** to outline her analysis as to the primary focus or purpose of this bill.

Ms. Keil emphasized the importance of case information getting to the judges prior to disposition and having a parole officer involved at the initial meeting for transfer of case management,

REP. SOFT asked if this bill is part of the process to allow for more local involvement and control in dealing with children in need and the disposition of their cases.

Ms. Keil said that was exactly the purpose.

REP. SOFT replied that then he found the bill confusing because it sounds like local people would be given more control, but it isn't saying that. He said the inclusion of parental involvement would be important if they really want local participation. People who provide services such as representatives of Mountain View, Pine Hills or outpatient services, for instance should be

included. He pointed out the inconsistencies on page 2, lines 17-18 which appears to mean that if the superintendent of a facility makes a placement determination, there is no authority to change it. And on page 3, line 2, "it says if the department accepts either of the committee's recommendations...." which sounds like the committee would meet and the recommendations could be accepted or perhaps not. So he wondered why they should meet.

{Tape: 1; Side: A; Approx. Counter: 66.5}

Ms. Keil said her experience on youth placement committees demonstrated that families, their attorneys and youth advocates do have a part and are strongly encouraged to be there. As far as private providers being at the meeting, she felt it would be difficult because of the lack of facilities and geographical locations of the meetings, though it would be ideal to have them present.

Ms. Gilke further responded to the specific questions on page 2 regarding the authority of the superintendents. They feel strongly that superintendents should have the discharge decision though it doesn't mean that they will decide where the youth will go. If the decision is made to discharge and the committee would like to meet, all this says is that the committee can't say, "No, you can't discharge the youth." They can meet to decide where to place the youth upon discharge. She commented on the page 3 portion which deals with denial of the recommendations by stating **REP. SOFT** was correct about the ultimate decision-making authority remains with the department. The authority always has been with the department and the way this bill is drafted it is intended to increase communication on the local level with more input up front and include parental involvement as well as involvement by everyone else who has an interest in the youth and their treatment. However, the decision ultimately rests with the department because of the funding issue.

REP. SOFT acknowledged the responses to his concerns, but said he believes in order to increase community involvement empowerment of the community teams (placement committee teams) is important. He did not believe the bill, as drafted, accomplishes this. He asked if the statement about the department's ultimate authority needs to remain in the bill. He suggested it might say that the department must accept one of the committee's recommendations.

Ms. Gilke affirmed that as long as they are under the budget constraints and the department is responsible for remaining within the budget, it would have to have the ultimate say. Her perception was that it would be rare that the department would not work with the youth placement committees on following recommendations. **REP. SOFT** said that the problem that creates is that if the ultimate decision-making authority rests with the department and the primary reason is management of the budget, it may also impact the fact that decisions made on the best

placement of the child have more to do with dollars than with the best interests of the child. He asked if **Ms. Gilke** agreed.

Ms. Gilke replied that in her work with the regional administrators of DFS, she had found that they are more interested in the best treatment of children than their own budgets although their budgets are a close second. She truly believes the department is interested in finding the most appropriate placement for these youth and having the involvement of the professionals up front helps them make that decision.

REP. SMITH asked how the child protective teams are correlated with this.

Ms. Keil said her experience has been in rural areas where those duties overlap. Larger cities have the luxury of having different people on child placement teams. Overlapping would be among the youth court representatives and mental health professionals.

REP. SMITH wondered if the child protective team could be the committee.

Ms. Keil said they could be the same committee members.

REP. DEBBIE SHEA pointed out section 1, line 23 and said she felt the language was loose. In particular she did not see listed any representative of a school district located within the boundary. She noted the committee may include a member of the school district, but wondered if it definitely would include a school district representative at least by telephone conference.

Ms. Keil replied that her understanding was that the members may include these people, but if there is a youth with a Managing Resources of Montana (MRM) worker or a different aftercare worker, etc, those would also be included.

REP. SHEA asked whether or not they are guaranteeing that someone from the school district will be on the committee. In other cases, she wondered if someone from the tribal council be present if the youth is a Native American, for instance.

Ms. Keil said her experience has been that the department appoints a professional in each of the designated areas.

CHAIRMAN CLARK clarified that the committee is not formed on a case-by-case basis and it may include representatives from these areas of interest not necessarily from the specific residence of the youth.

REP. SHEA asked if the wording should be, "shall include" rather than "may include."

Ms. Gilke responded that she agreed with **CHAIRMAN CLARK'S** assessment of the word, "may," and that word was left in the drafting because the child may not be in school and to force school personnel to attend every meeting would seem unnecessary. The intent is not to exclude anyone, but to allow the committee to function more rationally given the child's needs.

REP. LINDA MC CULLOCH asked who is ultimately responsible for establishing the committee.

Ms. Keil said the department was responsible for appointing five members of the committee to serve on the youth placement committee for two-year terms. In some communities, they have a set time for meeting monthly, some meet weekly, and some meet whenever there is a need.

REP. MC CULLOCH asked if there is a committee within the department which establishes the youth placement committee or if it is appointed by the director.

Ms. Keil said that it depended upon the community resources.

{Tape: 1; Side: B}

REP. MC CULLOCH commented on page 2, section 2, subsection 4 where the sentence is added concerning options for the financial support of the youth.

Ms. Keil explained she is committed to the idea that when people get free services, they don't benefit or invest in them as much. She supports that families be assessed and financially contribute in recognition of the fact that people are helping raise their children.

REP. MC CULLOCH inquired whether the families would be the only place the department would look for financial support.

Ms. Keil did not know where else they might look.

REP. BRAD MOLNAR stated he did not see where this bill gives judges any clout but only changes when they will meet and telling them what the placement options are. He asked **Mr. Davis** if he perceived anything in the bill which allows the judge to override the placement committee's decision.

Mr. Davis replied that the last sentence states the recommendations will be directed to the youth court for its consideration. Based on experience, the feeling is that it is rare that the judge would not act on the recommendations made by the committee.

REP. MOLNAR again said he could not see where it gives the judge any authority whatsoever.

Mr. Davis elaborated on the process by telling the committee that the recommendations would be specific which are submitted to the judge for consideration. Those recommendations can be included in the court order specifically to be followed and may be relative to restitution, parental involvement, types of treatment and location of placement. The only language in most court orders currently is their committment to DFS for care. This bill would allow the judge to be specific as to what he requires, demands or anticipates for youth coming into the system.

REP. MOLNER inquired if it means the judge is being given back the capability of overriding the placement recommendation of the department.

Mr. Davis replied that the judge could recommend that the recommendations of the committee not be followed and send it back to the placement committee with his recommendation. It would then be up to the placement committee to take into consideration those recommendations submitted by the judge.

REP. MOLNAR observed that if the committee meets before trial, this appears to presuppose guilt and if the judge does not find the youth guilty, the committee's time has been wasted in determining placement recommendations.

Ms. Gilke agreed this was a good point, but was not sure the committee would have decided guilt. Instead, they would have made recommendations for the judge's consideration based on the deeds of the youth.

REP. MOLNAR believed the placement committee would have been brought together for the purpose of placement of either an offender or a youth in need of supervision and would be telling the judge that the youth should be placed.

Ms. Gilke said, "They are making a recommendation for placement, yes. But they are not deciding guilt or innocence."

REP. MOLNAR re-asked his question about wasting the time of the placement committee when it is possible the judge would not find the youth guilty.

Ms. Gilke spoke hypothetically that if the case were tenuous, they would get the adjudication prior to convening. It would be left up to the local level to decide.

REP. MOLNAR addressed **Ms. Keil** in reference to her testimony that she wants to bring a juvenile probation officer into the youth placement committees. He noted they are already on the committee but where the law says "a youth probation officer," and her testimony says, "the juvenile probation officer." He agreed with the wording of her testimony so that the one who has been working with the youth would actually be present. He asked if she had

any objection to an amendment that would say, "the youth's probation officer."

Ms. Keil answered she believed the wording was, "juvenile parole officer." There are juvenile probation officers who commit to youth court and juvenile parole officers who provide after-secure care. They are asking that those people be involved at the placement committee meeting.

{Tape: 1; Side: B; Approx. Counter: 11.8}

REP. MC GEE "walked" **Ms. Gilke** through the bill to gain clarification of the terminology and the functions of the placement committee. His conclusion was that the department sets up the committee, the department may become the sole representation of the youth's interests on the committee, the department may argue with the superintendent of the correctional facility and then the department may not take any action recommended by the correctional facility. In other words, the way he read it, the committee can be overruled by the superintendent of the state youth correctional facility and then the department may not take action on his recommendations. Then the committee is assigned to inform the court as to the recommendation. To restate it, what he sees, as the bill is written, the department must establish the committee, can appoint all the people on the committee which can be overruled by the superintendent, but then the department can reject the recommendation of the correctional facility superintendent and then order the committee to inform the court what the department's final interpretation and determination are. He asked if he was correct in this evaluation of the bill.

Ms. Gilke said she did not read the bill exactly that way.

REP. MC GEE asked if it is a correct interpretation of how things could go.

Ms. Gilke answered she did not believe so. Under this bill theoretically DFS could appoint all five representatives from the department. She restated what the intent is in including others on the committee.

REP. MC GEE said he was not speaking about intent but rather what the bill is actually saying. He focused on the fact that it doesn't limit the membership to the department, but it doesn't exclude representatives of the department. By earlier testimony, it does not necessarily include other members.

Ms. Gilke replied that they could have just five department members meeting. The intent of the bill is to give more information to the judge.

REP. MC GEE declared his purpose to be making the language of the law reflect the intent. Otherwise, it might be that the

department could be setting the stage to fulfill the department's agenda on a particular person.

REP. JOAN HURDLE asked if the placement committee makes two recommendations to the judge and if those recommendations are made before the judge hears the case.

Mr. Davis said that was true.

REP. HURDLE asked what role the judge might have then in this which would be followed.

Mr. Davis explained that one area would be in parental financial responsibility. Another critical example is that the parents maintain or continue some activity toward correction of issues in the home environment. If the information is known prior to the disposition and the placement committee feels it is appropriate and in the best interests of the youth, the court can include it specifically in the court order. That is the clout the department feels is really necessary.

REP. HURDLE asked if she understood it would be rare that the department would overrule the judge and so therefore the department can overrule the judge.

Mr. Davis said he really could not think of an instance where it had ever occurred. He said his response would be that it would never occur without going back through the youth court judge.

REP. DEB KOTTEL wanted to know if Mountain View School (MVS) and Pine Hills School (PHS) are licensed facilities.

Ms. Gilke said they are not licensed.

REP. KOTTEL felt statutes should be written to go beyond the specifics and if there are generic descriptions which could be put in place of the names of the two schools, it would be wise to avoid problems which would arise if the specific institutions were to close. She asked for the language which would be appropriate to do this.

Ms. Gilke said that MVS and PHS are juvenile correctional facilities which are defined elsewhere in statute by their names, so the other statutes would have to be amended.

REP. KOTTEL asked if she would have an objection to amending the language to read, "A committee shall consider placement in a licensed facility, a state juvenile correctional facility, ..."

Ms. Gilke said she would not object.

REP. KOTTEL asked if the people who serve on this committee receive any compensation other than their salary.

Ms. Gilke said that they did not.

REP. KOTTEL said that made sense to her except when she considered an independent mental health professional serving on the committee. She wanted to know if this meant they served as volunteers.

Ms. Gilke said they had been in the past.

REP. KOTTEL asked if there is any travel allowance.

Ms. Gilke answered, "No, there is not." This was why telephone conference calls are the most efficient way to convene the committee.

REP. SMITH inquired about the change on page 1, line 25, from the county department of public welfare to the Department of Social and Rehabilitative Services (SRS). She wanted to know if that was not moving the committee from a county representative to a state employee.

Ms. Gilke said her understanding of the change was that it refers to Eligibility Specialists who are employees of SRS and the field staff felt it was important to have that person present to help determine if there were federal funds available for placement.

REP. SMITH asked if there is a way once the child comes under the supervision of DFS to involve parental financial responsibility or assistance.

Ms. Gilke said this was found under the dispositional statute in the Youth Court Act.

REP. SMITH asked if the judges are responsive to it.

Ms. Gilke said, "Somewhat."

REP. SMITH observed that case management is the problem which is trying to be addressed by including the parole officer. She wanted to know if the parole officer had been a part of the review of a case by the judge or if this bill was an enhancement to include that for good case management.

Ms. Gilke thought the question reflected a confusion between probation and parole. Probation officers are employed by the district court and had communication with the judge prior to adjudication; and they would be involved with the youth and can be in the meeting.

REP. SMITH clarified the department's feeling that there is a limitation of another level of expertise in the decision making by the judge regarding placement because it has been narrowed down primarily to the probation officer's recommendation.

Ms. Gilke said it was fairly accurate. The intent goes on to include parole officers who pick up supervision after secured care. She suggested the department would work with the committee for amending the bill so that the committee would not be out of balance in its membership.

REP. SMITH asked if there is a parole officer on a youth protection team.

Ms. Gilke replied she did not believe they typically are on those teams because their duties are so specific in supervision of delinquent youth.

REP. SMITH asked if it is up to the local level who serves on the child protection team.

Ms. Gilke answered that that is also covered by statute.

{Tape: 1; Side: B; Approx. Counter: 35.8}

REP. SOFT directed the attention to page 2, line 4 which says who may convene the committee. He felt that line was confusing.

Ms. Gilke said that the purpose of allowing either the probation officer or the department to convene reflects the reality of these cases. Probation officers are familiar with them first in their communities. Included on page 1, lines 18 and 19, when a youth's placement is changed the committee may want to convene to talk about alternative placements. At that point, it probably would be the department which would have the information.

REP. SOFT pointed out line 22 on page 2 as being too vague as to when the committee will meet.

Ms. Gilke replied that was the reason they included, "upon change of placement." Line 22, page 2 is existing language, but she would not have any problem amending it.

REP. SOFT moved on to page 3 to suggest an amendment to the effect that the department would place the child as recommended by the committee within a specified number of days after the written decision.

Ms. Gilke said she would consider it but would consult with regional administrators and state administrators on that.

REP. MOLNAR said it was his understanding that if a bill does not say generally revised, the committee is limited to working on the changes being proposed rather than going back into old law. He wondered if the Judiciary Committee had the authority to make some of these changes because the bill is not a general revision.

CHAIRMAN CLARK replied that it is this committee's job to consider the changes and if the committee wants to change the law

as it is, it is allowed to do that also using the amendment process.

REP. ANDERSON reminded the committee that all the changes must still remain within the title of the bill.

REP. BOHARSKI wondered how much legal authority the placement committee has and if it includes subpoena power to request financial records.

Ms. Gilke said that the placement committee is simply convened to make recommendations to the youth court and the department. They do not have subpoena power and could not force parents to disclose financial information. They could recommend to the judge that the judge require financial disclosure if they think the parent could and should contribute.

{Tape: 1; Side: B; Approx. Counter: 45.3}

REP. BOHARSKI asked if DFS would object to the judge appointing the committee members. He used the example of the judge objecting to the composition of the committee representation.

Ms. Gilke understood the concern and would like the judge to sanction the committee as well. The only hesitation she would have would be if the judge doesn't like the only DFS employee and they would have to send someone from another county to work with the committee.

REP. BOHARSKI asked why the committee meets before the judge makes the determination as to the adjudication of the youth.

Ms. Gilke replied that the Youth Court Act provides for distinct hearings; i.e., the adjudicatory hearing and then the dispositional hearing. It is prior to the dispositional hearing that they are asking the youth placement committee to meet. In reality judges have the hearings back to back in which case the committee would convene with alternative recommendations depending on the disposition. If the committee felt it was too tenuous to know, they wouldn't get the adjudicatory hearing out of the way first, then meet and go back to the dispositional hearing.

REP. BOHARSKI wanted clarification about the department's ability to overrule the judge's decision and place the youth in a different place.

Ms. Gilke responded that a different statute which is not contained in this bill, outlines the dispositional options available to the youth court judges and it does say that if the youth is committed to the department by the youth court, the department makes the final placement decision and can't be obligated financially without the department's approval. Consequently, if a judge were to order DFS to do something

outside the recommendations of the youth placement committee and the approval by the department, the department would either have to live with that court order or go back and challenge the judge. She said that DFS cannot overrule a judge but can challenge his court order if they feel is it inappropriate.

REP. BOHARSKI said, "So the judge has the final say so just exactly where they are going within the department."

Ms. Gilke answered, "Within the limits of the Youth Court Act, yes, they do."

Closing by Sponsor:

REP. AHNER gave her closing remarks with thanks to the committee and urging them to act favorably on HB 150.

HEARING ON HB 198

Opening Statement by Sponsor:

REP. CHRIS AHNER, HD 51, opened the hearing on HB 198 with a summary of the bill which concerns a presentence investigation and victims' fund. It requires the criminal offenders to pay a fee of $25 for preparation of a presentence investigation which is required to be prepared by probation and parole officers prior to sentencing of felony offenders. The money will be used to support local crime victims' assistance programs.

Proponents' Testimony:

Mike Ferriter, Chief, Community Corrections Bureau, spoke in support of HB 198. **EXHIBIT 5**

John Connor, Montana County Attorneys Association, appeared in support of HB 198. They believe accountability for criminal acts is important and the payment of a fee is another step in the right direction toward getting an offender to realize the importance of taking some responsibility for his or her acts. The disposition of the money to help with the responsibility toward victims is equally important.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC GEE asked how the fee was established at $25.

Mr. Ferriter said that the parole and probation officers he represents feel it is a reasonable fee. The more accurate costs

would be well over $100, but they feel it is more realistic to expect collection of $25.

REP. MC GEE asked how **Mr. Ferriter** would feel about an amendment giving the court the ability to assign a larger fee rather than to limit it.

Mr. Ferriter said he would have no opposition to that, though he felt it might get a bit cumbersome for the judges to do it.

REP. MC GEE wanted to know what the actual cost to process these presentence reports.

Mr. Ferriter thought $100 would be a more accurate estimate of the actual cost.

REP. MC GEE asked the sponsor if she would have an objection to amend the bill as he had previously proposed.

REP. AHNER said she would not object.

REP. HURDLE asked if the money goes to the county attorney offices for the victim services program and what the qualifications are for the person administering the program, its job description, funding source and the salary paid.

Mr. Connor replied that there is no set job description, qualifications or salary. The victim and witness assistance programs in most counties are managed by secretaries in the county attorney offices. Some are funded out of a grant from the Board of Crime Control in the larger counties.

REP. TREXLER supposed the defendant were going to jail and refused to pay the fee, and asked how it would then be collected.

Mr. Ferriter answered that the probation and parole officers would indicate in their report to the judge the fee had been collected prior to the completion and submission of the report to the judge. If there were no funds available, they could ask for a waiver. If they refuse to pay, that would be reported to the district court judge in the report and the judge would determine an appropriate disposition for it. He supposed it would be viewed as contempt of court.

REP. TREXLER asked if it has any constitutional implications that the person would be paying to incriminate himself.

Mr. Ferriter said he was not aware of how it would be affected Constitutionally.

REP. BOHARSKI stated he understood the purpose of the fee to offset the cost of the presentence investigation which is funded

from the district court fund. Then he wondered why the language is in the bill about depositing the remaining money in the local crime victim's fund.

Mr. Ferriter restated **REP. BOHARSKI'S** question for clarification.

REP. BOHARSKI explained his concern.

Mr. Ferriter responded that the actual cost of running the presentence investigation comes from the Probation and Parole Bureau general fund allocation. The major costs are the salaries. They did consider placing the funds back into the probation and parole officer general fund to offset training and equipment needs. Debate resulted from that consideration, and they felt they would like to provide something for the victims and it is appropriate to look at the rights and needs of victims. Subjects of presentence investigations are fairly agreeable at that point in the process and $25 is an amount that can be gathered without a lot of hassle. It is part of their mission to support the victims and this seemed the best way to do that.

REP. BOHARSKI asked if he was correct in assuming the money that goes into the probation and parole officers account is general fund money.

Mr. Ferriter said he was correct and that the last legislature authorized probation and parole officers to collect a fee for supervision by all their clientele. Presently they collect $10 per month for each of the over 5,000 offenders. Those funds have been an addition to the general fund money which have gone for further training and equipment for probation and parole officers.

REP. BOHARSKI proposed the bill doesn't do what is intended in the way it is written. He said that if the fee is collected to offset costs, then that is one thing. If they are going to fine people for the crime victims fund, they should do that.

Mr. Ferriter said he couldn't totally disagree with that statement, but the intent was initially to actually go toward the direct offsetting of the costs for the probation and parole officers. The "gist" of the legislation is to hold the offenders accountable.

REP. HURDLE wanted to know from a practical and factual matter if the money would be used in the county attorney's office to pay the salary or someone employed in the witness assistance program.

Mr. Ferriter was assured the counties are professional and would understand the intent of the funding though he could not tell exactly how they would spend it.

REP. MOLNAR demonstrated his view on the distribution of the $25 and questioned how much it would cost to collect it in the first place.

Mr. Ferriter said he understood the concern but he felt they were in a good position to collect the fee and his experience was, at this point in the process, a person would be trying to put their best foot forward. Based on the parole and probation supervision fee experience, they anticipate that they will collect 75% of this fee with a net gain of between $22,000 - $28,000 annually.

Closing by Sponsor:

REP. AHNER presented her closing remarks on HB 198 and urged the committee to understand the intent of the bill is to offset the costs of the parole officer but also to send a message to the offender for accountability and responsibility.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON HB 69

Motion: **REP. BOHARSKI MOVED HB 69 DO PASS.**

Motion: **REP. SOFT MOVED TO AMEND AS SUBMITTED BY THE DEPARTMENT OF JUSTICE. EXHIBIT 6**

Discussion: **Mr. MacMaster** explained the amendments.

REP. SHEA asked why these amendments were not submitted when the bill was presented.

CHAIRMAN CLARK said he believed the request for the bill was sometime ago and then later when they drafted the bill they realized the need for the amendments.

REP. BOHARSKI questioned using the words, "may" and "disclose" on page 6, line 12 in regard to the presentence report.

REP. ANDERSON answered there might be a case where a victim does not want to discuss the contents of the presentence report.

REP. BOHARSKI wondered if the case would ever arise there the victim might want to see it and the prosecutor has the discretion to withhold it.

Vote: **The motion carried unanimously 19 - 0 by voice vote.**

Motion: **CHAIRMAN CLARK MOVED TO AMEND PAGE 13, LINE 27 TO STRIKE "ONE-THIRD" AND INSERT "ONE-HALF."**

Discussion: **REP. KOTTEL** opposed the amendment because part of their earnings go to pay child support as well as the requirement

to purchase various items and because of their costs for postage and correspondence with their families.

REP. MOLNAR asked how much the prisoners earn.

CHAIRMAN CLARK said that it varies depending on the job they hold at the prison.

REP. SMITH explained they earn anywhere from $1.10 per day and up to $6+ if they are in the industries program which then requires they pay their medical costs. There is a craft store from which they receive a commission when they sell their products. Some have significant accounts while others have small accounts.

CHAIRMAN CLARK said that some have SSI, workers' compensation and retirement benefits. Some are not financially strapped.

REP. MOLNAR observed that items like writing a book while in prison would not be included in their prison earnings. And he wondered where things like SSI would fall.

CHAIRMAN CLARK said he believed that is covered under another section of law passed previously prohibiting a prisoner from benefitting by the fruit of his crime. But he believed any money generated into their accounts during the time they are in prison is classified as prison earnings.

REP. DUANE GRIMES interpreted the bill and the amendment to mean the judge would have the discretion to set the amount. He would feel positive toward the amendment if the amount could be assessed up to one-half as the maximum.

REP. BOHARSKI asked if child support would already be taken out before this.

REP. KOTTEL believed there was no master list of priorities and the claims against prisoner earnings become unsecured creditors so whoever gets there first to attach the account is paid.

REP. GRIMES questioned if the discretion in paragraph 3 and also in subsection (c) allows for the consideration of those things before the court.

REP. KOTTEL said she thought that was correct and a hearing is held to make the adjustments.

REP. MC CULLOCH reminded the committee that the one-third figure came out of the Uniform Crime Victims Act and asked if that is a federal act.

CHAIRMAN CLARK said he believed that it is the Montana crime victims' fund.

REP. MC CULLOCH asked if the one-third figure refers to something that is already on the books.

CHAIRMAN CLARK replied that this was new language.

REP. KOTTEL remembered it was a model victims compensation act which was drafted for states to follow.

Vote: **The motion failed by roll call vote 9-9.**

Motion: **REP. MOLNAR MOVED TO AMEND SECTION 4 BY INSERTING, "AN ADULT CONVICTED OF A FELONY MAY NOT DISCHARGE HIS RESTITUTION OBLIGATIONS THROUGH THE PERFORMANCE OF COMMUNITY SERVICE."**

Discussion: **REP. BOHARSKI** stated his understanding of the effect of the amendment would be that even though the court can require community service this community service work would not reduce the amount of restitution owed to the victim.

REP. MOLNAR said that was correct. This would cover the case of someone becoming able to make restitution at a later date.

REP. KOTTEL said the effect would be to have a lifetime obligation.

REP. GRIMES asked if other parts of the proposed bill would have to be changed to reflect this amendment.

Mr. MacMaster said he did not know and would have to compare it with the current law that isn't in the bill to see what kinds of amendments and wording would be required.

Vote: **The motion carried unanimously 19-0.**

Motion: **REP. ANDERSON MOVED HB 69 DO PASS AS AMENDED.**

Discussion: **REP. MOLNAR** recalled a concern he had during the hearing that the obligation could be discharged through bankruptcy. Looking under statute, he believed the obligation is actually to the state and he was concerned that if the state chose not to pursue the obligation, the person to whom it is owed would never receive their money. He wanted to include wording to the effect that the obligation is to the victim and is not to the state itself and is not dischargeable through bankruptcy and the victim can take action even if the state is hesitant to.

REP. KOTTEL said it would be enough to add language that the debt is not dischargeable in bankruptcy.

Mr. MacMaster said he would have to have time to think about it though it sounds reasonable offhand.

REP. BOHARSKI believed this committee in the past had made conceptual amendments whereby the language was clarified after the committee agreed to them and acted on the bill.

CHAIRMAN CLARK asked **REP. MOLNAR** if he would agree to a conceptual amendment.

Motion/Vote: REP. MOLNAR MOVED THE CONCEPTUAL AMENDMENT WHICH WOULD INTEND THAT THE DEBT IS NOT DISCHARGEABLE THROUGH BANKRUPTCY AND IT IS OWED TO THE PERSON AND NOT TO THE STATE AND THEY COULD MOVE ON IT IN THE LIFETIME OF THE PERPETRATOR. The motion carried by a unanimous vote 19 - 0.

Motion/Vote: REP. ANDERSON MOVED HB 69 DO PASS AS AMENDED. Motion carried unanimously 19 - 0.

Motion: REP. BOHARSKI MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 90-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:30 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/19/95

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

HOUSE STANDING COMMITTEE REPORT

January 21, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 69** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 7.
Following: "SECTIONS"
Insert: "27-2-201,"

2. Page 6, line 12.
Strike: "discuss"
Insert: "disclose"

3. Page 6, line 13.
Strike: "with"
Insert: "to"

4. Page 8, lines 24 and 25.
Strike: "If" on line 24 through end of line 25

5. Page 11, lines 22 through 25.
Strike: subsection (3) in its entirety

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

7. Page 14, line 4.
Following: "payment."
Insert: "If the victim has received compensation under Title 53, chapter 9, the court may also order an employee of the board of crime control to supervise the making of restitution and

Committee Vote:
Yes 19, No 0.

to report to the court any default in payment."

8. Page 27, line 8.
Following: line 7
Insert: "**Section 39.** 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 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 restitution remains unpaid.""

Renumber: subsequent sections

-END-

1-23-95

HOUSE STANDING COMMITTEE REPORT

January 19, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 6** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Anderson

1/19

Committee Vote:
Yes 19, No 0.

161521SC.Hbk

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 1/19/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H. Bill No. 69

Representative Daniel McGee voting aye
(aye or no)

and amendments

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date Jan. 19, 1995

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 69

Representative Bill Carey voting Aye
(aye or no)

Rep. McCullough may vote on amendments for me. BC

HB 69 - Fisher 1/19/95

Amendments (if any) yea

HB 69 yea

Bill Tash

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 1-19-95 BILL NO. HB 69 NUMBER _____

MOTION: Amend Page 13, Line 27, strike "one-third" and insert "one-half."

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

EXHIBIT 1
DATE 1/19/95
SB 6

STATEMENT OF JEAN A. TURNAGE
Chief Justice of the Montana Supreme Court
In Support Of Senate Bill 6

Mr. Chairman, members of the House Committee on the Judiciary. My name is Jean A. Turnage, and I appear here as Chief Justice of the Montana Supreme Court.

I respectfully submit this statement on behalf of the Judiciary of the State of Montana in support of Senate Bill 6.

A brief review of the Montana Supreme Court is appropriate.

1889 Const., Art. VIII, Sec. 5 -- The Supreme Court shall consist of three justices . . . the legislature shall have the power to increase the number to not less nor more than five.

Art. VIII, Sec. 8. -- There shall be elected at the first general election one chief justice and two associate judges.

Thirty years later in . . . 1919, by Chapter 31, Ex. L. of 1919, the legislature provided that . . . The Supreme Court shall consist of a chief justice and four associate justices.

Fifty-three years later the people of Montana adopted the 1972 Constitution and

Art. VII, Sec. 3, provides the Supreme Court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six.

Seven years later the legislature enacted Chapter 683, Laws of 1979, that provided . . . The Supreme Court consists of a chief justice and six associate justices. (This legislation was to sunset on the first Monday of January 1989 and the number of associate justices would revert to four.)

In 1987 the legislature enacted Chapter 362, Laws of 1987 . . . and extended the six associate justice court -- but again sunset the extension. Unless the 1995 legislature passes Senate Bill 6, the Supreme Court will revert to one chief justice and four associate justices -- a five-member Court.

There is no question that a loss of two justices on the Supreme Court would result in a serious impairment to the

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administration of justice in Montana -- the Court case load has not decreased.

Case filings in 1979 when the two additional justices were authorized increased dramatically to 1987 when the two additional justices were continued and from 1987 to 1994 the case load again had a large increase.

The present case load for each of the seven justices on the Court today is virtually identical to the case load in 1979 -- when the Court had five justices -- 1979 approximately 96 cases for each of the five -- 1994, 91 cases for each of the seven justices.

The only way the Court presently can keep even with the cases filed each year is to conference and process cases each Tuesday and Thursday every week of the year and . . . during every work day of the year work diligently to prepare for cases in process.

Loss of two justices would certainly result in delay at the Court in processing cases -- a delay increase of at least one-third.

Art. II, Sec. 16, of the Constitution of Montana provides . . . Courts of justice shall be open to every person and speedy remedy afforded . . . .

Failure to meet this constitutional guarantee would be a failure of justice and a form of rationing of justice -- a result totally unacceptable to the people of Montana.

Delay in resolving litigation is costly -- adds public expense, expense to the litigants, and -- a cost not measured by dollars -- the human stress that clouds the lives of all litigants.

If a party in a lawsuit has been awarded compensation for injuries, they should not be required to wait intolerable lengths of time while the appellate process operates; likewise, if a party is found to be liable for an injury, interest runs at 10 percent per

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annum on the amount of damages until the appellate process is completed and the damages then determined and paid.

In the social area of the law, such matters as child custody, placement of children in foster homes, and adoption matters should never be delayed and the lives of those involved thereby thrown into turmoil.

There are literally hundreds of other examples where delay is unacceptable.

Sunset not needed -- at any time the legislature should find that the work load of the court does not require seven members -- the legislature can reduce the court to five.

What the legislature gives, it can take away.

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THE SUPREME COURT OF MONTANA

JAMES C. NELSON
JUSTICE

JUSTICE BUILDING
215 NORTH SANDERS
PO BOX 203001
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-5570

Testimony in Support, Senate Bill No. 6
Honorable James C. Nelson
Justice, Montana Supreme Court

January 19, 1995

Mr. Chairman and Members of the Committee:

I speak for the entire Montana Supreme Court in offering my unqualified support for Senate Bill No. 6 which, if enacted, will retain the seven member Court and make seats 5 and 6 permanent seats. In doing so, I do not wish to appear disingenuous; I presently hold seat 5, and would, of course, forfeit my position on the Court if the 1995 Legislature fails to retain the seats.

Notwithstanding my personal interest in this legislation, I am, however, more concerned about the adverse effects on the operations of the Court and on the administration of justice in this State if the two seats are not retained.

In 1979, the year that the legislature enacted the law that added seats 5 and 6, there were 481 filings in the Court and 323 opinions issued. With five members on the Court that averaged 96 cases and 64.6 opinions per justice per year. [1]

In 1981, the first year of the seven member Court, there were 574 filings and 298 opinions issued, averaging 82 filings and 42.6 opinions per justice.

In 1987, the year that the legislature extended the sunset for seats 5 and 6, there were 571 filings, again averaging 82 per justice.

In 1993, there were 659 filings or an average of 94 per justice and 437 opinions issued or 62.4 per justice. That is slightly more than one opinion per justice per week.

---

[1] Statistical information in the following five paragraphs was obtained from the Annual Judicial Reports for the years in question and from information in the Supreme Court Administrator's Office.

In 1994, there were 634 filings or 91 per justice and 368 opinions issued or 53 per justice, again slightly more than one opinion per justice per week.

From those numbers it is obvious that the Supreme Court, with seven members, is now dealing with nearly the same volume of cases per justice as that which necessitated **adding** two seats to the Court in 1979. It is also obvious that the total number of filings and opinions and the average of each per justice has and continues to trend upward. There is no reason to believe that the trend will reverse itself; to the contrary, there is every reason to believe that the trend will, in all likelihood, continue with an ever increasing caseload being imposed on the members of Montana's only appellate Court.

That brings me to my greatest concern. Article II, Section 16 of our Montana Constitution guarantees to the people of this State that,

> [c]ourts of justice shall be open to every person, and **speedy** remedy afforded for every injury of person, property, or character. . . . Right and justice shall be administered without sale, denial, **or delay**. (Emphasis added).

I doubt that anyone would seriously argue that there is no limit to the number of cases that each member of the Court can reasonably deal with and still produce quality work product. I respectfully submit that the Court, as it was in 1979, is about at that limit now. I believe that, presently, we are efficiently processing an ever increasing case load and are issuing timely, accurate and well-reasoned opinions.

If the seven member Court is not retained, however, that will not continue to be the case. One or another aspect of the Court's operations is going to suffer, either in terms of the quality or the timeliness of our work product. Since I do not believe that the members of the Court will countenance turning out shoddy work, the result of not retaining the two seats will most assuredly be substantial delays in issuing orders and opinions and, perhaps, summary disposition of cases that, otherwise, might deserve more thorough review.

Based on 1993 filings and opinions, if those were being handled by a five member court, that would average 132 filings and 87 opinions per justice. That, quite simply, is too much.

Reducing the seven member Court to five members will increase the time that cases are on appeal by at least 33%; will delay the

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collection of judgments by litigants; will increase the amount of interest accruing on judgments; will seriously delay the resolution of criminal cases, domestic relations actions and child custody matters; and will deny litigants in Montana their right guaranteed by Article II, Section 16 of our Constitution. That, quite simply, is not acceptable.

Accordingly, it is with those facts and concerns in mind that I urge this Committee to favorably consider Senate Bill No. 6 and to make permanent seats 5 and 6.

Thank you for this opportunity to address this Committee and to express my thoughts on this subject.

Respectfully,

James C. Nelson
Justice

TESTIMONY IN SUPPORT OF SENATE BILL NO. 6

Hon. James C. Nelson
Justice, Montana Supreme Court
January 19, 1995

RETENTION OF THE 7 MEMBER SUPREME COURT

Article VII, §3 of the 1972 Constitution provides the basic organization of the Supreme Court:

> "The supreme court consists of one chief justice and four associate justices, but the legislature may increase the number of justices from four to six. ..."

The 1979 legislature enacted legislation [§2 Ch. 683, L. 1979] which increased the number of associate justices to 6. Those justices were first elected in 1980 and took office in 1981. The legislation -- codified as § 3-2-101 -- was to automatically terminate or sunset on the first Monday in January 1989, at which time the number of associate justices would revert to 4. [§5 Ch. 683, L. 1979].

In 1987 the legislature enacted legislation to amend the 1979 law [§1, Ch. 362, L. 1987] to extend the sunset provision to the first Monday in 1997 -- January 6, 1997.

Thus, unless the legislature in the 1995 session again extends the sunset or makes the two seats permanent altogether, the court will lose seats 5 and 6 on January 6, 1997, and the court will, again, become a 5 member court consisting of one chief justice and 4 associate justices.

Historic statistics indicate that the workload of the Court has increased steadily from the time that the two seats were added to the Court to the present day.

Year	New Filings /Average per Justice	Opinions Issued	
1979	481 /96 p/j	323	year legislation enacted
1981	574 /82 p/j	298	1st year of 7 member ct.
1987	571 /82 p/j		1st sunset extended
1992	627 /90 p/j	340	

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1993	659 /94 p/j	437[1]	
1994	634 /91 p/j	368	most recent year

As can be seen, the workload of the Court, on a case-per-judge basis, has steadily risen from 1979 to the point where, today, each of the seven justices is handling about the same number of cases that necessitated **adding** two seats to the Court in the first place. There is no indication that the numbers of cases and filings will decrease in future years.

Moreover, if we use 1993 figures, and, pro forma, assume those had been handled by a five member court, the average number of cases per justice per year would be approximately 132. That averages out to be 28% more filings per justice than when the 7 member court legislation was originally enacted in 1979.

The effect of reducing the 7 member Court to 5 members would be to increase the time that cases are on appeal by at least 33%; would delay the collection of judgments by litigants; would increase the amount of interest accruing on judgments; would seriously delay the resolution of criminal cases, domestic relations actions and child custody matters; and would deny litigants in Montana their right guaranteed by Article II, § 16 of our Constitution to a

> "... speedy remedy ... for every injury of person, property, or character ... [to] full legal redress ... [and to] [r]ight and justice ... administered without ... delay."

On behalf of the members of the Montana Supreme Court, I respectfully urge your favorable consideration of Senate Bill No. 6.

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[1]Please note attached statistical breakdowns from the 1993 Judicial Report and from information compiled by the Supreme Court Administrator's Office.

1993 SUPREME COURT CASELOAD STATISTICS

1.	Filings carried over from Calendar Year 1992	450
2.	New Filings in 1993	659
	Civil	439
	Criminal	220
3.	Dispositions in 1993	618
	By Remittitur	398
	By Dismissal	103
	Writ Denied	106
	Writ Granted	11
4.	Cases Pending as of December 31, 1993	433
5.	Formal Opinions Issued	437
	Affirmed	271
	Reversed	17
	Affirmed in part/Reversed in part	39
	Reversed and Remanded	76
	Revised	0
	Other	34

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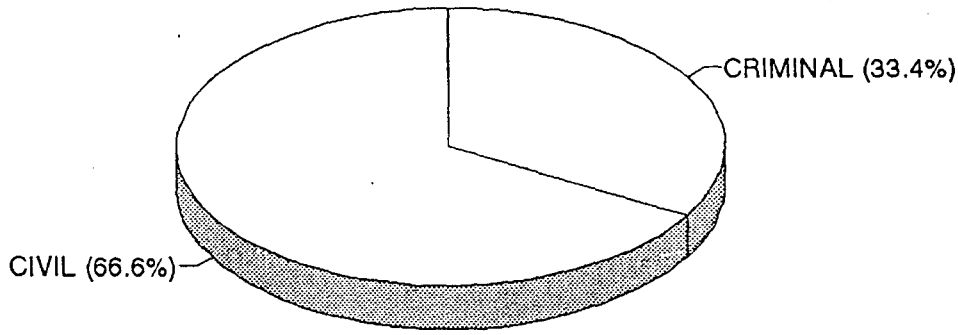
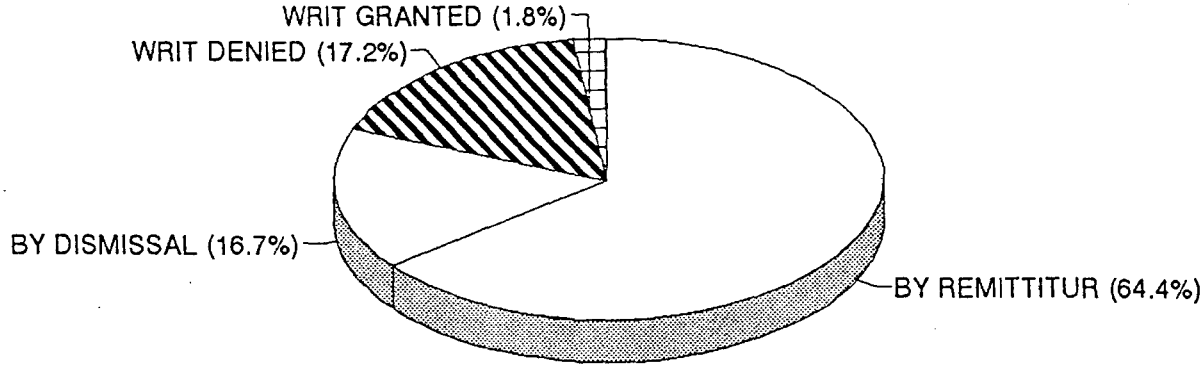
SUPREME COURT CASELOAD STATISTICS

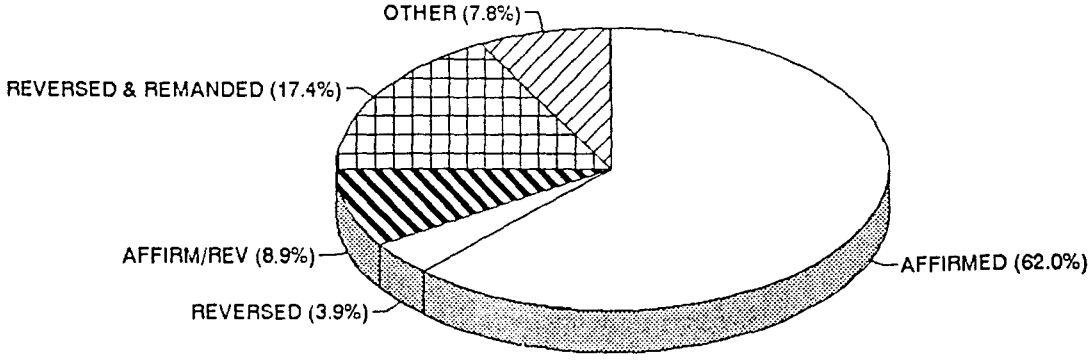
FY 93 CASE TYPE FILINGS

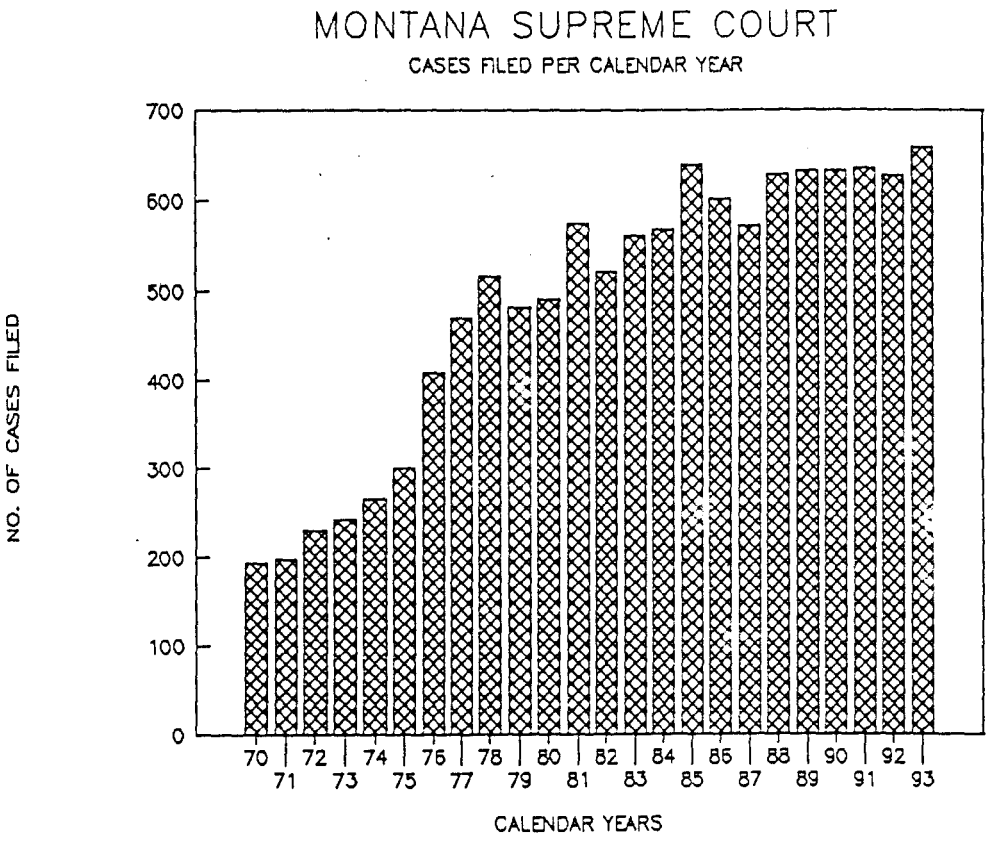


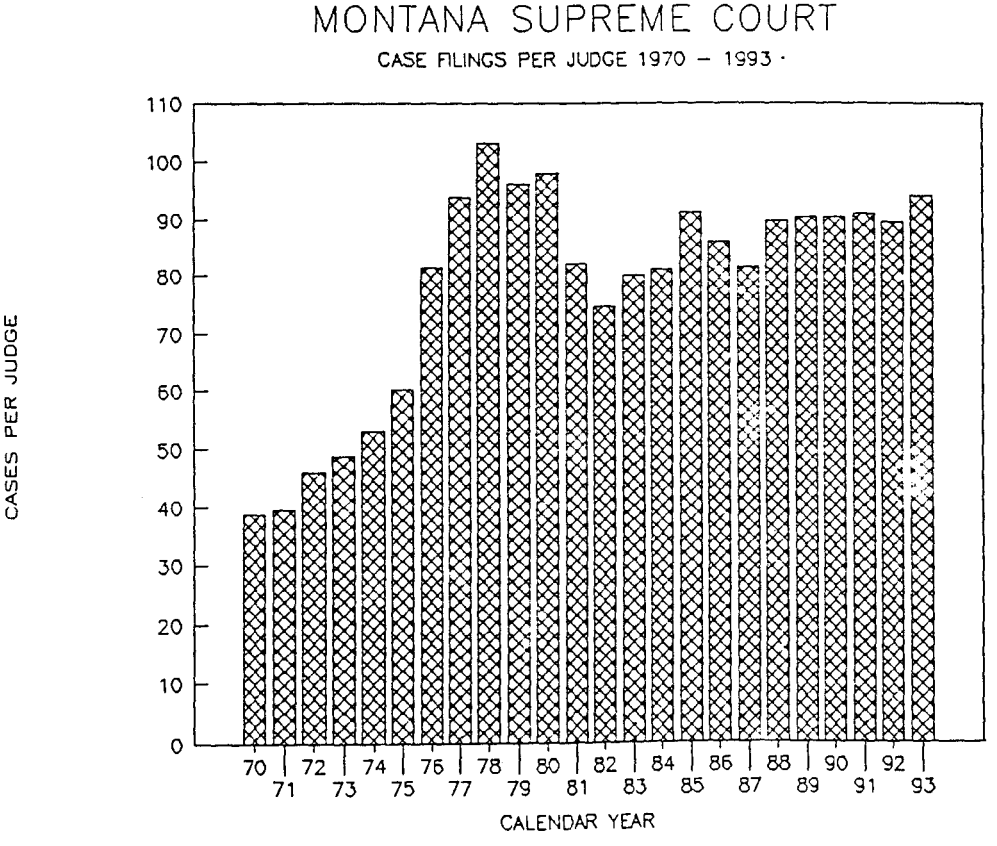
FY 93 DISPOSITIONS



FY 93 FORMAL OPINIONS ISSUED




MONTANA SUPREME COURT
CASES FILED PER CALENDAR YEAR
NO. OF CASES FILED
700
600
500
400
300
200
100
0
70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93
CALENDAR YEARS


MONTANA SUPREME COURT
CASE FILINGS PER JUDGE 1970 – 1993
CASES PER JUDGE
110
100
90
80
70
60
50
40
30
20
10
0
70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93
CALENDAR YEAR

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MONTANA SUPREME COURT CASELOAD

YEAR	TOTAL FILINGS	CASE PER JUDGE
1970	194	39
1971	198	40
1972	230	46
1973	243	49
1974	265	53
1975	301	60
1976	408	82
1977	469	94
1978	516	103
1979	481	96
1980	490	98
1981	574	82
1982	522	75
1983	561	80
1984	567	81
1985	639	91
1986	602	86
1987	571	82
1988	628	90
1989	633	90
1990	633	90
1991	636	91
1992	627	90
1993	659	94
1994	624	91

EXHIBIT 3
DATE 1/19/95
HB 150

DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

January 19, 1995

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 150

Submitted by Gale Keil, DFS, Juvenile Corrections Division

Support for HB 150 is a response to requests from judges and the Montana Probation Officers Association to provide the courts with the most current and comprehensive information essential to determine appropriate placements. This information consists of a profile of the youth and his or her family which includes: legal, and social history; educational and vocational status; psychological and medical diagnosis; and financial and social history.

HB 150 requires that a local youth placement committee convene prior to the commitment of a delinquent youth to the Department of Family Services. By meeting prior to the dispositional hearing and commitment to the department, the committee can use the Montana Guideline for Secure Care as a method of standardizing the procedures for determining the appropriate level of care for a youth based on the seriousness of the offense, prior criminal involvement and chronicity. This means that youth with similar offense histories will be treated the same statewide.

The bill also intends to include the juvenile parole officer in the youth placement committee meetings. This process eliminates interruption of case management when a youth is transferred from youth court to a correctional facility, and it allows for family involvement with the department prior to a youth entering the facility.

HB 150 allows the youth placement committee to meet when a change of placement occurs. For example, when a youth is discharged from a residential treatment facility back to the community, a youth placement committee meeting, at this critical point, will enhance communications between the providers regarding the treatment needs of a youth and services available.

I urge you to support HB 150 as a bill that will assist in improving the standardization, placement and continuum of care for delinquent youth in Montana. The process is a necessary element to support the judges in determining the appropriate level of care for delinquent youth.

EXHIBIT 4
DATE 1/19/95
HB 150

DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

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STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

January 9, 1995

TO: Rep Chris Ahner, Sponsor
FR: Al Davis, Juvenile Corrections Administrator
RE: BILL NO: LC 144

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE COMPOSITION AND DUTIES OF A YOUTH PLACEMENT COMMITTEE; REQUIRING A YOUTH PLACEMENT COMMITTEE TO MAKE RECOMMENDATIONS FOR PLACEMENT OF A YOUTH PRIOR TO COMMITMENT OF THE YOUTH TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 41-5-525, 41-5-526, AND 41-5-527, MCA AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BACKGROUND. Youth Placement Committees were created by HB 325 in 1987. The act established a Youth Placement Committee in each judicial district to recommend appropriate placements of delinquent youth referred or committed to the Department of Family Services. The act recognizes the importance of preserving the unity and welfare of the family whenever possible and emphasizes development, maintenance and utilization of quality services.

PURPOSE. The objectives of the committee are to involve community professionals in a collaborative effort of case planning for delinquent youth referred by the youth court. The youth court provides the committee with case information regarding the youth. The committee makes their placement recommendations and forwards them to one of the department's regional administrators for final approval or alternative recommendations.

CHANGES. The changes in the act respond to the importance of preserving the unity and welfare of families in Montana by:

(a) providing the Youth Court Judge with relevant information PRIOR to placement;
(b) responding to the demands for standardization and classification of youth to the level of care needed; and
(c) allowing the committee to meet regarding changes in youth placement or PRIOR to their return to the community.

SUMMARY. These changes are critical for the juvenile corrections system to provide the most appropriate, responsive placements for youth committed from the youth courts to the department. Statewide standardization of the procedure is imperative to the responsiveness of the delinquent youth and his or her family to treatment and rehabilitation.

EXHIBIT 5
DATE 1/19/95
HB 198

Mr. Chairman, Members of the Committee:

I am Mike Ferriter, Chief of the Community Corrections Bureau. I am here in support of HB 198. HB 198 will require felony offenders to accept financial responsibility for a small portion of the cost of their criminal behavior.

Montana Adult Probation and Parole officers write nearly 1,500 Pre-Sentence Reports annually. The reports are written for the sentencing District Court Judge and serve as the foundation for the sentencing. Extensive studies indicate that a Pre-Sentence report takes nearly 8 hours of the Probation and Parole Officer's time. By charging subjects of PSI's the $25.00 fee, I feel HB 198 greatly assists Adult Probation and Parole Officers in fulfilling our mission, specifically in the areas of holding offenders accountable, and in assisting victims.

Thank you for your support, as it truly will assist crime victims while making felony offenders accountable.

EXHIBIT 6
DATE 1/19/95
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"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/19/95

BILL NO. SB 6 SPONSOR(S) Sen. Crippen

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Rice, Helena	TUFC	✓	
Gordon Morris	MACo	✓	
GEORGE BOUSLIMAN	STATE BAR OF MT	✓	
Jacqueline Lenmark	State Bar of MT	✓	
JOHN COHLER	MT County Attorneys Assn	✓	
J. A. Turnage	Chief Justice	✓	
Stuart L Kellner	Mont. Defense Trial Lawyers	✓	
JAMES C NELSON	JUSTICE MT S. CT	✓	
JEROME ANDERSON	STATE BAR OF MT.	✓	
Karla M. Gray	Mt. S. Ct	✓	
Chris Tweeten	Attorney General	✓	
J.P. GOAN	Supreme Court	✓	
Bob Gilbert	MT MAGISTRATES ASSN	✓	

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

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CS-14

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JUDICIARY COMMITTEE DATE 1/19/95

BILL NO. SB6 SPONSOR(S)

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Russell Hill	MTLA	SB6	

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HOUSE OF REPRESENTATIVES
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JUDICIARY COMMITTEE DATE 1/19/95

BILL NO. HB 150 SPONSOR(S) Rep. Ohrenschall

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Gordon Morris	MACo		
Cindy Hinman	MBCC	✓	
Andrea Hart	Montana Advocacy	✓ if amend.	
Joe Kelly	DOJ	✓	

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JUDICIARY COMMITTEE DATE 1/19/95

BILL NO. HB 198 SPONSOR(S) Rep Ahner

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Connor	MT County Attys Assn	✓	
Mike Ferriter	Dept. of Cor. & H.S	✓	

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