

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN** , on March 7, 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: HJR 14, HB 64, HB 457, HB 474
Executive Action: HB 474, HB 64, HB 457, HB 158, HB 547

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HEARING ON HJR 14

Opening Statement by Sponsor:

REPRESENTATIVE DICK GREEN, House District 61, the Northern one-third of Ravalli County, sponsored HJR 14. The bill was requested by the Ravalli County Attorney and the Ravalli County Commissioners. There is a practice providing for law students in state-supported programs to bring lawsuits on behalf of prisoners or ex-prisoners in the counties. This resolution petitions the

Supreme Court to stop this practice. Under the program, the taxpayers in Montana pay for everything, he said, such as university-subsidized students, courts, county attorneys, law enforcement agencies, public defenders, jails, prisons, mental health facilities, etc. etc. He said they were further blessed with providing legal counsel in allowing these prisoners, themselves, to sue the counties incurring still further expenses to defend ourselves from these lawsuits. They are an unfunded mandate and constitute a burden on the county attorneys and their budgets. He said he would not deny the right of anyone to bring suit, but most of the cases are frivolous and without merit. If these prisoners had to pay the usual expenses of such a suit, they would not do it. Any case that has merit will not have any lack of champions to assist the prisoner, such as the ACLU under contingency fee agreements. The whole system is unfair to the overburdened taxpayers of our state and results in providing an incentive to do that which is wrong.

Proponents' Testimony:

Allen C. Horsfall, Jr., Ravalli County Commissioner, said that HJR 14 would probably not result in a law, but a resolution to make a point. When a crime is committed against the state statute, that statute was made by a tax-supported legislature. Then a tax-supported law enforcement agency investigates that crime. If they solve the crime, the alleged violator is held in a tax-supported institution called a jail. The accused will then be arraigned in a tax-supported court of the people, or justice court. If the offense was a misdemeanor, the justice court will handle it; if not, it goes directly to a tax-supported district court. In either case, an indigent defendant has a legal right to counsel, which in most cases, are tax-supported, court-appointed defense lawyers. The tax-supported prosecutor must try the case if a not guilty plea is entered. If a jury trial is requested, a tax-supported jury will try it. A tax-supported clerk of court and staff and tax-supported judge will work on the case. If a guilty verdict is found, and the case is a felony, a tax-supported adult probation or parole officer will investigate and make recommendation. If a prison sentence is ordered, the offender is sent to a tax-supported jail where every facet of life for that inmate is tax-supported. If an appeal is filed, tax-supported attorneys, judges and staff take it all the way to Supreme Court, if necessary. He said the people in Ravalli County believe in due process and the rights of defendants in criminal trial, but the question is: It is necessary that a guarantee exists that a tax-supported institution of higher learning in its pursuit has an obligation to bring suit in that training against a tax-supported jurisdiction for a civil action brought by a convicted felon. If civil suits become the responsibility of the taxpayers, then the committee members would know what the court calendar would look like, he said. No taxpayers expect their money to be used by the UM Law School to aid and abet legally convicted felons at taxpayer's expense to sue, under civil law, the very government their tax dollars support. The project is charged with, "those cases which have

merit," and helping their constituents bring cases against the appropriate authorities for cases with merit. He cited a case that the Defenders' Project has assisted in. The case in Ravalli County was a man convicted of beating his 9-year-old daughter. During the trial, he indicated his daughter was lucky because in some biblical lines a child sacrifice would have been authorized. He served six days in the Ravalli County jail as a result of a district court judge's order pending transportation to the Montana State Prison. His suit alleged certain things wrong with the county jail. A new jail was going up at the same time. He asked the committee to consider if Ravalli County was deliberately indifferent to the problems in the old jail, and did the case have merit? He said, in speaking with an advisor who oversees the Defenders' Project, they were also involved in the Wildlife Association suit against the U.S. Forest Service in Beaverhead County and was giving them technical, legal advice in the suit. Also, the Stockgrowers Association may end up having difficulty in its cattle allotments due to some changes the Forest Service felt it had to make in reference to that suit. He wondered if it was necessary to use tax dollars to train our legal students in Montana to sue the very jurisdictions that are working on their behalf. He thought there were 21 students and that there was enough activity in Ravalli County to offer the student program work to do. He said they had asked and been turned down. If it is so difficult for a student to work on behalf of the county, the same difficulty would apply to allow a student to advise a convicted felon to sue Ravalli County. He urged passage of the legislation.

George Corn, Ravalli County Attorney, spoke in favor of HJR 14. He said it highlights the problem of a state agency, which in this case is the UM Law School through one of its classes called the Defender's Project. The law students represent prisoners and teach them to represent themselves in suits against the state and county governments. Since the state does not reimburse the counties for the expense, it is one of the clearest examples on an unfunded mandate. The Department of Corrections and Human Services pays the law school \$78,960 per year for the Defender's Project to represent state prisoners in various matters including civil rights, post conviction relief matters, sentence review and parole issues. In theory, there is nothing wrong with having student do these things for the prisoners. What's wrong is how it's put into practice. Due to certain federal requirements, many of these matters must be provided to prisoners. It makes sense to have the students do this, he said, but in practice it is not the state sued, but counties that often get sued. So while the program may save the state money, it costs the counties a significant amount of money and resources. Since the state is already subsidizing the education of the law students, he did not think that they should have to pay for the program, too. He thought they should also provide the counties with the resources to defend themselves. He told the committee that the mandate was particularly harmful because it takes time from serious matters in view of the increasing demands, particularly the western

counties because of the rapid growth occurring there. Further, in the last 10 years, the legislature has expanded state agencies and has requested that county attorneys act as the prosecutors that help enforce the laws of the state. At the same time, the legislature has cut the resources available to the counties. In Ravalli County, up until the mid-1980's, the state paid for the full services of a full-time deputy county attorney. It was cut in half in 1985 and then phased out entirely in 1987.. But at the same time, the state has added more highway patrolmen, more fish and game wardens, and more duties of the Department of Family Services which the county attorney is called upon to provide for. He had a solution which would give the students the experience of representation but would take the burden off the counties: the law school could establish another program, similar to the Defender's Project but with the mission of opposing suits and challenges of the type spawned by the Defender's Project. They could communicate back and forth through the mail or do the research at the school and send it back for filing in the district court. It would cost the law school a minimal fee. He said that the legal students assisted the U.S. Forest Service and the National Wildlife Federation and he felt helping the counties would be as important as those projects. The law school is resistant to changes, not realizing the burdens they place on the counties, he said. He said to illustrate that, he passed out some of the discovery requests in one particular suit.

(EXHIBIT 1)

Opponents' Testimony:

Jeffrey T. Renz, Assistant Professor at the University of Montana School of Law and the Director of the Montana Defender Project, opposed HJR 14. He began by clarifying some misstatements, he said. He said the Montana Project had no connection with any litigation on behalf of the National Wildlife Federation and never has. Students are provided to the National Wildlife Federation as part of the clinical program. They also provide students to the Department of Agriculture. He said they had about a dozen, and maybe at tops, 14 students in any one semester. He spoke about representing unpopular causes and clients, saying that HJR 14 would tell the students not to take on these causes or clients, because if they do, they will be in trouble. He read from written testimony at this point.

(EXHIBIT 2) He said there were benefits from this program, including a two-for-one advantage including training for students as well as the representation of inmates that had been court-ordered. For every civil rights case they bring, they discourage another. They often tell inmates not to bring litigation that is not winnable. They can bring litigation by simply sending a card to the Clerk of Court, he said. Judge Bart Erickson, Missoula, refers to inmate work as, "gibberish". Every time a piece of paper is filed by anyone, the inmate thinks they must file a responding piece of paper, and perhaps 20 or 25 pieces of paper, not making sense. He maintained that was what the County Attorney's Office was dealing with in the Thompson case before

they came in and focused the issues. He contended that they had made repeated attempts to include the students in a clinical setting in Ravalli County, but were rebuffed. On the Thompson case, they only took the case at the personal request of a federal judge. They did not go looking for the case; Thompson did not come looking for them. The federal judge thought it warranted an attorney taking part in the case. He stated that mass punishment was used at the jail which is against the U.S. Constitution. They discovered that for several years' running, public health inspections amounted to a photocopy of the past year's inspection, because so few improvements had been made. **Mr. Thompson** entered the jail with his jaw wired shut, did not get the soft food diet he requested and lost 20 pounds. **Mr. Renz** said starvation was not called for in our jails. The county had also altered the records. He said he had inspected this jail. It was not up to Constitutional standards and they had gone through great lengths to clean it up. Inmates had incurred diseases as a result of incarceration and **Mr. Thompson** had incurred an infection. It was a meritorious case, he said. He said it was a myth that people are standing in line to represent inmates. He had great difficulty in finding people to take civil rights actions even with the understanding that they could collect attorney's fees. He thought it was a great idea to come up with a new clinic at the school to provide services to counties, but he stated that the Ravalli County Attorney should not expect something for nothing. He said they were not a state-supported law school, but a state-assisted law school.

Questions From Committee Members and Responses:

SENATOR AL BISHOP asked **Professor Renz** who the court would impose sanctions on, if anyone, if a case was found to be frivolous.

Mr. Renz said that under Rule 11, they could impose sanctions on either party or the attorneys. Imposing sanctions on an indigent inmate would no nobody any good, he said. Asked if the court could impose sanctions on the students, he answered that they would probably sanction him instead. **SENATOR SUE BARTLETT** asked

Mr. Corn that since the federal courts have required that inmates have access to the courts, either civil or criminal, if the Defender Project did not assist in those cases, who would? And what would the cost be? **Mr. Corn** said he was unsure. The language of the U.S. court case does not say that they have to provide a lawyer. It says, "legal assistance," or a law library. Various states have chosen to implement that in different ways.

SENATOR BARTLETT asked for his recommendation in meeting the federal requirements. **Mr. Corn** thought that the Defender's Project was an appropriate way to do that so long as some sort of counter clinic were set up. However, he said, with the explosion in electronic research in the legal field, it may well be that it would be cheaper to have an electronic law library. **CHAIRMAN**

BRUCE CRIPPEN asked if the Ratzlaff cases presented only one method by which the requirements by Judge Battin could be met.

Mr. Corn said yes. **CHAIRMAN CRIPPEN** said if he would agree to that, he would have a hard time making sense of his argument. He

said the state had an option and could have hired an attorney, but chose this program instead. **Mr. Corn** stated that while being appropriate, the program had an effect which had not been addressed. **CHAIRMAN CRIPPEN** said the resolution would recommend to the Supreme Court that they prohibit this type of program. He thought the only other alternative would be to hire lawyers at considerable extra cost to the taxpayers. **Mr. Corn** said he could not agree because the case did not say they had to hire attorneys, they said other legal means and a law library would be appropriate. This is only a resolution, he said, and the Supreme Court would be free to adopt other rules to perhaps balance it out. **CHAIRMAN CRIPPEN** asked if they used an updated, technical library, who would use it? **Mr. Corn** said the prisoners would use the library. **CHAIRMAN CRIPPEN** asked if they used that system, why would the paperwork problem described by **Professor Renz** diminish? He asked if he and other County Attorneys would be overwhelmed with legal documentation from prisoners who are unfamiliar with the law? **Mr. Corn** said he would not agree. He said he disagreed with the characterization of the problem as described in the Thompson case. **CHAIRMAN CRIPPEN** asked if he agreed that the training was outstanding? **Mr. Corn** agreed. **CHAIRMAN CRIPPEN** asked **Mr. Corn** and **REPRESENTATIVE GREEN** to work with the law school and work out a program whereby they could provide not only assistance to inmates, but also assistance to County Attorneys. **Mr. Corn** said he would propose an amendment to the resolution that says the law school considers the effects of its clinics. **CHAIRMAN CRIPPEN** asked **Professor Renz** if he would be willing to make some amendments to this resolution whereby they could keep some kind of a program and proceed further? He suggested some of the gifted law students could draft some amendments. **Professor Renz** said they would be happy to provide representation to cities and towns and counties who are involved in civil rights legislation, not only involving inmates. **CHAIRMAN CRIPPEN** asked **REPRESENTATIVE GREEN** if he would be agreeable to amend his resolution? He said he did not want to substantially change the intent of the bill. **CHAIRMAN CRIPPEN** asked if his intent was to prevent any law students from engaging in any program similar to the one outlined in testimony? **REPRESENTATIVE GREEN** said he brought the bill because there were more of these types of actions brought since the system was in place. Rather than solving problems, it seemed to be exacerbating problems and raising the workload to the counties. The cases that had merit prior to the institution of the program were properly dealt with. He thought it was a very expensive way to bring the law students up to speed. Most career education does not bring people up to seasoned, fully qualified positions. The law school should look at internship, he said. He wanted to keep the bill intact. He agreed to cooperate with the others in working on the bill. **SENATOR BARTLETT** suggested the parties working on the bill speak with **John Connor** at the **Department of Justice**, to look at supplementing his services that are available to all of the counties where appropriate.

Closing by Sponsor:

REPRESENTATIVE GREEN said in closing that the bill would have the effect of holding the line on their costs for County Attorney, Sheriffs and court workloads. He said that if allowed to expand, the program would require larger county budgets.

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HEARING ON HB 457Opening Statement by Sponsor:

REPRESENTATIVE STEVE VICK, House District 31, Belgrade, opened the hearing on HB 457. He said HB 457 was a straightforward bill with a straightforward purpose. Up to 90 per cent of the people who use tobacco products start before the age of 18, he said. He felt they were sending the wrong message in saying it is legal to possess and use these products. The fines set in the bill in Section 2a were stiff enough to hurt the people caught with the products, yet help costs incurred by the counties in enforcing these fines. In Section 4, and keeping with the idea of no unfunded mandates, he allowed the fines to go to the county general fund for distribution as they see fit. The state would not incur any cost in enforcing this bill, he said.

Proponents' Testimony:

Dennis Hardin, Bozeman, third-generation Montanan, Bozeman School Board Trustee, financial lender, spoke in favor of HB 457. He said the bill was strongly supported in both the educational and business communities. It is also supported by the **Montana Retail Association**. In answer to a question that kept coming up, he said their intent was not to prevent youth from stocking shelves. He said that was not possession. The first handout (**EXHIBIT 3**) was a pamphlet from the Tobacco Institute and Philip Morris U.S.A., entitled Minors. He said the tobacco industry members were in favor of the bill and commended them on their wholehearted support. The second handout (**EXHIBIT 4**) was a folder for retail establishments entitled, It's The Law, We Do Not Sell Tobacco Products To Persons Under 18, produced by The Tobacco Institute. He quoted at length from a collection of articles, charts and letters (**EXHIBIT 5**). Extra testimony was collected in (**EXHIBIT 6**).

REPRESENTATIVE ROBERT CLARK, House District 8, Ryegate, supported HB 457. He is a D.A.R.E. officer when not serving the legislature. He said the curriculum of D.A.R.E. discourages the use of alcohol or other drugs, including tobacco products. The definition of a drug is, "any substance, other than food, that affects the way your mind and body work." Tobacco affects the way the body works, he said, not to mention how the mind works.

He said it was more than a case of mind over matter when they get hooked on tobacco products. 420,000 people die each year in this country from smoking-related illnesses. He said they repeatedly were asked, in the face of the information received about the dangers of tobacco, why didn't they just outlaw it? He hoped in their lifetimes to see that happen. He asked the committee to pass the bill and remove one source of peer pressure for his students.

Nancy Davis-Walker, representing Voices Against Smoking, spoke with the aid of mechanized vocal chords. She said she had developed cancer of the vocal chords at age 38. Her voice changed then, and she explained she had a voice prosthesis. She told the committee she had neither smell nor taste. She started to smoke and age 16. As a result of the illness and surgeries, her husband and one child had left her. Because she had to breathe through a hole in her neck, she could not do water sports any longer. She stated that kids think if smoking is not against the law, they should be able to smoke, illogically thinking they could just quit whenever they wanted to. She also believed that smoking is a gateway drug to other drugs.

Jerome Anderson, Attorney, Helena, appeared on behalf of The Tobacco Institute. He said the institute had sponsored on a consistent basis, programs designed to ensure the withholding of tobacco products to people under 18 years of age. This bill would provide accountability for those people under the age of 18 that are using the product. He said it was a choice to be made by fully-informed adults. He supported the legislation.

Charles Brooks, represented Bill Stevens and the Montana Food Distributors Association, which are the independent grocery stores and suppliers of our state, he said. They are also a large seller of tobacco products. They liked this legislation because it attempted to put the responsibility upon our youth. If they violate the law, there would be a penalty to pay. He urged support of the bill, HB 457.

John Delano, appeared on behalf of Philip Morris, to support HB 457. He said the handout by Mr. Hardin, (EXHIBIT 3), was prepared and distributed by his company. He read their position from that booklet, "minors should not be allowed to sell cigarettes to minors. They should not smoke."

Brian Dunn, Assistant Superintendent of Schools, Bozeman, spoke as a proponent of the bill. He said it would send a message to kids. They had developed a curriculum in the schools to explain the dangers of tobacco to the students. It produced some results, but over the past few years, tobacco use had increased by students, which was proven to them in polls. Students said they did not believe the information provided. They knew alcohol was a dangerous drug because it was illegal, as well as marijuana. But tobacco, which he considered the most dangerous drug available today, did not pose a threat to students in their

perception. Unless declared illegal, he did not think they, as educators, could send a clear message on the dangers of smoking and tobacco products.

Mike Salvagni, Gallatin County Attorney, spoke in favor of HB 457. He said that as a society, they were obligated to prohibit tobacco products if they recognized the danger to the children. He felt they had responded in 1993 to legislation to make it illegal to sell or give tobacco products to minors. Alcohol and gambling have been determined not to be appropriate activities for kids, and subsequently declared illegal, he said. **Mr. Hardin** had asked him about the impact of this law on his office. He said as County Attorney, the duties of the criminal justice system was outweighed by the need to prohibit the conduct. A question had come up about removing a child from the home under the Youth Court Act for smoking cigarettes. **Mr. Salvagni** said it could be possible, but as a practical matter would not happen.

Randy Durr, Principal, Fort Benton High School, appeared to support HB 457. He said he taught social studies and coached for seven years in Montana prior to moving to Idaho. In Rupert, Idaho, he was assistant principal. It amazed him to see no evidence of tobacco use at all in that school. He learned that the State of Idaho had prohibited possession and use of tobacco products by minors. The fine was \$110 per offense, plus court costs. He said it was a tremendous, positive impact on that school of 1,200 students, which was then truly a tobacco-free school. He said many middle school students were using tobacco in the schools now. He urged the committee to support the bill, cleaning up the schools and giving the students a greater opportunity to make good choices.

Laurie Koutenik, Executive Director of Christian Coalition of Montana, Montana's largest family advocacy organization that addresses the family, supported HB 457. She read from written testimony. (EXHIBIT 7). She also presented testimony from **Arlette Randash**, (EXHIBIT 8) who was unable to be present.

Dennis Alexander, Executive Director, represented the **American Lung Association** in support of HB 457. They believe that the use of tobacco products by children is an important public health issue, not only today, but for future generations. On an average in Montana, children begin smoking at an age of 13. He maintained that the reason for early use was simply easy access, such as vending machines. This bill would be a step in the right direction, he said.

Susan Palermo, Health Educator, Lewis and Clark City-County Health Department, Helena, read from written testimony. (EXHIBIT 9)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked **County Attorney Salvagni** about the mechanics of the bill, to make sure it does what they intend it to do. Other than the fine in Sub 2a, it would require "or a separate petition alleging a youth in need of supervision." He said the community service was probably the more important provision. He said the bill would be codified in the tobacco section rather than the Youth Court section. He wondered about jurisdiction of the Youth Court over the youth for a period of time, yet there was no stated limit. A maximum jurisdiction under a misdemeanor statute would be six months, he said. He wanted to put it into the Youth Court Act. Under Line 20, he said there were no parameters on community service. **Mr. Salvagni** said it may need to be corrected in order for the justice court to require the community service as a condition of the sentence. The minors-in-possession law may be prosecuted under Title 45 or it may be prosecuted under the Youth Court Act. The jurisdiction is O.K., here, he said. He said they could either proceed under the Youth Court Act in which case all those dispositions permissible would apply here. Or, if the citation is written in the city or justice of the peace court, it would be prosecuted like a minor-in-possession. He said he thought the court could order the community service. If they juvenile failed to perform it, it would be a contempt of court, bringing the juvenile into the Youth Court. **SENATOR HALLIGAN** said he would like the County Attorney's office to get the same amount of jurisdiction as they would under the Youth Court Act without filing the petition. He wanted to extend the flexibility. **Mr. Salvagni**, referred to 45-5-624, the minors-in-possession law, and guessed that most of the cases would be filed in city or justice courts.

Closing by Sponsor:

REPRESENTATIVE VICK said the bill would not eliminate the problem of youth smoking. But he felt it was a piece of the puzzle and there was a great deal of support for the bill. He said there seemed to be a myth that juvenile smoking was decreasing. He hoped for approval for this appropriate bill.

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HEARING ON HB 474Opening Statement by Sponsor:

REPRESENTATIVE JOHN COBB, House District 50, Augusta, sponsored HB 474, an act entitled, "An act providing for juvenile probation officer training." The bill would aim at uniformity, he said. He said that a performance audit in 1983 on the juvenile justice system which showed substantial differences in the Youth Court operations activities among the 21 judicial districts. Everyone was doing things differently and the training was different. They also determined there was a statutory requirement for 16

hours of training per year, but the training was widely diverse. He said that by allowing the Board of Crime Control to establish the training and centering the authority with that agency, better training should result. The training would be conducted by the Department of Justice. Better uniformity of the training of probation officers would provide for uniformity in the courts. It would have a positive effect on how juveniles were treated in the system. He presented written testimony. (EXHIBIT 10) Because he was presenting a bill in another hearing, he closed the bill at this time as well.

Proponents' Testimony:

Gene Kiser, Director, Montana Board of Crime Control, said the Board stands in support of the bill.

Mary Ellerd, Montana Juvenile Probation Officers Association, said her group was directly affected by this legislation and that they supported it.

Candy Wimmer, Department of Justice, said that they had worked with the Probation Association and the Department of Family Services over the past year to institute a basic training curriculum through the law enforcement academy. To date they had trained 87 officers in the state. The cooperation had been phenomenal. She urged support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARTLETT addressed Ms. Wimmer, saying the House had amended the bill to give some responsibilities to the Department of Justice while the Board of Crime Control retains other responsibilities. She wondered about the reason. Ms. Wimmers said the authority for the actual implementation of training went to the Department of Justice to be done through the Law Enforcement Academy. The Montana Board of Crime Control simply has rule-making authority which they would incorporate under the post council when rules are developed for other law enforcement officers. CHAIRMAN CRIPPEN asked about the funding. Mr. Kiser said the bill refers to the basic funding of the academy. The academy can pick it up in its budget.

EXECUTIVE ACTION ON HB 474

Motion/Vote: SENATOR HALLIGAN MOVED THAT HB 474 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on an oral vote. SENATOR JABS will carry the bill in the Senate.

HEARING ON HB 64Opening Statement by Sponsor:

SENATOR AL BISHOP, representing the heart of Billings, opened HB 64 for REPRESENTATIVE DAVID EWER, House District 53, Helena, who was testifying on another hearing. He said the bill would amend the qualifications for police officers. They may not be less than 18 years of age, a citizen of the United States and shall meet the minimum qualifying standards for employment promulgated by the Board of Crime Control.

Proponents' Testimony:

Alec Hansen, representing the League of Cities and Town, said their organization had asked REPRESENTATIVE EWER to present the bill for a simple reason. The age requirement in the existing statute is causing trouble. If they follow the statute, the cities and towns are open to a lawsuit. They have several lawsuits now resulting from age discrimination. He said it was completely illogical to sue a city or town because they are following statute. The law should be changed instead. The age requirement needs to be removed, he said. He said a parallel federal statute was allowed to expire, causing problems with this state law.

Jim Oberhofer, representing himself and the Montana Peace Officers Standards of Training. He said he was one of the individuals involved in a current lawsuit. As a past chief of police, he had adhered to a state law at a 35-year age limit. He had a person who called and asked what to do with the application when he turned 36. They did not accept it and he was found guilty of violation of the state human rights law for an age discrimination. Two other cities are under that same suit. However, if he had decided the other way, he would have been guilty of violating state law of hiring at a 35-year age limit. Either way, he was in trouble. He asked for the change in the law. The sheriffs and peace officers have not had to abide by this limit, he said.

W. James Kembel, representing the City of Billings, said they would like to be recorded as being in support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR LINDA NELSON asked Mr. Kiser what the minimum qualifying standards were. Mr. Kiser stated an applicant would have to be

18 years of age, a citizen of the United States, a high school or equivalent education requirement, and not be convicted of a felony. **SENATOR LORENTS GROSFIELD** asked why someone like **Jim Oberhofer** would be taken to task rather than just going after the Constitutionality of the statute. **Ann McIntyre, Administrator, State Human Rights Commission**, answered the question. She said that someone who felt that the city or town was in violation of the discrimination laws filed a complaint with the commission and sought adjudication. That is the form the legislature had established, she said. She said it was a choice of form with the filing individual. The law favors a statutory remedy over a Constitutional one. **SENATOR RIC HOLDEN** said he felt the 35 age limit had to do with fitness. What would they do to ensure that the public gets physically fit police officers? **Mr. Oberhofer** said it would fall upon the jurisdiction that is hiring. There are standards set by the academy called the "Cooper's Test," currently being enforced. He said he hoped they did not get sued over the physical requirements.

Closing by Sponsor:

The hearing was closed for the sponsor, who was absent.

EXECUTIVE ACTION ON HB 64

Motion/Vote: **SENATOR GROSFIELD** MOVED THAT HB 64 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY by an oral vote. **SENATOR GROSFIELD** agreed to carry the bill.

EXECUTIVE ACTION ON HB 457

Discussion: **SENATOR HALLIGAN** explained that the minors-in-possession statute which deals with alcohol, is codified in the criminal law section, Title 45, Chapter 5. He, **Valencia Lane** and **Greg Petesch** felt it should be codified in that section and not in the tobacco section, although it should refer to that section for definitions. Another question he had was about community service, which must be performed in 6 months or the court loses jurisdiction. There was no limitation over what length of time, which he said was fine until someone challenged it. **Valencia Lane** explained the amendments, as shown in (EXHIBIT 11).

Motion/Vote: **SENATOR HALLIGAN** MOVED THAT THE AMENDMENT BE ADOPTED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Discussion: **SENATOR HOLDEN** asked if they moved it into the juvenile codes? **SENATOR HALLIGAN** said they put it into the regular criminal code where all the rest of the crimes are. Without it, it would put it under Title 16 which would not make any sense.

Motion: SENATOR HALLIGAN MOVED THAT HB 457 BE CONCURRED IN AS AMENDED.

Discussion: SENATOR NELSON asked about the enforceability of the measure. CHAIRMAN CRIPPEN said it was mentioned in passing. Testimony stated that kids did not believe people about the harmful effects because it was not illegal. SENATOR HALLIGAN said that circumstantial as well as direct evidence can be used. SENATOR HOLDEN said enforceability would not be that big of a problem when the laws were on the books as a deterrent. SENATOR NELSON said that the force of the law would maybe be enough, but it was maybe not going to be enforced if push comes to shove. CHAIRMAN CRIPPEN said the proponents would enforce it. He suggested it would be a good law for the schools to enforce.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote. SENATOR HOLDEN offered to carry the bill.

EXECUTIVE ACTION ON HB 158

Discussion: SENATOR BARTLETT offered amendments (EXHIBIT 12) and said that Carl Schweitzer had offered similar amendments (EXHIBIT 13) which she liked better because of the language.

Motion: SENATOR BARTLETT MOVED THE FIRST SET OF AMENDMENTS, EXHIBIT 12.

Discussion: SENATOR BARTLETT said the amendments addressed the concerns raised by the Montana AFL-CIO and echoed by Jacqueline Lenmark from AIA, which make clear that the ladder or other equipment that is the exclusive route of access to the scaffold would be considered part of the scaffold. Rather than specifying a special section of law as applying to the liability, it would be subject to the comparative negligence principals provided in Title 27. The third amendment moves words in the bill to a different section to make the bill better and more clear. The fourth part strikes the language moved in amendment three from the original location. SENATOR HOLDEN asked Mr. Schweitzer if the amendments were O.K. Mr. Schweitzer said they were. SENATOR BARTLETT said she had Ms. Lenmark, Mr. Schweitzer and Mr. Holzer from the AFL-CIO, and Mr. Hill from the Trial Lawyers all review the amendments.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion: SENATOR BARTLETT MOVED THE AMENDMENT AS CONTAINED IN EXHIBIT 13.

Discussion: SENATOR BARTLETT explained the purpose of the amendment was to make clear that in talking about scaffolding that is on a construction site on this bill.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion: SENATOR BARTLETT MOVED THAT HB 158 BE CONCURRED IN AS AMENDED.

Discussion: SENATOR BARTLETT said that some of them were still at a loss as to what is meant by the words, "fellow employee," or "immediate employer," since what they were talking about in the bill is a sub-contractor or builder. She said there remains something of a mystery still in this bill.

Vote: The MOTION CARRIED on an oral vote with SENATOR STEVE DOHERTY voting no.

EXECUTIVE ACTION ON HB 547

Discussion: Valencia Lane explained the amendments (EXHIBIT 14). She said amendment 2. on Page 1, Line 14, in the inserting clause, where it refers to rules of the Department of Corrections and Human Services, the Department of Justice wanted to insert, "or the Board of Pardons." If you recall Beth Baker's testimony, she said, there was a recent Montana Supreme Court decision that says a court's incorporating of rules by reference is not sufficient under statutory requirements. A fellow was being prosecuted in federal court for possession of arms in violation of state law. The district court's sentencing order incorporated rules of the Board of Pardons and the Department of Corrections and Human Services. The rule says they cannot possess weapons and firearms. The district court sentencing order simply incorporated all of those rules and others by reference. The question was: was the incorporation by reference sufficient under the state statute to say he had been deprived of his rights and should not have been carrying a firearm and therefore could be prosecuted under federal law? The Montana Supreme Court about 10 days ago, said: no, that an incorporation by reference in a sentencing order by a district court judge is not sufficient to meet the requirements of a state statute. That section of law is 46-18-801, Page 1, Line 13. It says the convicted person could be deprived of any Constitutional rights if they are specifically enumerated in the sentencing order. The district court incorporated the department rules by reference. The Department of Corrections and the Department of Justice are concerned about the effect of that ruling and have asked the committee to amend the bill to 46-18-801. On Page 1, Line 14, the Department's offered amendment would amend existing state law to say that if a district court in sentencing an offender

incorporates rules of the Department of Corrections or the Board of Pardons by reference, that it is sufficient and is a specific enumeration for purposes of this statute.

Motion/Vote: SENATOR BISHOP MOVED THE AMENDMENTS AS CONTAINED IN EXHIBIT 15. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Discussion: SENATOR HOLDEN reported that he and SENATOR GROSFIELD had worked on an additional amendment. On Page 1, Line 22, it talked about the unlawful possession of a firearm by a convicted person. On Line 27, it lists the types of crimes a person would not be allowed to have a firearm if committed. On Page 2, Line 7, "sexual intercourse without consent," they had looked in the statute books and thought it applied to statutory rape. It did not reference that age group. He was concerned that if the people were 25 or older, in regular boyfriend-girlfriend relationships, it would not be that heinous of a crime. He said many factors could come into play in that case.

Motion: SENATOR HOLDEN MOVED TO STRIKE LINE 7 ON PAGE 2.

Discussion: SENATOR LARRY BAER asked to hear Section 45-5-503, Subsection 1, (3b). It was read. He said that the section referred to criminal, forcible rape, not statutory rape. It would carry a penalty of not less than 2 years nor more than 20 and \$50,000.

Motion: SENATOR HOLDEN WITHDREW HIS MOTION.

Discussion: SENATOR GROSFIELD asked the meaning of intimidation.

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Valencia Lane explained 45-5-203 and 45-5-221. SENATOR HOLDEN asked for clarification of Page 2, Line 9, (m). Valencia Lane said it was a penalty enhancement for an additional sentence for an offense committed with a dangerous weapon. CHAIRMAN CRIPPEN said the judge could increase the sentence by as much as 25 per cent. SENATOR BARTLETT said the way supervision is defined in this bill, or "active supervision by a probation or parole officer," may be imposed, but not required. In fact, she said a person can't commit the crime described in the bill. It seemed to be a kind of construct here to say they were putting these people under lifetime supervision and the reality is that will not be any supervision. They are simply under the potential for having violated another law, the one they were considering. CHAIRMAN CRIPPEN said if the court thought it was warranted, they could order that the probation officer supervise. SENATOR HALLIGAN answered the question of active supervision. He said it was reporting to the probation officer once a month. It was wearing a bracelet electronically tied to the home they could call up at any time. SENATOR BAER questioned supervision and active supervision. Valencia Lane stated that it was used in a very generic sense, then on Page 2, Line 16, where it states, "active supervision," they are using a more specific sense of the word supervision. The reason the bill was introduced is because under the Constitution, once a person is no longer under the state's supervision and they have served their sentence, the rights are returned to the person. They can no longer prevent them from having firearms, etc. The bill would set up a lifetime supervision, extending the supervision for the lifetime as far as

firearms are concerned. On Page 2, Line 16, it refers to active supervision, which would be the normal relationship with the parole officer. **SENATOR BAER** said there would be no problem. **SENATOR GROSFIELD** said the person could still petition the district court to own firearms then, but they would still be subject to the rules of purchasing firearms. **SENATOR BARTLETT** said the bill comes much closer to being a "feel good" bill than a bill that has much meaning in reality. If a person convicted of one or more of the crimes listed in Section 2 is released from the state supervision for all purposes except the one under which the bill maintains supervision, and no one sees any reason to keep that person under active supervision, they will be able to illegally amass an arsenal if they wanted to, until they were caught. **SENATOR GROSFIELD** disagreed, saying they were subject to 2 to 10 years for each weapon they had. On the other hand, a person under active supervision could break the law as well. The parole officer can't search the house on a daily basis. He thought the bill does do something. **Valencia Lane** said the Department of Justice had asked about the bill's retroactivity because there were thousands of people on probation and parole whose sentencing order include incorporation by reference. This should be made retroactive simply by adoption of a new section on the bill at the end called, "retroactive applicability," which would simply be limited to Section 1. **SENATOR BARTLETT** said that Section 6 of the bill already says that the lifetime supervision provision applies only to sentences imposed after the effective date of this act. **Valencia Lane** stated the concern that thousands of people who are on parole whose sentencing orders include rules of the Department of Corrections and the Board of Pardons that have been incorporated by reference by the sentencing judge that says, they shall abide by the rules which include a laundry list such as checking with the probation officer, can't get married, leave the state, carry weapons, etc. Most of the orders as a matter of practice have incorporated those rules by reference. The concern is, those existing orders may be in jeopardy because of the recent Supreme Court decision that says that incorporation by reference was not sufficient. There was concern that if the amendment says incorporation by reference is sufficient, the committee should make that amendment retroactive. **SENATOR BARTLETT** said it did not match the applicability statements in the bill as it exists. Why does the new crime created only apply to one of these crimes after the effective date? **SENATOR CRIPPEN** said by the Supreme Court's decision that any of the incorporation by references are now in jeopardy. Since they were amending 46-18, it would be appropriate to put in an retroactivity clause if they wanted to. **SENATOR BAER** said they would be jeopardizing the bill by getting into the realm of *ex post facto*, a bill of attainder, and Constitutional issues, and he did not want to get into those items. He opposed the amendment. He said the bill was a good one and he did not want to see it fail because they tried to doctor it too much. **CHAIRMAN CRIPPEN** said the severability clause on Page 3 would take care of those concerns. If Section 1 were made retroactive and it was later held to be

unconstitutional, they could eliminate that portion and keep the rest of the bill intact. **SENATOR BAER** said he was glad the safety valve was there, but still would not support an amendment. **Valencia Lane** repeated the amendment: On Page 3, Line 27, after applicability, she would put, "--retroactive." On Page 3, Line 30, she would add a new Subsection 3, inserting standard retroactive applicability language, saying "New Subsection 3, Section 1, applies retroactively within the meaning of 1-2-109."

Motion: **SENATOR BISHOP** MOVED THE AMENDMENT AS DESCRIBED BY **VALENCIA LANE**.

Discussion: **CHAIRMAN CRIPPEN** explained the reason for amending the bill. The court case that precluded the reference by incorporation was under this code provision in the bill. If it was not already so late in the session, they could have a committee bill that would do this specifically. He suggested they go ahead and do it, then send it back to the House, and any problems would surface at that time.

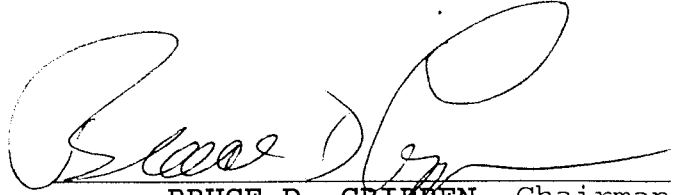
SENATOR BAER objected. He asked why they would want to incorporate something into a bill even with the severability clause that might be found to be unconstitutional later on. Why would they have that mentality to put something into a bill that they felt might be held unconstitutional. There is a difference between incorporation by reference and incorporation by retroactivity. **CHAIRMAN CRIPPEN** said the only way he would see it could be held unconstitutional would be in the provision that gives the legislature the right to pass legislation on a retroactive basis. The provision is constitutional, he said, but the court could disagree with anything they do. He added that they often put severability clauses in legislation where they feel the area is unknown. **SENATOR BAER** said it did not matter if they had done it before and it did not matter if it was challenged in court. It still did not mean it was right.

Vote: The **MOTION CARRIED** on an oral vote with **SENATOR BAER** voting no.

Motion/Vote: **SENATOR BAER** MOVED THAT **HB 547** BE CONCURRED IN AS AMENDED. The **MOTION CARRIED** on an oral vote. The bill was assigned to **SENATOR COLE** OR **SENATOR BAER**.

ADJOURNMENT

Adjournment: The hearing was adjourned by CHAIRMAN BRUCE D.
CRIPPEN at 11:55 a.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

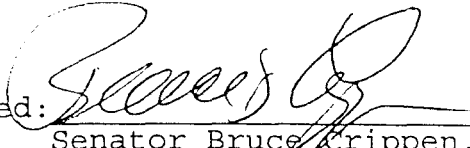
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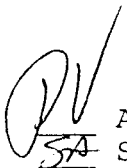
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 474 (third reading copy -- blue), respectfully report that HB 474 be concurred in.

Signed: 
Senator Bruce Crippen, Chair


SA

Amd. Coord.
Sec. of Senate

SEN. JANS
Senator Carrying Bill

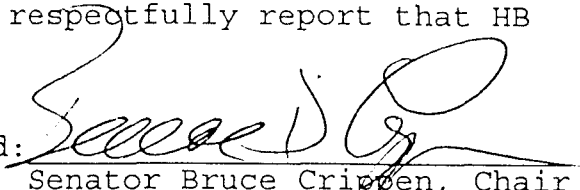
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 64 (third reading copy -- blue), respectfully report that HB 64 be concurred in.

Signed: 

Senator Bruce Crippen, Chair


ST

Amd. Coord.
Sec. of Senate

Sen. Grosfield
Senator Carrying Bill

531223SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 158 (third reading copy -- blue), respectfully report that HB 158 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 16.

Following: "used"

Strike: "for supporting"

Insert: "on a construction site to support"

2. Page 1, line 17.

Following: "term"

Insert: "includes a ladder or other equipment that is the
exclusive route of access to the scaffold but"

Following: "include"

Strike: "a"

Insert: "any other"

3. Page 1, line 24.

Following: "(1)"

Strike: "A"

Insert: "Subject to the comparative negligence principles
provided in Title 27, chapter 1, part 7, a"

4. Page 1, line 25.

Following: "liable"

Insert: "for damages sustained by any person who uses the
scaffold, except a fellow employee or immediate employer"

5. Page 1, line 30 through page 2, line 1.

Following: "SCAFFOLD" on line 30

Strike: remainder of line 30 through "scaffold" on page 2, line 1

-END-



Amd. Coord.

Sec.

Sec. of Senate

Senator Carrying Bill

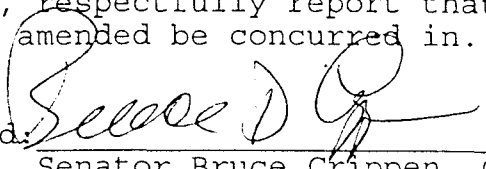
541059SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 457 (third reading copy -- blue), respectfully report that HB 457 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 13.

Following: "product"

Insert: ", as defined in 16-11-302,"

2. Page 2, line 6 (in 2 places).

Strike: "Title 16, chapter 11, part 3"

Insert: "Title 45, chapter 5, part 6"

-END-


SA

Amd. Coord.

Sec. of Senate

Sen. Holden
Senator Carrying Bill

531434SC.SPV

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-7-95
FILED HJR 14 C/A

2-2-93

Jeffrey T. Renz
Shane N. Reely, Legal Intern
Montana Defender Project
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(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA MONTANA

JIM E. THOMPSON,)	
)	
Plaintiff,)	
v.)	Cause No. CV 93-113-CCL
)	
RAVALLI COUNTY BOARD OF)	RULE 200-5 DISCLOSURE
COMMISSIONERS, RAVALLI COUNTY)	
SHERIFF'S OFFICE, JAY PRINTZ,)	
and ALL JAIL EMPLOYEES,)	
individually and officially)	
)	
Defendants.)	

FACTUAL BASIS FOR CLAIMS

The factual basis for Plaintiff's pain and suffering and punitive damage claims are as follows: There was mildew on the roof of his cell block. The shower floor was very slippery, causing him to fall. Water dripped on his bunkbed as a result of condensation. The outside walls were cracked, permitting seepage into the cell block.

The cell block was overcrowded. Plaintiff was not allowed to exercise while he was incarcerated. There were no recreational facilities available to Plaintiff. There were no ventilation vents, there were two fans in the cell block, but both were plugged. The cell block consequently always smelled like defecation. The temperature was unusually cold and the cell was very humid. There were no windows in the cell block. There

1 were no fire sprinklers or fire extinguishers in the cell, nor
2 were there any visible smoke alarms. The jail has insects.
3 Overcrowding resulted in inadequate access to the toilet and
4 commode. Plaintiff contracted athlete's foot and a cold while
5 incarcerated. Plaintiff was exposed to at least one cancerous
6 person with open sores.

7 The clothing and bedding had not been washed prior to
8 Plaintiff's incarceration. Electric outlet on walls occasionally
9 saturated with condensation. Plaintiff was denied access to the
10 telephone and television, and had to make collect calls for local
11 calls. Plaintiff was not provided with adequate cleaning
12 supplies to clean the toilet and commode. Plaintiff was not
13 provided with a special liquid diet, and officials knew that his
14 most of his face had recently been stitched shut and could not
15 eat solid foods.

16 Plaintiff's factual basis for his denial of visitation claim
17 is as follows: The Jail's policy was to permit visitors twice
18 per week for 2 1/2 hours. Each visit lasted thirty minutes. The
19 visits were on a first-come-first-serve-basis. Plaintiff was
20 denied visitation three times when his wife came to see him.
21 Finally, there was no grievance procedure.

22 LEGAL THEORIES

23 Plaintiff relies upon the following constitutional claims to
24 support his claims: Fourteenth Amendment for denial of due
25 process, discrimination, and Equal Protection; Eighth Amendment
26 for cruel and unusual punishment; First Amendment for redress of
27 government.

EXHIBIT 1

DATE 3-7-95

X HJR 14

PERSONS KNOWN TO OR BELIEVED TO HAVE INFORMATION ABOUT THE
CLAIMS IN THE COMPLAINT.

1. Plaintiff
2. Defendants
3. Plaintiff's wife
Address unknown at present
Knows about visitation policy
4. Wallace Arney
Address unknown at present
Inmate at Ravalli County Jail with cancerous sores
5. Deleena Stewart
Address unknown at present
Incarcerated while Plaintiff incarcerated, had all
bodily hair shaved off as a result of vermin in Jail
subsequent to Plaintiff's transfer to Montana State
Prison.
6. All inmates incarcerated during Plaintiff's
incarceration.
Addresses unknown

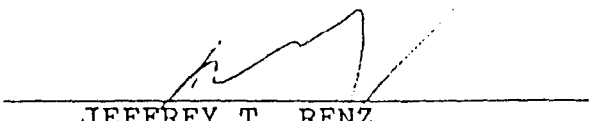
DOCUMENTS

1. Legal papers and correspondence.

COMPUTATION OF DAMAGES AND OTHER RELIEF

1. Actual damages for pain and suffering in an amount stated in
Plaintiff's Complaint.
2. Punitive damages in an amount stated in Plaintiff's
Complaint.
3. Damages for denial of visitation in an amount stated in
Plaintiff's Complaint.

DATED THIS 22 of November, 1993

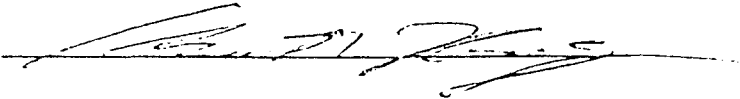


JEFFREY T. RENZ
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I certify that on this ____ day of November, 1993, a true and correct copy of the foregoing was deposited in the U.S. Mail, postage prepaid thereon, addressed to the Defendants as follows:

Dee Ann G. Cooney
Utick & Grosfield
Attorneys at Law
P.O. Box 512
Helena, MT 59624-0512

A handwritten signature in dark ink, appearing to read "Dee Ann G. Cooney", is written over a horizontal line.

1 Jeffrey T. Renz
2 Shane N. Reely, Legal Intern
3 Montana Defender Project
4 University of Montana School of Law
5 Missoula, Montana 59812
6 (406) 243-2222
7 Attorneys for Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * * * *

JIM E. THOMPSON,

Plaintiffs

v.

RAVALLI COUNTY BOARD OF COMMISS-
IONERS, RAVALLI COUNTY SHERIFF'S
OFFICE, JAY PRINTZ, and ALL JAIL
EMPLOYEES, individually and off-
icially

Defendants.

Cause No. CV 93-113-CCL

PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS
FOR ADMISSION AND PRODUC-
TION TO DEFENDANTS

* * * * *

TO: Defendants Ravalli County Board of Commissioners, Ravalli
County Sheriff's Office, Jay Printz, and all Jail
employees, individually and officially:

COMES NOW the Plaintiff, by and through his counsel, and
pursuant to Rules 33 and 36, Fed.R.Civ.P., offers the
following Interrogatories and Requests for Admissions to the
Defendants:

INTERROGATORY NO. 1: Please state the names of all Jail
employees who were employed at the Ravalli County Jail between

1 ANSWER:

2
3
4 INTERROGATORY NO. 2: Please state the names of all persons
5 who actually worked at the Jail, in any capacity,
6 between December 22, 1992, and January 1, 1993.

7 ANSWER:

8
9
10
11
12
13 INTERROGATORY NO. 3: Please state whether the Ravalli County
14 Jail has been inspected by any State or Local Agencies in the
15 past three years.

16 ANSWER:

17
18 INTERROGATORY NO. 4: If the answer to Interrogatory No. 3 is
19 "yes", please state the names of the agencies and inspection
20 officials or personnel who performed such inspections, and
21 the exact dates, beginning with the most recent date.

22 ANSWER:

1 REQUEST FOR PRODUCTION NO. 1: If the answer to Interrogatory
2
3 No. 3 is "yes", please produce all copies of any documents,
4 papers, findings, conclusions, reports, letters, evaluations,
5 and suggestions which were prepared by such agencies.
6

7 INTERROGATORY NO. 5: If any state or local agencies referred
8 to in your answer to Interrogatory No. 3 have made any
9 recommendations or imposed any restrictions upon the Ravalli
10 County Jail, please describe in detail the steps taken by the
11 Jail to address the recommendations or restrictions. Also,
12 if any such agencies have made any recommendations or have
13 imposed restrictions upon the Ravalli County Jail, please
14 describe in detail the steps taken by the Jail to address the
15 recommendations or restrictions.

16 ANSWER:
17
18
19
20
21

22 INTERROGATORY NO. 6: Please describe in detail the
23 ventilation system inside the cell block in which Plaintiff
24 was incarcerated at the Ravalli County Jail.

25 ANSWER:
26
27
28

REQUEST FOR ADMISSION NO. 1: Please admit that there were no windows in Plaintiff's cell block between December 22, 1992, and January 1, 1993.

RESPONSE:

INTERROGATORY NO. 7: If you denied Request for Admission No. 1, please describe in detail the location of any such windows which were inside Plaintiff's cell block between December 22, 1992, and January 1, 1993.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: Admit that there were no fire sprinklers or smoke alarms in Plaintiff's cell block between December 22, 1991, and January 1, 1993.

RESPONSE:

INTERROGATORY NO. 8: If you denied Request for Admission No. 2, please state in detail the number and locations of such fire sprinklers or smoke alarms.

ANSWER:

INTERROGATORY NO. 9: Please state the daily population at the Ravalli County Jail, the design capacity, and the number of permanent bunkbeds inside Plaintiff's cell

1 block.

2 ANSWER:

3
4
5 REQUEST FOR PRODUCTION NO. 2: Please produce a copy of the
6 Ravalli County Jail's evacuation plan.
7

8 REQUEST FOR PRODUCTION NO. 3: Please produce a copy of the
9 floor plan of the Ravalli County Jail.
10

11 REQUEST FOR PRODUCTION NO. 4: Please produce a copy of the
12 Ravalli County Jail policy manual.
13

14 REQUEST FOR PRODUCTION NO. 5: Please produce a copy of every
15 Ravalli County Jail inmate handbook and/or manual.
16

17 REQUEST FOR ADMISSION NO. 3: Admit that the cell block in
18 the Ravalli County Jail had insects between December 22,
19 1992, and January 1, 1993.
20

21 RESPONSE:

22 REQUEST FOR ADMISSION NO. 4: Admit that between
23 December 22, 1992, and January 1, 1993, the Jail employees
24 engaged in the practice of cutting off all of the inmates'
25 access to the telephone and television when one inmate within
26 Plaintiff's cell block committed an infraction or violated a
27

1 Jail rule, policy, or restriction.

2 RESPONSE:

3
4 INTERROGATORY NO. 10: If you denied Request for Admission
5 No. 4, please describe with particularity how Jail employees
6 disciplined inmates for violating Ravalli County Jail rules
7 or regulations.

8 ANSWER:

9
10
11 INTERROGATORY NO. 11: Please describe in detail the Ravalli
12 County Jail's policy or procedure regarding inmates' use of
13 the telephone inside the cell block.

14 ANSWER:

15
16
17
18 REQUEST FOR PRODUCTION NO. 6: Please produce a copy of such
19 policy or procedure described in Interrogatory No. 11.

20
21
22 INTERROGATORY NO. 12: Please describe in detail the Ravalli
23 County Jail's policy or procedure regarding feeding or
24 otherwise caring for inmates who are unable to eat solid
25 foods, and who, as a result of a physical condition, must
26 consume liquids.

27 ANSWER:

1
2
3
4 INTERROGATORY NO. 13: Please state what cleaning materials
5 or supplies were provided to prisoners in Plaintiff's cell
6 block between December 22, 1992, and January 1, 1993.

7 ANSWER:
8

9
10 INTERROGATORY NO. 14: Please state whether any other
11 lawsuits relating to conditions at the Ravalli County Jail
12 have been filed in the past five years.

13 ANSWER:
14

15
16 INTERROGATORY NO. 15: If the answer to Interrogatory No. 21
17 is "yes", please identify by parties and docket number and
18 the describe the disposition of each lawsuit.

19 ANSWER:
20

21 REQUEST FOR PRODUCTION NO. 7: Please produce a copy of the
22 Ravalli County Jail's inmate exercise policy which was in
23 effect between December 22, 1992, and January 1, 1993.
24

25 REQUEST FOR ADMISSION NO. 5: Admit that between December 22,
26 1992, and January 1, 1993, the Ravalli County Jail officials
27 did not allow inmates to physically exercise unless an inmate
28

1 had been incarcerated for thirty (30) days.

2 RESPONSE:

3
4 INTERROGATORY NO. 16: If you denied Request for Admission
5 No. 5, please describe in detail the exercise policy or
6 practices of the Ravalli County Jail between December 22,
7 1992, and January 1, 1993.

8 ANSWER:

9
10
11 REQUEST FOR ADMISSION NO. 6: Admit that during Plaintiff's
12 incarceration in the Ravalli County Jail, the only exercise
13 inmates were allowed was to walk around the block adjacent to
14 the Jail, under the direction of Jail officials.

15 RESPONSE:

16
17
18 REQUEST FOR ADMISSION NO. 7: Admit that there were no
19 recreational facilities available to inmates inside the
20 Ravalli County Jail between December 22, 1992, and January 1,
21 1993.

22 RESPONSE:

23
24 INTERROGATORY NO. 17: If you denied Request for Admission
25 No. 7, please describe any such recreational facilities
26 available to inmates inside the Ravalli County Jail between
27 December 22, 1992, and January 1, 1993.

1 ANSWER:

2
3 INTERROGATORY NO. 18: Please state whether the Ravalli
4 County Jail conducts due process hearings prior to imposing
5 discipline upon inmates.

6 ANSWER:

7
8 INTERROGATORY NO. 19: If the answer to Interrogatory No. 25
9 is "yes", please describe in detail the hearings process.

10 ANSWER:

11
12
13 REQUEST FOR PRODUCTION NO. 8: If the answer to Interrogatory
14 No. 24 is "yes", please produce a copy of any such
15 procedures.

16
17 REQUEST FOR PRODUCTION NO. 9: Please produce a copy of any
18 inmate grievance procedures which were in effect between
19 December 22, 1992, and January 1, 1993.

20
21 INTERROGATORY NO. 20: Please describe in detail the
22 visitation policy or procedure of the Ravalli County Jail.

23 ANSWER:

1 REQUEST FOR PRODUCTION NO. 10: Please produce a copy of the
2 Ravalli County Jail's visitation policy or procedure.
3

4 INTERROGATORY NO. 21: Please state the names of the inmates
5 who were incarcerated in Plaintiff's cell block between
6 December 22, 1992, and January 1, 1993.

7 ANSWER:

8
9 REQUEST FOR PRODUCTION NO. 11: Please permit the inspection
10 of the Ravalli County Jail by Plaintiff's counsel and experts
11 (if any.)

12
13 DATED this 2nd of November, 1993.

14
15 JEFFREY T. RENZ
Attorney for Plaintiff

16 CERTIFICATE OF MAILING

17 I certify that on this 2nd day of November, 1993, a true and
18 correct copy of the foregoing was deposited in the U.S. Mail,
postage prepaid, addressed to the Defendants as follows:

19 Dee Ann. G. Cooney
20 Utick & Grosfield
Attorneys at Law
21 P.O. Box 512
Helena, Montana 59624-0512
22
23
24
25
26
27
28

The University of
Montana

SCHOOL OF LAW
The University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

MISSOULA, MONTANA
March 7, 1995

Sen. Bruce Crippen
Chairman, Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Joint Resolution 14

Dear Bruce:

On February 23, 1995, ACLU attorneys representing inmates in Montana State Prison presented the State's attorneys with a bill for attorneys fees in excess of one-third of a million dollars. This bill arises out of litigation over conditions in Montana State Prison. Because the State settled that case favorably to the plaintiff inmates, it will probably have to pay the entire bill.

Had law students at Montana Defender Project represented the inmates in the case, the bill would have been nothing. This is a single example of the cost savings that the State of Montana realizes when students at the University of Montana Law School provide legal assistance to our prison inmates in civil rights litigation and other legal matters.

Law student representation of inmates in civil rights cases has its source in a 1978 federal law suit, *Ratzlaff v. Zanto*, No. CV 77-59. A prison inmate, initially representing himself, sued the state alleging that he had been denied access to the courts (a right guaranteed to all citizens, including prisoners, by the First Amendment.) United States District Judge (and former Congressman (R-MT)) James Battin immediately ordered the State to appear and show cause why he should not issue a preliminary injunction on the court access issue.

The State appeared, and Judge Battin entered an Order directing the State to submit a plan to provide inmates access to the courts. The State submitted a plan that provided only limited representation by University of Montana law students. Judge Battin disapproved it. The State submitted a second plan. This plan called for representation by Montana Defender Project law students limited only by the rules of professional conduct. The plan included a copy of a proposed agreement for services between the Law School and the then Department of Institutions. This plan was approved by the Court. It was finalized by means of a

Sen. Bruce Crippen
February 28, 1995
Page 2

Consent Judgment entered on September 28, 1978. A copy is attached.

The State of Montana continues to operate under the terms of the *Ratzlaff* plan. Law student representation of inmates has insulated the State from suit over the years. In 1985, the United States District Court heard the case of *Harrod v. South*, No. CV-85-85-BU, in which inmates claimed that the prison law library was inadequate. The District Court dismissed the case after receiving testimony from the Director of the Montana Defender Project describing the services that the Project provided. The ACLU attorneys mentioned above advised the United States Magistrate that the existence of the Montana Defender Project was the only reason that they did not include an access to the courts claim in their litigation. House Joint Resolution No. 14 seeks to change all that.

HJ Res. 14 has a dishonorable pedigree. In 1993, at the personal request of United States Magistrate Bart Erickson, the Montana Defender Project agreed to represent Montana State Prison inmate James Thompson in his pending civil rights claim against Ravalli County for confining him under conditions that amounted to cruel and unusual punishment. The Ravalli County Attorney immediately complained about the Project's appearance in the case. However, he made his complaints to the press, not to the Court. His complaints were conditioned however: he wouldn't feel so bad if the Law School would provide his office with law students who would work there and receive clinical credit.

Although we explained to Mr. Corn the requirements for supervision, education, and training of students in external clinics, he would not hear of them. Since then he has made repeated and inaccurate claims that law students spend all their time suing counties. At his behest, Rep. Dick Green of Ravalli County submitted HJ Res. 14.

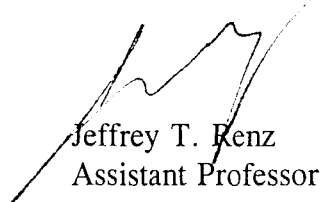
I am disappointed that the Legislature has become involved in what is nothing more than a personal vendetta. All of our law students, because they more often than not go to smaller towns and work in smaller firms where they cannot receive the necessary mentoring and supervision, must complete four credits of clinical training. We have established clinical programs with the Missoula County Attorney's office, the U.S. Department of Agriculture, and Montana Legal Services, among others. Our clinics are like teaching hospitals. They make a commitment to train our students, not merely to use them. More important, the American Bar Association requires the School of Law's faculty to supervise all of its clinical programs and their students. The ABA requires faculty supervision of our external clinics in particular. Otherwise, we cannot allow students to receive credit for participation in these clinics. Our students and our program should not be punished because we do what is right.

We understand that someone will always dispute the merits of a particular case in which a law student may be involved. (For example the State recently complained that a case taken by the Defender Project lacked merit--until the Defender Project successfully moved for summary judgment. In the *Thompson* case, the federal court, after reviewing

Sen. Bruce Crippen
February 28, 1995
Page 3

moving papers by both parties, expressed concern over conditions in the Ravalli County Jail and recommended that we immediately meet to discuss correcting them.) However, our clinical faculty and supervising attorneys are all experienced trial attorneys. We are subject to the Rules of Professional Conduct and to the rules of the courts in which we appear. We think that it is better that these matters be left to the courts than the Legislature be asked to make a decision based on innuendo and half truth.

Sincerely,



Jeffrey T. Renz
Assistant Professor

c: Sen. Al Bishop
Sen. Mike Halligan
Sen. Steve Doherty
Sen. Sue Bartlett
Sen. Lorents Grosfield
Sen. Ric Holden
Sen. Larry Baer
Sen. Sharon Estrada
Sen. Reiny Jabs
Sen. Linda Nelson

EXHIBIT 2
DATE 3-7-95
HJR 14

FILED 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

NOV 2 1977
JOHN E. PEDERSON, CLERK
By Barbara Hill
Deputy Clerk

ROBERT JHON RATZLAFF,)
Plaintiff,)
-vs-)
LAWRENCE ZANTO, Director, Montana) CV-77-59-BLG
Department of Institutions, ROGER W.)
CRIST, Warden, Montana State Prison,)
JAMES BLODGETT, Deputy Warden, Montana)
State Prison, GARY WEER, Associate) ORDER
Warden, Montana State Prison, and SGT.)
B. F. HICKOX, Correctional Officer,)
Montana State Prison,)
Defendants.)

On October 27, 1977, a hearing was conducted in the above-entitled action, wherein the State of Montana's plan to implement the mandate of Bounds vs. Smith, 97 S.Ct. 149 (1977), was discussed. The Court being fully advised in the premises of the proposed plan does hereby find that it meets the requirement of providing meaningful access to the Courts for persons in custody of the State of Montana. Therefore,

IT IS ORDERED that the defendants implement the proposed plan on or before December 1, 1977.

The Clerk is directed to provide the Montana Defender Project, David Patterson, Esq., Director, with a list of cases filed, pro se, by persons incarcerated in the Montana State Prison. Upon receipt of such list, David Patterson is directed to take the necessary steps to bring such cases to issue.

The Clerk is directed to notify the parties of the entry of this order.

Done and dated this 2nd day of November, 1977.

William J. Patterson
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

FILED 18

SEP 10 1977

JOHN E. PEDERSON, CLERK
By *Frederick J. ...*
Deputy Clerk

ROBERT JHON RATZLAFF,

Plaintiff,

-Vs-

LAWRENCE ZANTO, et al,

Defendants.

CV-77-59-Billings

DEFENDANTS' REVISED
PLAN

Pursuant to the Order of this Court, dated August 17, 1977, requesting the Defendants to prepare and submit a revised plan which will insure that inmates incarcerated in institutions in Montana will have adequate and meaningful access to state and federal courts, pursuant to the mandate of Bounds -vs- Smith, _____ U.S. _____ 97 S. Ct. 1491 (1977), the Defendants hereby submit their revised plan.

1. The legal materials that are available or are on order and will be available to inmates housed in the new prison at Deer Lodge, Montana, and the old prison at Deer Lodge, Montana are found in the Appendixes A, B, C, D, which are attached hereto and were made a part of this Court's record at the hearing on June 14, 1977.

The only legal material, at this time, that is available the Swan River Youth Forest Camp, Swan River; Pine Hills School, Miles City, Montana; and the Mountain View School, Helena, Montana would be one complete set of the Revised Codes of Montana. It is not contemplated under this plan that any additional legal materials will be or are mandated to be available. A requirement to maintain law library materials for juveniles is not required under the Bounds -vs- Smith decision.

1 Concerning female felons in institutions in Montana,
2 the following plan is made available:

3 Those female prisoners who are undergoing evaluation at the
4 Missoula County jail could have access to any Montana Defender
5 Project attorneys at staff. No legal materials are available
6 at the Missoula County jail for these women. Those women that
7 would be housed in the community Halfway Center, Missoula,
8 Montana, would have access to the law library at the University
9 of Montana law school. The inmates who, by contract would be
10 housed on a long-term conviction at the Nevada State Prison
11 would have to make use of whatever legal materials
12 are available in that institution. At this time the Defendants
13 are unaware as to the exact composition of the law library at
14 the Nevada State Prison.

15 2. Legal assistance to all inmates in old and new prisons
16 in Deer Lodge, Montana and the Swan River Youth Forest Camp
17 and female offenders in Missoula, Montana County jail will
18 be by legal assistance or the Montana Defender
19 Project located at the University of Montana Law School.
20 The Defendants will enter into a contractual relationship
21 with the University of Montana Law School which will insure
22 adequate legal representation at all levels of inmates request
23 for legal assistance in either state or federal courts. (see Appendix)

24 Concerning the juvenile inmates at the Mountain View School
25 and the Pine Hills School, the legal access can only be maintained
26 by contact with staff attorneys at the Montana Legal Services
27 Association. The Defendants will make every reasonable
28 effort to inform all present youth, and those who are admitted
29 to the institutions, that they have the right to contact the
30 local staff attorney of the Montana Legal Services Association.
31 The Defendants will assure that Legal Services Attorneys will
32 have complete access to youth requesting their services at

1 reasonable times and places.

2 The female offenders housed in the Missoula County jail for
3 evaluation will have access to the Montana Defender Project staff
4 consistant with the rules that are established for any attorney
5 have access to the prisoners in the Missoula County jail. These
6 rules are established by the sheriff of Missoula County, Defendants
7 have no control over those rules. Female offenders housed in the
8 Nevada State Prison on a long-term basis will have to make use of
9 whatever legal aide, attorneys, or public defenders that may be
10 available in the Nevada system. At this time the Defendants
11 have no knowledge of this. Female offenders house at the Halfway
12 facility in Missoula would naturally have reasonable access
13 to Defender Project staff or attorneys of their own choice in
14 the community of Missoula.

- 15 3. Attached are the new rules concerning legal materials that
16 will be allowed in the maximum security housing unit at the new
17 prison at Deer Lodge, (See Appendix F). These are revised as of August 4,
18 1977 and indicate that the number of library books included in the
19 cell does not include legal materials. Also any punishment which
20 would cause a suspension of canteen materials does not include
21 legal materials. Legal materials will have to be requested from
22 the library which is housed at the new prison in Deer Lodge. The
23 materials requested by maximum security inmates will have priority
24 over all other requests. The times which these materials are
25 available will be consistent with new rules giving the inmates
26 priority in this unit to these materials and will try to be
27 filled within a reasonable time but in no case any longer
28 than 48 hours after the request is made.

29 The conditions on which counsel or Defender Projects staff are
30 available to inmates in the maxiumu security houseing unit are between
31 8:00 A.M. and 5:00 P.M. Monday through Friday. However, special
32 requests for other times when justified will be allowable by the

1 institution consistent with security and staff.

2 The Defendants attach a copy of these revised rules as
3 Appendix F to this plan.

4 4. The procedure that the Defendants will implement to inform
5 inmates of state institutions of their rights under the
6 Bounds -vs- Smith decision and this plan if acceptable to
7 the court, it will be my notice to all inmates signed by the
8 Director of the Department. This notice will be placed on all
9 information for public bulletin boards etc., in all of the
10 institutions concerned. This particular notice will inform the
11 inmates of their right under the Bounds decision to meaningful
12 and adequate access to state or federal courts. It will indicate
13 what legal materials are available and what hours and procedures
14 are to be used to have access to the materials.

15 It will explain that these people have access to legal
16 counsel in either the Defender Project or the Montana Legal
17 conditions for requesting such legal counsel will be listed.

18 The foregoing is a proposed revised plan that the Defendants
19 submit pursuant to this Court's Order. The Defendants strongly
20 urge their view of meaningful and adequate access to the state
21 and federal courts is more appropriately supplied by
22 legal counsel rather than library books. For this reason a
23 greater emphasis on the use of legal counsel, especially in
24 the Swan River Youth Forest Camp and the juvenile institutions
25 is stressed. There is not clear mandate of the Bounds decision
26 that these type of offenders need to have access to law library
27 materials. Recognizing that the adult male offenders in
28 Deer Lodge require both access to law library materials and
29 legal counsel, the bulk of the monies to be spent by the
30 Defendants for law library materials and legal counsel are
31 being expended in the area of the adult felons in Deer Lodge.

32 DATED this 10th day of September, 1977.

1 M. Kermit Daniels
2 Attorney at Law
3 313 Missouri Avenue
4 Deer Lodge, Montana 59722

5 Nick A. Roterling
6 Special Assistant Attorney General
7 Department of Institutions
8 1539 11th Avenue
9 Helena, Montana 59601

Attorneys for Defendant

By: Nick A. Roterling
Nick A. Roterling

10 CERTIFICATE OF MAILING

11 This is to certify that the foregoing was duly served by mail
12 upon the following attorneys of record.

13 John P. Conner
14 Attorney at Law
15 211 West Front
16 Missoula, Montana 59801
17 Attorney for Plaintiff

18 David J. Patterson
19 Attorney at Law
20 Law School
21 University of Montana
22 Missoula, Montana 59801
23 Amicus Curine

24 Neil Haight
25 Attorney at Law
26 Montana Legal Services Association
27 Power Block
28 Helena, Montana 59601

29 Nick A. Roterling
30 Nick A. Roterling
31 Attorney for Defendants
32



University of Montana
Missoula, Montana 59812

September 1, 1977

EXHIBIT 2
DATE 3-7-95
X HJR 14

Lawrence Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, MT 59601

Dear Mr. Zanto:

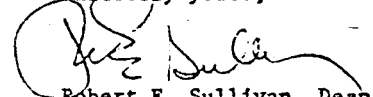
I am enclosing, in duplicate, the contract to provide access by inmates of the state prison and youth camp to legal services in matters involving civil rights complaints. It has been signed by the appropriate University officials and I request that a copy be returned to me after it has been signed by the appropriate state officials.

We have presently a program known as the Montana Defender Project providing services to inmates of the state prison. This program does not provide services involving civil rights complaints. This contract will enable us to integrate the civil rights component into our existing program and utilize effectively law students who have completed two years of law school and who will work under the direction of a faculty member who will be hired to participate in the program.

The contract provides for "adequate legal representation." We reserve the right to exercise independent professional judgment in the representation of inmates and will be guided by the provisions of the Code of Professional Responsibility promulgated by the Montana Supreme Court.

We are pleased to participate in the delivery of these legal services required of the State of Montana and look forward to a productive and continuing relationship.

Sincerely yours,



Robert E. Sullivan, Dean
School of Law

Enc.
RES:dp

Appendix E

Equal Opportunity in Education and Employment

C O N T R A C T

This agreement made and entered into by and between the Montana Department of Institutions, hereinafter referred to as the Department, and the Law School, University of Montana through the Law School, hereinafter referred to as Law School.

Purpose

It is the purpose of this agreement to obtain and provide legal services required by the United State Supreme Court decision of BOUNDS V. SMITH, ___ U.S. ___ 97 S. Ct. 1491 (1977). The principle of that case requires legal counsel for inmates at the Montana State Prison and the Swan River Youth Forest Camp to insure that any inmate in those institutions who desires to file a civil rights complaint will have adequate and meaningful access to the state and federal courts. Therefore, in consideration of the mutual undertakings hereinafter set forth, the Department and Law School agree as follows:

TERMS AND CONDITIONS

The Department and the Law School shall furnish jointly the required personnel, facilities and services to do all things necessary for and incidental to the performance of this agreement as set forth herein. The Law School through the Montana Defender Project will provide

EXHIBIT

2

DATE

3-7-95

HJR 14

adequate legal representation for any inmate requesting such services who is presently incarcerated at either the Montana State Prison at Deer Lodge or the Swan River Youth Forest Camp at Swan River, Montana.

TERM

The term of this agreement shall be from the first day of September, 1977 through the 30th day of August, 1978.

COSTS

The Department shall pay to the University of Montana for the Law School the sum of Thirty Thousand Dollars (\$30,000.00) to carry out the purposes of this contract. The Department will pay in advance one-tenth (1/10) of the contract price to the University of Montana for the Law School on the first business day of each month commencing with September 1 or as soon thereafter as possible.

The Department shall provide at the Montana State Prison in Deer Lodge and the Swan River Youth Forest Camp at Swan River the necessary facilities for interviewing and consultation between inmates and legal counsel or legal interns. The Department shall insure that all records of inmates who verify that they are represented by the Montana Defender Project will be available to the Defender Project.

Nothing herein authorizes intrusion upon the confidential relationship between the inmate as client and the Defender Project as attorney without the written consent of the inmate. This agreement shall not be assigned or terminated without the written consent of the parties.

It is contemplated that this contract will be renewed on an annual basis and that the terms thereof will be renegotiated each year. However, nothing herein binds either the Department or the Law School to renew this contract.

DATED this ____ day of August, 19__.

LAWRENCE M. ZANTO, Director
Department of Institutions

University of Montana
by DONALD HOBBE, Academic Vice president

DAN RUSSELL, Acting Administrator
Corrections Division
Department of Institutions

University of Montana Law School
by ROBERT E. SULLIVAN, Dean

ROGER CRIST, Warden
Montana State Prison

We don't want minors to smoke. Period.

There are many activities that society dictates should be reserved for adults, and Philip Morris believes that smoking is one of them. We do not market our products to minors because we don't want minors to smoke.

But don't judge us by our words, judge us by our actions.

Contrary to what you may hear from our critics, our marketing, promotion and sampling efforts are designed to maintain the loyalty of adult smokers of our brands, as well as to encourage adult smokers of competitive brands to switch.

As far back as 1963, we announced that we would not advertise cigarettes in youth publications or even in college newspapers, even though most college students are 18 years of age or older.

All models appearing in our advertising must be — and must look — at least 25 years of age. We insist on signed certification that an individual is both 21 years of age or older and a smoker in order to be eligible to receive promotional materials from us.

But we recognize that if we are to be true to our word, that *we don't want minors to smoke*, we must address the issue of access to the product by minors. So, we have strongly supported legislative initiatives in all 50 states that establish minimum age requirements for the sale of cigarettes.

It's The Law!

Because Philip Morris does not sell cigarettes to the public, we must rely upon those who do — retailers and vending machine operators — to obey local laws and prevent sales of tobacco products to minors.

To further demonstrate our commitment to prevent cigarette sales to minors, we created the "It's The Law" program, which encourages enforcement of minimum age requirements that we've worked so hard to pass into law. "It's The Law" provides retailers, free of charge, the following tools they need to effectively enforce these laws:

- Information outlining each state's age and licensing requirements, where applicable, for the sale of cigarettes. This information also outlines penalties for sales to minors.
- Educational materials instructing retail employees how to verify purchasers' ages and enforce minimum age laws.
- A selection of the familiar "It's The Law" decals for posting on windows, displays and cash registers. The use of these materials tells the public that retailers and the tobacco industry are working together to prevent minors from obtaining cigarettes.

Philip Morris believes that the decision to smoke should be made only by adults. We are doing everything we can to prevent minors from having access to our products at retail, and we encourage all groups concerned with the issue of youth and smoking to do their part.



**We want you to know
where we stand.**

Our position, word by word.

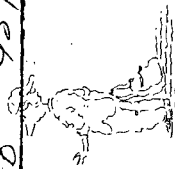
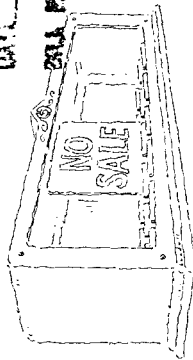
Minors

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-7-95

BY DAVID H. B. 457



No one should be allowed to sell cigarettes to minors. Minors should not smoke. Period.

That is our position.

That's why Philip Morris developed a comprehensive national program to prevent sales of cigarettes to minors.

The program, called "It's The Law," reiterates to retailers and to their employees that it is illegal to sell cigarettes to minors.

We all have a role to play in this effort: Educators. Lawmakers. Parents. Communities. And, of course, the tobacco industry.

At Philip Morris, we will continue to work with our retailers on this important issue.



PHILIP MORRIS U.S.A.

We want you to know where we stand.

Facts Matter

Philip Morris has taken legal action more than 1,800 times where our tobacco brand logos were used illegally, often on products intended for use by minors.

IT'S THE LAW

**WE DO NOT SELL
TOBACCO PRODUCTS
TO PERSONS UNDER 18**

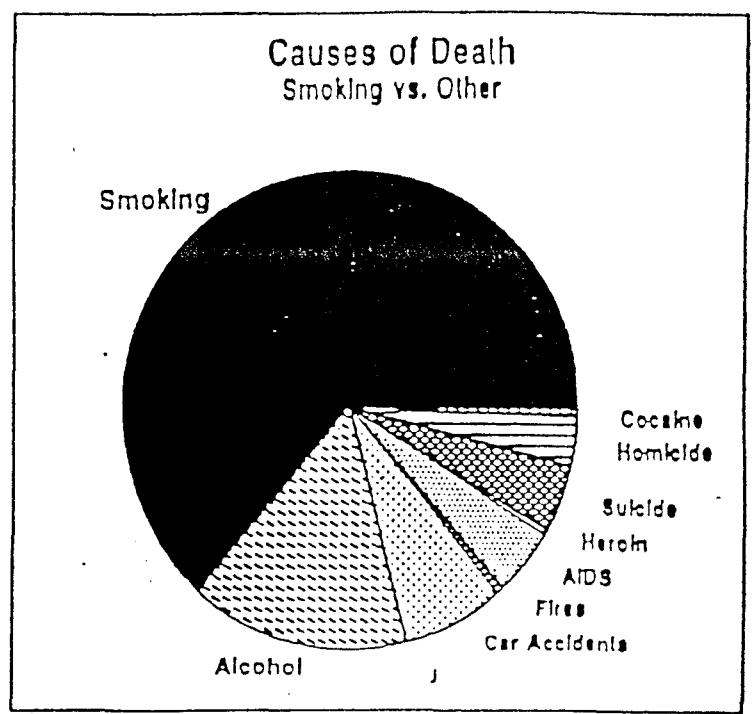
The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Smoking Kills More Americans Each Year Than Alcohol, Cocaine, Crack, Heroin, Homicide, Suicide, Car Accidents, Fires, and AIDS combined.

Approximate Number of Deaths:

Smoking	434,000*
Alcohol (incl. drunk driving)	105,000*
Car Accidents (incl. drunk driving)	49,000*
Fires	4,000*
AIDS	31,000*
Heroin and Morphine	2,400*
Suicide	31,000*
Homicide	22,000*
Cocaine and Crack	3,300*

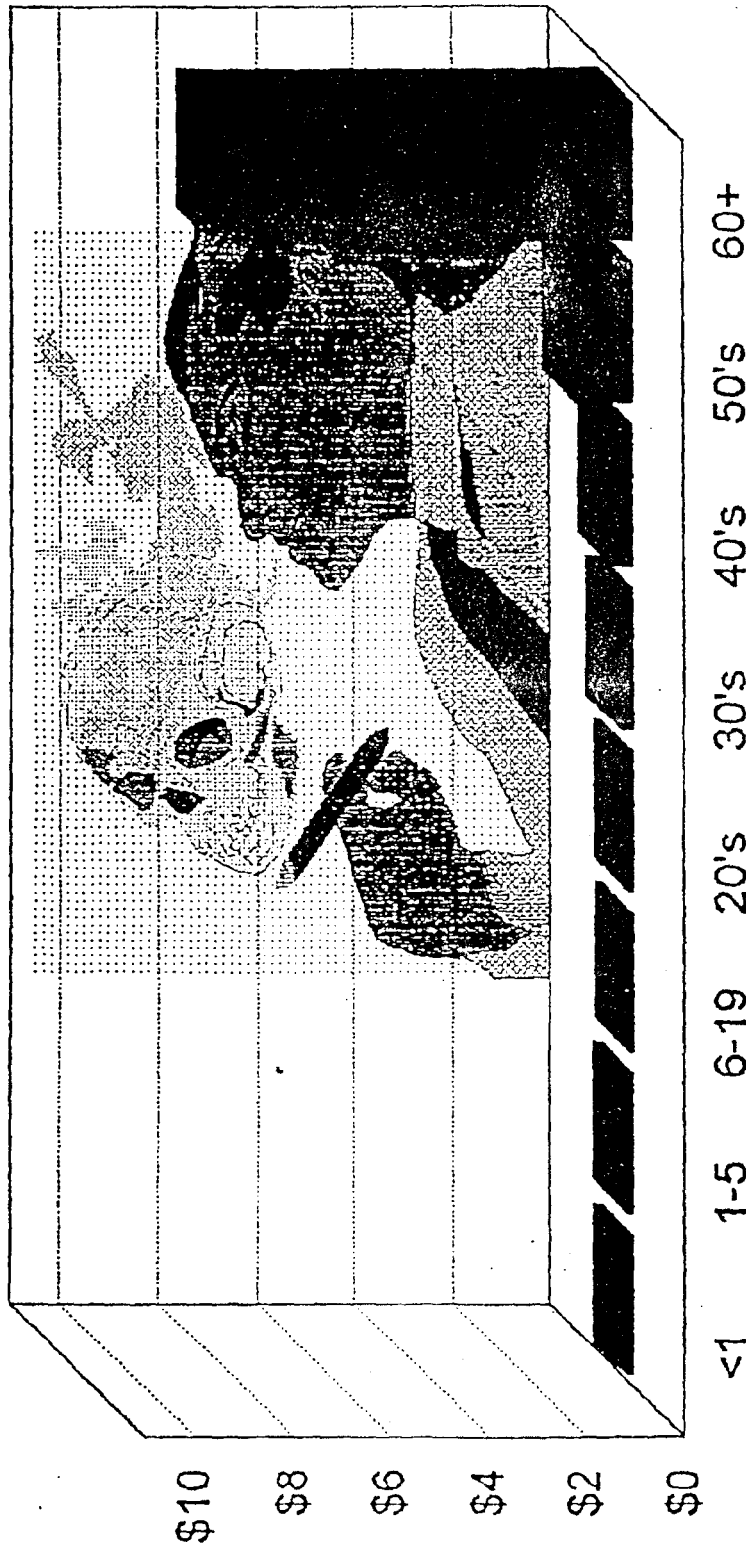
*U.S. Centers For Disease Control, 1988 data
 *U.S. Centers For Disease Control, 1987 data
 *National Safety Council, 1989 data
 *U.S. Centers For Disease Control, 1990 data
 *National Center For Health Statistics, 1988 data



Costs of Smoking To Medicaid

Calendar 1993

\$ in Millions



Age of Recipient

40's
50's
60+

<1
1-5
6-19
20's
30's

TOTAL COSTS \$10,861,765

Cost By Diagnosis By Age Group

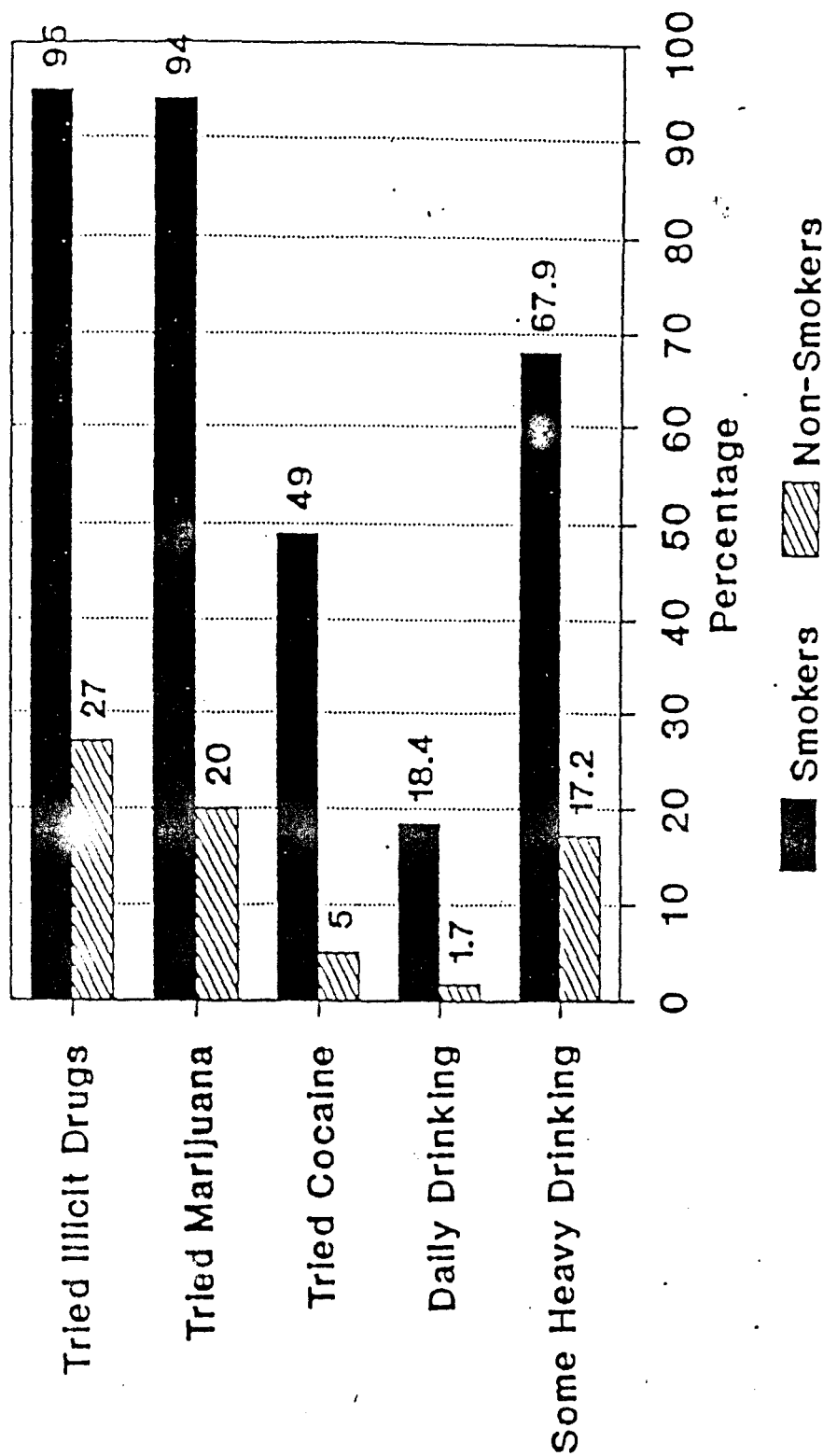
	ICD-9 Code	Disease	\$ < 0	\$ 1 - 5	\$ 6 - 19	\$ 20 - 29	\$ 30 - 39	\$ 40 - 49	\$ 50 - 59	\$ 60 - 64	\$ > 64
	140	Malignant Neoplasm of the Lip	0	\$4,202	\$520	\$0	\$0	\$0	\$1,392	\$0	\$1,887
	141	Malignant Neoplasm of the Tongue	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	142	Malignant Neoplasm of Major Salivary Glands	0	\$0	\$0	\$24,189	\$0	\$3,283	\$1,871	\$117	\$8,173
	143	Malignant Neoplasm of the Gum	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	144	Malignant Neoplasm of the Mouth Floor	0	\$0	\$0	\$0	\$0	\$10	\$2,666	\$41	\$0
	145	Malignant Neoplasm of the Mouth	0	\$0	\$0	\$113	\$0	\$0	\$1,231	\$16,134	\$5,367
	146	Malignant Neoplasm of the Oropharynx	0	\$0	\$0	\$23	\$0	\$0	\$820	\$5,558	\$933
	147	Malignant Neoplasm of the Nasopharynx	0	\$0	\$0	\$0	\$0	\$0	\$35	\$459	\$1
	148	Malignant Neoplasm of the Hypopharynx	0	\$0	\$0	\$580	\$0	\$0	\$2,480	\$5,505	\$461
	149	Other Malignant Neoplasms of the Oropharynx	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	150	Malignant Neoplasm of the Esophagus	0	\$0	\$0	\$0	\$1,186	\$10,299	\$12,575	\$1,128	\$24,923
	155	Malignant Neoplasm of the Liver	0	\$310	\$30	\$0	\$4	\$437	\$2,765	\$579	\$2,642
	157	Malignant Neoplasm of the Pancreas	0	\$0	\$0	\$0	\$0	\$3,738	\$8,574	\$937	\$5,876
	161	Malignant Neoplasm of the Larynx	0	\$0	\$0	\$6	\$850	\$0	\$22,788	\$11,653	\$21,018
	162	Lung / Trachea / Bronchus Cancer	0	\$0	\$18	\$1,064	\$19,686	\$52,896	\$230,527	\$239,888	\$142,362
	170	Malignant Neoplasm of the Uterus	0	\$0	\$0	\$82	\$376	\$47	\$557	\$5,210	\$551
	182	Malignant Neoplasm of the Uterus (body)	0	\$0	\$0	\$6	\$886	\$1,633	\$4,545	\$45	\$1,682
	183	Malignant Neoplasm of the Uterine Adnexa	0	\$0	\$0	\$3,474	\$22,977	\$170	\$2,508	\$403	\$7,598
	188	Malignant Neoplasm of the Bladder	0	\$0	\$8,003	\$0	\$12	\$4,787	\$7,603	\$1,103	\$5,228
	189	Malignant Neoplasm of the Urinary Organs	\$214	\$228	\$116	\$0	\$235	\$12,103	\$4,782	\$5,370	\$4,848
	410	Acute Myocardial Infarction	\$20	\$0	\$0	\$64	\$7,660	\$12,984	\$22,974	\$18,568	\$70,430
	411	Ischemic Heart Disease	\$0	\$0	\$0	\$0	\$4,214	\$19,485	\$15,712	\$11,022	\$15,369
	413	Angina Pectoris	\$0	\$6	\$307	\$158	\$760	\$3,729	\$9,446	\$3,409	\$40,006
	430	Sub Arachnoid Hemorrhage	\$42	\$10	\$8	\$0	\$4,903	\$10,643	\$15,355	\$4,565	\$11,563
	431	Intracerebral Hemorrhage	\$331	\$296	\$0	\$1,228	\$399	\$2,264	\$5,020	\$6,866	\$32,518
	432	Other Intracerebral Hemorrhage	\$209	\$261	\$74	(\$239)	\$595	\$483	\$265	\$3,725	\$10,500
	433	Occlusion and Stenosis of Precerebral Arteries	\$0	\$12	\$0	\$9	\$22	\$5,868	\$15,184	\$14,477	\$41,054
	434	Occlusion of Cerebral Arteries	\$5,811	\$333	\$1,317	\$148	\$17,211	\$22,100	\$37,891	\$20,727	\$152,057
	435	Transient Cerebral Ischemia	\$0	\$0	\$296	\$12	\$350	\$848	\$5,462	\$7,892	\$194,433
	436	Cerebrovascular Disease	\$1,316	\$1,124	\$3,179	\$775	\$33,683	\$33,855	\$63,543	\$75,746	\$1,783,235
	437	Cerebrovascular Disease	\$92	\$765	\$8	\$4,823	\$9,413	\$18,155	\$16,882	\$2,158	\$279,175
	438	Cerebrovascular Disease	\$448	\$125	\$0	\$460	\$5,550	\$18,835	\$54,952	\$34,691	\$853,872
	480	Viral Pneumonia	\$35,634	\$20,686	\$2,423	\$1,585	\$834	\$3,810	\$891	\$241	\$423
	481	Pneumococcal Pneumonia	\$3,414	\$3,652	\$2,674	\$2,620	\$8,057	\$12,829	\$3,898	\$4,291	\$23,420
	482	Other Bacterial Pneumonia	\$2,412	\$3,458	\$16,835	\$13,735	\$14,714	\$14,788	\$26,947	\$17,385	\$19,597
	483	Pneumonia Caused By Other Organism	\$1,680	\$48	\$169	\$93	\$51	\$64	\$76	\$2	\$4,809
	484	Pneumonia in Infectious Diseases	\$39	\$0	\$5	\$0	\$37	\$8	\$0	\$0	\$83
	485	Bronchopneumonia	\$10,603	\$8,011	\$4,081	\$1,513	\$919	\$405	\$284	\$1,208	\$19,125
	486	Pneumonia (Organism Unspecified)	\$55,442	\$47,723	\$19,784	\$17,704	\$22,254	\$27,133	\$33,776	\$24,532	\$207,427
	487	Influenza	\$2,399	\$13,935	\$4,671	\$4,785	\$3,554	\$2,483	\$1,824	\$719	\$9,277
	491	Chronic Bronchitis	\$3,178	\$2,028	\$11,731	\$4,532	\$12,831	\$24,938	\$103,893	\$55,701	\$201,200
	492	Emphysema	\$0	\$132	\$0	\$31	\$10,428	\$8,003	\$24,481	\$42,682	\$218,573
	498	Chronic Airway Obstruction	\$684	\$5,328	\$725	\$2,881	\$53,558	\$67,804	\$367,110	\$298,614	\$3,251,737
	Totals		\$124,064	\$115,872	\$77,135	\$87,303	\$254,444	\$411,699	\$1,153,085	\$845,248	\$7,893,107

Grand Total \$10,881,765

EXHIBIT
DATE 3-7-95
HB 457

TOBACCO AS A GATEWAY DRUG

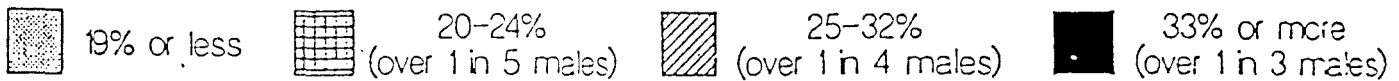
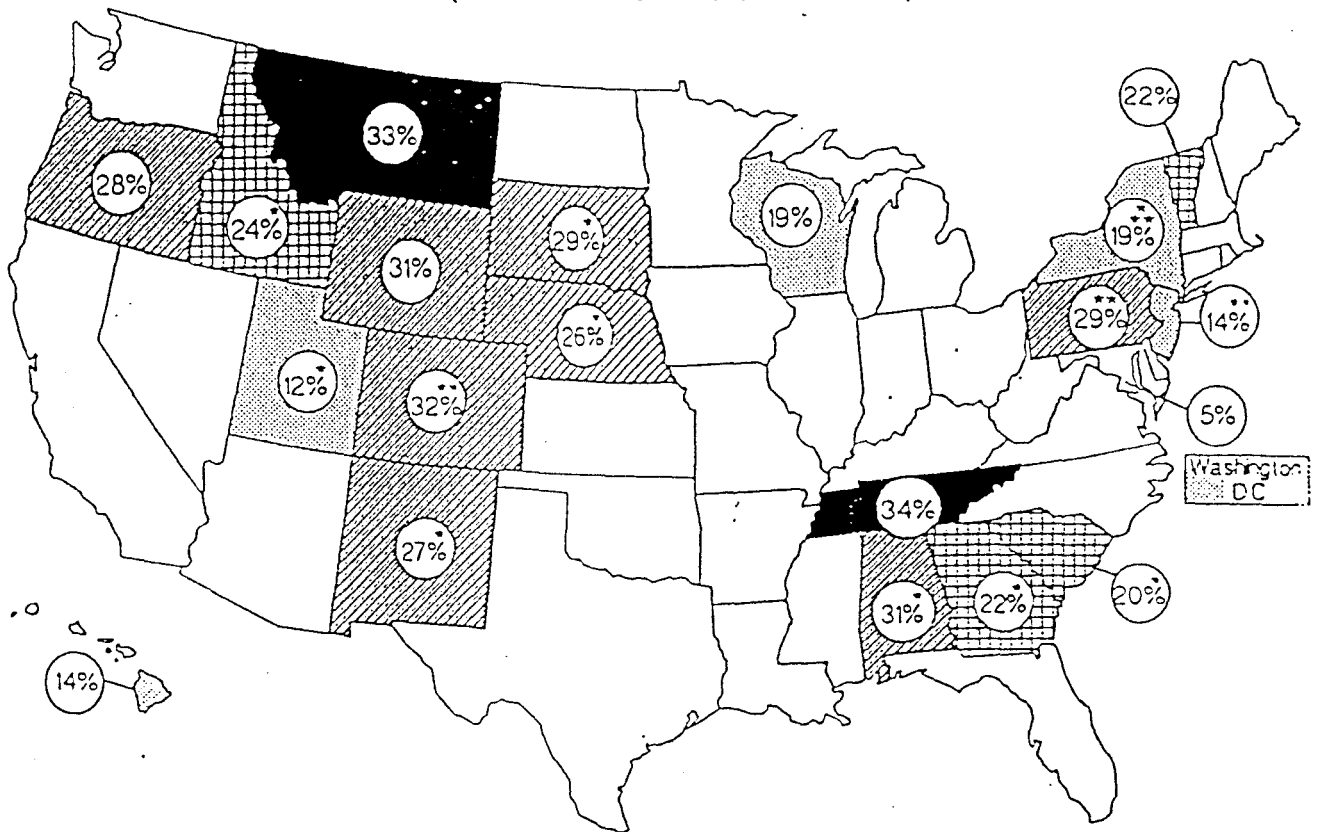
Percentage of High School Seniors Who Have
Tried Illicit Drugs and Alcohol
Smokers/Non-Smokers



Source: U.S. National Institute on Drug Abuse:
National Trends in Drug Use and Related Factors Among
American High School Students and Young Adults 1976-80

Males Currently⁺ Use Spit Tobacco At High Rates In Twenty States.¹

(Source: YRBS 1991 Grades 9-12)



• Weighted data

•• Surveys did not include students from the largest city.

+ Preceding 30 days

¹ Includes Washington D.C.

Survivor preaches anti-chew message

By JOAN HAINES
Chronicle Staff Writer

Call it snoose, smokeless tobacco, snuff, chew or chaw, Rick Bender of Roundup just calls it bad.

Bender told Bozeman students today he lost half of his jawbone and a third of his tongue and almost died after getting oral cancer, which he attributed to sucking on tobacco.

"I put mine smack dab in the front of my mouth," Bender said.

"What's the average age people start using smokeless tobacco?" Bender asked about 130 students in Paula Schumacher's eighth-grade class at Chief Joseph Middle School this morning.

Several students guessed 13, 14 and 15 years of age.

"It's 10," Bender said.

Bender, 33, asked the students how many knew someone who used smokeless tobacco. Almost all of them raised their hands.

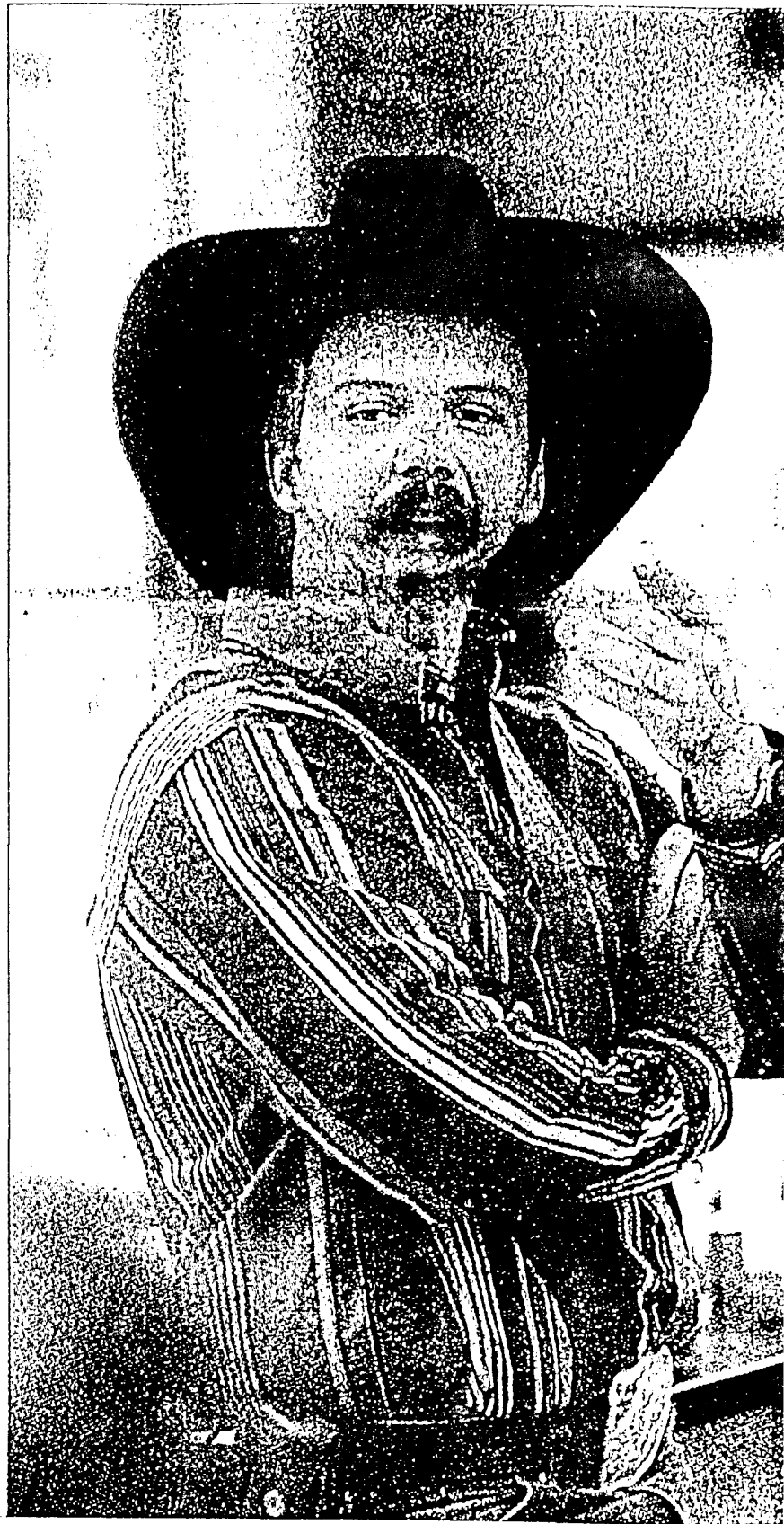
Statistics show the use of smokeless tobacco in Montana is 2 1/2 times the national average, he said. Montana ranks second in the nation in its use, surpassed only by Kentucky.

He is speaking in several Montana cities as part of a "Tobacco Free Montana" program. His talks are financed by a Centers for Disease Control grant awarded to the American Lung Association of Montana.

"If I had my life to live all over again, I would never use a tobacco product," Bender said in an interview before his talk.

Tobacco company officials have said their products are not dangerous to human health.

Employees working for companies that declare cigarettes off-limits sometimes turn to smokeless tobacco, Bender said. Many youngsters begin using it because they want to appear "cool" and they think it is less dangerous to their health than cigarettes. But that isn't true, he said.





YOUTH ACCESS TO TOBACCO

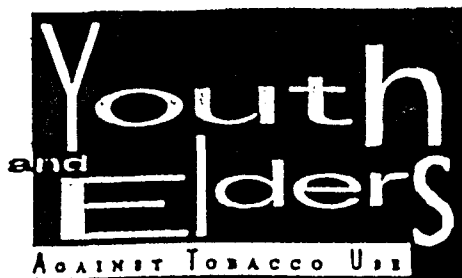
March 1994

- ✓ Although it is now illegal in all states to sell cigarettes to persons under age 18, children and adolescents have easy access to tobacco products. One author estimated that underage persons can purchase cigarettes 70%–80% of the time over the counter and 90%–100% of the time through vending machines.¹
- ✓ Each year, merchants illegally sell to minors 947 million packs of cigarettes and 26 million containers of spitting tobacco. These products are worth \$1.26 billion, and they generate \$221 million in tobacco industry profits.²
- Among the estimated 2.6 million U.S. smokers aged 12–17 years in 1989, about 1.5 million (58%) usually bought their own cigarettes.³
- Of the estimated 13.9 million youths aged 12–17 years who had not smoked a cigarette in 1989, about 62% believed it would be easy for them to get cigarettes — including 53% aged 12–15 years and 88% aged 16–17 years.³
- Among youths aged 12–17 years who usually bought their own cigarettes in 1989, about 85% often or sometimes bought them from a small store, 50% from a large store, and 15% from a vending machine.³
- Children can purchase cigarettes from vending machines placed in “adult only” areas, such as bars, 77% of the time.⁴
- Only 54% of the executives of the 148 largest U.S. companies that sell tobacco products could correctly identify the minimum age of purchase in the state where they live.⁵
- The recently enacted Synar Amendment, Public Law 102-31, requires that all states enact and enforce a law prohibiting the sale or distribution of tobacco products to minors (persons <18 years old) as a condition of receiving full funding from block grants from the Substance Abuse and Mental Health Services Administration.⁶

REFERENCES

1. Altman D, Foster V, Rasenick-Douss L, et al. Reducing the Illegal Sale of Cigarettes to Minors. JAMA 1989;261:80-83.
2. DiFranza JR, Tye JB. Who Profits from Tobacco Sales to Children? JAMA 1990;263:2784-2787.
3. Centers for Disease Control. Accessibility of Cigarettes to Youth Aged 12–17 Years - United States, 1989. MMWR 1992;41:485-488.
4. Foster JL, Hourigan M, McGovern P. Availability of Cigarettes to Underage Youth in Three Communities. Preventive Medicine 1992;21:320-328.
5. Altman D, Linzer J, Kropp R, et al. Policy Alternatives for Reducing Tobacco Sales to Minors: Results from a National Survey of Retail Chain and Franchise Stores. Journal of Public Health Policy 1992;13:318-331.
6. Centers for Disease Control and Prevention. Minors' Access to Tobacco - Missouri, 1992 and Texas, 1993. MMWR 1993;42:125-128.





YOUTH AND TOBACCO ADVERTISING

March 1994

- The Surgeon General concluded in 1989 that tobacco advertising and promotion do appear to stimulate cigarette consumption.¹
- ✓ • Tobacco companies spent nearly \$4 billion in 1990 — or about \$11 million a day — to advertise and promote cigarettes. Increasingly, these marketing dollars are going toward promotional activities that may have special appeal to young people, such as sponsorship of public entertainment, distribution of specialty items bearing product names, and the issuing of coupons and premiums.²
- Cigarette advertisements tend to emphasize youthful vigor, sexual attraction, and independence — themes that are likely to appeal to teenagers and young adults struggling with these issues.³
- About 85% of adolescent smokers prefer either Marlboro, Newport, or Camel, the three most heavily advertised cigarette brands.⁴
- ✓ • Cigarette promotions of televised sporting and entertainment events heavily expose large numbers of youth to implicitly prosmoking messages. During the 1989 Marlboro Grand Prix Telecast, for example, the Marlboro logotype was seen or mentioned nearly 6,000 times and was visible for 46 of the 94 minutes the race was broadcast.⁵
- Tobacco company spending for specialty gift items (such as T-shirts, caps, sunglasses, key chains, calendars, and sporting goods) bearing a cigarette brand logo increased 17%, from \$262 million to \$307 million, between 1989 and 1990.⁶
- ✓ • “Old Joe,” the cartoon camel used to advertise Camel cigarettes, is as familiar to children aged 6 years as Mickey Mouse’s silhouette. A study found that 91% of 6-year-olds recognized Old Joe and linked him with his product. This was the same recognition level measured for the Disney icon.⁶
- Since the Old Joe cartoon character was introduced in 1988, Camel’s share of the adolescent market has increased dramatically — from less than 1% before 1988 to 8% in 1989. Some studies suggest market share after 1989 as high as 30%.^{7,8}
- Under a voluntary code of advertising adopted in 1964, cigarette companies agreed not to advertise in publications directed mainly to an audience under 21 years of age. In February 1990, a marketing firm under contract for R.J. Reynolds Tobacco Company developed plans to promote “Dakota” brand cigarettes to 18- through 20-year-old women.⁹
- ✓ • Cigarette advertisements appear in publications with large teenage readerships. In *Glamour*, 25% of whose readers are females 18 year old and under, cigarette advertising expenditures were \$6.3 million in 1985. In *Sports Illustrated*, 33% of whose readers are males under 18, cigarette advertising expenditures were \$29.9 million in 1985.³
- Healthy People 2000 Objective 3.15 intends to eliminate or severely restrict all forms of tobacco product advertising and promotion to which youth younger than age 18 are likely to be exposed.¹⁰



TRENDS IN TOBACCO USE AMONG YOUTH

March 1994

- Each day, more than 3,000 young people begin to smoke — or more than 1 million each year. Most of the new smokers who replace the smokers who quit or die prematurely from smoking-related disease are children or teens.¹
- The prevalence of cigarette smoking among high school seniors remained virtually unchanged from 1981 through 1990. In 1992, 17% of both male and female high school seniors were daily cigarette smokers.²
- Almost 75% of daily smokers in high school still smoke 7 to 9 years later, even though only 5% had thought they would definitely be smoking 5 years later.³
- In 1989, about 64% of teenagers who are current smokers had made at least one serious attempt to quit.⁴
- About 90% of smokers born since 1935 started smoking before age 21 and almost 50% started before age 18.⁵
- Use of smokeless tobacco among youth is a growing problem. Between 1970 and 1986, the use of snuff increased 15 times and the use of chewing tobacco 4 times among males aged 17-19 years.⁵
- Many factors interact to encourage cigarette smoking among youth, including smoking by peers and family members, tobacco advertising and promotion, and easy availability of cigarettes.⁵
- The most consistent influence on cigarette use among adolescents is having friends who smoke. About 80% of adolescent smokers report having at least one close friend who smokes. About 20% of adolescent who don't smoke report having at least one close friend who smokes.⁴
- About half of adolescent smokers have parents who smoke. Teenagers are three times more likely to smoke if their parents and at least one older sibling smoke.⁶
- About 85% of adolescent smokers who buy their own cigarettes usually buy Marlboro, Newport, or Camel cigarettes, the most heavily marketed brands.⁷
- White high school seniors are on average five times more likely to smoke than black high school seniors. Smoking prevalence among Hispanics falls in between.²
- Among male high school seniors, the prevalence of smoking half a pack of cigarettes or more a day is 18% among Native Americans, compared with 12% among whites, 5% among Mexican-Americans, 4% among Asian-Americans, and 2% among African-Americans.⁸



Associated Press

Police Sgt. Buzz Talbot, author of the restrictive tobacco-sale ordinance, sits in his patrol car outside a convenience store in Woodridge, Ill.

Tough anti-smoking law aimed at teens is working

WOODRIDGE, Ill. (AP) — Thirteen-year-old Eric Lemons has tried a half-dozen times to buy cigarettes in his hometown. No luck.

"They just won't sell them. They ask for your ID," he says.

In this middle-class Chicago suburb, youngsters under 18 have about as much chance of buying a pack of cigarettes as they do of buying a bottle of vodka.

It's a result of one of the nation's toughest tobacco-control ordinances. Enforced with undercover "sting" operations using teenage decoys and \$25 fines for minors caught with tobacco, the law is credited with cutting teen smoking rates to a fraction of national levels.

"It's considered model legislation across the United States," said Diana Hackbarth, a community-health nursing professor at Loyola University of Chicago.

Outlawing the sale of tobacco products to teens isn't unusual; 44 states set a minimum age for purchasing the product. But actually keeping tobacco out of teens' hands is unusual; federal experts estimate that by high school age, one youth in three smokes or uses smokeless tobacco.

The Woodridge ordinance has its roots in a junior high school principal's complaint in 1988 that a student had bought cigarettes at a store just half a block from school.

The complaint went to police Sgt. Bruce "Buzz" Talbot, who came up with the tough anti-tobacco provisions that were enacted in 1989.

Any Woodridge merchant who sells tobacco to the minor can be fined up to \$500. Repeat offenders can have their city-issued tobacco sale licenses suspended or revoked. Violators answer to the mayor, who is also the tobacco control commissioner, so

Woodridge's law holds minors accountable, too. Anyone under 18 caught with tobacco gets a \$25 ticket. If a minor is caught trying to buy tobacco, the ticket is \$50.

"Most kids who try to buy (cigarettes) in convenience stores, they'll get told ... 'Get out, or we'll call the cops,'" 13-year-old Lisa Uselis said.

Some youngsters who have been ticketed end up on the other side of the law, as undercover decoys. On a volunteer basis only, they are sent undercover to every licensed tobacco merchant in the city. Each of the city's 35 tobacco merchants gets an announced visit four times a year.

The first teen decoys were the children of police officers, then their friends and other volunteers.

"The kids really enjoy it," Talbot said. "To them it's a big adventure. They feel like they're James Bond, 007, going out there — police undercover agent."

"They're very popular at school when they do it. There was some concern that they would be ostracized. It's just the exact opposite. ... We have more volunteers than we could possibly use."

Smoking rates among adolescents in Woodridge have dropped sharply since the law was enacted, according to psychology Professor Leonard A. Jason of DePaul University in Chicago, who surveyed local youngsters before and after the ordinance went into effect.

The percentage of seventh- and eighth-graders experimenting with cigarettes dropped by half, and the rate of regular smoking among adolescents dropped by two-thirds, he found.

Merchants, too, have accepted the law well. "I don't think it's that much of a hassle," said Joanne Duffy, manager of Doc's Drugs. "It takes two seconds to ask for ID."

STATES THAT PROHIBIT THE POSSESSION/CONSUMPTION
OF TOBACCO PRODUCTS BY MINORS *

<u>State</u>	<u>Penalty</u>
1. Illinois	\$200-\$600 Fine
2. Louisiana	Less than \$50.00 up to \$400.00
3. Minnesota	\$200.00 Fine
4. Oregon	\$100.00 Fine
5. Rhode Island	\$100.00 Fine
6. Colorado	\$50.00 Fine
7. Arizona	Petty Offense
8. Georgia	Community Service Education
9. Idaho	Misdemeanor Fine
10. Iowa	Civil Fine
11. Maryland	Fines Community Service Education
12. Michigan	\$50.00 Fine
13. New Hampshire	\$25.00-\$50.00 Fine
14. Oklahoma	\$25.00-\$50.00 Fine Driver's License
15. Tennessee	Community Service \$50.00 Fine
16. Virginia	\$50.00 Fine
17. West Virginia	\$5.00 Fine
18. Wisconsin	\$25.00 Fine Driver's License Hunting & Fishing License
19. Wyoming	\$25.00 Fine
20. Alaska	Fines Youth Detention

* According to information gathered by the association of
State and Territorial Health Officials (ASTHO), 415 Second
Street NE, Suite 200, Washington, DC 20002



Jill Richards
Gallatin County
Superintendent of Schools
311 West Main, Room 101
Bozeman, MT 59715

Telephone (406) 582-3090
Telefax (406) 582-3112

January 24, 1995

To Whom It May Concern:

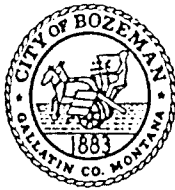
As Superintendent of Schools for Gallatin Count, I fully support the bill to prohibit the possession or consumption of tobacco products by minors.

Society has prohibited minors to possess and/or consume harmful substances, such as alcohol and non prescribed drugs. Looking at scientific research concerning the effects of tobacco products, it would be logical to label tobacco as a harmful substance as well.

Children have enough decisions to make, without needing to make life threatening decisions about whether to consume a dangerous substance that may become an addiction. As someone who is concerned about children and youth, I advocate that our society should discourage our children of Montana from starting a life long habit of destruction.

Jill Richards, MA
Gallatin County Superintendent of Schools

BOZEMAN POLICE DEPARTMENT



Law & Justice Center
615 South 16th Avenue
Bozeman, MT 59715
(406) 582-2000

TDD/TTY 582-2001 FAX 582-2002

EXHIBIT 5
DATE 3-7-95
HB 457

January 12, 1995

Dennis Hardin
113 South 19th
Bozeman, Montana 59715

Dear Mr. Hardin,

I have sent letters to the Legislative Chairman of the Montana Police Protective Association and the President of the Montana Chiefs of Police Association regarding the proposed minor's in possession of tobacco products bill. I also sent copies of the proposed draft and have requested they consider supporting this bill.

On behalf of the Bozeman Police Department I will support this bill and you are authorized to inform legislators of this support.

If time allows and my schedule is open, I will testify.

Sincerely,

Larry Conner, Chief



BUTTE-SILVER BOW HEALTH DEPARTMENT

25 WEST FRONT

BUTTE, MONTANA 59701

406-723-3274

FAX 406-723-7245

March 6, 1995

The Honorable Bruce Crippen
Montana Senate
Capitol Station
Helena, Montana 59620-1706

Dear Senator Crippen:

I am writing to ask your support for House Bill #457. Those of us who are in the business of prevention feel this could have a positive effect on delaying or preventing the use of tobacco by our youth. I think its interesting that studies show that early tobacco use has correlation to early sexual activities, so in effect this could be an effort to also prevent teen pregnancy.

Thank you for your consideration.

Sincerely,

Gan Cossel, R.N.
Public Health Nurse
Butte Health Department

GC/bf

ROBERT J. FLAHERTY, MD

416 W. Arnold St.
Bozeman, MT 59715-6135
Voice: (406) 586-1157
Fax: (406) 994-6993

3 March 1995

Mr. Bruce Crippen
Chair, Senate Judiciary Committee
Montana State Senate
Capitol Building
Helena, MT

EXHIBIT 5
DATE 3-7-95
HB 457

Dear Chairman Crippen,

I write in support of HB 457. This bill will do much to address the problem of teenage smoking, a growing problem in my medical practice. It is well known that the majority of smokers begin smoking during adolescence. Indeed, it is rare for a person beyond their teens to begin smoking. The risks of smoking are well documented and efforts to decrease smoking are important if we are to decrease the illness and death associated with the use of tobacco.

Laws forbidding the purchase of tobacco by minors are not sufficient. HB 457 will provide an additional discouragement to smoking and tobacco use in teenagers, and, as has been shown, if individuals do not start smoking as teenagers, it is unlikely that they will begin smoking as young adults. HB 457 has my solid support, and I respectfully request that you and your Committee give HB 457 your strongest consideration.

Sincerely,

Robert J. Flaherty, MD

January 26, 1995

To Whom it May Concern:

This ordinance has been written to combat several dangerous conditions which exist within the City of Miles City.


Currently citizens believe that possession of a tobacco product by a juvenile, particularly cigarettes, is illegal. They assume that if it is illegal to sell a tobacco product to a juvenile it is also illegal for them to possess it. This assumption is false, there is no law forbidding possession of a tobacco product by a juvenile.

On more than one occasion, officers have witnessed juveniles at the Beacon Carter Gas Station standing next to the gas pumps smoking cigarettes. Once they observe patrol units they drop their burning cigarettes onto the ground next to the gas pumps, thus creating a hazard endangering life and property. Officers confront them and advise them not to smoke next to the gas pumps. As the officers leave the area several other juveniles take their place and the dangerous activity is resumed. Federal operational requirements prohibit smoking materials within 20 feet of areas used for fueling, however, there is no penalty provided for violating this Federal requirement.

Another dangerous condition that exists is during the school lunch hour. Many Junior High School and Senior High School students stand next to the M&H gas station smoking cigarettes. They place their burning cigarettes on the window sill of the M&H Gas Station and stand in front of them to hide them from officer's view. Students also stand across from the High School smoking cigarettes. When they observe officers they drop their burning cigarettes onto the ground or throw them out of sight. Sometimes these burning cigarettes land in piles of leaves or near vehicles or houses. These types of activities pose a threat to life and property.

Even though conditions such as these exist, there are no laws or ordinances in effect to help correct them. Enacting a tobacco ordinance would lessen and very possibly end a large amount of the dangerous conditions created by juveniles.

Sincerely,


Mark D. Reddick

Miles City Police Department

Good Luck!

EXHIBIT 5
DATE 3-7-95
HB 457

FLATHEAD C.A.R.E.

P.O. Box 370 • Kalispell, Montana 59903 • Area Code (406) 756-6986

C.A.R.E. Board of Directors

DeAnn Thomas, Coordinator

Executive Committee:

President: Mike Anderson

Vice-Pres: Jeff Buscher

Part Pres: Karla Jones

Treasurer: Charlene Avery

Secretary: Shelly Brander

March 2, 1995

TO: Bruce Critpen

FROM: DEANN THOMAS, COORDINATOR
DRUG FREE SCHOOLS - FLATHEAD C.A.R.E.
P.O. BOX 370
KALISPELL, MT 59901

Board Members

Charlene Avery

Diane Balding

Maggie Brown

Jeff Buscher

Mike Cummins

Wendy Dooley

Vivian Harrison

Karla Jones

Bernie Lund

Eva Mast

Carol McGuire

Jim Mollenkopf

Nick Nyman

Jan O'Brien

Nancy Robinson

Larry Sanders

Lix Seabaugh

Terry Willis

Pat Winkal

On behalf of the Flathead C.A.R.E. and Drug Free Schools board of directors, I would like to offer our support of House Bill No. 457 entitled: "An Act Prohibiting The Possession Or Consumption Of Tobacco Products By A Youth Court Upon Conviction; and Amending Section 41-5-203, MCA."

The existing law makes no sense and is considered farce by kids. As it is written now, minors can not buy tobacco products but they CAN use tobacco products. So there is no way schools, law enforcement, etc. can do anything to curtail tobacco use in many places and in many situations, but especially around schools where so many small children watch this ugly behavior. Please remember that anything, i.e. laws, accessibility, education, that makes this drug more difficult for kids to use will pay off BIG, BIG dividends for years to come.

Please, also remember that the tobacco companies have millions of dollars to pour into this state to defeat any tobacco curtailing legislation. While most the work that is done for the health and welfare of kids on this issue is done by volunteers who care and with no financial backing.

Please stand-up and do the right thing for our children. Thank-you for taking time to read this letter of support.



Montana Academy of Family Physicians
2021 Eleventh Avenue Helena, Montana 59601
Telephone (406) 443-4000 FAX (406) 443-4042



March 3, 1995
Friday

TO: SENATOR BRUCE CRIPPEN

FROM: LAWRENCE A. HEMMER, JR., M.D., PRESIDENT

Dear Senator Crippen:

The board and membership of the Montana Academy of Family Physicians would like to endorse House Bill 457.

Certainly the sale of tobacco products to minors continues to be a significant health concern to all Montanans, especially to the Family Physicians who treat them.

Thank you for promoting this legislation.

LAH:le

BOZEMAN POLICE DEPARTMENT



Law & Justice Center
615 South 16th Avenue
Bozeman, MT 59715
(406) 582-2000

TDD/TTY 582-2001 FAX 582-2002

EXHIBIT 5
DATE 3-7-95
1 HB 457

February 10, 1995

Honorable Bob Clark,

This letter is to express to you Chief Larry Conner's and my support of HB 457.

When I initially was informed of HB 457 I have to admit that it appeared as unenforceable. However, after careful consideration it appears that the benefits attainable far out weigh any other approach.

Respectfully,

A handwritten signature in cursive script, appearing to read "M. E. Tymrak".

Mark E. Tymrak
Assistant Chief of Police

Belgrade Public Schools

School District No. 44

HARRY D. ERICKSON, Superintendent
JERRY VANDERPAN, Assistant Superintendent
DEB THRONHILL, District Clerk

Belgrade High School 388-4224
Belgrade Middle School 388-1309
Belgrade Intermediate 388-3311
Quaw Elementary 388-4215
Heck Elementary 388-4104

Phone (406) 388-6951
Mail Address: P.O. 166
Belgrade, Montana 59714
Fax (406) 388-0122

February 10, 1995

To: All Montana Legislators
Capitol Building
Helena, Montana 59601

Re: House Bill No. 457

I am writing in support of House Bill No. 457 which would make it illegal for a person under 18 years of age to possess or consume tobacco.

We all know tobacco use begins in early adolescence, typically by age 16. About two-thirds of our youth have tried smoking by age 18. Tobacco is often the first drug used by young people. It is a "gateway" drug that makes it easier to move on to alcohol and other illegal drugs. All of the young people that I have talked with that smoke, admit to being "hooked" very quickly. They want to quit but are unable to do so. Students who smoke miss more school due to illness. These are often students that are already "at risk" due to other behaviors and smoking compounds the problem. The cost to society for health care, lost time at school, lost time at work as smokers become adults, etc. is far greater now than the cost of enforcing a law prohibiting tobacco possession and use would be.

We know one of the greatest reasons a young person begins smoking is the influence of one of their peers who is already smoking. We send our youth a very mixed message when we make it illegal for a retailer to sell tobacco to someone under 18, but we don't follow through and say it is not ok for them to possess and use tobacco. We have tried to make it the retailer's responsibility without placing any responsibility on the consumer.

It is time for us to "bite the bullet" and take that next step. I urge you to vote for House Bill No. 457. We must care enough about our youth and their future to do everything we can to make that future a healthy one. Passing this bill would be a true prevention measure.

Sincerely,

Alison Counts

Alison Counts
Student Assistance Program Coordinator



BELGRADE CORE TEAM
BELGRADE SCHOOL DISTRICT #44
P.O. BOX 166
BELGRADE, MONTANA 59714

EXHIBIT 5
DATE 3-7-95
HB 457

February 10, 1995

To: All Montana Legislators
Capitol Building
Helena, Montana 59601

Re: House Bill No. 457

I am writing this letter on behalf of the Belgrade CORE Team. The CORE Team is made up of school and community people and we serve as the advisory council for the Drug-Free Schools and Communities Project in the Belgrade School District. The Team has voted as a whole to support the passage of House Bill No. 457 which would make it illegal for a person under 18 years of age to possess or consume tobacco.

It is time to change the mixed message we are sending our youth by making it illegal for a retailer to sell tobacco products to someone under 18, but not saying it is not ok for someone under 18 to possess or use tobacco. We must give our youth a strong message by making it illegal for someone under 18 to possess or consume tobacco in any form.

Tobacco use begins in early adolescence, often as early as 11 or 12 years old in Montana. One of the greatest influences on our youth concerning tobacco use, is the influence of their peers who are already smoking. About two-thirds of our youth have tried smoking by age 18. The Center for Disease Control tells us that illegal drug use is rare among those who have never smoked. Cigarette smoking is likely to precede use of alcohol or illegal drugs. The greatest percentage of adult tobacco users began their use before the age of 18. We know that if someone has not used tobacco by age 18, they are far less likely to begin using as an adult.

We must care enough about the health of our youth to take the next step and make it illegal for anyone under 18 to possess or use tobacco. Our future depends on the healthy future of our youth. We urge you to vote for House Bill No. 457.

Sincerely,

Rochelle Baughman
Rochelle Baughman
President



Bridger Program
P.O. Box 520
Bozeman, MT 59771
Phone: (406)585-1830

Bozeman High School
585-1668

Yvonne Hauwiller, Supervisor
Dave Swingle, Coordinator

February 10, 1995

To: Montana House of Representatives

From: David Swingle, Coordinator of Alternative Education, Bozeman Public Schools

Re: HB 457

Strong measures must be taken to discourage tobacco use by minors, particularly children of middle school age. Please accept my professional support for HB 457. Consider:

- 1) There is a very strong correlation between early smoking and later failure in school.
- 2) Most of the students in our program, Bridger Alternative School, acknowledge that smoking was a major reason for failure in school. Typically, they were choosing smoking or chewing instead of attending, got behind in their school work, and gave up their education (and their chance for a productive future).
- 3) We have 58 students. Most are smokers and most cannot even walk at a rapid pace or climb two flights of stairs without becoming 'winded'. Our staff's median age is 45 and any of us are in better physical condition than our smoking students.
- 4) We have a parenting center for pregnant and parenting teens. Most of the teen mothers are smokers, exposing their babies to prenatal effects of tobacco or later, to second-hand smoke. These infants are at much greater risk for smoking-related illnesses.
- 5) The majority of our students work at wage jobs and have far too high a rate being dismissed, often for smoking infractions or absenteeism due to chronic bronchitis.

I urge this legislative body to make early smoking more difficult, thus saving lives and careers. It makes economic sense to have fewer young people damaged or destroyed by tobacco use and all that goes with it. We will have fewer unemployment claims, fewer people on welfare, fewer handicapped infants who later become tax dependents, fewer traffic accidents, and fewer health care costs to the public.

Persons who survive their teenage years without being addicted to tobacco probably will never begin smoking. Please pass HB 457 and please consider making it even stronger by severely taxing tobacco (most early teens can barely afford tobacco products now, so make it more difficult to afford the stuff), and eliminate advertising directed at young smokers.

I am available to testify on this issue.

With grave concern for our youth,

A handwritten signature in cursive script that reads "David A. Swingle".

David A. Swingle, Coordinator of Alternative Education

FEB-09-1995 14:23

MISSOULA HEALTH DEPT.

406 523 4781 P.01

MISSOULA
COUNTY



Y-COUNTY HEALTH DEPARTMENT
301 W ALDER ST
MISSOULA MT 59802-4123

EXHIBIT 5
DATE 3-7-95
HB 457

Date: February 9, 1995

To: Bob Clark - Chairman of the Judiciary Committee

From: Holly Cummings - Missoula City-County Health Department

Re: House Bill 457: An Act Prohibiting the Possession of Consumption of Tobacco Products by Minors

I write in support of House Bill 457. Over the past twenty years, research has uncovered the health effects of tobacco and its extremely addictive properties (cessation rates are only 10 - 15%). Most of that information is common knowledge, however tobacco also has a terrible financial cost to society. During 1993, tobacco cost Montana 10.6 ~~860~~ million in Medicaid dollars alone. With those points in mind, it has become apparent that *the only real solution to problems associated with tobacco is to prevent addiction in the first place.*

For the past ten years I have been involved in preventive health activities. Experience has shown me that real behavior change is most successful when using a multifaceted approach. In regard to tobacco, the existing law restricting merchant sales to minors has been ineffective. Tobacco accessibility surveys across Montana during 1994 showed that nearly 85% of all 13 to 17 year olds were able to purchase tobacco products without any problem. Clearly the single, restricted merchant sales approach, is not working to limit children's access to, or consumption of, cigarettes and chew. There must also be an incentive in place for kids to not want to smoke. Fines and tickets, although punitive, serve to motivate kids in this manner. In other communities across the nation, tobacco consumption by children dropped drastically when both MERCHANT FINES AND YOUTH FINES were imposed. In light of Montana's problem with youth and tobacco, this kind of strategy is needed statewide. Please help protect our children from tobacco's insidious attack.

Caveat: Merchant and youth finest will only be an effective deterrent if they are enforced. It is essential that state and local law enforcement agencies support this bill.

ANIMAL CONTROL
(406) 721-7576

ENVIRONMENTAL HEALTH
(406) 523-4735

HEALTH EDUCATION
(406) 523-4775

SERVICES
(406) 523-4740

PARTNERSHIP HEALTH CENTER
(406) 523-4769

WATER QUALITY DISTRICT
(406) 523-4590



February 10, 1995

House Judiciary Committee
Bob Clark Chairman

Ladies and Gentlemen:

As a professional in the field of chemical dependency for 25 years and also the Director of Alcohol and Drug Services of Gallatin County for eight years, I have had the opportunity to observe many of the people in our different programs. One of the programs is Minor in Possession education. In this program we admit between 350 to 375 young adults between the ages of 17 and 20 per year.

One of the important observations I have noted is that the majority of these young adults are using tobacco, either chewing or smoking. Most of these young adults started their drug use with the "gateway drug" tobacco.

As we talk to other program recipients (some 600 admits per year) the majority of these clients whether DUI or treatment people all seem to identify with tobacco as a start and used it to be part of the peer system they were in. This peer system then included other drugs such as marijuana or alcohol.

I believe House Bill 457 could have a significant impact on reducing not only tobacco use but other drug use by young adults under the age of 18. I urge passage of this bill.

Sincerely,

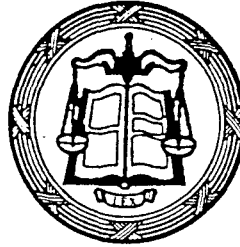
James W. Beckman
Executive Director

JWB/dj

cc: file

EXHIBIT 5
DATE 3-7-95
HB 457

Eighteenth Judicial District
Youth Probation Office



THOMAS A. OLSON
CHIEF DISTRICT JUDGE

LARRY W. MORAN
DISTRICT JUDGE

DAVID A. GATES
CHIEF PROBATION OFFICER

VICKY NELSON
DEPUTY PROBATION OFFICER

DELLA R. SMITH
DEPUTY PROBATION OFFICER

GWEN MASSEY
DEPUTY PROBATION OFFICER

KATHERINE SAFHOLM
DEPUTY PROBATION OFFICER

LAW & JUSTICE CENTER

615 SO. 16TH
BOZEMAN, MT 59715
(406) 582-2180

February 9, 1995

Bob Clark, Chairman
House Judiciary Committee

RE: House bill 457

Dear Bob,

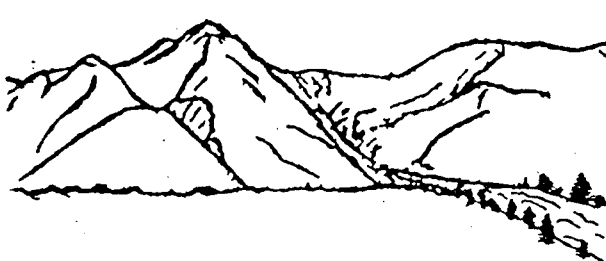
I would like to go on record as supporting any legislation which would decrease tobacco use by minors. As informed adults it is our responsibility to protect our youth from unsafe situations, including dangerous substances of all kinds. One effective way to make a strong statement is by making the consumption of tobacco products by minors illegal. This needs to be in conjunction with a community wide effort to both educate our youths and enforce the laws dealing with the sale of tobacco products.

Smoking rates by adults have plummeted over the last 30 years as we have learned more about the adverse health effects of tobacco consumption. However, more than 3,000 young people begin to smoke each day or more than one million each year. Although most teens say they would like to quit, tobacco is extremely addictive. Almost all adults who use tobacco started before the age of 18.

Thank you for your consideration and support of HB 457.

Sincerely,

David Gates
Chief Probation Officer



GALLATIN COUNTY PREVENTION COALITION

the sky is the limit in Big Sky Country

February 10, 1995

Representative Robert Clark
House Judiciary Committee
Capitol Station
Helena, MT 59620-1706

Dear Rep. Clark:

The Gallatin County Prevention Coalition consists of 80 member organizations from all sectors of the community. Our primary focus is on alcohol, tobacco and other drug prevention.

We strongly support HB457 to make the possession of tobacco illegal for minors. Passage of this legislation is critical for several reasons.

(1) Currently, we are sending our youth a mixed message; i.e., it is illegal for businesses to sell tobacco, but not for minors to possess it.

(2) There is no deterrent for youth to not use tobacco.

(3) Tobacco is a gateway drug for alcohol and other drug use. If we can prevent or delay the use of tobacco, then youth are less likely to try alcohol and other drugs.

(4) Teenage usage of tobacco is on the rise in Montana. Tobacco awareness campaigns are not as prominent as they were a decade or so ago. Therefore, the numbers are rising again. In addition, the tobacco industry's advertisements target youth (e.g., Joe Camel), especially teenage girls.

(5) Lastly, the health care costs for treating lung cancer and related diseases are exorbitant. If we want to address health care issues, we should keep our youth healthy.

In summary, laws set the norms for society. We must be cognizant of the message we send to our youth. We trust that the House Judiciary Committee will endorse HB457 and advocate for its passage. We thank you for your support and attention to this matter.

Sincerely,

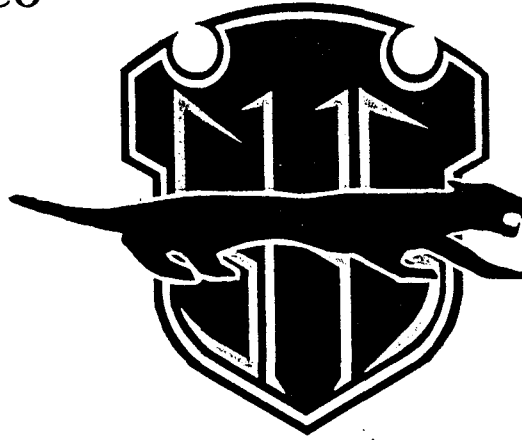
Claudia Venditti
Project Director

SACO

PANTHER

SCHOOLS

P.O. Box 298
321 Highway 243
Saco, MT 59261



SENATE JUDICIARY COMMITTEE

DATE

6

3-7-95

District 12 HB 457

Phillips County
(406) 527-3531

Mr. Chairman and members of the committee, for the record my name is Tamara Crowder. I am the Drug Educational Coordinator for Saco Public Schools. I am here in support of House Bill 457.

Over the last three years we have notice an significant increase in the use of tobacco products by our students. It seems that there is the miss conception that tobacco isn't a drug, but a recreational pass time here in Montana. Those of use in the field of drug education however know it to be a gateway drug; that is a drug used as a stepping stone to the use and abuse of harder drugs! Our youth don't realize how addictive tobacco is until they try to kick the habit.

It is our belief that if House Bill 457 is passed minors will be deterred in the use of tobacco products. As it stands Montanans youth can use all the tobacco products that they can get there hands on, and I am here to tell you that they are having no trouble obtaining tobacco goods even though the sale of which is illegal to minors.

I encourage your support for the passage of this bill.

WE CAN'T HIDE OUR PANTHER PRIDE!

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0457, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the possession or consumption of tobacco products by minors; and providing for criminal monetary penalties or for adjudication by a youth court upon conviction.

ASSUMPTIONS:

Department of Justice

1. No impact to the Department of Justice.

Department of Family Services

1. DFS assumes there will be persons under 18 years of age convicted of possession or consumption of tobacco in Youth Courts.
2. DFS is unable to determine the impact on local government revenues or expenses.
3. The community service and tobacco cessation programs will be managed and financed by local governments and the youth courts.

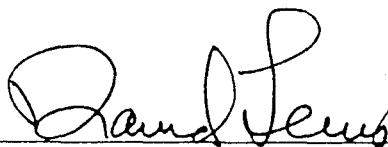
FISCAL IMPACT:


No fiscal impact to the Department of Family Services and the Department of Justice.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. There will be increased revenue to the local governments of the arresting officer.
2. Costs of managing community service programs and tobacco cessation programs may be off-set by fines collected.

Good bill

 2-14-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


STEVE VICK, PRIMARY SPONSOR DATE

Fiscal Note for HB0457, as introduced

HB 457

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

EXHIBIT 6
DATE 3-7-95
HB 457



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

TESTIMONY OF THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
BEFORE THE SENATE JUDICIARY COMMITTEE

RE: HB 547

As the administrator of Montana's Medicaid program, I can say without hesitation that I support House Bill 547. The use of tobacco by minors has caused serious health problems for Medicaid recipients. Those health problems are evident when you look at the financial cost to taxpayers of treating tobacco related illnesses.

In calendar year 1993, Medicaid paid out \$316,871 to medical providers to treat smoking related problems for Medicaid recipients under the age of 19. As the attached graph shows, smoking related health problems in all age groups cost the Medicaid program over ten million dollars in 1993. Those who begin smoking as minors are likely to become an ever increasing health burden to those close to them, and an ever increasing financial burden to the taxpayers of Montana.

Please consider the health of our children and vote to support House Bill 547.

Nancy Ellery, Administrator
Medicaid Services Division
Department of Social and Rehabilitation Services

Post-It® Fax Note	7671	Date	3/6/95	# of pages	5
To	Mike Clayton	From	Nancy Ellery		
Co./Dept.		Co.	Medicaid		
Phone #		Phone #	444 4540		
Fax #		Fax #	444 1861		

Mr. Chairman, Members of Senate Judiciary Committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization whose concerns are on issues of importance effecting the family. I rise in support of Rep. Vick's measure today.

With an ever increasing awareness of the harmful effects smoking, even second hand smoke and smokeless tobacco have on our health, we owe it to our children to deter this addictive behavior by restricting it to minors.

Indications are that the tobacco industry has geared a major portion of their advertising dollar to encourage children to smoke. The best example is the "Joe Camel" campaign where a cartoon character portrays smoking as "macho" and the "in" thing to do. Kids are enticed to save coupons to purchase T-shirts, frisbees, sunglasses and the such. All because the tobacco industry knows that if they can hook kids early, they'll have customers for life. The industry has played on the unsuspecting for profit, while parents, teachers, taxpayers invest time and resources in developing curriculums to deter the very habit this industry promotes. Interestingly enough, some of these school curriculums are actually financed by tobacco companies themselves under the rationale that if children are presented with the notion that they have a "choice," children will be curious enough to act on this decision.

Shouldn't our standard for children be, "This is harmful. Do not do it?" We teach children in drivers ed to "stop" at a stop sign for their safety and the safety others. They are not given an option. Just the same, we should advocate not smoking for their safety and the safety of others.

In the health care debate over the past year, we've heard that "prevention" must be encouraged as a necessary first step in cutting the ever increasing health care costs. We agree that this is where emphasis must be placed.

Under code 45-5-622, a parent or guardian endangers the welfare of children if he or she knowingly contributes to the delinquency of a child by supplying or encouraging the use of an intoxicating substance by a child. I submit that tobacco is just as addictive and intoxicating when ingested by a youth. We should not encourage its use.

HB 457 is a very important first step in letting our children know that we care enough about their health and well being to protect them from the appeal and harmful effects of smoking,

Need we continue to add our children to the ever rising statistics of cancer, lung disease, asthma and other smoking related fatalities? I think not. Let's set a consistent standard. Please pass HB 457. Thank you.

Respectfully submitted March 7, 1995
Laurie Koutnik

March 7, 1995

HB 457 / Senate Judiciary
Arlette Randash

I rise in support of this common sense bill. My husband was addicted to cigarettes by the time he was 13 and loathed the habit, as did all of us. He struggled for over 30 years to quit and finally did after attending a smoking cessation class and immediately going into the Bob Marshall Wilderness for a week without cigarettes! When we saw the grizzlies packing out we knew he was coping with the stress.

The peer pressure at 16 can be incredible and any help we can give teenagers to get through this crazy time of life just makes good sense. Not only is cigarette smoking an established health hazard for the smoker it affects those compelled to also breathe the smoke. Both of my children have struggled with allergies and my husband and I can only wonder at what role the smoke in our home played in that. Furthermore, cigarettes can consume an incredible amount of money and loss of productivity. Anyone who is intellectually honest who has smoked or chewed will admit to both. Furthermore, considering at 16 many teenagers are learning to drive, road safety could only be enhanced by removing the attention given cigarettes from the attentiveness a teenager needs to devote to careful driving. If we genuinely say we care for our youth, working to postpone their entry into the consumption of tobacco can only be a positive, hoping that the additional time permits them the maturity to say "no" to a lifetime of bondage to tobacco.



LEWIS AND CLARK

CITY-COUNTY HEALTH DEPARTMENT

1930 Ninth Avenue Suite 207
Helena, Montana 59601
Telephone 4-HEALTH or dial 406-443-2584

LEGISLATIVE SIGNATURE COMMITTEE
BILL NO. 9
3-7-95
HB 457

Mr. Chairman and members of the committee, my name is Susan Palermo. I'm a health educator at the Lewis and Clark City-County Health Department.

Tobacco is the single most preventable cause of death in the United States. 3,000 young people start smoking every day and they'll have a hard time quitting since tobacco is more than twice as addicting as cocaine.

Prevention is what public health is all about and ^HSB 457 can help prevent young people from smoking. Similar bills have been enacted in Missoula, Montana (1970), and Woodridge, Illinois, to name two specific communities.

Smoking rates among adolescents in Woodridge dropped sharply after a tough anti-tobacco law, which includes holding minors accountable for their actions, was passed there in 1989.

If ^HSB 457 prevents one young person from smoking, it will have performed an important public health service.

**Testimony presented March 7, 1995, by:
Susan Palermo, Health Educator
Lewis and Clark City-County Health Department
Helena, MT 59601**

Background Information Regarding The Reasons For House Bill 474--
An Act Providing For Juvenile Probation Officer Training HB 474

In a performance audit report issued in June of 1993 on the juvenile justice system in Montana, the Legislative Auditor's Office determined there were substantial differences in youth court operations and activities among the 21 judicial districts. Youth intervention and treatment approaches by juvenile probation officers varied significantly. For example, youths ordered to pay restitution, the restitution amounts, and priorities for victim repayment varied substantially both within and between districts. In other instances, the auditors noted differences in type and amount of youth criminal involvement before youth were committed to DFS supervision. As a result of these inconsistencies youths were not being treated equally or consistently statewide.

The auditors also determined that while there is a statutory requirement for juvenile probation officers to obtain 16 hours of training per year in subjects relating to their duties, there is no established statewide training curriculum for juvenile probation officers. As a result, the auditors also found wide variation in the amount and types of training the probation officers received. Some officers indicated they either did not attend any training courses or received less than the required 16 hours of training.

This proposed legislation (HB474), would allow the Board of Crime Control (by rule) to establish standards, procedures, and content requirements for juvenile probation officer training programs. The rules would also establish attendance, examination, and certification requirements.

Section 1 of the bill establishes a 40 hour basic training course to be conducted by the Department of Justice's Montana Law Enforcement Academy. Successful completion of this course will help establish a more uniform approach to the youth treatment and intervention methodologies employed by the state's juvenile probation officers.

Section 2 of the bill would require the probation officers to obtain their annual 16 hours of mandatory training in either programs conducted by the Law Enforcement Academy or through programs which have been approved by the Board of Crime Control. This requirement will also help standardize juvenile probation officer treatment methodologies and provide an opportunity for more consistency in their approach to delinquent youth.

HOUSE BILL NO. 474

INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR JUVENILE PROBATION OFFICER TRAINING;
AND AMENDING SECTION 41-5-702, MCA."

STATEMENT OF INTENT

Rules adopted under [section 1] should establish standards, procedures, and subject and content requirements for training programs and courses. The rules should also establish attendance, examination, and certification requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Juvenile probation officer training.** (1) The ~~board of crime control~~ DEPARTMENT OF JUSTICE may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board OF CRIME CONTROL. If funding is available, the ~~board~~ DEPARTMENT shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

(3) A juvenile probation officer is entitled to the officer's salary while attending a program or training course and must be paid, by the district court, expenses as provided in 2-18-501. The court shall also pay any program or course registration fee.

(4) The board may adopt rules to implement this section.

Section 2. Section 41-5-702, MCA, is amended to read:

"41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

- 1 (a) a master's degree in the behavioral sciences;
- 2 (b) a bachelor's degree from an accredited college or university in the behavioral sciences and at
3 least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in
4 41-5-703; or
- 5 (c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties
6 of a probation officer as set forth in 41-5-703.
- 7 (2) The judge may appoint any reputable person as a probation officer who has had experience in
8 work of a nature related to the duties of a chief probation officer, provided preference ~~shall~~ must be given
9 to persons with the qualifications set forth in subsection (1).
- 10 (3) Each person appointed as a chief probation officer or probation officer under this section or as
11 a deputy probation officer under 41-5-705 must, ~~through a source approved by his employer,~~ obtain 16
12 hours a year of training in subjects relating to the powers and duties of probation officers in a program or
13 course offered CONDUCTED BY THE DEPARTMENT OF JUSTICE or approved by the board of crime control
14 under [section 1]."

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0474, as introduced

EXHIBIT 10
DATE 3-7-95
HB 474

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for juvenile probation officer training.

ASSUMPTIONS:

1. It is assumed that the training courses prescribed in the bill will be conducted by the Department of Justice rather than the Board of Crime Control. It is also assumed that the Department of Justice Law Enforcement Academy will incur minimal additional expenses to conduct the courses.
2. The Board of Crime Control will adopt and publish administrative rules as necessary.
3. The Board of Crime Control will certify approved training courses for juvenile probation officers.
4. The Board of Crime Control will certify training records for individual juvenile probation officers.
5. The costs to the Board of Crime Control for performing the services in assumptions #1-4 will be absorbed within the present law base for the Crime Control Division.
6. Juvenile probation officers are not employees of the Department of Corrections and Human Services and there is no fiscal impact on that department.
7. The Department of Family Services employs juvenile parole officers but not juvenile probation officers. Therefore, there is no fiscal impact on that department.

FISCAL IMPACT:

No material fiscal impact on state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill requires any juvenile probation officer program or course registration fee, and the officer's salary during attendance, to be paid by the county district court. This will have some impact on county government expenditures.

Dave Lewis 2-15-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Cobb
JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB0474, as introduced

HB 474

SENATE JUDICIARY COMMITTEE

REPORT NO. 11

DATE 3-7-95

BY HB 457

BY Eric Crippen, Chair

That such amendments read:

1. Page 1, line 13.

Following: "product"

Insert: ", as defined in 16-11-302,"

2. Page 2, line 6 (in 2 places).

Strike: "Title 16, chapter 11, part 3"

Insert: "Title 45, chapter 5, part 6"

-END-

PV
SA

Amd. Coord.
Sec. of Senate

Sen. Holden
Senator Carrying Bill

531434SC.SPV

Amendments to House Bill No. 158
Third Reading Copy (blue)

DATE 3-7-95BILL NO. HB 158

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 4, 1995

1. Page 1, line 17.

Following: "term"

Insert: "includes a ladder or other equipment that is the
exclusive route of access to the scaffold but"

Following: "include"

Strike: "a"

Insert: "any other"

2. Page 1, line 24.

Following: "(1)"

Strike: "A"

Insert: "Subject to the comparative negligence principles
provided in Title 27, chapter 1, part 7, a"

3. Page 1, line 25.

Following: "liable"

Insert: "for damages sustained by any person who uses the
scaffold, except a fellow employee or immediate employer,"

4. Page 1, line 30 through page 2, line 1.

Following: "SCAFFOLD" on line 30

Strike: remainder of line 30 through "scaffold" on page 2, line 1

Amendments to HB 158

1. Page 1 Line 16 following: "uses"
Strike: "for supporting"
Insert: "on a construction site to support"

This amendment is to address the concerns on the Montana Trial Lawyers that non-construction activities such as temporary shelving and car jacks would be included within the definition of scaffold.

SENATE JUDICIARY COMMITTEE
SENATE NO. 12
DATE 3-7-95
FILE NO. HB 158

Amendments to House Bill No. 547
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 6, 1995

1. Title, line 5.

Following: "CRIMINALS;"

Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY
REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR
SUPERVISED RELEASE;"

2. Page 1, line 14.

Following: "society."

Insert: "If the sentencing judge incorporates by reference in the
sentencing order rules of the department of corrections and
human services setting conditions of probation, parole, or
supervised release with which the offender is required to
comply, the incorporation by reference constitutes a
specific enumeration of the conditions for purposes of this
section."

DATE 3-7-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HJ 14, HB 64, HB 457, HB 474

< ■ > PLEASE PRINT! < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Charles R. Brooks	MT. Food Dist Assoc	HB 457	✓	
Allen C. Horsfall Jr.	Ravalli County Commissioner	HJ-14	✓	
John DeLano	Philip Morris	457	✓	
Mary Ellerd	MTPOA	474	✓	
Clancy Davis-Walker	Vice President Spelling			
Randy Durr	Fort Benton HS.	457	✓	
Jim Oberhoffer	P.O.S.T. Police Officers Standard	64	✓	
George Corv	Ravalli County Clerk Attorney	HJ-14	✓	
W. James Kambel	City of Billings	64	✓	
Dennis Alexander	American Lung Assoc.	HB 457	✓	
JEFF RENZ	School of Law	HJ 14		✓
Mike Salvagni	Gallatin County Attorney	457	✓	
Mike Clayton	Bozeman Schools	457	✓	
GENE KISEN	MBCC	474	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Susan Palermo	L+C City-Co. H.D.	457	✓	
Laure Kestine	Christian Coalition of MI	457	✓	
REP. BOB CLARK	D.A.R.E.	457	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY