

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **SEN. WALTER MCNUTT**, on April 8, 1999 at 9:10  
A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** Sen. Al Bishop, Vice Chairman (R)

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 516, 4/5/1999; SJR 19,  
4/1/1999; SJR 14, 4/1/1999; SR  
6, 4/1/1999  
Executive Action: SJR 14; SJR 19; SR 6

**HEARING ON HB 516**

**Sponsor:** REP. LARRY GRINDE, HD 94, Lewistown

**Proponents:** None

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. LARRY GRINDE, HD 94, Lewistown,** said this bill has to do with non-profits and their role in our society. Non-profits have been given a charitable gift by society in order to produce and help in charitable ways. But some of these organizations have gone beyond the scope of their non-profit status. He read line 16, page 1.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. MIKE HALLIGAN** asked if this will go after organizations such as the YMCA that are in competition with private health facilities, etc. He asked what non-profits are they directing this at. **REP. GRINDE** said all non-profit organizations need to be looked at. Hospitals are charging people for the use of their fitness centers when they are supposed to be used for staff and patients. Hospitals are also buying up private clinics and putting them under their non-profit status and this is not the scope of non-profits. He said they don't want to shut down non-profits, they just want to make sure they are using their non-profit status correctly and that they are not competing with the private sector.

**SEN. HALLIGAN** said profit making organizations provide services at a much higher price. He said there wouldn't be access to services for low income people if non-profits didn't exist. **REP. GRINDE** said a non-profit is to be a charitable organization and help people. He said he is not trying to stop services to low income people.

**SEN. RIC HOLDEN** asked what brought this up. **REP. GRINDE** said this was brought up to him in Billings by the fitness centers. Also in Lewistown, the hospital was in the process of building a doctor's complex on government ground. Only a certain amount of doctors could use this and the other doctors who still had to rent office space downtown where upset. There was a great debate in their town as to whether the county, city or state could be involved in this at all.

**SEN. DUANE GRIMES** said in the Senate they had a bill concerning the conversion of non-profits to for-profit entities. He said perhaps they need another whereas to specifically address conversions. He said if this bill addresses health care facilities, etc. perhaps it would be better under children and

family services rather than the tax interim committee. **REP. GRINDE** said he was hoping the conversion would be part of this study and another whereas could be added. He said it would get the best hearing in the tax interim committee.

**SEN. STEVE DOHERTY** asked if church owned property will be a part of this bill. **REP. GRINDE** said in the original bill it was amended out. But he believes that churches do abuse the privilege of non-profits and it could be put in by this committee.

**SEN. DOHERTY** asked what about co-ops. **REP. GRINDE** said they were also amended out of the bill, but they should all be looked at.

**SEN. DOHERTY** asked what about certain insurance companies like Blue Cross-Blue Shield. **REP. GRINDE** said insurance companies have gone beyond their scope and need to be looked at.

**Closing by Sponsor:**

**REP. GRINDE** said there is a problem out there and it should be addressed while they can still get a handle on it.

*{Tape : 1; Side : A; Approx. Time Counter : 9:25 a.m.}*

**HEARING ON SJR 19**

**Sponsor:** **SEN. DOROTHY ECK, SD 15, Bozeman**

**Proponents:**

Betty Waddell, MT Assoc. of Churches  
Sharon Hoff, MT Catholic Conference  
Al Smith, Self  
Scott Crichton, American Civil Liberties Union  
Bill Hooks, Appellate Defender Agency  
John Conner, Attorney General's Office and MT Department of Justice

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. DOROTHY ECK, SD 15, Bozeman,** read the title of the bill. She said they have had several bills this session concerning the death penalty and it has raised a lot of concern and questions. She said people's decisions and their opinions on the death penalty are not necessarily based on reason. They need to have a good thorough study on the death penalty during the interim.

Studies show that it is more cost effective to keep a convict in prison rather than executing. She said in many Supreme Courts almost half of their time is spent on death penalty issues.

**Proponents' Testimony:**

**Betty Waddell, MT Assoc. of Churches,** said there has been a lot of new issues on the death penalty that was discussed this session and they need to be looked at by the interim. She said they need to look at the cost and the psychological effects of the death penalty.

**Sharon Hoff, MT Catholic Conference,** said they are finding many people, who were sentenced the death penalty, and then found innocent. The death penalty affect many people on all levels. Many are starting the realize that the death penalty doesn't do all that much except cost money.

**Al Smith, Self,** said they have made a lot of assumptions on why they have a death penalty, but they really don't know the facts behind it. This will give them a chance to gather the facts and look at those issues. He said it takes an average of six years to find out if someone on death row is innocent.

**Scott Crichton, American Civil Liberties Union,** said the bill has outlined a very conscientious study.

**Bill Hooks, Appellate Defender Agency,** said a comprehensive study would be a great benefit to help them figure out what they will be dealing with in the next few years.

**John Conner, Attorney General's Office and MT Department of Justice,** said in Montana they don't discriminate when giving the death penalty and they don't impose it disproportionately to minorities, etc. But they don't have enough information on what the impacts of those sentencing schemes are. This study would be helpful to prosecutors who could use it when trying to assess the death penalty. It would be useful for defense council and advising clients who may be facing the death penalty.

**EXHIBIT (jus76a01)**

*{Tape : 1; Side : A; Approx. Time Counter : 9:38 a.m.}*

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** said on page 1, line 17 and 18, it talks about the cost of the legal proceeding for the death penalty, but it

doesn't mention anything about the cost of legal proceedings for life in prison. **SEN. ECK** said this may be something that they have overlooked and should be included in this whereas'.

**SEN. HOLDEN** said on page 1, line 22 and 23 there are some cases in Illinois and can they look at those cases. **SEN. ECK** said she does not have the citations, but they are available.

**SEN. HOLDEN** said on line 24 and 25 it talks about inmates that have been proven innocent on death row and are there cases like that in Montana. **SEN. ECK** said no, they have had only two executions in Montana since 1942. She said executions didn't happen in Montana from about 1940 to the early 1970s because of a federal ruling.

**SEN. HALLIGAN** said what are these people going to do in prison if they are not killed. **Bill Hooks** said these people are in maximum security and have very little freedom to even breath fresh air.

**SEN. HALLIGAN** said these people are extremely dangerous and can they even be integrated into the prison population. **Bill Hooks** said there are some men who are on death row for the killing another inmate, but there are some people on death row who have had clear conduct for a number of years while they have been in prison. He said it may be a problem for some and not for others.

**SEN. HALLIGAN** asked is there any incentives for people on death row if they are going to be in for life. **Bill Hooks** said there are some incentives, but it depends on the individual and if they want to take advantage of those incentives.

**SEN. GRIMES** said on line 14, page 1, can they really make an "objective analysis" on the context of an interim committee. **Scott Crichton** said they have done some public education forums dealing with issues in the Bill of Rights and they have been done objectively. If people feel strongly about the death penalty they should be at the table, etc. The committee should not be stacked with people who only support this study.

**SEN. GRIMES** said he does not want to see this as a one sided issue. The death penalty appeals to most peoples sense of justice and fair play. **Scott Crichton** said this study will allow both sides to speak if they feel strongly about it.

*{Tape : 1; Side : A; Approx. Time Counter : 9:50 a.m.}*

**SEN. HALLIGAN** asked what is a ball park figure for cost. **John Connor** said there is no ball park figure and this is one of the problems with the death penalty. He said one of the advantages to

having one of these studies is they can gather this kind of information. He said penalty is not a deterrent to crime and neither is the death penalty. But with this study they can come up with how long litigation is going to take, how expensive that is, and if it is economically advisable.

**Closing by Sponsor:**

**SEN. ECK** said they have heard some very emotional testimony regarding the death penalty and they are going to continue to hear this. This study would be very helpful and worthwhile.

*{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}*

**HEARING ON SJR 14**

**Sponsor: SEN. SUE BARTLETT, SD 27, Helena**

**Proponents:**

**Scott Crichton, ACLU**

**Beth Baker, MT Department of Justice**

**John Conner, MT Department of Justice**

**Mike McGrath, Lewis and Clark County Attorney**

**Opponents: None**

**Opening Statement by Sponsor:**

**SEN. SUE BARTLETT, SD 27, Helena,** read the title of the bill. She said in the past they have made changes to the sentencing statutes on a piece meal basis without an overall framework to guide their decisions. She said as a result, the sentencing statutes are now riddled with cross references, internal references and inconsistent terminology which is confusing and difficult to work with. She said this resolution comes from the Montana Sentencing Commission which functioned from 1995-1997. It is time for a thorough review of the sentencing statutes. She handed out some amendments and explained them. **EXHIBIT(jus76a02)**

**Proponents' Testimony:**

**Scott Crichton, ACLU,** said this is not challenging any Constitutional protection issues which normally their organization defends. But they don't have a handle on sentencing, managing new prisons, controlling costs, etc. and this interim committee could look at those issues.

**Beth Baker, MT Department of Justice,** said they have made many changes to the sentencing statutes without research, etc. The Department of Justice is trying to improve the data that they can gather on the criminal justice process from start to finish. This resolution would help carry out a more thorough and on going study of Montana laws concerning the sentencing system. She read part of the final report that came from the sentencing commission concerning sentencing policies, and minimum and maximum sentences, etc.

**John Conner, MT Department of Justice,** said there are many problems with the sentencing statutes and they have to deal with them everyday. He said they have devoted a lot of time looking at these statutes, but have never gotten down to the core of the problem.

**Mike McGrath, Lewis and Clark County Attorney,** said there are a number of provisions in Montana law where they impose a mandatory minimum sentence. But what happens is that a fact pattern occurs and it really isn't appropriate because of the facts, etc. that this person go to prison for a mandatory amount of time. He said what happens is mandatory minimum sentences result in charge bargaining. He said the charge gets reduced to some other offense that doesn't have a mandatory minimum sentence and as a result they don't have an accurate criminal record of what the person has done, etc.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**SEN. BARTLETT** closed on **SJR 14.**

*{Tape : 1; Side : B; Approx. Time Counter : 10:08 a.m.}*

**EXECUTIVE ACTION ON SJR 14**

**Motion/Vote:** **SEN. HALLIGAN** moved that **AMENDMENT SJ001401.av1 BE ADOPTED.** Motion carried 4-0.

**Motion:** **SEN. HALLIGAN** moved **SJR 14 DO PASS AS AMENDED.**

**Discussion:**

**SEN. REINY JABS** asked if this will be a continuation of the sentencing commission from 1995 or will it be a different commission. **Beth Baker** said this would be a legislative interim

committee. The sentencing commission was created by statute and had specific members on it.

**SEN. JABS** asked if this would be more effective. **Beth Baker** said if the committee gets participation from all of the organizations, etc. it could be very effective.

**Vote:** Motion **carried 6-0.**

**EXECUTIVE ACTION ON SJR 19**

**Motion:** **SEN. HOLDEN** moved that **AMENDMENTS FOR SJR 19 BE ADOPTED. EXHIBIT (jus76a03)**

**Discussion:**

**SEN. HOLDEN** discussed the amendments. (**EXHIBIT 3**)

*{Tape : 1; Side : B; Approx. Time Counter : 10:18 a.m.}*

**SEN. HALLIGAN** said he would like to take each amendment one at a time.

**Motion/Vote:** **SEN. HOLDEN** moved **AMENDMENT #1 TO STRIKE "ARGUMENTS JUSTIFYING"**. Motion **carried 7-0.** (**EXHIBIT 3**)

**Motion/Vote:** **SEN. HOLDEN** moved **AMENDMENT #2.** Motion **carried 7-0.** (**EXHIBIT 3**)

**Motion:** **SEN. HOLDEN** moved **AMENDMENT #3 TO INSERT "LEGAL PROCEEDINGS"**.

**Discussion:**

**SEN. HALLIGAN** said this amendment doesn't make any sense. The cost of life imprisonment has been reported to be less, not the legal proceedings. **Valencia Lane** said the cost that is being compared is how much it is to keep a person in prison for life versus the litigation of death penalty cases. If they passed this amendment it would be a third issue on comparing the litigation of life imprisonment.

**SEN. HOLDEN** said the people who don't support the death penalty want to forget about the legal proceeding associated with life imprisonment. But they always want to show how much it costs to litigate a death penalty case. If they are going to compare, they need to look at the cost of legal proceedings for both life

imprisonment and death penalty cases. He said they could also make a separate whereas clause.

**SEN. DOHERTY** said there are costs associated with bringing a person to trial no matter what the sentencing phase is. If they are convicting a murderer the cost is the same to point "A" and then there are some changes after the sentencing phase as to whether they are in for life or on death row. The difference in cost to the legal system is mostly in the appeal stage.

**SEN. HALLIGAN** asked how many people are appealing their life sentences. **Al Smith** said they need to look at the entire cost. Death Penalty cases themselves are much higher on the trial level and there are people that will plea bargain to the life sentence as opposed to taking it all the way to trial in a death penalty case.

**SEN. HALLIGAN** asked if they could put in the cost of life imprisonment including legal proceedings. **Valencia Lane** said including the cost of legal proceedings associated with life imprisonment cases.

**SEN. BARTLETT** said even the trial costs that lead to a conviction may be higher when it is a potential death penalty case. She said it may be worth looking at a comparison of costs from the beginning of the legal proceedings.

**SEN. GRIMES** said if they put the word "and" in front of legal proceeding so that it read "and associated legal proceedings", would this work.

**Valencia Lane** said they could word it that way or have the cost of life imprisonment including the cost of legal proceedings associated with life imprisonment cases.

**SEN. JABS** asked if there are other costs involved for life imprisonment. Older prisoners will have medical costs, etc. and should that be considered.

**Valencia Lane** said the amendment will read on page 1, line 17 following life imprisonment insert "and associated legal proceedings."

**Vote:** Motion **carried 8-0.**

**Motion:** **SEN. HOLDEN** moved **AMENDMENT #4 TO STRIKE THE ENTIRE WHEREAS CLAUSE.**

**Discussion:**

**SEN. DOHERTY** said he is aware of the case that is referred to in this whereas clause. It was on 60 minutes and was in the *Great Falls Tribune*. It is important to have this whereas clause in there and study these cases.

**SEN. BARTLETT** discussed an article from the *Missoulian* about the four men who had spent nearly two decades on death row and where then found innocent. **EXHIBIT(jus76a04)** She said in Illinois about 50 percent of the people on death row have been found innocent and if it can happen there, it can happen in Montana.

**Vote:** Motion **failed 3-5 with Grimes, Holden and Jabs voting yes.**

**Motion:** **SEN. HOLDEN** moved **AMENDMENT #5 TO STRIKE THE ENTIRE WHEREAS CLAUSE. (EXHIBIT 3)**

**Discussion:**

**SEN. HOLDEN** said there is a lot of underlying issues in this clause. He said some people are racist and just because a person is black he gets the death penalty. He said they have not had any information on this and this is not critical to the study.

**SEN. GRIMES** said these whereas statements don't have as big of an impact on this bill, but this is going to be looked at anyway.

**Vote:** Motion **carried 6-2 with Doherty and Halligan voting no.**

**Motion:** **SEN. HOLDEN** moved **AMENDMENT #6. (EXHIBIT 3)**

**Discussion:**

**SEN. HOLDEN** said they need to compare the cost of life imprisonment versus the cost of the death penalty.

**SEN. BARTLETT** asked if this amendment is comparing the cost of preparing the death chamber and carrying out an execution versus life imprisonment.

**SEN. HOLDEN** said line 16 talks about the true cost of pursuing a death penalty case. If they are going to exam this they also need to exam the true cost of life imprisonment. This bill doesn't give balance.

**Substitute Motion:** SEN. DOHERTY made a substitute motion to INSERT ON LINE 18, "TO THE TRUE COST OF INCARCERATING A VIOLENT OFFENDER FOR THE REMAINDER OF THE OFFENDERS NATURAL LIFE."

**Discussion:**

Valencia Lane said perhaps they should propose the true cost of pursuing a death penalty case contrasted to the true cost of pursuing a life imprisonment case.

**Substitute Motion/Vote:** SEN. DOHERTY made a substitute motion to WITHDRAW HIS PREVIOUS MOTION AND INSERT THE NEW LANGUAGE SUGGESTED BY LEGAL STAFF. Substitute motion carried 8-0.

**Motion:** SEN. HOLDEN moved AMENDMENT #7. (EXHIBIT 3)

**Discussion:**

SEN. HOLDEN said to put balance in the study they need to look at the delays for both types of cases.

**Substitute Motion/Vote:** SEN. DOHERTY moved ON LINE 20 AFTER "DEATH PENALTY " INSERT "AND LIFE IMPRISONMENT CASES". Motion carried 8-0.

**Discussion:**

Valencia Lane said on page 2, line 17, she doesn't know what preparing a judgement means. She said she thinks it means preparing the case and seeing it through to judgement.

**Motion/Vote:** SEN. GROSFIELD moved TO INSERT "CASES" AFTER THE WORD "PREPARING". Motion carried 8-0.

**Discussion:**

SEN BARTLETT said life sentences and lifetime imprisonment is somewhat different. John Conner said when they use deliberate homicide as an example, the person can not be sentenced to less than ten and no more than 100 years, or life or death. If a person gets a sentence of life imprisonment which is an option, then they become parole eligible in 30 years. Someone who gets consecutive 100 year sentences with no parole they may not be released as soon as someone who gets a life sentence. Using the term lifetime imprisonment might be more accurate than life imprisonment.

***{Tape : 2; Side : A; Approx. Time Counter : 10:45 a.m. }***

**Motion/Vote:** SEN. GROSFIELD moved TO PUT IN "LIFETIME IMPRISONMENT" IN PLACE OF "LIFE IMPRISONMENT". Motion carried 8-0.

**Motion/Vote:** SEN. GROSFIELD moved PAGE 1, LINE 22, STRIKE ",COUPLED WITH ORGANIZED PUBLIC PRESSURE,". Motion carried 8-0.

**Motion:** SEN. HALLIGAN moved SJR 19 DO PASS AS AMENDED.

**Discussion:**

SEN. GRIMES said there is less drunk drivers and domestic abuse, etc. because they are cracking down on them. Tough laws make a difference. He said the message they are sending about the value of a life may have an impact on whether or not someone is more predisposed than others to commit those same acts in their later life.

SEN. DOHERTY said he was very close to a family that was murdered in Great Falls. He said that family made a conscious choice that they felt far more just that this person who killed their family never saw the light of day again. He said life imprisonment was a just decision, opposed to the death penalty with a ten year delay and the case constantly in the courts and the media involved. But it may be different for all families. This study is due and it would be balanced because this is a sensitive issue.

**Vote:** Motion carried 8-0.

*{Tape : 2; Side : A; Approx. Time Counter : 10:52 a.m.}*

Committee took a break from 10:52-10:55 a.m.

**Resolution of Appreciation**

**Motion:** CHAIRMAN GROSFIELD moved to adopt a Senate Judiciary Committee Resolution of Appreciation for SEN. SUE BARTLETT. He read the resolution. **EXHIBIT(jus76a05)**

**Vote:** Motion carried unanimously.

**Discussion:**

SEN. GRIMES said he would like to add one line to the resolution. He said if there is anything technically inaccurate with the English or it is Constitutionally unsound she will discover it.

**CHAIRMAN GROSFIELD** said several of them have been on the committee the whole time that **SEN. BARTLETT** has been. The resolution of appreciation expresses **SEN. BARTLETT'S** role on this committee. All of them have really appreciated her contributions to this committee.

**SEN. DOHERTY** said it goes without saying that when you serve here you learn to rely on some people. He said with **SEN. BARTLETT** in Judiciary, his reliance in many cases have been total because she will take care of it. That may be an easy crutch for him to limp along on, but his reliance has never been misplaced.

**SEN. HALLIGAN** said he was glad the word "thorough" was used several times in the resolution. He said there is nobody that tries to make sure that those that aren't represented by the lobbyists and other groups are at least represented by the Legislature. A good example is the sentencing statutes, most people don't care, but **SEN. BARTLETT** does and this issue affects everyone.

**SEN. MCNUTT** said last session he was a freshman and was horrified at being on the Judiciary committee and he learned very quickly to rely on her input. He has come to really respect her and offered his congratulations.

**Joe Mazurek, Attorney General**, said all of us who serve in this body are always concerned about who succeeds them and takes their seat. **SEN. BARTLETT** succeeded him and does a far better job at representing the people than he ever did. He said he is proud that she has continued to carry the torch for the good people of Helena.

**SEN. BARTLETT** said she is surprised and very appreciative. She said she has not necessarily represented the people of this district better than Joe Mazurek did. He was a fine Senator and is a fine Attorney General. She said no one ever completely knows what people think about you or how you are perceived and she appreciates this very much.

Committee took a break from 11:03 to 11:07 a.m.

#### HEARING ON SR 6

**Sponsor:** **SEN. LORENTS GROSFIELD, SD 13, Big Timber**

**Proponents:**

**Marc Racicot, Governor**  
**Justice J.A. Turnage, Supreme Court**

**Joe Mazurek, Attorney General**  
**Tom Ebzery, ProBono Panel for State Bar**  
**REP. BETTY LOU KASTEN, HD 99, Brockway**

Opponents: None

Presentation by Judge

**Judge Richard Simonton, Seventh Judicial District, Glendive**

Opening Statement by Sponsor:

**SEN. LORENTS GROSFIELD, SD 13, Big Timber,** said this resolution is a Judicial confirmation. Richard A. Simonton from Glendive has been nominated by the Governor to succeed Judge Dale Cox in the Seventh Judicial District.

Proponents' Testimony:

**Marc Racicot, Governor,** said it is his pleasure to recommend to the committee the confirmation of Richard Simonton as district judge in and for the Seventh Judicial District in the State of Montana. He said he has had numerous occasions to observe his performance as a trial attorney, prosecutor and as defense council. He urged this committee and the entire Senate to confirm the nomination of Richard Simonton for the Seventh Judicial District. **EXHIBIT (jus76a06)**

**Justice J.A. Turnage, Supreme Court,** said Richard Simonton took office on July 1, 1998. He did a biography background on Mr. Simonton. Since he has taken the bench in his Judicial district there has not been a great number of writs for supervisory control or appeals.

**Joe Mazurek, Attorney General,** said Judge Simonton brings an appropriate balance between civil and criminal law. He will maintain the appropriate level of judicial demeanor.

**Tom Ebzery, ProBono Panel for State Bar,** said they hold Montana Judges in high esteem and Judge Simonton will be a fine addition as a district judge.

**REP. BETTY LOU KASTEN, HD 99, Brockway,** rose in support of this resolution.

*{Tape : 2; Side : A; Approx. Time Counter : 11:15 a.m.}*

Opponents' Testimony: None

**Presentation by Judge:**

**Judge Richard Simonton, Seventh Judicial District, Glendive,** said he would like to thank the people responsible for the appointment process, the judicial nominating commission, the Governor and this committee. He said he thought the election process was difficult, however, the stress involved in the appointment process has certainly exceeded the election. He said he has been practicing law since 1971 in Glendive. He said he has learned from previous judges and will do his best to carry on the tradition of fair justice in the Seventh Judicial District.

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** said starting in 1995 the Legislature began passing stricter crime control legislation. He said the death penalty was re-instituted and what is his stand on the death penalty in Montana? **Judge Simonton** said he could impose the death penalty if it were appropriate. The Legislature has set certain guidelines to determine if the death penalty is appropriate. He said if those factors are present, he would not be reluctant to impose the death penalty.

**SEN. HALLIGAN** asked how does he view attorney's in front of the bench and keep cases moving along without delays, etc. **Judge Simonton** said it is the judge's job to manage that court room and the cases. He said since July he has seen where lawyers have continually tried to postpone cases. This not only affects the management of the court's calender it adversely affects the litigants. He said he reviews all of the cases and they set up a scheduling conference and set deadlines. Those deadlines are going to be complied with and if they are not, lawyers may be precluded from introducing certain evidence. He said several lawyers try and change court dates and he makes the lawyers get the consent of their clients for any continuance. Lawyers who are late for proceedings will get fined, etc. He said lawyers know where he stands on these issues and they have not had many problems.

**{Tape : 2; Side : A; Approx. Time Counter : 11:23 a.m.}**

**SEN. HALLIGAN** said how are they going to deal with case loads in their district. **Judge Simonton** said they have 370 new filings every year. He said they have implemented mandatory mediation in domestic relation cases. He said along with mediation they may bring in a settlement judge and this has been very successful. He said if they urge people to look at something other than a trial, they will usually take advantage of those opportunities.

**SEN. GRIMES** said they have dealt extensively with family law this session. He asked what is his experience with frivolous, obstructive action on the part of a spouse in which mediation doesn't help. **Judge Simonton** said family law issues account for about 25 percent of their case load. He said a third of his practice was in family law. He said judges have to take a role in calming and quieting down the situations and this is being done. If there is violations, there will be jail time faced and the litigants know that. He said in his district if there is a battle over custody, they require that the parties discuss and view with a third party a video called "Children in the Middle." It focuses on what child custody battles can do to the children themselves and has been quite effective.

**SEN. BARTLETT** said she is interested in seeing more women in judiciary. She asked what are some ways, as a judge, to mentor and provide opportunities for women who are attorneys in his district who may be interested in serving as a judge. **Judge Simonton** said he is not sure there is much that he as a judge can do except encourage and congratulate them on a job well done. He said they have excellent lawyers of both genders in the Seventh Judicial District. He said he would not be reluctant to encourage women to serve on the judiciary. He said he has never perceived it as a gender type profession.

**SEN. MCNUTT** said Judge Simonton is well respected in Richland County and will do a fine job for Eastern Montana.

**Closing by Sponsor:**

**SEN. GROSFIELD** said Judge Simonton has been a judge for almost a year and he takes his job very seriously. Dealing with the sensitivity of the needs of citizens who use the court system and the proper function of the court is important.

**EXECUTIVE ACTION ON SR 6**

**Motion/Vote:** **SEN. DOHERTY** moved **SR 6 DO PASS. Motion carried 8-0.**

**ADJOURNMENT**

Adjournment: 11:34 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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JODI PAULEY, Secretary

LG/JP

**EXHIBIT (jus76aad)**