MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on March 2, 1995, at 9:00 A.M.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing:	HB 158, HB 161, HB 250, SB 387
Executive Action:	HB 135, HB 83, HB 46, HB 69, HB 177, HB 179, HB 250, HB 161

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EXECUTIVE ACTION ON HB 135

Motion: **SENATOR MIKE HALLIGAN MOVED THAT HB 135 BE CONCURRED IN.**

Discussion: **SENATOR LARRY BAER** said he had a lot of problems with the bill, speaking mostly to government bureaucracy. He said they would not need two attorneys, a paralegal and a secretary. He maintained that they were not that complicated and

could not justify the expense and personnel. He could not support the bill. **CHAIRMAN BRUCE CRIPPEN** said he would be inclined to agree, but he had talked to the Attorney General who had assured him it would sunset, and that they would not use their own staff, but hire outside, professional lawyers. **SENATOR HALLIGAN** said that the two highest elected officials (the Governor and Attorney General) had promoted the bill and included the provision for an audit. It would have to pay for itself because of the sunset clause, which would eliminate the program if it is not a success. He said that the Budget and Finance Committee would have the final say in terms of staffing. **SENATOR HALLIGAN** stated that it was a program the state needed to look at to protect itself with respect to its taxes.

Vote: The **MOTION THAT HB 135 BE CONCURRED IN PASSED,** with 8 members voting aye and 3 members, **SENS. LINDA NELSON, SHARON ESTRADA AND BAER** voting no, on an oral vote.

EXECUTIVE ACTION ON HB 83

Motion/Vote: **SENATOR RIC HOLDEN MOVED TO TAKE HB 83 OFF THE TABLE.** The **MOTION CARRIED** on an oral vote.

Motion: **SENATOR HALLIGAN MOVED THAT HB 83 BE NOT CONCURRED IN.**

Discussion: **CHAIRMAN CRIPPEN** explained the amendments as contained in **(EXHIBIT 1).** He said the bill would come out as a Do Pass or a Do Not Pass on the floor, but he wanted to see some amendments included before it returned to the House. He thought there would be difficulty in distinguishing between a local Miss Kitty's bookstore and the bookstore at the mall. He thought the local dealer would be familiar with the books they carry because they would be fairly limited, but the larger store would not. **SENATOR HALLIGAN** said it was a good idea to fix the bill, but that it would be creating an equal protection problem if he was trying to differentiate between bookstore owners and big store chain like K-Mart, even though they weren't considered to be a bookstore.

Motion/Vote: **CHAIRMAN CRIPPEN MOVED TO ACCEPT THE FIRST TWO AMENDMENTS AS CONTAINED IN (EXHIBIT 1).**

Discussion: **Valencia Lane** further explained the amendment to **SENATOR HOLDEN** who requested clarification. **SENATOR STEVE DOHERTY** stated they would be granting bookstore owners a higher standard of actual knowledge. What about the convenience store owner that sells books, or videos? He understood the intent, but there seemed to be no distinction between owners selling the same materials. **SENATOR BAER** suggested, "store owner," or "purveyor" be inserted. **CHAIRMAN CRIPPEN** stated the problem for the record. He said that the committee members were concerned about consent and concerned about knowledge. He wanted to be clear that the

committee had no intention of putting those people (the store owners) in jeopardy. **SENATOR LORENTS GROSFIELD** said he looked at the language differently. He said if he were the owner of an adult bookstore, he would simply say he did not know what was in the books. The owner would be off the hook, and yet, he believed that was not their intention. **CHAIRMAN CRIPPEN** asked if he thought there should be a distinction between an adult bookstore and a general run-of-the-mill bookstore. **SENATOR GROSFIELD** said he definitely would.

Motion: **CHAIRMAN CRIPPEN WITHDREW HIS MOTION.**

Motion: **SENATOR HOLDEN MOVED A SUBSTITUTE MOTION THAT HB 83 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR ESTRADA** stated that the bill had come through the House already, and deserved the attention of the Committee of the Whole. **SENATOR BAER** said he would support the motion. He stated that a tremendous amount of work had gone into the bill. They tried very hard to comply with Constitutional muster, they complied with Miller vs. California, they had shown that it does not affect Playboy and other magazines that people would fear would be taken from the marketplace. They had shown every step of the way the true intent and function of the bill, he said. He supported the one amendment concerning education. **SENATOR SUE BARTLETT** said she could not get past the testimony concerning the "chilling effect" of the bill. She referred to a letter from a video store in Missoula, whose owners stated that videos had been returned. They were highly rated, R-rated movies, rated by national movie critics. Various people objected to them, and because the store owner did not want the hassle of potentially being charged under their ordinance, and having to appear in court as to whether or not the community standard in that community considered the videos to be obscene, he simply got rid of them. She said they would probably be acquitted, but it would take a lot of time and a lot of money and a lot of pressure on a small business to go through that process. She stated that they would owe those people, in addition to Internet users and libraries, artists and dramatists in the State of Montana, the opportunity not to be subjected to that kind of chilling effect. **SENATOR DOHERTY** said it was obvious that there had been careful drafting of the bill to fit in with the Miller vs. California decision. However, he said, there had not been a lot of careful drafting for this particular to fit in with the Montana Constitution. The Montana Constitution guaranteed greater degrees of individual liberty than are guaranteed specifically in the U.S. Constitution. Given those guarantees in the Montana Constitution, these cookie-cutter pieces of legislation which were supposedly adopted in 35 or 45 other states, run afoul of our standards, and of our Constitution, he said. He said the only way a person could tell if they had violated a criminal law was when the jury comes in. He thought it would be an overbroad and very general criminal statute. It is not good policy to write law when the decision is based on the jury verdict.

SENATOR HALLIGAN said he thought it was a good hearing, praising both sides of the argument. He said that the legislature had passed in 1989 the bottom of page 3, Subsection 5, that cities, towns and counties can adopt ordinances more strict than the State law. He voted for it, he said. He recognized that a statewide standard isn't something that was appropriate at the time. He said when they talked about the invasions of "big government," they had to make it mean something when they passed the law, whether it was passing morality, as in this case, or other things. He said they had already granted local control if that is what the communities wanted and they had also allowed for strong zoning laws for bookstores and adult stores. They had passed strong criminal laws dealing with sex offenders. He said he had young sons which he would have to inculcate or somehow develop their understanding of what is appropriate conduct. He said it was his responsibility and that of his wife, his family, his neighborhood and his community. He hoped the bill would stay with the 1989 law and the intention of local control. **SENATOR HALLIGAN** stated that the broader language with the "average person" applying contemporary standards would cause inconsistency in the application of this law and would have a chilling effect. He said he strongly agreed with local controls, but it was not appropriate with this forum. **SENATOR HOLDEN** stated that he comes from the largest senate district, covering five counties. He said no one talks about obscenity or abortion. He had never been asked about either in a candidate forum. But he said the people in his district knew what was right and what was wrong. It upset him that some people on the committee wanted to defend pornography and defend a person's right to take a picture of a lady chained up and call it justice. He said he would vote for the bill and the people in his district would not say a word. Local ordinances would not speak to those types of things, he said.

Vote: **REVERTING TO THE ORIGINAL MOTION BY SENATOR HALLIGAN THAT HB 83 BE NOT CONCURRED IN AS AMENDED, THE MOTION CARRIED** by roll call vote.

EXECUTIVE ACTION ON HB 46

Motion/Vote: **SENATOR DOHERTY MOVED THAT HB 46 BE CONCURRED IN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 69

Motion/Vote: **SENATOR NELSON MOVED THAT HB 69 BE CONCURRED IN.**

Discussion: **SENATOR HOLDEN** stated that he believed **SENATOR GAGE** would agree that this bill was superior to the one he carried. He thought they should concur on this bill.

SENATOR NELSON wanted some clarification on the bill since she was to carry it on the floor. She asked **Beth Baker of the**

Department of Justice about Page 12, Section 15, Line 24, talking about expenses incurred in obtaining ordinary and necessary services that the victim would have performed if not injured. She asked if they intended to paint the house or pour a new driveway, would those things be covered? **Beth Baker** stated that the language was taken from the Uniform Crime Victims' Act, and would cover such situations such as the ordinary work of, for an example, a housewife: cooking and housework. **The Senator** inquired further about Page 14, Line 5, which spoke to the restitution to a person designated by the victim. **Ms. Baker** read further, "if that person provided services as a result of the offense." So, for example, if the victim hired someone to come in to give assistance, the victim could designate the person providing assistance, rather than the offender, but the offender would pay for the help.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 177

Motion: **SENATOR AL BISHOP MOVED THAT HB 177 BE NOT CONCURRED IN.**

Discussion: **SENATOR BISHOP** explained his motion. This bill would not entail just the recorders, he said, but would entail an horrendous amount of time in those courts. They are processing 300,000 cases a year, of which 469 were appealed, he said, which would only be one-fifth of one percent. He feared an eventual upgrading, including lawyers and justices of the peace, necessitating a four-tiered court system. **SENATOR DOHERTY** said they should count all of the costs of a trial in justice court and all of the costs of public defenders and county attorneys' time, as well as police time and investigation, and then conclude that it should be a vote for the bill. There are some initial outlays of cost, he said, but justice does cost money. The points made by the practicing county attorneys was clear. It would allow people two chances to get off, to avoid their responsibility and in many cases may endanger the public safety. It would reduce the workload of the district courts significantly, lead to more professionalism in the justice courts, and reduce hidden costs. **SENATOR BARTLETT** said she signed on the bill and thought at the time it was a good idea. She had spoken to the City Attorney from Helena and discovered that initially the city judges weren't terribly concerned, but over time as potential costs to the lower courts became more apparent to them, their concern grew. This is a substantial change that may be the first step of something the proponents did not intend, she said. She said she would be more comfortable if the Commission on Courts of Limited Jurisdiction or the Judicial Unification of Finance Commission had really examined these kinds of changes and come forward with a proposal that was perhaps more comprehensive to phase in the changes. **SENATOR NELSON** stated

that Judge Harkin talked about the inefficiencies of doing these things by tape recorder. She related that she had participated in a SRS hearing in the session, and found it could be handled very well. She did not have a problem with it. **SENATOR GROSFIELD** said he would support the motion, mostly because he had been persuaded by the opponents of the bill that the changes were premature. The people who would have to implement the bill were the opponents, with the exception of the district judge. There were good points made about the inadequacy of the records that have been presented to them using this approach. He agreed with the direction, but it needs more thought. **CHAIRMAN CRIPPEN** said he would vote for the motion and oppose the bill. He said it was a good idea whose time is not yet come. He was concerned that the JP courts would not be the people's courts any longer. He said they certainly did not want to see the defendants getting two bites of the apple, but wanted to afford them one good bite. **SENATOR BISHOP** stated that he liked the idea of a people's court where they could go without an attorney, where people could represent themselves. Everything comes out in the JP court, he said. This law would only clog the court and demand more record-keeping. It would be expensive for our constituents, he said.

Vote: The **MOTION CARRIED** on an oral vote, with **SENATORS DOHERTY, HALLIGAN AND NELSON** voting no.

EXECUTIVE ACTION ON HB 179

Motion: **SENATOR BISHOP MOVED THAT HB 179 BE CONCURRED IN.**

Discussion: **SENATOR HALLIGAN** asked about a time frame in which the escapee has to indicate their objection and if it would be under the normal rule of civil procedures? **John Connor, Department of Justice,** said that was correct. The first motion the defendant would have to make is to the propriety of the venue of the action. So if they would have an objection to the venue of the action, it would be filed as the defendant's first motion in the prosecution. The state would have no interest in fighting the action, he said, it is only an attempt to save money. If the defendant and the county attorney should decide the proceedings should be in their county, he did not anticipate any problem. He explained that the House has amended in the provision, "or at the discretion of the county attorney," in the county where the offense occurred. He said if it's part of some other action, such as the person escaping and committing another crime, it would be less complicated to simply prosecute the offense in that county as part of the same action.

Vote: The **MOTION CARRIED** on an oral vote.

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HEARING ON HB 158

SENATOR SHARON ESTRADA ASSUMED THE CHAIR.

Opening Statement by Sponsor:

REPRESENTATIVE DAN FUCHS, House District 14, representing the N.E. corner of Billings, Shepherd and Broadview, sponsored HB 158. He was asked to present the bill on behalf of the Montana Contractors' Association. HB 158 is an act re-defining and clarifying the definition of a scaffold. Also, he said, the bill would allow for the use of comparative negligence in determining liability and provides an immediate effective date. The bill received some opposition from the AFL-CIO and The Trial Lawyers Association in the House hearing, but since that time he worked with **REPRESENTATIVE RYAN** on behalf of the AFL-CIO and labor. They had consequently added an amendment, which was Subsection 2, Section 1.

Proponents' Testimony:

Ron McCullough, Executive Vice President, Sletten Construction Company, Great Falls, said he was fully in support of HB 158. The other commercial contractors they compete with were also in favor of the bill, he said. Even if he were a single-person small contractor, he would also support the legislation. The bill is an effort to make work under the scaffolding act more reasonable. Other states with a similar act have either repealed it completely or found it has lost useful effects. Currently there are more pressing issues as relating to OSHA and MSHA. Scaffolding at one time was one of the most unsafe construction practices, but in today's work, emphasis and time put on scaffolding and erection and maintenance is of utmost importance to all trades working on scaffolding. The restrictions from OSHA and from private owners put on contractors to maintain safe scaffolding are well-stated and respected. No one wants to see injury on projects, he stated, and great improvements have been made in the area.

Helen Christensen appeared to represent the Montana State AFL-CIO and Don Judge, the Executive Secretary, who was unable to attend. She submitted and read from written testimony. **(EXHIBIT 2)**

Jacqueline Lenmark, representing the American Insurance Associates (AIA), supported the passage HB 158. They also supported the amendments from the **AFL-CIO.** She told the committee that the AIA is strongly in support of safety as an important component in keeping down risk and losses in any situation where they would provide insurance. The Montana Scaffolding Act has been historically one of the most restrictive in the nation. There were few instances in the code where strict liability was imposed on any party who may be liable without applying the principles of comparative negligence. What that meant in terms of insurance, she said, was that the insurance

would cost more, and would be less available. They supported the adoption of comparative negligence principles into the law. It was a fairness issue and will also have the effect of making insurance more affordable and available to general contractors, who now are having difficulty in obtaining insurance needed. She had one small amendment to propose, she said. **(EXHIBIT 3)** She said the bill as it came from the House specified Section 27-1-702. The organization thought the bill would be better drafted and more susceptible to fair interpretation if it included the entire part 7 of Title 27, Chapter 1.

Joe Hansen, representing Edsall Construction as President, told the committee of an incident. They had an incident of a sub-sub-contractor operating a man-lift. The operator moved the lift in an upright position when it was fully extended, dropped one wheel into a drain and came tumbling off the lift, causing severe injuries. This is not a safe practice, he said. Because of the Montana Scaffolding Act, their company faces the entire cost of that incident, whereas if they had comparative negligence, perhaps their costs would not have been so extreme. He supported HB 158.

Lorrin Darby, Cogswell Agency, Great Falls, whose company insures and bonds a number of Montana contractors doing business in the state, encouraged passage of HB 158. They have had a number of cases where the contractors were unable to show, because of the existing law, any negligence on the part of the injured party, even if they were 100 per cent negligent. In the 1920's when the bill was enacted, scaffolding was constructed on-site with wood and planks and there were unsafe conditions and practices. The law was extremely needed. However, with modern scaffolding and equipment, and with the enactment of all the present safety culture from OSHA, the General Contractors' own safety committees, and the owners' requirement of safety engineers on jobs, scaffolding is not unsafe as it was in early days. He said that they had seen a drastic reduction in the availability of the insurance companies that are willing to insure general contractors especially if they sub-contract a large portion of their jobs. There is little or no insurance premium on the sub-contractor work for the general contractor and yet the insurance company on the general liability faces a chance of a large lawsuit settlement. They had a number of the cases, and it has come to the place where the insurance companies don't even offer defense, they just settle, because of the interpretation of the law. He urged passage of the bill.

Mark Agather, President, Glacier Insurance, said he was a native Montanan and had been in the insurance business for 23 years, 18 of which he worked for Glacier Insurance in Kalispell. He submitted and read from written testimony. **(EXHIBIT 4)**

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, supported the legislation for all

the reasons they had just heard. He urged a Do Pass recommendation.

Ron Ashabraner, represented State Farm Insurance Companies. He said that State Farm Insurance was the largest property and casualty carrier for homeowners in the State of Montana. He said the scaffolding act also applies to homeowners. He had numerous cases in which private homeowners were impacted by the scaffolding act as it so exists, that they had either no control over or no negligence whatsoever. Therefore, he urged the passage of HB 158.

Carl Schweitzer represented the Montana Contractors' Association, said his organization fully supported the bill and the amendment from the **AFL-CIO** offered, as well as the one offered by **Ms. Lenmark of the AIA.** Montana had copied the original scaffolding act after an Illinois act in the early 1900's, he said. Illinois legislature recently repealed their entire scaffolding act because of the same problems with comparative negligence vs. total negligence. He urged support.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, read from written testimony. **(EXHIBIT 5)**

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked the sponsor if he was in agreement with the proposed amendments. **REPRESENTATIVE FUCHS** said he would defer to **Carl Schweitzer** who had seen them and supported them. **SENATOR HALLIGAN** asked about the ladder amendment from the **AFL-CIO. Mr. Schweitzer** said that when a ladder is an integral part of the scaffolding, it should be included as part of the scaffolding act. They agreed to the amendment, he said. When asked about the Workers' Compensation aspect by **SENATOR HALLIGAN, Mr. Schweitzer** stated they were not talking about Workers' Comp., but rather third-party lawsuits where the injured person may be covered by Workers' Comp., but they can come back and sue the general contractor. This is where comparative negligence cannot be brought back into the lawsuit, he said, even if the injured party did not fulfill safety requirements and were given a safe working arena. **SENATOR DOHERTY** asked if it would be a strict comparative negligence. If the contractor was over 50 per cent negligent, would the injured worker be able to obtain full legal redress? **Jacqueline Lenmark** answered no. The regular principals would be applied to the scaffolding act action as in any other lawsuit. She said the contractor would be liable and once damages were determined, they would be reduced proportionately in accordance with each parties' portion of negligence. **SENATOR HOLDEN** asked **Ms. Lenmark** about her amendment. **Ms. Lenmark** said that 27-1-702 is a specific section that sets out the general principal of comparative negligence. There were other sections that amplified how that concept should be applied in any given

lawsuit. The purpose of the amendment was to make it clear that the entire part applies and not just the one section that identifies comparative negligence. **SENATOR HOLDEN** asked the sponsor if he was in agreement with the amendment and the answer was yes. **SENATOR HALLIGAN** said the definition in existing law is very specific as it appears to the construction industry. The new definition, "an elevated platform," would apply to any elevated platform and not just the industry. He wondered why they were changing the expanding breadth of the definition. **Ms. Lenmark** replied that the liability issue is what they were trying to address. The purpose of the bill is to confine it to the construction situations and not auto repair or some other areas. She thought the problem would be addressed in taking the liability section along with the scaffolding language. She wanted to take a second look at **Mr. Hills's** amendments.

Closing by Sponsor:

REPRESENTATIVE FUCHS said he had complete confidence in the committee in adopting the amendments. He asked for a Be Concurred In recommendation to HB 158.

HEARING ON HB 250

Opening Statement by Sponsor:

REPRESENTATIVE LINDA McCULLOCH, House District 70, Western Missoula County, presented HB 250. HB 250 addresses the problem of overcrowded jail cells, she said. In current law, if a person commits a misdemeanor under Chapter 61, such as following too closely, failing to stop at a stop sign or a muffler violation, and then fails to pay the fine, the person can be then be imprisoned for each violation. In the event that the person cannot pay the fine imposed, if this bill is passed, the court may sentence the offender to two alternatives other than imprisonment in the county jail. The first alternative is community service. The second alternative provides for the garnishment and attachments of property. If the community service is inappropriate and if property is not found in an amount necessary to satisfy the unpaid portion of the fine, then the court still have the option of imprisonment in the county jail. The new law would apply only to two chapters of the law, both contained in Title 61, Chapter 8, entitled, "Traffic Regulations," and in Chapter 9, entitled, "Vehicle Equipment." This bill would not apply to any provisions in those chapters which carry with them their own penalties, such as driving under the influence of drugs or alcohol, or reckless driving. It would not change the penalties for those offenses. There is no fiscal impact on either state or local government expenditures, although there may be some reduction in the cost incurred from incarceration in county jails due to a reduced number of imprisonments.

Proponents' Testimony:

Kathy McGowan, appeared on behalf of the Montana Sheriffs and Peace Officers Association. She read from and presented written testimony. **(EXHIBIT 6)**

Michael O'Hara, Jail Administrator, Missoula County, appeared to support HB 250. As many people know, he said, the State Prison has closed its doors and they were being told to hold state inmates in local jails. Three weeks ago, their jail was so overcrowded that they refused or released 12 offenders from the jail, including DUI's, domestic abuse cases, and misdemeanor theft offenders. This cannot be tolerated, he said. The day before, they had four absconders from Utah, juveniles, brought in by the city police. They could not hold them and had to get a district court to order them to Kalispell, then drive 150 miles and pay the $110 per day charge for each juvenile. He said they had between 90 and 100 persons on their waiting list, on a reservation system. Even if they had the room, he questioned why they should put those type of offenders in jails? Doing so would put the county at risk. A minor offender might be assaulted while in custody by the 2/3 population that is considered to be violent or felony offenders. On behalf of the **State Sheriffs** and the State of Montana, he asked for a favorable recommendation.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

REPRESENTATIVE McCULLOCH closed on HB 158. There are three reasons to vote for the bill, she said. 1) It gives courts other sentencing options. 2) It assists jail administrators in reserving space for more serious misdemeanor and felony cases. 3) Incarceration costs money. This bill makes better use of the taxpayers' dollars. She urged a Be Concurred In recommendation. She asked **SENATOR HALLIGAN** to carry the bill.

HEARING ON HB 161

Opening Statement by Sponsor:

REPRESENTATIVE AUBYN CURTISS, House District 81, Fortine, opened HB 161. She stated that the U.S. Supreme Court had called child pornography a serious national problem. After consideration of one related case, it concluded, "if the sexual abuse of children and pornography is to be curtailed, the production and distribution network must be eliminated. This short bill is a

straightforward effort to strengthen the sexual abuse of abuse statute found in 45-5-625. The most significant change is found on Page 2, Line 30 and Page 3, Line 1, which by increasing the penalty, changes the offense from a misdemeanor to a felony. Because of testimony offered in the House, provisions were amended into the bill to include use of electronic media which addressed the increasing use of network methods of spreading pornographic matter from terminal to terminal. That truly makes it a better bill and she urged concurrence.

Proponents' Testimony:

Dallas D. Erickson, representing The Montana Citizens for Decency Through Law, said his organization was a non-profit, Montana corporation, funded by Montanans. He presented and read from written testimony. **(EXHIBIT 7)**

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Arlette Randash, represented Eagle Forum in support of HB 161. She read from written testimony. **(EXHIBIT 8)**

Mary Alice Cook, representing the Advocates for Montana's Children, offered strong support for HB 161.

John Connor, appeared on behalf of the Montana County Attorneys Association in support of House Bill 161. The bill was not a part of the County Attorney's legislative agenda brought before the legislature this session, he said, but they were asked to support it. While they usually take no position on laws that increase or decrease penalties because they regard that as legislative policy, they do support laws that are designed for the protection of children. He said children were so easily victimized and so incapable of protecting themselves. Crimes against children are committed in secret and children are often threatened with retaliation beyond the scope of the crime committed against them. He said he was trained to recognize these types of crimes in a 20-year career. He had learned that people who commit these crimes cannot be cured; they can only be contained. He also learned that people who commit crimes against children frequently possess child pornography materials. He said they were encouraged to seek search warrants to look for that material so they could demonstrate a pattern of behavior that was consistent with the kind of crime committed. There is no Constitutional protection for the possession of this kind of material and although it cannot be sent through the mails, there is a thriving underground cottage industry where this kind of material is concerned. Increased penalties like this are worthwhile for the purpose of trying to monitor the behavior of these offenders, so if they are not incarcerated, at least they are on some sort of probationary sentence where the probation officer can monitor the behavior. The House amendment is also a good idea, he said.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, the state's largest family advocacy organization, supported HB 161. She read from written testimony. **(EXHIBIT 9)**

David Hemion, representing the Montana Association of Churches, said that his prayer for the committee is that they do not become desensitized. He was sympathetic that the panel heard day in and day out all the criminal activity occurring in our homes and communities. He said Christian values call to protecting our children. The other side of Christian values call for compassion, he said. When they look at budgets in the next weeks, he asked them to look long and hard at what could be done with sex offenders to prevent further abuse of children through treatment. Especially sex offenders who are children themselves, he said.

Sharon Hoff, representing the Montana Catholic Conference and acting as liaison for Montana's two Roman Catholic Bishops, supported HB 161. There is nothing more heinous than child abuse, she said. To exploit and abuse those who are the most trusting is unconscionable. She agreed with the expanded definition and the inclusion of the electronic media. She urged stronger penalties for child sex abusers.

Bob Torres, appeared on behalf of the Montana Chapter of the National Association of Social Workers. He asked to echo the comments of the proponents. In terms of treatment of persons who are alleged sex offenders, it is very important to have a sufficient hammer in order to keep them involved in the process of treatment so that their alternatives are limited.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked **John Connor** if he had looked at other states and made sure they covered the imagery and the computer and the phone transmissions, etc. **Mr. Connor** said he had not looked at it for a couple of years. Some states made it a crime to possess pictures of children at 14 years of age, others at 16. He could not answer as to the technicalities of the computers. **SENATOR HOLDEN** asked **Ms. Randash** about her comment that, "children were damaged during the making of child porn." **Ms. Randash** said they were damaged psychologically, emotionally, spiritually and physically, many times causing problems all throughout life. **SENATOR DOHERTY** asked **John Connor** for an estimate of how many cases in Montana there have been in the last couple of years. He stated that by making the penalty a felony rather than a misdemeanor, it would send more people to prison. He asked how many additional convictions he expected. **Mr. Connor** said it would be a shot in the dark if he guessed. The fiscal note indicated that the Department of Corrections projected

minimal impact. The problem is they were basing their figures on the old law. He said the bill had value beyond that because of deterrents.

Closing by Sponsor:

REPRESENTATIVE CURTISS said she had served on a Task Force on Child Pornography headed in Kalispell. The acts committed on children are unspeakable, she said. The amendments relative to the electronic media were put on by **REPRESENTATIVE KOTTEL** in committee and she concurred with those. She stated that effecting the changes and increasing the penalty should give law enforcement officials an incentive to accelerate their efforts to prosecute these cases. Only by providing strong deterrents are we going to discourage those corrupt persons in our society who have no qualms about preying on the innocent to line their own pockets. She urged favorable consideration and concurrence.

HEARING ON SB 387

Opening Statement by Sponsor:

SENATOR TOM BECK, Senate District 28, Deer Lodge, sponsored SB 387. He stated he was trying to accomplish three things with this bill that he had presented before: 1) The bill would rectify the late claims process that had gotten out of sync. In 1983 Montana started to re-adjudicate the waters to protect the water holders in Montana, but when some were not in the process on a certain date, they were thrown out as adjudicated water rights. It was his desire to let some of those claims back in the adjudication process. It was not his intent to interfere with any compacts or with the McCarren decision, but to try to get waters already adjudicated in the court system back in the process. 2) The second part would address litigation currently going on with water rights claims. One farmer in his area had spent up to $60,000 protecting the rights he had adjudicated from other people trying to claim those rights. The sponsor said he was trying to expedite that process. Why not put the already adjudicated water rights into the temporary, preliminary decree, or those that had already gone through the courts? 3) The final part would form a committee to work in conjunction with the water courts to see if there were things they could do to expedite the adjudication process. They had been working on this for 15 years already, and projections were for 20-25 more years to complete it.

Proponents' Testimony:

Janice Rehberg, attorney, partner of Crowley, Haughey, Hanson, Toole and Dietrich, spoke on her own behalf and also represented Teigen Land and Livestock. She told the committee she had been involved in an issue with this bill for the past five years. She worked on two issues: 1) the late claims aspects, and 2) the advisory committee. She stated that she had attempted to develop

a proposal that would be legally sound, equitable, efficient, cost effective and would provide some finality to the on-going debate as to what should be done with late claims. If not addressed, she feared it would continue to haunt the legislature for years to come. She acknowledged the complexity of the issue, noting the interests, concerns and legal issues, leading her to believe it was an issue to be decided by the court, the arbiter of justice. The issues would require a particularized inquiry in to the facts and circumstances of the case, she said. She encouraged the formation of an advisory committee to speed up the process and to provide justice at a reasonable cost.

Patty Walker, Glen, represented herself. She read from written testimony. **(EXHIBIT 10)**

Cliff Cox, rancher from Broadwater County, represented himself. He stated that he was a late claimant and also a timely claimant. He supported HB 387, but had concerns he wanted the committee to address. He was concerned that the timeliness and interpretation of the adjudication process is maintained after the passage of the bill, meaning that he wanted to ensure that the passage was not challenged by the federal government. The advisory committee should remain on an advisory capacity, he stated. **Mr. Cox** said he was also sensitive to the concerns of the timely filing complainants be protected, but felt that the issue of continuous use of late claims must be addressed. He offered assistance to the committee.

Holly Franz, representing the Montana Power Company, testified concerning Sections 5 and 6 of the bill. Section 5 creates an advisory committee for the water court. Attorneys had discussed this in the past with Judge Loble and he had been generally supportive of the idea. This would be a good way to address the concerns of the water courts to identify improvements that could be made. She addressed the issues contained in Section 6, Page 7, Section, 7, Line 15. In non-legislative times, **Ms. Franz represents the firm of Gough, Shannahan, Johnson and Waterman** and she said she represented a number of water claimants, including irrigators and other water users. Very often issues arise concerning decreed water rights. She stated she was currently working on an adjudication in the Sun River country where a decree had been in place since 1906, but concerns had been raised in the adjudication that the language as written would be harmful. The old decrees are not particularly detailed about the acreage actually irrigated at the time of the decree. Consequently, there were a number of claims being objected to because of claims that the acreage has been expanded significantly since the decree. Another issue that commonly arises with a decreed water right is that of abandonment. They may have been irrigating in 1906, but stopped in 1920, she said. She submitted an amendment **(EXHIBIT 11)** which would keep in the language of Section 7, which is a codification of the legal doctrine of *res judicata*, but makes it clear that the court can consider the issues that have arisen after entry of the previous

decree, such as abandonment or expansion of acres or the failure to use due diligence in putting irrigated acres to use. With the amendment, she would support the section, she stated.

John Bloomquist, representing the Montana Stockgrowers Association, is a water attorney from Dillon. He stated that they also have offices in Helena, and participate in the water adjudication process. The Association supports the adjudication process and the need to quantify and establish the parameters and elements of existing water rights in Montana. He spoke of Sections 5-7. In terms of late claims, he said his organization had people on both sides of the fence. If there was a way to expand forfeiture remission in a manner which does not compromise the integrity of the adjudication process, that would be the challenge of the committee, he said. They believe a review of the water court rules as well as the DNRC verification and examination rules could be beneficial in streamlining the process and expediting the adjudication of the existing water rights. He suggested the possible amendment of requiring a district judge be added to the advisory council to serve as a water division judge. He concurred in **Ms. Franz'** amendment regarding the enlargement and abandonment issues. On Page 7, Line 15, he suggested the word, "shall," be changed to, "may", to allow the court discretion in addressing a petition for dismissal of the objection. Section 7 regarding the allowance of appeals of legal issues they thought was a good idea. He said it was an extended codification of Rule 54 certification, making clear on some of the legal issues of interlocutory decrees that the availability of the Supreme Court is there. He said it was important to note that temporary preliminary decrees, while interlocutory in nature, (after objections have resolved) will be enforceable.

Larry Brown, represented the Agricultural Preservation Association. He wished to echo the comments by **Mr. Bloomquist** and **Ms. Franz** regarding Line 15, Section 7. His organization felt they would be better served to replace, "shall," with "may," to give the participants a better opportunity to deal with that issue. A water right is an asset of private property, he said, and they believed it deserved the due process as could be seen in the courts.

Opponents' Testimony:

Mark Simonich, Director, Department of Natural Resources and Conservation, spoke on behalf of the Department and the Administration, in opposition to SB 387. He read from written testimony. **(EXHIBIT 12)**

Harley Harris, Assistant Attorney General, State of Montana, representing Joe Mazurek, stated that the **Attorney General** concurred in the testimony presented by **Mr. Simonich on behalf of the Administration.** Their office had participated fully in now a two-year debate and discussion of the varying legal and policy issues presented by the late claim situation. They concurred in

the conclusion reached by the Administration that it probably is now time to put this issue to rest and move on to the adjudicating Montana's water rights. The specific interest in the Attorney General's office is to preserve and protect the integrity of the adjudication process, he said, along with challenges from the federal government.

{Tape: 2; Side: B; Approx. Counter: 00}

Chris Tweeten, appeared in his capacity as Chairman of the Reserve Water Rights Compact Commission. He stated their concerns as a commission that SB 387 has introduced, specifically with the impacts on their ability to negotiate water right compacts with the federal government. He asked the committee to recall their compact dealing with the water rights of the National Park Service at Bighorn Canyon and Little Bighorn Battlefield. It stated that the commission exists for the purpose of negotiating settlements of federal reserve water rights claims in Montana. He said they had reached compacts with the Fort Peck Tribes and the Northern Cheyenne Tribes and the two compacts settling the rights of the National Park Service for the five parks in Montana. They were currently in negotiation with a number of other Indian tribal governments with respect to tribal claims and dealing with a number of other federal agencies, he said. He explained the negotiation process and what their objectives were as a commission of that process. Their primary objective is the protection of existing Montana water rights. In many cases they were junior to federal reserve water rights of the Indian tribes and federal agencies and they therefore have the responsibility to attempt to negotiate by which they will subordinate their earlier water rights to existing rights that may have had later priority dates. They had found that the federal government and the Indian tribes were extremely reluctant to negotiate open-ended subordination agreements. They wanted to know the amount of waters they are being asked to subordinate. In adding a late claims process, as SB 287 provides, it would prevent the tribes and federal agencies from having an understanding of the magnitude of the rights to which they address. SB 310 had been addressed previously in the committee some years ago, he said, and amendments had been added making clear that a late claimant would not have standing to object to a water rights compact dated prior to the effective date of SB 310. In addition, it subordinated any late claims to water rights settled by negotiated compact or by adjudication which involved the federal water right. It provided the assurance they needed to give their negotiating partners. SB 387 as drafted strips that protection that was granted in SB 310. It does that by repealing the language that subordinates late claims to negotiated federal reserve water rights. He proposed amendments to SB 387 in the event that the late claims remission proceeds through the legislative process and becomes law. He said the amendments would assure that the passage of the bill does not impair the recently-negotiated compact with the National Park Service. Changing the rules after the signing of the compact

would impair the understanding of the federal government in respect to the compact and to future compacts. **(EXHIBIT 13)**

Questions From Committee Members and Responses:

SENATOR BAER questioned the sponsor about the $666,000 cost projected by the fiscal note, and if he would agree to a mitigating filing fee for the late claims to make up the additional cost. **Janice Rehberg** responded to the question, saying that two years ago a filing fee was imposed. In addition, there is a provision that allows the court to recoup those costs, and they can charge the late claimants for court time and cost. **SENATOR BAER** asked if it was discretionary or required the court to recoup its costs? **Ms. Rehberg** stated that there was a "shall" in the language, changed in this bill to, "may", giving the court more flexibility. **SENATOR GROSFIELD** asked **Ms. Rehberg** if she would respond to the amendments by the Water Compact Commission and the chilling effect of their ability to deal with the subordination issue in the future. She stated that none of the adjudication was complete in those basins, so they are going on a guess as they proceed, both as to timely and late claims. The timely claims are not known at the time, as well as late claims, she stated, so uncertainty would be involved whether or not this bill was presented. Her understanding of the Cheyenne agreement was that the estimates were made, but they were just assumptions. The number of claims they were looking at was such a small amount that it seemed hard to believe it would put a chilling effect on negotiations. There was a much larger gap in knowledge when it comes to claims filed on time, she averred. She had philosophical problems with the amendments because the compacts were negotiated prior to the time Montanans had a chance to explore and examine and adjudicate their rights. She also expressed concern with the philosophy of protecting Montanan's water rights which was the objective of the adjudication. She thought there was room in the act to make adjustments. She thought it was overstated that there is nothing known about the volume of water with late claims. She maintained there was uncertainty anytime a contract was negotiated. She had no strong objections to the amendments, but said the timing of the compacts were a problem for both timely and late claimants. **SENATOR GROSFIELD** asked **Holly Franz** to explain "reasonable diligence", in her amendment. She said decrees had been issued on not so much on actual water use, but based on the intent of the appropriator. A person could intend to appropriate a full 160 acres, but at the time were only irrigating 60 acres. As long as "reasonable diligence" was used in going ahead with the appropriation, a person would get the benefit of the earlier priority date. Some of the decrees were used in filed notices of appropriations, she said, and some courts indicated they would allow irrigation but required reasonable diligence in developing it. As an example, a decree says 200 acres, yet it is very clear that only 50 acres were irrigated still 80 years later. **SENATOR GROSFIELD** asked what Montana Power's position would be in Sections 1-4. **Ms. Franz** replied that they would take no position. **SENATOR**

GROSFIELD questioned **John Bloomquist** about Sections 1-4. He asked if he attended water policy committee deliberations on this whole late claims study? **Mr. Bloomquist** said that he had attended most of the policy discussions and that they had remained neutral throughout. **SENATOR GROSFIELD** lamented the fact that most of the study commission members were gone, leaving **REPRESENTATIVE HARPER** and **SENATOR MESAROS.** His understanding of the study last session was that a comprehensive look at the issue had been taken and the committee had been unable to come up with any recommendations as to further remission without jeopardizing the adjudication process. **Mr. Bloomquist** said the synopsis was correct. The recommendation was that nothing more be done, and SB 310 was as far as they were comfortable in going. He said that this bill takes the equitable power approach of the courts and tried to utilize that in a manner to allow the claims to come in prior to a final decree. The only other parallel would be an on-going type of adjudication system such as used in Colorado. **SENATOR HALLIGAN** addressed **Director Simonich.** He asked how much money the water court costs on an annual basis now? **Mr. Simonich** said a guess would be about one million dollars over the course of the biennium. He said it was funded by RIT funds. **SENATOR HALLIGAN** said they had passed a repealer of the RIT funds out of the Senate, and asked if that money would not be available for the funding for the court. **Mr. Simonich** said SB 152 eliminates the RIT tax. The Constitution requires that the Resource Indemnity Trust remain inviolate at 100 million dollars. He said it is the interest income from the trust that has been used to fund various state agencies. The interest would continue to be available, he said. Over the past few years, diversions have been made before the money actually got into the trust, and that has funded agencies as well. **SENATOR HALLIGAN** suggested that if there was no funding for the court, the issue would go unresolved forever. **Mr. Simonich** said potentially it was possible, however, the legislature would have to look at each program funded by the RIT and establish priorities. **SENATOR HALLIGAN** questioned **Ms. Rehberg** about finding an end date to file the claims and the problem of funding. He asked if it was her intent to let water claims go on for 30 to 50 years of adjudication? **Ms. Rehberg** said they had tried to pattern the filing after the regular default provisions in both federal and state rules of procedure. Possibly it would leave an ability for people to come in to raise arguments, just as any defendant can do. The longer the time period, the less likely the court would find good cause or to find the criteria for rule 60-B, which is excusable neglect. If after people haven't filed claims in 50 years, she said, it would be hard to find excusable neglect. She said those claims should be heard on a case-by-case basis rather than decided by the legislature not even knowing what the situations were. On the funding issue, she stated that the $633,000 was based on a prediction that 32 per cent of the late claims would receive objections. She thought it should be closer to 50 per cent and the numbers cut in half for the actual cost. The court would be allowed to assess fees, so the legislature would not have to fund the courts, she said. **SENATOR CRIPPEN** asked if the assessments

by the water court were now equalling or exceeding the cost of the filings? **Ms. Rehberg** did not know if any assessments were being made at this time. There was a $150 fee put on late claims two years ago, she said, in addition to the $40 fee people paid when they filed and were not told their claims were late. Under the rules the Supreme Court adopted in 1987, they mandated that the DCRC accept all the claims and process them regardless of the filing date. Even under the Supreme Court rules, the claims have been processed and are within the system. **SENATOR CRIPPEN** suggested a Subcommittee. **Ms. Rehberg** said the issue would be better resolved in the legislature because the claimants would not be faced with a challenge of adjudication in federal court. **SENATOR DOHERTY** asked the proponents why the time extension would be a good idea if they were looking at finality. **Ms. Rehberg** said the reason is that many of the mistakes that are discovered after the filing of the temporary decree. If they would set the 1996 deadline, in ten years they would revisit the decision, she felt. It would let it run its course to get the mistakes taken care of. In trying to draft a legally sound program, she followed traditional court concepts and tried to: 1) avoid coming back in ten years, and 2) provide a system that meshes well with the judiciary and the concepts they are familiar with. **SENATOR DOHERTY** asked **Mr. Bloomquist** if the bill would meet with the Stockgrowers wishes, without, "tipping the boat over?" **Mr. Bloomquist** said, in his opinion as a water attorney, that the U.S. would be hard-pressed to challenge the sufficiency of the adjudication under this bill. **Mr. Tweeten** was asked the same question. He replied the Compact Commission had no particular view to that question. He offered a personal opinion as an attorney. He stated that nobody knows and nobody can know. There is no case law. They were dealing with a legal standard that derived from a footnote in the U.S. Supreme Court opinion handed down about 15 years ago. There has been no further litigation in respect to the meaning of the footnote. He said there was some risk of Montana's water rights to be adjudicated in two courts at the same time, including the federal courts, requiring the claimants to pay extremely high prices. **SENATOR NELSON** asked about the $150 filing fee that was above the $40. Was it something the legislature imposed or something the court imposed? **Ms. Rehberg** answered it was imposed by the legislature two years ago. In response to when it would be imposed, she said the procedure to collect them has been in limbo, and the why and the how is uncertain. **Mark Simonich** said the fee was for any new claims filed in the three-year window. The fee is collected by the Department when the claim is filed.

Closing by Sponsor:

SENATOR BECK said it was a controversial issue the last time they were here. He feels that the people whose water rights that were adjudicated and decreed in the courts already and that did not get their timely filing in, are now running water on their farms and using that water. But as soon as the preliminary temporary decree is implemented, they will lose that water right. That's

the people he was really worried about. He was not concerned about the people who filed on nebulous water rights, rather the ones that had their adjudicated rights in the process previous to this adjudication. It was a fairness issue. The longer it goes on, the more complicated it becomes. The fiscal note says it will extend for another year and one-quarter, the process of the water courts to put this into the system. There are things in the bill to shorten up the time frame. Maybe they would actually save money, he said, if the committee could come up with a way to expedite the process. He personally did not know how to straighten out the issue. He said portions of the law had neighbor fighting against neighbor. This is one system of state government that was not working all that well, he said.

CHAIRMAN CRIPPEN appointed a Subcommittee comprised of **SENATOR HOLDEN, CHAIR; SENATOR REINY JABS, SENATOR HALLIGAN AND SENATOR GROSFIELD.** He asked a recommendation back in no later than one week.

EXECUTIVE ACTION ON HB 250

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 250 BE CONCURRED IN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 161

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 161 BE CONCURRED IN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

ADJOURNMENT

Adjournment: **CHAIRMAN ESTRADA** adjourned the meeting at 11:49 a.m.

SHARON ESTRADA, Chairman

JUDY FELAND, Secretary

SE/jf

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 135 (third reading copy -- blue), respectfully report that HB 135 be concurred in.

Signed: Bruce J. Crippen

Senator Bruce Crippen, Chair

Amd. Coord.

Sec. of Senate

Senator Carrying Bill

491202SC.SRF

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 83 (third reading copy -- blue), respectfully report that HB 83 be amended as follows and as so amended be not concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 3.
Following: "political,"
Insert: "educational,"

-END-

Amd. Coord.
Sec. of Senate

Sen. Halligan
Senator Carrying Bill

491347SC.SRFf

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 46 (third reading copy -- blue), respectfully report that HB 46 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Doherty
Senator Carrying Bill

491208SC.SRF

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 69 (third reading copy -- blue), respectfully report that HB 69 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

491210SC.SRF

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 177 (third reading copy -- blue), respectfully report that HB 177 be not concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Bishop
Senator Carrying Bill

491213SC.SRF

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 179 (third reading copy -- blue), respectfully report that HB 179 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

_____
Senator Carrying Bill

491215SC.SRF

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 250 (third reading copy -- blue), ~~respectfully~~ report that HB 250 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

491213SC.SPV

SENATE STANDING COMMITTEE REPORT

March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 161 (third reading copy -- blue), respectfully report that HB 161 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Benedict
Senator Carrying Bill

491217SC.SPV

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-2-95 BILL NO. HB 83 NUMBER 1

MOTION:

Sen. Holden Moved HB 83 BE IN

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

SEN:1995
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MOTION FAILED

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-2-95 BILL NO. HB 83 NUMBER 2

MOTION: Sen. Halligan Moved HB 83 BNCIAA

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

SEN:1995
wp:rlclvote.man

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Motion Passed

BNCIAA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-2-95
BILL NO. HB 83

Amendments to House Bill No. 83
Third Reading Copy (blue)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
March 1, 1995

1. Page 2, line 23.
Following: "(A)"
Strike: ""KNOWLEDGE"
Insert: "(i) Except as provided in subsection (2)(a)(ii), "knowledge"

2. Page 2, line 26.
Following: line 25
Insert: "(ii) In the case of a bookstore owner, manager, or employee, knowledge of the character means with actual knowledge of the content or character of the material."

3. Page 2, line 26.
Following: "(B)"
Strike: ""Material"
Insert: "(i) Except as provided in subsection (2)(b)(ii), "material"

4. Page 2, line 28.
Following: line 27
Insert: "(ii) Material does not include an original painting or statue."

Montana State AFL-CIO

Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-2-95
BILL NO. HB158

TESTIMONY OF DON JUDGE, EXECUTIVE SECRETARY
MONTANA STATE AFL-CIO
ON HOUSE BILL 158
BEFORE THE SENATE JUDICIARY COMMITTEE,
Thursday, March 2, 1995

Mr. Chairman, members of the committee, my name is Don Judge representing the Montana State AFL-CIO in support of the bill as amended.

After the number of scaffolding accidents in the last few years in Montana, we who work in the building and construction trades had hoped to see a scaffolding bill in the 1995 Legislature. However, we had hoped it would be an improvement in the law focusing on higher safety standards, not a setback in the law making life harder for injured workers.

As originally written, we had opposed this bill because of the need to improve, not degrade, Montana's scaffold laws. However, amendments approved by the House have improved the bill to the point that we can support it.

We do have an additional, simple amendment to the bill that will solidify our support for it even more.

We believe the bill should be amended to make it clear that ladders or other equipment that are the exclusive access route to the scaffold should be considered a part of the scaffold under the law. Quite simply, if I climb over the edge of the basket on the man-lift to step over to the scaffold platform and then fall off, that should be considered a scaffold-related accident. Our intention here is to make this applicable ONLY when there is no other way to reach the work platform on the scaffold.

Mr. Chairman, members of the committee, with this amendment, and with those approved already by the House, we support House Bill 158 and urge the committee give it a "do pass" recommendation.

Thank you.

AMENDMENTS TO HB 158

PREPARED BY JACQUELINE LENMARK

FOR THE AMERICAN INSURANCE ASSOCIATION

1. Page 1, line 30
   Following: "APPLICATION OF"
   Strike: "27-1-702"
   Insert: "comparative negligence principles as provided in Title 27, Chapter 1, part 7"

Glacier
Insurance
& Financial Strategies

17 First Avenue East • Kalispell, Montana 59901 • 406 752-8693 • FAX 406 756-8897

TESTIMONY
SCAFFOLDING ACT HB 158

I am Mark A. Agather. I am the President of Glacier Insurance and a native Montanan. I have been in the insurance business for 23 years and have been with Glacier Insurance for 18 years.

At the present time, insurance nationwide and in the state of Montana is very competitive. There are many markets for the majority of the businesses in our state and the pricing is extremely competitive. However, there is one glaring exception to this statement and that is insurance in regards to the construction industry and specifically, for our general contractors in the state.

Here, the market is thin - there are very few companies willing to quote on general contractors and those that are quoting have expressed some reservations from time to time. The companies tell me of two major areas that they are concerned with, which lead to the reluctance to quote general contractors. The first reason is the Scaffolding Act and the second is the doctrine of safe work place.

The Scaffolding Act, as now written, holds general contractors to a strict liability for any accident involving an employee on a scaffold. This means that it's not a matter of who is at fault for the accident, the general contractor will pay regardless. Secondly, the definition of scaffold has been expanded in our state to include just about every type of climbing device, even ladders in some situations. Consequently, companies are faced with the possibility of large law suits and subsequent large judgements, making the pricing of their product extremely difficult.

Eventually, the insurance market place will tighten. There will be fewer companies quoting our businesses in the state and the pricing will be higher. Our general contractors will be perceived as marginal businesses by the insurance industry. They will be the first to suffer the consequences of a tighter market place. Availability will become increasingly more scarce.

Since the construction industry is vital to the economy of the state of Montana, I support the Scaffolding Act. It will bring us more in line with the rest of the country and will promote the availability of insurance for our general contractors.

Sincerely yours,

Mark A. Agather, CPCU
President
GLACIER INSURANCE, INC.

Montana Trial Lawyers Association

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

March 2, 1995

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

RE: HB 158

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to House Bill 158, revising state scaffolding laws. Even if HB 158 operates as its proponents apparently intend, it will raise workers compensation costs in Montana by increasing serious injuries and decreasing subrogation payments to workers-compensation insurers. MTLA believes, however, that HB 158 will not operate as its proponents intend.

Background. Montana's scaffolding laws, codified at Sec. 50-77-101 et seq., MCA, were first enacted before the advent of workers compensation in the state. The rationale behind those scaffolding laws remains as true today as then: working at great heights is extremely dangerous, and injuries caused by falls are extremely costly. Moreover, workers frequently exercise much less control over their own safety at great heights than their employers do. Consequently, as Gov. Racicot correctly emphasizes, preventing such workplace injuries in the first place makes enormous sense.

Negligence per se. Sec. 50-77-101, MCA, the Montana Scaffolding Act provision which would be amended by HB 158, does not create strict liability for injuries whenever a contractor, subcontractor, or "builder" violates the statute. A violation of Sec. 50-77-101, MCA, creates negligence per se, not strict liability. As the Montana Supreme Court expressly held in *Mydlarz v. Palmer/Duncan Construction Co.*, 682 P.2d 695, 703 (1984), "Liability does not become fixed upon the showing of a scaffolding-associated injury." A plaintiff must still demonstrate that the violation caused the injury. See also *Steiner v. Department of Highways*, 51 St.Rep. 1496 (1994).

Significantly, HB 158 itself still imposes a mandatory duty upon employers and thus

would not remove scaffolding-law violations from the application of negligence per se. Moreover, the statutory duty of a contractor, subcontractor, or "builder" to provide safe scaffolding also arises from other statutes which HB 158 ignores, such as Sec. 50-71-201, MCA.

Non-delegable duties. HB 158 does not alter Montana law making certain duties of contractors, subcontractors, and "builders" *non-delegable.* For instance, the non-delegable duty of a contractor or subcontractor to protect the safety of workers often arises from contract, i.e. between an owner and general contractor. HB 158 would not affect these duties.

More importantly, as the Montana Supreme Court recognized in *Stepanek v. Kober Construction*, 191 Mont. 430 (1981), the adoption in 1972 of Montana's new Constitution clearly prevented owners, general contractors, subcontractors, "builders" and the like from delegating a duty of safety to employees covered by workers compensation. Article II, Section 16 of the Montana Constitution protects an employee's "immediate employer" from civil liability if that employer provides workers compensation coverage. But that Constitutional provision also makes certain employment-related duties non-delegable since workers compensation is a no-fault system; since remote owners/general contractors/etc. could easily subvert the constitutional language if they could delegate their duties down the line to an "immediate employer"; and since "immediate employers" shielded from liability by workers compensation obviously have much less incentive to prevent the type of workplace injuries addressed by scaffolding laws. As the Montana Supreme Court declared in *Steiner* at page 1498:

> "Thus, the distinction discussed in *Stepanek* between third parties and employees of subcontractors no longer applies in Montana and employees of subcontractors may sue the general contractor for injuries received on the job if the general contractor has a nondelegable duty to the subcontractor's employees, notwithstanding the fact that the employee's exclusive remedies against the employer are covered under the Workers' Compensation Act. Because the duties imposed on MDOH by its contract with FHWA are nondelegable, *it cannot avoid liability by attempting to shift responsibility for those duties to someone else.* [cite omitted; emphasis added]

House Bill 158. Aside from the intentions of its proponents to import comparative negligence into Scaffolding Act cases, MTLA believes that House Bill 158 as amended contains numerous serious problems, including:

- **Section 1.** The only scrap of current Sec. 50-77-101, MCA, which would remain after passage of HB 158 would be the section number itself. Yet by amending this statute rather than repealing it, HB 158 would thus preserve *some* elements of the current Montana Scaffolding Act, i.e., previous legislative intentions and judicial precedents addressing circumstances beyond the scope of HB 158 (see comments re: Section 2(1) below).

- **The definition of "scaffold" and "scaffolding."** HB 158, for example, doesn't limit this definition to construction-related activities. Temporary shelving and car jacks fall within the definition. The specific exclusion for ladders indicates that, without such an exclusion, equipment similar to ladders should be included. And the exclusion for "other mobile construction equipment" is terribly broad--broad enough to include even mobile scaffolding, precisely the type of equipment which the statute presumably intends to addresss. (See accompanying newspaper photograph, page 4.)

- **Section 1, subsection (2).** By imposing a statutory duty of care on employees, this section conflicts with Montana's no-fault workers compensation scheme, at least regarding "immediate employers." Additionally, the phrase "safety practices commonly recognized in the construction industry as well as applicable state and federal occupational safety laws" would replace the current duty of a contractor, subcontractor or "builder" to exercise reasonable care in the matter of scaffolding with a statutory duty to follow an incredibly complicated array of safety practices detailed by such industry experts as the American National Standards Institute (ANSI), the National Safety Council (NSC), Underwriters Laboratories (UL), the American Society of Safety Engineers, the Institute for Product Safety, and even individual scaffolding manufacturers and OSHA.

- **Section 2, subsection (1).** By explicitly addressing the "liability of employer for negligence" and imposing liability for negligence upon contractors, subcontractors, and "builders" (who are often also employers), the bill modifies current workers' compensation law. By importing the phrase "except a fellow employee or immediate employer" from Article II, Section 16 of the Montana Constitution, the bill would strangely transform language applicable to employees into language applicable to contractors, subcontractors, and "builders" (who are often also employers). By restricting application of this subsection to "construction sites," the bill does not extend to non-construction sites where scaffolding injuries occur, i.e., in the course of painting, maintenance, etc. By restricting application of this subsection to contractors, subcontractors, and "builders," the bill does not extend to other entities such as property owners or manufacturers of scaffolding. And by restricting application of this subsection to "any person . . . who uses the scaffold," the bill abolishes protections in current law for such entities as innocent passersby.

If I can provide additional information or assistance, please allow me to do so. Thank you again for this opportunity to express MTLA's opposition to House Bill 158.

Respectfully,

Russell B. Hill, Executive Director

■ GLASS IN THE SKY

Gazette photo by James Woodcock

Joe Hansen, left, and Randy Frasca, both from Associated Glass, work replacing plastic panels with laminated glass in the sky bridge that connects Park One garage and the Herberger's parking garage downtown. The work should be completed next week.

EXHIBIT 6
DATE 3-2-95
BILL NO. HB 250

Testimony in Support of House Bill 250
Presented by Kathy McGowan
On Behalf of the Montana Sheriff's and Peace Officer's Association

I appear before you on behalf of the Montana Sheriff's and Peace Officer's Association to ask your support of House Bill 250.

House Bill 250 is one of three bills addressing the same basic problem facing todays jail administrators: too many customers and too little room at the inn. If these jail administrators were managing Holiday Inns, it would be a problem they would love to have. Unfortunately, they are running facilities that are funded by limited taxpayer dollars and they are faced with having to prioritize their customers.

House Bill 250 is one solution for jail administrators. Very simply, it gives judges an alternative to jail when a person is unable to pay a fine imposed under Title 61, Chapters 8 and 9. Those chapters are entitled, "Traffic Regulation" and "Vehicle Equipment."

The first alternative offered in House Bill 250 is community service. In performing community service, the person must be credited with an amount equal to the state minimum hourly wage.

If community service is inappropriate and if property is not found in an amount necessary to satisfy the unpaid portion of the fine, then the court may turn to imprisonment in the county jail.

I emphasize that these provisions apply only to violations committed under Chapters 8 and 9, and only to violations for which another penalty is not provided. I am attaching to my testimony a sheet which lists some examples of violations which would be covered under this bill and those that carry their own penalties.

Thank you in advance for your support for House Bill 250.

Offenses Qualifying -- HB 250

- Pedestrian Control Signals

- Following Too Closely
- Turning at Intersections
- Stop/Yield Sign Violations

- Obstruction to Driver's View
- Coasting
- Crossing firehose
- Riding on fenders/running boards
- Funeral procession violations
- Bicycle traffic violations
- General lighting requirements
- Slow moving provisions
- Muffler violations
- Mirror violations
- Brake maintenance

Offenses Not Qualifying -- HB 250

- Driving Under Influence/Alcohol or Drugs
- Reckless Driving
- Meeting/Passing School Bus
- Leaving Vehicles on Public Property
- Erection of unauthorized sign
- Injury to/removal of a sign
- Unauthorized drag racing
- Violation/fuel conservation speed limit
- Seatbelt violations
- Violation of towing requirements
- Violation of tire restrictions
- Violation headgear requirements/ motorcycles/ under 18

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3-2-95
HB 161

Montana Citizens for Decency through Law, Inc.

P.O. Box 4071 • Missoula, Montana 59806 • (406) 777-5862 • Fax: (406) 777-5025

March 2, 1995

Senate Judiciary Committee
Chairman Bruce Crippen
Members of the Committee
HB161 SEXUAL ABUSE OF CHILDREN

Increases Penalty For Possession of Child Porn from Misdemeanor to Felony

The *Final Report of the Attorney General's Commission on Pornography* recommended for state legislation (#44): **"State legislatures should amend laws, where necessary, to make the knowing possession of child pornography a felony."**

The report went on to say: "The United States Supreme Court has called child pornography "a serious national problem." In *New York v. Ferber*, the Court said that child pornography constitutes a permanent record of the children's participation in sexual activity, and the circulation of the pornography exacerbates the harm to children. If the sexual abuse of children in pornography is to be curtailed the production and distribution network must be eliminated."

There are several uses of child pornography identified in studies. Basically today it is pedophiles that use it and have it in their possession. They use it in the following ways:

1. For sexual arousal and gratification. Many use it in producing their own child pornography.

2. As a means of seducing child victims. Children have a built in resistance to sexual activity with an adult. They can many times be convinced by viewing other children having "fun" participating in the activity. Children are taught from an early age to respect and believe material contained in books and will thus carry those beliefs concerning child pornography. This lowers the inhibitions children have and entices him or her to engage in a desired activity. This also adds a certain amount of peer pressure as they see other children engaged in such activity.

3. It is used to illustrate **the activities** in which the pedophile wishes the child to engage, no matter how deviant. The pedophile asks the child to imitate the pictures.

4. Preserve the child's youth.

5. These depictions of a child may be used to blackmail the child. The pedophile uses the photos to scare the child and will often threaten to show the pictures to others if they do not cooperate.

6. Considered a valuable commodity among pedophile. They trade or sell them. The child is thus subjected to repeated victimization by countless numbers of pedophiles. Even though it may have begun as a home made item many times it is sold to commercial child pornography publication. It has a life of its own.

7. Profit.

"PRINT MEDIUM"

"Print medium" according to the ACLU could be construed to mean "written medium".

It is important to note that the state statute 45-5-625 already had "print medium" in it before this proposed change of penalty for possession. It is also in the Ohio law that was upheld by the U.S. Supreme Court.

While print medium is not defined the term "print" could refer to a computer print out or a print of a photo. It is true that only visual material can be charged under a child pornography law. The U.S. Supreme Court has made that clear in its decisions. (See the Final Report of the Attorney General's Commission on Pornography).

Any child pornography in a "written medium" would therefore not fall under a child pornography statute but would have to be judged under the *Miller* three prong test.

"DEVELOP"

Representative Cliff Trexler stated that he had a letter from a man who develops photo's requesting that the word "develops" be removed from Page 1 line 15. This man was concerned that the police may charge him with developing film that he didn't realize or know was child pornography.

There is the potential of abuse of this law as there is in any law. We do not have law enforcement officers, prosecutors or judges that would prosecute a person for developing a photo that they did not know was child pornography. If the child was old enough that it was not possible to determine age without further investigation then the developer didn't violate the law because they didn't "knowingly" develop the film.

If, however, the child was 8 years old then the developer would have no question and should report this to the officials. If he did not report it there certainly would be evidence that the person knowingly developed a photo of a child engaged in sexual conduct.

The real potential for abuse of this law comes from the side of the pornographer. If you remove the word "develop" from the law then a safe haven has been created for someone who assists in promoting child porn.

THE AMENDMENT

We support the amendment added by Representative Kottel concerning computers and video games.

HARM TO CHILDREN

"In hearings before both Houses of Congress in 1977, witnesses estimated that between, 300,000 and 600,00 children were involved in child pornography"

"Clinical studies of children suffering from traumatic sexualization are disturbing. Children experience somatic complaints and sleep disorders, withdraw from other children and adults, and act out what they have been exposed to. These findings are based on the results of convincing long - and short-term clinical studies".

"The first conclusion is painfully obvious: 'Children and adolescents who participate in the production of pornography experience adverse, enduring effects.' These effects include what is called 'traumatic sexualization', which is the result of a child's being coerced into viewing and participating in a broad range of sexual experiences. This experience can produce an obsession with, or aversion to, sexuality and intimacy. The behavioral manifestations in children who participate in pornography production include a range of pathological responses such as a preoccupation with sexual activity, sexual dysfunction, and phobic reactions to intimacy. These may last a lifetime. The vulnerability of children makes their victimization that much more enduring and devastating" (pp. 1-3).

Mason, James O. M.D., Dr. P.H., Assistant Secretary of Health. "Harm of Pornography", Address to the Religious Alliance Against Pornography, October 26, 1989; pp. 1-3.

CHILD MOLESTERS USE PORNOGRAPHY TO MOLEST CHILDREN

"No single characteristic of pedophilia is more pervasive than the obsession with child pornography. The fascination of pedophiles with child pornography and child erotica has been documented in many studies and has been established by hundreds of arrests of pedophiles who are found to possess a large amount of sexually explicit material involving children".

"Detective William Dworin of the Los Angeles Police Department estimates that of the 700 child molesters in whose arrest he has participated in during the last ten years, more than half had child pornography in their possession. About 80 percent owned either child or adult pornography".

"Each convicted child molester interviewed by the subcommittee either collected or produced child pornography, or both. Most said they had used the material to lower the inhibitions of children or to coach them into posing for photographs".

".... Kenneth Lanning of the FBI's Behavioral Science Unit, a recognized expert on pedophilia, elaborated on the pedophile's fascination with child pornography: ... The maintenance and growth of their collections becomes one of the most important things in their life".

" Experts cite seven primary reasons that pedophiles collect child pornography: Justification, arousal, to lower a child's inhibitions, preservations of the child's youth, blackmail, a medium of exchange, profit".

"Based on the information obtained during its investigations, the Subcommittee has reached the

following general conclusions: Child pornography plays a central role in child molestations by pedophiles, serving to justify their conduct, assist them in seducing their victims, and provide a means to blackmail the children they have molested in order to prevent exposure".
(Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, October 9, 1986. U.S. Government Printing Office, Washington: 1986. Report 99-537.)

March 2, 1995

Senate Judiciary Committee
HB 161
Arlette Randash / Eagle Forum

In the Ferber case the Court recognized that it may be difficult, it not impossible, to stop the sexual exploitation of children by pursuing only those who produce child pornography. HB 161 by increasing the penalty acknowledges that court finding. Citing the clandestine nature of child pornography the Court said "the only practical method of law enforcement may be to 'dry up the market' for this material." The prohibition of the mere possession of child pornography is a necessary incident to 'drying up the market' for a product found to be extremely harmful to the youth of our nation. These laws are entirely consistent with other court decisions and are very different from other "obscenity" decisions because of the nature of little children damaged in the production of pornography.

As has been stated by other proponents this is an invisible crime because the distribution of child porn is underground. However, there are over 350 child pornography magazines published in the United States. And even though this industry tends to be invisible its effect is not. Montana has seen several pedophile cases in recent years. People who use child porn usually act their deviancy out.

Just since January I have collected numerous articles from the Helena newspaper about child porn cases. Keep in mind these clippings which I have enclosed for you are only the ones where child porn and abuse were linked by the police department and then reported by the print media. I believe there are far more instances than this small sampling taking place in reality and the reason for that is the heart breaking letter to editor that I have also included where no charges were filed because the child was to little to be considered a credible witness.

Because of these facts and because this law would give teeth and tracking ability through increased incarceration time and penalties I urge a 'do pass' on HB 161.

1/15/95 IR

Convicted man kills self

BILLINGS (AP) — A man within an hour of being sentenced on child pornography charges killed himself at a motel here.

Robert Brooks, 59, shot himself on Friday after seeking assurance that he wouldn't be sent to prison.

"He wanted to know, is he or is he not going to prison," said public defender Sandy Selvey. "I guess he just wasn't willing for that decision to be made."

Brooks asked his attorney to explain that he would not be in court on Friday, then hung up the telephone. By the time police arrived at the Parkway Motel a few minutes later, Brooks had shot himself in the forehead.

Authorities began investigating him in February, after learning that a sexually explicit picture of a young girl was posted in a Billings adult-book store. The picture included an offer of sexual contact with minors and asked those interested to leave a name and telephone number.

During the investigation, Brooks sent pornographic pictures of young girls to an undercover officer who provided a post office box as an address. Brooks was arrested after officers raided his former Billings home in June. He pleaded guilty to child-pornography charges in July and was released.

Prosecutors said they intended to ask that he be placed under supervision of the state Corrections Department for 20 years.

Accused child molester changes plea to guilty

2/23/95 IR

By LORNA THACKERAY
Billings Gazette

With just a few defense witnesses left to testify, Vernon Virgil Chopper decided Wednesday afternoon to change his plea in a federal sexual abuse case to guilty.

The 41-year-old Wolf Point man will be sentenced on the charge in April by U.S. District Judge Jack Shanstrom, who had presided at the jury trial that started Monday. If Chopper had been convicted by the jury, the sentence could have been two or three years in prison.

According to the terms of a verbal agreement with Assistant U.S. Attorney Klaus Richter, a sentence of probation and counseling will be recommended. While he is awaiting sentencing, Chopper will remain out of jail as long as he follows conditions set by the court.

Chopper had been charged with having sexual contact with a 5-year-old boy July 16 in Wolf Point. Richter said that the child told his mother that Chopper had awakened him and touched him on his bottom. The prosecution had a statement signed by Chopper 10 days after the incident in which he admitted touching the boy.

Defense attorney Mark Werner maintained that Chopper merely gave the child a tap on the bottom to wake him up to go to the bathroom. He also told the jury that Chopper admitted to the crime when interviewed by the Bureau of Indian Affairs and FBI simply because he wanted to leave the jail and get a drink.

Much of the defense testimony Wednesday morning concerned Chopper's admitted alcoholism. Chopper himself took the stand to tell the jury that the disease had taken a more important place in his life than anything else, including his family. He said that he drank three half gallons of wine a day and sometimes a six-pack of beer.

On the day he gave his statement to investigators, Chopper said, he had started the day with a half gallon of wine. Although officers said Chopper did not appear, act or smell intoxicated, Chopper said he was putting on an act. He testified that he could feel the DTs coming on and didn't think he would be free to leave and search for a drink unless he told the officers what they wanted to hear.

"I wanted to get out of there," he said. "I didn't want to be there

turbingly enough, Ahner was one of so Republicans to oppose the bill.

I fail to see the logic in Ahner's actions — particularly considering the Republican Action Plan which spoke definitively about keeping our schools weapon-free.

We don't need another tragedy in our schools. I had hoped our representatives would have stood firm and supported legislation which allows our schools to effectively crack down on student misconduct.

Hildred Scire
801-1/2 Stuart Street

Appreciates support

The Warren School PTO would like to thank the many Helena and East Helena businesses who supported our recent school carnival. Their generous gifts of merchandise, advertising, and numerous other items helped us have a very successful and fun-filled carnival and raffle. We are proud of our hometown businesses and find it gratifying that so many are willing to sponsor events at Warren School and other Helena schools as well.

We also want to thank our school-business partner, D.A. Davidson, for taking time to run one of our games and generously donate to the carnival. And our thanks to our generous friends at County Market for supporting Warren School and our community in so many ways.

We appreciate all of our contributors very much!

Chris Eby, Cathy Malach, Nancy Westerbuhr
Warren School Carnival Committee Chairs

in the 9 a.m. water aerobics class instructed by Carrie Ann Drinville.

Teddy Mergenthaler, member
And the 9 a.m. Aerobics Class
Helena YMCA

Student seeks help

My name is Chris Stearns and I am a fifth grade student who attends Truman Benedict School in San Clemente, Calif.

I am researching and writing a report on the state of Montana. I was hoping you would be able to print my letter in your newspaper asking your readers to send me information in the form of letters, phamplets, maps or postcards.

Thank you for your prompt attention to my request.

Chris Stearns
Truman Benedict School
1251 Sarmentoso Rm. D-3
San Clemente, CA 92673

Supports the raises

The proper legislation to give immediate raises to the state's top elected officials in the way that would not give the governor the option of approving immediate raises for the other executive officials without also approving his own. That should make it less "awkward" for him to sign the bill when it hits his desk.

Paul S. Roos
1200 Floweree

Another horror story

I have another horrible story that needs to be heard.

My 3-year-old daughter was raped and molested in August by a man I knew and trusted. She was taken to a "grandma's" house where she was made to perform fellatio while pictures were taken of her. Her vaginal structures are so widely open that she gets infections. Her doctor, the police, attorney, and her counselor all know the man is guilty but can do nothing until she is old enough to testify. At that time, I will prosecute to the fullest extent.

I can surely never give her back what he has taken, but I can be there for her always in love and in hope.

Name withheld to protect the
identity of the child

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 3-2-95
BILL NO. HB 161

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, executive director of Christian Coalition of Montana, the largest grassroots family advocacy organization in our state. I rise to support HB 161, strengthening the law concerning the possession of child pornography from a misdemeanor to a felony offense.

Two years ago when Rep. Jim Rice introduced our current law, it met with overwhelming and unanimous support in both houses. At that time, John Connor, representing the Mt. County Attorneys Ass. testified that this measure was needed because of the strong link between the possession of child pornography and people arrested for child sexual abuse. He has affirmed here yet today the necessity of this measure in the enforcement, prosecution, and tracking of this crime. To be sure we understand what we are dealing with, I would like to read to you exerts from: Lanning K.V., Burgess, A.W.,1989, "Child Pornography and Sex Rings" in Zillmann D. Bryant, J.(Eds.) Pornography Resarch Advances and Policy Consideration. Hillsdale: N.J.: Erlbaum (attached)

Last fall when Christian Coalition of Montana conducted our legislative candidate survey prior to the general election, we presented a statement selection of either "support", "oppose", or "undecided" reponse to this statement: Strengthen the child pornography law as a felony offense. All the respondents regardless of party affiliation, had checked "support"...a 100% agreement.

It was obvious that we all shared the same concern and sentiments on this important issue.

Today, we are here to send a clear message to those who involve themselves in these heinous activities. This offense should never be lightly considered, but rather our childrens' psychological, physical, and emontional well-beings as well as the violation of their innocence is of much greater value then the $500 penalty associated with a misdemeanor offense. There is no value we can place to replace these violations perpetrated against our vulnerable and impressionable youth.

While there are organizations that exists today like NAMBLA, the North American Man Boy Love Ass., whose goal is to repeal laws that prevent men from having sex with boys, we must do all in our power to protect and counter such self- serving,destructive, attitudes. We must work to dry up the market.

With the recent arrests in Billings of a mother taking pictures of her under-age daughter engaging in sexual acts with the mother's boyfriend, and the suicide earlier this week of a man who had been caught soliciting for child pornography, we know the problem is very real. Let us enact a real deterent rather then a slap on the wrist. Won't you join us in the protection of our children by strenghtening this statute? Thank you. Respectfully submitted:

VI. CHILDREN AND ADOLESCENTS WHO ARE USED TO MAKE PORNOGRAPHY EXPERIENCE ADVERSE ENDURING EFFECTS-- ONGOING HARM.

Koop, C. E. (1987). Report of the Surgeon General's Workshop on Pornography and Public Health. American Psychologist, 42 (10); 944-945.

Report of the Surgeon General's Workshop on Pornography and Public Health. (1986) Washington, D. C.: U.S. Public Health Service.

Silbert, M. H. Ch. 3, Handbook.

"Children and adolescents who participate in the production of pornography experience adverse, enduring effects" (p. 11).

"Involvement of children in the production of pornography is a form of sexual exploitation, victimizing vulnerable children and leaving them with the aftermath of this involvement" (p. 11).

"Involvement with pornography does seem to have a place in the dynamics of sexually exploiting children. Pornography has been used by adults to teach children how to perform sexual acts and to legitimize the children's participation by showing pictures of other children who are "enjoying" the activity" (p. 11).

"There is clear evidence that youth involved in the production of pornography are adversely affected by their participation" (p. 21).

--Report of the Surgeon General's Workshop, "Pornography and Public Health," Arlington, Virginia. June 22-24, 1986; pp. 11 & 21.

"Child pornography requires a child to be victimized. A child had to be sexually exploited to produce the material. Children used in pornography are desensitized and conditioned to respond as sexual objects. They are frequently ashamed of their portrayal in such material. They must deal with the permanency, longevity, and circulation of such a record of their sexual abuse" (p. 239).

"The follow-up of some of the children who were involved with adults (Burgess, Groth, & McCausland, 1981) indicates post-traumatic stress response, both acute, chronic, and delayed (Burgess, 1984). Prominent features of intrusive thoughts, avoidance behavior, gender identity conflicts, and stylized sexual behavior were noted" (p. 249).

"Child victims frequently have mixed feelings about the discovery of such a sex ring" (p. 250).

"They may be embarrassed about others discovering what they have been doing... It must not be misinterpreted as consent, complicity, or guilt" (p. 250).

"When you recognize the effect and scope of the trauma caused by nonviolent sexual manipulation, the amount of consideration given by the criminal justice system to such offenders simply because they are

nonviolent is baffling. Physically batter a child and you are locked up, but psychologically batter 100 children and you are left on the street because you are nonviolent. The devastation caused by such "nonviolent" victimization is psychological violence of the worst kind" (p. 250).

Lanning, K. V., and Burgess, A. W., (1989). "Child Pornography and Sex Rings." In Zillmann, D. & Bryant, J. (Eds.) Pornography: Research Advances and Policy Considerations. Hillsdale: NJ: Erlbaum.

"In hearings before both Houses of Congress in 1977, witnesses estimated that between 300,000 and 600,000 children were involved in child pornography" (p. 1).

"Clinical studies of children suffering from traumatic sexualization are disturbing. Children experience somatic complaints and sleep disorders, withdraw from other children and adults, and act out what they have been exposed to. These findings are based on the results of convincing long - and short-term clinical studies" (p. 2).

"The first conclusion is painfully obvious: "Children and adolescents who participate in the production of pornography experience adverse, enduring effects." These effects include what is called "traumatic sexualization," which is the result of a child's being coerced into viewing and participating in a broad range of sexual experiences. This experience can produce an obsession with, or aversion to, sexuality and intimacy. The behavioral manifestations in children who participate in pornography production include a range of pathological response such a preoccupation with sexual activity, sexual dysfunction, and phobic reactions to intimacy. These may last a lifetime. The vulnerability of children makes their victimization that much more enduring and devastating" (pp. 1-3).

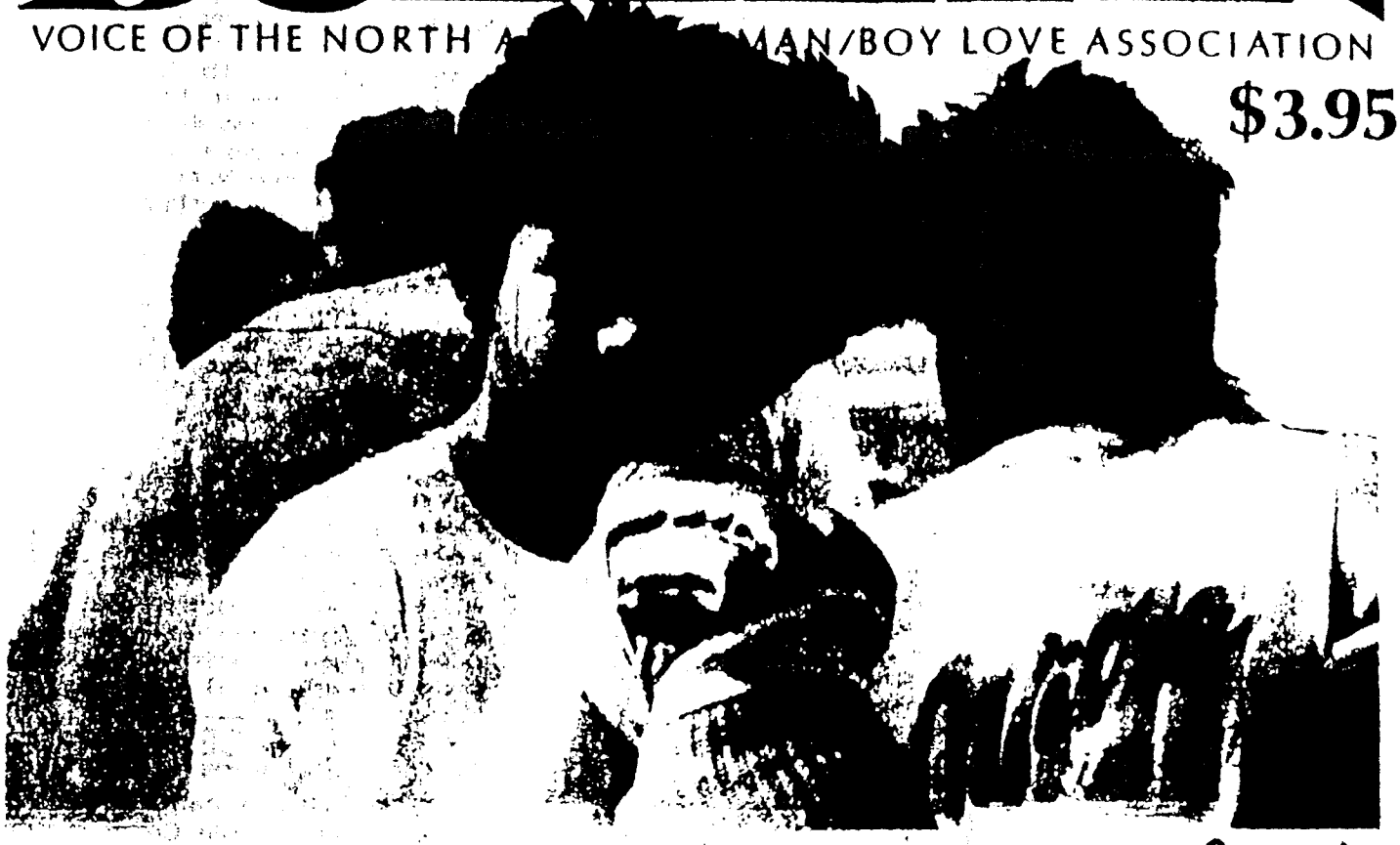
Mason, James O. M.D., Dr. P.H., Assistant Secretary for Health. "The Harm of Pornography," Address to the Religious Alliance Against Pornography, October 26, 1989; pp. 1-3.

Jan.-Feb. 1992 nambla Vol. 13 No. 1

BULLETIN

VOICE OF THE NORTH A[illegible]MAN/BOY LOVE ASSOCIATION

$3.95



Why does the "No Special Rights" initiative include Pedophilia?
Because the "Gay Rights" movement includes Pedophiles!

The North American Man/Boy Love Association

CONSTITUTION AND POSITION PAPERS

The Constitution was adopted by the membership in December, 1980.

The North American Man/Boy Love Association (NAMBLA) is an organization founded in response to the extreme oppression of men and boys involved in consensual sexual and other relationships with each other. Its membership is open to all individuals sympathetic to man/boy love in particular and sexual freedom in general. NAMBLA is strongly opposed to age-of-consent laws and other restrictions which deny adults and youth the full enjoyment of their bodies and control over their lives. NAMBLA's goal is to end the long-standing oppression of men and boys involved in any mutually consensual relationship by:

1) building a support network for such men and boys;
2) educating the public on the benevolent nature of man/boy love;
3) cooperating with the lesbian, gay, and other movements for sexual liberation;

The Lavender Network
Oregon's Lesbian and Gay Newsmagazine

PERSONALS

Unlike the Marines, I am not looking for a Few Good Men to send them off to the War In the Gulf. Rather, I like men

GWF 46 touch, share wumminly warmth and wit with me. Intelligence and loyalty are the Goddess gifts that bond us. We'll seek simple *and* sophisticated adventures, reveling in the joyous appreciation of us. Reply TLN Box #245

27 y/o GWM 5'8", 140 lbs, brown hair, green eyes...looking to meet someone interested in life outside the bars. I am romantic, handsome, honest, seeking new friends...possible lover, TP#19001λ

GWM; 40, 6', 165#, good body, young hearted, fun, dancer, talented, masculine, serious relationship minded replies only, from ages + or - 30-38, good looking men only, no phonies please. I have a lot to offer to the right person. TP#19002λ

SF Dominant; attractive, petite, brunette, sexually experienced, non-butch-seeks health-conscious Femme for relationship. We make it how we want it. (Eugene Area) TP# 19003λ

Lesbian, young 46, honest, good sense of humor, enjoys life, love and the pursuit of happiness. Looking for friends and someone special to share these things. TP# 1900-λ

GWM, 60, 6'+, 180# wants a dance partner in Eugene area. Other sensual and enjoyable life experiences are also possibilities. TP# 19005λ

SERVICES

Colon Cleaning & Detox sessions available in PDX - Write, CM, PO Box 6415, Portland, OR 97228-6415.

TRAVEL

Male seek same to vacation with; long-week ends and week-long vacations desired. Must be playful, fun, good sense of humor, and spontaneous. Call 503-796-1592

ORGANIZATIONS

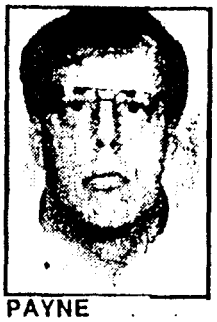
Man/Boy love. NAMBLA seeks justice for men and boys interested in consensual relationships. Our monthly Bulletin features news, fiction, letters, pictures. Mailed discreetly. Subscribe! $25/year NAMBLA, Dept. LN, POB 174, NY, NY 10018.

Oregonian April 18, 1992

Portland man jailed in molestation case

By DAVE HOGAN
of The Oregonian staff

Portland Police have arrested a former Boy Scout leader on accusations that he fondled and sodomized two boys in his Southeast Portland apartment.


PAYNE

Dennis E. Payne, 40, was being held in the Justice Center jail Friday on four counts of third-degree sodomy and two counts of endangering the welfare of a minor.

Payne was an assistant leader for a Boy Scout troop in Newberg from 1984 to 1986, but he has not been involved in the organization since that time, said Douglas S. Smith Jr., scout executive for the Boy Scouts of America Columbia Pacific Council.

Police arrested Payne Thursday after searching his apartment and two storage lockers at 1910 S.E. Ash St., said Sgt. Derrick Foxworth, spokesman for the Portland Police Bureau.

In the search, investigators seized several items, including a note to Payne from the North American Man/Boy Love Association and a blue binder with "a manuscript to Jim Regier," Foxworth said.

James Regier was a Gresham middle school teacher who jumped to his death from Portland's Vista Bridge three days after he was arrested in March 1991 on charges of sex abuse and dealing in child pornography.

Two boys, ages 11 and 15, told police earlier this month that Payne had fondled or orally sodomized them at his apartment on several occasions since meeting him in early 1991 at a Southeast Portland game arcade. The boys said they sometimes ran away from home and stayed overnight with Payne, Foxworth said.

After serving as assistant leader for a Boy Scout troop in Newberg from 1984 to 1986, Payne moved to California, said Smith of the Boy Scouts of America.

Payne returned to Oregon in 1988, but scout officials denied his request to resume scouting activities, Smith said.

"We heard some information that made us believe he did not meet our standards as a leader, so in the spring of 1988 we denied his application to return to scouting," Smith said.

Smith said that he could not discuss details of the information about Payne, but he said "it wasn't sexual in nature" and it had nothing to do with anything he did while he was involved in scouting.

"I don't have on record any allegations of a sexual nature (regarding Payne) nor do I have any allegations of misconduct as a scout leader," Smith said.

Continued On Page 70

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 3-2-95
BILL NO. HB 387

Patty Walker
Atlasta Ranch
Box 320081
Glen, Montana 59732

Feb. 16,1995

To whom it may concern,

I come here today because I have a late claim and I want you to know what has happened to my family because of it. My husband and I bought our place in 1987, it is an old homestead and mostly rock and sagebrush. We did not get up one morning and decide that today we were going to file a water claim late. No the homesteader in 1910 got up one morning and went out with his shovel and dug out the spring and started to use the water on what is our place today. Our predecessor for whatever reason missed filing on this spring, and we have filed a late claim. This water has been in continuous use since 1910. Because of our late claim the Bureau of Land Management has decided that it wants our water, not because it needs water but because it felt that we no longer had any right to it. We have been taken in front of a water hearing and had to defend our historic water rights. The BLM lost but the hearing examiner left the door wide open for them to try again to take our water away. This was before Sen. bill 310 was passed. Then in 1992 we were cleaning out our spring when an armed BLM ranger came and tried to stop us from maintaining our spring. I have to say that every time we have tried to do any work on our spring the BLM has interfered with threats and intimidation. The last threat was our invitation to federal court in 1992. Judge Hatfield ruled last month that we as the defendants were guilty and had to prove ourselves innocent. That we after three owners and forty years, that we as the defendants had the burden of proof. And with that after he had the case for two years instead of giving the BLM what they asked for he gave the BLM our entire ranch. The BLM will stop at nothing to take our water away from us because of this late claim and because we will not sign our water rights over to them. We are awaiting our third invitation to defend ourselves and our water in court. Our BLM file says that the BLM intends to protest every single water right that originates on public land. That will be our forth invitation to court brought by the BLM.

All of this has happened in the eight years that we have had this place. All we want is to be left alone and live in peace and enjoy this place as our predecessors did. This has destroyed my life, my husbands life and my two sons lives. My husband has had to be put on medication because of the depression all of this has caused and I can't begin to tell you what it does to me when my 11 year old son for christmas the first thing on his list is for the government to leave us alone. Maybe there is nothing you can do to stop what is happening to us but PLEASE, please do something so that no other family has to go through what mine has.

Several years ago the legislature passed a law saying that for something as minor as a filing mistake historic rights would vaporize without even a chance to explain. I am asking you to make it right.

Sincerely,

Patty Walker

Patty Walker

Amendment to Senate Bill 387
First Reading Copy

Prepared by Holly Franz
February 17, 1995

1. Page 7.
Following: line 23
Insert: "(8) The provisions of subsection (7) do not apply to issues arising after entry of the previous decree, including but not limited to abandonment, expansion of the water right, and reasonable diligence.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

EXHIBIT NO. 12
DATE 3-2-95
HB 387

STATEMENT OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON SENATE BILL 387
BEFORE THE SENATE JUDICIARY COMMITTEE
MARCH 2, 1995

Mr. Chairman and members of the Committee, my name is Mark Simonich. I am the Director of the Department of Natural Resources and Conservation. I am here today on behalf of the Department and the Administration to oppose Senate Bill 387.

The position of the administration and the decision to oppose this bill did not come easily. This is a very tough issue, and one which received very careful, thoughtful review. During recent years we have heard the accounts of many of those individuals with late claims. We have been told of the many and various reasons why some claims were not filed by the required deadline. In some of those cases it was not the fault of the claimant. Many of these accounts tug at one's heart strings. Certainly water is one of our most precious natural resources. The thought of losing the ability or the right to the use of that resource is more than many of us could contemplate. These stories of the late claimants are what made this decision so difficult.

However, be that as it may, it is still the determination of the administration that the late claims issue should be laid to rest. Two years ago this same committee heard a similar bill and agreed to offer partial remission of the forfeiture to the late claimants. That bill, as amended, also called upon the Water Policy Committee to conduct an interim study for the purpose of identifying and making recommendations for any possible further remission. The Water Policy Committee conducted that study with the cooperation and participation of the DNRC, the Attorney General's Office and a variety of water users. At the conclusion of the study the Water Policy Committee chose not to recommend any further remission of forfeiture.

It is our belief that it is now time to get on with the business of finishing the adjudication process in Montana. The adjudication is very complicated, very time consuming and very costly to all parties involved. This bill will only add to that. The legislature has addressed the late claims issue and has previously offered a partial remission. The legislature also opened the process for three years to allow additional claims to

be filed. That window will close July 1, 1996.

Lets make sure we have this in perspective. Through June 30, 1993 3,197 late claims had been received by the Department. So far during this three year window for additional filing the department has received 301 new claims. This total of 3,498 late claims is in contrast to the approximately 200,000 water right claims that were filed within the original allotted time period.

The underlying public policy reason for filing deadlines is to bring finality to the settlement of issues and rights. It is not possible to have a fair, reliable, predictable and stable system of protection for the rights of competitive interests, if finality to the settlement of those rights is not available. Without finality the value of the rights that is intended to bring about predictability and respect is compromised. That does not mean that filing deadlines do not work inequities in individual cases. The law and the people who enact these laws regret such iniquities, but the transcendent benefits of such public policies must be observed.

This is really a question of fairness and of balance. The question should be--How can we provide some relief to those late claimants without causing an undue burden or cost on all the others that filed the +200,000 claims on time? We believe that balance in fairness has been reached and no further action should be taken.

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SB 387

PROPOSED AMENDMENTS

RESERVED WATER RIGHTS COMPACT COMMISSION

February 17, 1995

Page 2, line 22-23:

Strike: "prior to July 1, 1993"

Page 3, line 10-11:

Strike: "that is ratified by the legislature prior to July 1, 1993"

Insert: "after the date specified in a compact"

Page 3, line 14:

Add after "law": "; or be decreed as senior to a water right recognized in the compact"

Text with proposed amendments:

Page 2, lines 21-24:

"Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on forms provided by the department."

Page 3, lines 9-14:

"(c) a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter **after the date specified in a compact**, except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; **or be decreed as senior to a water right recognized in the compact**"

EXHIBIT 13
DATE 3-2-95
HB 387

SB 387

TESTIMONY OF -- ON BEHALF OF

THE RESERVED WATER RIGHTS COMPACT COMMISSION

February 17, 1995

The following testimony addresses only the impact of SB 387 on compacts between the State and federal and Tribal governments settling water rights. It does not address the broader implications of the impact of SB 387 on the adjudication or the exposure of the State to takings claims.

SB 387 adversely impacts compacts in two ways:

(1) language in SB 387 is in direct conflict with SB 203, the compact between the State and the National Park Service settling water rights for the Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area which was passed by the Senate on a 50-0 vote and now awaits executive action in the House Natural Resources Committee; and

(2) open ended late claim filing will jeopardize negotiation of future compacts by creating uncertainty in the status of water allocation in the affected basin.

#1 Conflict with SB 203:

SB 387 states on page 2, lines 21-24:

> Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter **prior to July 1, 1993**, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on forms provided by the department.

SB 203 requires closure of drainages flowing into Bighorn Canyon National Recreation Area. Agreement concerning level of development allowed prior to closure was based on evaluation of existing claims. The 1993 date in SB 387 is in direct conflict with SB 203.

Remedy: remove "prior to July 1, 1993" from line 22-23

SB 387 states on page 3, lines 9-11:

> a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter **that is ratified by the legislature prior to July 1, 1993** . . .

SB 203 (Article II, Section C.2), page 10, lines 9-15 states:

> The reserved water rights described in the Compact shall not be subordinate to water rights which were forfeited by 85-2-212 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact . . .

This language is in direct conflict. It is likely that in statutory interpretation the more specific law, SB 203, would control. However, by not amending the language in SB 387, that decision is left to the discretion of a court. By amending SB 387 the legislature retains control of interpretation of its intent and prevents the risk of forcing re-negotiation of SB 203.

Remedy: replace "that is ratified by the legislature prior to July 1, 1993" on page 3 line 10-11, with: "after the date specified in a Compact"

#2 Future Compacts:

Negotiation of compacts focuses on allocation of water between federal and Indian rights and State-based rights. The DNRC database on filed and decreed rights and permits forms the basis for identification of State uses that require protection. SB 387 allows late claims to be filed at any time. State negotiators will lack certainty in the level of water use which must be protected, and federal and Tribal negotiators will be unlikely to agree to subordinate to existing use when that level of use is uncertain. For this reason, it is insufficient to replace the July 1, 1993 date discussed above with July 1, 1995. The more general remedies set forth above are necessary. In addition, the following amendment will assure negotiators that new claims will not be granted seniority after a compact is ratified:

Remedy: Page 3, line 14:

> Add after "law": "; or be decreed as senior to a water right recognized in the compact"

DATE MARCH 2, 1995

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 161, HB 158, HB 250

HB 387

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dallas D Erickson	MCDC	161	+	
Patty Walker	Self	387	X	
Sam Rehbein	Self, a Teigen farm & livestock	387	X	
Russell B Hill	MT Trial Lawyers	HB 158		✓
John Connor	MT County Attys Assn	HB 161	✓	
David Hemion	MT Assn. of Churches	HB 161	✓	
SHARON HOFF	MT CATH. CONF	HB 161	✓	
Helen Christensen	MT State AFL-CIO	HB 158	✓ w/Am	
Mons TELGEN	Teigen L + Ls Co	387	X	
J Michael O'Hara	Missoula Sheriff	HB 250	X	
Craig Reap	MHP	HB 250	∝	
Dennis McGrave	Yellowstone County Sheriff	HB 250	X	
Chuck O'Reilly	Lewis & Clark Co Sheriff	HB 250	X	
Kathy McGowan	MSPOA	HB 250	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Joe Hansen	Edsall Cons	158	X	
Carl Schweitzer	Mont Conf Ass HB158		X	
Ward Shanahan / JNTL	~~Farming~~ Ind. ~~Group~~	HB 158	✓	
Larry Brown	Ag. Pres. Assoc.	SB387	✓	
Bob Torres	NASW	HB161	✓	
Mark Simonich	DNRC	SB387		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE March 2, 1995

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: HB 158 HB 250

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Roger McClean	Independent Ins Agents Assoc of Mt	158	X	
Mark Heather	Self	158	X	
Ron McCullough	Sletten Const Co.	158	X	
Lorren Dansey	Cogswell Agency	158	✓	
James Cashell	MSPOA	250	X	
Laurie Koutnik	Christian Coalition of MT	161	✓	
C Jeff Cox	~~AFB~~ Self	387	✓	
Lorna Frank	MT. Farm Bureau	387	✓	
Rae Ashabraner	State Farm Ins	158	✓	
Mary Alice Cook	Advocates for MT's Children	161 HB ~~250~~	✓	
Arlette Randash	Eagle Forum	161	✓	
Holly Franz	Mt. Power Co.	SB387	w/amendment SS+6	
Chris Tweeton	Comm'n Renewable Water Rts Compact	SB387		unless Amended
Jacqueline Denmark	Am. Ins. Assoc.	HB 158	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10