MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Steve Doherty, Vice Chair, on February 10, 1993, at 10:38 a.m. Senator Yellowtail, Chair took over chair during course of the meeting.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Patricia Brooke, Committee Secretary

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

Committee Business Summary:
Hearing: SB 277, SB 260
Executive Action: SB 249, SB 265, SB 9, SB 179

EXECUTIVE ACTION ON SENATE BILL 249

Motion:

Senator Brown moved Senate Bill 249 DO PASS.

Vote:

The motion that Senate Bill 249 DO PASS CARRIED with Senator

Crippen voting NO.

EXECUTIVE ACTION ON SENATE BILL 265

Motion/Vote:

Senator Blaylock moved to RECONSIDER ACTION in adopting an ADVERSE COMMITTEE REPORT on Senate Bill 265. The motion to RECONSIDER CARRIED with Senator Crippen and Senator Rye voting NO.

Motion:

Senator Blaylock moved to TABLE Senate Bill 265.

Vote:

The motion to TABLE Senate Bill 265 CARRIED with Senator Crippen and Senator Rye voting NO.

EXECUTIVE ACTION ON SENATE BILL 9

Motion/Vote:

Senator Harp moved Senate Bill 9 be removed from Table. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harp moved to amend Senate Bill 9 (Exhibit #1). Motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved Senate Bill 9 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 179

Discussion:

Senator Towe told the Committee Senate Bill 179 would amend the law which he had added to the code approximately twenty years ago. He explained at one point he felt that non-profit organizations would be better serving the developmentally

disabled, the pre-release centers, etc. because the profit motive may cut corners too sharp and a lack of services would result. He stated he has changed his opinion and profit corporations, of which there are many in the state and nation, are doing well. He explained under the regulations the same fears are not here as they were at that time. He stated the reason this is important to the department and to the state is at the present time the Governor's proposal is to reduce the number of prisoners at Deer Lodge from approximately 1100 to 850. He explained the only way this can be realistically done, without seriously endangering the public by releasing prisoners too soon, is to put them in half-way houses. He explained the problem is the capital expenditure to operate a new half-way house is probably $200,000 to $300,000. He told the Committee in order to accomplish this without coming up with the capital expenditures, is that it will have to go private. He said there is no reason not to allow private companies, as well as non-profit companies, to operate a half-way house.

Motion:

Senator Towe moved Senate Bill 179 DO PASS.

Further Discussion:

Senator Halligan raised the concern about privatizing half-way houses. There would be minimum wage jobs with no health care. He asked for a statement of intent.

Senator Towe suggested the intent regarding health care and minimum wage was that no contracts would be issued without regard to the employees.

Senator Towe withdrew his Motion for Senate Bill 179 DO PASS.

Motion:

Senator Halligan moved to amend Senate Bill 179 with a 'WHEREAS' clause and that the intent of the Legislature, as the department contracts with the private sector entities, would include in its contract the requirement of adequate protection of employees with minimum wage and fringe benefits.

Vote:

Motion to amend Senate Bill 179 CARRIED UNANIMOUSLY.

Motion:

Senator Brown moved Senate Bill 179 DO PASS AS AMENDED.

Discussion:

Senator Bartlett asked to discuss current programs that are in jeopardy. She explained the department director has given a memo to the appropriations sub-committee in which it says they will consider closing the Missoula and Billings Life's Skills Centers. She told the Committee it cannot be said that current programs are not in jeopardy.

Senator Towe responded that the Women's Life's Skills Centers in Billings and Missoula are not non-profit organizations such as those being addressed. He explained both are state operated programs. What is being spoken of there is moving off of the state program, and if this bill were to not pass they would try to get a non-profit organization to do it.

Vote:

Senate Bill 179 DO PASS AS AMENDED with Senator Bartlett voting NO.

HEARING ON SENATE BILL 277

Opening Statement by Sponsor:

Senator Don Bianchi, Senate District 39 told the Committee Senate Bill 277 would repeal the manner in which private property is posted "no trespassing." He explained SB 277 will require posting be done with signs with individual's name and address. He stated there are mass abuses of the posting process using orange paint. There is posted property which is public land; and also examples in which hunters go down a public road into a hunting area and paint the posts orange. He explained using the orange paint with no way of knowing if the postings were legitimate. He told the Committee he used the current law being used in North Dakota. He explained North Dakota feels the law is working well for them. It would help eliminate some of the misuse.

Proponents' Testimony:

Gene Hawk, Executive Director of the Public Lands Access Association in Bozeman, Montana spoke in favor of Senate Bill 277. He told the Committee there were approximately 900 individual members with approximately 7000 people who belong in Montana. He stated his organization has been working on the problem of public access to public lands since 1985. He stated the GAO audit states that 50.4 million acres of public lands are not accessible to the public. He stated the orange paint practice is abused. He explained Public Lands Access is supportive of private property rights but wants to make sure the public has access to public lands. He told the Committee orange paint problems are unenforceable because of lack of sheriff personnel. The orange paint is being sprayed by unknown people

in attempt to cut off land to the public. He gave example of how orange signs are used and the public has no idea if the signs are legitimate or not. Mr. Hawks presented the Committee with photos of illegal posting of public lands (Exhibit #2).

Opponents' Testimony:

Robert Dupea, Chair of Land Use Committee, Montana Stockgrowers spoke from prepared testimony (Exhibit #3).

Keith Bales from Otter Creek, Montana spoke in opposition to Senate Bill 277 from prepared testimony (Exhibit #4).

Bob Fouhy from the Land Management Council spoke in opposition to Senate Bill 277 from prepared testimony (Exhibit #5).

Bob Hoffman, spoke on behalf of the Agricultural Preservation Association in opposition to Senate Bill 277. He told the Committee there is membership in Gallatin, Jefferson, and Madison Counties.

Tom Lofsgaard asked to go on record as being opposed to Senate Bill 277.

Jim Peterson, Montana Stockgrowers Association told the Committee that dictating posting requirements to landowners is not going to solve the public land access problems. He stated the landowners have the option to post their land and the orange paint is clearly recognized as posted land and permission is required. He explained it does not indicate someone cannot hunt, simply that permission is required.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Jim Peterson how he responds to the concern Senator Bianchi raised about how easy it is to put orange paint on a post improperly and incorrectly. Mr. Peterson replied any system devised has abuses. He stated he does not know how many sportsmen mark public lands. He told the Committee he knows property owners are flexible, and receptive to hunters asking permission. He stated he did not see that individual signs would solve the problem. He explained that public lands are also marked on maps and most hunters could find out which lands are public. He stated placing the burden on the landowner to have to post their land with signs (which have short life) is not the proper way to address the issue.

Senator Towe asked Senator Bianchi about the point that the

law may not be working. He stated some landowners may properly post their lands while others may not. He asked if the better solution would be to prosecute those who are not doing it properly. Senator Bianchi stated there may be no gain. Using the orange paint still does not identify with name of owner.

Senator Doherty asked Mr. Peterson if the Stockgrowers had concerns about people who post land illegally. Mr. Peterson told the Committee they do not condone the activity. He suggested making a stiffer penalty offers a deterrent to that kind of activity. He again stated it is not fair to put the burden on the landowner for something the landowner may not have anything to do with.

Senator Doherty asked Senator Bianchi what would happen if the signs were blown down by the wind and someone comes in because there is not a sign. He stated the orange paint would last. Senator Bianchi said posting is the responsibility of those who own the land.

Senator Grosfield asked Senator Bianchi if there had not been a bill in the last session which levied a $500 fine for illegal posting of public roads. Senator Bianchi told the Committee he did not remember if the bill passed. Senator Grosfield suggested this be checked into.

Senator Grosfield asked Gene Hawks if the photos he presented were of illegal posting of public lands. Mr. Hawks told the Committee that was correct.

Senator Blaylock asked why Senate Bill 277 was in the Judiciary Committee instead of Fish and Game. Senator Yellowtail explained it was probably because the Senate Judiciary Committee established the orange paint rule ten years ago.

Closing by Sponsor:

Senator Bianchi told the Committee the orange paint law was not enforceable. He explained he would like to see the rights of individuals who wish to hunt and fish protected.

HEARING ON SENATE BILL 260

Opening Statement by Sponsor:

Senator Sue Bartlett, Senate District 23, Helena told the Committee the essential principle in the court case which brings this bill before the Committee was a provision relating to the time allowed for bringing an action in order to determine or declare the existence of a father/child relationship. She stated Senate Bill 260 strikes the language that identified one was limited to a five year period after the child's birth to bring an action in order to declare the father/child relationship that was

presumed did in fact not exist.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Ms. Lane what was the court case holding. Ms. Lane explained the language in 1(b) was specifically addressed. She stated that should be compared was sub (1) and sub (3). She told the Committee sub (1) deals with the instance where there is a presumed father because the mother was married to the man at the time; sub (3) deals with situation where there is not a presumed father in the instance where a child is born out of wedlock. In the instance where a child is born out of wedlock there are twenty years to determine paternity; in the instance where there is a presumed father there is only five years. The language in sub 1(b) was declared unconstitutional because it was a discriminatory classification between those two classes of children.

Senator Towe asked Ms. Lane what is the statute of limitation for a child born within wedlock. Ms. Lane explained it was at any time. She stated she would like to work with SRS to refine the language.

Closing by Sponsor:

Senator Bartlett closed on Senate Bill 260.

Motion/Vote:

Senator Doherty asked to discuss a request for a committee bill. He pointed out there is not a statute which defines felony assault on a judicial officer. He asked that the Committee prepare a bill to make it a felony to attack a judge when the judge is performing their duties. He also pointed out any peace officer (Justice of the Peace, Police Officers, etc.) should be protected.

Ms. Lane reported this statute of assault could be more severe penalty.

Senator Towe made a motion to grant permission for request of Committee bill. Senator Grosfield asked if it is necessary to include other judiciary positions.

The Motion to draft a Committee bill CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:50 a.m.

Wm Yellowtail
SENATOR BILL YELLOWTAIL, Chair

Patricia Brooke
PATRICIA BROOKE, Secretary

BY/pb

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-10-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 12, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 9 (first reading copy -- white), respectfully report that Senate Bill No. 9 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 4 through 8.
Following: "AN ACT" on line 4
Strike: remainder of line 4 through "FEES;" on line 8

2. Title, lines 12 through 16.
Following: line 11
Strike: line 12 through "JURISDICTION;" on line 16
Insert: "AND"

3. Title, line 17.
Following: line 16
Strike: "25-31-601,"
Following: "25-34-102,"
Strike: "25-35-502, 25-35-503,"
Insert: "AND"
Following: "25-35-604,"
Strike: "AND"

4. Title, line 18.
Following: line 17
Strike: "25-35-806,"
Following: "MCA"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

5. Page 1, line 20 through page 2, line 25.
Strike: page 1, line 20 through page 2, line 25 in its entirety

6. Page 4, line 11 through page 4, line 16.
Strike: section 3 in its entirety
Renumber: subsequent sections

7. Page 5, line 9 through page 5, line 25.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

8. Page 6, line 13 through page 10, line 14.
Strike: sections 8 through 14 in their entirety

-END-

M - Amd. Coord.
M Sec. of Senate

351421SC.Sma

SENATE STANDING COMMITTEE REPORT

February 13, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 179 (first reading copy -- white), respectfully report that Senate Bill No. 179 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 1, line 8.
Following: line 7
Insert: "WHEREAS, it is the intent of the Legislature that when the Department of Corrections and Human Services contracts with a for-profit corporation to operate a community-based prerelease center, the contract maintain the same level of pay and benefits for all employees and honor the terms, if applicable, of any collective bargaining agreement in place at the time the contract is executed."

-END-

M— Amd. Coord.
___ Sec. of Senate

361402SC.Sma

SENATE STANDING COMMITTEE REPORT

February 9, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 249 (first reading copy -- white), respectfully report that Senate Bill No. 249 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

321309SC.San

ROLL CALL VOTE

SB. 179 Amendment

SENATE COMMITTEE Judiciary BILL NO. 179

DATE 2/10/93 TIME 11 (A.M.) P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown	X	
Senator Crippen	X	
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan	X	
Senator Harp	X	
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock		
Senator Franklin		

Patty Brooke
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to amend

ROLL CALL VOTE

DP As Amended

SENATE COMMITTEE Judiciary BILL NO. SB 179

DATE 2/10/93 TIME 11 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown	X	
Senator Crippen	X	
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan	X	
Senator Harp	X	
Senator Towe	X	
Senator Bartlett		X
Senator Blaylock	X	
Senator Franklin		

Patty Brooke
SECRETARY

Bill Yellowtail
CHAIR

MOTION: DPAA

Check - This may have passed 219

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. 249

DATE _____ TIME _____ A.M. P.M.

NAME	YES	NO
Senator Yellowtail		
Senator Doherty	X	
Senator Brown	X	
Senator Crippen		X
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan	X	
Senator Harp	X	
Senator Towe	X	
Senator Bartlett		
Senator Blaylock	X	
Senator Franklin		

Patty Brooke
SECRETARY

Bill Yellowtail
CHAIR

MOTION: DO PASS

ROLL CALL VOTE

labled SB 265

SENATE COMMITTEE Judiciary BILL NO. 359

DATE _____ TIME _____ A.M. P.M.

NAME	YES	NO
Senator Yellowtail		
Senator Doherty	X	
Senator Brown	X	
Senator Crippen		X
Senator Rye		X
Senator Grosfield	X	
Senator Halligan	X	
Senator Harp	X	
Senator Towe	X	
Senator Bartlett		
Senator Blaylock	X	
Senator Franklin		

Patty Brooke
SECRETARY

Bill Yellowtail
CHAIR

MOTION: TO TABLE

F09

Acting Chairman Doherty -

I believe this comm ~~adopted~~ passed SB 249 yesterday (with no amendments) + today (before I got here)

if so, be sure you don't get 2 comm. reports. - it'll just confuse lots of things

VJ

Valencia ~~please check~~ w/ Patty Brooke, if we did do something a-toul, we can intercept

Senate Judiciary Co
EXHIBIT NO. 10
DATE 2/10/93
BILL NO. SB 9

Amendments to Senate Bill No. 9
First Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
January 28, 1993

1. Title, lines 4 through 8.
Following: "AN ACT" on line 4
Strike: remainder of line 4 through "FEES;" on line 8

2. Title, lines 12 through 16.
Following: line 11
Strike: line 12 through "JURISDICTION;" on line 16
Insert: "AND"

3. Title, line 17.
Following: line 16
Strike: "25-31-601,"
Following: "25-34-102,"
Strike: "25-35-502, 25-35-503,"
Insert: "AND"
Following: "25-35-604,"
Strike: "AND"

4. Title, line 18.
Following: line 17
Strike: "25-35-806,"
Following: "MCA"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

5. Page 1, line 20 through page 2, line 25.
Strike: page 1, line 20 through page 2, line 25 in its entirety

6. Page 4, line 11 through page 4, line 16.
Strike: section 3 in its entirety
Renumber: subsequent sections

7. Page 5, line 9 through page 5, line 25.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

8. Page 6, line 13 through page 10, line 14.
Strike: sections 8 through 14 in their entirety

EXHIBIT 1
DATE 2-10-93
SB 9

SB 0009/01

SENATE BILL NO. 9

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~GENERALLY REVISING AND REFORMING PROCEDURES IN SMALL CLAIMS COURTS AND JUSTICES' COURTS; PROVIDING THAT IF A DEFENDANT IN SMALL CLAIMS COURT APPEALS TO DISTRICT COURT AND LOSES, THE PLAINTIFF MAY BE AWARDED ATTORNEY FEES;~~ PROVIDING THAT JURISDICTION IN SMALL CLAIMS COURTS IS NOT LIMITED TO A COUNTY IN WHICH A DEFENDANT CAN BE SERVED; PROVIDING THAT SERVICE OF PROCESS IN SMALL CLAIMS COURTS IS THE SAME AS IN JUSTICES' COURTS; ~~MAKING CONSISTENT THE DOLLAR LIMITATIONS FOR JURISDICTION IN SMALL CLAIMS COURTS; PROVIDING THAT COUNTY COMMISSIONERS MAY EITHER APPOINT OR AUTHORIZE NONATTORNEY COURT ASSISTANTS TO ASSIST CIVIL LITIGANTS IN CERTAIN COURTS OF LIMITED JURISDICTION;~~ AND AMENDING SECTIONS 3-10-1004, 3-12-106, ~~25-31-601,~~ 25-34-102, ~~25-35-503, 25-35-503,~~ AND 25-35-604, ~~AND 25-35-806,~~ MCA~~; AND PROVIDING AN EFFECTIVE DATE~~."

~~WHEREAS, the purpose of [sections 1 through 11] is to~~ make Small Claims Courts and Justices' Courts more accessible and functional for persons without legal training or adequate funds to hire a lawyer; and

~~WHEREAS,~~ it is the Legislature's intent to keep Small ~~Claims Courts functioning well as a forum by enhancing their ability to handle small claims quickly and informally in a~~ manner that is not intimidating to claimants, thereby reducing the burden of claims on the other courts and reducing costs; and

WHEREAS, it is the intent of the Legislature to reduce the cost deterrent in litigation over small claims and to minimize inequities between business and individual litigants by emphasizing the plaintiff's perspective rather than the defendant's perspective; and

WHEREAS, in addition, it is the intent of the Legislature to provide an effective means of assistance for litigants in courts of limited jurisdiction who may not have the means to hire an attorney. The Legislature finds that fewer and fewer attorneys are willing to represent clients in courts of limited jurisdiction because of the limited dollar amount involved or for other reasons. Often citizens find themselves involved in litigation without benefit of counsel in cases in which the expense of hiring legal counsel in relation to the dollar amount of the claim is a deterrent to bringing the claim. The Legislature further finds that as a matter of public policy, it is desirable that litigants have the benefit of advice from a person knowledgeable in procedures in the courts of limited jurisdiction pursuant to the limitations set forth in ~~[sections 1 through 11].~~

SB 9
INTRODUCED BILL

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

Section 1. Section 3-10-1004, MCA, is amended to read:

"3-10-1004. Jurisdiction -- removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $3,000, exclusive of costs~~,~~ ~~and the defendant can be served within the county where the action is commenced.~~

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $3,000. The small claims court shall hear any action so removed from the district court."

Section 2. Section 3-12-106, MCA, is amended to read:

"3-12-106. Jurisdiction -- removal from district court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) ~~such~~ the action arises out of a contract, express or implied; and

(b) the amount of the claim, exclusive of costs, does not exceed ~~$2,500,~~ ~~and~~ $3,000

~~(c) the defendant can be served within the county or counties for which the small claims court has been created.~~

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~$2,500~~ $3,000.

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ $3,000. The small claims court shall hear any action so removed from the district court."

~~**Section 3.** Section 25-31-601, MCA, is amended to read:~~

"25-31-601. Who may act as attorney. Parties in justice's court may appear and act ~~in~~ person or by attorney~~,~~ ~~and~~. As provided in [section 9], any person, except the constable ~~by~~ whom the summons or jury process was served, ~~may act as attorney.~~"

Section ~~4~~ 3. Section 25-34-102, MCA, is amended to read:

"25-34-102. Jurisdiction -- joinder -- interpleader. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when ~~such~~ the action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed ~~$2,500~~ $3,000~~,~~ ~~and the defendant can be served within the county or counties for which the small claims court has been created.~~

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~$2,500~~ $3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed ~~$2,500~~ $3,000."

~~**Section 5.** Section 25-35-502, MCA, is amended to read:~~

"25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$2,500~~ $3,000, exclusive of costs~~,--and--the defendant--can--be-served-within-the-county-where-the-action is-commenced~~.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed ~~$2,500~~ $3,000."

Section 6. Section 25-35-503, MCA, is amended to read:

"25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ $3,000. The small claims court shall hear any action so removed from the district court."

1

2-10-93
SB 9

Section ~~7~~ 4. Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant ----return. ~~(1)~~ The original of the order and notice ~~shall~~ must be shown-to--the defendant~~,--and--a-copy-of-it-along-with-a-copy-of-the-sworn complaint-shall-be~~ served upon the defendant ~~by-the-sheriff, constable,-or--other--process--server~~ in the same manner provided by law for service of process in civil actions commenced in justice's court. ~~The-provisions-of-law-relating to-sheriff's-fees-are-applicable-to-this-section.~~

~~(2)--The-sheriff,-constable,--or--other--process--server shall,-after-effecting-service,-return-the-original-order-to the-justice-of-the-peace-or-his-clerk.~~"

~~**Section 8.** Section 25-35-806, MCA, is amended to read:~~

"25-35-806. ~~Attorney's~~ Attorney fees upon ~~appeal~~ or removal. (1) ~~If the-parties-are-represented-by--counsel--on appeal~~ a defendant appeals a matter to district court under the provisions of 25-35-803 but does not prevail in district court, the court may grant the ~~prevailing--party---his~~ plaintiff reasonable ~~attorney's~~ attorney fees, in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff ~~his~~ reasonable ~~attorney's~~ attorney fees, if any."

~~NEW SECTION. **Section 9.** Court assistants~~

1 ~~appointment or authorization by county commissioners~~
2 qualifications. The county commissioners may, after
3 consultation with the justices of the peace within the
4 county, appoint one or more court assistants to provide
5 litigants in civil cases in the justice's court, at the
6 county's expense, with advice on filing and litigating
7 claims in the justice's court. In the alternative, the
8 county commissioners may, after consultation with the
9 justices of the peace within the county, authorize
10 individuals to act as court assistants and to charge fees.
11 Providing litigants assistance under this section in
12 bringing a case before the justice's court in the county
13 does not constitute the practice of law, and a court
14 assistant appointed or authorized under this section is not
15 required to be a licensed attorney. The county commissioners
16 shall consult with the justices of the peace within the
17 county to determine the qualifications and criteria used in
18 making the appointments or authorizations. A court assistant
19 may not represent a client in court and may only advise a
20 client in the areas of court procedures, drafting pleadings,
21 conducting discovery, and presentation of the case in
22 justice's court.
23 NEW SECTION. **Section 10.** Court assistants --
24 appointment or authorization by county commissioners --
25 ~~qualifications. The county commissioners may, after~~

1 ~~consultation with the justices of the peace within the~~
2 county, appoint one or more court assistants to provide
3 litigants in civil cases in the small claims court, at the
4 county's expense, with advice on filing and litigating
5 claims in the small claims court. In the alternative, the
6 county commissioners may, after consultation with the
7 justices of the peace within the county, authorize
8 individuals to act as court assistants and to charge fees.
9 Providing litigants assistance under this section in
10 prosecuting a case before the small claims court in the
11 county does not constitute the practice of law, and a court
12 assistant appointed or authorized under this section is not
13 required to be a licensed attorney. The county commissioners
14 shall consult with the justices of the peace within the
15 county to determine the qualifications and criteria used in
16 making the appointments or authorizations. A court assistant
17 may not represent a client in court and may only advise a
18 client in the areas of court procedures, drafting pleadings,
19 conducting discovery, and presentation of the case in small
20 claims court.
21 NEW SECTION. **Section 11.** Court assistants --
22 appointment or authorization by county commissioners --
23 qualifications. The county commissioners may, after
24 consultation with the small claims court judges of the
25 ~~district courts within the county, appoint one or more court~~

~~assistants to provide litigants in civil cases in the small~~ claims court, at the court's expense, advice on filing and litigating claims in the small claims court. In the alternative, the county commissioners may, after consultation with the small claims court judges of the district courts within the county, authorize individuals to act as court assistants and to charge fees. Providing litigants assistance under this section in prosecuting a case before the small claims court in the county does not constitute the practice of law, and a court assistant appointed or authorized under this section is not required to be a licensed attorney. The county commissioners shall consult with the small claims court judges of the district courts within the county to determine the qualifications and criteria used in making the appointments or authorizations. A court assistant may not represent a client in court and may only advise a client in the areas of court procedures, drafting pleadings, conducting discovery, and presentation of the case in small claims court.

NEW SECTION. **Section 12.** Codification instruction. (1) [Section 9] is intended to be codified as an integral part of Title 25, chapter 31, part 6, and the provisions of Title 25, chapter 31, part 6, apply to [section 9].

(2) [Section 10] is intended to be codified as an ~~integral part of Title 25, chapter 35, part 5, and the~~

~~provisions of Title 25, chapter 35, part 5, apply to~~ [section 10].

(3) [Section 11] is intended to be codified as an integral part of Title 25, chapter 34, part 1, and the provisions of Title 25, chapter 34, part 1, apply to [section 11].

NEW SECTION. **Section 13.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14.** Effective date. [This act] is ~~effective July 1, 1993.~~

-End-

Senate Judiciary

Exhibit #2
SB 277
2/10/93

EXAMPLE

ILLEGAL POSTING

MISSION CREEK COUNTY
ROAD - PARK COUNTY

1989

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

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2/10/93
BILL NO. SB 277

TESTIMONY ON SENATE BILL 277
SENATE JUDICIARY COMMITTEE
FEBRUARY 10, 1993

Good Morning Mr. Chairman and members of the Senate Judiciary Committee. My name is Robert Dupea and I am a rancher from the White Sulphur Springs area. I am here today representing the Montana Stockgrowers as chairman of the Land Use Committee and my family ranching operation. I rise in strong opposition to S.B. 277.

Access to private land is a privilege which is granted to guests by the owner of the property, regardless of that property being a suburban backyard or a sprawling ranch. However, owners of larger parcels of property are often confused with public ownership of similar type property--especially during the hunting season. So I will concede that it is reasonable to mark those lands as private property to eliminate possible confusion.

I will not agree with the Bill's sponsor when he takes the posting responsibility one step further and eliminates the landowners option to either posting with signs or marking with orange paint. Senator Bianchi wants to create a law which will dictate exactly how I must post my land with a sign every quarter of a mile to let guests or passersby know that my property, is my property. Does this sound fair and reasonable to you? Where does this put my right to privacy?

In the current political climate of this state, landowner and sportsmen relations have gotten a great deal of attention. Both sides have many common interests and much can be gained when we work together. However, this type of legislation does not foster good relations from our side of the fence. It appears to me that this legislation may further erode any good relations that exist and antagonize a situation that should be left alone.

Most ranchers are satisfied with the ease, convenience and cost-effectiveness of marking their property with orange paint. Others find posting is the option they prefer. Both are universally recognizable to all responsible sportsmen and seem to be working well with few complaints or problems.

The important point is that current law provides an option for posting and that should be left to the discretion of the landowner. S.B. 277 is a good example of bad public policy and I urge you to vote "Do Not Pass".

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2/10/93
BILL NO. SB 277

TESTIMONY ON SENATE BILL 277
SENATE JUDICIARY COMMITTEE
FEBRUARY 10, 1993

MR. CHAIRMAN, AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE, my name is Keith Bales and I am from Otter Creek, Montana. I am here today to present testimony against Senate Bill 277.

This bill would require a landowner to post his property with printed signs. As you can well imagine, printed signs can be torn down by hunters who do not want to abide by the wishes of the landowner. They can be torn down by the wind. They fade in sunlight and rain. In short, they have to be replaced frequently, adding to landowners costs. At a time when we are all trying to be "cost conscious" this just isn't a good idea.

For some landowners, printed signs might be appropriate. I hope you will leave us the option of making the decision for our own property. Please give Senate Bill 277 a "do not pass" vote.

Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2/10
BILL NO. SB 277

Chairman Senator Yellowtail and members of the committee,

My Name is Bob Fothy and I represent the Land Management Council.

We oppose senate Bill 277 because this legislation would deny the agri-business man his or her right to privacy.

current law provides an option for the land owner to post the property either by sign or by paint.

language in this bill which would require a landowner to include their address on the sign for all to see would not be unlike posting all privately owned city lots with the same type of information

Robert G. Fothy
Board member
Land Management Council

Draft Copy

Printed 7:37 pm on February 9, 1993

LCxxxx1

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 2/10/93
BILL NO. SB —

**** Bill No. ***

Introduced By **********

By Request of **********

A Bill for an Act entitled: "An Act including causing or threatening bodily injury to a judge in the crime of felony assault; amending section 45-5-202, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-202, MCA, is amended to read:

"**45-5-202. Aggravated assault -- felony assault.** (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly : (a) causes:

~~(a)~~(i) bodily injury to another with a weapon;

~~(b)~~(ii) reasonable apprehension of serious bodily injury in another by use of a weapon; or

~~(c)~~(iii) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner~~.~~ ; or

(b) causes or threatens bodily injury to a judge, as defined in 46-1-202, while the judge is performing the judge's official duties or because of a judge's performance of the judge's official duties.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2

(OVER)

years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both."

{*Internal References to 45-5-202:*
xx41-5-206 *x46-18-201* *x46-18-231*}

-END-

{Valencia Lane
Staff Attorney
Montana Legislative Council
(406) 444-3064}

DATE 2/10/93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 260

SB 277

Name	Representing	Bill No.	Check One Support	Oppose
Jim Peterson	MSGA	SB277		✓
Robert Dupea	MSGA	SB277		✓
Keith Bales	MSGA	SB277		✓
Robt. Hoffman. A.P.A	Ag Preservation Assoc	SB277		✓
LOWIS E. HAWKES PLAA I	PUBLIC LAND ACCESS	SB277	✓	
Robert Fowly	Land Management Council	SB 277		✓
Thomas Loftsgaard	" " "	SB 277		✓
Luverne Nieskens	Daniels County	S.B-277		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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