

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

**Call to Order:** By ACTING CHAIRWOMAN LINDA NELSON, on January 23, 1995, at 10:00 A.M.

#### ROLL CALL

**Members Present:**

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

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Council  
Judy Keintz, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 127, SB 174  
Executive Action: SB 63, SB 64, SB 127

#### HEARING ON SB 127

**Opening Statement by Sponsor:**

SENATOR AL BISHOP, Senate District 9, presented SB 127 which he is carrying at the request of the Judicial Unification and Finance Commission. This Commission was created by the 53rd Legislature. This bill would provide that the District Court Criminal Reimbursement Program pay for expenses incurred in state district court for postconviction relief hearings, habeas corpus proceedings and also the appeals from those proceedings. This fund comes from the 2% tax on light vehicles. Seven percent of that tax is appropriated to the Supreme Court to reimburse

counties for district court expenditures in criminal cases. The fiscal note estimates the new types of expenses created by this bill will amount to \$15,000 a year. There is sufficient money in the fund to cover this.

**Proponents' Testimony:**

**John W. Larson, District Judge of the Fourth Judicial District,** stated he is a member of the Judicial Unification Finance Commission and was appointed by the Chief Justice. He supports SB 127 which would extend benefits to the counties. The expenses would apply primarily to capital cases which are the cases which incur 95% of the postconviction relief expenses. In all capital cases in Montana, there is a direct automatic appeal to the Montana Supreme Court. Following that there can be postconviction relief actions initiated in either state or federal court. When the action is in state court, the county expenses for the public defenders and expert witnesses are not being reimbursed. When the action is in federal court, the state handles the defense costs. There are occasions where a case which has been in the federal system will be remanded back to the state court for either retrial or resentencing. A new trial is reimbursed under the current system. A resentencing is not. The expenses of resentencing are significant. Two attorneys and a significant number of expert witnesses are required for a resentencing. A small county with a small property tax base could be saddled with significant expenses as a result of these postconviction proceedings. This bill would cover both these additional county expenses and a certain amount of state expenses as set forth in the bill.

**Beth Baker, Department of Justice,** announced their support of SB 127. This bill will help significantly in the defense of capital cases. The original intent of the district court reimbursement fund was to help counties defray the costs of expensive criminal cases. Due to the wording of the current law, the court administrator does not consider postconviction costs to be part of a criminal case. This will help clarify that those costs should be handled in the same manner. The bulk of these costs falls on the counties. When the county refuses or is unable to pay, the Department of Justice absorbs those costs. They are also not budgeted for those costs. In the last biennium the Department of Justice paid several thousand dollars in costs which would now be covered by this reimbursement fund. **Ms. Baker** felt the fiscal note was unclear when it stated that there were new types of expenses created by this bill. The expenses already exist and are not created by this bill. The bill only addresses how those expenses will be paid.

**Charles Brooks, Yellowstone County Commissioners,** stated there is continuous pressure on financing district courts at the county level. They support SB 127.

**Opponents' Testimony:** None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

SENATOR AL BISHOP offered no further comments on closing.  
EXHIBIT 1, Judicial Unification and Finance Commission Summary of Proposals, was handed out.

HEARING ON SB 174

Opening Statement by Sponsor:

SENATOR JUDY JACOBSON, Senate District 18, presented SB 174. The Local Citizen Review Board Pilot Program, which was set up for foster care replacements, was established by the 53rd Legislature. In the Special Session the funding was reduced from \$150,000 to \$75,000, which left them very little to work with. The Supreme Court Administrator was very supportive of the program and was able to loan some of his staff to start the first pilot program. The pilot program is located in Missoula. They are hoping to expand the program. Citizen review boards are active in 22 other states. Foster care costs are reduced considerably once the program is put into place. This bill is to clean up the initial legislation and has very little to do with the funding. They would like the Supreme Court, rather than the local youth courts, to adopt the rules of procedure so that the rules will be uniform throughout the state. The references in the bill to "youth" court should be changed to "district" court. The youth court deals with delinquency. The district court deals with abuse and neglect cases, which are the larger load of the foster care program. The Department of Family Services needs a longer time to respond to the citizen review board. In some cases the DFS was to respond to the findings before they had a copy of the findings. Initially, the judicial immunity provision was in the bill. The provision was dropped out of the bill and they are asking that the judicial immunity provision be added to this bill.

Proponents' Testimony:

Karen Sedlock, Montana Supreme Court, presented her written testimony, EXHIBIT 2. Montana Supreme Court Report of the Local Citizen Review Board Pilot Program was handed out, EXHIBIT 3.

John W. Larson, District Judge of the Fourth Judicial District, announced their support of SB 174. They were selected for the first pilot program because they had one of the largest abuse/neglect foster care caseloads. It is very helpful to have the community involved. Volunteers have more time to spend on these cases and with their range of experience they can have their own investigation.

Opponents' Testimony:

**Laurie Koutnik** remarked she is a concerned individual who has served as a foster parent for the state of Montana and private agencies. She has cared for 55 children for the state ranging in ages of 4 to 18 years of age. She questions the need of a citizen review board when each judicial district of this state already has at least one or more local foster care review committees in place. This seems to be an unnecessary duplication of effort. The local oversight of the judicial court should not be shifted to the state oversight of the Supreme Court Administrator. She questioned the costs of this program. One pilot program in Missoula is the only pilot program drawing funds from the \$75,000 given during the Special Session. How much will it cost to equip every district with this program? Do we have a breakdown of the \$75,000 costs which have already been spent? She also questioned confidentiality. Each member of the board would be given case histories. Natural parents, their attorneys or others with an active interest in the case will be invited into the case. If the board is immune from liability, who is liable should a breach of confidence exist? **Ms. Koutnik** also expressed concern that those who know most about the children; the counselors, the foster parents, the caseworkers, may or may not be represented or requested to participate in the review process.

Informational Testimony: None.

Questions From Committee Members and Responses:

**SENATOR STEVE DOHERTY** questioned whether we are throwing good money after bad by continuing this program. **Judge Larson** stated they were not. These cases are being given more time. Instead of a checklist, they are able to go into detail on these cases.

**SENATOR LORENTS GROSFIELD** questioned whether the immunity being provided on page 6 would require a 2/3 majority vote to pass. **SENATOR JACOBSON** stated that may be the case and they should have the Council look at it.

**SENATOR RIC HOLDEN** inquired about **REP. COBB'S** reasons for supporting the bill. **SENATOR JACOBSON** stated that she and **REP. COBB** sat on the same committee with the Supreme Court to put this program together. They support the bill because foster care costs are getting out of control. They also felt that children are lingering in this system longer than necessary. Some districts have boards that don't meet. In some cases the reviews of these children are being done by one person. Their hope would be to remove all the review boards which are in place now and put these boards in in their place. The federal government is moving in this direction and they may be able to access some federal money. This makes the citizens of the community more involved in the placement and concerns of the children who live in their community.

**SENATOR DOHERTY**, following up on the 2/3 vote for immunity, questioned if the immunity clause was an important part of the bill and if they would consider any contingency language if the 2/3 vote failed. **SENATOR JACOBSON** stated the Department of Family Services and volunteers already have that immunity. They are asking for parity with that.

**Closing by Sponsor:**

**SENATOR JACOBSON** remarked that this program will make government smaller, get things back to a local level and get people involved in community programs.

*{Tape: 1; Side: B; Approx. Counter: 11.3}*

**EXECUTIVE ACTION ON SB 127**

**Motion/Vote:** **SENATOR CRIPPEN** moved SB 127 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote.

**EXECUTIVE ACTION ON SB 64**

**Motion:** **SENATOR NELSON** moved to AMEND SB 64.

**Discussion:** Amendments prepared by Valencia Lane were handed out. **EXHIBIT 4 Ms. Baker** explained it was her understanding that the committee would prefer to have lesser penalties for the adult minors. The third amendment keeps in the six month jail sentence which is current law for offenders who are 18 and over. This will allow the court to suspend the driver's license for a second or subsequent offense for an 18 or older violator, if that person was driving or in control of the vehicle at the time the offense occurred.

**Vote:** The motion CARRIED UNANIMOUSLY on oral vote.

**Motion:** **SENATOR CRIPPEN** moved SB 64 DO PASS AS AMENDED.

**Discussion:** **SENATOR GROSFIELD** expressed concern regarding underaged designated drivers. If a designated driver was penalized, the word would get around that you may as well forget about being a designated driver.

**SENATOR DOHERTY** stated he had the same concerns. **Ms. Baker** stated this bill will not change the law regarding the designated driver status. The prosecutor must have evidence that would be sufficient to convince a jury beyond a reasonable doubt that the defendant was in possession of alcohol. There will have to be circumstantial evidence that the driver consumed or was in possession of alcohol for that person to be charged.

**SENATOR GROSFIELD** remarked he is troubled by the possession part of this situation. He brought up the situation of a designated driver who does not consume any alcohol, drives everyone home, and is then stopped. If there is a can of beer left in the car or if beer has been spilt in the car, is the designated driver in possession? **Ms. Baker** said that decision will need to be made on a case by case basis. However, it is irrelevant to this bill because that situation deals with current law. They do not wish to discourage the use of designated drivers. It is an enforcement issue and one that can be dealt with outside of the confines of this bill.

**SENATOR JABS** stated the driver of the car is in charge of the car. If someone is not wearing a seat belt, the driver is responsible.

**SENATOR BISHOP** stated that the designated driver is guilty of being an accessory. He is part of the scheme to break the law.

**SENATOR CRIPPEN** remarked that under current law the designated driver would be in possession. Some of this needs to be left up to the discretion of law enforcement officials.

**SENATOR BAER** commented that in dealing with the designated driver issue, we are talking about accountability resulting from responsibility. A designated driver should take reasonable steps to see that no alcohol is brought into the car by the underaged people who had been drinking previously.

**Vote:** The motion **CARRIED** on oral vote with **SENATOR BARTLETT** voting "NO".

#### EXECUTIVE ACTION ON SB 66

**Discussion:** **SENATOR CRIPPEN** stated that "robbery" and "arson" had been removed from the bill. In comparing deliberate homicide to mitigated deliberate homicide, the difference is whether there is a defense that the defendant acted under the influence of extreme mental or emotional stress for which there was a reasonable explanation or excuse. The penalty for deliberate homicide is death or life imprisonment. The penalty for mitigated deliberate homicide is less severe. Kidnapping now has a penalty of not less than two years nor more than ten years. Aggravated kidnapping is punishable by death. His concern is custody cases where the parent runs off with the child and is caught. The mother or father can be convicted of aggravated kidnapping. **SENATOR HALLIGAN** contended that the custodial interference statute would apply. The non-custodial parent is contacted and given a 24 hour time frame to return the child before they are charged with kidnapping. **SENATOR CRIPPEN** continued that his concern is that in dealing with two strikes and you are out, they are not dealing with pure cases of aggravated kidnapping or premeditated murder.

**Motion:** SENATOR BARTLETT moved to AMEND SB 66.

**Discussion:** Valencia Lane explained amendments nos. 1, 3, 4, 5, 9, and 10 remove "robbery" and "arson" from the bill. Amendment 7 makes it clear that for medical purposes the inmate could be moved to a hospital facility. Amendment 2, 6, and 8 deal with the exception clause in the bill.

**Vote:** The motion CARRIED on oral vote with SENATOR BAER voting "NO".

**Motion:** SENATOR ESTRADA moved SB 66 DO PASS AS AMENDED.

**Discussion:** SENATOR GROSFIELD questioned whether this bill presents complications in terms of going to a prison in another state, a federal prison or to a privatized prison.

SENATOR HALLIGAN stated that if the bill states Montana State Prison there may be a conflict with sentencing guidelines which state the defendant is to be sentenced to either the Montana State Prison or the Department of Corrections. SENATOR HALLIGAN further expressed his concern about creating a geriatric ward. Valencia Lane stated the amendment was added to state that inmates could be moved for medical reasons. Page 1, line 25, also refers to an exception as provided in 46-23-210 which is the medical parole statute. SENATOR HALLIGAN also commented that he has two newspaper articles which explain that states who had adopted the two strikes law had greatly underestimated the impact on their corrections budget.

SENATOR GROSFIELD expressed his concern in the situation where there are two felonies which occur at the same time. He would like to make sure the two strikes were for separate occurrences.

SENATOR BAER feels that robbery and arson should not have been taken out of the bill. These are two seriously dangerous violent felonies which often result in a felony murder situation.

{Tape: 2; Side: A}

#### EXECUTIVE ACTION ON 63

**Motion:** CHAIRMAN CRIPPEN MOVED TO AMEND SB 63.

**Discussion:** CHAIRMAN CRIPPEN explained his amendment. EXHIBIT 5 The proper place for the trial of a tort action, when the defendant is a corporation incorporated in a state other than Montana, is the county in which the tort was committed, the county in which the plaintiff resides, or the county in which the corporation's resident agent is located or in the first judicial district.

SENATOR DOHERTY stated he also had a couple of amendments. In reference to SENATOR CRIPPEN'S amendment, he stated that most

resident agents for out-of-state corporations contract with CT Corporation which provides registered agent service for out-of-state corporations. The practical result of **SENATOR CRIPPEN'S** amendment is that these trials would all be in the first judicial district. This would greatly increase the workload of the first judicial district. This is done in the case of other statutes because they are of statewide concern. This out-of-state corporation could resolve all of this by simply becoming a Montana corporation. His amendment would substitute language that states, "where the corporation owns property".

**SENATOR HALLIGAN** asked **Zander Blewett** to respond to **SENATOR CRIPPEN'S** amendment. **Mr. Blewett** explained that this amendment would allow the corporation to pick an agent to receive service which would mean they could pick any county in the state to decide where they wanted to be sued. Under federal law, injured railroad workers are allowed to choose any county. Burlington Northern is trying to switch that around so they can choose the county.

**SENATOR CRIPPEN** stated there is a problem with forum shopping within the state. He looks at this from the standpoint of reasonableness. **SENATOR DOHERTY'S** amendment would give the plaintiff three choices: the county where the tort was committed, the county where the plaintiff resides, or a neutral area. This bill will put a restriction on forum shopping but it is still giving the plaintiff some opportunity. He feels the proposed amendment tightens it up and meets some of the objections.

**SENATOR JABS** commented that this amendment gave them a fourth option. **Mr. Blewett** stated that **SENATOR CRIPPEN** had been told by the BN where the BN thinks it will do better. The employee is forced to sue his employer. The federal law forces him to do this, and now the BN wants to force the employee to either sue in the company town or to go to Helena where the BN feels it is going to do much better.

**Leo Berry** stated that this bill, if the amendment were adopted, would provide four alternatives for the plaintiff to sue. The employee has another option. The case could still be filed in federal court in Billings, Great Falls or Helena. Cases probably should be filed in federal court because they are dealing with federal law, protections and benefits.

**SENATOR HOLDEN** stated that if you have a weak case, you shouldn't be allowed to disregard the people in your community.

**Vote:** The motion **CARRIED** on roll call vote with **SENATORS NELSON, BARTLETT, BISHOP, DOHERTY,** and **HALLIGAN** voting "NO".

**Discussion:** **SENATOR DOHERTY** announced that he had an amendment to handout, **EXHIBIT 6**. He did not hand out the amendment referred to earlier.



**Motion:** SENATOR DOHERTY MOVED TO FURTHER AMEND SB 63.

**Discussion:** SENATOR DOHERTY explained the amendment. Following "Montana" he inserted "and if the plaintiff is a resident of a state other than Montana,". The purpose of this amendment deals with people from out of state who are using our court system. If someone comes into Montana in order to file a lawsuit, the non-resident corporation and the out-of-state individual stand on the same footing. Adoption of this amendment would provide protection to Montana citizens.

SENATOR CRIPPEN stated that what the amendment is doing is already there. The way the language is now written, the proper place for the trial is the county in which the tort was committed. We are saying that this exception only applies to a resident of another state.

SENATOR HALLIGAN asked Mr. Berry if he agreed with Mr. Blewett's interpretation of the Missouri v. Mayfield case in that states can discriminate against out-of-state residents. Mr. Berry asserted that it was difficult to answer that question with any precision. The Missouri case was a forum non conveniens case not a venue case and the courts were left with discretion as to whether the principle should apply to out-of-state residents. If this is placed in the statute, it would jeopardize the fundamental principles of the bill.

SENATOR DOHERTY explained that his amendment is for out-of-state residents. In this instance, if Burlington Northern wants to forum shop, it will be able to forum shop. It will be able to chose its agent in whatever community it wants or it can remove those cases to federal court.

**Vote:** The motion FAILED 6-4 on roll call vote.

**Motion:** SENATOR CRIPPEN moved SB 63 DO PASS AS AMENDED.

**Discussion:** SENATOR DOHERTY submitted a legal brief for the record, EXHIBIT 7. This legislation attempts to overturn several Supreme Court decisions. It overturns the feeling of Governor Marc Racicot concerning Montana's venue statute which states that Montana courts should be open to Montanans. This bill, as now amended, will allow forum shopping by defendant Burlington Northern. This is special interest legislation for the Burlington Northern Railroad. Although the legislation is broadly written, it affects only one entity. That entity is the Burlington Northern Railroad. It is bad policy to favor out-of-state corporations over Montana citizens.

SENATOR CRIPPEN expounded that he disagreed that we were favoring out-of-state corporations over Montana citizens. It is easy to look at Burlington Northern as a big, bad person. They are still corporate citizens doing business in this state. They still fall under the laws of the state and they are entitled to the

protection of the laws of this state. Any person that is residing and doing business in this state has the opportunity to come before this legislative body with its concerns. We adopted the Micron proposal for Butte. That is going to benefit Butte as well as indirectly benefit the entire state. This bill will provide a basis for avoiding forum shopping against a citizen of our state.

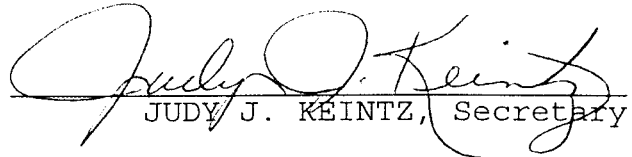
**Vote:** The motion **CARRIED** on roll call vote with **SENATORS NELSON, BARTLETT, BISHOP, DOHERTY, and HALLIGAN** voting "NO".

ADJOURNMENT

**Adjournment:** The meeting adjourned at 12:05.



SENATOR LINDA NELSON, Acting Chairwoman



JUDY J. KEINTZ, Secretary

LN/jjk

DATE \_\_\_\_\_

1-23-95

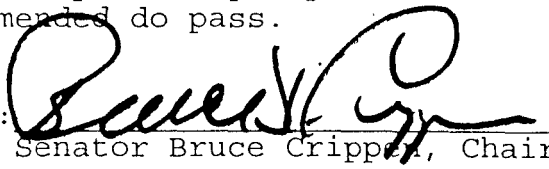
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 23, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 63 (first reading copy -- white), respectfully report that SB 63 be amended as follows and as so amended do pass.

Signed: 

Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 21.

Strike: "corporation has its principal place of business"

Insert: "corporation's resident agent is located, as required by law, or in the first judicial district"

-END-



Amd. Coord.  
Sec. of Senate

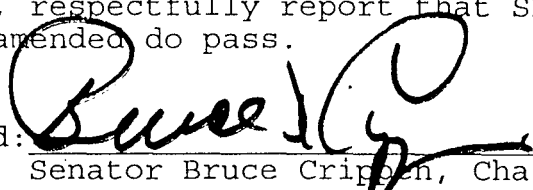
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
January 23, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 64 (first reading copy -- white), respectfully report that SB 64 be amended as follows and as so amended do pass.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 4, line 28.

Following: "person"

Insert: "under 18 years of age who is"

2. Page 6, line 5.

Following: "appropriate"

Strike: "; and"

Insert: "."

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed \$100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

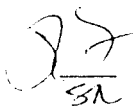
(c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and"

Renumber: subsequent subsections

 Amd. Coord.

SA Sec. of Senate

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3. Page 6, line 6.

Strike: "(iii)"

Insert: "(iv)"

Following: "court"

Strike: ", if the person was 18 years of age or older at the time  
that the offense was committed,"

4. Page 6, line 10.

Following: "~~\$50~~"

Insert: "\$50 if the person was 18 years of age or older at the  
time the offense was committed or"

Following: "\$100"

Insert: "if the person was under 18 years of age at the time that  
the offense was committed"

-END-


SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
January 23, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB127 (first reading copy -- white), respectfully report that SB127 do pass.

Signed.

  
Senator Bruce Crispin, Chair

  
Amd. Coord.  
Sec. of Senate

191233SC.SRF



MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SB 63 NUMBER 1

MOTION: Motion to Amend SB 63  
Crippen Amendment

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

MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SB63 NUMBER 2

MOTION: Doherty move to Amend SB63

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

MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 1/23/95 BILL NO. SB 63 NUMBER 2

MOTION: DPA A

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

1/23/95

Bartlett votes in Judiciary Com.

SB 127<sup>do pass</sup> - yes

Nelson amendments to SB 64 - no  
SB 64 as amended do pass - no

Crippen amendments to SB 63 - no  
SB 63 do pass as amended - no

JUDICIAL UNIFICATION AND FINANCE COMMISSION  
SUMMARY OF PROPOSALS

The Judicial Unification and Finance Commission (JUFC), was created by the 1993 Legislature to study the potential unification and future financing of Montana's courts. The committee is proposing seven Legislative bills and a number of Recommendations.

JUFC LEGISLATIVE PROPOSALS

LC0067 District Court Funding -- Establishes a state cost-sharing program for certain district court expenses in civil proceedings similar to the criminal reimbursement program, except that the state would pay up to 50% of the costs. Eligible expenses under this program are:

(1) Representation of indigent persons who are (a) charged with a misdemeanor in justice court, (b) subject to civil commitment proceedings, (c) youths charged under the Montana Youth Court Act, (d) subject to child dependent and neglected proceedings;

(2) Juvenile probation; and

(3) Court reporters salaries in civil cases.

To pay for the civil reimbursement program the legislation imposes a mandatory 0.1% light vehicle tax. Funding for the 50/50 cost share would be statutorily appropriated for the above stated civil expenses. Counties will continue to have the option to levy a light vehicle tax up to 0.4% and the bill makes

permanent the present distribution of option tax monies (50% the county and 50% to the cities, towns, and outlying areas of the county on the basis of population) thereby removing the previous sunset provision which otherwise would become effective on July 1, 1995.

RATIONALE: The Legislature should act LC67 to provide state funding for up to 50% of each county's most volatile or uncontrollable court expenses in civil cases: indigent representation, juvenile probation and court reporters' salaries. More than half of Montana's counties are experiencing serious shortfalls in their district court budgets. District court expenses such as indigent defense and juvenile probation are volatile and unpredictable. Unexpectedly high expenses can seriously affect the stability of county budgets and fiscally hurt some counties more than others. Furthermore, county commissions have no authority to control some expenses that are dictated by statute such as salaries for court reporters and juvenile probation officers. The bill also eliminates the sunset provision in the existing 0.5% light vehicle option tax thereby guaranteeing counties a permanent source of revenue for district court and other needs as well as a permanent source of revenue for cities and towns.

LC0130 Civil Commitment Proceedings -- Provides that payment for civil psychiatric evaluation and treatment costs incurred in involuntary civil commitment proceedings will be assumed by the state, and will be paid from the state general fund.

RATIONALE: Seriously mentally ill persons, who were formerly cared for in state custodial institutions, are now the

responsibility of the counties of which they are "residents." (53-21-113 M.C.A.) During civil involuntary commitment proceedings, such persons must be hospitalized and a typical hospitalization is two to four weeks at an average cost of \$1,200 per day. Seriously mentally ill persons from outlying counties tend to take up residence in counties which have mental treatment centers and thus the burden of these expenses tends to impact urban counties disproportionately. Such expenses are escalating, they are unpredictable, and they cannot be controlled at the local level. Such expenses exceeded \$1.2 million during the 1993-1994 biennium. By shifting these expenses from the counties to the state general fund, the cost of caring for such patients would again be assumed by state and the counties would no longer be subject to uncontrollable expenses mandated by the state for which no funding mechanism is otherwise provided.

LC0066 Post Conviction Relief Expenses -- Provides that the district court criminal reimbursement program pay certain costs for post conviction relief hearings and habeas corpus proceedings and for certain expenses incurred by the state in federal habeas corpus cases challenging the validity of conviction or of a sentence.

RATIONALE: Current statutes (Title 46, Chapters 21, 22) provide that a person convicted and sentenced for a criminal offense may file a petition challenging the validity of the court's judgment. These post-conviction relief proceedings involve expenses for evidentiary hearing and court appointed counsel. The district court criminal reimbursement program funded under Section

3-5-901 M.C.A. does not reimburse counties for these expenses. Although exact data is not available it is estimated that the cost of these proceedings state wide is probably less than \$20,000 per year and adding this category to the criminal reimbursement program will not require any additional funding sources.

LC0065 Court Automation -- Requires all courts of original jurisdiction to impose a \$5.00 user surcharge (to be statutorily appropriated) in criminal, civil, and probate cases to be used for state funding of court information technology.

RATIONALE: In 1990, the Supreme Court ordered the Office of Court Administrator to provide automation for the 182 courts in Montana. Contemplated projects include computerized legal research, automation of district court records, state wide access to court records, automation of traffic citations and fine collections and others. Although some progress has been made there is no funding mechanism in place to continue. The \$5.00 user surcharge would provide funding to allow the continued development of court automation.

LC0064 Court Record Retention -- Requires counties to establish a fund for district court records retention, preservation, and technology. Clarifies the disposition of district court fees and raises certain district court fees by \$5.00 in most cases. Provides that the increase in fees be deposited in the county fund for district court records retention, preservation and technology.

RATIONALE: District courts must provide for the storage and preservation of district court records, some of which date back



to 1880. However, counties have no specific budgets for maintaining such records. The objective of LC64 is to provide the funds necessary for the clerks of district courts to effectively maintain, store, and preserve such records.

LC0063 Assignment of District Judges to Other Districts -

- Provides that the Chief Justice, rather than the Governor, has the authority to temporarily assign a district judge to hold court in a district other than the judge's own district. Eliminates the requirement that such assignment is pursuant to a request by an interested person or by written order.

RATIONALE: Present §§ 3-5-111 and 3-5-112 M.C.A. provide that the Governor has the authority to assign a district judge to hold district court in another district if by reason of caseload or other circumstances the elected judge of the district is unable to do so. These statutes violate the constitutional separation of powers. Under the amended statutes, the Chief Justice will assume these functions and the requirement that an interested person must first request the reassignment is eliminated.

LC0062 Seven Member Supreme Court -- Makes permanent the provision setting the number of associate justices on the Montana Supreme Court at six.

RATIONALE: This provision would retain the present seven member court which otherwise will be reduced to a five member court pursuant to a sunset provision effective January 6, 1997. Since 1979, when the Legislature first authorized a seven member court, the number of Supreme Court cases has been increasing and between

1983 and 1993, the annual number of cases rose from 561 to 659. In fiscal year 1993, the Supreme Court issued 437 opinions, or about 62 opinions per justice. If the court were reduced to five members, the number of opinions per justice per year would increase to about 87, a 40% increase. Retention of a seven member court is essential to keep pace with the increasing work load.

#### ADDITIONAL RECOMMENDATIONS

The JUFC also made the following additional recommendations for which no legislation was proposed.

RECOMMENDATION NO. 2: Continue to explore long term solutions. The Legislature should continue to explore long term funding solutions that ensure the sufficient, stable and equitable funding of Montana's district courts, including the potential for total state assumption of district court funding. Furthermore, if the Montana Supreme Court establishes an advisory council (see Recommendation (No. 6) the advisory council should explore court funding needs and should advise the Supreme Court and the Legislature on ways to allocate resources in the most efficient and effective manner possible.

RECOMMENDATION NO. 5: Pursue grant funding. The judicial branch in each county and court individually should actively seek funds being made available to state courts through the federal crime control bill and other court grant programs.

RECOMMENDATION NO. 6: Judicial advisory council and regional conferences. The Montana Supreme Court should establish a judicial advisory council to conduct long range strategic planning for the judicial branch. Among the issues that the

advisory council should examine are total state funding, court unification options, judicial compensation (which remains among the lowest in the nation), and court reporter employment issues.

Membership on the advisory council should include one representative each appointed by:

(1) The Supreme Court, District Court judges, Magistrates Association, Clerks of District Courts, the Court Reporters Association, the State Bar of Montana, the Montana Association of Counties, the Montana League of Cities and Towns, the Sheriffs and Peace Officers Association, the Governor, the Senate and the House of Representatives.

In conjunction, the Supreme Court should provide for regional conferences to enhance communication between judicial officials and courts at all levels.

The JUFC endorses the efforts of the Montana Judges Association to address these issues within the judicial branch.

RECOMMENDATION NO. 11: Use available technology.

The Legislature, judiciary and local government should strongly support the use of available technology, especially the Montana Educational Telecommunications Network (METNET), to improve court operations. The METNET system, which provides a two way interactive, televideo capability, should be available to as many courts as possible so that initial hearings can be conducted without the cost and security risks of transporting a defendant from the jail or detention center to the court of jurisdiction.

RECOMMENDATION NO. 12: Modify the budgetary and revenue system (BARS).

The Department of Commerce and Office of Court Administrators should work together to modify the budgetary and accounting revenue systems (BARS) format to establish a more uniform system for counting reporting of court expenditures. Uniform and accurate reporting of expenditure data is essential to determining the fiscal status of Montana's court systems.

RECOMMENDATION NO. 13: Address juvenile justice issues.

The Legislature should thoroughly examine and expeditiously address problems with Montana's juvenile justice system, especially confidentiality, sentencing, and extended jurisdiction issues involving serious juvenile offenders.

DATE 1/23/95  
COURT NO. 2  
FILE NO. SB174

TESTIMONY FOR SB174

BY: Karen Sedlock, Montana Supreme Court

Mr. Chairman, members of the committee, for the record my name is Karen Sedlock.

As you know, this bill is requesting an extension of two years for the pilot project. I believe there is a need for foster care citizen review in the State of Montana. There are approximately 1800 children in foster care in the state of Montana at this time. These placements should be temporary and every child **needs and deserves** a permanent home.

Right now the Department of Family Services is involved in the removal and placement of these children. These placements need to be reviewed, at a minimum, of every six-months. This review should be done by an independent group. Someone that is not associated with the Department of Family Services. This is what the Citizen Review Board's do. They are the eyes and ears of the community and the community has a right to know what is happening with their children.

A citizen review board is composed of three to five volunteer members. These volunteers come from a cross section of residents in the community and they are interested, and care about, Montana's children. Each member receives training prior to serving.

The citizen review boards review the case of each child in care under the Department of Family Services. The first review occurs no more than six months after the child is placed in substitute care. Findings and recommendation are then sent to the district court judge as well as the parties that were noticed for hearing.

The results and effects of the hearings are safe, permanent homes, particularly for children who have been abused or neglected. The Juvenile Court Judge finds the recommendations to be an efficient and objective source of information and guidance. The citizen review boards develop Community awareness of the needs of children in substitute care and become strong advocates for the children of Montana.

The citizen response in Missoula County has been very receptive. Of the 15 people selected their experience and background is formidable. They have well over 150 years of combined parenting experience.

Currently there are 21 other states that have citizen review boards in place and four more, plus Montana, that are in the pilot stages. In Oregon, the volunteers donate an average of three weeks per year, which is a conservative savings of over \$723,000 per year. In Nebraska, the volunteers donate approximately 14,000 hours per year, which is a cost savings of \$280,000 per year in professional

EXHIBIT 2  
DATE 1-23-95  
SB174

fees. Reviewed children were 3.6 times more likely to be adopted than non-reviewed children. This would be a net savings per year of \$236,000 in foster care payments. 18.6% of reviewed children left care through adoption or guardianship vs. 3.3% of those who did not have citizen review. Within three years of the start of citizen review in the state of Nebraska the number of children who spent 5 or more years in care decreased from 23% to only 9%.

Montana's first pilot project is located in Missoula county and approximately 40 cases have been reviewed. The review board recommendations are a great asset in moving the children to the end goal of a permanent home environment with the court making the final decision.

The review boards will bring children's issues and concerns out of the courthouse and into the community to expedite appropriate permanent placement which benefits the child. Most families, of all races and backgrounds, welcome the support and guidance of the citizen review board. Citizen review boards need to exist in Montana because its citizens care about their children.

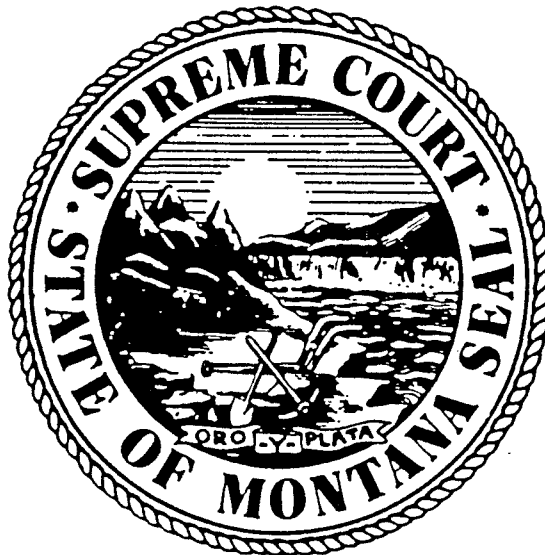
Respectfully submitted by

Karen Sedlock - Phone Number 444-2608

Dated this 23rd day of January, 1995.

CLERK NO. 3  
DATE 1/23/95  
FILE NO. SB 174

MONTANA SUPREME COURT  
REPORT OF THE  
LOCAL CITIZEN REVIEW BOARD  
PILOT PROGRAM



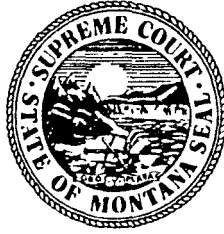
The original of this document is stored at  
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Street, Helena, MT 59620-1201. The phone  
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(comb-bound)



**The Supreme Court of Montana**  
**Office of the Court Administrator**

PATRICK A. CHENOVICK  
Court Administrator



JUSTICE BUILDING—ROOM 315  
215 NORTH SANDERS  
PO BOX 203002  
HELENA, MONTANA 59620-3002  
TELEPHONE (406) 444-2621

December 22, 1994

TO: Governor Marc Racicot, Members of the 54th Montana Legislature, and concerned citizens of Montana

In accordance with section 41-3-1004(2), MCA, I am submitting the report of the activities of the Local Citizen Review Board Pilot Program Act, enacted by the 53rd Legislature.

This program was brought to life due to concerns of Montana citizens that wanted to improve the current system. The program was assigned to the Judicial Branch so that an independent program could take an outside look and give back unbiased reviews.

The pilot program has began and reviews performed. I believe that the program will offer positive results in the foster care and placement areas and that all Montana's will benefit.

Sincerely,

A handwritten signature in cursive script, reading "Patrick A. Chenovick".

Patrick A. Chenovick  
Supreme Court Administrator

Amendments to Senate Bill No. 64  
First Reading Copy

Requested by Senator Nelson  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 23, 1995

1. Page 4, line 28.

Following: "person"

Insert: "under 18 years of age who is"

2. Page 6, line 5.

Following: "appropriate"

Strike: "; and"

Insert: "."

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed \$100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and"

Renumber: subsequent subsections

3. Page 6, line 6.

Strike: "(iii)"

Insert: "(iv)"

Following: "court"

Strike: ", if the person was 18 years of age or older at the time that the offense was committed,"

4. Page 6, line 10.

(over)

Following: "\$50"

Insert: "\$50 if the person was 18 years of age or older at the  
time the offense was committed or"

Following: "\$100"

Insert: "if the person was under 18 years of age at the time that  
the offense was committed"

SENATE JUDICIARY COMM  
Exhibit # 5  
DATE: 1/23/95  
Bill # SB 63

Amendments to Senate Bill No. 63  
First Reading Copy

Requested by Senator Crippen  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 22, 1995

1. Page 1, line 21.

Strike: "corporation has its principal place of business"

Insert: "corporation's resident agent is located, as required by  
law, or in the first judicial district"

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. #6  
DATE 1/23/95  
BILL NO. SB63

Amendments to Senate Bill No. 63  
First Reading Copy

Requested by Senator Doherty  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 21, 1995

1. Page 1, line 17.

Following: "Montana,"

Insert: "and if the plaintiff is a resident of a state other than  
Montana,"

*Sen Oshuty requests This memo to be put in the record*

LEGAL BRIEF TO ASSIST SENATE JUDICIARY COMMITTEE RE: SB 63

The following research is provided to assist the committee with a question that was raised during the hearing on Senate Bill No. 63.

EXHIBIT NO. #7  
DATE 1/23/95  
FILE NO. SB 63

I. LEGAL ISSUE AND ANSWER.

The question is:

**To prevent court overcrowding, can Montana refuse to entertain tort claims by non-resident plaintiffs against non-resident corporations?**

The answer is clearly "yes" under both United States Supreme Court and Montana law.

II. MONTANA HAS THE RIGHT TO REFUSE TO ENTERTAIN A TORT CLAIM ARISING OUT OF CONDUCT OUTSIDE MONTANA, INCLUDING CLAIMS IN FELONY ACTIONS.

1. The United States Supreme Court. The identical issue was presented to the United States Supreme Court in Missouri v. Mayfield, 340 U.S. 1 (1950). The plaintiff was a railroad worker, who sued his employer in Missouri. "The accident, which gave rise to the claim of liability for negligence, took place outside Missouri." 340 U.S. at 2-3. The railroad company was not a resident of Missouri.

The United States Supreme Court held that Missouri had the power to refuse to accept the case. It stated:

If the state chooses to "prefer residents in access to often overcrowded courts" and to deny such access to all non-residents, whether its own citizens or those of other states, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act.

340 U.S. at 3-4.<sup>1</sup> Applying these definitions and the Mayfield ruling, Montana is entitled to deny access to "non-resident" plaintiffs who were injured outside of Montana without violating constitutional principles.<sup>2</sup> Constitutional law does not "force a duty upon the state courts to entertain or retain Federal Employers' Liability litigation against an otherwise valid excuse." Mayfield, 340 U.S. at 5. "Preferr[ing] residents in access to often overcrowded courts" is a "valid excuse." Mayfield, supra.

**2. Montana Cases on This Issue.** The issue of railroad workers who have been injured outside of Montana and have filed their lawsuits in Montana courts has been the topic of several Montana cases. The most recent case, Ford v. Burlington Northern, \_\_\_\_\_ Mont. \_\_\_\_\_, 819 P.2d 169 (1991), has been approved and affirmed by the United States Supreme Court, \_\_\_\_\_ U.S. \_\_\_\_\_, 119 L.Ed.2d 432 (1992).

In the Montana cases, our court has recognized that non-resident railroad workers are entitled to bring their claims against the Burlington Northern in Montana only because federal law gives them a right to sue a railroad in any state where the railroad is "doing business." Since BN is "doing business" in Montana, railroad workers from out of state can sue it here.

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<sup>1</sup>It is important to note that the United States Supreme Court is making a distinction between "residents" and "citizens." A person who claims Montana citizenship, but is residing outside Montana, is a "non-resident."

<sup>2</sup>The Committee will find additional authority for this point in Howlett v. Rose, 496 U.S. 356, 110 L.Ed.2d 332, 110 Sup.Ct. 2430 (1990), where the United States Supreme Court reviewed Mayfield, supra, and its two other cases addressing the issue of when a state court can refuse "to entertain a federal cause of action."

This "policy favoring the injured railroad worker's choice of forum [is] highly persuasive" and makes the doctrine of *forum non conveniens* inapplicable. LaBella v. Burlington Northern, 182 Mont. 202, 595 P.2d 1184 (1989); see Bevacqua v. Burlington Northern, 183 Mont. 237, 598 P.2d 1124 (1979). Railroad workers are entitled to choose their venue based upon the "strong national policy favoring a plaintiff's selection of forum in actions brought under the Federal Employers' Liability Act. Ford v. Burlington Northern, supra. at 175.

In most of these cases, however, the Montana Supreme Court has repeatedly stated that even though the non-resident railroader's choice of forum is important, it can be outweighed by Montana's interest in preventing overcrowding of local courts. See e.g., LaBella, supra; Bevacqua, supra. It has reserved the right to re-examine the situation and in fact, our court is currently doing that right now in a case before it. Thus, the Montana Supreme Court has recognized its power to deny access to non-residents if our courts are becoming overcrowded because of their lawsuits against the BN.

To summarize, neither the United States Supreme Court nor the Montana Supreme Court has ever concluded that a state cannot bar non-residents from using the state's courts. In fact, the courts have said just the opposite. The United States Supreme Court has expressly stated that a state can bar access to non-residents for suits against non-resident corporations. Mayfield v. Missouri, supra. Our own court has already recognized it has



the power to do just that, if the non-resident suits start overcrowding our courts. LaBella, supra, Ford, supra.

Therefore, if this legislature determines that non-resident suits are in fact clogging and overcrowding our courts, it can correct the problem without harming the rights of residents of Montana. Montana residents can retain the right to sue non-resident corporations away from communities where the corporation can exert considerable influence over the trial. Senate Bill No. 63 need only indicate that it applies when both parties to the lawsuit are non-residents. In this way, Montanans' rights will not be lessened.

DATE 1-23-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 127  
SB 174

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Charles R. Brooks	Yellowstone County	SB-127	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pam Meyer	DFS	174	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Watson	Supreme Court Administrators Office	174	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John W. Larson	District Judge 4 <sup>th</sup> J.D.	127 174	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Karen Sedlock	Supreme Court Administrators Office	174	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PATRICK CHENOVICK	MONTANA SUPREME CT	174	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shirley Brown	DFS		<input type="checkbox"/>	<input type="checkbox"/>
Laurie Kautnik		174	<input type="checkbox"/>	<input type="checkbox"/>
Beth Baker	Dept of Justice	127	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY