

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 14, 1979

The fifty-ninth meeting of the Senate Judiciary Committee was called to order in room 331 of the capitol building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 805:

This is an act to repeal section 39-4-108, MCA, which was declared unconstitutional in Union Pacific Railroad Company v. Woodahl, 308 F. Supp. 1002, etc. Representative Williams introduced Jim Lear from the Legislative Council.

Mr. Lear stated that there was a court case and this was declared unconstitutional that stated the maximum hours a railroad employee could work.

There were no further proponents and no opponents.

There were no questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 803:

This is an act to define confidential health information: providing for disclosure of the information in certain cases, etc. Representative Anderson gave an explanation of this bill.

Jerry Loendorf, appearing on behalf of the Montana Medical Association, offered some amendments Norman Grosfield had submitted.

Chad Smith, representing the Montana Hospital Association, stated that actually most of what is in this bill is already in the law some place and he said the problem is there is no nice codification of all these laws. He testified that this puts it in one package where people working in the health care facilities can find it. He said that it does expand somewhat in regard to the utilization of review and he said he was concerned about the

punitive part added at the end of the bill and he stated that in the drafting of this bill, it turned into criminal law; and once this is taken out, they find that the bill is acceptable and fill it will help.

Norm Grosfield, representing the Division of Workmens Compensation, stated that they asked for an amendment to clarify this matter.

There were no further proponents and no opponents.

Jo Driscoll, Chief of the Insurance Division, stated that confidentiality of health care information is very highly technical and highly complex. She stated that there was a model bill developed by the American Medical Association and being there was such extensive research put into this model bill, she felt that it would be good to follow. She stated that the model bill did not require consent for the state insurance department's investigation and she felt this should be amended for this purpose. She also suggested some further amendments and said that they would be much more comfortable with the model bill.

Norma Seiffert, who works in the Insurance Department, stated that she handles the policy holder's complaints, and she said that as far as third parties are concerned, they find that they get a lot of inaccuracies and she further said that a lot of claims are paid on the basis of information provided by health care providers.

Les Loble, representing the American Council of Life Insurers, stated they oppose the bill. He said that the A.M.A. bill would be a satisfactory bill from their point of view and he felt that this bill appears to be a garbled version of that bill. He testified that the National Association of Life Insurers are working on a model bill and we are probably going to support that. He also addressed some problems he felt were in the bill.

Glen Drake, representing the American Insurance Companies of America, stated that there was also one other problem. He said the casualty insurers have what is called an index bureau and when a claim is submitted they send to the index bureau some very basic information and the nature of the injury that a claim is being filed for. He said that the purpose of this is to try to find the fraudulent claimant who is running a racket to bilk the insurance

industry and the general public. He testified that as he reads this bill, this would be prohibited. He stated that Mr. Loble has covered the other problems that he has with the bill, he feels that it is most confusing and he would agree that it should have a do not pass as it is written.

There were no further opponents.

Senator Lensink asked Mr. Loendorf if he would like to respond to some of the comments made in regard to the A.M.A. model bill. Mr. Loendorf stated that he was given a draft about two years ago and he said that problems dealing with the confusion is hard to respond to. He said that in connection with information to be given by insurance companies, he thought section 4 at the top of page 4, is in response to that. He said that it seems to him that the insurance company does have the right to make a report if the party makes a request.

Senator Towe questioned on page 4, line 7, you use the word "affected person" and he wondered if they meant the person about whom the information is released. Mr. Loendorf replied that is the person against whom the action is taken.

Senator Towe questioned what was the reasoning behind the deletion of section 7. Mr. Loendorf stated that this was proposed to the committee and not by them and he said that they felt that this remedy was a little too harsh. Senator Towe said that in other words, with this section 7 gone, the only remedy is civil action and it is not specifically spelled out what kind of defense would be allowed.

Senator Towe questioned on page 3, lines 20 and 21, this is one of the exceptions, "by a health care provider" and he wondered what does that mean. Mr. Loendorf stated that in the operation of a physician's office, there are lay people there that may need the information.

Senator Towe questioned on page 6, legal process not subject to" and line 10, "when compulsory process if otherwise authorized by law", does one not negate the other and what standard do they have. Mr. Loendorf stated that if authorized by law now, will continue to be authorized.

Senator Towe said that he guessed what it means is that you cannot do it by compulsory legal process unless you issue a subpoena.

Mr. Loendorf stated that this is essentially the same bill as last year and last year there were two objections to it and we satisfied those. Senator Towe questioned whose bill is this and it was noted that it was from the Montana Medical Association and the Montana Hospital Association.

Senator Turnage questioned what does this really intend to do. Mr. Loendorf said it was a general law prohibiting the disclosure of health care information except in those cases where it should be disclosed. He stated that the people we are trying to get at are auditors, researchers, etc., not to have to specifically identify the individual.

Senator Turnage questioned what is it really going to correct. Dr. McMahan, representing the Montana Medical Association, stated that the insurance companies are now giving out information about patients without the patients even knowing about it. He stated that the patient-doctor relationship is absolutely based on total trust and gradually, through growing insurance mechanisms, very particular information about patients is being released. He said some doctors do not tell their patients everything and most feel that this is appropriate. He said that hospital record rooms are being plagued by requests for passing out information. He further stated that health care is sacred, it should be pinpointed down in one place, the reason is to protect the patient and he said that arguments he has heard against this are the very reasons why it should be taken care of.

Senator Turnage questioned if the insurance companies are the big offenders, how are you going to stop them. They won't be able to pay claims if they can't get the information. There was some discussion on the tumor register.

Senator Turnage questioned on page 6, confidential health care information is not subject to legal process except under subsection (2). He asked if this is the only area whereby you can subpoena information.

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Senator Turnage stated that it seems like a lot to go around to where you want to be. Senator Towe that was his point - the wording is bad but the content is good. Senator Turnage stated that he was still convinced of that.

Mr. Smith said that one major reason for this page 3, one of the exceptions for consent on lines 14 and he said that the hospitals have taken a strong position not to release given information to anyone purpose unless it be by patient consent or by order of the court. He stated in hospital evaluations, utilization reviews, etc., if they are properly controlled are in the public's best interest.

Senator Towe questioned that they do not allow release even if there is no personal identification involved. Mr. Smith said there is no way to release without personal identification - he said that it is a case-by-case study and not an accumulation - such as John Doe was kept in the hospital too long, ( c

Senator Turnage questioned "qualified person" who is in training or it is appropriate to his work as an insurance adjuster - anybody else. He said if you are talking about scientific research that is one thing but what about an insurance adjuster.

Senator Towe questioned why not the way the new privacy laws are written. Mr. Smith said that we do want it to be mandatory, but he stated that if you make it as an exception to the consent and defined it right down to the person making this evaluation, we would not object. Senator Turnage said if you can't personally identify, what good is it going to do the insurance. Dr. McMahan answered that the hospital has good judgment both the hospital and the medical staff. He stated it does in fact, help correct bad medical practices.

There were no further questions or comments and the hearing on this bill was closed.

#### CONSIDERATION OF HOUSE BILL 813:

This is an act to revise and clarify the roles of the Department of Social and Rehabilitation Services.

the County Welfare Department in conducting investigations, including financial investigations, and preparing reports when a minor is placed in a foster home, etc.

Representative Scully said that this addresses the problem of when parents, either voluntarily or involuntarily, place children in a facility of the state and then just forgets about paying for them. He gave an explanation of the bill.

There were no further proponents and no opponents.

Senator Towe questioned on page 2, lines 10 and 11, how does he define child care agency and wondered if Boulder would be a child care agency. Representative Scully said yes, it is and so is a group home, or even a foster home. He said that the point is any place the child may be placed after finding abuse, neglect or whatever and there would be a final responsibility if the parents were capable with the exception of in the case of a guardian.

Senator Towe said that on page 8, the investigation should not take place until after the dispositional hearing, and he stated that you take out the language on lines 13 through 18 authorizing the court, and he wondered where do you pick that up again. Representative Scully said there is a new section 8 on page 11 and on line 12 on page 7.

Senator Lensink stated that SB 301 would amend 41-3-401 and there may be some conflict.

Senator Towe questioned on page 12, if it is determined that the guardian should contribute and the guardian has substantial funds of his own, are you going to make it so the guardian pays out of his own funds. Representative Scully said no, you can clarify that anyway you wish.

Senator Towe questioned about taking a man's life savings and Representative Scully stated that if he abuses or neglects his children, he hoped that they would take all of his savings.

#### CONSIDERATION OF HOUSE BILL 820:

This is an act amending section 7-32-4152, MCA to provide that the members on a police commission hearing

charges brought against a policeman continue to sit on the commission for that business until a decision has been made. Representative Pistoria stated that this bill is to correct a situation that has happened and he gave out handouts to the committee. (See Exhibit A.) He further explained the circumstances involved.

There were no further proponents and no opponents.

Senator Olson questioned why did this drag on for two years. Representative Pistoria said it was 3 years, 7 months and 7 days over a bicycle.

Senator Van Valkenburg moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 805:

Senator O'Hara moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 813:

It was recommended that Joan Mayer, legal counsel for the committee, work on some amendments on the question of guardian and look at SB 301.

DISPOSITION OF HOUSE BILL 259:

Joan Mayer, legal counsel for the committee, went through proposed amendments. Senator Turnage moved that the amendments be adopted. The motion carried unanimously. Senator Turnage moved that the bill, as amended, be concurred in. The motion carried.

DISPOSITION OF HOUSE BILL 749:

Senator Towe moved that the bill be amended on page 2, lines 13 and 14 by striking this in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried.

DISPOSITION OF HOUSE BILL 652:

Joan Mayer stated that there is conflict with HB 865 and another problem with the amendments added in the house. Senator Lensink suggested that she integrate this with HB 865 so they can take action on this on Saturday.

DISPOSITION OF HOUSE BILL 712:

Senator Turnage moved adoption of the amendments. The motion carried. Senator Turnage moved that the bill be concurred in, as amended. The motion carried.

DISPOSITION OF HOUSE BILL 788:

Senator Van Valkenburg said there were considerable amendments on this bill and we do not have the amendments on HB 787, one of which threw out all of lines 19 and 20 on page 2.

Senator Towe suggested that they get some amendments prepared but take out bureau and offer bonds by private industry.

Senator Lensink requested Joan Mayer to work with Senators Towe and Turnage on this and have it done by Friday.

DISPOSITION OF HOUSE BILL 737:

Senator Turnage said that he thinks that this is a mistake - broadens and softens and makes it easier.

Senator Towe said there is a big difference between prolonged and protracted. Senator Turnage said that this makes simple assault aggravated. Senator Towe said that the old law said substantial risk of death.

Senator Turnage moved to amend on page 12, by re-inserting subparagraph (a) and strike the new language subparagraph (c) strike all the new material and reinsert all old language, leave "use" in and reinsert old language following line 20. The motion carried unanimously/



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Senator Brown moved that the bill be concurred in, as amended. The motion carried with Senators Van Valkenburg and Olson voting no.

There being no further business, the meeting was adjourned at 11:23 a.m.

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SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 3/14/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			✓
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.



Bills to be heard by Senate Judiciary  
Wednesday, March 14, 1979

1). HB 813 (John Scully - House Judiciary Committee)

current law - under 41-3-105, parents can be required to share the cost of care provided for their children by the state; under 41-3-201, when the department of social and rehabilitation services receives a report that a child is abused or neglected, a social worker is to conduct a thorough investigation into the home - this can include an investigation into the family's financial status; the county attorney is responsible for filing all petitions alleging neglect, abuse or dependence, he can require all state, county, and city agencies to conduct investigations and make reports, including an investigation of financial status; under 41-3-404, the court is to hold a hearing on the petition, the court can consider evidence of the family's financial status among other things to determine if the child is abused, neglected, or dependent; under 41-3-405, when a petition is filed, the county welfare department is to immediately investigate the parents' financial ability to pay for the child's care in a foster home.

proposed bill - amends the above sections dealing with investigations and reports of parents ability to pay when a child is placed in a foster home or other care facility. Basically, the bill provides for two hearings instead of one when a petition is filed alleging a child to be abused, neglected, or dependent. There is first to be an adjudicatory hearing by a court to determine the status of the child - at this point, the financial status of the family is not investigated. If the child is determined to be abused, neglected, or dependent, then the court is to set a date for a dispositional hearing. Before the dispositional hearing, the court is to order the county welfare department to investigate the financial status of the child's parents or guardian. The bill would require the parents or guardians to pay for support in a child care agency, group home, or private treatment facility in addition to a foster home. In addition to amending the laws dealing with abused, neglected, and dependent children, the bill also amends the laws relating to children placed under the Youth Court Act and provides methods for determining parents' responsibility to pay support for their children placed under the act.

Section 1. NEW  
Section 2. Amend 41-3-105.

Rulemaking authority.  
Recovery from parents or guardian - division between state and county.

Section 3. Amend 41-3-202.

Action on reporting - maintenance of central registry on child abuse.

Section 4. Amend 41-3-401.

Abuse, neglect, and dependency petitions.

Provides that investigations as to financial status cannot be made before the adjudicatory proceeding.

Section 5. Amend 41-3-404.

Hearing Adjudicatory hearing -- temporary disposition.

- Section 6. Amend 41-3-405 Investigation of parents' or guardian's financial ability  
Section 7. Amend 41-3-406 ~~Judgment~~ Dispositional hearing.  
Section 8. NEW Order for financial support.  
Section 9. Amend 41-5-522 Dispositional hearing.  
Dispositional hearing in an action under the Youth Court Act  
can involve a determination of financial liability.  
Section 10. Amend 41-5-803. Support of youth committed  
to a custodial agency.  
Section 11. NEW Financial investigation by  
county welfare department.  
An investigation is to be made if a youth is placed in  
a home where the department of social and rehabilitation  
services is responsible for the costs or if the youth is  
determined to be delinquent or in need of supervision  
after an adjudicatory hearing.  
Section 12. NEW Order for financial support.  
The court is to hold a hearing to determine the ability  
of the youth's parents to pay support for a youth placed  
under the Youth Court Act.

NOTE - SB 301 (Lensink) deals somewhat with the same subject area.  
Note that the amendments on page 2 of HB 813 to 41-3-105  
were proposed by the department of social and rehabilitation  
services in SB 301 - these amendments were rejected by the  
Senate Judiciary Committee in respect to SB 301.  
Note also that 41-3-202 is amended in both bills. The two  
bills conflict, in part, with respect to 41-3-202.

) HB 803 (Anderson)

proposed bill -defines confidential health care information and  
provides for disclosure of the information in certain areas.

- Section 1. NEW Purpose.  
Section 2. NEW Definitions.  
Section 3. NEW Confidential health care  
information.  
Cannot be released without the person's consent except  
in certain cases provided for in the bill.  
Section 4. NEW Condition of transfer --  
right to request modification.  
A person can request that a third party who has taken  
adverse action based on the confidential information  
transfer the information. The person can seek to have  
incorrect information modified.  
Section 5. NEW Privileged information --  
exemption from compulsory  
legal process  
Section 6. NEW No limitation on licensing  
board.  
Section 7. NEW  
The House deleted the penalty section and provided that there  
can be no disciplinary or punitive action.  
Section 8. NEW Reporting obligations not  
limited.

- 3). HB 805 (Williams)  
By request of the Code Commissioner

current law - 39-4-108 sets the allowable hours of labor for railway employees; 39-4-109 sets the hours of labor for workers in cement plants, quarries and hydroelectric dams. In a 1970 Federal court case, certain railroads brought a suit for a declaratory judgment that the Montana statute regulating railroad labor hours was unconstitutional. The U.S. District Court ruled that the statute relating to railroads was in direct conflict with federal statute regulating the area and were therefore void under the supremacy clause of the U.S. Constitution and the state was permanently enjoined from prosecuting under the statute. The statutes involved in the Union Pacific Railroad Company v. Woodahl case were sections 41-1123 and 41-1124, R.C.M. (section 39-4-108(1)-(5), MCA).

proposed bill - repeals 39-4-108 which was declared unconstitutional in the above case. Note that 39-4-109 which was originally in the bill was not involved in any way in the above case.

- 4). HB 820 (Pistoria)

current law - requires cities in Montana to have a police commission; one duty of the commission is to hear, try, and decide all charges brought against a member or officer of the police department. The members of the commission are to serve for three years (7-32-4152).

proposed bill - amends 7-32-4152 to provide that a commission member whose term has expired must continue to sit on any case that has been started until a decision is made, and a new commission member cannot sit in on such business.

REPORT OF THE BOARD OF TRUSTEES

Report:  
(A-76)

RECEIVED  
STATE ARCHIVES  
MAY 16 9 51 AM '76

Subject: Confidentiality of Health Care Information:  
Model State Legislation

Presented by: Raymond T. Holden, M. D., Chairman

Referred to: Reference Committee B  
(J. E. Miller, M. D., Chairman)

1 In response to a request from the House of Delegates (C-73) the  
2 Council on Legislation has developed model state legislation on con-  
3 fidentiality. A copy of the model bill, as approved by the Board of  
4 Trustees on May 13, 1976 on recommendation of the Council, is submitted  
5 with this report.

6  
7 Prior drafts of the model bill were before the House of Delegates  
8 at the 1975 Annual and Clinical Conventions. The present draft was  
9 prepared in response to concerns expressed at the 1975 Clinical Conven-  
10 tion and to other recommendations received subsequently.

11  
12 The new draft allows greater flexibility than did the prior draft  
13 to physicians' and hospitals' use of confidential health care informa-  
14 tion, while retaining the prior bill's restrictions on third parties'  
15 use of such information. Other portions of the prior bill, such as  
16 those relating to peer review immunity and nondiscoverability of peer  
17 review proceedings and records, have been retained in the new draft.  
18 Application of portions of the bill was extended to health care pro-  
19 viders other than physicians.

20  
21 Throughout the development of this model legislation a considerable  
22 effort was made to seek and respond to the suggestions of state and spe-  
23 cialty medical societies and other interested organizations and individ-  
24 uals. Following the Council's approval of the new draft in January 1976,  
25 copies were sent to all state and specialty medical societies and approx-  
26 imately 35 organizations and individuals who had commented on the model  
27 legislation during its development. Comments were solicited on this  
28 latest draft.

29  
30 Comments received during the process of developing this model bill  
31 have been most helpful. It was not, of course, possible to incorporate  
32 all of the changes suggested and still effectively respond to the issues  
33 which must be addressed in this proposal. However, the comments indicate  
34 that concerns with earlier drafts have been largely resolved.

## IN THE GENERAL ASSEMBLY

STATE OF \_\_\_\_\_

## A Bill

To Provide For Confidentiality  
Of Health Care Information

1 Be it enacted by the People of the State of \_\_\_\_\_, represented  
2 in the General Assembly:

3  
4 Section 1. This Act may be cited as the "Confidentiality Of  
5 Health Care Information Act".  
6

7 Section 2. The purpose of this Act is to establish safeguards  
8 for maintaining the integrity of confidential health care information.  
9

10 Section 3. For purposes of this Act --  
11

12 (a) the term "health care provider" means any person, cor-  
13 poration, facility or institution licensed by this state to provide  
14 or otherwise lawfully providing health care services, (including but  
15 not limited to a physician, hospital or other health care facility,  
16 dentist, nurse, optometrist, podiatrist, physical therapist or psychol-  
17 ogist, and an officer, employee or agent of such provider acting in  
18 the course and scope of his employment or agency related to or suppor-  
19 tive of health care services; )  
20

21 (b) the term "health care services" means acts of diagnosis,  
22 treatment, medical evaluation or advice or such other acts as may be  
23 permissible under the health care licensing statutes of this state;  
24

25 (c) the term "confidential health care information" means  
26 information relating to a person's health care history, diagnosis, con-  
27 dition, treatment, or evaluation;  
28

29 (d) the term "medical peer review committee" means a commit-  
30 tee of a state or local professional medical society or of a medical  
31 staff of a licensed hospital, nursing home or other health care facil-  
32 ity provided the medical staff operates pursuant to written bylaws that  
33 have been approved by the governing board of the hospital, nursing home,  
34 or other health care facility, or other organization of physicians  
35 formed pursuant to state or federal law and authorized to evaluate medi-  
36 cal and health care services;  
37

38 (e) the term "third party" means a person or entity other  
39 than the person to whom the confidential health care information re-  
40 lates and other than a health care provider.



1 confidential health care information; (3) provide a written statement to  
2 each employee or agent as to the necessity of maintaining the security  
3 of confidential health care information, and of the penalties provided  
4 for in this Act for the unauthorized release, use, or disclosures of  
5 such information; receipt of such statement shall be acknowledged by  
6 such employee or agent signing and returning same to his employer or  
7 principal and the employer or principal shall furnish his employee or  
8 agent with a copy of the signed statement, and shall retain the origi-  
9 nal thereof; (4) take no disciplinary or punitive action against any  
10 employee or agent who brings evidence of violation of this Act to the  
11 attention of any person or entity.  
12

13 (d) Consent forms for the release or transfer of confidential  
14 health care information shall contain, or in the course of an appli-  
15 cation or claim for insurance be accompanied by a notice containing,  
16 at least the following:  
17

18 (1) the need for and proposed use of such informa-  
19 tion;  
20

21 (2) a statement that all information is to be re-  
22 leased or indicating the extent of the information to be  
23 released, and  
24

25 (3) a statement that such information will not be  
26 given, sold, transferred, or in any way relayed to any  
27 other person or entity not specified in the consent form  
28 or notice without first obtaining the individual's addi-  
29 tional written consent on a form stating the need for the  
30 proposed new use of such information or the need for its  
31 transfer to another person or entity, and,  
32

33 (4) a statement that such consent applies only to  
34 the release or transfer of confidential health care in-  
35 formation existing prior to the date such consent is  
36 signed, except that when such consent is given in the  
37 course of an application or claim for insurance it shall  
38 also apply to medical information existing at any time  
39 during the period of contestability provided for in the  
40 policy and during periods of ongoing proofs of loss dur-  
41 ing a claim.  
42

43 Section 5. (a) Upon occurrence of an action or decision of any  
44 third party, which adversely affects a person, and which is based in  
45 whole or in part upon his confidential health care information, in-  
46 cluding, but not limited to, the following actions or decisions: (1)  
47 denial of an application for an insurance policy; (2) issuance of an  
48 insurance policy with other than standard and uniform restrictions;  
49 (3) rejection in whole or in part of any claim for insurance benefits;  
50 (4) denial of an employment application or termination of employment  
51 when such denial or termination is for health reasons; and upon the  
52 written request of such person or his authorized representative (or,  
53 if such person is deceased, then his heir or beneficiary or their  
54 authorized representative or his estate), a third party shall transfer

1 dition into issue and the exemption and privilege  
2 shall apply in such situations as to those por-  
3 tions of one's confidential health care informa-  
4 tion relating to mental condition.  
5

6 (B) the individual's physical or mental condi-  
7 tion is relevant regarding the execution or witness-  
8 ing of a will or other document;  
9

10 (C) the physical or mental condition of a de-  
11 ceased individual is introduced by any party claim-  
12 ing or defending through or as a beneficiary of such  
13 individual;  
14

15 (D) in a civil or criminal commitment proceed-  
16 ing, a physician, in the course of diagnosis, treat-  
17 ment, or medical evaluation of an individual, deter-  
18 mines that an individual is in need of care and treat-  
19 ment in a hospital or any other health care facility  
20 which is deemed by the individual's physician to be  
21 appropriate for mental illness;  
22

23 (E) a judge finds that an individual, after hav-  
24 ing been informed that the communications would not be  
25 privileged, has made communications to a psychiatrist  
26 in the course of a psychiatric examination ordered by  
27 the court, provided that such communications shall be  
28 admissible only on issues involving the individual's  
29 mental condition;  
30

31 (F) in any court proceeding, including an ex parte  
32 hearing, it is demonstrated on a prima facie basis to  
33 the court that the individual's physical or mental con-  
34 dition is of an imminent and serious danger to the phys-  
35 ical or mental health of another person, or to the secu-  
36 rity of the United States, or  
37

38 (G) in any action by an individual pursuant to  
39 Section 9 of this Act, or in any policy action brought  
40 by an individual against his insurance carrier, or by  
41 the carrier against an insured, or in any other action  
42 by an individual wherein it is demonstrated to the court  
43 that such confidential health care information is rele-  
44 vant and material then such court may issue an order  
45 compelling production of such information.  
46

47 (b) The exceptions contained in items (A) through (G) of subpara-  
48 graph (2) above are not intended to preclude the exemption or privilege  
49 described in subparagraph (1) above in any pre-trial or trial proceedings  
50 under the Divorce Act of this State unless the individual or witness on  
51 his behalf first testifies as to such confidential health care informa-  
52 tion.  
53

54 Section 7. (a) Notwithstanding other provisions of this Act, health  
55 care providers may make confidential health care information available to  
56 medical peer review committees without authorization.

1 Section 8. (a) Civil Penalties - Anyone who violates provisions  
2 of this Act, may be held liable for special and general damages.  
3

4 (b) Criminal Penalties - Anyone who intentionally and knowingly  
5 violates provisions of this Act shall, upon conviction, be fined not  
6 more than \$1,000, or imprisoned for not more than six months, or both.  
7

8 (c) The civil and criminal penalties above shall also be appli-  
9 cable to anyone who obtains an individual's confidential health care  
10 information through the commission of a crime.  
11

12 Section 9. A person or his authorized representative shall have  
13 the right, when there is an unreasonable refusal to change the records  
14 as provided in Section 5, to seek through court action the amendment or  
15 expungement of any part of his confidential health care information in  
16 a third party's possession which he believes is erroneous.  
17

18 Section 10. Attorney's fees and reasonable costs may be awarded,  
19 at the discretion of the court, to the successful party in any action  
20 under this Act.  
21

22 Section 11. Any agreement purporting to waive the provisions of  
23 this Act is hereby declared to be against public policy and void.  
24

25 Section 12. If any provision of this Act is held by a court to  
26 be invalid, such invalidity shall not affect the remaining provisions  
27 of this Act, and to this end the provisions of this Act are hereby  
28 declared severable.  
29

30 Section 13. This Act shall become effective \_\_\_\_\_ (one year)  
31 from the date of being signed into law.

dition into issue and the exemption and privilege shall apply in such situations as to those portions of one's confidential health care information relating to mental condition.

(B) the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(C) the physical or mental condition of a deceased individual is introduced by any party claiming or defending through or as a beneficiary of such individual;

(D) in a civil or criminal commitment proceeding, a physician, in the course of diagnosis, treatment, or medical evaluation of an individual, determines that an individual is in need of care and treatment in a hospital or any other health care facility which is deemed by the individual's physician to be appropriate for mental illness;

(E) a judge finds that an individual, after having been informed that the communications would not be privileged, has made communications to a psychiatrist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the individual's mental condition;

(F) in any court proceeding, including an ex parte hearing, it is demonstrated on a prima facie basis to the court that the individual's physical or mental condition is of an imminent and serious danger to the physical or mental health of another person, or to the security of the United States, or

(G) in any action by an individual pursuant to Section 9 of this Act, or in any policy action brought by an individual against his insurance carrier, or by the carrier against an insured, or in any other action by an individual wherein it is demonstrated to the court that such confidential health care information is relevant and material then such court may issue an order compelling production of such information.

(b) The exceptions contained in items (A) through (G) of subparagraph (2) above are not intended to preclude the exemption or privilege described in subparagraph (1) above in any pre-trial or trial proceedings under the Divorce Act of this State unless the individual or witness on his behalf first testifies as to such confidential health care information.

Section 7. (a) Notwithstanding other provisions of this Act, health care providers may make confidential health care information available to medical peer review committees without authorization.

SENATE JUDICIARY COMMITTEE

PROPOSED AMENDMENT FOR HOUSE BILL NO. 803

Page 4,

Following: line 1

Insert: "(d) to a State Insurance Department for the purpose of reviewing an insurance claim or complaint made to such Department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured."

1 Section 4. (a) Except as provided in subsection (b) or as other-  
2 wise specifically provided by law, a person's confidential health care  
3 information shall not be released or transferred without the written  
4 consent, on a consent form meeting the requirements of section 4 (d)  
5 of this Act, of such individual or his authorized representative. A  
6 copy of any notice used pursuant to section 4 (d), and of any signed  
7 consent shall be provided to the person signing a consent form.  
8

9 (b) No consent for release or transfer of confidential health care  
10 information is required in the following situations: (1) to a physician,  
11 dentist, or other medical personnel for diagnosis or treatment of such  
12 individual in a medical or dental emergency, or (2) to medical peer re-  
13 view committees, or (3) to a State Insurance Department or other state  
14 agency for the purpose of reviewing an insurance claim or complaint  
15 made to such Department or other agency by an insured or his authorized  
16 representative or by a beneficiary or his authorized representative of  
17 a deceased insured, or (4) to qualified personnel for the purpose of con-  
18 ducting scientific research, management audits, financial audits, program  
19 evaluations, or similar studies, but such personnel shall not identify,  
20 directly or indirectly, any individual patient in any report of such re-  
21 search, audit, or evaluation, or otherwise disclose patient identities  
22 in any manner (the term "qualified personnel" means persons whose train-  
23 ing and experience are appropriate to the nature and level of the work  
24 in which they are engaged and who, when working as part of an organiza-  
25 tion, are performing such work with published and adequate administrative  
26 safeguards against unauthorized disclosures), (5) by a health care pro-  
27 vider, as reasonably necessary in the provision of health care services  
28 to a person, or in the administration of the office or practice or oper-  
29 ation of a health care provider (as used herein, "administration" shall  
30 include, but not be limited to, purposes of: accreditation, reimburse-  
31 ment, liability risk management or appraisal, and defense or prosecution  
32 of legal actions), (6) by an employer as reasonably necessary in the  
33 administration of a group insurance or workmen's compensation plan, (7)  
34 upon the filing of a claim for insurance benefits, between third party  
35 insurers to determine their relative rights and obligations concerning  
36 the individual's entitlement or the amount or kind of insurance benefits,  
37 when the policy of insurance obtained by the individual provides for  
38 obligations by more than one insurer with respect to a claim for bene-  
39 fits, or (8) between insurers and reinsurers in connection with the under-  
40 writing and administration of coverages and the processing of claims.  
41

42 The release or transfer of confidential medical information under  
43 any of the above exceptions shall not be the basis for any legal liabil-  
44 ity, civil or criminal, nor considered a violation of this Act.  
45

46 (c) Third parties receiving and retaining an individual's confi-  
47 dential health care information must establish at least the following  
48 security procedures: (1) limit authorized access to personally identi-  
49 fiable confidential health care information to persons having a "need to  
50 know" such information; additional employees or agents may have access  
51 to such information which does not contain information from which an in-  
52 dividual can be identified; (2) identify an individual or individuals  
53 who have responsibility for maintaining security procedures for con-

44-7

NAME Les Loble II Bill No. H 13803  
ADDRESS 716 Power DATE 3-14-78  
WHOM DO YOU REPRESENT Am. Council of Life Insurance  
SUPPORT \_\_\_\_\_ OPPOSE X AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

AMA Version given by Mr. Russell of Insurance  
Commissioner's office is acceptable.

Add at p4, line 2, add new sub section (g).  
"(g) between insurers and reinsurers in connection with  
the underwriting and administration of coverages and the  
processing of claims."

At p6, l 23

Strike: ~~the~~ "pursuant to"

Insert: in an action by an individual pursuant to  
[this text] or in any policy action brought by  
an individual against his insurance carrier,  
or by a carrier against an insured, or in any other  
action by an individual wherein it is demonstrated to  
the court that such confidential information is relevant  
and material to such court may issue an order  
compelling production of such information."

Change p5, l2-12 to conform to

§5(c) of AMA Bill.

HOUSE BILL 803

Recommend that House Bill 803 be amended as follows:

1. Page 3, line 22.

Following: "by"  
Insert: "to"

2. Page 3, line 23.

Following: "or"  
Strike: "workers' compensation plan"  
Insert: "to a workers' compensation insurer,  
the Division of Workers' Compensation,  
or the Workers' Compensation Judge,  
as is necessary in the administration  
of Title 39, Chapters 71 and 72."



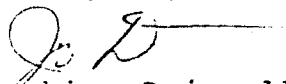
2. Page 5, line 2, - reference to erroneous information. We believe it would be improper for the "third party" to modify information provided by the health care provider. In handling complaints we must often verify information directly with the health care provider, and would require confirmation of such information in the event it involved a denial of a claim based on such information.

3.. Section 5, pages 5 and 6. We note a number of omissions from the model bill, - more particularly (G) of the model bill - copy attached. We merely wish to call this to the attention of the attorneys on the committee for their review and evaluation as to whether or not they are relevant to the intent of the bill.

As previously stated, we feel much more comfortable with a model bill product, as it becomes extremely difficult to evaluate portions taken out of context.

Thank you for your consideration ~~to~~ these items.

MONTANA INSURANCE DEPARTMENT

  
Josephine Driscoll, Chief Deputy

SENATE JUDICIARY COMMITTEE

PROPOSED AMENDMENT FOR HOUSE BILL NO. 803

Page 4,

Following: line 1

Insert: "(d) to a State Insurance Department for the purpose of reviewing an insurance claim or complaint made to such Department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured."

Section 4. (a) Except as provided in subsection (b) or as otherwise specifically provided by law, a person's confidential health care information shall not be released or transferred without the written consent, on a consent form meeting the requirements of section 4 (d) of this Act, of such individual or his authorized representative. A copy of any notice used pursuant to section 4 (d), and of any signed consent shall be provided to the person signing a consent form.

(b) No consent for release or transfer of confidential health care information is required in the following situations: (1) to a physician, dentist, or other medical personnel for diagnosis or treatment of such individual in a medical or dental emergency, or (2) to medical peer review committees, or (3) to a State Insurance Department or other state agency for the purpose of reviewing an insurance claim or complaint made to such Department or other agency by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured, or (4) to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies, but such personnel shall not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner (the term "qualified personnel" means persons whose training and experience are appropriate to the nature and level of the work in which they are engaged and who, when working as part of an organization, are performing such work with published and adequate administrative safeguards against unauthorized disclosures), (5) by a health care provider, as reasonably necessary in the provision of health care services to a person, or in the administration of the office or practice or operation of a health care provider (as used herein, "administration" shall include, but not be limited to, purposes of: accreditation, reimbursement, liability risk management or appraisal, and defense or prosecution of legal actions), (6) by an employer as reasonably necessary in the administration of a group insurance or workmen's compensation plan, (7) upon the filing of a claim for insurance benefits, between third party insurers to determine their relative rights and obligations concerning the individual's entitlement or the amount or kind of insurance benefits, when the policy of insurance obtained by the individual provides for obligations by more than one insurer with respect to a claim for benefits, or (8) between insurers and reinsurers in connection with the underwriting and administration of coverages and the processing of claims.

The release or transfer of confidential medical information under any of the above exceptions shall not be the basis for any legal liability, civil or criminal, nor considered a violation of this Act.

(c) Third parties receiving and retaining an individual's confidential health care information must establish at least the following security procedures: (1) limit authorized access to personally identifiable confidential health care information to persons having a "need to know" such information; additional employees or agents may have access to such information which does not contain information from which an individual can be identified; (2) identify an individual or individuals who have responsibility for maintaining security procedures for con-

7  
1       dition into issue and the exemption and privilege  
2       shall apply in such situations as to those por-  
3       tions of one's confidential health care informa-  
4       tion relating to mental condition.

5  
6       (B) the individual's physical or mental condi-  
7       tion is relevant regarding the execution or witness-  
8       ing of a will or other document;

9  
10       (C) the physical or mental condition of a de-  
11       ceased individual is introduced by any party claim-  
12       ing or defending through or as a beneficiary of such  
13       individual;

14  
15       (D) in a civil or criminal commitment proceed-  
16       ing, a physician, in the course of diagnosis, treat-  
17       ment, or medical evaluation of an individual, deter-  
18       mines that an individual is in need of care and treat-  
19       ment in a hospital or any other health care facility  
20       which is deemed by the individual's physician to be  
21       appropriate for mental illness;

22  
23       (E) a judge finds that an individual, after hav-  
24       ing been informed that the communications would not be  
25       privileged, has made communications to a psychiatrist  
26       in the course of a psychiatric examination ordered by  
27       the court, provided that such communications shall be  
28       admissible only on issues involving the individual's  
29       mental condition;

30  
31       (F) in any court proceeding, including an ex parte  
32       hearing, it is demonstrated on a prima facie basis to  
33       the court that the individual's physical or mental con-  
34       dition is of an imminent and serious danger to the phys-  
35       ical or mental health of another person, or to the secu-  
36       rity of the United States, or

37  
38       (G) in any action by an individual pursuant to  
39       Section 9 of this Act, or in any policy action brought  
40       by an individual against his insurance carrier, or by  
41       the carrier against an insured, or in any other action  
42       by an individual wherein it is demonstrated to the court  
43       that such confidential health care information is rele-  
44       vant and material then such court may issue an order  
45       compelling production of such information.

46  
47       (b) The exceptions contained in items (A) through (G) of subpara-  
48       graph (2) above are not intended to preclude the exemption or privilege  
49       described in subparagraph (1) above in any pre-trial or trial proceedings  
50       under the Divorce Act of this State unless the individual or witness on  
51       his behalf first testifies as to such confidential health care informa-  
52       tion.

53  
54       Section 7. (a) Notwithstanding other provisions of this Act, health  
55       care providers may make confidential health care information available to  
56       medical peer review committees without authorization.

X  
TRIBUNE - TUES - JAN. 7, 1975 -

## City policeman <sup>PAGE-1.</sup> suspended after ① theft of bikes

An 11-year veteran of the Great Falls Police Department has been suspended from the force without pay pending the outcome of a hearing before the Great Falls Police Commission to determine if he should be permanently discharged from the department.

Patrolman 1st Class Robert Dewar was suspended Dec. 26 by Police Chief Jack Anderson following a departmental investigation into the theft of two bicycles from the department's storage area.

In a complaint filed before the police commission Monday, Anderson states Dewar was suspended "on the grounds that there is probable cause to believe that he was personally involved in the theft of two bicycles during the month of October, 1974."

The complaint further states that as a result of the alleged theft "Dewar has been guilty of misconduct in office, conduct unbecoming a police officer and conduct of a nature as to bring reproach onto the police force."

Commission Chairman Daniel S. "Tex" Harris, said a hearing probably will be conducted in early February. Following the hearing, the commission will present its findings and recommendations to City Manager Dick Thomas who has five days to accept, modify or veto the commission ruling in making a final determination.

Exhibit A.

74-59

# X Policeman's hearing under way

(2)

By M. THOMAS BEAM  
Tribune Staff Writer

The city police commission hearing of suspended Patrolman Robert Dewar got under way Wednesday night with three of 14 witnesses testifying before Tribune press deadline.

Dewar, an 11-year veteran of the force, was suspended from duty Dec. 26 by Chief Jack Anderson after a departmental investigation into the theft of bicycles from a police storage area.

First witness was James A. Cook, head of the Intelligence Division, who said he learned that a police officer had taken two bicycles from the police storage area. He said he also had heard that Roger Fields, another police officer, at that time, may have seen the theft. Cook said he then turned the investigation over to Sgt. Timothy B. Skinner.

Skinner testified that on Dec. 23 he talked to Fields and Fields denied knowledge of the theft. Skinner said he then learned that Patrolman Robert Stevens may have seen the alleged theft. Skinner said he questioned Stevens Dec. 24, who related that on the night of Oct. 2, while returning to his vehicle parked behind the police station, he observed Fields and Dewar standing in the open doorway leading to the storage area at the rear of the station.

Further Skinner testimony brought out that Fields on that night was the police department jailer and as such had in his possession several keys, including one to the storage area door.

Skinner then stated that on Dec. 25, he again interviewed Fields who at that time admitted he had taken one bicycle and helped Dewar take two others.

Fields, a senior patrolman, who later resigned from the force was the third witness. He testified he had just unlocked the overhead door to the police storage area the night of Oct. 2 when Dewar drove up in his squad car. Fields quoted Dewar as saying, "What are you up to?" Fields said he told him, "I was loading up a bike for myself." Dewar noted that he had run over a couple of his own (bicycles) and would like two, too, Fields continued.

Fields testified Dewar then went to an adjacent parking area and got his pickup and pulled it alongside the overhead door. "I loaded one bike into his truck and Dewar the other," Fields said. "Dewar then parked his truck at the rear of the Rosslyn Apartments." Fields said he also took a third bike and put it in his car. Fields noted that Dewar's were white and all were multi-speed, either five or 10.

Before Skinner concluded his testimony, he said after the second interview with Fields, he obtained a search warrant from a district court judge, which he (Skinner) served Dec. 26 on Dewar at Dewar's residence. Skinner testified that Dewar's home, property and vehicles were searched but he did not find the bicycles he was looking for.

Under cross-examination by Dewar's attorney, John McCarvel, Fields stated that prior to making his written statement regarding the alleged thefts, he (Fields) was told he has two choices: "Be charged with theft or resign." It also was brought out that William Steele, assistant police chief, told Fields he would receive a letter of recommendation from the police department to help him in obtaining an airport security job if he testified at the Dewar hearing.

*Exhibit #1*

3

Friday, Feb. 21, 1975

Great Falls Tribune 9

## X Hearing halted when officer fails to identify informant

By M. THOMAS BEAM  
Tribune Staff Writer

The city police commission hearing for suspended Patrolman Robert Dewar came to an abrupt halt late Wednesday night during the cross-examination of Sgt. James Cook when Cook refused to disclose the name of an informant.

Dewar, an 11-year-veteran of the force, was suspended from duty Dec. 26 by Chief Jack Anderson following a departmental investigation into the theft of two bicycles from a police storage area.

Cook, the first witness to testify at the hearing, told the commission he was told on Dec. 22 Dewar may have been involved in the theft by a fellow police officer.

Dewar's attorney, John McCarvel, recalled Cook late in the evening and when he asked who Cook's informant was, Cook refused to say. City Atty. Dave Gliko objected to McCarvel's question, but commission member Joseph Marra overruled Gliko.

Gliko then asked for a continuance in order to submit in writing Cook's reasons for refusing to identify his informant. Marra granted the continuance and said he would give Gliko and McCarvel 10 days to submit written arguments.

Also testifying Wednesday

myself." Fields said Dewar told him that he had run over a couple of his own bicycles and that he would like two, too.

Fields testified that Dewar then went to an adjacent parking area and got his pickup and pulled it alongside the door. "I loaded one bike into his truck and Dewar loaded the other," Fields said. Fields also stated he took a third bike and put it into his car.

McCarvel also recalled Skinner and had him explain departmental procedure concerning the identifying of abandoned and lost bicycles. Skinner said that as a result of a record check he was able to determine that five bicycles in the department's possession could not be accounted for.

Prior to recalling Cook, McCarvel argued that there is no state statute or city ordinance which empowers the city to serve as a collector of lost or abandoned bicycles. "I know it's been a long-time practice of the police department to pick up abandoned bikes but it doesn't have the authority to do so," he said.

McCarvel also stated that the city hasn't proved ownership of the two bicycles in question and moved that the charges be dismissed for lack of evidence.

Marra countered that McCarvel's argument has no merit before the police com-

mission. Marra then denied McCarvel's motion.

About 40 persons, including 14 policemen, were at the hearing in the Civic Center police court room. Ten policemen, including Cook, Skinner and Stevens, were scheduled to testify.

Daniel S. "Tex" Harris and Marion C. Heffern and Marra make up the police commission.

## Commission to resume hearing on patrolman

4

The Great Falls Police Commission hearing for suspended Patrolman Robert Dewar will reconvene tonight at 7:30 in the city police court chambers at the Civic Center.

<sup>FEB. 19</sup>  
The hearing was recessed Feb. 20 at the request of City Atty. David Gliko after Sgt. James Cook refused to disclose the name of an informant while under cross-examination by Dewar's attorney John McCarvel.

Dewar, an 11-year-veteran of the force, was suspended from duty Dec. 26 by Chief Jack Anderson following a departmental investigation into the theft of two bicycles from a police storage area.

Gliko requested the continuance after commission member Joseph Marra overruled his objection to McCarvel's questioning of Cook as to the identity of the informant. Cook earlier had testified he learned that Dewar may have been involved in the

theft of the two bicycles by a fellow police officer.

In granting the continuance, Marra gave Gliko and McCarvel 10 days to submit written arguments concerning the identifying of an informant. Commission chairman Daniel S. "Tex" Harris said Marra will rule on the question tonight before testimony resumes.

In a complaint filed before the commission in January, Anderson said Dewar was suspended "on the grounds that there is probable cause to believe that he was personally involved in the theft of two bicycles during the month of October, 1974."

The complaint further states that as a result of the alleged theft "Dewar has been guilty of misconduct in office, conduct unbecoming a police officer and conduct of a nature as to bring reproach onto the police force."



## X District judge to rule in case of policeman ⑤

The city police commission hearing for suspended policeman Robert Dewar was recessed after a ten minute meeting Monday night when the commission agreed to let a district court judge rule whether a witness must disclose the source of his information.

At the last hearing Feb. 20, Sgt. James Cook refused to give the name of a fellow police officer who told him Dewar may have been involved in the October, 1974 theft of two bicycles from a police storage area.

Dewar, an 11-year-veteran of the force, was suspended from duty Dec. 26 by Chief Jack Anderson following a departmental investigation into the theft.

Attorneys for Dewar and the city submitted briefs to the commission after the last hearing, and Joseph Marra gave the commission's opinion Monday that Cook must disclose the name of his informant.

Marra's reasons were both philosophical and legal. He said he does not believe in hiding information, and that a person has the right to be faced with his accuser.

Legally, Marra said the commission is a quasi-judicial body, as far as he is concerned, and since it is given

the power to punish, it must have all the facts to make a decision. Marra said the commission does not want to face criticism that it did not sue all available information. He said he was not impressed with the argument presented by the city that the informant needed to be protected.

City Attorney David Gliko moved that, based on Marra's opinion, district court should rule on whether Cook must name his source. His motion was granted by the commission.

Marra said that if the matter is not filed in district court within 10 days, the commission will consider it dismissed.

The hearing was held in the city commission chambers rather than the police courtroom due to the crowd which turned out for the meeting.

TRIBUNE, THES.  
MAR. 11, 1975 - PAGE 8

### Premiere of movie scheduled

A "grand premiere" showing of "Rancho Deluxe," filmed near Livingston, will be shown in Missoula March 18.

## Court asked to take case of policeman <sup>8.</sup> (6)

READ

TO  
DIST.  
CRT.

Police Chief Jack Anderson and Detective James Cook are asking that the case of suspended Great Falls patrolman Robert Dewar be transferred from the Great Falls Police Commission to District Court.

Their petition, filed in Dist. Judge R. J. Nelson's court, asks that the transcript of the commission hearings and all records and evidence in the Dewar case be certified to District Court.

Also asked is an order granting stay of the quasi-judicial commission order pending final determination of the Dewar proceedings.

The commission had ordered Cook to reveal the name of the police officer who originally informed Cook that Dewar might be involved in the theft of bicycles impounded by the Great Falls Police Department.

Cook and Anderson brought the charges of misconduct in office against Dewar before the commission and a hearing was held on Feb. 19.

During that hearing Dewar's

attorney asked Cook, under direct examination, the identity of the informer. Cook refused to provide this information and the hearing was continued.

On March 10, the hearing was reopened after the submission of briefs by all parties. After consideration of the briefs, the commission again ordered Cook to reveal the identity of the informant and indicated that the commission had contempt powers.

Cook received the information on the Dewar case on Dec. 23, 1974, from the informant, another officer, who told Cook the information was only a rumor.

Cook and Anderson do not believe the informing officer could help Dewar's defense because he has no material evidence in the case and that the personal security of the informing officer or his family may be in jeopardy if his identity was revealed or there may be adverse reactions.

The petition states the police commission exceeded its jurisdiction by commanding the testimony of a witness (Cook) and assuming the exercise of the power of contempt, which has not been conferred on the commission.

Continuing the petition states harm will come to the Great Falls Police Department, damaging the department's effectiveness by destroying the credibility of the police department's ability to protect the identity of its informants in all phases of criminal investigation.

# Affidavit filed to disqualify

Dewar  
Case

7

An affidavit of disqualification has been filed against Dist. Judge R. J. Nelson in the matter of charges against Robert Dewar, a suspended Great Falls police officer.

Dewar's affidavit states he believes he cannot have a fair and impartial hearing before Nelson by reason of bias and prejudice.

The affidavit was filed as the result of the Wednesday filing of a petition for a writ to stay an order by the Great Falls Police Commission that police Det. James Cook reveal the name of a police officer informant who originally informed Cook that Dewar might be involved in the theft of bicycles held by the Great Falls Police Department.

The petition for the writ was filed by Cook and Great Falls Police Chief Jack H. Anderson. Cook and Anderson brought charges of misconduct in office against Dewar before the commission and two hearings were held.

At both hearings Cook declined to identify the officer who reported the rumored involvement of Dewar.

The commission informed Cook, after he declined to reveal the informer's identity, that it has contempt powers. The Cook-Anderson petition disagrees with the commission's stand on contempt powers and had asked that transcripts of the commission hearings and all records and evidence be transferred to the district court.

Before the filing of the affidavit of disqualification, Nelson set April 9 at 10 a.m. for a show cause hearing on whether the writ should be granted.



8 Great Falls Tribune

Monday, June 30, 1975

## X Dewar trial appeal

The attorney representing suspended Great Falls policeman Robert Dewar, who is accused of stealing bicycles from the police department storage area, has filed an appeal with the Montana Supreme Court from the decision of a Lewistown district judge regarding an informer whose name has been kept confidential so far.

Judge LeRoy McKinnon ruled that the name of the informant was not critical to the outcome of the case. Police intelligence officer Jim Cook has refused to divulge the name of the fellow policeman who told him of the alleged theft on the grounds that it would compromise his ability to work with other informers who expect anonymity when dealing with police.

John McCarvel lodged the appeal in Dewar's behalf.

City Attorney Dave Gliko said McCarvel most likely would be given 30 days in which to file briefs on the matter, after which the city will file briefs as well.

Since the supreme court sits only occasionally during summer, Gliko said, the matter most likely would not be handled until late summer or fall.

# Police commission has lame duck majority <sup>(9)</sup>

READ

IMPORTANT

BUT CHANGED  
POSITION LATER,  
WHY?

IT WAS POLITICAL

NOTE - READ TO COMMITTEE

Two members of the Great Falls Police Commission whose official terms have expired probably should continue to serve at least until a pending case against one officer is resolved, City Attorney Dave Gliko told city commissioners during a work session this week.

The matter of expirations arose during last week's regular city commission meeting, when Commissioner Bill Scott pointed out that police commissioner Joe Marra was the only one serving a current term. The term of Marion Heffern, he said, expired May 1, 1975, and that of Tex Harris on May 1, 1974.

Scott pointed out the expirations in connection with a discussion on whether the police commission should be consulted on police department promotions.

During two recent city commission meetings, Scott has questioned whether sufficient comment was received before policeman Jim Cook was promoted to lieutenant. Scott objected to the practice of City Manager Dick Thomas being responsible for such promotions.

Since Scott was absent from this week's city commission work session while convalescing from surgery, his fellow commissioners deferred further discussion on the matter of promotion procedures.

Gliko, however, commented on the police commission term expirations regarding a separate case involving suspended policeman Robert Dewar.

Dewar was accused in December, 1974, of theft of two bicycles from the police department storage area.

The police commission commenced a hearing on the charge but it bogged down when Dewar's attorney demanded that Cook, the department's internal affairs investigator, reveal who had informed him of the alleged theft.

Cook said he could not reveal the name of the informant because it would compromise his ability to work with other tipsters in the city.

The matter was taken to state district court, where it was ruled that the informant's name was not germane to the proceedings. Dewar's attorney appealed that finding to the Montana Supreme Court, which heard oral arguments last November but still has not issued a decision.

A section of state law says that police commissioners whose terms have expired shall continue to serve until successors are named, according to Gliko.

Gliko pointed out that the police commissioners have heard all the testimony in the Dewar case so far and that, if new police commissioners are appointed, the case might have to be started all over again.

Work session discussion then returned to the matter of promotions, with City Com-

missioner Stan Meyer remarking that it was regrettable the image of the officer (Cook) and of the department "has to be dragged through this" — but that the question remains of whether one person should be responsible for promotions.

Mayor Don Ostrem said he was under the impression that the city commission had to ratify Thomas' promotions for police officers.

Gliko said he thought state law gave the mayor the authority for promotions — but that the authority could be subject to local ordinance.

Last May, said Gliko, Thomas submitted promotion regulations which included provision for an examining board to interview candidates and review their test scores. Under those regulations, said Gliko, the candidate first goes through the examining board and Thomas then approves or denies the promotion.

Gliko noted that his research for the work session dealt only with the terms of police commissioners, however, and that he would prefer to submit an explanatory memorandum on promotion policies at next week's regular city commission meeting. Commissioners ordered him to do so.

## Dewar hearing will resume 10

Testimony in the case of suspended Great Falls police officer Robert Dewar, which was halted Feb. 20, 1975 by a legal dispute over the identity of an informant, will resume May 10, according to commission chairman Tex Harris.

Dewar, an 11-year veteran of

the police force, was suspended from duty Dec. 26, 1974 following a departmental investigation into the theft of two bicycles from a police storage area.

At a hearing which started Feb. 19, 1975 before the commission, police Sgt. James Cook testified he began an investigation into the alleged theft when an unidentified police officer told him of a rumor that Dewar had stolen some bicycles. During the hearing, another police officer, who later resigned, implicated Dewar in the theft.

The hearing was suspended when Cook refused to identify the informant during questioning by Dewar's attorney, John McCarvel. When the commission ordered Cook to name the informer, the matter was taken to district court and later to the state Supreme Court, which returned the dispute to the commission last week.

City Atty. David Gliko, who stated April 6 that he assumed the high court ruling means that the commission has the

power to decide on whether the informant's name should be disclosed, said Tuesday, "One way or another, we're going to move along with this thing."

Harris said he originally intended to resume the hearing Wednesday night but it had to be postponed because commission-member Joe Marra, a local attorney, is busy with a court case.

Harris also said that as far as he knows, the commission has not indicated yet if it will stand by its previous ruling concerning the disclosure of the identity of the informant.

Police Chief Jack Anderson said Tuesday there are several options still open to city authorities if the commission again orders Cook to identify the informant.

Anderson said he preferred not to list the options but he did state that dismissing the charges against Dewar, which would allow the suspended officer to return to the force, was not one of them. "I can assure you that we are not going to dismiss the charges under any circumstances," he said.

REC'D - WED - MAY 5, 1976  
FROM CITY MGR.



# City of GREAT FALLS Montana

59403

P.O. BOX 1609

TELEPHONE 406/452-8561

May 4, 1976

## ASKING FOR RESIGNATION

Mr. Marion C. Heffern  
2115 Third Avenue South  
Great Falls MT 59405

Dear Mr. Heffern:

As I am sure you know, your term on the Police Commission officially ended on May 1, 1975. You have continued to serve in this capacity based upon the City Attorney's opinion that you were eligible to serve until your successor was named.

Now it appears very likely that a challenge will be raised concerning whether or not you properly hold this position. It is the opinion of the City Commission, the City Attorney and myself that we do not want any further delays in completing the case which is now pending before the Police Commission.

It is now the general policy of the City to provide for some turnover on the various boards and commissions. This is for the primary purpose of providing opportunities for more people to participate in City government.

Due to the fact that you have served on the Police Commission for some time and based upon the recommendation of the City Attorney that all appointments should now be made and confirmed, I do plan to appoint two new members to the Police Commission. Consequently, I do not propose to reappoint you to this commission at the present time. Mr. Tex Harris has been requested to continue to serve on the Police Commission.

I sincerely appreciate the excellent service that you have given during the past. I apologize for the way in which this must be handled now but the circumstances which now exist are not quite normal.

Again, thank you and best wishes.

Sincerely yours,

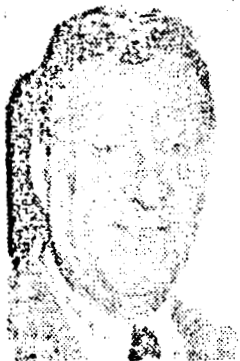
Richard D. Thomas  
City Manager

RDTgb

TO COMPLETE THE CASE?  
A POOR EXCLUSIVE MEMBER COULDN'T INTERFERE WITH THE NEW MEMBER

BUT, WHY DIDN'T THEY ALLOW TO REMAIN

TRIBUNE - THUR - MAY 6, 1976 - PAGE 14.



Daniel S. "Tex" Harris  
CARE OVER



Maurice P. Clark Jr.  
NEW



Charles C. Abernathy  
NEW

112

**APPOINTED** — The city commission by unanimous vote Tuesday named to membership on the Great Falls Police Commission Charles C. Abernathy, 1034 Durango; Maurice P. Clark Jr., 3220 2nd Ave. S., and Daniel S. "Tex" Harris, 2717 3rd Ave. N. Harris, who was reappointed, will serve until May 1, 1977; Clark, until May 1, 1978, and Abernathy, until May 1, 1979. Clark succeeds Marion C. Heffern and Abernathy succeeds Joseph R. Marra,

POLICE COM.  
**2 NEW MEMBERS**  
APPOINTED.



Wed. May 5, 1976

(13)

During noon hr  
John Hansen meeting  
First Natl Bank Bldg -  
2nd floor -

As I was leaving  
I saw Don Ostrem -  
& his 3 meet Police Com.  
appointees from last night  
Tex Harris, Maurice Clark Jr  
& Charles Abernathy -  
Harris & Ostrem talking  
about Police matters -

Don Ostrem said Hello -  
I went down on Elevator  
Paula Ristola

TRIBUNE - WED - MAY 26, 1976 - PAGE 14 - I ATTENDED LAST NIGHT'S MEETING,

## Informant in Dewar case named

74

Great Falls Police Lt. James A. Cook Tuesday named the informant whose tip initiated the departmental investigation which led to the charging of Officer Robert Dewar with theft of two bicycles from police storage.

The disclosure that Officer Robert Stevens had advised Cook that it was rumored Dewar had stolen the bicycles was quietly received by Dewar and his attorney, John McCarvel. The disclosure had held up for 15 months the Great Falls Police Commission hearing of the case involving the suspended officer.

Cook identified Stevens as his source in response to McCarvel's questioning before a two-thirds-new police commission. He was the only witness called in Tuesday night's comparatively brief and uneventful conclusion to the hearing which began in February 1975.

At the conclusion of his testimony, the commission took the case under advisement, indicating a written decision would be issued by next week.

McCarvel withdrew a motion

for dismissal after he failed to supply evidence to satisfy commission chairman Tex Harris to support his allegation that Dewar was being denied due process by the city administration's "prosecutor role manipulation." Harris refused to accept McCarvel's argument that the city hasn't complied to the letter of the Metropolitan Police Law in regard to the appointment of police commissioners.

"I see no evidence to support your statement that the city 'manipulated' prosecution of this case," Harris said.

To that, McCarvel replied that Joseph Marra, who was appointed in September 1973 to the commission which originally heard the Dewar case, was appointed by the city manager and was never confirmed by the city commission. The commission took that question under advisement, but declined to halt the hearing.

Given the option of starting the hearing at the beginning for the benefit of the police commissioners appointed earlier this month (Maurice

Clark and Charles Abernathy) or picking it up with Cook's testimony, McCarvel agreed to complete the hearing and allow the new commissioners to catch up by studying the transcript of previous proceedings.

McCarvel stipulated, however, that his objections to the jurisdictions of the previous and current police commissions stand. Neither, he said, is legally constituted by having a new member appointed each May for a three-year term. He indicated that he would apply to the Supreme Court for a writ of supervisory control at the conclusion of the proceeding.

In his examination of Cook, McCarvel tried to pin down the time and date that the informant told Cook of Dewar's alleged involvement in the Oct. 2, 1974, thefts. Cook said "It could have been a day or two one way or the other," of Dec. 23. He said it was dark out, but he didn't recall the exact time of day.

Cook's attorney, Arthur Matteucci, was present during the session. Neil Ugrin served as counsel to the police com-

mission.

The hearing had come to an abrupt halt Feb. 20, 1975, when Cook refused to reveal the informant's name when Marra ordered him to do so. At that session, Stevens had testified that he had observed Dewar and Patrolman Roger Fields standing in the open doorway of the storage area on the night of Oct. 2. Later that evening, Stevens said, he saw Dewar's pickup truck parked near the police station with two bicycles in the box. Fields, who resigned from the force in December 1974, admitted theft of one bicycle from the storage area earlier hearing.

When the commission ruled that Cook would have to identify the officer, Gliko appealed the ruling to Dist. Judge R. J. Nelson. Dist. Judge LeRoy L. McKinnon of Lewistown, who assumed jurisdiction when Nelson was disqualified. He ruled that the commission must proceed without requiring the disclosure of the informant. Last month, the Supreme Court vacated McKinnon's ruling and returned the case to the police commission.

TRIBUNE-TUES-DEC. 28, 1976-PAGE 8 (15)

## Court continues action on latest Dewar claim

The on-going court battle over the December, 1974 suspension and subsequent firing of Great Falls police officer Robert Dewar was continued Monday for an additional 15 days in district court to allow attorneys to submit briefs over the latest claim filed by the defendant.

Dewar, an 11-year veteran of the force, was suspended Dec. 26, 1974 following a departmental investigation into the theft of two bicycles from the department's storage area.

Dewar was ordered fired in June of this year by a newly-appointed city Police Commission after several hearings had been held by the prior commission in 1975 and 1976 and appeals had been made to district court and the Montana Supreme Court.

In a complaint filed in district court last July, Dewar is seeking the dismissal of the charges which resulted in his discharge and pay retroactive to the date of his suspension on the grounds that he was denied due process by the city's "prosecutorial manipulation" in naming a new police commission while his case still was pending. He contends this constituted double jeopardy.

During the hearing Monday before Dist. Judge B. W. Thomas of Chinook, Dewar's attorney, John McCarvel, said the new police commission

members were not appointed in conformance with state law.

McCarvel said commission chairman D. S. "Tex" Harris was appointed June 7, 1971; commission member Marion Heffern was appointed May 14, 1972, and member Joseph Marra was appointed Sept. 21, 1973, each to a three-year term.

According to McCarvel, Marra's term did not expire until September, 1976, yet the city removed Marra and Heffern from the commission on May 4 and named Justice Clark Jr. and Charles C. Abernathy Jr. to the board.

"The city appointed two new commission members after receiving an order of Supreme Court ruling and this smacks of unfair play and vindictiveness," McCarvel said.

In reply, city attorney David Gliko told Thomas that, according to state law, appointments to the police commission are to be made in the month of May.

"For some unknown reason, Marra was appointed in September, 1973. He should have been appointed in May but he wasn't. Also, he was never confirmed so the act of appointment was never actually confirmed."

Gliko denied that the high court ruling influenced the city's decision to name two new police commission members. "In fact, the ruling simply sent this matter back to

the police commission for further consideration on the question of the identity of the informant who tipped off police to the bicycle theft," he said.

When the hearing resumed before the new police commission, the city voluntarily identified that informant as police officer Robert Stevens, according to Gliko.

Dewar was found guilty of misconduct in office, conduct unbecoming a police officer and conduct of a nature as to bring reproach upon the police force in connection with the theft of the two bicycles after Stevens told his superiors that it was rumored Dewar had stolen the bicycles.

At a police commission hearing in February, 1975, Stevens testified he saw two bicycles in the rear of Dewar's pickup truck on the night of the theft.

Former police officer Roger Fields testified he helped Dewar load two bicycles from the storage area into Dewar's vehicle on that night. Fields, who also admitted stealing one bicycle for himself, resigned from the force a short time before Dewar was suspended.

Following Monday's hearing, Thomas gave McCarvel 10 days to file written briefs in support of his arguments and Gliko five days after that to reply.

NOTE  
THIS IS  
TERRIBLE  
READ  
TO COM-  
MITTEE  
FIRED BY  
NEW MEMBERS

1 TRIBUNE - SAT. JUNE 5, 1976 - FRONT PAGE FROM HEAR.  
146 - TUES - MAY 25, 1976

# Policeman ordered discharged

By M. THOMAS BEAM  
Tribune Staff Writer

16  
The Great Falls Police Commission ordered patrolman Robert Dewar be discharged from the police force Friday in a ruling that ended a 16-month court battle which, at one point, reached the state Supreme Court.

REPO  
The three-member commission found Dewar guilty of misconduct in office, conduct unbecoming a police officer and conduct of a nature as to bring reproach upon the police force by "his involvement in the theft of two bicycles from the Great Falls Police Department in October, 1974."

Dewar, an 11-year veteran of the force, was suspended from the department Dec. 26, 1974, by Police Chief Jack Anderson following a departmental investigation into the theft of the bicycles from a police storage area.

But what started out Feb. 19, 1975, as a routine police commission hearing on the charges quickly turned into a legal battle over the naming of an informer as Dewar's attorney. John M. McCarvel, sought the identity of the police officer

who first informed authorities of Dewar's possible involvement in the theft.

At that hearing, former patrolman Roger Fields, who resigned from the force after the investigation began, testified he had helped Dewar steal two bikes from the storage area Oct. 2, 1974, and also stole one for himself.

Another witness, patrolman Robert Stevens, told the commission he saw Dewar and Fields standing in the open doorway leading to the storage area at the rear of the old police station Oct. 2 and later saw two bicycles in Dewar's pickup truck.

The hearing ground to a halt when Lt. James Cook, who testified he began the investigation into the theft when a fellow police officer told him Dewar may have been involved, refused to identify the informant under cross-examination by McCarvel.

When Cook still refused to name the informer after being ordered to do so by the commission, the hearing was recessed and City Atty. David Gliko appealed the commission's order to Dist. Judge R. J. Nelson.

McCarvel disqualified Nelson and Dist. Judge LeRoy L. McKinnon of Lewistown assumed jurisdiction. Following a hearing in May, 1975, McKinnon ruled that the commission must proceed with the hearing without requiring the disclosure of the informant.

McCarvel appealed that ruling to the state Supreme Court and on April 6, the high court vacated McKinnon's ruling and returned the case to the commission, stating the commission has the power to decide whether the informant's name should be disclosed.

On May 25, the hearing resumed and Cook identified Stevens as the officer whose tip initiated the departmental investigation.

The commission then took the case under advisement and on Friday issued a written decision stating, "Robert Dewar is permanently discharged from his position and duties as a police officer with the City of Great Falls effective Dec. 26, 1974."

Making the ruling were commissioners D. S. "Tex" Harris, Charles C. Abernathy Jr., and Maurice Clark Jr.

# Tribune today

## Dewar loses appeal to Supreme Court

### BN line being fixed

The Burlington Northern's rail line from Havre to Great Falls has been closed because of excessive moisture conditions resulting from snowmelt, according to BN division superintendent M.E. Hagen of Havre. The line between Virgelle and Havre, resulting in freight traffic being detoured through Shelby. The detour service is scheduled to resume between Great Falls and Havre Friday night.

### Two hurt in crash

James H. Malton, 21, 420 6th Ave. S., and Kathy Searles, 28, Vermont, were treated for injuries and later released at Columbus Hospital Tuesday following a two-car collision at Fourth Avenue North and Ninth Street. City police said a car driven by James D. Merrill, 30, 3110 2nd Ave. N., collided with Malton's automobile about 10 a.m. Searles was a passenger in Merrill's vehicle. Merrill was cited for violation of right-of-way.

### Here come the

Secondary students in Great Falls schools will receive report cards Friday.

By The Associated Press

HELENA — A Great Falls policeman suspended in 1974 after being charged with stealing bicycles from a police storage area has lost his argument that the city police commission which disciplined him was invalid.

The Montana Supreme Court on Wednesday upheld a district court finding that some members of the commission at the time were serving in a proper capacity even though their terms had expired.

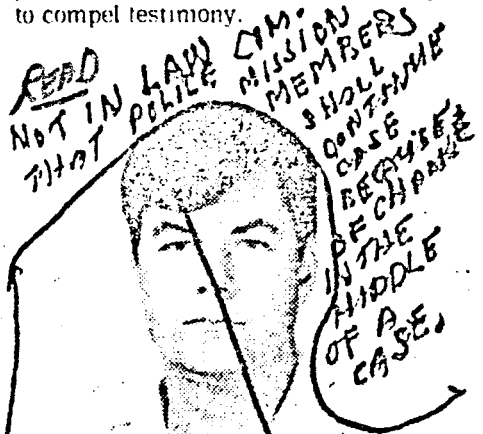
Former officer Robert Dewar claimed that the commissioners serving when his hearing began had not been properly appointed or confirmed and that the later appointment of two new commissioners constituted "prosecutorial manipulation."

The Supreme Court said a 1933 decision "plainly stated that every officer must continue to discharge the duties of his office although his term has expired, until his successor has qualified. It is a right and a duty."

The court noted, however, "There have been procedures adopted in here that should not be repeated, but from all of that one can draw only an inference of misconduct and not sufficient showing to overcome" the presumption that the district court decision was right.

It was the second time the case

had been before the Supreme Court. In 1976, the court had to settle a dispute over the commission's authority to compel testimony.



### WINS DEGREE —

Sgt. P.A. "Sandy" Bowser of the 24th North American Air Defense Command Region at Malmstrom Air Force Base, who dropped out of school after completing the ninth grade to join the Canadian Forces, has been awarded a master's degree in counseling psychology through the base education program. Bowser is the first Canadian to earn a graduate degree through the base program which is associated with Pepperdine University. He completed high school by correspondence and received a bachelor's degree in psychology from Mount Al-

STATEMENT  
By SUPREME CT.  
NOT TO REPEAT.

THATS WHY I INTRODUCED  
THIS BILL, SUPPORTED BY THEM.  
Paul H. Pistoria

HB 259

1. Title, line 10.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "2-4-611"

Insert: "AND 20-30-107"

Following: 2. Page 3, lines 1 through 9.  
in 25, page 2

Strike: subsection (5) in its entirety

Insert: "Section 2. Section 20-30-107, MCA, is amended to read

"20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, Chapter 4, relating to final agency decisions or orders, including

HB 475

1. Title, line 6.  
Following: "To"  
Strike: "10%"  
Insert: "8%"

2. Page 1, line 12.  
Following: "-6%<sup>10</sup>%"  
Strike: "10%<sup>10</sup>%"  
Insert: "8%<sup>10</sup>%"

3. Page 1.

Following: line 13  
Insert: "Section 2. Application."

This act applies to all  
payments entered before and  
remaining unpaid on July 1, 1979,  
except that the 8% interest  
rate becomes effective on  
July 1, 1979."

HB 498

1. Page 2.  
Following: line 7  
Insert: (MCS) The final adoption,  
amendment, or repeal of a  
rule is not subject to challenge  
in any court as a result of  
the inconsistency or  
inadequacy of the statement  
required under this section."

and, as so amended,

In Council on

Ernest R. Hancock

HB 712

1. Title, lines 7 and 8.

Following: "WHICH" on line 7

Strike: "MAY BE PERFECTED AGAINST ANY MOTOR VEHICLE"

Insert: "MUST BE ENDORSED IN DETAIL ON THE FACE  
OF THE CERTIFICATE OF OWNERSHIP"

2. Title, line 9.

Following: "TO"

Strike: "§ 5"

Insert: "§ 3"

Following: "61-3-103,"

Insert: "61-3-104,"

3. Page 2, line 11.

Following: "and"

Insert: ", except as provided in subsection (2),"

4. Page 2, lines 21 through 24.

Following: "(c)" on line 21

Strike: remainder of line 21 through "section" on line 24

Insert: "Whenever a security agreement or lien  
instrument is filed against a motor vehicle  
that is subject to two security interests previously  
perfected in favor of the same person, the division  
shall endorse on the face of the certificate of  
ownership, "NOTICE. This motor vehicle is subject  
to two security interests in the following order: (1) [blank]  
(2) [blank]"



Division of Motor Vehicles." No other information regarding such additional security interest need be entered on the certificate."

5. Page 5, line 10.

Following: ~~"and deleting the enforcement of the security interest from the face of the certificate of ownership"~~ "§2"

Strike: "§5"

Insert: "§3"

6. Page 5, line 13.

Following: "The"

Strike: "§5"

Insert: "§3"

7. Page 5, line 16.

Following: "of"

Strike: "endoring"

Insert: "entering"

8. Page 5, line 17.

Strike: "The face of the certificate of ownership or and on"

9. Page 5, line 18.

Following: "~~delete~~"

Insert: "and deleting the enforcement of the security interest from the face of the certificate of ownership"

Following: "§2"

Strike: "§5"

10. Page 6.

Following: line 1

Insert: "Section 2. Section 61-3-104, MCA, is amended to read:

"61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division ~~and endorsement on the certificate of ownership.~~"

Remember: all subsequent sections

11. Page 6, line 19.

Following: "(d)"

Insert: "except as provided in 61-3-103(e),"

12. Page 6, line 25.

Following: "(f)"

Insert: "except as provided in 61-3-103(e),"

HB 737

1. Page 12, line 17.

Following: "(53)"

Insert: "(a)"

2. Page 12, line 19.

Following: line 18

Strike: "(a)"

Insert: "(i)"

3. Page 12, line 20.

Following: line 19

Strike: "(b)"

Insert: "(ii)"

Following: "~~permanent~~"

Strike: "prolonged"

Insert: "serious permanent"

4. Page 12, line 22.

Following: line 21

Strike: "(c)"

Insert: "(iii)"

Following: "or"

Strike: "prolonged"

Insert: "protracted loss or"

5. Page 12, line 23 through line 1 on page 13.

Following: "organ" on line 23

"including"

Strike: remainder of line 23 through ~~line 1~~ on line

Insert: "

(b) It includes "

✓ 15. Page 2, lines 13 and 14.

Strike: subsection (4) in its entirety

#459

Insert: "AND 20-3-107"

Following: 2. Page 3, lines 1 through 9.  
p. 25, page 2

Strike: subsection (5) in its entirety

Insert: "Section 2. Section 20-3-107, MCA, is amended to read:

"20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order, except as provided in this subsection. Such final order is subject to all the provisions of Title 2, Chapter 4, relating to final agency decisions or orders, including

1. if lien satisfied - add 3<sup>rd</sup>?
2. info on cont. of reg. (p. 9)

HB 712

1. Title, lines 7 and 8.

Following: "WHICH" on line 7

Strike: "MAY BE PERFECTED AGAINST ANY MOTOR VEHICLE"

Insert: "MUST BE ENDORSED IN DETAIL ON THE FACE OF THE CERTIFICATE OF OWNERSHIP"

2. Title, line 9.

Following: "TO"

Strike: "§ 5"

Insert: "§ 3"

Following: "61-3-103,"

Insert: "61-3-104,"

3. Page 2, line 11.

Following: "and"

Insert: ", except as provided in subsection (2),"

4. Page 2, lines 21 through 24.

Following: "(2)" on line 21

Strike: remainder of line 21 through "section" on line 24

Insert: "Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject

Division of Motor Vehicles." No other information regarding such additional security interests need be entered on the certificate."

5. Page 5, line 10.

Following: ~~"The"~~ "#2"

Strike: "#5"

Insert: "#3"

6. Page 5, line 13.

Following: "The"

Strike: "#5"

Insert: "#3"

7. Page 5, line 16.

Following: "of"

Strike: "endorsing"

Insert: "entering"

8. Page 5, line 17.

Strike: "The face of the certificate of ownership ~~or~~ and on"

9. Page 5, line 18.

Following: "~~both~~"

Insert: "and deleting the endorsement of the security interests from the face of the certificate of ownership"

Following: "#2"

Strike: "#5"

10. Page 6.

Following: line 1

Insert: "Section 2. Section 61-3-104, HCA, is amended to read

"61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division ~~and endorsement on the certificate of ownership.~~"

---

11. Page 6, line 19.

Following: "(d)"

Insert: "except as provided in 61-3-103(2),"

12. Page 6, line 25.

Following: "(f)"

Insert: "except as provided in 61-3-103(2),"



1. if lien satisfied - add 3rd?
2. info on cert. of reg. (p. 9)

HB 712

1. Title, lines 7 and 8.

Following: "WHICH" on line 7

Strike: "MAY BE PERFECTED AGAINST ANY MOTOR VEHICLE

Insert: "MUST BE ENDORSED IN DETAIL ON THE FACE OF THE CERTIFICATE OF OWNERSHIP"

2. Title, line 9.

Following: "TO"

Strike: "§ 5"

Insert: ~~§ 5~~ "§ 3"

Following: "61-3-103,"

Insert: "61-3-104,"

3. Page 2, line 11.

Following: "and"

Insert: ", except as provided in subsection (2),"

4. Page 2, lines 21 through 24.

Following: "(2)" on line 21

Strike: remainder of lines 21 through "section" on line 24

Insert: "Whenever a security agreement or lien instrument is filed against a motor vehicle and that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership: "NOTICE This motor vehicle is subject to two security interests previously perfected by filing under this section. The division shall endorse on the face of the certificate of ownership: "NOTICE This motor vehicle is subject to two security interests previously perfected by filing under this section."

Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate."

5. Page 5, line 10.

Following: ~~"William"~~ "A-2"

Strike: "\$5"

Insert: "\$3"

6. Page 5, line 13.

Following: "~~The~~"

Strike: "\$5"

Insert: "\$3"

7. Page 5, line 16.

Following: "of"

Strike: "endorsing"

Insert: "entering"

8. Page 5, line 17.

Strike: "the face of the certificate of ownership ~~on and on~~"

9. Page 5, line 18.

Following: "~~both~~"

Insert: "and deleting the endorsements of the security interests from the face of the certificate of ownership"

Following: "\$2"

Strike: "\$5"

10. Page 6.

Following: line 1

Insert: "Section 2. Section 61-3-104, NCA, is amended to read

"61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division ~~and endorsement on the certificate of ownership.~~"

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11. Page 6, line 19.

Following: "(f)"

Insert: "except as provided in 61-3-103(2),"

12. Page 6, line 25.

Following: "(f)"

Insert: "except as provided in 61-3-103(2),"

HB 749

cut 1. Title, line 8.

Following: "CHILDREN"

Insert: ", PROMOTING PROSTITUTION,"

cut 2. Page 1, line 22.

Following: "(1)(D)"

Insert: "or for purposes of prostitution"

3. Page 2, line 12.

Following: "-13"

Strike: "16"

Insert: "13"

Following: "old"

Insert: ", except that if the offense consists of conduct described in subsection (1)(c) for purposes of prostitution, 'child' means any person less than 16 years old"

cut 4. Page 2, lines 13 and 14.

Strike: subsection (4) in its entirety

# STANDING COMMITTEE REPORT

.....March 14,..... 1979.....

MR. ....President:.....

We, your committee on .....Judiciary.....

having had under consideration .....House..... Bill No. 259.....

Tropila (Brown)

Respectfully report as follows: That.....House..... Bill No. 259,.....  
third reading bill, be amended as follows:

1. Title, line 10.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "2-4-611"

Insert: "AND 20-3-107"

2. Page 3, lines 1 through 9.

Following: line 25, page 2

Strike: subsection (5) in its entirety

Insert: "Section 2. Section 20-3-107, MCA, is amended to read:

"20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

DOPASS

(continued)

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

And, as so amended,  
BE CONCURRENT IN

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# STANDING COMMITTEE REPORT

March 13

19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 712

Cooney (Turnage)

Respectfully report as follows: That House Bill No. 712,

third reading bill, be amended as follows:

1. Title, lines 7 and 8.

Following: "WHICH" on line 7

Strike: "MAY BE PERFECTED AGAINST ANY MOTOR VEHICLE"

Insert: "MUST BE ENDORSED IN DETAIL ON THE FACE OF THE  
CERTIFICATE OF OWNERSHIP"

2. Title, line 9.

Following: "TO"

Strike: "\$5"

Insert: "\$3"

Following: "61-3-103,"

Insert: "61-3-104,"

3. Page 2, line 11.

Following: "and"

Insert: ", except as provided in subsection (2),"

DORESEX

(Continued)

4. Page 2, lines 21 through 24.

Following: "(2)" on line 21

Strike: remainder of line 21 through "section" on line 24

Insert: "Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE". This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate."

5. Page 5, line 10.

Following: "\$2"

Strike: "\$5"

Insert: "\$3"

6. Page 5, line 13.

Following: "The"

Strike: "\$5"

Insert: "\$3"

7. Page 5, line 16.

Following: "of"

Strike: "endorsing"

Insert: "entering"

8. Page 5, line 17.

Strike: "the face of the certificate of ownership or and on"

9. Page 5, line 18.

Following: "beth"

Insert: "and deleting the endorsement of the security interest from the face of the certificate of ownership"

Following: "\$2"

Strike: "\$5"

Insert: "\$3"

10. Page 6.

Following: line 1

Insert: "Section 2. Section 61-3-104, MCA, IS AMENDED TO READ:  
"61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division and-endorsement on-the-certificate-of-ownership."

Renumber: subsequent sections

(Continued)



March 13

19 79

11. Page 6, line 19.

Following: "(d)"

Insert: "except as provided in 61-3-103(2),"

12. Page 6, line 25.

Following: "(f)"

Insert: "except as provided in 61-3-103(2),"

And, as so amended,  
BE CONCURRED IN

*Pa.*

# STANDING COMMITTEE REPORT

March 13

19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 737

Keady (Towe)

Respectfully report as follows: That House Bill No. 737,

third reading bill, be amended as follows:

1. Page 12, line 17.

Following: "(53)"

Insert: "(a)"

2. Page 12, line 19.

Following: line 13

Strike: "(a)"

Insert: "(i)"

3. Page 12, line 20.

Following: line 19

Strike: "(b)"

Insert: "(ii)"

Following: "permanent"

Strike: "prolonged"

Insert: "serious permanent"

ENCLOSURE

Continued

March 13

19 79

4. Page 12, line 22.

Following: line 21

Strike: "(c)"

Insert: "(iii)"

Following: "or"

Strike: "prolonged"

Insert: "protracted loss or"

5. Page 12, line 23 through line 1 on page 13.

Following: "organ" on line 23

Strike: remainder of line 23 through "including" on line 1

Insert: "."

(b) It includes"

And, as so amended,  
BE CONCURRED IN

*P.A.*

4.59

# STANDING COMMITTEE REPORT

March 14, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 749

Frates (Brown)

Respectfully report as follows: That House Bill No. 749, third reading bill, be amended as follows:

1. Page 2, lines 13 and 14.  
Strike: subsection (4) in its entirety

And, as so amended,  
BE CONCURRED IN

BRGASK

*OK*

# STANDING COMMITTEE REPORT

..... March 14, ..... 19 73 .....

MR. .... President: .....

We, your committee on ..... Judiciary .....

having had under consideration ..... House ..... Bill No. .... 835 .....

Williams (O'Hara)

Respectfully report as follows: That ..... House ..... Bill No. .... 835 .....

BE CONCURRED IN

DO PASS

# STANDING COMMITTEE REPORT

March 14, 1972

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 820

Pistoria (Van Valkenburg)

Respectfully report as follows: That House Bill No. 820

BE CONCURRED IN

DO: PASS