MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 24, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

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

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

Committee Business Summary:

Hearing:	HB 174, HB 175, HB 176, HB 179
Executive Action:	HB 46 DO PASS AS AMENDED
	HB 161 DO PASS AS AMENDED
	HB 174 DO PASS
	HB 175 DO PASS
	HB 93 POSTPONE ACTION

{Tape: 1; Side: A.}

HEARING ON HB 179

Opening Statement by Sponsor:

REP. GARY FELAND, HD 88, stated this bill would provide that a charge may be filed for an escapee violation in any county in the state. Currently the charge is filed in the county where the escape occurs. HB 179 was requested by the County Attorneys' Association.

Proponents' Testimony:

Christopher Miller, Powell County Attorney, gave background information in favor of HB 179. He said that the 1989 Legislature had, by oversight, deleted a section from the venue law which had created some difficulties. There are 35 - 40 escapes each year in various counties within the state mostly from pre-release centers or from furloughs and work programs. The purpose of the bill is to give a stamp of approval to the current practice. The advantage to the system is that warrants can be issued promptly, usually within an hour. If the bill does not pass, the pre-release center in each of the affected counties would have to contact the sheriff or county attorney in the county and make arrangements for a warrant to be issued which will take more time allowing the escapee additional time to flee.

Thomas Blaz, Investigator, Department of Corrections and Human Services (DCHS), said that they are ultimately responsible for getting inmates ready for prosecution once they escape or walk away from pre-release centers. He commended the current system and felt that public safety is more important than any money issue involved.

Mike Micu, Investigator, DCHS, in evaluating the effectiveness of this bill, had looked into cost saving measures for transportation costs, vehicles, on-the-road time, inmate lodging costs, and officer lodging costs and overtime. He said they had also looked at the greater escape risk in travel to and from trial and sentencing in support of HB 179.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. AUBYN CURTISS asked if there was a fiscal note for HB 179. There was and it was distributed.

REP. WILLIAM BOHARSKI commented that the fiscal note appears to show that it somehow helps fund Powell County Attorney's Office for these charges. He wanted to know if the other counties are

going to bear the cost of this and if other counties are now going to be reimbursed for these costs.

Mr. Miller answered that DCHS had for many years compensated his office through the county government for the time they put in on prison matters. On a year-to-year basis it averages out at $10,000 - $12,000 per year. The largest portion of that is related to the escape prosecutions. He said that if HB 179 is not approved, he would expect that the other counties would approach DCHS and be likewise compensated for their time.

REP. BOHARSKI asked what happens when a prisoner escapes Montana State Prison, goes to Flathead County, commits a theft and is then brought before the county attorney there.

Mr. Miller said that if there are offenses committed upon escape, the escape and other offenses are prosecuted in the other county if the other county agrees. Ordinarily, the county attorney in the other county will call Powell County to check to see how much time the prisoner has to serve. Then it is determined whether or not they want to prosecute the offense committed during the escape.

REP. BOHARSKI asked how the mechanism for refunding costs for Powell County works and whether the department thinks that it would be a relatively simple thing to do.

Mr. Miller said that he didn't think that could be answered immediately. He keeps track of his time, sends the department a bill and they send him a check.

REP. JOAN HURDLE asked **Mr. Miller** to clarify the current procedure.

Mr. Miller said that when someone walks away from a pre-release center, the center notifies the shift commander at the prison who enters the pre-assigned warrant number from Justice McGillis of Powell County into the NCIC system. When the prisoner is picked up, they are brought to the prison (not the pre-release center) and they are taken to court to be arraigned. Because of the venue defect, at the arraignment they are being asked by Judge Mizner, the district judge, if they will waive any defect in the venue and consent to proceeding in Powell County. The intent of HB 179 is to get the Legislature's stamp of approval to the arrangement that has developed over the last couple of years.

REP. DEBBIE SHEA requested the average number of escapees per year.

Mr. Miller replied that there are between 30 - 40 per year, 80% of those are walk-aways from pre-release centers, 10% are absconders from work furlough programs and the other 10% are trustees. It has been more than five years since someone has escaped from inside the prison.

Closing by Sponsor:

REP. FELAND made his closing remarks.

HEARING ON HB 174

Opening Statement by Sponsor:

REP. TONI HAGENER, HD 90, introduced HB 174 at the request of the Montana Association of District Clerks. It is intended to clear up some matters for the district clerks and to provide a more accurate recording of dissolutions of marriages and annulments. Lines 17-23 on page 2 are the main changes in the bill.

Proponents' Testimony:

Nancy Sweeney, Clerk of District Court, Lewis and Clark County, presented written testimony in favor of HB 174. **EXHIBIT 1**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LOREN SOFT asked what happens as a result of the lack of information they are requesting through the implementation of this bill.

Ms. Sweeney said this allows people who are researching for genealogical reasons to determine where the dissolution occurred. There is no impact in terms of legal separations.

Closing by Sponsor:

REP. HAGENER closed.

HEARING ON HB 175

Opening Statement by Sponsor:

REP. TONI HAGENER, HD 90, introduced HB 175 at the request of the Judicial Unification and Finance Committee intended to clean up old language and bring it into consistency with the Constitution. Current law allows the governor to assign on a temporary basis district court judges to other districts to manage case loads. This is inconsistent with the principles of the independence of the judiciary. The Montana Constitution vests the Supreme Court with general supervisory authority over all other Montana courts. This bill is designed to correct this error in statute.

{Tape: 1; Side: A; Approx. Counter: 32.5}

Proponents' Testimony:

Jim Rice, Attorney, reiterated that this bill is to revise an old law and that it is a law which could play a helpful role in the administration of the judiciary, but it is unconstitutional as presently written. This will bring flexibility to the judicial system and eliminate the practice of creating new judgeships. He said that we can't have the head of the executive branch of government administering the affairs of the judicial branch.

Pat Chenovick, Administrator, Montana Supreme Court, reported that the Chief Justice, while not looking for additional work, believed that as a matter of constitutional authority it rests with the Chief Justice to assign or reassign district judges in case they are needed in other district.

John Larson, 4th Judicial District Judge, rose in support of this bill. He advised the committee that district judges do travel around the state and they do voluntarily go to other districts to assist in those cases where there is conflict of interest.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BOHARSKI requested clarification of the language on the bottom of page 1 and what sorts of provisions there are as to when this assignment can and cannot be done.

Mr. Rice thought that there was no particular language that sets forth any standard or mandate for this practice. The judges are a close-knit group who work together well and know among themselves when there is a problem because of an illness or an excessive number of filings and they work together on that. He could not imagine the Chief Justice overriding the desires or work of a local district court judge unless it was really necessary.

REP. BOHARSKI wondered if there might be an occasion where the Chief Justice might want another judge sitting in on a case and he didn't know if the local judge currently has the authority to refuse should this occur.

Judge Larson believed when a case is assigned to a district judge, that district judge has the sole authority to call in anyone else to accept or not accept the case. This bill would come into effect where the district judge is incapacitated or actually requests the Chief Justice to assist and to assign the judge to that district.

REP. BOHARSKI clarified that it is at the request of the sitting district court judge.

Judge Larson said that was how he would see it operating. A third party would intervene if the judge was incapacitated.

REP. DANIEL MC GEE asked if there were any political implications in this bill at all.

Mr. Rice answered, "No." The only possible political implication, if it could be termed political, that he could foresee would be if the judge for some reason was not performing the duties of office very well.

REP. MC GEE asked if it was **Mr. Rice's** opinion that this is needed to agree with the Constitution.

Mr. Rice indicated that it did.

Closing by Sponsor:

REP. HAGENER closed.

HEARING ON HB 176

Opening Statement by Sponsor:

REP. TONI HAGENER, HD 90, introduced HB 176 at the request of the Judicial Unification and Finance Commission. This commission was created by the 1993 legislative session in response to concerns raised by the State Bar of Montana and the Association of Counties that Montana's courts were experiencing funding problems. She discussed the proposals of the commission which included a recommendation of dealing with court funding short falls and the inability to update and modernize court equipment by imposing a user surcharge in criminal, civil, and probate cases. She emphasized that this would be a user fee and would not affect the general fund. She also testified to the need for the modernization of court equipment and the limited funds to manage a statewide automation project. **EXHIBIT 2**

Proponents' Testimony:

James Rice, Attorney, said that this bill is to complete the process of modernizing the district court system and cited examples of the need. The user fee would be paid by those who use the court system at $5 per case.

Pat Chenovick, Court Administrator, Montana Supreme Court, distributed a chart showing the courts and the status of their automation systems. **EXHIBIT 3** He demonstrated visually and by historical examples the need for automation in those courts where it has not yet taken place. The surcharge was also detailed in his testimony. He reported that **REP. GRADY** said the subcommittee on appropriations as a whole supports the $5 surcharge bill in lieu of taking general funds to support automation.

{Tape: 1; Side: B}

John Larson, District Judge, 4th Judicial District, rose in support of the bill. Having served on the Judicial Unification and Finance Commission, he described the makeup of the commission and how they arrived at the recommendations. An alternative to the surcharge might be allocating $5 of the fees that are received in justice district court to be deposited for automation. He felt the criminal surcharge could be mandatory. He described the practical applications of automation and its benefits to the court system.

Bob Gilbert, Montana Magistrates Association and Montana Clerks of Courts Association, said automation is what is really needed to better serve the court system and provide swift justice.

Gary Spaeth, State Bar of Montana, reported that the State Bar supports this bill because it will help the judicial system and will better serve justice. He said that he could also report that the Montana Trial Lawyers also support this bill.

Lori Maloney, Clerk of the Court, Butte, testified about the need for the updating of the court system.

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 4 was submitted January 25, 1995, as follow-up to the testimony by **Mr. Chenovick** which addressed the recommendation for automation to improve the processing of juvenile issues in the youth court system.

Questions From Committee Members and Responses:

REP. DEB KOTTEL asked who the initiating party in criminal cases would be.

Mr. Rice replied that it would be the state through the county attorney's office.

REP. KOTTEL asked if it was his belief that the state of Montana representing the people would use the system but not be charged the $5 user charge in criminal cases.

Mr. Rice said that there were be an exemption from any state agency paying any filing fees.

REP. KOTTEL inquired about subsection (b) whether the state of Montana is ever the initiating party in a civil case.

Mr. Rice answered, "It is."

REP. KOTTEL asked if the state of Montana is ever a defendant in a civil case.

Mr. Rice answered, "It is."

REP. KOTTEL said that when she reads (b) and (c), because this is a user surcharge, not a fee, she wondered if the state of Montana has to pay the user surcharge as either the initiating party in a civil case or as the respondent or the defendant in a civil case.

Mr. Rice deferred to **Judge Larson**.

Judge Larson said that the statute provides complete exemption.

REP. KOTTEL asked **Mr. Rice** if he was saying that if the attorney for the defendant filed a special unlimited appearance, the attorney would have to pay the surcharge and at that point, the surcharge would not put the attorney into the jurisdiction of the court.

Mr. Rice replied that his understanding of the language was that some courts, in particular courts of limited jurisdiction, can only process cases that are up to a certain amount and that any case that involves more money than that must go to the district court. This can't be used to add onto this jurisdictional amount.

REP. KOTTEL said if she filed special unlimited appearance for the purpose of contesting the jurisdiction of the court over her and she had to pay a $5 surcharge, she wouldn't want the payment of the $5 surcharge to be used as evidence that she came within the jurisdiction of the court. She felt that was what that language was attempting to stop.

Mr. Rice replied that it was his understanding that it was not. (He indicated that **Judge Larson** agreed with him.)

REP. KOTTEL asked if there was a $5 surcharge for an involuntary civil commitment.

Mr. Rice said that it is not technically a criminal case and probably would qualify for a waiver.

REP. KOTTEL inquired if this covers restraining orders.

Mr. Rice said that any case presently that has any sort of filing fee attached to it would also have the surcharge attached to it with the appropriate provisions for waiver.

Without objection from the committee, **Judge Larson** responded that there would be no charge in an involuntary commitment since that proceeding is initiated by the state. In any other proceeding in which people seek restraining orders and do not have the funds, they may apply for a waiver.

{Tape: 1; Side: B; Approx. Counter: 21.3}

REP. SOFT referred to the fiscal note which lists 182 courts while the initial introduction of the bill listed over 200 courts and wanted to know the reason for the difference.

Mr. Chenovick said the difference was based on the premise that there are 182 judges and 224 courts because some of the judges are both justices of the peace and city judges and could be city judges in several city courts.

REP. SOFT again referred to the fiscal note and the number of FTEs to implement the program. He wanted to know who employs these FTEs.

Mr. Chenovick replied that currently in the automation effort, the Supreme Court Administrator's office employed five FTEs.

REP. SOFT asked where they would be located.

Mr. Chenovick said the additional five would be located in Helena and if they can work out a contract arrangement in areas that are a distance from Helena, they would contract with someone to do support in those remote areas.

REP. SOFT asked for what period of time these FTEs would be employed.

Mr. Chenovick replied that the ratio of support to users is about 1 - 50 users. When they get fully automated, it is anticipated that the user base would be in the neighborhood of between 500-600 users. It is anticipated that once the system is in place, they would not need as much support as when they install, train, etc.

REP. SOFT called attention to the budget amount projected for two years and wanted to know what would happen after that time.

Mr. Chenovick said it would cost about $5 million to update all the courts. Over two years with the amount being requested the project will not be complete but the effort will be to complete 66% or better.

REP. SOFT asked if this meant that the user fee would be charged for two or three fiscal sessions until they are fully up and running.

Mr. Chenovick thought it would cover two biennium or a five-year period.

REP. SOFT asked if this was a pay-as-you-go set up and what would occur if the expected revenue doesn't materialize.

Mr. Chenovick answered by saying that if the anticipated revenue does not materialize, they will automate up to the amount they do receive.

REP. SOFT found it curious that the expenses exactly matched the revenue.

Mr. Chenovick responded that the match-up was coincidental, but they did not want to spend more than they have.

REP. SOFT recalled that they currently receive $165,000 per year for automation and asked where that fits into the fiscal note.

Mr. Chenovick replied that in the present biennium there is funding that terminates from the general fund at the end of June so that the $160,000 is no longer available. If they don't receive any more general fund or they cannot collect the $5 surcharge, they will have to shut down any type of automation.

{Tape: 1; Side: B; Approx. Counter: 28.2}

REP. MC GEE asked how many people use the court that this will apply to.

Mr. Chenovick based his answer on the number of filings in district court in 1994 which were 29,000. He could not say how many different individuals were involved in these filings. In the justice and city courts there were 330,000 filings and this bill exempts the daytime speed limit fine and the seat belt and parking ordinances, leaving about 200,000.

REP. MC GEE calculated that there were about 229,000 filings between the two courts and those would be subject to the $5 surcharge if all persons are able to pay, making in excess of $1 million of potential revenue in a year according to that.

REP. HURDLE was curious about other things which would fall on users like this and why the fee isn't higher.

Mr. Chenovick thought a reasonable amount of money an individual could pay would be $5 and comparable to other user fees charged.

REP. HURDLE asked if the people who do the filing pay the filing fee and if the state is exempted from that.

Mr. Chenovick answered, "Yes, they are."

REP. KOTTEL stated that her understanding is that the difference between a user fee and a user surcharge has to do with the people who use the court system are actually using a service synonymous with photocopies, postage or other service used at the courthouse.

Mr. Chenovick said that was correct.

REP. KOTTEL referred to 25-10-405, MCA, in which it is stated that government agencies are not obligated to pay fees, but they must pay for photocopies, postage, handling, certification, etc. Since the testimony was that this is similar to photocopies, she wondered if the state would not then be obligated under this section to pay the user surcharge for using the court system.

Mr. Rice argued that this is a fee that is a charge essentially tacked on to a filing fee making it more in the nature of a filing fee than it is for the cost of the particular service and therefore, the state would not be obligated to pay it. They would not object to putting a specific provision in the bill to clarify that point.

REP. KOTTEL said that they could go to great length not to call it a fee, instead to call it a surcharge and then treat it as a fee in another section of the statutes so the state doesn't have to pay. She wanted to know if he saw the need for an amendment to 25-10-405, MCA, to include the word, "surcharge."

Mr. Rice replied that he did not know of any other surcharge that might be affected by the inclusion of the language in the referenced section. He felt it might be safer and a better presentation of intent to make the amendment to this bill.

REP. DIANA WYATT clarified that there would be five new FTEs in Helena.

Mr. Chenovick said that was correct.

REP. WYATT asked how they would approach dealing with the local counties and the local districts in terms of providing them with this computer service.

Mr. Chenovick said they would move on the premise that they would automate the courts of the larger jurisdictions first and branch out to get all courts after that. They would evaluate the individual county's ability to contribute match money and would finance it in the ratio that they could afford.

REP. WYATT understood the premise as it concerned hardware and software in Helena, but wondered how they would teach WordPerfect to people in the outlying districts as a reasonable approach in local areas.

Mr. Chenovick replied that they have developed the Judicial Case Management System. While it is being installed, they do word processing training. They are aware that this training is available from local public and private vendors. When the department is there and they can offer that service, they do it. They have developed several complex macros specific to the court system which they teach. If it is appropriate, they pay for court employees to go to those types of training.

REP. WYATT next addressed the time-distance problem with maintenance out of Helena to outlying areas. She felt it would be much more effective to have those people trained within the local communities with contracted service or from persons who are already employed.

REP. SOFT asked if they explored contracting with the private sector to install this system.

Mr. Chenovick said they had been in contact with several private contractors in some counties for installations and basic technical help. But when they considered the addition of the FTEs they were considering ordering the equipment, getting it in Helena, setting it up and putting all the software on it and then installing it as well as training the individuals. If they contracted, they would have to bring the contractor into Helena to train on the Judicial Case Management System. The other problem is that access to certain parts of court records is confidential.

REP. LIZ SMITH requested the amount of funding appropriated to the department that will terminate as of June 1 and when that was appropriated as well as what it has been used for.

Mr. Chenovick replied that the current funding for this biennium was a total of $560,000. That came from funds which were left over after 100% reimbursement on criminal cases. It is used to pay for staff, development of the Judicial Case Management System and the Limited Court Management System and the purchase of equipment for counties.

REP. SMITH said her constituents have indicated that they would not be supportive of more taxes of any kind; therefore, she wondered if they had considered going to the general fund to request the amount needed for this process.

Mr. Chenovick answered that they had submitted a budget proposal to the subcommittee on appropriations requesting general fund money to do automation and they are waiting to act on that request based on this $5 surcharge bill.

REP. SMITH asked if they would consider a sunset clause on this bill.

Mr. Chenovick disclosed that this had come up in a conversation with the Chief Justice who believes that any fee of any kind should come up for review and a provision to put a sunset on this fee would be within their agreement. He said they would request a five-year provision to make planning into the future easier.

REP. LINDA MC CULLOCH asked if the proposal for computers included general public user stations or if the computers are

behind desks which would limit the general public from accessing the information themselves.

{Tape: 1; Side: B; Approx. Counter: 48.3}

Mr. Chenovick said the system includes a planned-for station at the counter so that public records would be available to the public.

REP. MC CULLOCH asked if the software would be user friendly for general public use.

Mr. Chenovick said it is very user friendly.

REP. MC CULLOCH asked if the proposal would also tackle the electricity problems typical of courthouses.

Mr. Chenovick replied that they plan to try to solve some of the facility problems with this money.

REP. MC CULLOCH inquired about the prioritizing process.

Mr. Chenovick answered that they prioritized first by the availability of a willing contingency and then by determining if the sites were capable of sustaining the facility installation needs as well as the volume of the courts' work.

REP. DUANE GRIMES asked if they were talking about a network or about individual word processing stations which might be accessible by modem.

Mr. Chenovick said if they get to the point where they can take advantage of the Department of Administration's Summit Net capabilities, they could poll each court and move information into the state mainframe. The Department of Revenue currently has connections into all of the courthouses. It is planned to have a variety of networks and stand-alone systems.

REP. GRIMES wanted to know if the additional five FTEs would be microsystems personnel.

Mr. Chenovick said that was correct.

REP. GRIMES referred to the $85,000 which is being charged in a similar fashion that is going to community service programs. He asked if that applies to the same people who would be paying this $5 fee.

Judge Larson answered that if you allowed the $5 surcharge for each convicted defendant, it would apply (in the 4th Judicial District) to those same defendants who would pay $85 toward general fund which they recommend be allocated to fund the community service program. Those are people who don't have jobs who owe either the costs of incarceration or who, as a means of

making some payment back to the community in recognition of their crime, are sentenced to do community service.

REP. GRIMES asked which programs are dependent on that $85.

Judge Larson said it is a work program just in the 4th Judicial District, it is not statewide.

REP. TREXLER asked if this has a fiscal impact to the county for collecting, disbursing, bookkeeping, etc. and how they are compensated for their time.

Mr. Chenovick summarized the process and said he anticipates a simple report not having a significant fiscal impact.

REP. KOTTEL referred to lines 20 and 21 and wondered if there would be an objection to an amendment referring to 25-10-404, MCA.

Mr. Chenovick would not object because that is the intent.

REP. BOHARSKI looked at the provisions of (b) and (c) and asked if it was appropriate that the person being sued also pay the $5.

Judge Larson said he would have no objection to the concept that each party to a civil action pay $5 provided they are able to pay.

REP. BOHARSKI felt it was not appropriate to pay the fee just to respond to a civil suit.

Judge Larson understood and said that, in the determination of every civil case the issue of fees and costs, it is up to the judge to allocate. There are protections in the common law for a defendant who is unjustly sued.

REP. BOHARSKI asked if he would foresee in a case like this the same would apply to the losing parties.

Judge Larson answered, "To all parties appearing, yes."

{Tape: 2; Side: A}

Closing by Sponsor:

REP. HAGENER declared the need for these changes and said she had no objection to amendments to clarify difference between surcharge and fees.

EXECUTIVE ACTION ON HB 174

Motion: **REP. SHEA MOVED HB 174 DO PASS.**

Discussion: **REP. TASH** requested that the record show that he would abstain from votes on these three bills because he has a case pending in the appeals court.

Vote: **The motion carried 18 ayes and REP. TASH abstaining.**

EXECUTIVE ACTION ON HB 175

Motion/Vote: **REP. WYATT MOVED HB 175 DO PASS. Motion carried 18 ayes with REP. TASH abstaining.**

EXECUTIVE ACTION ON HB 93

REP. SOFT commented on a number of items which needed to be addressed with HB 93.

REP. HURDLE recalled from her notes that there were several problems which had come up during the hearing on HB 93.

Motion: **REP. HURDLE MOVED HB 93 DO NOT PASS.**

Discussion: **REP. BRAD MOLNAR** shared the concerns but felt there were other concerns which would arise without the bill. He felt if there was no sex offender treatment program the recidivism rate would increase to 100%. He continued to address specific items in the bill which needed modification.

CHAIRMAN CLARK reviewed the Department of Corrections and Human Services (DCHS) proposed amendments to facilitate the committee's decision. He "walked" the committee through each proposed amendment.

REP. MOLNAR asked if the words, "mildly mentally retarded" and "borderline intelligence" were quantifiably defined.

REP. SOFT said they were.

CHAIRMAN CLARK also said they were referenced.

REP. CHRIS AHNER asked if it was currently acceptable to use the term, "mentally retarded," rather than mentally handicapped.

CHAIRMAN CLARK reported that **Mr. Day** of DCHS had said that term is still used.

REP. HURDLE felt using both terms was redundant and the term, "borderline intelligence," would be the more acceptable.

CHAIRMAN CLARK said he had no objection but that **Mr. Day** wanted the whole spectrum covered.

REP. MC GEE commented that if both terms were in statute, they should remain in the bill.

REP. SHEA wondered if there should be wording to say that the court determines this rather than the pre-sentence investigation.

CHAIRMAN CLARK replied that the court gets their information from the pre-sentence investigations which are conducted by people who are trained to determine the condition.

REP. SHEA said she had had a conversation with the Parole Board and it was their recommendation that the court make the decision.

REP. AHNER agreed that both concepts should be left in the language of the bill.

REP. GRIMES wanted to know what the scope of the subcommittee's responsibilities would be since the committee needs to know the definitions.

CHAIRMAN CLARK suggested that the committee hear all the amendments before deciding to proceed or to place the bill with the subcommittee.

REP. HURDLE voiced the same concerns as well as concern about the broad authority of the bill and the lack of due process as well as the staffing and decision-making authority.

CHAIRMAN CLARK explained that the content of the amendments would perhaps address some of those concerns.

REP. CURTISS referred to line 25 and the need for a reference to the department.

CHAIRMAN CLARK pointed out that the department is referenced on line 27.

REP. CURTISS did not think the reference appeared early enough in the bill for clarity.

REP. MC CULLOCH asked the committee to look at line 19 for this reference.

REP. SHIELL ANDERSON tied the appropriate lines together for the reference needed for clarity of responsibility.

REP. BOHARSKI wanted to know where the terms are referenced in existing statute.

REP. KOTTEL reviewed the sections of code relating to definitions of words and phrases and pointed out that they only define developmentally disabled, seriously developmentally disabled and no definition was found or mentioned for mental retardation or borderline intelligence.

REP. HURDLE pointed out that those were included in special education law.

REP. KOTTEL reiterated that it was not found in the sections on words and phrases in the code.

REP. HURDLE said it was defined by rules and regulations. She said developmentally disabled is not used in Montana in special education rules and regulations.

CHAIRMAN CLARK continued with the proposed amendments.

{Tape: 2; Side: A; Approx. Counter: 33.9}

REP. SMITH gave history and information regarding the whole program. Presently at the Montana State Prison there are 450 sex offenders for whom there is a well-drafted program which they can participate in on a volunteer basis. It is considered a long-term non-curable condition. It is the continuum of the program when they are released they are seeking to establish. Therefore, she proposed some amendments to that end including language such as, "one with a limited intellectual ability" or "developmentally disabled (DD)." The criminal DD is the serious person in society who has gone through due process and should not be incarcerated as such, but they need a place with ongoing support in the program. She validated the other proposed amendments.

REP. HURDLE withdrew the **DO NOT PASS MOTION.**

REP. SHEA asked if jurisdiction needed to be established and wondered if the decision wouldn't have to fall in line with the parole board.

CHAIRMAN CLARK believed that the parole board determines whether these programs have been successfully completed; and as such, do not remove the parole board from any function or authority.

REP. SHEA proposed language at the end of line 19, page 2 to clarify the jurisdiction.

REP. BOHARSKI said that line 18 already said what she was proposing.

REP. MC GEE also referred to line 28, section 1, subsection (g) as containing language which would satisfy this concern.

Motion: **REP. CURTISS MOVED HB 93 DO PASS.**

Motion: **REP. BOHARSKI MOVED THE FIRST DCHS AMENDMENT.**

Discussion: **REP. BOHARSKI** voiced concern that there isn't a clear definition of the two terms discussed previously. He wanted to prevent the possibility of the department and

psychiatrists drawing up new definitions of these people with limited intelligence.

CHAIRMAN CLARK read the department's rationale for the amendments.

REP. BOHARSKI said he was comfortable with the rationale.

REP. HURDLE didn't want to use the term, "borderline intelligence," but wanted to retain the definition in law instead of special education regulations.

Motion: REP. HURDLE MOVED A SUBSTITUTE AMENDMENT, "AS SERIOUSLY MENTALLY ILL AS DEFINED IN 53-21-101, MCA, OR IS DEVELOPMENTALLY DISABLED AS DEFINED IN CODE."

Discussion: REP. BOHARSKI asked if the two groups of people the department was trying to make sure are covered fall under that definition.

REP. GRIMES said he was beginning to wonder the same thing. He referred back to the original bill and wondered if changing it to "developmentally disabled" would significantly change the whole purpose of the bill.

REP. KOTTEL read the statute concerning the definition of developmental disability.

REP. HURDLE maintained that they should use the definition as proposed in her amendment because she did not want the department determining the level of everybody's (sic) intelligence and whether or not they should be in this program.

REP. KOTTEL supported that comment by pointing out the definition for "seriously mentally disabled" people and contrasted them with developmentally disabled.

REP. SOFT felt very uncomfortable with this and preferred to have an attorney from one of the departments which use these definitions give them information.

REP. GRIMES said they did need to define seriously mentally ill by changing it slightly. He said the definitions are found in 53-21-102, MCA, rather than 53-21-101, MCA.

REP. SMITH referred to the fiscal note's intent to serve developmentally disabled and seriously mentally ill persons. She felt the committee should be consistent.

REP. GRIMES agreed that additional technical information was needed before the committee could vote.

REP. HURDLE withdrew her motion.

REP. BOHARSKI withdrew his motion.

Motion/Vote: REP. ANDERSON MOVED TO POSTPONE ACTION. The motion carried unanimously by voice vote.

CHAIRMAN CLARK referred the bill to the subcommittee.

EXECUTIVE ACTION ON HB 161

Motion: REP. CURTISS MOVED HB 161 DO PASS.

Motion: REP. KOTTEL MOVED TO AMEND PER EXHIBIT 5, ONLY NUMBERS 1 AND 2, ELIMINATING NUMBERS 3 AND 4.

Discussion: REP. KOTTEL explained the amendments proposed as well as the reasons for eliminating Numbers 3 and 4 of her submitted amendments.

{Tape: 2; Side: B}

REP. MOLNAR asked if a video screen would cover both a computer and game.

REP. KOTTEL said she was open to any change in the language.

John MacMaster said that he added video screen because they are similar in their use in pornography.

REP. MOLNAR described his reasoning for questioning the language of the amendment in subsection (3) (b).

Motion: REP. KOTTEL MOVED A SUBSTITUTE MOTION LEAVING THE WORD, "VIDEO" IN AND DELETING THE WORD, "GAME" AND IN THE THIRD LINE DELETING "COMPUTER" AND INSERTING "VIDEO."

REP. BOHARSKI asked if it covered the possibility of someone downloading information onto a personal computer.

REP. KOTTEL explained why she believed it did.

REP. CURTISS questioned why this had been included in section 45-5-620, MCA, when the section being addressed was 45-5-625, MCA.

REP. KOTTEL told **REP. CURTISS** the rationale behind these portions being amended.

REP. MC CULLOCH felt that using only the words, "video screen" eliminated the computer concept.

REP. MOLNAR responded to her concern.

REP. MC CULLOCH was not convinced.

REP. KOTTEL felt that video screen was a more generic and broader term.

REP. MC CULLOCH was not sure a court system would understand video screen being the same as a computer screen.

REP. SOFT said he felt it would not hurt to leave the word, "computer," in for clarification. **REP. SOFT MOVED A SUBSTITUTE MOTION TO REINSERT THE WORD, "COMPUTER."**

REP. MC GEE suggested a friendly amendment adding the word, "other," before video screen. **EXHIBIT 6** reflects the changed amendment.

Vote: **The motion carried unanimously by voice vote.**

Motion/Vote: **REP. SOFT MOVED HB 161 DO PASS AS AMENDED. The motion carried, 18 - 0.**

EXECUTIVE ACTION ON HB 46

Motion: **REP. SOFT MOVED TO RECONSIDER ACTION ON HB 46.**

Discussion: **REP. BOHARSKI** asked for an explanation of the reasons.

REP. SOFT explained that since the time the bill was tabled additional information had been received from the proponents so that arsonists could be charged as felons as well as to be able to track them across the state.

{Tape: 2; Side: B; Approx. Counter: 15.7}

Vote: **The motion carried, 16 - 2, REPS. TREXLER AND BERGMAN voting no.**

Motion: **REP. SOFT MOVED HB 46 DO PASS.**

Discussion: **REP. MC GEE** felt this bill was important in that it defines this activity in a criminal format that is different from criminal mischief. He felt that burning something with the intent to do harm should be defined as arson.

REP. KOTTEL said there were three reasons the committee should reconsider and pass the bill. One has to do with truth in sentencing and truth in labeling a crime. Labeling it as arson allows bringing in a fire marshall for investigative purposes, a second reason is that arson is a trackable offense, in that they can follow offenders who often commit subsequent acts of an escalated nature, and the third reason is that it allows recovery of arson damages.

REP. GRIMES said he would support the bill as well for the reasons just stated.

REP. TREXLER asked for clarification how much more was being added to the items which qualify for an arson charge.

REP. KOTTEL said that by deleting the word, "occupied," the definition is expanded.

REP. BOHARSKI said they had also added new language pertaining to the property of another.

REP. CAREY clarified that the bill was amended.

REP. MC GEE said that the amendment had been passed in previous executive action.

Motion: **REP. HURDLE MOVED TO AMEND TO SAY, "SHALL BE SENTENCED FOR A TERM" AND STRIKE, "IMPRISONED IN THE STATE PRISON."**

REP. MC GEE spoke against the amendment because the wording of the bill is consistent with other sections of statute as well as the fact there is nowhere else to put them.

REP. GRIMES asked **Mr. MacMaster** for his opinion.

Mr. MacMaster explained why it would be theoretically right to say, "shall be incarcerated for a term not to exceed.... " and he recommended that they leave it as it is.

REP. HURDLE withdrew her amendment.

REP. ANDERSON said he remained unconvinced that they were accomplishing much with the bill and explained his reasons for voting against the bill.

REP. MOLNAR covered his reasons for not supporting the bill as it related to how it would affect juveniles who had burned structures and other material objects. He felt it was a local problem brought by the proponents and that its passage would not change anything substantively.

CHAIRMAN CLARK did not believe that juveniles were discussed under this bill.

REP. MOLNAR said that from page 14 on, they can be treated as adults.

REP. KOTTEL responded with an explanation of definitions of occupied structures and read portions of the present arson code. She also quoted from a document submitted by the proponents as evidence for reconsideration of the bill. **EXHIBIT 6** She concluded that HB 46 is not redundant and does not financially benefit arson investigation agencies.

{Tape: 2; Side: B; Approx. Counter: 39.0}

REP. ANDERSON rebutted the arguments for the bill. He asked if **REP. KOTTEL** said, "you can't seek restitution for criminal mischief."

REP. KOTTEL replied that she didn't think they were talking about civilly, but were talking about MCA, 46-18-261, and read what that statute says. Therefore, if the bill is passed, it has to do with victim compensation or civilly compensation can be sought.

REP. ANDERSON answered, "Yes, I believe you can." He continued to rebut the arguments for the bill.

REP. GRIMES thought the committee's decision should be whether or not it is right to consider arson as a penalty for things other than occupied structures. He felt that it probably should.

REP. HURDLE added that there is a connection between emotional disturbance and arson and so tracking might become an important component.

REP. MOLNAR said that throughout the Youth Court Act and throughout various other statutes, restitution can and is demanded by judges though it is hardly ever given. He also rebutted other reasons given for supporting the bill.

CHAIRMAN CLARK commented on the possibility that was raised that the people of the 13th Judicial District are not doing their job. He suggested that the bill be passed to cause people to do their job who may not be doing so.

REP. MOLNAR replied that there is no minimum sentence imposed, the judge still has latitude and he did not believe anything would be changed.

REP. BOHARSKI did not believe the change in the arson statutes would require the county attorney to prosecute an individual who burned an "outhouse," but that they could prosecute under a lesser charge.

REP. KOTTEL said it would be discretionary with the county attorney to charge someone under the criminal mischief portion or under the arson portion.

REP. ANDERSON said that was correct and it also lends to considerable inconsistency among judicial districts.

REP. BOHARSKI asked if there is currently a statute which would deal with an individual who destroys their vehicle for the purposes of collecting on the insurance.

CHAIRMAN CLARK believed there are insurance fraud statutes which would cover it.

REP. BOHARSKI said that appears what subsection (b) is now attempting to direct.

REP. ANDERSON did not believe it covered anything that is not currently covered in statutes.

REP. KOTTEL recalled that there was an arson statute which was modeled after the "model arson law" of 1973 in Montana which included arson of various degrees. All of that language was amended out and now it is felt that those items which qualified as arson should be brought back for truth in prosecution.

REP. BOHARSKI said he was satisfied with that answer.

Vote: **The motion carried 15 - 4, REPS. ANDERSON, MOLNAR, TASH and BERGMAN voting no.**

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

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:55 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/24/95

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	✓ late		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 174** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

Mon 1/24

Committee Vote:
Yes 18, No 0. ABSTAIN 1

201324SC.Hbk

HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 175** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

Mm 1/24

Committee Vote:
Yes 18, No 0. ABSTAIN 1

201325SC.Hbk

HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 161** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

1. Title, line 6.
Following: "CONDUCT;"
Insert: "EXPANDING THE DEFINITION OF THE OFFENSE;"
Strike: "SECTION"
Insert: "SECTIONS 45-5-620 AND"

2. Page 1, line 10.
Following: line 9
Insert: "**Section 1.** Section 45-5-620, MCA, is amended to read:
"**45-5-620. Definitions.** As used in 45-5-625, the following definitions apply:
(1) "Sexual conduct" means actual or simulated:
(a) sexual intercourse, whether between persons of the same or opposite sex;
(b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
(c) bestiality;
(d) masturbation;
(e) sadomasochistic abuse;
(f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or
(g) defecation or urination for the purpose of the sexual stimulation of the viewer.
(2) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

Mon 1/24

Committee Vote:
Yes 18, No 0.

201321SC.Hbk

HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 46** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

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

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

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

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

-END-

11/24

Committee Vote:
Yes 15, No 4.

201319SC.Hbk

EXHIBIT 1
DATE 1/24/95
HB 174

NANCY SWEENEY
CLERK OF DISTRICT COURT
Lewis and Clark County Courthouse
P.O. Box 158
Helena, MT 59624-0158
W-447-8215 H-449-8970

January 23, 1995

Rep. Bob Clark
House Judiciary Committee
Capitol Station
Helena, MT 59620

Chairman Clark and Members of the Committee,

House Bill 174 is simply a clarification of language regarding notices of entry of dissolution that a clerk of court is required to send to the county where the marriage license was issued.

At the Montana Association of Clerks of District Court's convention in June of 1994, we passed a resolution to change this statute. It was the consensus of the members attending the convention that notices of legal separation were not being sent. Notices of dissolution were being mailed the appropriate jurisdictions at the beginning of the month when we processed the statistical reports required by the State Bureau of Records and Statistics. The Bureau of Records and Statistics does not require a report on legal separations and none of us had an established procedure to send notice of legal separations. Lewis and Clark county issues approximately 500 marriage licenses each year and we have never received a notice of legal separation.

The intent of this statute is to record the termination of a marital relationship with the agency that recorded the marriage. The provisions of statute does not fulfill its intent. The statute does not include invalid marriages (annulments) which are a termination of a marital relationship and does include decrees of legal separation which are not terminations of marital relationships. House Bill 174 would enable the clerks to fulfill the intent of the statute and accurately record the termination of marital relationships where the marriage was recorded.

The provisions contained in House Bill 174 would clean up language which requires a clerk of district court to do something they actually have rarely if ever done and it adds the provision of sending notice on invalid marriages, which more precisely performs the intent of the original statute. The Montana Association of Clerks of District Court would urge your support of this housekeeping legislation.

Sincerely,

Nancy Sweeney

Nancy Sweeney
Clerk of District Court

EXHIBIT 2
DATE 1/24/95
HB 176

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.

EXHIBIT 3
DATE 1/24/95
HB 176

SUPREME COURT INSTALLED AND SUPPORTED COMPUTER SYSTEMS IN MONTANA'S JUDICIAL DISTRICTS
As of January 18, 1995

District	Courts	Location	System
1st	6	Montana Supreme Court, Court Admin, Law Library Lewis & Clark Co. DC, JP & City Courts Broadwater Co. JP/City Court, Townsend	Novell Network - 45 Workstations Novell Network - 24 Workstations 1 Standalone Workstation
3rd	5	Deer Lodge Co. Clerk of DC, Anaconda Deer Lodge Co. JP, Anaconda Granite Co. Clerk of DC, Philipsburg Powell Co. DC & JP, Deer Lodge	1 Standalone Workstation 1 Standalone Workstation 1 Standalone Workstation Novell Network - 8 Workstations
4th	2	Missoula Co. Clerk of DC, Missoula Missoula Co. City Court, Missoula	Novell Network - 12 Workstations Novell Network - 7 Workstations
5th	5	Jefferson Co. Clerk of DC, Boulder Jefferson Co. JP Court, Boulder Madison Co. JP Court, Virginia City Madison Co. Clerk of DC, Virginia City Madison Co. Dist. Court Judge, Virginia City Beaverhead Co. Dist. Court Judge, Dillon	Novell Network - 3 Workstations 1 Standalone Workstation 1 Standalone Workstation 1 Standalone Workstation 1 Standalone Workstation 1 Standalone Workstation
6th	3	Park Co. DC, JP, City Courts, Co. Attorney, Livingston	Novell Network - 11 Workstations
7th	5	Dawson Co. Clerk of DC, Glendive McCone Co., Clerk of DC, Circle Richland Co., District Court, Sidney Richland Co., JP Court, Sidney Wibaux Co. District Court, Wibaux	Novell Network - 6 Workstations 1 Standalone Workstation 2 Standalone Workstations 2 Standalone Workstations 1 Standalone Workstation

8th	1	Cascade Co., Clerk of DC, Great Falls	7 Standalone Workstations (to be networked Spring 95)
9th	5	Glacier Co. Clerk of DC, Cut Bank Glacier Co. JP/City Court, Cut Bank Pondera Co. Clerk of DC, Conrad Pondera Co. JP, Conrad	Novell Network - 3 Workstations 1 Standalone Workstation 2 Standalone Workstations 1 Standalone Workstation
10th	3	Fergus Co. Clerk of DC, Lewistown Judith Basin Co. JP/City, Standford	1 Standalone Workstation 1 Standalone Workstation
11th	3	Flathead Co. DC & JP Courts, Co. Attorney, Kalispell Flathead Co. City Court, Kalispell	Novell Network - 30 Workstations Novell Network - 3 Workstation
12th	3	Chouteau Co. Clerk of DC, Fort Benton Hill Co. Clerk of DC, Havre Liberty Co. Clerk of DC, Chester	1 Standalone Workstation Novell Network - 6 Workstations 2 Standalone Workstations
13th	5	Big Horn Co. Clerk of DC, Hardin Carbon Co. DC & JP, Red Lodge Yellowstone Co. City Court, Laurel Yellowstone Co. District Court, Billings	2 Standalone Workstations Novell Network - 5 Workstations 1 Standalone Workstations Novell Network - 20 Workstations
14th	1	Musselshell Co. JP, Roundup	1 Standalone
15th	4	Roosevelt Co. Clerk of DC, Wolf Point Roosevelt Co. JP/City Court, Wolf Point Sheridan Co. JP, Plentywood	2 Standalone Workstations 1 Standalone Workstation 1 Standalone Workstation

EXHIBIT 3
DATE 1-24-95
HB 176

16th	6	Custer Co. Clerk of DC, Miles City Custer Co. City Court, Miles City Fallon Co. Clerk of DC, Baker Powder River Co. Clerk of DC, Broadus Powder River Co. JP Court, Broadus Rosebud Co. JP, Colstrip	2 Standalone Workstations 1 Standalone Workstation Novell NetWare Lite - 2 Workstations 1 Standalone Workstation 1 Standalone Workstation 1 Standalone Workstation
17th	4	Blaine Co. Clerk of DC, Chinook Phillips Co. Clerk of DC, Malta Valley Co. Clerk of DC, Glasgow Valley Co. JP, Glasgow	Novell Netware Lite - 2 Workstations 1 Standalone Workstation 2 Standalone Workstations 1 Standalone Workstation
18th	4	Gallatin Co. District Court, Bozeman Gallatin Co. JP, Bozeman Gallatin City Court Montana Water Courts, Bozeman	Novell Network - 18 Workstations Novell Network - 4 Workstations Novell Network - 3 Workstations (DC?) Novell Network - 12 Workstations
19th	3	Lincoln Co. Clerk of DC, Libby Lincoln Co. JP Court, Libby Lincoln Co. JP Court, Eureka	Novell Network - 5 Workstations Novell Netware Lite - 4 Workstations Novell NetWare Lite - 2 Workstations
20th	2	Lake Co. District Court, Polson Sanders Co. Clerk of DC, Thompson Falls	Novell Network - 4 Workstations 1 Standalone Workstation
21st	2	Ravalli Co. Clerk of DC & JP Court, Hamilton	Novell Network - 11 Workstations
TOTAL	72		

EXHIBIT 4
DATE 1/24/95
HB 176

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

January 25, 1995

Representative Bob Clark
Chairman, House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Chairman Clark and members of the Committee:

In followup on my testimony on January 24, 1995, in regards to HB 176, I submit to you and the members of the committee letters of support for the automation efforts of the Supreme Court. These letters are addressed to the chair of the General Government Appropriations Subcommittee, but reflect the support for continued automation of the courts in Montana. As I stated, I have asked for General Fund support of this effort, Chairman Grady is holding our request to see the outcome of the HB 176. He has indicated that HB 176 is a proper method to improve the system, have the users pay for the improvements.

In the testimony I gave to the committee I missed an important point. An audit of the Juvenile Justice system in Montana in 1993, by the office of the Legislative Auditor, made strong statements concerning the data available on juvenile issues. The audit recommended and we are trying to put into place a system to provide management information on juvenile issues so that the youth courts can improve their handling of juvenile cases. I have attached a portion of the audit concerning this recommendation.

I thank you and the committee for the opportunity to testify in support of HB 176, and ask for favorable concurrence.

If I can provide additional information or answer questions, please advise.

Sincerely,

Pat Chenovick

Patrick Chenovick

a single judicial district to increase parental contributions, there is no established statewide procedure or mechanism to implement a successful parental contributions function. The probation officers association, JPOA, has developed standardized court orders for youth courts which address the requirements for parental contributions. However, there is currently no assurance of adoption of these standardized procedures by the youth courts.

Youth Courts have Primary Responsibility for Establishing Parental Contributions

According to statute youth courts are responsible for the first step in the process. The court has to examine financial ability to pay prior to court ordered disposition to DFS, in every case. The court order must specify the amount of parental contribution determined by the court before the process can proceed. The Supreme Court in unison with DFS should establish standard rules and forms to insure youth court awareness and compliance with current statutory requirements for the examination and provision of parental contributions.

Recommendation #2

We recommend the Supreme Court and DFS establish parental contribution procedures to insure youth court compliance with the law requiring documented consideration of parental contributions.

There is No Youth Court Management Information System

During interviews with juvenile probation officers, we asked for information and/or statistics on probation officer activities such as: number of youths referred, types of crimes, success of intervention programs, etc. In most districts, we found youth courts do not develop or compile any type of comprehensive information on youth court activity. While probation officers indicated they submit some numerical data to the Montana Board of Crime Control via the Juvenile Probation Information System, most also indicated neither this data nor any other information concerning their daily activities is used to evaluate operations. Compiling

management information is either perceived as too time-consuming or as having no value relative to day-to-day job requirements.

There is a Lack of Data on Program Outcomes

As a result of youth courts not compiling management information, and therefore not conducting ongoing evaluations of their performance, youth courts cannot differentiate between programs in terms of whether youth intervention and diversion program are effective. For example, probation officers indicated the use of shelter care or group homes as a common youth intervention technique because of their access and availability, rather than because their success rates justified the continued use of these DFS-funded options. Similar logic was expressed for restitution and community service programs; that is, they are used because of probation officer perceived "lessons" these programs can provide youths, rather than because of a documented success of diversion and victim repayment.

Development and maintenance of management information is needed to evaluate the operational aspects of an organization as well as to measure staff performance and program outcomes. Further, studies by the National Center for Juvenile Justice state:

-- juvenile developmental offense patterns exist, which if properly identified and monitored, can predict repeat activity and lead to specific future treatment program development.
-- both judges and probation officers need criminal activity and offense pattern information to make treatment decisions.

At present, there is no statewide system to gather and compile information on youth intervention and diversion program effectiveness. Although the Supreme Court until 1990 maintained a Statewide Judicial Information System, according to Supreme Court officials it was discontinued due to other funding priorities resulting from reduced appropriations. Currently, the Supreme Court is working with the various courts in Montana to establish a Judicial Case Management System. Although the system's current capability is limited to civil cases, and is only in place in some counties, it is being designed to create a statewide judicial information system.

Recommendation #3

We recommend the Supreme Court in unison with the youth courts work towards a management information system which includes data on youth court programs.

EXHIBIT 4
DATE 1-24-95
HB 176

June Little
Clerk of The District Court
Sixth Judicial District

PARK COUNTY, MONTANA

Telephone 222-6120 Ext. 234
Area Code 406

Box 437
Livingston, Montana 59047

January 6, 1995

Representative Ed Grady
State Capitol
Helena, MT 59620

Dear Mr. Grady,

As Clerk of District Court of Park County, Montana, I strongly support funding for automation of the Courts.

My office is automated at this time and is networked with the County Attorney, Justice of the Peace, City Court Judge, and the Juvenile Office. We hope to also have our District Judge on the network in the next few months.

We have depended solely on the Court Administrators Office for technological support and to end funding at this time would be detrimental and a severe set-back to our county, as well as any other counties that have done the same.

Automation has increased efficiency in my office such as not hiring additional help, less printing costs, and easier access to records by the public.

Automation is here and is a part of our future. It has become a necessity for our office and feel it is going to become a necessity for all Courts of Montana and ask that you help support funding for this bill.

Sincerely,

June Little
Clerk of the District Court

NANCY SWEENEY
CLERK OF DISTRICT COURT
Lewis and Clark County Courthouse
P. O. Box 158
Helena, Mt 59624-0158
447-8216

January 6, 1994

Ed Grady
Vice Chairman
House Appropriations Committee
State Capitol
Helena, MT 59620

Dear Sir,

I have worked with the Supreme Court Administrator's office as Clerk of Court for the past year. During this time my office has worked with Dana Corson and the staff of the office of the Court Administrator on development of a new Judicial Case Management System (JCMS). They have continued to provide excellent support services for the current system and in a very limited time and despite numerous unanticipated problems, continue to develop a superior JCMS product.

This office served as a pilot program for the Court Administrator's JCMS program seven years ago and continues assisting in the development and refinement of the Court Administrator's JCMS product. We are very excited with the enhancements and added flexibility developed in the new JCMS and look forward to providing any further assistance possible. My office has experienced the benefits of court automation and simply could not process the work at existing staff levels without automation.

It is my opinion that Lewis and Clark County would not have in the past and could not now provide the financial or technical assistance necessary to support this system without the Court Administrator's office. I would encourage the committee to continue this valuable service to the counties by recommending continued funding for this program.

Sincerely,

Nancy Sweeney

Nancy Sweeney
Clerk of District Court

EXHIBIT 4
DATE 1-24-95
HB 176

McCone County
Circle, Montana 59215
Fax (406) 485-2689

COMMISSIONERS
Aron King
Connie Eissinger
Kenton E. Larson
Box 199
485-3500

ASSESSOR
Laura E. Wittenberg
Box 179
485-3565

CLERK & RECORDER
Leanne K. Switzer
Box 199
485-3505

CLERK OF THE COURT
Betty L. Robinette
Box 199
485-3410

COUNTY ATTORNEY
Jail F. Link
199
485-3530

COUNTY HEALTH DEPT.
Patricia Wittkopp
Sue Good-Brown
Box 47
485-2444

COUNTY PLANNER
Mary Garfield
Box 199
485-3505

JUSTICE OF THE PEACE
Dwight Burton
Box 192
485-3548

SHERIFF
Robert A. Jensen
Box 207
485-3405

TREASURER /
SUPT. OF SCHOOLS
Janet L. McCabe
Box 180
485-3590

TO: JUDICIAL FUND COMMITTEE
HONORABLE ED GRADY, CHAIRMAN

FROM: BETTY L. ROBINETTE Betty L. Robinette
CLERK OF DISTRICT COURT
MCCONE COUNTY, MONTANA

DATE: JANUARY 6, 1995

SUBJECT: FUNDING FOR COURT AUTOMATION

Please give your every consideration to the funding necessary to allow the Court Administrator's Office to continue with the automation of Montana Courts.

The Court Administrator's Office has just recently installed a computer and printers in my office which I purchased through them. I am very pleased with the service as Dana Corson and his staff were very prompt and efficient from the purchase to the installation of the equipment.

The Court Administrator's Office has been working on the Montana Judicial Case Management System and it should be ready to be installed in all counties in Montana in the near future. Montana's court system has been in the dark ages too long. We need to be automated and computerized.

TO: Ed Grady

FROM: Ardelle Adams, Clerk of District Court, Glendive, Montana

DATE: January 6, 1995

RE: Ed Grady

* * * * * * * * * * *

I'm writing in support of automation for the Clerks of District Court that the Montana Court Administrator's Office has started. Because of the past funding received from the State, many clerks are now automated and we find our work to be superior. The Court Administrator's Office has been doing a great job and working very hard getting as many offices as possible running efficiency with the computers. I'm asking for your support as money is needed to continue this effect.

Thank you,
Ardelle Adams
Clerk of District Court

EXHIBIT 4
DATE 1-24-95
HB 176

CLERK OF THE DISTRICT COURT

RAVALLI COUNTY COURTHOUSE BOX 5014
HAMILTON MT 59840
Telephone (406) 363-1900
Fax (406) 363-4478

DEBBIE HARMON
Clerk

JUDITH A. VOIGT
Chief Deputy

GRACE KNOWLES
Deputy

MARY SAWYER
Deputy

MAUREEN WOFFORD
Deputy

JUDY ROUSE
Deputy

TODAY'S DATE: January 6, 1995

TO FAX NO. 444-3274

ATTENTION: Ed Grady
State Capitol
Helena MT 59624

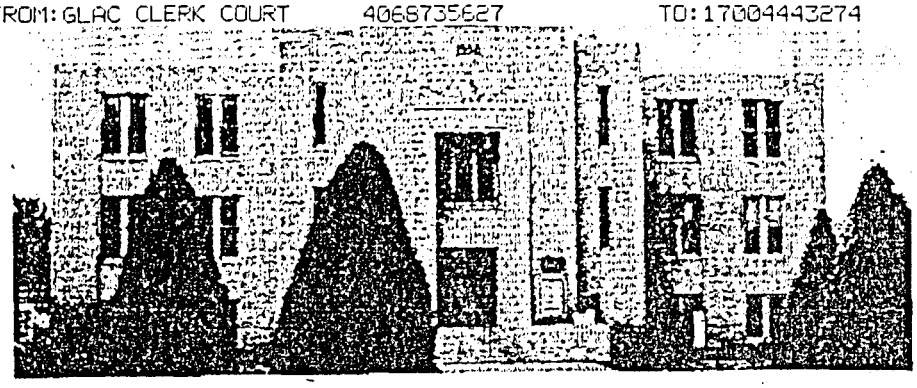
MESSAGE: RE: Automation Funding for District Courts

We urge you to support the funding for the District Court, as many counties, including Ravalli County, are unable to adequately supply the Court system with modern computer technology.

The Court Administrators office has worked diligently on our behalf to provide us with computers and software for the case management program. Ravalli County would still be in the dark ages if the Court Administrators office has not helped us out with computers. Please support the funding for the Automation.

Thank you for your consideration,

Debbie Harmon, Clerk of Court



GLACIER COUNTY

CUT BANK, MONTANA

MARY PHIPPEN
CLERK OF DISTRICT COURT
GLACIER COUNTY COURTHOUSE
512 EAST MAIN STREET
CUT BANK MT 59427
(406) 873-5063 Ext. 36

January 6, 1995

Representative Ed Grady
State Capitol
Helena MT 59624

Dear Representative Grady:

I am writing to express SUPPORT for continued funding for District Court Automation. In order to be assured of continued technical support, continued funding is a NECESSITY, especially for rural counties.

Your support of continued funding for District Court Automation is appreciated.

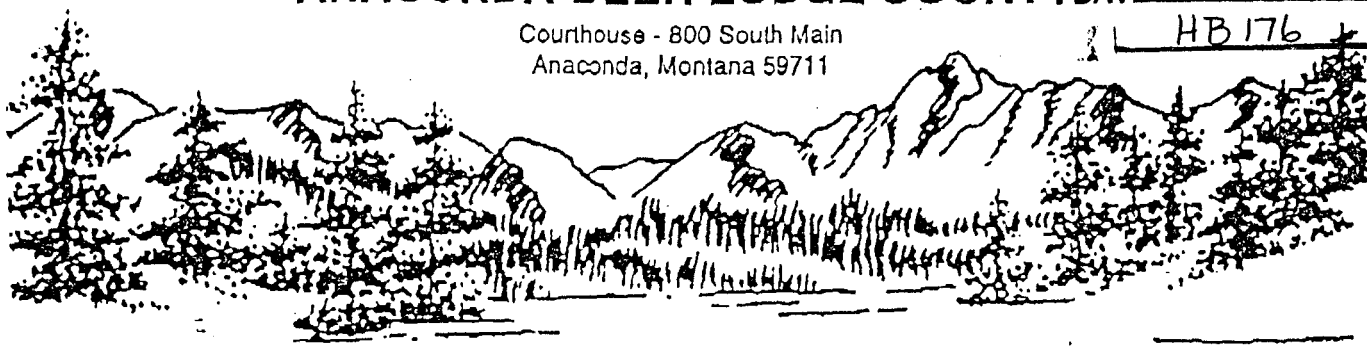
Very truly yours,

Mary Phippen
Clerk of District Court

EXHIBIT 4
DATE 1-24-95
HB 176

ANACONDA-DEER LODGE COUNTY

Courthouse - 800 South Main
Anaconda, Montana 59711



Clerk of District Court

Phone Number 563-8421

January 6, 1995

Representative Ed Grady
State Capital
Helena, MT 59620

Dear Representative Grady:

We, from the District Court Clerks Office in Anaconda-Deer Lodge County, support the Court Administrator's request for funding for automation. Our office is about to be included in the network and without this funding it will be a severe setback. The Clerk's of Court are on the brink of automation statewide and without this funding the efficiency of the court system will suffer greatly.

Sincerely,

Theresa Orrino

Theresa Orrino
Clerk of the Third Judicial District Court
Anaconda-Deer Lodge County

By: Susie McNeil
Susie McNeil
Deputy Clerk of District Court

EXHIBIT 5
DATE 1/24/95
HB 161

Amendments to House Bill No. 161
First Reading Copy

Requested by Rep. Kottel
For the Committee on the Judiciary

Prepared by John MacMaster
January 20, 1995

1. Title, line 6.
Following: "CONDUCT;"
Insert: "EXPANDING THE DEFINITION OF THE OFFENSE;"
Strike: "SECTION"
Insert: "SECTIONS 45-5-620 AND"

2. Page 1, line 10.
Following: line 9
Insert: "**Section 1.** Section 45-5-620, MCA, is amended to read:
"45-5-620. Definitions. As used in 45-5-625, the following definitions apply:
(1) "Sexual conduct" means actual or simulated:
(a) sexual intercourse, whether between persons of the same or opposite sex;
(b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
(c) bestiality;
(d) masturbation;
(e) sadomasochistic abuse;
(f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or
(g) defecation or urination for the purpose of the sexual stimulation of the viewer.
(2) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.
(3) "Visual medium" means:
(a) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
(b) any disc, diskette, or other physical media that allows an image to be displayed on a computer or video game screen and any image transmitted to a computer screen by telephone line, cable, satellite transmission, or other method.""

Renumber: subsequent section

3. Page 1, line 14.
Following: "simulated"
Insert: ", or for the purpose of talking about sexual conduct on the telephone with or to a person who pays for the conversation"

4. Page 1, line 18.
Following: "simulated,"
Insert: "or to talk about sexual conduct on the telephone with or to a person who pays for the conversation,"

EXHIBIT 6
DATE 1/24/95
HB 46

HB 46

- PROPOSED REVISIONS ARE NOT TOO HARSH. SENTENCING DETERMINES DEGREE OR SEVERITY OF CRIME OF ARSON.

  MCA 45-2-101 STATES FELONY IS OFFENSE IN WHICH SENTENCE IS DEATH OR IMPRISONMENT IN STATE PRISON FOR MORE THAN 1 YEAR. MISDEMEANOR IS IMPRISONMENT IN COUNTY JAIL FOR ANY TERM OR A FINE, OR BOTH, OR IMPRISONMENT IN STATE PRISON FOR LESS THAN 1 YEAR.

- PROPOSED LEGISLATION WOULD ADD GREATER FLEXIBILITY IN MAKING PUNISHMENT FIT CRIME.

  MCA 50-63-101 STATES ANY PERSON WHO MALICIOUSLY SETS ANY FIRE UPON LAND IN THIS STATE, WITH INTENT TO DESTROY PROPERTY NOT HIS OWN , SHALL BE GUILTY OF A FELONY.

  SHOULD A PERSON BE CHARGED UNDER THIS SECTION OF STATE LAW, HE COULD RECEIVE FELONY SENTENCE FOR SETTING GRASS FIRE, WITH NO CHANCE OF REDUCTION TO MISDEMEANOR.

- UNDER HB 46, PERSON COULD STILL BE CHARGED WITH CRIMINAL MISCHIEF, IF LEGAL SYSTEM DEEMED APPROPRIATE.

  EXPANDING ARSON STATUTE WOULD GIVE ADDED TOOL FOR WORKING WITH MORE SERIOUS ARSON OFFENSES AND HABITUAL ARSONISTS.

  REALITY DOCUMENTS MOST OFFENDERS OF THE LAW GET LESS OF A SENTENCE THAT THEY DESERVE, NOT MORE.

HB 46

- Arson statutes were revised in 1973.

- Before 1973, Montana arson statutes were patterned after Model Arson Law.

- Serious deficiencies in Model Arson Law - Ex: Burning of an occupied or unoccupied dwelling house resulted in 20 year sentence (first degree arson). Burning of buildings other than dwellings resulted in 10 year sentence (second degree arson).

  Therefore, burning an empty isolated dwelling could result in a 20 year sentence while burning a church with 500 people inside could result in a 10 year sentence.

- 1973 revisions of arson law corrected this situation. Rather than offenses being classified according to class of property destroyed, arson was classified according to criminality of offenders conduct.

- Revisions were needed; however, baby was thrown out with bath water. Now arsonist who burns unoccupied properties and does not endanger another person does not commit arson. He is a mischief maker.

- Because occupied structures were intended to be inclusive of human habitation, such items as house trailers and house boats would qualify as occupied structure but other vehicles would not.

- Livestock housing, for example, does not meet criteria of occupied structure. Consequently, arsonist could burn cattle barn, with 100 head of cattle inside, and he would be designated as "mischief maker", not arsonist.

- Above points taken from prepared notes written by Criminal law Study Commission in 1973.

- After 20 years, serious deficiencies have surfaced in current arson law which need to be corrected.

- MCA 53-1-104 states Department of Justice to be notified when arsonist is released from detainment.

- Under present law, only select portion of "actual" arsonists would qualify for notification status. Others would be "mischief makers", not requiring notification to Department of Justice.

EXHIBIT 6
DATE 1-24-95
HB 46

- MCA 46-18-261 states suppression and investigation expenses for fires caused by arson can be collected from persons convicted of arson.

- Under present law, only a select portion of "actual" arsonists would be required to reimburse law enforcement and firefighting agencies for arson fires.

- Arsonists must be tracked to ensure authorities will have history of their arson activities. Serial arsonists historically begin their arson careers by starting smaller fires and escalating to larger, life threatening fires. Cycle must be interrupted at earliest possible stage.

- Republicans made a get tough on crime promise in 1994 campaigning.

- Billings Fire Department statistics: 20% - 25% of fire calls are incendiary or suspicious. 1/3 of dollar loss is incendiary or suspicious.

- This legislation is about making people accountable for crime they committed. Crime of arson must be called arson. Child molester is identified for crime of molestation. Rapist is identified for crime of rape. When someone kills, he is identified according to type of killing he was responsible for.

- HB 46 is not redundant bill. It does not financially benefit arson investigation agencies in any way.

Appendix I

Model Arson Law

Courtesy of American Insurance Association

ARSON: FIRST DEGREE

Burning of dwellings. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable, or outhouse that is parcel thereof, or belongs to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson in the first degree, and upon conviction thereof be sentenced to the penitentiary for not less than two nor more than twenty years.

ARSON: SECOND DEGREE

Burning of buildings, etc., other than dwellings. Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or of another, not included or described in the preceding section, shall be guilty of arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

ARSON: THIRD DEGREE

Burning of other property. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any personal property of whatsoever class or character (the property being of the value of twenty-five dollars and the property of another person) shall be guilty of arson in the third degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than three years.

ARSON: FOURTH DEGREE

Attempt to burn buildings or property. (a) Any person who willfully and maliciously attempts to set fire to or attempts to burn or aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than two years or fined not to exceed one thousand dollars.

EXHIBIT 6
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HB 46

Definition of an attempt to burn. (b) The placing or distributing of any flammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purpose of this act constitute an attempt to burn such building or property.

Burning to defraud insurer. Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts to do so or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than five years.

OCCUPIED STRUCTURE/PREMISES

EXHIBIT 6
DATE 1-24-95
HB 46

Occupied Structure: This definition and the terms "premises" and "vehicle" provide a comprehensive treatment of such offenses against property as Criminal Trespass, Burglary, Criminal Mischief and Arson (MCA, 45-6-101 through 45-6-103 and 45-6-201 through 45-6-205). These offenses are graded according to the type of structure against which the crime was committed and whether the act created a potential danger to human life. Prior law on arson included an exhaustive listing of different types of structures to allow the offense to be graded. This definition replaces that catalog. The wording for this subsection comes from but is not identical to the Model Penal Code source. Included within the definition are such items as house trailers, house boats, etc., which are not ordinarily considered to be "structures". It is important to note that the structure need not be occupied to be the subject of arson or burglary--under this definition the building need only be suitable for human habitation.

Premises: This subsection and the companion terms of "occupied structure" (MCA, 45-2-101) and "vehicle" (MCA, 45-2-101) allow for a comprehensive treatment of such crimes against property as Criminal Trespass and Burglary (MCA, 45-6-201 through 45-6-205) and Criminal Mischief and Arson (MCA, 45-6-101 through 45-6-103). These offenses are graded according to the type of structure against which the crime was committed and whether there was a potential danger to human life. This definition of "premises" includes structures suitable for occupancy to allow prosecution for the lesser included offense of Criminal Trespass when an offender has committed the crime of burglary. While this definition is taken directly from the New York source, the drafters of the new code specifically avoided adopting the New York definitions of "building" and "real property" due to differences in the substantive provisions. Since these terms have not been defined, they take on their ordinary grammatical and legal meanings.

Montana Code Annotated, Aug. 1993

Subsection (1)(a) which proscribes actual harm to property of another, corresponds to traditional malicious mischief. "Property of another", MCA, 45-2-101, includes both real and personal property. The subsection is intentionally broad to eliminate the need for having a number of offenses which define more specific types of behavior such as the destruction of art, literature, crops, livestock, etc. This subsection would also include forms of arson which may not fit into the more exacting requirements of the arson statute which follow. For example, if a person intentionally sets fire to a shack, to livestock housing or to any other articles which do not meet the criteria of an "occupied structure" as required in the Arson statute, MCA, 45-6-103, he may be prosecuted under subsection (1)(a) of this statute.

Subsection (3) classifies Criminal Mischief as either a felony or misdemeanor depending upon the value of the injured property. [See "Pecuniary Loss v. Value" note below.] The

EXHIBIT 6
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This section, together with section 94-6-103 [now MCA, 45-6-102], Negligent Arson, is intended to completely replace the old Model Arson Law which classifies offenses in an illogical and arbitrary fashion. The burning of an empty isolated dwelling could result in a twenty (20) year sentence under R.C.M. 1947, section 94-502, while setting fire to a crowded church or theater or jail could yield only a maximum sentence of ten (10) years under R.C.M. 1947, section 94-503. Moreover, it makes little sense to treat the burning of miscellaneous personal property, whether out of malice or to defraud insurers a special category of crime apart from the risks associated from burning. To destroy a valuable painting or manuscript by burning it in a hearth or furnace cannot be distinguished criminologically from any other method of destruction.

Annotator's Note: This section on Arson is the highest offense in the hierarchy of crimes involving the destruction of property. Together with the section on Negligent Arson, this provision replaces the Model Arson Law which classified offenses according to the class of property destroyed rather than by the criminality of the offender's conduct. Under this section the prosecution must show: (1) that the offender knowingly or purposely started a fire or explosion (2) which either damaged an occupied structure or placed a person other than the actor in danger of being injured. Under the definition of occupied structure (MCA, 45-2-101), the property need not be inhabited; it need only be capable of habitation. Thus, the purposeful burning of any building in which a person conceivably could lodge would be sufficient for conviction. Since the definitions of knowingly and purposely (MCA, 45-2-101, 45-2-101) do not require initial knowledge of the final result, actual knowledge that the person injured was present in the building is not necessary. This section also covers burning of any occupied structure to defraud an insurer. Burning of an unoccupied structure with intent to defraud an insurer is punishable under MCA, 45-6-101, Criminal Mischief. Since the burning of the property must be without consent, it would be the burden of the defense to bring forth evidence raising an affirmative defense of authority to act. Together with the section on Causal Relationship Between Conduct and Result (MCA, 45-2-201), this section would be applicable to a person who purposely starts a fire on his own property in order to destroy the property of his neighbor. Attention

is directed to the other arson related offenses in this part of chapter 6 which may provide alternative or lesser included offenses for Arson.

Jury Instruction on Presumption of Accidental Fire

Montana Code Annotated, Aug. 1993

53-1-104. Release of arsonist -- notification of department of justice. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever the person is admitted or released by it:

(a) Montana state hospital;
(b) state prison;
(c) Mountain View school;
(d) Pine Hills school; or
(e) any county or city detention facility.

(2) The notification must disclose:
(a) the name of the person;
(b) where the person is or will be located; and
(c) the type of fire the person was involved in.

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Negligent arson, 45-6-102.
Arson, 45-6-103.

Montana Code Annotated, Aug. 1993

RELEASE OF ARSONISTS-PENALTY-DEFINITIONS

EXHIBIT 6
DATE 1-24-95
HB 46

46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

Montana Code Annotated, Aug. 1993

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

Montana Code Annotated, Aug. 1993

EXHIBIT 6
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HB 46

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

Montana Code Annotated, Aug. 1993

RECOVERY OF SUPPRESSION AND INVESTIGATION COSTS

EXHIBIT 6
DATE 1-24-95
HB 46

YELLOWSTONE COUNTY ATTORNEY
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

Dennis Paxinos
Deputy Yellowstone County Attorney

January 12, 1995

Representative Shiell Anderson
Montana State Capital Station
Helena, Montana 59620

VIA FAX 900-225-1600
FOLLOWED BY U.S. MAIL

Dear Representative Anderson:

It is my understanding that House Bill 46 introduced by Bruce Simon has been tabled. I would appreciate it if you would reconsider your vote to table and move it back out to the committee for discussion. This bill was drafted by Fire Department Officials in cooperation with this office to combat what we perceive to be huge loop holes within the criminal law statutes. As a prosecutor I can tell you it is damn difficult to get an arsonist labeled as such and prosecuted as such. Too often times we are limited to charging somebody with a burglary or a criminal mischief violation when what they really committed was arson. The arsonist is a criminal who all too frequently continues to escalate his destructiveness because of his ever increasing fascination with fire. As a prosecutor I would like to have the discretion to charge a person who burns cars in the courthouse parking lot as an arsonist not as a mischief maker! If convicted of arson, this defendant has to report to every community he goes to that he is an arsonist. Also because arson carries a 20 year term I can keep the convicted arsonist under a probationary sentence for a longer period of time then I can with the person charged with criminal mischief.

Please reconsider your vote tabling this matter and move to have this bill reheard. I would be happy to be present to give testimony from a prosecutor's point of view. Thank you for your time and consideration.

Very truly yours,

Dennis Paxinos
Yellowstone County Attorney

DP/hp

cc: Paul Gerber, City Fire Marshal
Representative Bruce Simon

CITY OF BILLINGS

BILLINGS FIRE DEPARTMENT
LORREN L. BALLARD
FIRE CHIEF

2305 8th Avenue North
Billings, Montana 59101
(406) 657-8423

January 12, 1995

Honorable Governor Racicot

Governor Racicot:

I have been involved in the rewriting of the current arson statute. This bill is currently House Bill 46, introduced by Representative Bruce Simon.

As you are aware arson is an extremely difficult crime to prove in a court of law. It is extremely important that those persons responsible for the burning of property be charged and tracked for this violent crime.

The main forces behind tabling this bill were Representative Shiell Anderson, Representative Brad Molnar and Representative Deb Kottel from the House Judiciary Committee.

It is my understanding after hearing your State of the State speech that you support the idea of getting tough on crime. I feel that this bill fits your agenda.

If there is anyway that you could or would look into reviving this bill I would appreciate the help.

Thank you,

Lonnie Larson
Deputy City Fire Marshal
406-657-8425

Paul Gerber
City Fire Marshal
406-657-8422

OFFICE OF THE GOVERNOR

STATE OF MONTANA

MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

EXHIBIT 6
DATE 1-24-95
HB 46

January 18, 1995

Lonnie Larson
Deputy City Fire Marshall
City of Billings
2305 8th Avenue North
Billings MT 59101

Dear Lonnie:

Thank you for your comments on House Bill 46. Your thoughts are important and will most certainly be kept in mind as we review that proposed legislation and discuss it with legislators.

I would also advise, in the event you have not already done so, to make contact with your local legislators and provide them with your insights concerning HB 46.

Thank you for your advice and counsel.

Sincerely,

Marc Racicot

MARC RACICOT
Governor

TELEPHONE: (406) 444-3111 FAX: (406) 444-5529

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-24-95

BILL NO. HB 179 SPONSOR(S) Rep. Feland

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Michael J Micy	Dept Corr & Human Serv.	X	
Thomas D Blez	Dept Corrections & Human Ser	X	
Chris Miller	Powell Co. Attorney MT County Atty Assn	X	
Joe Roberts	Mt City Atty's Assn	X	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-24-95

BILL NO HB 174 SPONSOR(S) Rep. Hagener

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
NANCY SWEENEY	Montana Association of Clerks of District Court	X	

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-24-95

BILL NO. HB 175 SPONSOR(S) Rep. Hagener

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
PATRICK CHENOVICK	MONTANA SUPREME COURT	✓	

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1.24.95

BILL NO. HB176 SPONSOR(S) Rep. Hagener

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
PATRICK CHENOVICK	MONTANA SUPREME COURT	✓	
Gary Spaeth	State Bar	X	
Lori Maloney	Clerk of Court	X	

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

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