

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 8, 1995,
at 9:00 AM

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 157, HB 214, HB 347, HB 253
Executive Action: HRJ 14, HB 232, HB 253, HB 347

HEARING ON HB 214 & HB 157

Opening Statement by Sponsor:

REPRESENTATIVE DEBORAH KOTTEL, House District 45, Great Falls, presented HB 214. This legislative session has had a lot of focus on the issue of crime. The three areas of focus are: victim protection, rehabilitation/prevention and deterrents/punishment. Deterrents and punishment is not just keeping people in prison. Deterrents deal with what to do with the individual once they are out of prison and on the street. How will the people of Montana be protected? HB 214 deals with

lifetime registration of violent offenders. Presently in Montana we have registration of sex offenders for 10 years. The lifetime registration would require an individual within 14 days of moving into a county or upon release from a correctional institution to report to their local sheriff and fill out a registration card. Since they have already been convicted of a violent crime, as set out in HB 214, their records, fingerprints, and other criminal identifying information would then be sent to the local sheriff. If the person fails to register, that would be a felony. Why is this important? Statistics show that 60% of violent offenders reoffend. The information from the attorney general's office is shocking. They are able to solve less than 10% of the arson cases, less than 40% of the robbery cases, etc. Lifetime registration lets the person who has already been convicted of a violent crime know and understand that law enforcement knows where they are and makes them accountable for their actions. What this bill does not do is label their door or allow general public dissemination of that information so that if people are truly interested in rehabilitation, they can be about their business of rehabilitation and become good citizens in the community. This bill allows any violent offender to come into a court proceeding after 10 years and petition the judge to come off the lifetime registration. If they have proven themselves and there has been no further violent crimes, they will be able to come off the lifetime registration. The states around us have registration of violent and sex offenders. Out-of-state offenders can escape the detection of law enforcement agencies. If people themselves do not have impulse control and cannot set their own boundaries to live in society, then we as a society must set those boundaries for them.

REPRESENTATIVE MATT DENNY, House District 63, Missoula, presented HB 157 which is an act to allow life sentencing and lifetime registration and supervision of sex offenders. This bill was drafted at the request of the Governor's Council on Corrections and Criminal Justice Policy. This Council was composed of people from around Montana who are involved in the criminal justice and corrections system including judges, sheriffs, police officers, probation officers and prison officials. It was drafted to address the growing public concern about the sex offender in our society while addressing the goal of rehabilitating offenders and finding solutions which will ensure a safer society for all Montanans. This bill has two principal provisions: one provides for lifetime sentencing and the other for lifetime registration for sex offenders. The life sentence is not subject to reduction and is a true lifetime commitment to the Department's control and supervision. Experts who deal with sex offenders believe that a sex offender, like an alcoholic, is never cured. Rather their disease, like alcoholism, is able to be controlled. This bill will address the need to protect society while providing for the rehabilitation of the offender through lifetime supervision and registration. The bill provides an alternative for district court sentencing a convicted sex offender. In addition to the current prison terms which are provided by the criminal statutes,

this bill permits the district court to sentence the sex offender to the custody of the Department of Corrections and Human Services for the remainder of his or her life. The offender will be placed in the correction system based upon the offense, previous record, behavior and progress in the treatment programs. For the vast majority of sex offenders, this means placement in Montana State Prison while the offender undergoes intensive sex offender treatment. Following completion of that program when it is determined the offender is ready, the offender may be placed in a community based prerelease center under continuing treatment. Following this, the offender may be placed under supervision of probation and parole while continuing to undergo treatment. If there is any reason to believe that the offender may reoffend or that he is not continuing to participate in his treatment, he can be removed from society and returned to MSP until his placement back in the community can be accomplished with safety to the public. This provides the offender with a strong incentive to remain in treatment and to continue to address his disease throughout the remainder of his life. In conjunction with lifetime supervision of offenders, this bill also increases the time during which any sex offender must register with local law enforcement authorities in the town in which the offender resides. This bill requires that sex offenders register for the remainder of their life rather than the 10 years which is currently provided in statute. It also provides a means by which a sex offender who is successfully rehabilitated himself, may ask the court to be relieved from the duty to register. The bill also provides that while the names of registered sex offenders may be public, other information about the offender is confidential criminal justice information. Personal information including the residence of the offender would not be generally available to the public, but is available to local and state law enforcement personnel. This protects the privacy of the offender and relieves the offender of stigma which may adversely impact his or her treatment. To ensure that known and dangerous sex offenders are not released from prison without public notification, the bill requires the Department to petition the district court for authorization to release whatever information is necessary for public protection prior to the actual release of the offender. This provision addresses those offenders who have received a prison term of so many years and who have failed to address their disease through treatment. The fiscal note states the costs at approximately \$225,000.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections and Human Services, spoke in favor of the HB 157. Tougher criminal penalties, improved investigative information and enhanced public safety describes HB 157. It is not just another bill in a long line of get tough legislation. It is intended to provide solutions to the public safety imposed by criminal sex offenders. HB 157 is designed around the acknowledgement that sex offenders are not cured but must be involved in treatment and supervision

for the rest of their lives. For some that fail to accept and participate in treatment designed to reduce the risk of reoffense, this legislation will mean life in prison. For others, it may mean a return to a productive life in a community under supervision and continued treatment but allows for a return to prison if the offender fails to comply. It also imposes the requirement of lifetime registration of sex offenders. This legislation was drafted to identify the registerer as criminal justice information. The names of the offenders would be public information. This also provides a method through the district court to disclose registration information to the public. Although there continues to be much discussion around the issue of public disclosure, recent court decisions in New Jersey tend to indicate the method offered in this legislation is the most acceptable approach. Evidently a similar law in New Jersey called Megans law, included a broader public disclosure administered by the attorney general. Recent court decisions have overturned that section primarily based on the denial of due process and acknowledgement that the courts need to be involved in a public disclosure process. HB 157 already incorporates the district courts in this process. The executive budget included expanded prison and community treatment funds and additional parole and probation officers to provide the supervision required to back this legislation. At this point, the portion of the funds for expanded treatment at Montana State Prison, have been approved but the community side has not and that is an amendment at a House Appropriations Hearing this morning. HB 157 represents a thoughtful and aggressive solution designed to combat the increase in sexual crimes.

John Connor, Attorney General's Office, Montana County Attorneys Association, Member of the Governor's Advisory Council on Corrections and Correction Policy, spoke in support of HB 157 and HB 214. One of the concerns about these bills in the hearing in the House was that they are overly onerous where the rights of the defendants are concerned. This bill contains protections for the defendant by giving the court an alternative situation. The court can sentence the defendant under existing statutes with respect to time or, under this bill, has the alternative if the situation warrants it to require a lifetime supervision. The intent of that provision is not to put the defendant in prison, although that is an option, but to maintain a supervision over that person for the rest of the offender's life so that there is some adequate system of monitoring. Statistics indicate that about 1/4 of all offenders who leave prison do so without supervision and approximately 1/3 of offenders who are in prison for sex offenses, are not unwilling to accept treatment. This provides a means of tracking and monitoring to enforce constraints which are necessary to keep these people from reoffending. There are protections in the bill with respect to allowing the defendant to petition the court for this sentence to be set aside if, in fact, he can demonstrate to the court's satisfaction that he has, over a period of ten years, changed his conduct so that he doesn't present a threat to reoffend. The

House made some changes in HB 214 with respect to the dissemination of information which made it consistent with HB 157. They believe those changes were excellent decisions.

John Strandell, Undersheriff of Cascade County, Member of the Governor's Council on Corrections and Criminal Justice, Board Member of the Montana Sheriffs and Peace Officers Association, stated the sex offender's committee was responsible to consider more stringent and progressive responses to sex offenders throughout Montana. They were formed to consider lifetime supervision of sex offenders and they also discussed other issues such as DNA registration, lifetime registration of sex offenders, and public disclosure of the offender's identity to the public. During discussion and testimony provided to the committee, it became apparent that there is no cure to the problem that sex offenders have. Treatment can control their behavior if properly monitored. Lifetime sentencing and registration will be effective in controlling these offenders when they are released from prison. Statistics show that the greatest risk for reoffense is within the first six months. But the second time frame most common for reoffense happens 15 to 20 years later. From a law enforcement point of view, it is very disturbing to see sex offenders come back to the community from prison knowing that the high risk for reoffense is there. One of every four released have served their sentence issued by the court and are currently not on supervision of any type. Many offenders receive no treatment in prison because of noncompliance by the offender. Lifetime registration and sentencing control would keep the offender within the community and if conditions are violated, any offender can be reincarcerated. This legislation also provides for proper dissemination of information on sex offenders to the general public after a petition is filed with the district court and the court orders the information released. This legislation provides effective and progressive change in controlling sex offenders in our state.

Jane Christman appeared in support of HB 157 and 214. Almost eight years ago her son, Ryan Van Luchene, was murdered by Robert Hornbach, who is a repeat sex offender. In July of 1987 she moved to Libby. She was a newly single parent. She had the opportunity to work in either Spokane or Libby. She decided that Libby would be a safe place for her children. She found a home in Libby and so did Robert Hornbach, who was originally from that area. He had been released from Montana State Prison about ninety days earlier. He had served a three year term for raping a little boy about 100 yards from the house which she bought. He had a five year sentence, but was out in three years. No one told her he was there. Maybe the parents should know these things before tragedies happen. Ryan's first love was fishing. Their land had a stream through it. She registered Ryan for school on Friday. It would have been a wonderful place for someone to let her know that there was a dangerous man in the community. No one told her. Ryan was murdered on Monday, he never did start second grade. She called her family in Kalispell

when Ryan was missing. Someone working within the penal institution called her brother and said he knew who was out of prison and in Libby. He knew. They knew they were not looking for an alive little boy because Robert Hornbach stated in prison that if he ever did it again, he would leave no witnesses.

Derek Van Luchene spoke in support of HB 214 and HB 157 not only as a law enforcement officer, but as a victim of violent crime. On August 31, 1987, his family learned that his eight year old brother was murdered by Robert Hornbach. Mr. Hornbach was a once convicted child molester who had been set free to go anywhere he wanted without having to report to anyone about his whereabouts and that day his brother happened to run into Mr. Hornbach. He was in the wrong place at the wrong time and fell victim to this animal. Why didn't he have to report his whereabouts? Why wasn't he kept track of? Why wasn't the community warned? We need laws to keep track of these sex offenders, not just while they are on conditions of parole but for the rest of their lives. The community needs to know where they are. His family has worked very hard to deal with the loss of his brother. He is presently working as a police officer. He has taken the anger and hurt that he feels and turned it into something positive. He works very hard to make his community a safe place to live. He works in the schools and teaches the children how to stay safe and avoid strangers. All he has left of his brother are memories.

Sandy Heaton, Therapist from Montana State Prison, spoke in support of HB 157. She has worked with offenders for 16 years. Lifetime supervision with treatment and monitoring them in the community is the responsible way to deal with the offenders. Offenders need a chance to be productive members of the community and this bill is a good balance to do both. It will help to track and monitor them while keeping the community safer. It will also allow those who want to change their lives to do so.

Christine Kaufman, Director of Montana Human Rights Network, spoke in support of both bills by presenting her written testimony, **EXHIBIT 1**.

Sandra Hale, PRIDE, presented her written testimony, **EXHIBIT 2**.

Arlette Randash, Eagle Forum, presented her written testimony in support of HB 157, **EXHIBIT 3**.

Opponents' Testimony:

Scott Crichton, ACLU, presented his written testimony in opposition to HB 214 and HB 157, **EXHIBIT 4**. He has a lot of personal respect for the testimony this morning, for the anguish the victims have been through in their lives and he does not defend sex offenders. He spoke in support of preserving the constitutional protections for all of its citizens by advising

the committee about a couple of his concerns which may make this bill more constitutionally worthy. He read a newsclipping from the New York Times, January 10, ten days after Megan's law went into effect. "Two men who knew that a recently paroled sex offender was living here because of the community notification provision in Megan's law, have been charged with assault in a case the prosecutors are calling the first instance of vigilantism under the new law. The two men, a father and son, broke into a house where the parolee, Michael Goof, 25, was asleep on the living floor at 2:45 in the morning, Sunday. Warren County authorities said several people were staying at the house and one of the intruders began beating a man he mistook for Mr. Goof. All of a sudden a big guy, says Mrs. Keller, one of the people asleep at the house, in a black ski mask came in the door and said he was looking for the child molester. Someone called the police who arrived with minutes and subdued the attacker before anyone was seriously hurt." What happened is they attacked an innocent person based on information that had been released on the supposed whereabouts of this individual. If there was some guarantee that there would be ample opportunity to make sure that people who are being tracked are also being treated, this would be more palatable. He thanked **SENATOR VAN VALKENBURG** for introducing a bill which he introduced which allowed the people in treatment at MSP not to be held accountable for crimes they admitted to in their treatment. In Billings a sex offender would not have been convicted if that immunity had been in place. There is a problem either way this is looked at. By allowing a person to be prosecuted for what is said in therapy, a lot of inmates will refuse treatment entirely. That is self defeating. Sex offenders are likely to never be rehabilitated if in the process of their therapy, they are likely to be recharged and resentenced on additional crimes.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HOLDEN asked **REPRESENTATIVE DENNY** why the House left the homosexuality reference in the bill. **REPRESENTATIVE DENNY** commented the amendment to the bill was submitted to the committee and he concurred with that amendment, however, the opinion of the committee was that because that particular statute included offenses of two different natures, bestiality and homosexual conduct, they did not want to strike that from the law.

SENATOR HOLDEN asked how the public would find out where a offender lives.

REPRESENTATIVE DENNY commented in Section 7 (1) it states that the offender must register for the remainder of their life. After ten years, if they have not reoffended, they may petition the district court to be released from the requirement to register.

SENATOR HOLDEN asked how the public, in a practical sense, would find out that a sexual offender is in the community.

REPRESENTATIVE DENNY commented there are two different ways to find out. Under the normal registration, that person's name would be included in a registry available to the public. This would not give details of the crime or where the person lives. Perhaps a law enforcement officer would inform someone who is interacting with this person, that his name is on the list. The Department can petition a district court to release all of the information to the public. That information would be available at the county courthouse or through law enforcement.

Mr. Ohler commented on the physical location of the sexual offender register. The register is currently maintained by the Department of Corrections in Helena. Local law enforcement would be advised through the registration process that an individual has entered their community and he is a registered sex offender. They would have the information but not the register.

SENATOR HOLDEN asked how he personally would find out who is on the register.

Mr. Ohler commented that HB 157 states that the name of a registered sexual offender is public criminal justice information. That means that information is available to the public and can be disseminated to the public. If you wanted to know whether John Doe was a registered sexual offender, you could contact the Department of Corrections.

SENATOR HALLIGAN stated that if the Department believed the release of information is necessary for public protection, the Department shall petition the district court. The Department may not believe that the public needs the protection, but the deputy county attorney, working with the victims, may believe that the public would be served by a district court petition disseminating the information. There is no opportunity for the county attorney to petition the district court in order to have the information. Was this discussed in the House hearing?

Mr. Ohler stated it is not addressed in the bill. By stating that the register is confidential criminal justice information except for the name, the provisions of the Criminal Justice Information Act apply to this information. There are provisions for a county attorney to ask the district court to release of confidential criminal justice information upon a showing of public need or safety. Section 9 (2) addresses the situation where an individual is sentenced to a term of imprisonment at Montana State Prison and refuses to enter into treatment and the prison believes there is a risk to the community to have an untreated sex offender released because of the great possibility that he will reoffend. The prison then would have an opportunity to go to district court and seek some release of information so that the public can be notified.

SENATOR ESTRADA asked if the family of the victim would be notified that the offender has been released and is going back to the community?

Mr. Ohler stated that was not provided for in this bill. The crime victim's bill would deal with notification. The sexual register is available to local law enforcement personnel. Criminal justice agencies have access to that information. When a sex offender enters a community he is required to report to the local law enforcement and register with them. That information is then transmitted to the Department of Corrections where the register is maintained. HB 157 is changing the current law from 10 years registration to lifetime registration of sex offenders.

SENATOR JABS stated the families will not know if a sex offender lives in their neighborhood.

Mr. Ohler stated that is a two edge sword. There is a possibility of going too far with releasing information concerning sex offenders. There is a fine line as to how much information can be disseminated to the general public without some sort of court proceeding. He spoke with the attorney general from the State of New Jersey and discussed the court opinions that have been handed down both in federal and New Jersey Superior Court concerning New Jersey's community notification law which has been struck down as being unconstitutional. The problem with the New Jersey statute was that their law permitted the attorney general to draft some guidelines as to what kind of information could be released to the community and based upon those guidelines a local law enforcement person could go to the newspaper and say there is a sex offender living in the community and give the address. The federal and New Jersey State Courts found that to be a problem because there was no due process. It was found to be punitive and said there would have to be a court proceeding before information was released because it is very damaging to the sex offenders who do have some rights of privacy. HB 157 limits the release of the information to the name of the offender. An example would be, local law enforcement knows John Doe is a sex offender and he is hanging out where young people congregate. The local law enforcement can go to the mother and warn her that a registered sex offender is communicating with her child. He cannot give an address or place of work. This would require some court proceeding.

SENATOR BAER stated that victims and their family should not meet a sex offender face to face, not knowing that he has been released from prison and is back in town.

REPRESENTATIVE DENNY commented that HB 69, which has passed both chambers, requires notification of the victims of any change in status of a particular perpetrator. This bill includes that at such time that the offender petitions a district court to be

released from their obligation to register, the victim will be informed within three days by the county attorney.

REPRESENTATIVE KOTTEL commented that in other jurisdictions, if a convicted sex offender who has served his time, is hanging around a school yard, law enforcement can run a check to determine if this is a sex or violent offender. Registration allows the police, if the person has not registered, to remove the person out of the dangerous situation and hold them pending an investigation because they then could charge him with the crime of failure to register. This is a tool which local law enforcement can use to help prevent the crimes from taking place.

SENATOR NELSON asked about the retroactive applicability which was removed from the bill.

REPRESENTATIVE KOTTEL stated that a Supreme Court provision struck down a statute which had an ex post facto provision on it because when the people were previously convicted, lifetime registration was not part of their sentence. She did not like removing this from her bill, but understands the constitutionality of the situation.

SENATOR BARTLETT asked about the status of the funding request for the fiscal note.

REPRESENTATIVE KOTTEL stated that it is her understanding that the funds are available. It is only \$21,000 in the first year and after that a \$1,000 for all succeeding years.

SENATOR BARTLETT stated HB 157 includes as one of the sexual offenses the crime of incest but qualifies that by specifying that that does not include unless the act occurred between two consenting persons 16 years of age or older. The statute on incest says that consent may be raised as a defense with or upon a stepson or stepdaughter, but is ineffective if the victim is less than 18 years old. The incest statute says "18", this bill says "16".

Mr. Ohler stated that Section 6 was discussed by the Governor's Council as to whether or not to eliminate that parentheses from that particular section and the decision was to leave it in.

SENATOR BARTLETT asked if they consciously chose the 16 years of age as a part of that parentheses.

Mr. Ohler commented the discussion was to leave the current statute and the current definition the way it is.

SENATOR BARTLETT stated the issue was raised that if a person under the lifetime registration requirement petitions a court that the court petition process would be a public process. Is it possible to close that hearing to the public?

Mr. Ohler stated he did not recall any discussions as to privatizing the particular hearings. There was discussion as to the appropriate venue for bringing a petition and the Council believed that the proper venue to bring a petition would be in the county in which the offense occurred, presumably that being the same county that the victim and the victim's family would reside in.

SENATOR BARTLETT stated that the Department was concerned about being able to release information in the case of a person from a state prison who had refused treatment. That section specifically states that the Department can seek permission to release the information before the person is released from a state prison. She asked what the word "state prison" covered?

Mr. Ohler stated that prerelease centers, the regional prisons, and Montana State Prison are all administratively considered state prisons or extensions of the state prison and people who reside in any of those facilities are considered inmates so that should not be a problem.

SENATOR BARTLETT asked REPRESENTATIVE DENNY, referring to the testimony regarding deviant sexual conduct and the definition of that term includes "bestiality", if the act of incest occurred between two consenting persons 16 years of age or older, would that kind of parenthetical statement after 45-5-505, expressly excluding consenting acts by adults.

REPRESENTATIVE DENNY commented his only concern might be that they would lose the entire bill when it went back to the House.

Closing by Sponsor:

REPRESENTATIVE KOTTEL stated she put HB 157 and HB 214 together because in her mind sex offenses have very little to do with sex and everything to do with violence. Eight months ago a baby was admitted to Montana Deaconess Hospital. The baby was six months old. The baby had her esophagus torn open and had oral gonorrhea from what a man did to that child. Ryan was not just brutally sodomized. He was killed and left for dead in a cemetery in Libby. Why do people commit violent crimes against other human beings? She believes it is because they have a lack of respect for the victim as well as society's laws. They certainly have the inability to control their impulses and often they have a chemical dependency problem. Those four elements are true for sex offenses, deliberate homicide, and aggravated assault. What will HB 214 do? It will create a registry to assist law enforcement in investigations. It establishes legal grounds to hold offenders in suspicious circumstances. It deters violent and sex offenders from committing new offenses. It offers citizens the availability of important information so that they can protect themselves.

REPRESENTATIVE DENNY stated that if HB 157 is passed, we should not fool ourselves for a minute that people will not still offend and that victims will not be preyed upon. Hopefully, we will be able to protect more people from repeat offenders and make our system more effective at rehabilitating and controlling offenders. During the House hearing they heard testimony that a number of currently convicted sex offenders at the State Prison are in favor of this legislation because they need to have boundaries. Those who want to be rehabilitated would like to know that society is watching them and they will be held accountable for their actions in the future.

HEARING ON HB 253

Opening Statement by Sponsor:

REPRESENTATIVE BEVERLY BARNHART, House District 29, Bozeman, presented HB 253 which would allow judges in a dissolution action, to send parents to a class which will teach them the affects of divorce on children. Children will be affected differently at different ages. Some judges are already doing this. There is plenty of material available. The judge would tell all people who come before him for a divorce, that this class is available and he may send some of them if he believes they need this class. At the end of the class the two parents enter into a contract and decide things such as what should be done for birthdays, Christmas, etc., so their child's life is more stabilized. She passed out two handouts, EXHIBITS 5 and 6.

Proponents' Testimony:

Pat Melby, State Bar of Montana, stated their support of HB 253. A small part of his practice is family law. Anyone who is involved in that area runs into situations where the parties to a divorce, in a very emotional state, tend to use the children as a way to punish the other party. A judge should be able to order these parties to take some classes and educate themselves on what those kinds of activities can do to children.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE BARNHART offered no further comments on closing.

EXECUTIVE ACTION ON HB 253

Motion/Vote: SENATOR HALLIGAN MOVED HB 253 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON HJR 14

Discussion: CHAIRMAN CRIPPEN stated he talked to REPRESENTATIVE GREEN about this bill and he indicated he did not want to have any amendments on it.

HEARING ON HB 347Opening Statement by Sponsor:

REPRESENTATIVE DEBORAH KOTTEL, House District 45, Great Falls, presented HB 347. This bill will make it a felony to make threats against a public servant with the purpose to influence their discretion. Currently these types of threats are misdemeanors since they are directly connected with the judicial or administrative proceeding. This bill makes it a felony to make a threat against the property of a public servant with the purpose to influence their discretion. Section 45-7-102, MCA, does not provide for threats against property. It will make it a felony to make a threat against a family member of a public servant for the purpose of influencing their discretion. It will make it a felony if the person or property of a public servant is actually injured because of the public servant's lawful discharge of their duties. Currently only threats are covered at the misdemeanor level. This bill gives local government officials the protection that they need and the tools to stop the escalation of violence. Constitutionalists and tax protestors in Garfield, Petroleum and Fergus Counties calling themselves Freemen threatened to hang the Garfield County Sheriff Charles Phipps and offered bounties on several governmental officials. Lewis and Clark County Commissioner Blake Wordahl received a call threatening to kill his dogs and to injure his property. A school board member in Livingston had a lug nut on his car loosened because of a position he had taken on a school board meeting. Ravalli County Commissioners have received anonymous calls warning them not to sit in front of the windows of their office. Judge Jeffrey Langton received a threatening letter from a militia group, etc. One of the things which makes Montana great is a citizen's legislature. When she decided to run the decision meant the loss of a private life and an unbelievable loss of time. It meant taking tough positions. It did not mean that people would threaten the life of her child or her own life.

Proponents' Testimony:

REPRESENTATIVE CLIFF TREXLER, House District 59, Corvallis, stated that some time ago their local judge, county attorney, and assistant county attorney were threatened. A young man was arrested for driving a stolen pick up. After he posted bond and was released, all of the public officials involved were served with papers saying the Militia of Common Law had given them 10 days to respond. If they did not respond, they would be arrested and tried by the court of the militia.

Ken Toole, President of Montana Human Rights Network, commented on a pattern they see emerging in Montana. They have been monitoring the Freeman movement and the militia groups for four or five years. They are seeing a pattern of escalation within the groups. In Musselshell County among the items confiscated in the arrests, in addition to \$80,000 in cash and weapons, were plastic hand ties to be used to take people into custody. It is important that prosecutors and local law enforcement officials have the appropriate tools to deal with this type of situation. They feel that people are being discouraged from serving in public office because of all the threats. These organizations will seat their own courts. They then proceed to issue summons, arrest warrants, etc.

John Connor, Montana County Attorneys Association, stated Attorney General Joe Mazurek wanted to be here today but was unable to do so. This bill is an effort to make more definitive the provisions of 45-7-102, MCA, as well as increasing the punishment for impersonating public servants. The legislature is asked to broaden the offense consistent with the trend to include offenses for threats against public official's property and families. The nature of the threat and the potential for violence which comes out of that is what is important. Public officials should be free to speak out and to vote their conscience without fear of retaliation. The threats become more onerous when they involve clerk and recorders, clerks of court, treasurers, etc., who are not used to dealing with this sort of things. The part of the bill dealing with making it a crime to impersonate a public official stems from the situation where people have been setting up their own court system. They issue grand jury subpoenas and indictments. People are truly frightened.

Judge Marty Bethel, City Judge Ravalli County, stated that they have become quite shaken by the Militia of Montana activity. Four judges have been inundated with threats of violence against themselves, their families, and the peace officers who work in their courts. This court convened and ruled that they have jurisdiction over her courts. They elected three justices and appointed a marshal with arrest authority. All the judges were served with documents ordering them to dismiss within 10 days for lack of jurisdiction. They demanded their addresses. They deal with threats on a regular basis but those are typically defused with discussion. These people openly state they will die as free men if they do not get their way. Justice Sable has been told she will be shot in the head. Deputy County Attorney Reardon has been told he is going to be shot in the back.

Blake Wordal, Lewis and Clark County Commissioner, stated that the bill was improved in the House with reference to families. Threats to him will not affect his decisions on matters of importance but he listens a little harder when someone is threatening his family. There were three times when he was confronted with complaints over and above the regular complaints.

The first was in 1987 when a group called the Pace Amendment Advocates announced that they would be moving their headquarters to Helena, Montana. The Pace Amendment Advocates are a group who advocate a new amendment called the Pace Amendment to the United States Constitution which would set aside the Pacific Northwest as a homeland for white christian men and their families and would remove everyone else from the area. They were told they were not welcome in Helena. As a result, they bought full page ads challenging them in how they represented the community. He received phone calls and letters threatening his family, dog, property, and himself. The second complaint was over a road. One person who lived on the road, called the commission office and said he was coming up with his rifle to blow them away. The third time was when the commissioners were considering zoning proposals for the county. They were told to invest in bullet proof glass.

Brad Martin, Director of the Montana Democratic Party, spoke in support of HB 347. He sees mounting evidence of a growing freeman and militia movement in Montana. At what point, when this threat moves from a threat to an action, will the committee regret not acting on this bill. This bill is extremely important to public servants. The threat is real. The remedy is appropriate.

Sue Haverfield, Flathead County Clerk and Recorder, stated they support this bill. They are in the courthouse trying to do their statutorily assigned duties and people are challenging them with threats. The courthouse was built in 1902 which sits in the middle of the road and doesn't have any offices in it anymore. They have had the police department train them in the use of pepper spray.

Jim Campbell, City of Billings, stated their support of the bill for the protection of their employees.

Jim Smith, Montana Sheriffs and Peace Officers Association, stated their support of HB 347.

Edmund Caplis, Executive Director of the Montana Senior Citizens Association, spoke in support of this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HOLDEN asked **Mr. Connor** if public officials included judges?

Mr. Connor stated that was correct.

SENATOR HOLDEN asked if the governor has been contacted about the problem in Ravalli County and if the Montana National Guard could be used if there is escalation.

Mr. Connor stated he is working with the county attorney over there and is not comfortable commenting because he is not sure what may result, in terms of action in Ravalli County.

SENATOR HOLDEN asked if the Montana National Guard is used to put down those types of unrestful situations.

Mr. Connor stated that he believed the governor has a statutory scheme he must follow in terms of when he is able to activate the guard.

SENATOR BAER asked if **Mr. Connor** knew of any incident where someone has been actually physically harmed under these circumstances to date?

Mr. Connor answered he couldn't remember a specific assault situation. He did not want to say that they haven't occurred. He is personally not familiar with them. If there are assaults which occur, there are statutes which can be used to charge for a particular type of violent action.

SENATOR BAER asked if the impact of this bill would make the penalty more severe if the victim were a public official rather than a private person.

Mr. Connor stated that they tried to compare this bill with the intimidation statute which is Section 45-5-203, MCA, which can be used to address people who are not public servants if threats are made against them. They thought this bill was a good idea because it is more act specific and covers situations where there are threats against property as well as the person and that is not covered by intimidation. It is unique to public servants because in the performance of their duties they are more apt to have threats against property such as inappropriate liens put on their property rather than that kind of thing being done to the private citizen. If there are threats against a private person to get that person to perform or omit the performance of an act and they are threatened with physical harm or with the commission of any felony offense, then they can be charged under intimidation.

SENATOR BAER stated the fine is being raised from \$5,000 to \$50,000. Would that be the same application to a private person who was a victim of this type of violent behavior?

Mr. Connor stated it is the same penalty as intimidation.

SENATOR BAER commented that he did not wish to do something that would inflame the situation which has already progressed to a certain point. He has been subject to death threats in the

Senate. He does not want to hysterically inflame a situation. He asked if the bill was really necessary.

Mr. Connor stated that generally speaking from the standpoint of prosecutors and law enforcement, he agrees completely. We have to do our very best not to escalate the situation. This bill is a tool which must be used with restraint and responsibility as prosecutors and law enforcement officers.

SENATOR BAER stated there is a lot of extremism out there and he does not want the legislature to respond with reciprocal extremism.

SENATOR DOHERTY asked **Judge Bethel** and **Ms. Haverfield** if they believed this response is necessary.

Ms. Haverfield stated she hoped it was not necessary but something is needed. In their case they were dealing with the spouse of an employee who was a potential loose canon and they are sitting there in a wide open space with no protection.

Judge Bethel stated this bill is not an overreaction. The last filings stated if they will not respond, they will die.

SENATOR GROSFIELD stated that on page 2, line 11, it looked like the House lowered the fine to \$5,000 and then raised it back to \$50,000.

REPRESENTATIVE KOTTEL commented the fine has always been \$50,000. When they submitted the bill, since they increased the penalty to a felony from a misdemeanor, they thought as a compromise they would lower the fine to \$5,000. The bill was submitted with the fine being lowered as \$5,000. The House felt strongly that it should remain at \$50,000 and it is through the House's amendment that it was brought back to the original level of \$50,000.

Closing by Sponsor:

REPRESENTATIVE KOTTEL stated that when she was in the room earlier on HB 157 and HB 214, many people walked through these passages but almost no one looked up and looked around. Today during this bill she noticed over and over again many of the committee members looking to see who was walking by. This bill brought the heightened awareness of what happens when we allow citizens to use the tyranny of the threat of violence in order to further a particular political dogma. This bill is not about Freeman or militia, it is about anyone. We cannot allow individuals to use that type of tyranny to further their ideas. How would they do that? They do that by making sure good citizens do not serve in public office. No public officer should pay the price of watching their loved ones be threatened and their property destroyed in order to influence their decision.

EXECUTIVE ACTION ON HJR 14

Motion: SENATOR ESTRADA MOVED HJR 14 BE CONCURRED IN.

Discussion: SENATOR HALLIGAN stated that the balance in the system is somehow struck with the involvement of law students in this situation and they do perform a valid role in the process.

Substitute Motion: SENATOR HALLIGAN MOVED HJR 14 BE TABLED.

Discussion: SENATOR HOLDEN stated he discussed this with Mr. Connor and he stated the law students gear all their lawsuits around Ravalli and Missoula Counties. Those counties are paying for all the lawsuits.

SENATOR BAER stated that they passed a bill yesterday with an ex post facto amendment which is the most unconstitutional things he has ever seen happen. Based upon unconstitutionality, he would like to see some proof.

Vote: The motion FAILED on roll call vote.

Discussion: SENATOR DOHERTY commented that in those instances where prisoners file their own lawsuits, the lawsuits have to be dealt with. If a law student, who is supervised by an attorney, is working on these lawsuits you will reduce the amount of frivolous lawsuits being filed by prisoners. If the attorney does not make an adequate investigation and files a frivolous lawsuit, they are subject to sanctions. Prisoners and pro se litigants in theory are subject to the same sanctions as attorneys but he has never seen or heard of anyone acting as his own attorney being sanctioned by the court. The intent is honorable to reduce the amount of lawsuits, but by passing the resolution and asking the Supreme Court to take away that representation right for law students by supervised attorneys, you are probably going to end up with more lawsuits.

SENATOR BAER commented he understood the intent of the law school to provide education, training, and experience but to allow non-practicing lawyers who are non-members of the bar to practice on inmates is not the way to handle this. When he received his legal training, no law student would be allowed to do anything like this.

SENATOR HALLIGAN commented that he worked at the county attorney's office for three years while going to law school and was in court five days a week handling trials under the student practice rules. Montana's Law School is one of the foremost in the country in making sure that attorneys have practical experience before they get out. Page one of Jeff Renz' testimony talks about Judge Battin's entering of an order directing the state to submit a plan to provide inmates access to the courts. Access to the courts has something to do with our Constitution. When the ACLU attacked us for not having access to the courts,

they used the student practice parts of the Montana Defender Project to say that there was no point.

CHAIRMAN CRIPPEN stated that if this program was disbanded and no other program put in, there would be a problem. Even with the expanded law library and the ability to access it, there still may be a problem. The state would still have the option to hire attorneys to represent these inmates. He favors having the law students handle this. This gets the students orientated in the defense area.

Vote: The motion that HJR 14 be concurred in **CARRIED** on oral vote with **SENATORS CRIPPEN, BARTLETT, DOHERTY, HALLIGAN, and NELSON** voting "NO".

EXECUTIVE ACTION ON HB 232

Discussion: **Valencia Lane** stated she typed the amendments in Legislative Council form. The amendments were handed out yesterday by **REPRESENTATIVE JORE**. They are a compromise position and have been negotiated by the Montana Shooting Sports Association and the Sheriffs and Peace Officers Association.

Mr. Smith stated they had a problem with the second amendment. He suggested striking everything after the word "based" on line 17.

SENATOR HALLIGAN stated the bill would read "a written statement of the reasonable cause upon which the denial is based." They would still get the written statement of the reasonable cause upon which the denial is based. They expect that the contents of that writing to include whatever the sheriff or police officer feels is the indication of the reasonable cause finding.

CHAIRMAN CRIPPEN clarified that on amendment 3, line 17, page 2, after the word "based" there would be a period and then strike the rest of line 17 and all of 18.

SENATOR GROSFIELD stated that the sheriff does not have to give the applicant a written statement of reasonable cause if there is an ongoing criminal investigation. Would that inform the applicant that he is undergoing some kind of investigation? How would sheriffs and peace officers deal with that issue?

Mr. Smith stated that if they accept amendment 1, that language would read, "At the time the application is denied, unless the applicant is the subject of an active criminal investigation, the sheriff shall give the applicant a written statement of the reasonable cause upon which the denial is based." In the spirit of cooperation they acceded to that amendment.

SENATOR GROSFIELD asked **Mr. Marbut** if he saw a problem there. He felt it was a statement to the applicant that they are under a criminal investigation.

Mr. Marbut stated that it is extremely unlikely that criminals apply for concealed weapon permit. There are also sheriffs in Montana who simply do not issue permits for up to 90 days. If a criminal were applying for a permit to find out if there is a criminal investigation, he could read a number of things into that including the fact there may be an ongoing investigation but he did not believe that was a serious issue. This was the last area they negotiated with the Sheriffs and Peace Officers Association. He did not recall any reluctance on their part.

SENATOR GROSFIELD asked how the expenses of the advisory council would be paid.

Mr. Marbut stated there was no discussion and they assumed all along that people who served on that council would serve as volunteers.

CHAIRMAN CRIPPEN stated that if a salary was not specifically provided, it would be a voluntary position. He believed they would be allowed per diem.

SENATOR HALLIGAN believed they were all created under one particular section of the code and if this was not provided for they would not be paid. He asked to segregate amendment no. 7. If this bill works and the governor is actively negotiating, there will be no need for an advisory board to negotiate the interstate permits. He asked if it should be created when it is not needed.

Mr. Marbut stated that provision was put in at the request of the Montana Sheriffs and Peace Officers Association. They wanted to make sure there would be an advisory council working on it in which they would have representation and it is their intention that an advisory council should do most of the work. They are extremely sympathetic with their desire to be on it. If it makes them feel better to have "shall" rather than "may" they are glad to have that in there. It is not something they requested.

CHAIRMAN CRIPPEN stated there was an inconsistency wherein the words were "may negotiate" and then a "shall advise council". There might be a council and the governor would not have to do any negotiating at all and ignore the council. What the Montana Sheriffs and Peace Officers Association intended is that if there is any negotiation it shall work through a council the governor would appoint.

SENATOR HALLIGAN asked **Mr. Smith** what his thoughts were.

Mr. Smith stated that the Montana Shooting Sports Association felt very strongly that if reciprocity agreements could be concluded with other states, that the governor and the State of Montana ought to have the legal authority to enter into them and did not want any legal impediments in this bill or in the statute to doing so. The Sheriffs and Police Officers agreed. There

shouldn't be any legal impediments to doing so, but they still had a lot of concerns about these reciprocity agreements. They conceded to Mr. Marbut's statement that they were a little bit behind the times in terms of concealed weapons and they were not very comfortable with a blanket invitation to enter in these agreements. They felt that the advisory council ought to be established to provide some additional guidance and knowledge and they would advise that council if they didn't feel it would be wise to enter into agreements until this council has had a chance to function during at least one interim, even though there are not legal barriers to doing so in the law itself.

SENATOR HALLIGAN felt it would not be necessary to segregate the amendments.

Motion/Vote: SENATOR HALLIGAN MOVED TO AMEND HB 232. The motion CARRIED UNANIMOUSLY by oral vote.

Motion: SENATOR BAER MOVED HB 232 BE CONCURRED IN AS AMENDED.

Discussion: SENATOR JABS stated that he had a problem with the sheriff providing written notice as to why an application is denied. He believed that would open up a lawsuit for defamation of character.

Mr. Marbut stated in the underlying concealed weapon permit law there is a provision which immunizes the sheriff from liability due to what he does or does not do about permits.

SENATOR GROSFIELD stated that he is still concerned that they are putting people on notice that they are under criminal investigation.

Vote: The motion CARRIED by oral vote with SENATORS BARTLETT, GROSFIELD, and JABS voting "NO".

EXECUTIVE ACTION ON HB 347

Motion/Vote: SENATOR BAER MOVED HB 347 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote.

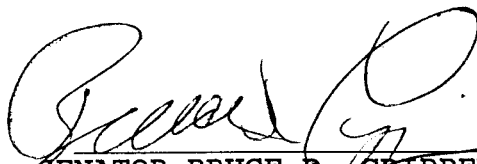
SENATE JUDICIARY COMMITTEE

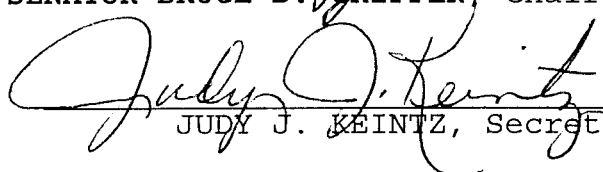
March 8, 1995

Page 22 of 22

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.


SENATOR BRUCE D. CRIPPEN, Chairman


JUDY J. KEINTZ, Secretary

BC/jjk


SENATE STANDING COMMITTEE REPORT

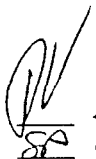
Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 347 (third reading copy -- blue), respectfully report that HB 347 be concurred in.

Signed:


Senator Bruce Crippen, Chair


Amd. Coord.
Sec. of Senate


Senator Bartlett
Senator Carrying Bill

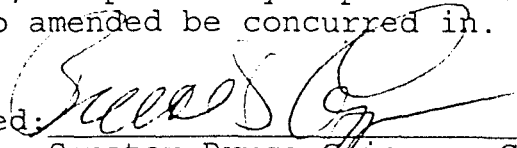
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:



We, your committee on Judiciary having had under consideration HB 232 (third reading copy -- blue), respectfully report that HB 232 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Zippen, Chair

That such amendments read:

1. Title, line 10.
Following: "AND"
Insert: "REQUIRING THE GOVERNOR"
2. Page 2, line 16.
Following: "shall"
Insert: ", unless the applicant is the subject of an active criminal investigation,"
3. Page 2, lines 17 and 18.
Following: "based" on line 17
Strike: remainder of line 17 through "finding" on line 18
4. Page 3, line 1.
Following: "evidence"
Insert: "that the sheriff may or may not accept"
5. Page 3, line 2.
Strike: "firearms"
Insert: "handguns"
6. Page 3, lines 21 through 24.
Following: "Montana." on line 21
Strike: remainder of line 21 through "state." on line 24
7. Page 3, line 25.
Following: "governor"
Strike: "may"
Insert: "shall"

-END-


Amd. Coord.
 Sec. of Senate


Senator Carrying Bill

541438SC.SPV

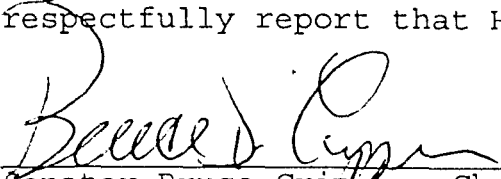
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
March 8, 1995

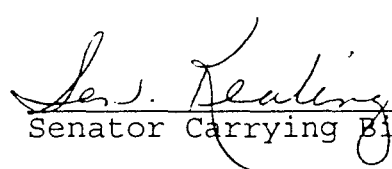
MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 253 (third reading copy -- blue), respectfully report that HB 253 be concurred in.

Signed:


Senator Bruce Crippen, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

541204SC.SPV

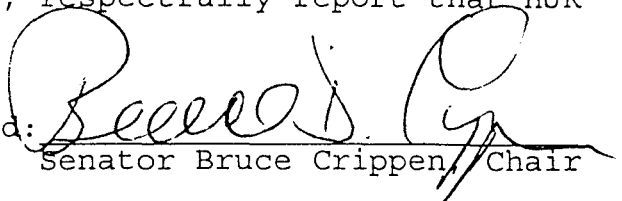
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HJR 14 (third reading copy -- blue), respectfully report that HJR 14 be concurred in.

Signed:


Senator Bruce Crippen, Chair


SA

Amd. Coord.
Sec. of Senate


Senator Benedict
Senator Carrying Bill

541205SC.SPV

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/8/95 BILL NO. HTR 14 NUMBER 1

MOTION: Halligan - Table

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

SEN:1995
wp:rlclvote.man

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/8/95 BILL NO. HJR 14 NUMBER 2
MOTION: Estrada - Concur D

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

TESTIMONY IN SUPPORT OF HB 157 WITH AMENDMENTS

HB 157

OFFERED BY: CHRISTINE KAUFMANN, HUMAN RIGHTS NETWORK

The Montana Human Rights Network is a private non-profit corporation, consisting of a statewide office and 12 local human rights groups. The staff answers to a board of directors from across the state and about 3,500 Montanans who support our mission with their dollars and their activism. We are not a part of the Human Rights Commission, the office of state government charged with enforcement of anti-discrimination laws.

Our mission is to help communities counter bigotry, hatred, and intolerance across Montana, no matter who the targets are. We do this by helping local folks speak out against bigotry and by celebrating the diversity among us. In keeping with our mission we support equal protection under the law for lesbians and gay men.

We can fully support HB 157 if it is amended on page 6, line 16 to remove consensual sexual activity made criminal in 45-5-505. My comments will be confined to the amendment.

You should be aware that 45-5-505 is currently being challenged in district court in Helena as an infringement of the constitutionally guaranteed rights to privacy, dignity, and equal protection under the law. The challenge will likely come before the Supreme Court prior to the next legislature. In defense of the law, the attorney general has argued that gay men and lesbians have nothing to fear because the law has been on the books in one form or another since territorial times and has never been enforced.

The district court judge has denied the State's motion to dismiss the lawsuit for lack of standing. In doing so, he pointed out that the Montana Legislature, in its refusal to repeal the law and its action to amend it, "has reinforced the idea that this is a viable and enforceable statute...The Court will not assume that law enforcement agencies will perpetually ignore a statute when our legislature continues to support its validity."

By creating new law referencing 45-5-505, particularly one which clearly discriminates against lesbians and gay men by denying their constitutional rights to privacy and dignity, the legislature will again send the message to the court that 45-5-505 is valid and should be enforced. If you leave the reference to 45-5-505 in the bill, you will make it more difficult for the State to argue its case, and easier for the court to rule with the plaintiffs.

Setting aside the impact on the court case, the real reason to amend the bill is because consenting sexual activity, whether you approve of it or not, simply does not belong in this bill. This bill is about registration of criminals who threaten the safety of our communities. When two adults freely consent to sexual activity, there are no victims. We urge you to support the bill as amended.



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3/8/95
FILE NO. HB 157

P.O. Box 775 • Helena, MT 59624 • (406) 442-9322

**TO: Senator Crippen, Chair; Senate Judiciary Committee
Members of the Committee**

Re: Opposition to Parts of HB 157

Date: March 8, 1995

I am Sandra Hale, Executive Director of PRIDE!, Montana's statewide organization for lesbians, gay men, and bisexuals. Our mission is to secure the constitutional rights for this community and to build Montana communities based on respect, fairness, and equality.

PRIDE! strongly opposes the inclusion of Montana Code Annotated 45-5-505 in the list of sexual offenses under section 6 of this bill. This statute makes felons of adults of the same sex engaging in consensual sexual intercourse in the privacy of their own homes. The statute is presently being challenged in the Montana court system as unconstitutional, in the lawsuit *Gryczan vs State of Montana*. The plaintiffs maintain that MCA 45-5-505 violates Montana citizens' right to privacy, equal protection under the law, and human dignity. The inclusion of it in this bill further reinforces the creation of state sanctioned discrimination against a segment of Montana citizens based on an intrinsic characteristic of their very being.

Consistent with the belief that self-identified lesbians, gay men, and bisexuals deserve the same basic rights as other Montana citizens, that a homosexual sexual orientation and its enactment in every day life in the privacy of homes between consenting adults is not a crime against nature or the state - but rather part of who we are, PRIDE! urges the Committee to strike this section from HB157.

"Lesbians, Gay Men and Bisexuals united to secure our constitutional rights to privacy, equal protection and dignity."

March 8, 1995

HB 157
Senate Judiciary
Arlette Randash / Eagle Forum

We rise in support of HB 157 for compelling reasons. Some of the most heart rendering testimony has been given during this legislative session concerning sexual offenders. I have shared with you newspapers articles of sexual offender cases from across Montana collected in the past several months because of the obscenity issue. For each of those there are probably dozens that have never been reported.

The Montana Board of Crime Control has kept statistics of sex offenses since 1980. That year there were 406 sex offense convictions and 166 forcible rapes. By 1983 sex offense convictions had jumped to 1070, in 1991 to 1438, dropping in 1993 to 1183 and 179 forcible rapes. How many of those sex offenses were committed by repeat sex offenders? How many could have been prevented if the sex offenders had been registered with the police department and the public had been notified? How many of those victims offended in 1983 are the perpetrators in 1995 *because they were victimized?*

In June of 1994 there was a symposium made up of the attorney general, of state law enforcement officials, and juvenile sex offender experts in Great Falls. I want to share with you several pertinent facts from their findings concerning sex offenders. From page 3 it says: "232 child molesters revealed an astounding capacity for victimization. Those offenders whose victims were less than 14 years old had attempted 55,250 molestations and had completed 38,727. Their combined victims numbered 17,585 children, for an average 76 victims each." This study by Abel, Mittelman and Beckman done in 1983 went on to say "that the average male sex offender affects 380 victims in his lifetime, the number of victims increasing as the offender moves from adolescence to adulthood." If you take the statistics of just the convicted sex offenders I gave you earlier and multiply by the number of supposed victimizations thought to be happening in these studies it is convincingly clear the state of Montana should support Rep. Denny's HB 157.

You have heard powerful testimony as to the havoc wreaked in the lives of those victimized by sexual offenders. Should perpetrators be compelled to register under the provision of HB 157? Definitely. No one should know the pain and the agony of sexual violation. No culture will ever preclude the deviant preying on the innocent, but you have it in your power to even the odds. Please give a "do pass" to HB 157.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 3/8/95

FILE NO. HB 214

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

MARCH 8
~~February 3~~, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. I am here today to voice opposition to HB 214.

Most of the comments I made on HB 157 would apply to HB 214.

I'd like to acknowledge that some key elements about which the ACLU expressed concerns in the House have been addressed.

Our concerns with what was originally the new Section 12 (which provided for release of the information if the release is "necessary for public protection" is improved with some judicial safeguards previously absent.

There was a real ex post facto problem in Section 15 which would make this registration apply retroactively to all persons who have ever been convicted.

Still, this is clearly a punitive bill. The lifetime registration, I think, is violative of our Constitution's restoration rights. Furthermore, even though the convicted person would be eligible after ten years to petition the court for relief from that obligation, I believe this is a draconian measure. Such a petition would be public and would undoubtedly cause press coverage and public furor. It would make the individual subject to a witch hunt. It would violate the rights to privacy and human dignity. Furthermore, it is unlikely to have any effect on the crime rate. This kind of knee jerk response to what is obviously a problem does more harm than good.

These bills simply contradict our basic sentencing policy of the State of Montana. Section 46-18-101(2), Montana Code Annotated sets forth the basic policy of the state of Montana. It reads:

The correctional policy of the State of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses

occurs whenever probable cause exists and that punishment of the convicted is certain, timely and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

Neither HB 157 or HB 214 is at all consistent with the ideas of rehabilitation and consideration of individual characteristics, circumstances, needs and potentialities. Rather, each contains a blanket assumption that every person who is convicted of a sex crime and/or a violent crime, will be and remains a sexual pervert or violent threat for life. That simply is not true.

George Studer
586-3582 (Home)
994-6301 (MSU)

Representative Bob Clark
Montana State Legislature
House Judiciary Committee
Helena, Montana

February 1, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/8/95
FILE NO. HB 253

Dear Mr. Chairman,

I am writing to support Representative Beverly Barnhart's proposal, HB 253, to institute a policy for education programs for divorcing parents which will protect the rights of the affected children. I have five children and went through a divorce in Coeur d'Alene Idaho on May 2, 1994. There were many difficulties surrounding the inclusion and manipulation of the children which became apparent to both lawyers, the mediator, school and church leadership. The court decided to direct that we attend their video and 3 hour class and work with a mediator to settle custody, visitation and property issues.

The video "In the Best Interests of the Child" was shown at the court house at only specific times two days a month. This was a major inconvenience for those having to travel a great distance to be there. It would seem to me that it would have been better to have an opportunity for everyone to watch it individually in addition to providing the group viewing. I would recommend this for Montana. The video itself was OK but not so effective as the ones I have viewed since. When I returned to Montana I contacted Judge Moran and Olsen's offices in Bozeman and asked if they would be interested in developing a program like there is in Idaho. Due to funding considerations we began looking at videos from programs around the country. Then I found the Family Law Section of the State Bar Association had already been perusing the recommendation of a video for the State. So I worked with Mr. Andy Suendram of Dillon, MT. I learned about the many sweeping programs being mandated by court systems around the United States and reviewed a few of the most highly recommended programs.

The videotape I would most highly recommend to be viewed by all divorcing parents that is available today is "Listen to the Children", by Victor-Harder Productions. It consists of moving and honest testimonies of 30 different children of varying ages and backgrounds. The purpose of this tape is to increase the sensitivity of all parents to the children's predicament, feelings and vulnerabilities. It does not appear "staged" as others do, but instead the children appear candid and open. At the end there are 10 or so clear written recommendations to the parents to do right away. I would also recommend that the judges in each district add some frank and direct words to divorcing parents at the beginning and end of the tape if at all possible and make the tape available for regular group viewing as well as checkout at the local courthouses.

The course in Idaho was called "Divorce: A Sensible Approach for Parents." It was extremely helpful for me and helped me to have a better attitude towards mediation subjects. In the class of 25 people I was able to see many people who were much more angry than myself, others who were expressing similar problems as myself and still others who seemed to have it all together. I was able to look more objectively at my attitudes and also felt affirmed in my desires and opinions of what was right for the children's sake. I learned about what were typical reactions of children of different ages to divorce and what things to do or avoid as parents to help them through it. I

realized my 2 year old daughter probably wasn't ready for overnight visits yet even though I felt I was being denied that right. I realized that I couldn't expect to force my fourteen year old son to come visit with me even though I had the right to visit him. I realized how much a major battle over custody would damage the children and how much stability in their lives means at that time. The class cost \$20, run at the North Idaho College only once a month.

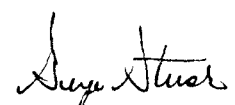
The Center for New Directions handles the Divorce education programs along with other essential services. They grant funded programs are run by the State of Idaho in six cities in cooperation with the university facilities and systems. Counselors are paid and certified and a Masters in counseling(or Grad Student) is required. Courts have not mandated the programs for every divorcing parent, but many states do. The Center for New Directions includes other programs for re-entering the workforce, teaching of non-traditional job skills(welding, construction, auto repair for women), career counseling, personal counseling and special workshops for financial planning, self-esteem, etc.

At the Center for Divorce Education in Boise, they:

- show one video 6 times a month, handling about 200 divorcing people.
- the instructional book includes a helpful "Parenting Plan"
- sell books like "Mom's House, Dad's House" in class.
- have the divorcing parents view "Listen to the Children" with the children - great idea!
- have parents in custody battles watch 2 other videos:
"Pain Games" & "Don't Forget the Children"
- have those directed toward mediation watch 2 more videos:
"Its Still Your Choice" & "Mediation, Its Up to Your"
- the center puts out a newsletter every month as well

In Lewiston, they use a video series called "Children in the Middle" which is put out by the very well known Center for New Directions in Athens, Ohio (a non-profit part of Ohio University). This series has one video for adults and another for teaching children how to best handle the same situations that are in the video for adults - it was meant to be used in a classroom setting. The Association for Family and Conciliation Courts is also very active in this area. In 1994, the 1st International Conference on Parent Divorce Education was held in Chicago Sep 29, 30 & Oct 1.

I am not a counselor, lawyer, judge or psychologist. I am a father of five wonderful children who have been victimized by divorce. I feel very strongly about the benefits of these programs for the ignorant and distracted divorcing couple - not to solve their problems but to wake them up to the needs of their children. Contrary to judicial opinion, I believe divorce should be recognized as a process and the children are victims over a long period. I only wish there were some way to give remedial training to people who didn't get the message the first time; but I think the books and videos recommended by these programs can really help divorced parents to be reminded of the important principles first introduced in the heat of battle. In Bozeman, I started an series of divorce recovery workshops, a professionally run on-going divorce support group and reference list of programs and materials to help individuals make it through the rest of the process. Idaho programs meet great needs and protect the future, please support something similar in Montana.



GUIDELINES FOR DIVORCED PARENTS

STATE JUDICIAL COUNCIL

LEADIT NO. 16

DATE: 3/8/95

1. Your youngsters need the security of knowing that they have two loving and considerate parents. Whether they have two equal families in a shared situation or one primary home and lots of contact with the other parent, they need to feel loved, accepted, secure, appreciated, understood, and validated as worthwhile people in their own right, even though their parents no longer live together. Any situation that forces them to take sides, make loyalty decisions, or become pawns in a power game between warring adults is going to be detrimental to them. HB 253

2. The children's right to love each parent must be honored. It's imperative that you recognize and respect your youngsters' feelings about their other parent, and allow them to feel comfortable about loving both of you. To do anything else is not only unreasonable and incredibly selfish: it attempts to deny one of the strongest of human emotions and desires. Attitudes that downgrade the other parent, scorn his or her worth, and make the youngsters feel guilty, resentful, or conflicted about the love they feel for their progenitor only add to the pain and confusion they already feel. As one 6-year-old told her mother, "I won't say bad things about your daddy if you quit saying bad things about mine!"

3. Your opposing partner's right to be an active parent must be validated. It's vitally important that you understand and accept this, and support the youngsters in their efforts to maintain contact and reassure themselves of each parent's love and commitment. Whether this means cooperating in making visits easier for the noncustodial parent, going out of your way to be flexible in your demands and expectations, or being willing to explore some form of shared custody, your primary consideration should be to allow the children and their other parent a chance to interact in a normal, natural, and comfortable manner. If your attitudes make this impossible, you're likely to find that the difficulties between you and your ex will increase, and the children will be the losers in the long run.

4. Stop and consider what your children are feeling and experiencing. Everyone's emotions run high during a family reorganization, but your kids won't have the same outlook on the problems that you do. What to you may be good riddance to a rubbish heap of broken dreams and promises may leave them feeling abandoned, deserted, guilty, unlovable, or tainted by the same brush with which you tar and feather your ex. Their emotions are just as complex and subtle as your own, although they may lack the sophistication to be able to explain them in adult terms. Every caring and concerned parent has to be willing to disengage from his or her personal feelings long enough to provide emotional support and reassurance to the youngsters when the children are under stress; this is a major part of the parental function, and you owe it to your children regardless of whether you are married, single, separated, or divorced.

5. Remember that it is healthier for your children to have two divorced coparents than to have an "intact" family which is constantly filled with stress and hostility. Divorce can be an honest and constructive solution to the problems created by "irreconcilable differences" in a marriage that has deteriorated, but it is up to you to complete your divorce stages so as to reach your equilibrium of dissent. If you continue your grudges and battle with your ex for months or years at a time, your children may see you as the constantly angry and hostile authority in their lives, and be frightened of expressing their own feelings for fear of bringing your wrath down on themselves. Or if you appear to be the poor martyred victim, complaining pitifully about each day's existence, they may not be willing to share their own pain with you lest it add to your already too heavy burden and make things worse. Therefore, for both your sake and theirs, you would do well to work through your divorce and put your energies toward building a constructive future for all of you.

DATE 3/8/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 253 HB 157

~~HB 214~~ HB 214 HB 347

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Check One

Name	Representing	Bill No.	Support	Oppose
W James Kembel	City of Billings	HB 347	✓	
Jane Christman	HB 214, HB 157	→	✓	
Derek VanLuchene		214, 157	✓	
John Connor	Attorney General's Office	HB 347 157-214	✓	
Pat Melbey	State Bar of MT	HB 253	✓	
Blake Wordal	Lewis & Clark Co.	HB 347	✓	
Judge Martha A. Littel	Hamilton/Darby	HB 347	✓	
Bob Mantz	MT Democratic Party	HB 347	✓	
Dave Otten	Dept Corrections	HB 157	✓	
Sandy Heater	"	HB 157	✓	
JOHN STRANDELL	CASCADE County	HB 214 HB 157	✓	
Lee Hawes Field	Shawhead Co/MATER	HB 347	✓	
Christine Kaufmann	MT Human Rights Network	HB 157 HB 347	Amend ✓	
Edmund Caplis	MBCA	HB 347	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY