

EXHIBIT 5  
DATE 3/9/07  
SB 306

Testimony of  
Justice John C. Sheehy (Rtd.)  
As A Citizen Proponent

SB 306

An Act Abolishing the Death Penalty and Replacing it with Life Imprisonment  
without Possibility of Release

House Judiciary Committee Hearing

March 9, 2007

Justice John C. Sheehy (Rtd.)  
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Testimony of John C. Sheehy as a proponent of and in support of Senate Bill  
306, An Act Abolishing the Death Penalty and Replacing it with Life Imprisonment  
Without Possibility of Release.

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I am John C. Sheehy, a native of Butte and a resident of Helena, duly admitted to the practice of law in all the courts of Montana. It has been my honor to serve in all branches of state government, as a chief deputy insurance commissioner, as a state representative and a state senator, and as a justice on the Montana Supreme Court. My private trial practice of criminal and civil cases was chiefly in Billings for 30 years.

I rise and stand in support of Senate Bill 306 because it has the effect of abolishing the death penalty in criminal cases, to which punishment I am unalterably opposed. Mine is a learned opinion, in the sense that it was learned from close observation over a long period of the adverse workings and effects of the death penalty on the justice system.

I did not start that way. Early on in my court career, I wrote or participated in two cases approving the penalty of death. One defendant was eventually executed, the other was not, saved by a later appeal process. However in other cases, it seemed to me that the prosecutors were sometimes over-reaching, that some judges were posturing, that deals were often made where some defendants were sentenced to death while their co-defendants were treated much less severely for the same offense. Ever present was the dismaying thought that if we were wrong or wrongly- led in assessing death, the result to the defendant was irrevocable.

I came eventually to the point where I announced that I would dissent in death cases from any further approval of a death penalty. I was vindicated at least once, in a case where two young men were given the death penalty over my dissent, based on the testimony against them from an accomplice, who received a jail sentence. Their death penalties were later reduced to life sentences by a federal court where apparently it developed the accomplice had engaged in obnoxious relations with her jailer while awaiting district court trial, unknown to the defense attorneys.

Now I want to say to the honorable Senators of the committee what I would say to you if I were visiting with each of you personally. Because I have been a legislator too, I appreciate and understand the pressure you may be under not to support this bill. Your constituents are pounded daily with lurid descriptions of homicides, and with

sound bites formed to get high ratings in readership or listeners. Unfortunately, the public sentiment crosses over from a sense of punishment to revenge. It is very difficult for a legislator, a judge, or a juror to put aside this pressure when dealing with the issue of the death penalty.

When you serve as you do in the top echelon of state government, you are shouldered with the duty to view dispassionately how best the state will be served in decisions you make for the good of all. In many of the United States, in fact throughout the civilized world, the death penalty has been rejected as a punishment too excessive in any justice system. No one can point out any adverse effect in those states or countries from such rejection.

Senate Bill 306 would substitute for the death penalty life imprisonment with no possibility of release. Such a result would protect society from the criminal, be a just retribution for a homicide because it demands a lifetime surrender of his individual liberty, and yet would respect the accused's right to life, however ill he may have used his life.

I think it takes political courage in present-day Montana to vote to abolish the death penalty, and I applaud Senator Dan Harrington for sponsoring the bill. He has shown over a long legislative career that doing the right thing as a legislator not only is good for the state, but is good politics too. That is another reason for you to support this bill.

  
John C. Sheehy

15-17-212. Tax sale certificate. (1) **After** receiving **proof of mail notice** to the person to whom the property was assessed, as **required by subsection (3)**, and upon receipt of all delinquent taxes. Penalties, interests, and costs, the county treasurer must prepare a tax sale certificate  
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(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send **notice** of the proposed payment, **by certified mail**, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least two weeks prior to the date of the payment. **The person making the payment shall provide proof of the mailing**

15-17-323. Assignment of rights – Form. (1) A tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, **after providing proof of mail notice** to the person to whom the property was assessed, as required by **subsection (5)**, pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of the delinquency. \* \* \*

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Prior to making payment under subsection (1), a person shall send notice of the proposed payment, **by certified mail**, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. **The person making the payment must provide proof of the mailing.**