

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 12, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday, March 12. All members were present except Representative Daily, absent and Representatives Roth and Anderson, who came in later.

Scheduled for hearing were Senate Bills 54, 393, 221, 491, 511, 283, 284, 301 and 409.

SENATE BILL NO. 409: Senator Regan. This bill revises the law relating to assault between spouses. I direct your attention to page 3, lines 17 and 18 concerning spouses living apart.

CAROL MITCHELL: Missoula Attorney. About a year and 1/2 ago there were contracts with the state to undertake a study on battered spouses. What we intended to do was to bring national research together with Montana research. The problem is pervasive. We are not talking about 1 out of 100, we are talking about 14 to 20% of married women. We have violence not in just one direction. Normally we define as a crime, the civil action. It is currently happening across the country that we are abolishing that old common law doctrine.

SHARON McVICKER: Great Falls. She explained that she was there as a battered spouse and gave the details of herself being thrown through a window by her husband. When I called the police, because we were married they would take no action. I think it is very important for you to know that women and wives are people too, and that they should have the right to protect themselves. The cycle is always repeated, the husband feels guilty, the wife forgives him and then it happens again.

MATT BOWER: Attorney. I represented Mrs. McVickers, and I have her permission to speak. She has now a serious permanent injury. She has no cause of action under existing state law.

JESSICA HUNTER: Missoula. I want to talk about SB 243, which will be heard tomorrow, also. I was married for 34 years to a college professor who was an alcoholic. I was admitted to a hospital 17 times, so please vote to try and give us some protection. It happens in the best of families.

ANN OWENS: Helena. I am dealing with the rape aspect of this bill. I have been separated since last May and my husband came to where I work and I was stabbed 17 times, and then he raped me. Rape is an act of violence. It is wrong even if you are married to the man.

CAROL MITCHELL: Attorney. I think it is pretty obvious the section as amended is inadequate.

MARTHA ADRIAN: I would like to stress to you the critical nature of this. 1/3 of my clients come into my office and they disclose to me acts of violence by their husbands. I think one of the biggest things that we are dealing with is that people have to regain control over their lives. Before they had little recourse. I would like to stress within the bill sexual intercourse without consent. Currently you have to start the divorce proceedings before you have any protection. I would like also for the law to respect the decision that when a woman leaves she has withdrawn her consent for intercourse.

JEANE ADAMS: Mercy Home, Great Falls. She read statistics on the Mercy Home. We are working state-wide to take people out of crisis situations and give them time to work out their problems. Copies of letters were presented, exhibits #1 and #2.

CAROL MITCHELL: Senate Bill 243 is providing the temporary restraining order that we need. It is only when someone intentionally acts to hurt.

REPRESENTATIVE KEEDY: He asked about the amendment on page 3. I would like an explanation as to how that change was made.

CAROL MITCHELL: I was not there.

SENATOR LENSINK: We thought it opened up the law a little too far.

SENATOR TOWE: We were having trouble with the definition of separation.

CAROL MITCHELL: The prosecution will look very carefully at that.

There was no other discussion and the hearing closed on Senate Bill 409.

SENATE BILL NO. 301: Senator Lensink. This is another area of family violence. This adds some language to better protect the child. It is from child abuse that much of the criminal element comes. He gave some illustrations as to how it will shift emphasis, on page 2.

DR. JEFF STRICKLER: Governors Task Force and American Academy of Pediatrics, Helena. I would urge you to pass this bill. I look at child abuse as a common problem. The bill would help attorneys in their deliberations on the handling of such cases. The County Attorney has some amendments. Basically

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we are defining "failure to provide and failure to thrive". We have objections to dropping this out of the bill, page 14. The Senate scratched all of this section, the exclusion. He discussed the court hearings at some length.

KAREN TOWNSEND:

Missoula, Deputy County Attorney. She talked about the amendments, and her

job working with young children. She talked about the Governors Task Force and the work they had done. We have a few changes that we would like to suggest, about religious beliefs, and getting a court order to provide health care, such as transfusions. She explained a case she had worked on and then gave another example of a case in which the child had highline membrane disease. We were able to get a court order to help that child. The Task Force did not allow for parents to be prosecuted. That language might belong in the criminal code and not in the civil code. The sentence, failure to thrive, this is intended to broaden that kind of a category. The question of privilege, there is a duty to report. My concern is that it has to go to court and if I can't put the expert on the stand then I cannot prove my case. The only time that should apply is the client privilege.

JIM MALLARD:

Montana Coalition of Human Services. He passed a copy of a letter to the

committee, exhibit #3.

MR. HANSON:

I am here in support for the developmentally disabled.

LYLE EGGUM:

I support the bill.

NORMA VESTRE:

SRS. I have written testimony and my main thrust is to preserve family unity.

Exhibit #4.

TOM HONZEL:

County Attorneys Association. We support this bill. He discussed the privilege

briefly.

OPPONENT, W. D. HUTCHISON: It strengthens the ability of the Welfare Department, and makes it too easy to remove children from the family unit. He talked about the amendment that was passed out. I think any doctor could tell you about the trauma of being removed from the family. I submit that this bill could cause more long-term harm than it will prevent. On page 3, line 6, the policy section gives gives you what I have just talked about. It is in direct conflict with a prior policy stated on page 2, line 18. On page 5, lines 20 and 22, it would probably have no medical meaning. It is too broad a definition. On page 6, line 22, he talked about the youth, too broad, and I would submit that it is not a proper way to remove a child. On page 8, child protection teams, I don't like

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that. On page 12, should be informed of the legal rights, and on page 13, lines 6 to 11, it is our position that this standard for protective services makes no sense. On page 15 and 16, section 12, it is always our rule to protect the natural parents and if we were excluded from the records that would greatly hinder our investigation. We would encourage the privison in section 15.

SENATOR LENSINK: The wisdom of having a bill like this is where to draw the line. I would like to comment on the amendments. It reflects some differences in the task force.

AMENDMENTS, EXHIBIT #5

REPRESENTATIVE UHDE: I wonder about the records.

REPRESENTATIVE ROTH: When did child abuse first become noticed and the pediatrician said, in the 60's, because of increased medical attention.

REPRESENTATIVE EUDAILY: Asked about the top of page 2, does this bill now meet these requirements.

MR. LENSINK: Yes it does.

REPRESENTATIVE KEMMIS: He questioned the second amendment, the failure to thrive.

KAREN TOWNSEND: What we concerned about doing was to make it as broad as possible without wiping out the old statute. Representative Kemmis offered an alternate amendment.

REPRESENTATIVE SCULLY: I am concerned about the necessary grounds available under this bill for the removal of the child. We receive anonymous calls into the department and sooner or later you end up with a fact sheet with none of the report verified. I can give you specific instances.

KAREN TOWNSEND: I think the definitional requirements will tighten that. At the hearing you have to have substantial risk.

REPRESENTATIVE SCULLY: On page 17, I would amend that definition, "danger of harm, from violence or serious injury". Miss Townsend commented that harm is defined earlier in the statutes. Whereupon Mr. Scully said, you have a definition of threatened harm. Miss Townsend said to look on page 4 at the bottom.

There was no other discussion and the hearing closed on Senate Bill 301.

Exhibits #6 and 7.

SENATE BILL NO. 221: Senator Turnage. It is the responsibility of the state to limit the expenditure of public assistance funds, whenever possible. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

RAYMOND LINDER: Department of Revenue. I have a handout. Exhibit #8. I think I should explain why the Department of Revenue goes with this type of legislation. Title 4-D of the Social Security act. It required each state to have a Department of Child Support Enforcement. We believe that this particular administrative procedure will do it, and he went on to list some of the goals. We had 16,900 cases at the end of fiscal 1978 and that seems like a lot of cases.

MIKE GARRITY: Attorney, Department of Revenue. Many times I can understand and know why the legislature is hesitant to create another procedure. He talked about welfare recipients and that most are the product of non-supportive parents. The District Court dockets are extremely over-crowded and the domestic cases are over-burdening our courts. This legislation provides a standard. I think this criteria for bringing a faster judicial decision and for bringing about a child support amendment will relieve the welfare roles.

SENATOR TURNAGE: I can surely appreciate the benefit to the District Court dockets.

REPRESENTATIVE KEEDY: Who is the person obligated to support?
wording. Then followed discussion about the

REPRESENTATIVE ROTH: What is the guarantee that the child will receive the money from the parent.

MR. GARRITY: We don't have any policing power in this legislation. We are following the present law.

REPRESENTATIVE SCULLY: Asked about sections of the bill and Mr. Garrity explained.

Mr. Scully commented, I don't see that it limits the court dockets one iota.
Then followed discussion about the court access.

MR. GARRITY: Federal law requires that we provide these services. At the present time we are using the District Courts and they are crowding the dockets. He

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explained the procedure. Mr. Scully asked him about the definition of court in this bill. What prevents someone from just filing in District Court and Mr. Garrity answered, if they were to go into District Court immediately they would have their own counsel.

REPRESENTATIVE SCULLY: Asked about page 9, line 24, section 2.

MR. GARRITY: I believe that is the administrative procedure.

REPRESENTATIVE SCULLY: Will you have a hearings office in each area? Mr. Garrity said, no, we will have a hearings officer. He gave the Utah statistics, 7400 over two years, 92 hearings on a yearly average.

REPRESENTATIVE SCULLY: What is wrong with your present system, and Mr. Garrity answered, the fact that we have to use the District Courts. Then, Mr. Scully asked, what is the present cost. Mr. Garrity said, approximately 35,000 the first year and 75% federal money. Mr. Scully asked, do you have a right to costs? Mr. Garrity answered, it really ought to defray the costs, the \$25 per filing fee.

There was no other discussion and the hearing closed on Senate Bill 221.

SENATE BILL NO. 491: Senator Turnage. This bill limits many claims filed in state courts to the the district level.

REPRESENTATIVE KEMMIS: What is the reason?

SENATOR TURNAGE: The District Court is a little more adequate.

There was no discussion and the hearing closed on Senate Bill 491.

SENATE BILL NO. 511: Senator Turnage. This bill was introduced at the request of the Secretary of States office. This is to make some type of registration of trademark, and to provide for renewal and assignment of trademarks.

MR. BROWN: Explained the Unifrom Trademark Act and the service mark. As it stands now you cannot cancel out a trademark, and we have some that are over 80 years old and we cannot cancel them.

REPRESENTATIVE SCULLY: How long will it take for a cancellation.

MR. BROWN: Ten years, and then it will be notified that they must reregister, that is, all existing trademarks. You sign what you call an affidavit of non-user. However, there are a lot of people who don't want to go through this.

SENATOR TURNAGE: Discussed page 8, line 18, the Secretary of States office.

REPRESENTATIVE KEYSER: What are the sections that you are repealing?

MR. BROWN: The Trademark Act. This is a companion bill, and this will replace the trademarks. He elaborated briefly.

With no other discussion the hearing closed on Senate Bill 511.

SENATE BILL NO. 54: Senator Towe. This was at the request of the Department of Business Regulation. They have the jurisdiction over unfair trade practices. On page 1, lines 19 and 20, it gives them authority. There is a great deal of confusion. He went on to talk about temporary restraining orders and an order to show cause. The problem that developed is that this procedure was attempted in Missoula and because of the wording Judge Green refused a temporary restraining order and this bill clarifies that. He went through the bill and explained it.

DAN HOLDEN: Department of Business Regulation. I think Senator Towe has covered the bill. Because it is so important it should be specifically alluded to in the act.

DICK DISNEY: Department of Business Regulation. As a result of the ruling in the case in Missoula it would give them the option for 20 more days.

SENATOR TOWE: These matters could involve a lot of money and I think a temporary restraining order is justified.

REPRESENTATIVE SCULLY: What prevents a judge from granting a temporary injunction. Senator Towe answered, Judge Green said you cannot get this without notice. We are eliminating that ambiguity. If you want something without notice you want a temporary restraining order.

MR. HOLDEN: He explained the case in Missoula.

REPRESENTATIVE SCULLY: Why is it necessary to hold a temporary injunction to notice?

SENATOR TOWE: Lets make it clear that if you have the facts sufficient to get a temporary restraining order, the temporary restraining order and the temporary injunction is the same thing. Lets make it clear that they are entitled together and then the injunction would be after a hearing.

REPRESENTATIVE SCULLY: You already have the order if you can prove. Senator Towe explained the temporary restraining order and injunction, with notice, without notice and after trial.

MR. HOLDEN: He explained how the department files their case.

REPRESENTATIVE SCULLY: Have you ever filed a temporary injunction without notice and been denied one. The answer was "no", and then Mr. Scully asked why they hadn't done so. There was general confusion and noone could answer the question as to why this had not been done.

The hearing closed on Senate Bill 54.

SENATE BILL NO. 393: Senator Towe. He went through the bill and explained it. On page 2, he talked about the patient involvement. On page 3, the term "responsible person" is to help the attorney and the court proceedings. We changed that terminology because of the responsibility needed to be clarified. The term "seriously mentally ill" on the bottom of page 3 also should be explained. This would define further who could be committed. On the bottom of page 4 and through page 5, voluntary admission, we were stating that it should be at the time and in this amendment we are stating that it should be within 12 hours. On the bottom of page 5, it provides for a release within 5 days and we added some language. On the bottom of page 6, this is the notice to the minor of his rights. On the bottom of page 8, the waiver of rights, we are now providing that if a person is not making a knowing and responsible decision this would not waive the right to counsel. On the bottom of page 9, where the individual is detained once the proceedings have been brought where ought he be detained. This explains that. There is a distinction here when this would apply. He went on to talk of a jury trial and cases where it has been abused. Page 15 covers the hearing that is made following the six months commitment. There is no involuntary commitment in the state of Montana for more than one year. He explained the civil rights on page 16. The Senate Committee dealt with two items. One,

the addition of a severe psychiatric injury, in addition to the physical, and how to determine a person is severely psychologically injured. Number two, on page 5, there was another question raised. This is the voluntary commitment. He then discussed who should pay the cost, the state or the patient. We make no recommendation one way or the other.

DR. DON HAAR: Billings, Montana Psychiatric Association.
Our concern primarily has to do with a right to treatment. He talked about physical injury and psychiatric problems. He gave definitions and examples. He discussed the part of page 5 that the Senate deleted. The next item is on page 10, to do with the jury trial, because we have had some very difficult situations. It becomes quite a problem when a case is dismissed rather than sent up to trial. On page 12, line 7, is really to provide the person testifying to the ultimate issue of a person being mentally ill. He explained what a professional person could testify to.

SENATOR TOWE: On page 11 and 12 there are two things.
At the present time when a petition is filed charging someone with serious mentally ill, that sometimes has a lot of hearsay in it. Hearsay is not admissible in a court of law within certain exceptions. He explained. Now, the other item is the ultimate issue. It is permissible in Montana for a psychiatrist to be asked only one question. At this point that could stop the trial. That is wrong. It should be required that it should be followed up with admissible evidence.

JIM JOHNSON: I have the largest percentage of these cases in the state. I am the doctor at Warm Springs State Hospital. On page 5, this is a matter of finance. The mental health director should not be certifying that people should go to the state hospital. I would hope that you would leave it at that and not amend it further. The bill has real problems with definitions. On page 10 the amendment with regards to jury trial. I don't think that is necessary. The system is going to forget about these people if they ask for a jury trial and then only committed. I would hope that you would put a very specific period of time so that they would have that protection. The other thing that might make it better would be to denominate these reports as medical records. On page 12, line 7, asked that between the word "may" and "testify" you add the word "not". He explained the reasoning. He discussed the Board of Visitors. I seriously doubt that they should have the authority to approve the records. Exhibit #9.

ARCHIE McFALE: Superintendent, State Hospital. This bill in relation to the hearsay evidence treats emotional and mental evidence like it did not exist. He

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discussed further that hearsay evidence and the danger that might be involved. The patient has to be notified that anything they say will be used against them. Right now we are using the mental status exam when we go to court.

SENATOR TOWE:

I would agree about the jury trial.

We have to make some kind of agreement for payment. This does not affect what is admissible or not admissible. This only applies to reports. The notification deals with the privilege. All you have to do is make it clear that at this time you are only making an evaluation. It is not clear that at the present time they could testify even if they have no evidence.

REPRESENTATIVE LORY:

On page 17, what about introducing the word "not", doesn't that change the meaning? Senator Towe talked about clarifying this. He went on to talk about the Code Commission.

With no other discussion the hearing closed on Senate Bill 393.

SENATE BILL NO. 283:

Senator Lowe. This covers products liability. This bill is certainly not trying to do away with products liability. What we are trying to do is get some kind of a handle on it to keep our economy good. Insurance to cover product liability has become so expensive that it is almost unavailable. He gave an example of football helmets. If you will look at the bill you will see that we have pretty well maimed it but we would put back in the definition because we think that it is needed.

TOM HARRISON:

Montana Equipment Dealers Association.

He presented written testimony, exhibit #10 attached. The first section in the last section should be reinstated. It should be amended, unless the suit was based upon a specific warranty. Also on line 25 of the 1st page, reinstate the definition. I have that language prepared.

LARRY HUSS:

Montana Auto Dealers Association Attorney.

I am a plaintiff attorney and not a defense attorney. We believe that it fixes liability where fault exists. The Senate Committee did a disservice to the bill. The manufacturer should be responsible for the ultimate liability. On page 4 and 5, it is our request that you reinsert those provisions and also the definitions. He discussed the plaintiff and also the responsibility of the manufacturer. It sets the responsibility for the ultimate liability. Then there has to be some method of determining what the ratio of liability will be. These simply fix the ultimate responsibility where it belongs.

BOB DOOLAN: I also speak on behalf of the Montana Equipment Dealers. We need some ground rules to set limits on insurance costs so they don't continue to go up. We have no say in the design or manufacture of this equipment, we are the middle-man. He read an article about product liability and insurance companies.

JUDGE JIM FARRAR: Fam-Kar Corporation, Shelby. They manufacture equipment for wheelchair and handicapped individuals. On the cost of equipment the product liability is paid by the consumer. There is a \$100,000 limit on liability with \$5,000 deductible. He showed pictures of an automobile they are manufacturing for the handicapped. I don't think we are trying to avoid our responsibility. There have been a number of ridiculous settlements in Montana. He gave an example of a case that was completely ridiculous, in the misuse of the product. I am afraid that we have to have some meaningful laws on product liability if we are going to survive.

REPRESENTATIVE UNDERDAL: I appear in favor of the bill as a co-sponsor. I have a picture of the car. It is very successful and is built for the handicapped. But, they do have a problem in the cost of the product liability insurance.

JANELLE FALLON: Montana Chamber. Talked about product liability and presented a copy of written testimony, exhibit #11.

PAT MELBY: Alliance of American Insurers. I would only like to say that I support 283 and the amendment that has been suggested. There is nothing in the bill that is unrealistic and I would ask that you review the deleted language.

GLEN DRAKE: American Insurance Association. We also support the bill with the amendments. The bill as its now written causes more problems than it cures. He went on to talk about cases in which the statute of limitations would have run out.

BOYCE CLARK: Independent Insurance Agents. I support as amended.

OPPONENT, MIKE MELOY: Montana Trial Lawyers. I don't want to address all of the amendments. I will address the statute of limitations. As it is presently written, it provides that a cause of action may not be commenced after 8 years. If you adopt this statute you will rule out the cause of

action before an injury even occurs regardless of how bad the injury might be. In a case the jury would consider how old the product is. The problem that you are really hearing here are the insurance rates. If you pass this statute of limitations you will still have the same rates. He would still have to get the insurance because this does not prevent a lawsuit if within 8 years. It will prevent a redress for any injury caused by a manufacturer. OK, taking a look at this bill in view of what it is supposed to do, it doesn't do it.

SENATOR LOWE: I think that the case has been well presented and there is a need for this bill. It has been a big help to our budding economy in the state.

REPRESENTATIVE UHDE: Asked about page 7, line 17, and discussion followed.

REPRESENTATIVE KEEDY: Can you cite an example of an inequitably high recovery by a complainant that might have been prevented by this bill.

JAMES T. HARRISON: Montana Equipment Dealers. No, not in Montana, but nationally, yes. I think the rates are too high for the insurance.

MR. KEEDY: How do you demonstrate to the insurers? How do you set the rates? Mr. Clark answered that he did not set the rates, he just applied them. Lots of things go into making up the rates, expenses, losses, income, trend factors. Then Mr. Keedy commented, if that is how insurance companies arrive at their rates and then if there has not been a case, if this bill is supposed to lower rates, I don't think you have demonstrated that this bill will do that.

SENATOR LOWE: Even though we have not had the problem in Montana, we are working at what is causing it. If we put these perimeters on it then we will not be subject to such high suits.

MR. HUSS: The purpose of this bill was gutted by the Senate. He explained the purpose was to put the liability where it began. We should reinsert sections 5 and 6.

MR. KEEDY: Would you like to see 5 and 6 back in in place of the part that was left in.

MR. HUSS: If I had to make a choice, yes I would.

There was no other discussion and the hearing closed on Senate Bill 283.

SENATE BILL NO. 284:

Senator Lowe. This bill was intended to establish reporting requirements for product liability insurers. The language that was taken out by the Senate is what we required in the report. We are not trying to avoid legal obligations, we are just trying to fix some rules.

TOM HARRISON:

Montana Equipment Dealers. The original bill before the Senate amended it was designed to put a handle on what is occurring in Montana. I think it is still a good bill in that I did hope that the insurance reporting procedures would go to every state. I would point out the fiscal note for a full-time equivalent. He went on to talk about the rate increases. The tempering factor of competitive pulling down of the rates does not apply here.

BOB DOLLAN:

We support the reporting system if for nothing else than for a handle on it. It does go with a national trend of showing more information.

RITA TYSON:

Insurance Commissioner. We would be most happy to work with those persons that are interested in developing a proper form.

MIKE MELOY:

Montana Trial Lawyers. I am in favor of the bill as originally drafted. This is the kind of information that we need. It ought to come before a decision is made on a bill like the previous bill. The form is already designed and it would not take much work to adapt it.

GLEN DRAKE:

I am not necessarily opposed to the bill as it now exists but I am opposed to it as it was. He gave an example of a case that would not be covered. The bill as set forth is unworkable and unamendable.

PAT MELBY:

This bill is certainly acceptable to us. The rates would increase because of the workload.

SENATOR LOWE:

I just hope you can pass this bill. It would seem to me that it would be better in its amended form.

REPRESENTATIVE KEYSER:

He asked of the insurance attorney, can you tell us what kind of a form you would need so that enough information would be included.

RITA TYSON:

I would think it would be claims. A great deal of detail in the legal

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part of this. It is a lawyers reporting bill. When was the act started? What was involved? How old was the product? These are the kinds of things that would be required on the form.

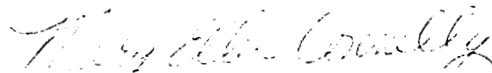
REPRESENTATIVE EUDAILY: Under section two the department will make reports that are required, and under section 1, these will be made available to the public. How can these reports be made without some access to the manufacturer.

MISS TYSON: I don't think it would be that difficult to get names. You are going to be able to go to the court and find out.

MR. HARRISON: He displayed an example of a proposed form. The left portion we would not drat, the amended portion. All information would be available except the names of the persons or companies involved.

There was some general discussion and no further questions, and the hearing closed on Senate Bill No. 284.

The meeting adjourned at 11:45 a.m.



Mary Ellen Connelly, Secretary



John P. Scully, Chairman