

MINUTES OF THE JUDICIARY COMMITTEE
February 11, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

HOUSE BILL 642

REPRESENTATIVE YARDLEY, District 74, Livingston, stated that this was a bill, which authorizes the possession of antique slot machines and amends the present statute, which makes it illegal to have any kind of a slot machine. He indicated that they put 1950 as the date that a slot machine would be considered an antique as that is the date they shifted from the old mechanical slot machines to the new type of slot machines. He presented to the committee an article from the Great Falls Tribune (See EXHIBIT A) and an article from the Coin Slot on the Status of the States. (See EXHIBIT B)

JOHN THOMPSON, Helena, testified that he thought it was a little ridiculous to have a law on the books that states it is a crime to own an antique slot machine; these machines when confined to the limits of this proposed law are a threat to no one; and he said you might as well have a law on the books that outlaws antique crossbows and antique guns, because, after all, they kill people and he has not heard yet of a person being killed by an antique slot machine.

BILL ERWIN, Helena, stated that he had one of these old slot machines and he passed a picture around for the committee to observe.

There were no further proponents and no opponents.

REPRESENTATIVE YARDLEY noted that these machines can be worth over \$5,000.00; and he hoped that the committee would see their way clear to pass this bill.

REPRESENTATIVE SEIFERT commented that he felt this was a good bill, but he wondered if he checked with the Senate to see if they were going to let it go through this time. REPRESENTATIVE YARDLEY replied that he would suggest rather than amending this bill, let the Senate scrutinize it.

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REPRESENTATIVE DAILY asked him if he said that one was confiscated in Butte in the last year and was destroyed. REPRESENTATIVE YARDLEY replied that he was told that it was about ready to be destroyed - this was back in December.

REPRESENTATIVE EUDAILY noted on the sheet that a lot of states had pre-1941 as the date. REPRESENTATIVE YARDLEY responded that he was told they used that because it would be a dividing line before and after the second world war.

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

HOUSE BILL 660

REPRESENTATIVE STELLA JEAN HANSEN, District 96, Missoula, stated that this was a bill to establish a procedure by which an individual alleging a violation of the human rights act may elect to pursue a complaint before the commission or in district court. She indicated that the bill should be amended on page 1, line 8, after "commission" insert "or".

ANNE MacINTYRE, Staff Attorney for the Human Rights Commission, presented the committee with a letter from John Frankino, Chairman of the Montana Human Rights Commission. See EXHIBIT C. She testified that the purpose of this bill is to establish a parallel procedure to that provided for in the federal system for resolution of complaints of discrimination.

There were no further proponents and no opponents.

REPRESENTATIVE HANSEN stated that she hoped they would give this bill careful consideration and send it out of this committee with a do pass.

REPRESENTATIVE KEYSER asked if they pass this bill, don't they in some instances, take the commission off the hook and throw that responsibility over into the court system; the courts are already loaded; you have said that the commission has not yet held a contested case; it seems as though that is within the commission's business to make sure that they do. REPRESENTATIVE HANSEN replied that it would seem to her that in all

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fairness, if that person is dissatisfied with the inaction of the commission, he should have that right. She contended that if they have to wait too long and the discrimination continues, the case is going to build up while they are waiting for it to be heard by the commission.

MS. MacINTYRE responded that, first of all, very few of the commission cases actually go to hearing; presently they have approximately twenty-seven cases awaiting hearing and she does not believe that all of those will elect to go to court. She said secondly, many of the cases that are heard by the commission, in which the commission makes the final word, end up in district court anyway, because one of the parties appeals that decision in the district court; and she would say that perhaps as many as 75 per cent of the commission's decisions are appealed into district court through the judicial review process.

REPRESENTATIVE KEYSER asked if, in fact, the cases are being heard in district court and there is no problem of getting to district court, why do we need the bill. MS. MacINTYRE responded that when a case goes to district court after the commission has issued a decision, it is only on judicial review; the parties cannot have a trial in district court; the court only reviews what the commission has done; so, under this procedure, a party could go ahead and have the hearing before the commission, if one of the parties felt the commission was wrong, they could still appeal to district court for judicial review; or they could file a complaint in district court and have their case heard there initially. She continued that another point is that the commission staff resolves many of these cases through investigation and conciliation; probably 90 per cent of the cases that are filed with the commission are resolved informally without a hearing; in those cases, when they are resolved, they are over; and no one goes into court. If the only procedure that they had, she contended, was for the charging party to file directly in court, she thought they would see a lot more litigation and a lot more cases going to trial, because they would not have the mediation effort.

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REPRESENTATIVE DAILY asked if this bill doesn't kind of defeat the purpose of the Human Rights Commission, and the reason he says that is because what you are doing here is that you are getting someone who has the funds or the opportunity to hire counsel a different alternative than the person who does not have the funds or the alternative to hire counsel. He felt as though it seemed that the bill was almost unconstitutional; and that you are going backwards instead of forwards with this bill. MS. MacINTYRE replied that she did not feel that it was going backwards; the point in the process where the commission and the commission staff are of most assistance to the parties without counsel is in the investigation and conciliation stages; in most instances, if someone has a hearing before the commission, they are represented by counsel at that stage; the hearings before the commission tend to be much like a trial; and there are very complex cases; and there is a need whenever a case goes to hearing for the complainant to be represented by counsel.

REPRESENTATIVE DAILY asked where does someone, who does not have funds, get counsel. MS. MacINTYRE answered that many people are able to find an attorney who will represent them on a contingency fee basis; the Human Rights Act also provides that a prevailing party in a human rights case can obtain attorney's fees at the conclusion of the case.

REPRESENTATIVE DAILY advised that in most contractual relationships, such as in school districts where there is a grievance procedure provided in the contract that when a union or the district files suit without following that grievance procedure first, without using all other available means before they get to court, he knows that the courts always rule that you go back and go through all the steps before you go to the courts. He wondered if the courts would do the same thing with this. REPRESENTATIVE ADDY replied that this is parallel to title VII; and, then all the administrative steps are not a necessary predisposition to a

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suit in district court; the law says you can leapfrog if you want to.

FRITZ BEHR, Administrator of the Law Enforcement Services Division of the Department of Justice, explained that the confusion here was partly due to a misunderstanding and one was an administrative hearing and one is a trial of the facts and of the case for the court to come up with a finding.

REPRESENTATIVE HANNAH said that as he understands this if he had a complaint, he would go to the Human Rights Commission; and the commission rules against him; he can then appeal that to the district court, who will review this, they say that whoever ruled against him was right; and he asked if he was all done in his appeal process, or does he then have the right to go to district court for a trial. MS. MacINTYRE replied that if you go to the court after the commission's hearing and the court affirms what the commission did; at that point, you have the right to appeal to the state supreme court, but that is the only other option you have; you don't have the right to have a trial.

REPRESENTATIVE EUDAILY asked if this works in reverse - can you take it to district court and if you are not satisfied, can you go back to the commission. MS. MacINTYRE responded no, and any decision that the district court makes in a trial would be binding on the commission.

REPRESENTATIVE DAILY asked if a person didn't like the decision of the Human Rights Commission, could they not file a civil suit. He thought it seemed crazy that they are going to let the Human Rights Commission make the decision without there being another alternative. MS. MacINTYRE answered that under state law, there is not another alternative at this time.

REPRESENTATIVE DAILY asked could you file a civil suit if he did not like what the commission did or what the court did. MS. MacINTYRE answered no.

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REPRESENTATIVE DAILY asked the same question of MR. BEHR, who responded that that is exactly what this bill proposes to do - to give you the right to go into court and file a civil suit, if you are not satisfied with what the Human Rights Commission has done; whereas, presently, as he understands it, the only right the person has, if he is dissatisfied, is to appeal to the court, but not to file suit.

REPRESENTATIVE HANNAH asked if they currently have a backlog of cases. MS. MacINTYRE responded that they do.

REPRESENTATIVE HANNAH asked if this would help relieve that backlog. MS. MacINTYRE replied that they are hoping that it will.

REPRESENTATIVE HANSEN informed the committee that under title VII of the federal law, it is restricted to fifteen employees or more; it also covers age, sex, religion, race and national origin, and that is all; but under our Montana law, it includes marital status, physical or mental handicap, political beliefs in governmental hiring; so without this law those last three would not come under any court decision; and also no employer that employs less than fifteen people would have the court option.

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

HOUSE BILL 608

REPRESENTATIVE SPAETH said this bill repeals sections 37-61-304 through 37-61-306, which establish procedures for disciplining attorneys that are inconsistent with orders and rules of the supreme court.

MARGARET JOHNSON, Assistant Attorney General, gave testimony in support of this bill. See EXHIBIT D.

There were no further proponents and no opponents.

REPRESENTATIVE SPAETH closed.

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

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HOUSE BILL 609

REPRESENTATIVE SPAETH, District 71, stated that this bill allows the Department of Justice and local law enforcement agencies to establish a central dental records system in order to identify missing persons and unidentified bodies. He indicated that one of the problems when they have a missing person, it is difficult to identify those people particularly if you have a decomposed body and about the only identifying feature they have is the dental records.

JOHN MAYNARD, Assistant Attorney General, stated that in the year of 1982, somewhere in the neighborhood of 680 persons were reported as missing in the state of Montana and there were four unidentified dead bodies found in this state last year. He presented to the committee copies of an article entitled, "Dental Identification Program: An Overview" and copies of Revised Cost Estimates on this bill. See EXHIBITS F and G.

BILL HULL, the Regional Training Coordinator at the Montana Law Enforcement Academy in Bozeman, gave a statement in support of this bill. See EXHIBIT H.

FRITZ BEHR, Administrator of the Law Enforcement Services Division of the Department of Justice, gave an explanation as to how this bill would work.

ROGER TIPPY, representing the Montana Dental Association, stated that the dentists support this concept, but the bill as introduced causes the dentist to lose his records altogether and the dentists would like to have their records back again if the person shows up.

REPRESENTATIVE SPAETH indicated that the other states are moving in this direction and he thought that Montana should be with them.

REPRESENTATIVE JAN BROWN indicated that the revised budget looked awfully high to her and she wondered what one FTE would do the rest of the time; why do they need one FTE and why do you need the x-ray film, a x-ray

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machine and a typewriter. MR. BEHR explained that they presently have the teletypes coming in from all over the state; a full-time employee will have to be trained in keeping and classifying dental charts; to keep a daily file on the teletype that is coming out; checking by phone and by mail with law enforcement agencies throughout the state and throughout our sister states and various other duties.

REPRESENTATIVE DAILY noted that there was a bill which basically did the same thing as this bill and it was stated that in that bill the cost of administering that bill would be minimal and he wondered why the cost of this program is not minimal when you are doing the same thing. MR. BEHR replied that with his limited understanding of that bill, which deals with fingerprinting; that individual would be fingerprinted at the local law enforcement level; they presently do that kind of work now so that would not require a lot of extra work; this kind of thing - missing persons - they cannot file in a criminal record because of the privacy rights and he is not a criminal; so they have to maintain a separate system and it is not going to be by fingerprints; this will have to be maintained by age, by height, by weight and the dental charts. He contended that it will take some training and they do not have anyone who is trained now to classify dental charts.

REPRESENTATIVE DAILY said that in looking at the costs, is this worth it. MR. BEHR said they are talking about missing persons, of which they are talking about 680; and they are talking about unidentified dead, which is four; and for four unidentified dead, he did not know if costs benefitwise is going to be beneficial; however, if it is your son, your daughter or one of your loved ones; or if it is your aging grandparent who has walked away and is found wandering around in another part of the state, would this be worth it.

REPRESENTATIVE DAILY commented that you would have to find them first before this thing would work. MR. BEHR said that they have run-away kids, ages 12, 14, who won't tell you who they are or where they are from; many of them wind up in places like San Francisco, because we have no way of establishing where they are from.

REPRESENTATIVE JENSEN noted that he was talking about 680 missing persons in Montana; from Forensics Science magazine, there is a discussion of the California program which begin on January 1, 1979; they have currently on file dental records of 600 missing persons and 300 unidentified dead; this is California we are talking about; and Montana with a population of 800,000 persons is going to have a similar problem. MR. MAYNARD replied that the 680 are attempts to locate.

REPRESENTATIVE JENSEN commented that he was not fully cognizant of exactly what this person is going to do; suppose there are 100 people you need to keep records on; you are talking about \$50,000 a year over the biennium to maintain a file on 100 missing persons and unidentified dead; and he wondered if they could justify that - at least the one FTE. He said he could not see where there would be a whole lot of work involved in this. MR. BEHR explained that there will be training for this individual and there will be training for the law enforcement agency people around the state; if, after two years time, by experience, they see this person is not fully employed, he would be the last person in the world to come in here and say that they need a full FTE for that. He indicated that the person would also be used in helping with the functions on criminal history and records of finger printing services as they are now performed by the identification bureau.

CHAIRMAN BROWN pointed out that if the committee passes this bill, it will go to appropriations anyway.

REPRESENTATIVE SPAETH said that they really are not dealing with a realistic cost - what you see there is the worst-case scenario; that matter is now before the appropriations committee in connection with the Department of Justice request and those are the same kind of questions that committee are asking; and he would hate to see this bill have any problems just because of that.

REPRESENTATIVE EUDAILY asked if there was any possibility that this could be handled by the crime lab; he realizes that a missing person is not a crime, but they do have

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people trained in the identification already on staff; they have space and he is wondering if it could be placed there. MR. BEHR responded that he had the same question and this was his initial reaction; he was almost adamant in saying that they did not need another job in the identification bureau; but the focus of this bill is really to find missing people; it is only a miniscule portion of it that deals with the identifying of the unidentified dead; this is his 27th year in law enforcement; and after consideration and checking with the identification end of it which is so important to the missing person, he felt that it should be handled by the Department of Justice.

REPRESENTATIVE DAILY asked if they have considered an alternative to funding this bill by charging a fee to the people who utilize the service - \$25.00 or \$50.00 - if they are so concerned, he was sure they would be willing to pay. MR. BEHR replied that it might be; he had not considered this; and again as the amended fiscal impact of this bill, that only came to them the last day or so; but he felt that this was a very needed program.

REPRESENTATIVE DAILY asked what would happen if they gave you the program but didn't give you the funds to do it - would you be forced to do something else, such as utilizing a person who is doing something else. MR. BEHR responded that like all the other jobs they have, he would work like hell to make it work.

REPRESENTATIVE DAILY asked if he would try to do it. MR. BEHR answered that if the legislature says that that is their job, he is going to work like crazy to do it. He indicated that there was not slack time in the identification bureau for them to do it now, as they have a backlog of fingerprints.

REPRESENTATIVE ADDY asked how many times a year are dental records sent to the state. MR. MAYNARD replied that that is a question that he does not have an answer to; and it is something, he is sure, they are going to

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have to present to the appropriations committee; there is no system currently in place for reporting these and nobody has recorded this, so the closest estimate is the attempts to locate.

REPRESENTATIVE ADDY noted that he thought that was relevant, because if in an attempt to locate you are at least going to look for the dental records. MR. MAYNARD stated that the attempts to locate are recorded on the teletype and they are oftentimes located; and whether 60 per cent of those people are located or show up the next day or a week later, or 90 per cent or 10 per cent, those are the figures that they just don't have because there are no records.

REPRESENTATIVE ADDY asked if this wouldn't put a tremendous administrative burden on a local law enforcement agency when you are talking about 680 some cases and to find out which dentist the person used and to go and get your dental records and send them in. MR. MAYNARD responded that he thought the bill provides that it puts that burden on the person reporting the missing person.

REPRESENTATIVE CURTISS wondered how much time has been spent in the past in efforts to identify missing persons, both within the attorney general's office and in the local enforcement agencies - it would seem to her that this would constitute a real saving in some areas. MR. MAYNARD believed that this was an excellent observation that the people who currently have to do this on a local level have to call 56 counties; they have to call as many police and sheriff stations as they can think of and then just pull names out of a hat or call to other states; and this puts it in a central depository.

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

HOUSE BILL 501

REPRESENTATIVE FARRIS, District 41, Great Falls, stated that this bill was introduced at the request of the Human Rights Commission following a court decision which basically rearranges and allows for marital status to be

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viewed in a different way than it has been in the past. She passed out to the committee some amendments to the bill. See EXHIBIT I.

RAYMOND BROWN, Administrator of the Human Rights Division of the Department of Labor and Industry, gave a statement explaining this bill. See EXHIBIT J.

LEROY SCHRAMM, Chief Legal Counsel for the University System, said that the most important thing that this bill does, in their opinion, is that it reinstates the neopotism law that was wiped out by the court decision; or, in fact, a subsequent attorney general's opinion, which, in effect, said that the neopotism law can no longer be enforced as it applies to people related by marriage. He emphasized that they support the bill wholeheartedly and the amendments that were passed out are absolutely essential.

CHIP ERDMANN, representing the Montana School Boards Association, testified that they would like to endorse Mr. Schramm's comments; and he commented that they run into this quite often in school districts; and they feel that this bill would, in their interpretation, almost nullify the attorney general's opinion; and would given them a uniform policy that they can deal with.

There were no further proponents and no opponents.

REPRESENTATIVE FARRIS closed.

REPRESENTATIVE ADDY noted that marital status, to him, was whether you are married, single or divorced; and what they are saying is that the Human Rights Commission and the Montana Supreme Court have interpreted marital status as also to whom you happen to be married; and he thought that was a little beyond the common meaning of that phrase. MR. BROWN read to the committee basically what the court said.

REPRESENTATIVE ADDY said that if they have two people working in business - one is the manager and one is the employee - and the manager is stealing money and engaging in kick-back schemes with the employees, it would be illegal discrimination to fire the wife.

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ANNE McINTYRE, Staff Attorney for the Human Rights Commission, replied that the issue would be whether the wife is guilty of the same misconduct as the husband in her employment; and she is aware of the case to which he refers; and it is her understanding that the finding in that case was that the wife was not engaged in any sort of misconduct with regard to her employment and, therefore, it would be discrimination to fire her because of the misconduct of her husband.

REPRESENTATIVE ADDY indicated that he thought the finding was that she was engaged in those activities, but the court was not aware of it until after they had already made a decision to fire her, although they didn't actually fire her until they knew about it.

REPRESENTATIVE JENSEN said that he currently understands that the superintendent of the school district is married; his spouse is a teacher, who does not practice in that same district; and he wondered if this is current practice. MR. ERDMANN replied that, under the current interpretation of the supreme court and the attorney general's interpretation, there would be nothing that you could do to stop that practice; the teacher can teach anywhere.

REPRESENTATIVE JENSEN asked what is your current practice. MR. ERDMANN replied that currently we say that you cannot commit any discrimination in employment at all, at least on marital status; and that is what they tell the districts.

REPRESENTATIVE JENSEN asked if current practice in the school districts of the state reflect adherence to the law or to the prior concept. MR. ERDMANN responded that it may well reflect adherence to the prior concept; sometimes word of something like this takes awhile to get out; and people are use to dealing with it one way; and that is how they are dealing with it. He indicated that they have put out the information that they cannot discriminate on that basis.

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REPRESENTATIVE JENSEN asked if this bill would allow or require the districts to prohibit that wife from teaching in that district where the superintendent or other administrator were employed, or would it be on the basis of some reasonable relationship. MR. ERDMANN answered that it would be his interpretation of some reasonable relationship; that is why the change is made in the lower section of the law; if there was no direct relationship between the superintendent and the spouse, absolutely prohibiting employment would be unreasonable; if you put her to work in his office, that may be a reasonable prohibition; and that is something that you may want to avoid. They feel that this bill addresses that and makes it much more workable.

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

HOUSE BILL 589

REPRESENTATIVE SCHYE, District 4, Glasgow, stated that this bill was introduced at the request of the Valley County County Attorney, and has to do with a conflict in the codes; and this bill removes a statutory conflict with respect to charging certain costs to convicted defendants. He presented to the committee copies of the codes relating to this bill and copies of a letter from David Nielsen, Attorney at Law in Glasgow. See EXHIBITS K and L.

There were no proponents and no opponents.

REPRESENTATIVE SCHYE closed.

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

EXECUTIVE SESSION

HOUSE BILL 589

REPRESENTATIVE JENSEN moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE ADDY. The motion carried unanimously.

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HOUSE BILL 642

REPRESENTATIVE KEYSER moved that this bill DO PASS. REPRESENTATIVE EUDAILY seconded the motion.

REPRESENTATIVE SEIFERT noted that it was a \$1,000 fine to have a slot machine in your possession; they have had this bill for three sessions; he has had some slot machines for ten years; the last time we almost got it passed and Senator Turnage found some kind of a loophole that he thought that they might be able to put these antique slot machines out and use for open gambling and this killed the bill. He thought this time he was not going to oppose it.

The motion carried unanimously.

HOUSE BILL 660

REPRESENTATIVE ADDY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE KENNERLY.

REPRESENTATIVE EUDAILY indicated that he has a hard time seeing the need for this bill; because it seems to him that almost everything is provided at the present time that this provides for.

CHAIRMAN BROWN advised that actually it is not - right now there is no ability to go beyond the Human Rights Commission to the courts.

REPRESENTATIVE ADDY explained that the Human Rights Commission takes about six months to investigate a case and you can see that 180 days have elapsed; beyond that 180 days, if you go to contest a case, you are talking about at least another six months, and more likely nine months or a year; there are some judicial districts where you might want to get a more expeditious decision or would just prefer to go right into court for whatever reason - it is going to end up in court anyway after the commission has made their decision and this just gives the option to pursue it through the courts.

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REPRESENTATIVE SEIFERT asked if it goes to court, who pays the court costs. REPRESENTATIVE ADDY responded that the losing party does.

REPRESENTATIVE CURTISS thought that this would dump a lot more cases on the district courts.

REPRESENTATIVE KEYSER said there was testimony that they have an overload on cases and he knows that they will use this to try to reduce that load.

REPRESENTATIVE ADDY replied that the option is with the claimant.

REPRESENTATIVE ADDY moved that they amend the title in line 8, by inserting "or" following "commission". The motion was seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE ADDY moved that the bill DO PASS AS AMENDED. REPRESENTATIVE KENNERLY seconded the motion.

The motion carried with 11 voting aye and 6 voting no. See ROLL CALL VOTE.

HOUSE BILL 585

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE ADDY made a substitute motion that the bill DO NOT PASS. The motion was seconded by REPRESENTATIVE FARRIS.

REPRESENTATIVE HANNAN stated that they have people who are committing these offenses, who are not being designated as dangerous offenders; and they do have a serious problem here.

CHAIRMAN BROWN passed out to the committee statistics on this bill and CURT CHISHOLM, Deputy Director of the Department of Institutions, explained them to the committee. See EXHIBIT M.

REPRESENTATIVE RAMIREZ said that this is one of those things that really needs to be addressed, but it is something that we do not have enough information and he is worried about what the impact would be.

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REPRESENTATIVE HANNAH moved to amend the bill on page 3, line 2 following "for" by inserting "more than" and strike "or more".

REPRESENTATIVE ADDY asked if he was saying that someone that is being tried for deliberate homicide would not be considered a dangerous offender. REPRESENTATIVE HANNAH responded that he had some other amendments he would like to put on the bill. He indicated that he could be designated as a dangerous offender and he felt appropriately should be.

REPRESENTATIVE HANNAH offered another amendment to add a subsection c, which would say that if a dangerous weapon is used in connection with one or more of these offenses, that they would be designated as a dangerous offender; and this would be on page 3. He explained that on page 2, subsection 4, they are really talking about the heart of the bill, "The offender is considered to have been designated as a dangerous offender for purposes of eligibility for parole if:" one of the following things have happened (a) or (b) and then subsection (c) would say that a dangerous weapon was used in commission of one or more of the offenses. He indicated that they would have three reasons under which an offender shall be considered to be a dangerous offender. He explained that it is important to realize that they have 70 per cent of the people in the Montana State Prison that have committed crimes under these subsections that have been designated nondangerous; and he feels that that may be too many; but given the fact that a dangerous weapon was used in the commission of a rape, for example, then that person should be designated a dangerous offender.

REPRESENTATIVE CURTISS stated that she supported this amendment; she thought it was more than fair and it makes a better bill. She contended that people around the state are just crying out for protection; they feel threatened and she thinks that this will do two things; it will let those out there know that the legislature cares about them; and it will also send a message to people that now very thoughtlessly, because they know that it is not going to bear any consequences for their

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actions, pick up a dangerous weapon. She thought that any time a person picks up a dangerous weapon and intends to use it on someone, it is threatening his life; and she felt that they should bear the consequences.

REPRESENTATIVE ADDY asked on the top of page 3, if he was saying (a), (b), or (c). REPRESENTATIVE HANNAH replied that he would say, "or"; he thought that any one of the three should designate them as a dangerous offender. He explained that one of the reasons he put "more than one" because he thinks there is a legitimate concern that when you start talking about the last four subsections, which are 45-9-101, 102, 103 and 107, this is sale of dangerous drugs, possession of dangerous drugs, possession with intent to sell and possession of precursors, he could see where you could have a nondangerous offender, who had been convicted of possession, and under the way the bill was written, that is an offense, a single offense, that would place him under the dangerous offender heading, as he reads the bill. He indicated that his amendment on line 2, page 3, would give the court, as he understands it, the discretion to say that that individual is not a dangerous offender; but if he were convicted of possession and intent to sell, then he personally thinks differently and he thinks that he is dangerous.

The motion to amend the bill passed unanimously.

REPRESENTATIVE ADDY commented that he thought there was a lot more they need to know before they pass this bill and if the bill does pass, they are placing a horrendous administrative burden on their correctional people.

REPRESENTATIVE ADDY moved that this bill DO NOT PASS AS AMENDED. The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE RAMIREZ moved that on page 2, line 2, the bill be amended by striking "45-5-102" and on line 5, by striking "45-9-107" and on line 1, page 3, by striking "or incarcerated for" and "either". REPRESENTATIVE CURTISS seconded the motion. The motion carried unanimously.

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A vote was taken on the DO NOT PASS AS AMENDED motion and it passed with 12 voting aye and 7 voting no. See ROLL CALL VOTE.

HOUSE BILL 575

REPRESENTATIVE JENSEN moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE ADDY presented to the committee some proposed amendments to this bill. See EXHIBIT N. He moved that these amendments be adopted. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE EUDAILY. The motion carried unanimously.

HOUSE BILL 608

REPRESENTATIVE SPAETH moved that this bill DO PASS. REPRESENTATIVE BERGENE seconded the motion.

The motion carried unanimously.

HOUSE BILL 609

REPRESENTATIVE SPAETH moved that this bill DO PASS. REPRESENTATIVE DARKO seconded the motion.

The committee had copies of some proposed amendments to this bill and REPRESENTATIVE SPAETH moved that the bill be amended as per these amendments. The motion was seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE JAN BROWN commented that on line 23 of the amendment, it changes "destroy" to "return to the dentist"; if what Fritz Behr said was correct and what they intended to do was to make copies and that is why they need the x-ray machine and the film; he indicated that they would copy them and return them to the dentist right then; and then there would not be any need for that amendment, unless it meant the copies of what they did. She thought they would keep those in their file.

Judiciary Committee
February 11, 1983
Page Twenty

REPRESENTATIVE SPAETH said that that is one of the problems with this - a long testimony sometimes hurts the bill; and what Mr. Behr said was not really what they envision in the attorney general's office. He commented that this is something he would like to do.

REPRESENTATIVE FARRIS said that she did not understand why, when every dentist office that has x-ray equipment has an opportunity to make copies, the dentist just doesn't just make copies and keep the originals rather than taking the chance of losing them in the mail and send them that. She indicated that this would also save the state some money in that they would not have to make these copies, and buy all the machinery and equipment.

REPRESENTATIVE SPAETH responded that that was looked at and they felt that this would be an unfair burden to place on the dentists; it was his understanding that when the bill was first put together, that the buying of equipment to make copies was not envisioned; they do not envision right now of buying all this equipment, i.e. typewriters and things like that; this was a note that just came in yesterday; it started bouncing around and they couldn't catch it quick enough and put it to rest; it probably is going to cost a little more than \$800.00, but they don't envision it costing anywhere near the \$50,000.00 figure that they have here.

REPRESENTATIVE EUDAILY suggested that on line 23, page 2, they insert "dental" following "all". This was included with the other amendments.

CHAIRMAN BROWN said that Ms. Desmond pointed out that they may want to consider destroying the file when the person is found. REPRESENTATIVE SPAETH replied that they return the dental records to the dentist and then destroy all the remaining items in the file.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill DO PASS AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

Judiciary Committee
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Page Twenty-one

REPRESENTATIVE SEIFERT indicated that he thought this was a good bill; he felt they could put the wheels in motion; and if they don't get the appropriation and the mechanics are there, maybe they will be able to come up with some funding out of their own programs to take care of it.

REPRESENTATIVE FARRIS moved that they amend the bill on line 16 on page 1, and line 7 on page 2 by changing that to 7 days.

REPRESENTATIVE KEYSER stated that he realized what she was trying to do, but he felt that this was an unrealistic thing though from the standpoint of missing persons to say just one week, to start activating those files, etc.; and he really honestly thought they should give them more time.

REPRESENTATIVE FARMS asked what if this is the case of a child or a senile older person who has wandered away; you are going to wait six and a half weeks before you start doing any serious communication with other agencies.

REPRESENTATIVE KEYSER said, "I am just saying seven is just a little short."

REPRESENTATIVE ADDY commented that sending the dental records in doesn't start the search; you send the dental records in when there is some presumption that there may have been foul play or that you are going to find a body or they found a person.

REPRESENTATIVE SPAETH advised that he appreciated what Representative Farris was saying; but he thought that as a matter of practice within the first few days - 10 to 15 days for example - the search is fairly intensive; this is more designed for when the search starts to taper off; a lot of these missing people do show up and that is why they put the thirty-day period in there so that they wouldn't have a lot of records coming in that they wouldn't need.

Judiciary Committee
February 11, 1983
Page Twenty-two

REPRESENTATIVE KEYSER said that until bodies are found or until some person is found, that is the time when dental records would be used; up until that time, there is a continuation in looking for the people, but until someone is found, how can you do any comparison until you find the person.

REPRESENTATIVE SPAETH explained about the only form of identification right now is finger prints; many times there are many people who do not have finger prints on file anywhere; you have a good chance with males because they have been in the armed forces or something like that; but there are a quarter of a million people who are missing each year and a lot of them are younger kids, who are hard to identify if they don't want to be and this is a second backup form; other states have adopted this and he thinks that ten years from now, dental records will be used in the same way that finger prints are being used now.

A vote was taken on the motion to DO PASS AS AMENDED.
The motion carried unanimously.

HOUSE BILL 501

REPRESENTATIVE FARRIS moved that this bill DO PASS.
REPRESENTATIVE KEYSER seconded the motion.

REPRESENTATIVE FARRIS moved the adoption of the amendments. See EXHIBIT I. The motion was seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE FARRIS advised that the amendments make it clear that this is permissive; that is, that the burden of demonstrating that marital status is a bona fide occupational requirement is on the employer rather than the employee.

REPRESENTATIVE ADDY indicated that this would allow the status quo to exist the way it is.

The motion carried unanimously.

Judiciary Committee
February 11, 1983
Page Twenty-three

REPRESENTATIVE FARRIS moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE IVERSON.

The motion carried with REPRESENTATIVE JENSEN voting no.

HOUSE BILL 220

REPRESENTATIVE HANNAH moved that this bill be taken off the table. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried unanimously.

REPRESENTATIVE HANNAH presented to the committee some proposed amendments to this bill. He explained that these amendments move this to a different section from section 70-24-421 to section 70-24-427.

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE KENNERLY seconded the motion.

REPRESENTATIVE HANNAH moved the adoption of the amendments. The motion was seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE FARRIS asked how does the court know that the renter has the rent in his possession.

REPRESENTATIVE HANNAH replied that the new language in the amendment, "If, in an action filed pursuant to (1), the pleadings show," he is assuming that the court has the right to ask questions and check things out to find out whether or not that person does have funds.

REPRESENTATIVE FARRIS said if she had a disagreement with her landlord and instead of paying the rent, she placed it in an account, would the money go from the bank to the court, or the court could take possession of the bank book.

REPRESENTATIVE HANNAH replied that he felt the court could do whatever they wanted to; the reason for the bill is that when the landlord or the tenant controls the money,

Judiciary Committee
February 11, 1983
Page Twenty-four

that there has been a problem that has developed as far as getting that money should the court find in favor of the landlord. He indicated that his intent was that the court control the money.

REPRESENTATIVE BERGENE said she had a note in her book which said how do they get the court to do this.

REPRESENTATIVE HANNAH said that is what this bill is all about.

REPRESENTATIVE BERGENE wondered if the court would really play this kind of a role.

REPRESENTATIVE HANNAH responded that they obviously have a great deal of confidence in the judicial system in this committee; if the law says they shall, he would assume that they will.

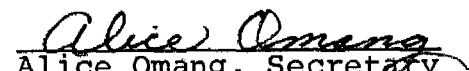
The motion carried unanimously.

REPRESENTATIVE HANNAH moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE KEYSER. The motion carried unanimously.

CHAIRMAN BROWN offered a personal thank-you to everyone on this committee for all their cooperation and all their help; he looked at the statistics that the Speaker had and this committee has had about 25 more bills than any other committee and have acted on more than 50 bills than any other committee; as of now they have five dui bills, and expecting one more, three exclusionary rule bills and expecting one more before they act on those; and otherwise, their slate is clean.

The meeting adjourned at 11:27 a.m.


DAVE BROWN, Chairman


Alice Omang, Secretary

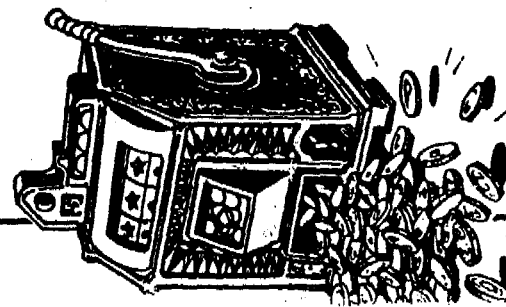
ROLL CALL VOTE ----- HOUSE JUDICIARY COMMITTEE

	Date: 2/11 No: HB 660 Do Pass Do Not Pass As Amended As Amended	Date: 2/11 No: HB 585	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	yes	yes				
ADDY, Kelly	yes	yes				
BERGENE, Toni	yes	yes				
BROWN, Jan	no	yes				
CURTISS, Aubyn	no	no				
DAILY, Fritz	no	no				
DARKO, Paula	yes	yes				
EUDAILY, Ralph	no	no				
FARRIS, Carol	yes	yes				
HANNAH, Tom	yes	no				
IVERSON, Dennis	yes	no				
JENSEN, James	yes	yes				
KENNERLY, Roland	yes	yes				
KEYSER, Kerry	no	no				
RAMIREZ, Jack	—	no				
SCHYE, Ted	yes	yes				
SEIFERT, Carl	no	yes				
SPAETH, Gary	yes	yes				
VELEBER, Dennis	—	yes				

11-yes 12-yes
6-no 7-no

Exh. 1A
HB 642
2/11/83

Slot machine blues



Law separates collector from his collection of one-arm bandit.

By RICHARD ECKE
Tribune Staff Writer

Antique dealer Gregg Nickol has the slot machine blues.

Great Falls police gave him the blues this week when they seized two antique slot machines he was shipping to Texas. They said such possession is illegal.

"I'm not a criminal," Nickol says.

To back up his argument, Nickol claims:

- A sheriff's deputy from northcentral Montana sold him the two slot machines this week.
- Scores of Great Falls residents, including a number of prominent ones, keep them in their homes.
- A sheriff's department in the region keeps a slot machine in the basement of the sheriff's office.
- Museum owners display them openly around the state.

Great Falls police say they're not buying Nickol's arguments. They say it's always been their policy to seize slot machines if they come across them. If the law's not enforced in other

parts of the state, that's not their problem.

They also say they'll be glad to arrest Nickol if he comes to Great Falls to claim the two antique slot machines — a 5-cent Mills worth about \$1,200 and a 50-cent Watling-Rol-A-Top worth perhaps several thousand dollars.

Nickol told his story in an interview at the Tribune Wednesday. He declined to disclose where he was staying.

A Montana native who runs an antique shop near Wichita, Kan., he said he bought two antique slot machines in Northcentral Montana Tuesday and was having them shipped to Texas when police seized them at the Great Falls International Airport.

He calls the seizure "unfair."

Up to this week, Nickol claims, he was led to believe it was legal in Montana to possess antique slot machines that aren't used for gambling purposes.

Nickol says he first came to Montana in a hunt for antique slot machines last year, and he says he took pains to find out whether it's legal to possess antique "one-armed bandits." In fact, he

says, he went straight to the law.

For one thing, he says a representative of the Montana attorney general's office told him that possession of antique slot machines in the state is legal if they're not used for gambling. (A spokesman for the attorney general's office was not available for comment.)

For another, he claims a city police officer told him last year that possession of antique slot machines was legal.

"Captain (Timothy) Skinner told me that the laws did not apply to antique slot machines," Nickol contends.

"I did not tell him that," Skinner replies. "I told him it was illegal."

Another policeman who attended the meeting verified Skinner's version of the conversation.

In any case, Nickol raises three issues that rest at the core of the Great Slot Machine Controversy:

First, is it legal to possess an antique slot machine that's not being used for gambling purposes? Second, is the law being enforced? Third, should the law be changed if such

Continued on 2-A, col. 1

Is the Montana law being enforced? Nickol gives a resounding "no" answer.

Nickol gives a resounding "no" answer.

In fact, he claims, law officers are the most helpful in finding him slot machines in Montana.

department sold him the two machines Tuesday that later were seized, Nickol claims.

Based on his knowledge of the Great Falls area, he claims about 400 local residents keep slot machines in their basements, adding that museums in Forsyth, Zortman and Virginia City openly display slot machines.

their basements, adding that museums in Forsyth, Zortman and Virginia City openly display slot machines.

He also says advertisements in daily newspapers, including the Tribune, as well as weekly shoppers, occasionally offer to buy or sell slot machines, he says. As to that police detective Sgt. Jack L. Macek says he would be glad to receive information about persons possessing slot machines, although he says placing an ad may not be illegal. He says police would have to catch the dealer with the merchandise.

Even though he says lawmen have done little to actively enforce the law, Nickol says he doesn't think city police purposely set out to seize his machines this week. He calls the seizure a "fluke" and suggests the seizure was probably an accident.

police would have to catch the dealer with the merchandise.

with the merchandise.

Even though he says lawmen have done little to actively enforce the law, Nickol says he doesn't think city police purposely set out to seize his machines this week. He calls the seizure a "fluke" and suggests the seizure was probably an accident.

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On Tuesday, Nickol bought the machines after a Texas business as-

sociate Dallas antique dealer Tom

Kunkle, wired him the money. Nickol

says he took the machines to the air-

Register, an antique shop Kunkle

runs. The machines were to be

shipped by Frontier Airlines via Den-

shipped by 1 route airlines via Denver to Dallas

As it turned out, an armed robbery

had recently taken place in town.

Alcohol had a lot of cash with him that

NICHOL had a lot of cash with him that

he uses in his business — and he used

that to pay for the shipping. That

raised suspicions.

Also he says he was not "dressed

Also, he says, he was not dressed like a rich person" that day. He also told employees at the airport he had an antique shotgun for sale.

EX91011 0
HB642 2/11/82



YES

Kentucky — any year provided they are not used for gambling
Nebraska — any year provided they are not used for gambling
Nevada — any year provided they are not used for gambling
Minnesota — any year provided they are not used for gambling
Arizona — any year provided they are not used for gambling
Iowa — 25 years or older
Wisconsin — 25 years or older
North Carolina — 25 years or older
Illinois — 25 years or older
Louisiana — 25 years or older
Michigan — 25 years or older
North Dakota — 25 years or older
Massachusetts — 30 years or older
Missouri — 30 years or older
District of Columbia — pre-1952
Kansas — pre-1950
Colorado — pre-1950
Florida — pre-1941
Maryland — pre-1941
Washington — pre-1941
California — pre-1941
Oregon — pre-1941
Pennsylvania — pre-1941
South Dakota — pre-1941
New Jersey — pre-1941
New York — pre-1941
New Hampshire — pre-1941
Texas — pre-1940
Connecticut — law is unclear
Ohio — law is unclear
Utah — law is unclear
Virginia — law is unclear
Arkansas — Trade Stimulators only
West Virginia — Trade Stimulators only
Wyoming — Trade Stimulators only

NO

Delaware
Georgia
Hawaii
Idaho
Montana
Alabama
Alaska
Indiana
Maine
New Mexico
Oklahoma
Rhode Island
South Carolina
Tennessee
Vermont
Puerto Rico
Mississippi



Action in Alabama and Indiana

The Coin Slot encourages all states to adopt legislation legalizing the ownership and collecting of antique slot machines 25 years or older and encourages its subscribers to support and participate in changing the laws in their state. This month there are two subscribers actively involved in attempting to change the status of legalization in their respective states. These two gentlemen are seeking the support and help of their fellow collectors in each state. We'd like to encourage every enthusiast or collector in these two states, Alabama and Indiana, to actively participate and help these two pioneers — write to them at the addresses listed below and write, also, to your State Representative and Senator.

To change the law in Alabama contact: Mr. Aaron W. Schopper at 204 Christopher Drive, Enterprise, Alabama 36330.

To change the law in Indiana contact: Mr. T. Austin Bevis at his office, Box 402, Bartlett, Illinois 60103 or call Monday through Thursday, 9 to 3 at 312/830-0205.

Or write to us: *The Coin Slot*, Managing Editor, P.O. Box 612M, Wheatridge, CO 80034

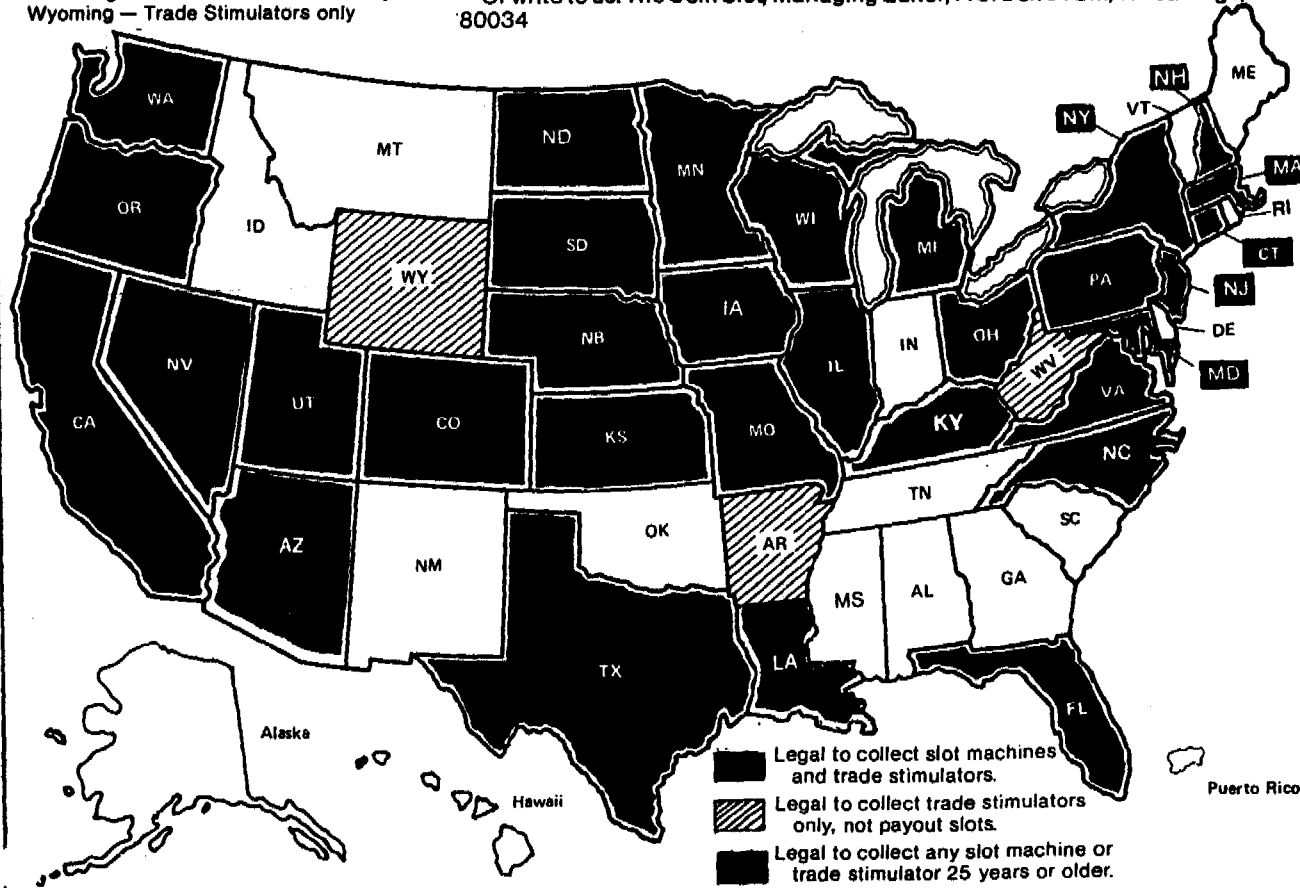


Exhibit C
HB 504660
2/11/83



HUMAN RIGHTS COMMISSION

STATE OF MONTANA

TED SCHWINDEN, GOVERNOR
(406) 449-2884

ROOM C-317, COGSWELL BUILDING
HELENA, MONTANA 59620

February 11, 1983

The Honorable Dave Brown, Chairman
Judiciary Committee
House of Representatives
Capitol Station
Helena, MT 59620

Dear Chairman Brown:

House Bills 501 and 660 are before this committee today at the request of the Montana Human Rights Commission.

The Commission has requested Raymond D. Brown, Administrator and Anne L. MacIntyre, Staff Attorney to speak in support of these bills on behalf of the Commission.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "John Frankino".

John Frankino
Chairman
Montana Human Rights Commission

JF/tg

Exhibit D
HB608
2/11/83

TESTIMONY OF MARGARET M. JOYCE JOHNSON
ASSISTANT ATTORNEY GENERAL
REGARDING HOUSE BILL 608

Article VII, Section 2(3) of Montana's 1972 Constitution gives the Montana Supreme Court jurisdiction "to make rules governing . . . admission to the bar and the conduct of its members." Additionally, Title 37, Chapter 61, Montana Code Annotated, grants the Supreme Court authority to "establish rules for the admission of attorneys and counselors" (§37-61-101, MCA) as well as "exclusive jurisdiction to remove or suspend attorneys and counselors at law" (§37-61-301, MCA).

The Supreme Court has acted pursuant to its constitutional and statutory authority and has issued orders dated January 5, 1965, February 8, 1979, August 22, 1979, and March 16, 1981, establishing a Commission on Practice with Local Grievance Committees to permit investigation and processing of complaints against members of the bar. On May 1, 1965, The Commission on Practice adopted Rules of Procedure in accordance with the authority granted it by the Montana Supreme Court.

Certain statutes which predate the 1972 Constitution and the orders of the Montana Supreme Court, specifically

Sections 37-61-304, 37-61-305, and 37-61-306, are inconsistent with those orders and establish other procedures for investigating and processing complaints against members of the state bar.

As a housekeeping matter, the Department of Justice has requested that House Bill 608 be introduced to repeal these superfluous and inconsistent sections. I have attached for the benefit of this committee a copy of the orders which the Montana Supreme Court has issued regarding these matters and of the Rules adopted by the Commission on Practice.

THE
CONSTITUTION
OF THE
STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972 AND AS RATIFIED BY THE PEOPLE, JUNE 6, 1972

ARTICLE VII
THE JUDICIARY

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

TITLE 37
PROFESSIONS AND OCCUPATIONS
CHAPTER 61
ATTORNEYS AT LAW

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).

3

37-61-304. Complaints filed in office of clerk. Whenever any verified complaint is filed in the office of the clerk of the supreme court charging any attorney or counselor at law with having violated his oath as an attorney or counselor or with having otherwise been guilty of conduct authorizing or justifying his suspension from practice or disbarment, it shall be the duty of the attorney general to represent such complaint in such action or proceeding and to prosecute the same. He shall first investigate the charges made and determine whether or not a trial thereof should be had and report the results of his investigation to the justices of the supreme court. If in his judgment or in the judgment of the justices of the supreme court a trial should be had, the clerk of the supreme court shall, upon the direction of the attorney general or any justice of the supreme court, issue a summons in the form of a summons in a civil action, setting forth, in brief, the charges contained in the complaint and requiring said attorney to appear and answer said complaint within such time as the court may designate.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Complaints filed with attorney general or district judge. (1) Whenever any verified complaint is made in writing to the attorney general that any attorney has violated his oath or otherwise been guilty of professional misconduct or other conduct authorizing or justifying his suspension from practice or his disbarment, it shall be the duty of the attorney general to investigate the charges so made. If from such investigation, he shall determine that a complaint should be filed in the supreme court of such charges and a trial thereof had, he shall file in the office of the clerk of the supreme court a complaint against such attorney, setting forth in concise language the acts or conduct charged or complained of; whereupon, the clerk of said court shall issue a summons for the appearance and answer of the party

complained of, as provided in the last preceding section. Said summons and the summons as provided for in the preceding section shall be served in the same manner as provided for the service of summons in civil actions. In making such investigations, the attorney general or the special deputy or counsel appointed to act in such matter shall have power to subpoena witnesses and require the production of books, documents, and other instruments and to administer oaths.

(2) Whenever a complaint is made in writing to any judge of a district court or to the supreme court against any attorney charging him with misconduct or other acts as in parts 1 through 3 of this chapter specified, the same shall be immediately forwarded to the attorney general, with the certificate of the clerk of such court, setting forth the time of the filing of said complaint in said court and the name and residence of the complainant and the residence and post-office address of the accused, and it shall be the duty of the attorney general thereupon to investigate such charges in the manner provided in parts 1 through 3 of this chapter.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Special investigator. The attorney general or the supreme court may, when deemed necessary, appoint some attorney as special counsel or deputy to investigate any such charges and to prosecute any disbarment proceedings instituted. The attorney so appointed shall be entitled to receive his necessary expenses therein and a reasonable compensation for his services to be fixed by the supreme court.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

IN THE SUPREME COURT OF THE STATE OF MONTANA

.....
No. 10910
.....

IN THE MATTER OF THE ESTABLISHMENT
OF THE
COMMISSION ON PRACTICE OF THE SUPREME
COURT OF THE STATE OF MONTANA

.....
O R D E R
.....

PER CURIAM:

PREAMBLE

This Court declares that it possesses original and exclusive jurisdiction under the provisions of Chapter 20 of Title 93, R.C.M. 1947 (Title 37, ch. 61, part 2, MCA), in addition to its inherent jurisdiction, in all matters involving admission of persons to practice law in this state and of the disciplining of such persons. In the exercise of that jurisdiction it adopts and promulgates the following rules which shall govern investigation of complaints, disciplinary proceedings, petitions for reinstatement and complaints involving the unauthorized practice of law.

Any acts committed by an attorney contrary to the highest standards of honesty, justice, or morality, including but not limited to those outlined in section 93-2026, R.C.M. 1947 (37-61-301, MCA), and the violations of the duties outlined in Chapter 21 of Title 93, R.C.M. 1947 (Title 37, ch. 61, part 4, MCA), whether committed in his capacity as attorney or otherwise, may constitute cause for discipline. Where such act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to suspension or to the institution of disciplinary proceedings, nor shall acquittal necessarily constitute a bar thereto. Any violation of the Canons of Professional Ethics as adopted by this Court may also constitute cause for discipline.

[On August 22, 1979, the Supreme Court issued an order in cause number 10910, effecting certain amendments to Rule I. The substantive portions of the order amended that rule to read as follows:]

I. Establishment

There is hereby established a permanent Commission to be known as the "Commission on Practice of the Supreme Court of the State of Montana", which shall consist of eleven members as hereinafter set forth.

The attorney members shall be chosen, one from each of the areas hereinafter provided and they shall serve for a term of four years, the term of two members to expire at the end of each calendar year. The areas shall be comprised of the various judicial districts of Montana and shall be designated by letter as follows:

Area A, which comprises the 4th, 11th and 19th judicial districts;

Area B, the 2nd, 3rd and 5th judicial districts;

Area C, the 8th and 9th judicial districts;

Area D, the 12th, 15th and 17th judicial districts;

Area E, the 1st, 6th and 18th judicial districts;

Area F, the 10th and 14th judicial districts;

Area G, the 13th judicial district; and

Area H, the 7th and 16th judicial districts.

The lawyer appointees to the Commission shall be made by the Supreme Court from a list of three licensed, practicing attorneys in each area submitted in the year of appointment as the result of an election by the resident members of the Bar therein residing. The Supreme Court shall issue its order designating the time, place and method for such election. In the event that said election is not held in any such area as ordered, the Supreme Court shall appoint a member of the Bar from that area to the Commission. In the event of a vacancy in the lawyer membership of the said Commission, a successor shall be appointed for the expired term of the lawyer member whose office is vacated in the manner set forth above. Lawyer members of the Commission may terminate their membership on the Commission at their pleasure and the membership may be terminated by the Supreme Court at its pleasure.

Three laymen members of the "Commission on Practice of the Supreme Court of the State of Montana" shall be appointed at large by the Supreme Court. Each laymen member shall serve a term of four years from and after the effective date of appointment.

The Supreme Court shall issue its Order designating the appointment, term and effective date of each such laymen member. In the event of a vacancy in the laymen membership of said Commission, a successor shall be appointed for the unexpired term of the laymen member whose office is vacated. Laymen members of the Commission may terminate their membership on the Commission at their pleasure and their membership may be terminated by the Supreme Court at its pleasure.

II. Rules

The Commission on Practice shall adopt rules providing for selection of a chairman and his term, time and place of meeting, and such other procedural rules, not in conflict with these Rules as may be necessary to expedite the conduct of its business. The membership of the Commission shall name a secretary who need not be a member of the Commission.

III. Duties

It shall be the duty of the Commission on Practice to receive and investigate complaints of alleged misconduct on the part of lawyers committed in the State of Montana. The Commission shall also have the responsibility for investigating and reporting on the merits of any petition for reinstatement to the practice of law referred to it by the Supreme Court. The Commission shall further have the responsibility to investigate complaints involving the unauthorized practice of law.

IV. Procedure

(a) To assist in the processing of complaints of alleged misconduct, a Grievance Committee of not less than three nor more than five licensed and practicing attorneys shall be appointed in each judicial district, to serve for a term of one year. Such committees shall be appointed in each judicial district by the district judge or judges from that judicial district, and if such appointments are not made as ordered by the Supreme Court, then the appointments will be made by the Supreme Court. The procedural rules for committee operation shall be established by the committee.

(b) All complaints arising in the State of Montana shall be denominated informal complaints and may be referred to the respective Grievance Committee of the judicial district, or as otherwise directed by the Commission on Practice, or its secretary, if so authorized by the Commission. Any district judge may refer such a complaint either to the Commission on Practice or directly to the local Grievance Committee or the Grievance Committee of a contiguous judicial district, with a copy of such grievance, if there be one, in writing, and if not his written explanation thereof and a copy of his letter of reference to the Commission on Practice.

(c) Upon preliminary consideration of a complaint which is in the hands of the Commission on Practice and has not yet been referred to a Grievance Committee, if it appears to the Commission on Practice that the facts do not support a charge of misconduct, and do not warrant disciplinary action, said Commission may dismiss the complaint and so notify the complainant. In those cases where the matter has been referred to a Grievance Committee either by the Commission or otherwise as herein provided, and upon preliminary consideration of the complaint it appears that the facts do not support a charge of misconduct and do not warrant disciplinary action, the Grievance Committee shall so report to the Commission on Practice, and if said Commission shall concur in said report, the Commission shall dismiss the complaint and so notify the complainant. If the Commission on Practice shall not concur in said report, it shall refer the matter back to the same or another Grievance Committee for further investigation or for such other action as it may deem appropriate. If it appears upon such preliminary consideration that the complaint may have merit and is worthy of a further investigation, the Grievance Committee shall cause the complaint to be reduced to writing, if it has not been done previously, and also to be signed by the complainant if practicable. A copy shall forthwith be sent by certified mail, return receipt requested, to, or personally served upon, the person complained of, herein called the "respondent." It shall be the respondent's duty to submit to the Grievance Committee within fifteen days after the date of mailing such complaint his written answer thereto, containing a full statement of the material facts in relation to the acts of misconduct alleged in the complaint; and it shall be the respondent's duty also, if required by the Grievance Committee to do so, to appear in person before the Grievance Committee and answer

oral or written interrogatories concerning the acts of misconduct alleged in the complaint; and any deliberate failure on the part of the respondent to submit to the Committee his written answer to a complaint, or to appear before the Grievance Committee and answer interrogatories when requested by the Grievance Committee to do so, and any willful misrepresentations or concealment of material facts in relation to the matter complained of, shall be grounds for disciplinary action. Before the investigation is concluded in any case, the respondent shall be afforded an opportunity to appear before the Grievance Committee and to present evidence on his behalf.

After investigation in any case, the Grievance Committee shall make a written report to the secretary of the Commission on Practice. If the Grievance Committee has found that the facts pertaining to the matter complained of do not merit disciplinary action, or that the respondent does merit admonition, and if the Commission on Practice concurs in that recommendation of the Grievance Committee, then the secretary of the Commission on Practice shall notify the complainant and the respondent of the action taken, and if a written admonition was ordered, shall, in the name of the Supreme Court, deliver such written admonition to the respondent, and there shall be no further proceedings.

If, after investigation in any case, the Grievance Committee concludes that the facts warrant a complaint by the Commission on Practice of the Supreme Court, the Grievance Committee shall make a report of its proceedings, including a summary of the material facts and its recommendations, and such report shall be filed with the secretary of the Commission on Practice.

(d) The Commission on Practice of the Supreme Court shall review the report of the Grievance Committee and if satisfied that the facts as reported warrant filing of a formal complaint with the Supreme Court shall promptly prepare and file the same, or if the informal complaint theretofore filed with the Commission on Practice be deemed by it to be sufficient, it may authorize it to be filed as a formal complaint. If the Commission feels that additional investigation shall be made, it shall refer the matter back to the originating Grievance Committee with directions indicating the further scope of investigations.

If the Commission on Practice of the Supreme Court upon review of the report of the Grievance Committee together with additional information provided as required shall conclude that a complaint is not warranted it shall notify the respondent, the complainant, and the Chairman of the originating Grievance Committee, and shall file the report.

If the Commission on Practice of the Supreme Court determines that the respondent merits admonition only, it shall do so in accordance with the procedure established herein.

V. Complaints, Process, Etc.

(a) All formal complaints seeking disciplinary action against an attorney shall be prepared or authorized by the Commission on Practice, filed in triplicate and signed by any interested person, provided, however, that on application of the Commission on Practice to the Supreme Court, or upon its own motion, the Court may authorize the filing of an unsigned complaint. A formal complaint shall set forth the charges with sufficient particularity as to inform the respondent attorney clearly and specifically of the acts of misconduct with which he is charged. Formal complaints shall be filed with the Commission on Practice for action as herein provided.

(b) When a formal complaint has been filed, and it has been determined that formal hearing be had thereon, the Commission on Practice shall file with the Clerk of the Supreme Court the original and one copy of said complaint, with a written request that a citation issue directed to the attorney complained of, to which shall be attached a copy of the complaint, requiring said attorney, within twenty days after the service thereof, to file with the Commission on Practice the original and one copy of a written answer to said complaint. Such citation, together with a copy of the complaint attached thereto, may be served by said clerk by registered or certified mail, return receipt requested, addressed to the attorney complained of at his last known Post Office address. "Return receipt" signed by the attorney complained of and returned to the Clerk shall be proof of the service thereof. In the event the attorney complained of shall refuse to accept said registered or certified mail and to sign a "return receipt" therefor, the citation and copy of complaint may be served upon him as other process and proof thereof made as provided in Rule 4, Montana Rules of Civil Procedure. Acceptance in writing of service and time to answer shall commence to run from the date of such acceptance. The original of said complaint shall be retained by the Clerk.

(c) It shall be the duty of the attorney served with such citation to file with the Commission on Practice, within the time specified, the original and one copy of his answer to said complaint, in which he shall admit or deny the material allegations thereof, and he may include in his answer a request for a more particular statement of the alleged acts of misconduct, or raise any other objections, including a plea that the complaint does not charge misconduct warranting the imposition of any discipline.

(d) If the attorney so charged, having been duly served with citation as above provided, shall fail to answer said complaint, as provided above, or fail to appear at any hearing, the time and place of which he has had due notice, he shall be deemed in default and the Commission on Practice shall proceed to hear the same and make its findings and recommendations as hereinafter provided.

VI. Hearings For Complaints

At formal hearings, the witnesses shall all be sworn and a complete record shall be made of all proceedings had and testimony taken. Only the Commission on Practice, a member of the Bar designated as a hearings officer, a hearings committee consisting of three or more members of the Bar, or a hearings committee composed of three or more members of the Commission on Practice, shall have the authority to conduct formal hearings on formal complaints. All such hearings officers and hearings committees shall be appointed by the chairman of the Commission on Practice, and in appointing any such committee the chairman shall designate one of the members thereof to act as presiding officer. If the Commission on Practice conducts any hearing, the chairman thereof shall act as presiding officer. The presiding officer shall have authority to rule on all motions, objections, and other matters presented in connection with such formal hearing. Except as otherwise provided herein, hearings on formal complaints shall be conducted in conformity with the practice in the trial of civil actions.

VII. Witnesses

The Chairman of the Commission on Practice, any hearings officer, or the presiding officer of any hearings committee, acting pursuant to and in conformity with these rules, shall have the power to:

(a) Administer oaths and affirmations and hear evidence.

(b) Compel, by subpoena, the attendance of witnesses and the production of pertinent books, papers and documents.

Witnesses shall be entitled to receive fees and mileage as provided by law for witnesses in civil actions, payment thereof to be made as hereinafter provided. Depositions may be taken and used in the same manner as in civil actions. The attorney complained of shall be entitled to examine all witnesses, and upon request to have witnesses, books, papers, and documents subpoenaed and produced.

Any person subpoenaed to appear and give testimony, or to produce books, papers, or documents, who fails or refuses to appear or to produce such books, papers, or documents, or any person, having been sworn to testify, who refuses to answer any proper question may be cited for contempt of this Court.

The Commission on Practice shall report to this Court the facts relating to any such contempt. Thereupon proceedings before this Court shall be had as in cases of other civil contempts.

VIII. Reports, Findings, And Recommendations

At the conclusion of a formal hearing before a hearings officer or before a hearings committee, a report shall be made to the Commission on Practice setting forth findings and recommendations, which report shall be signed by the hearings officer or by a majority of the hearings committee and submitted to the Commission on Practice for its approval or disapproval. To warrant a finding of misconduct the charges must be established by substantial, clear, convincing, and satisfactory evidence. If the findings and recommendations are approved and signed by a majority of the Commission on Practice, it shall be and become the report of the Commission on Practice. Where hearing is had before the Commission on Practice, it shall make a report of its findings and recommendations, which shall be approved and signed by a majority of the Commission.

If it shall be found that the charges are unfounded and unproven, the Commission on Practice of the Supreme Court shall recommend dismissal of the complaint to the Supreme Court and present its report for the Court's consideration. Upon concurrence by the Court, the Commission on Practice of the Supreme Court shall enter its order dismissing the complaint, whereupon the matter shall be terminated. A copy of the report, findings, and recom-

recommendations of the Commission on Practice shall be mailed to the respondent attorney and his counsel, if any, to the hearings committee members and the attorney, if such there is who has presented the case, and the complainant shall be advised of the action taken. If the Supreme Court shall not concur in the recommendation of the Commission on Practice, it shall request the Commission to proceed as provided for charges proven and to recommend discipline.

If the Commission on Practice finds the charges proven and recommends discipline, it shall also recommend the extent thereof as:

1. private censure,
2. public censure,
3. suspension for a definite or an indefinite period, or,
4. disbarment.

IX. Proceedings Before The Supreme Court

All disciplinary proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the State of Montana and shall be prosecuted by the Attorney General of the State of Montana, with the aid and assistance of one or more members of the bar of Montana, selected by the chairman of the Commission on Practice of the Supreme Court to assist in the prosecution of the charges set forth in the complaint. The member selected to assist in such prosecution shall be entitled to receive reasonable compensation for services so rendered.

In cases where the Commission on Practice of the Supreme Court has recommended discipline, it shall promptly file with the Clerk of the Court the original complaint, unless previously filed under Sec. V(c), and a copy of respondent's answer together with two copies of its report, findings and recommendations; thereupon the matter shall be docketed by the Clerk as:

IN THE SUPREME COURT

THE STATE OF MONTANA

NO.

vs.

ORIGINAL
PROCEEDINGS IN
DISCIPLINE

.....
Attorney Respondent

and the copy of the complaint together with the answer, report, findings and recommendations of the Commission on Practice of the Supreme Court, shall constitute the record in the case.

(a) Upon the docketing of a case in the Supreme Court the Clerk shall issue a citation directing the respondent to appear within ten days and file his exceptions to said report, or his election not to do so as hereinafter provided. A copy of said report and citation shall be served on the respondent and proof thereof made in the manner as provided by the Rules of Civil Procedure.

(b) The respondent attorney shall, within ten days after acceptance of service, or service upon him of a copy of said citation and report, file with the Clerk of this Court in duplicate:

1. A statement that he does not wish to file exceptions to said report, findings, and recommendations, or
2. His exceptions to said report which exceptions may be supplemented by such portions of the records of the Commission on Practice, or the reporter's transcript as he may deem necessary to enable the Court to pass on his exceptions.

(c) Upon failure of the respondent to file within ten days a statement as provided or exceptions as provided, the Court shall proceed to consider the recommendations of the Commission on Practice and may impose discipline in accordance therewith and if the circumstances warrant, issue a citation for contempt, directing the respondent to show cause why he should not be adjudged in contempt and punished for failure to file a statement or exceptions as provided above.

(d) If the respondent attorney elects to file no exceptions, the Court shall fix a time and place for respondent's appearance for imposition of such discipline as the Court shall deem proper. The Clerk shall notify the attorney by registered mail or certified mail of the time and place of his appearance and the purpose thereof. The respondent shall appear in person and may be

accompanied by counsel and may make a statement with respect to the discipline to be imposed. Thereupon the Court shall impose such discipline as may be deemed proper and just.

(e) If the respondent files exceptions as above provided, the Attorney General shall, within ten days thereafter, lodge with the Clerk such additional parts of the records of the Commission on Practice, and the reporter's transcript as he deems necessary to enable the Court to pass upon such exceptions.

On the completion of the record as above provided, the respondent attorney shall have ten days within which to file a brief, the Attorney General shall have ten days after receipt of respondent's brief in which to file an answer brief, and the respondent shall have five days after receipt of the brief of the Attorney General to file a reply brief.

Thereafter the matter shall stand submitted and shall be promptly determined by the Court by an order dismissing the complaint or imposing discipline.

The Commission on Practice, on request of the respondent, shall give to him an estimate of the cost of an original transcript of the record, or such portion thereof as he may designate, and on deposit with the Clerk of the Supreme Court of the estimated cost thereof, the Commission on Practice shall promptly certify to the Court the record or parts thereof so designated.

X. Reinstatement Procedure

Any attorney who shall have been disbarred or suspended may by verified petition apply for:

- (a) an order of reinstatement,
- (b) an order shortening the term of a fixed period of suspension, or
- (c) an order modifying an order of indefinite suspension by fixing a definite period of suspension.

Such petition shall bear the case number and caption appearing in the order of discipline, and an original and one copy thereof shall be filed with the Clerk of this Court and by him filed and made a part of the record in said case. Such petition shall set forth facts showing that the attorney has rehabilitated himself, or that he is entitled to have the order of discipline vacated, terminated, or modified.

On receipt of such petition, the Clerk shall immediately forward a copy thereof to the Commission on Practice, which shall consider the same and report to the Court in duplicate its findings, conclusions, and recommendation. The proceedings before the Commission relating to such petition shall be governed by the applicable provisions of these rules governing hearings in disciplinary proceedings, and the burden shall be upon an applicant seeking reinstatement to establish the averments of his application. The Clerk, on receipt of such report, shall mail a copy thereof to the respondent attorney.

If the report of the Commission on Practice recommends denial of the petition, the attorney shall have fifteen days from the date of mailing of such recommendations to file with the Clerk exceptions thereto, whereupon, the matter shall stand submitted. If the report recommends reinstatement, termination, or modification of suspension, the matter shall stand submitted for consideration on the report alone. Neither briefs nor oral argument shall be permitted. The Commission on Practice, upon request of the petitioner and payment of the actual cost thereof, shall certify to the Court the complete record of the proceedings before the Commission on the application of reinstatement, which record will be considered by the Court in disposing of the petition. The Court shall make such order as it deems proper.

A lawyer who, pending investigation of misconduct or while charges of misconduct against him are pending, voluntarily surrenders his license to practice law in this state or elsewhere, shall have his name stricken from the roll of attorneys and the pending disciplinary proceedings shall terminate.

Whereupon the Clerk of this Court shall, by letter directed to the Clerks of the Supreme Courts of any other states or jurisdictions, in which it is known by the Clerk that the attorney is licensed to practice law, notify said clerks of the prior proceedings in discipline in this state and the fact that his name has been stricken from the roll of attorneys licensed to practice law in Montana. Similar notice shall also be given to the Clerk of the Federal District Court for the District of Montana, and to the Clerk of the 9th Circuit Court.

XI. General Provisions

None of the proceedings provided for herein shall be public and the records of all hearings officers, hearings committee, and the Commission on Practice of this Court, together with all proceedings had before such Com-

mission or grievance committees, shall be confidential and shall not be exhibited nor shall the contents thereof, or any proceedings had in connection therewith, be divulged or made public, except by order of Court. Upon final determination of proceedings before the Supreme Court wherein the respondent attorney is given a private reprimand or is exonerated, notice of the disposition of the matter shall be mailed by the Clerk of this Court to the complainant, the respondent attorney, and the chairman of the Commission on Practice, who shall notify members of the Commission, members of the hearings committee, and the attorney who presented the case, of the Supreme Court's disposition of the matter, and the Chairman of the Grievance Committee which conducted the original investigation, if any.

Any person having received notice that a private reprimand has been given shall treat such information as confidential and shall not make public or divulge the same to anyone, except by order of Court. Any person violating this provision shall be subject to punishment for contempt of court.

The Court may on its own motion issue a citation directing an attorney, against whom criminal charges are pending or against whom formal or informal disciplinary proceedings are pending, to appear before this Court and show cause why his license to practice law should not be suspended during the pendency of such proceedings, and, after hearing, this Court may enter an order suspending his license for a definite or indefinite period or may discharge the order to show cause.

In all cases where discipline is recommended by the Commission on Practice it shall certify to the Supreme Court the costs incurred in connection with the proceedings and the Court may, in the event discipline is imposed, assess against the respondent attorney the costs so certified. In the event of dismissal by the Commission on Practice of a formal complaint it shall certify to the Court the costs incurred in connection with the proceedings and the same may be assessed by the Court against the complainant. All costs so assessed shall be paid to the Clerk.

All costs and expenses incurred by the Commission on Practice in the conduct of proceedings, as herein provided, shall be paid from the appropriation for expenses of this Court upon approval by the Chief Justice.

The rules of professional conduct as adopted, supplemented or modified by pronouncements of this court from time to time shall be the standards governing the practice of law in this state.

[On March 16, 1981, the Supreme Court issued an order in cause number 10910, effecting amendments to Rule XI. The substantive portions of the order provided as follows:]

(2) No information of any kind concerning any disciplinary matter involving the Commission on Practice and filed in this Court shall be divulged by anyone to anyone. All requests for such information shall be referred to the Chief Justice or in his absence the Acting Chief Justice.

(3) All files and records pertaining to Commission on Practice matters shall be physically secured, marked "confidential" in large and unmistakable

letters on both sides of the file, and kept in a separate locked file in the office of the Clerk of the Supreme Court.

(4) All documents or other papers relating to disciplinary matters involving the Commission on Practice shall be clearly labeled "confidential" before being transmitted to the Office of the Clerk of this Court for filing.

XII. Proceedings Involving Absent Residents And Nonresidents

Whenever a charge of misconduct is made against a member of the Bar of this state who is absent from the state of Montana and cannot be found herein, or is made against a member of the Bar of any other state who was either temporarily or permanently authorized to practice in Montana, and who is likewise absent from the state and cannot be found herein, then the Commission on Practice is authorized to serve said charge of misconduct upon the respondent in the same manner as a summons in a civil action is served under the rules of this court, and the proceedings shall thereafter be processed in the same manner as provided in these rules.

XIII. Unauthorized Practice Of Law

As to complaints involving the unauthorized practice of law the Commission on Practice may adopt a form of procedure and rules governing the investigation and action to be taken in such matters as may be appropriate and proper, but such rules and procedure shall be first submitted to and approved by this Court.

IT IS ORDERED that the Commission on Practice as herein established shall enter upon its duties on the first day of April, 1965, and the Court will by separate orders provide for implementation of the elective and appointive procedures provided herein to determine the membership thereof.

DATED this 5th day of January 1965.

Rules of Commission on Practice: On May 1, 1965, the Commission on Practice, established pursuant to the Supreme Court order of January 5, 1965, in cause number 10910, adopted Rules of Procedure. The compiler has included the Rules here because they seem to fall under the authority of the Court to govern the conduct of the members of the bar set forth in Art. VII, sec. 2, subsection (3), Mont. Const.

Rules of Procedure
For Commission on Practice of the Supreme Court
of the State of Montana
Adopted May 1, 1965

PURSUANT to the Order of the Supreme Court, January 5, 1965, the Commission on Practice of the Supreme Court of the State of Montana promulgates and adopts the following rules for the conduct of its business:

RULE I

The official meeting place for the Commission shall be the chambers of the Montana Supreme Court at the State Capitol unless otherwise designated in the Notice of Meeting by the Chairman or Secretary.

Meetings shall be subject to the call of the Chairman on not less than ten days notice. In cases of extreme urgency, the ten day period shall be waived. In calling a meeting, the Chairman shall be guided by the amount or the apparent urgency of the business properly before the Commission, except that a meeting in April of each year shall be mandatory for organizational purposes. Should the necessity arise, the written request of five of the eight Commission members shall be sufficient to call a meeting by either the Chairman or Secretary, and in such case, the meeting shall be called not less than five or more than fifteen days from the date the written request has been received.

Five members of the Commission of eight shall constitute a legal quorum for the transaction of its official business, excepting in those instances set

forth in the Order of the Supreme Court creating the Commission which require action by a majority of the Commission.

Post Office Box No. 921, Helena, Montana, is adopted as the official mailing address for all matters pertaining to the business of the Commission.

RULE II

In the month of April each year, the Commission members shall elect a Chairman from its membership who shall serve for a term of one year, unless re-elected, and no limit is placed on the number of terms the Chairman may serve as such.

At the same time, a Secretary shall be elected annually for a term of one year—preferably from the Commission membership, but not limited thereto. He may likewise be re-elected to the position of secretary without limit as to the number of terms he serves as such.

RULE III

For each meeting called and attended by a Commission member, he shall be allowed mileage at the rate of eight cents per mile together with actual expenses necessarily incurred in attending the meeting. Claims for mileage and expenses in duplicate shall be executed and filed with the Chief Justice of the Montana Supreme Court for payment.

All office and kindred expenses, including the services of any special investigator that might be designated by the Commission, shall be subject to payment on claim executed and filed in duplicate with the Chief Justice.

RULE IV

All complaints and matters within the intendment of the Order establishing the Commission on Practice, which are brought to the attention of the Commission, shall, if agreeable to a majority of the Commission quorum—if not previously disposed of by the Chairman or Secretary—be referred to the area member of the Commission from which the complaint has arisen, and to either the local or contiguous District Grievance Committee for preliminary investigation and disposal, if possible. If satisfactory results are not thus accomplished, then the matter shall be handled in accordance with RULE VI herein.

RULE V

No procedural rules for the operation of local grievance committees are established at this time. The Commission, in what it deems to be the spirit and intent of the Supreme Court Order establishing the Commission, believes that in most, if not all cases, satisfactory results in the handling of matters referred to it can best be accomplished on an informal basis at the local District level, unless in the opinion of the local grievance committee, Commission intervention and participation is required.

Complaints to the Commission from local grievance committees or individuals must—where possible—be verified under oath of the complaining party. Complaints arising from local grievance committees or individuals not meeting this requirement, shall in the discretion of the Commission be disregarded and dismissed until the requirement has been met.

RULE VI

In addition to the rules hereinabove set forth, the Commission hereby adopts as its Rules of Procedure Paragraphs I to XIII inclusive as set forth in the January 5, 1965, Order of the Montana Supreme Court establishing the Commission on Practice, and said paragraphs are hereby specifically incorporated by this reference and collectively all such paragraphs shall be referred to in these Rules as RULE VI.

Nothing contained in the Rules adopted by this Commission or any subsequent amendments thereto shall abrogate or modify the aforementioned

Rules of Procedure established by the Supreme Court in its Order of January 5, 1965.

RULE VII

These Rules may be amended, supplemented or revoked without notice by the vote of *five members* of the Commission at any of its regularly called meetings.

The above Rules unanimously adopted May 1, 1965, by the Commission on Practice in regular session assembled at Helena, Montana.

Guidelines for Local Grievance Committee Procedure: On February 8, 1979, the Supreme Court issued a supplemental order in cause number 10910. The supplemental order sets forth certain recommended procedures to be used by local grievance committees in considering complaints against members of the bar. The compiler has included the rules here because they seem to fall under the authority of the Court to govern the conduct of the members of the bar set forth in Art. VII, sec. 2, subsection (3), Mont. Const.

IN THE SUPREME COURT OF THE STATE OF MONTANA No. 10910

IN THE MATTER OF THE ESTABLISHMENT OF THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF THE STATE OF MONTANA

SUPPLEMENTAL ORDER

The following procedural guidelines are adopted for the benefit of the Montana Supreme Court and its Commission on Practice together with its Local Grievance Committees established under Montana Supreme Court Order No. 10910, dated the 5th day of January, 1965:

The Commission on Practice in the past few years has received numerous inquiries from Local Grievance Committees as to their duties, their procedures and guidelines when a complaint has been referred to their Committee. The following guidelines are suggested to the Local Grievance Committees in their handling of a complaint:

I. AUTHORITY OF LOCAL GRIEVANCE COMMITTEE.

Supreme Court Order No. 10910 which established the Commission on Practice provides generally that the Local Grievance Committee is an investigating arm of the Commission on Practice with authority to investigate all complaints against members of the Bar submitted to the Committee, and make recommendations to the Commission on Practice. The Rules on the Commission on Practice are set forth in full in the Montana Lawyer's Desk Book, published by the State Bar of Montana. We would suggest that the members of the Local Grievance Committee read and study the Supreme Court Order as to duties and procedures.

The procedures of the Local Grievance Committees are set forth in Paragraph IV of the Order. You will note, in Sub-paragraph (a) thereof the Court allows the Local Grievance Committee to establish procedural rules for the Committee's operation. We think it important that the procedural rules be adopted by each Local Grievance Committee and filed with the District Court as permanent rules until amended.

The main point we wish to emphasize is that due process be afforded to members of the Bar and to the complainant when a complaint is being investigated or a hearing held. Investigations and hearings should be conducted fairly to all parties concerned. The complainant and the attorney should be

informed that they have a right to have an attorney represent them at all times during the investigation or the hearing.

II. HOW COMPLAINTS ARE REFERRED TO THE LOCAL GRIEVANCE COMMITTEE.

Local Grievance Committees will be confronted mainly with receiving complaints from two sources:

(a) Any district judge may refer a complaint either to the Commission on Practice or directly to the Local Grievance Committee. Immediately upon receipt of a complaint from a district judge, the Local Grievance Committee will notify the Secretary of the Commission on Practice and submit a copy of the complaint.

(b) A complaint may be referred by the Commission on Practice to the Local Grievance Committee.

In most cases the Local Grievance Committee will receive a written complaint, however, there is a possibility that in certain instances a district judge may refer a complaint to a Local Grievance Committee that has come to his attention which may not be in writing. We would suggest in all cases that a written complaint be obtained and verified. All complaints that are sent down by the Commission on Practice to a Local Grievance Committee will be in writing and verified.

III. PROCEDURES OF LOCAL GRIEVANCE COMMITTEES AFTER A COMPLAINT HAS BEEN REFERRED.

(a) Refer to Paragraph IV(c) of the Commission on Practice Rules. This paragraph provides that in those cases where the matter has been referred to a Grievance Committee either by the Commission on Practice or as otherwise provided, and upon preliminary consideration of the complaint it appears that the facts do not support a charge of misconduct and do not warrant disciplinary action, the Grievance Committee shall so report to the Commission on Practice.

(b) The Rules further provide that if it appears upon such preliminary consideration that the complaint may have merit and is worthy of a further investigation, the Grievance Committee shall cause the complaint to be reduced to writing, if it has not been done previously, and also to be signed by the complainant if practical.

(c) A copy of the complaint shall forthwith be sent by certified mail, return receipt requested, to or personally served upon the person complained of, herein called the respondent.

(d) It shall be the respondent's duty to submit to the Grievance Committee within fifteen days after the date of mailing said complaint, his written answer thereto, containing a full statement of the material facts in relation to the acts of misconduct alleged in the complaint.

(e) If there is a conflict between the complaint and the answer filed by the respondent, the Local Grievance Committee has the authority to require the respondent to appear in person before the Grievance Committee and answer oral or written interrogatories concerning the acts of misconduct alleged in the complaint. Adequate notice should be given to the respondent of the requirement of his personal appearance.

(f) If the facts or issues in the complaint cannot be resolved up to this point, it is suggested that the Local Grievance Committee hold a hearing on the matter giving the complainant and respondent attorney notice of the time and place of the hearing, and that they are entitled to have an attorney appear with them if they so desire. A record of the proceedings and the sworn testimony at the hearing should be made by a Court Reporter or a qualified stenographer and a transcript made thereof.

(g) Complainant or the respondent attorney should have the privilege of presenting evidence either oral or documentary relevant to the complaint, and the right to cross-examine witnesses.

(h) The cost of a court reporter and transcript of the testimony at any hearing should be submitted to the Commission on Practice together with the final report of the Local Grievance Committee.

IV. FINAL DISPOSITION OF A COMPLAINT.

(a) After investigation or meeting with respondent attorney or after a full hearing, the Local Grievance Committee shall then make its final written report on the complaint and immediately submit it to the Secretary of the Commission on Practice for further action, with a copy to the respondent attorney.

(b) The final written report should include a summary of the material facts and should set forth the recommendation of the Committee.

The recommendation can be one of the following:

1. The matter complained of does not merit disciplinary action.
2. The facts do merit an admonition to the respondent.
3. The facts warrant a complaint be filed by the Commission on Practice against the respondent.

This then ends the duties of the Local Grievance Committee unless the complaint is again submitted to them for further investigation.

V. CONFIDENTIAL NATURE OF THE PROCEEDINGS.

The Local Grievance Committee should note that Paragraph XI of the Supreme Court order specifically provides that all proceedings had before such Commission or Grievance Committee shall be confidential and shall not be exhibited nor shall the contents thereof, or any proceedings had in connection therewith, be divulged or made public. The Local Grievance Committee should admonish the complainant and the respondent attorney and all witnesses that all proceedings, evidence and testimony is confidential and should not be divulged to anyone.

DATED this 8th day of February, 1979.

[The following letter from the Secretary of the Commission on Practice of the Supreme Court of the State of Montana appeared on page 3 of the September 1980 publication of *The Montana Lawyer*.]

"The Commission on Practice was established for the purpose of receiving and investigating complaints of alleged misconduct on the part of lawyers committed in the State of Montana. We have been increasingly concerned about the number of complaints received from parties to a dissolution of marriage, which problems stem from alleged multiple representation of the two parties.

The Legislature is establishing so called "No Fault Divorce," provided in Section 40-4105, subsection 2, that either or both parties may initiate the proceeding. It is this provision authorizing the filing of a joint petition for dissolution of marriage that gives rise to the complaints being filed before the Commission. The complaints received allege violations of Disciplinary Rule 5-105-a, which deals with multiple employment and provides in substance that a lawyer should decline proffered employment if the exercise of his independent professional judgement in behalf of the client will be, or is likely to be, adversely affected by the acceptance of the proffered employment. In short, while the Legislature has authorized the filing of a joint petition for dissolution of marriage, the Canons of Ethics and the decisions and opinions of other states all indicate that separate and independent lawyers for each of the parties in a dissolution proceeding is almost a mandate.

In examining and investigating the complaints we have received we find that in most cases the attorney involved has conscientiously attempted to be fair to both parties, and in far too many cases, the client who was satisfied with the original property settlement or custody arrangements has now determined that he or she was not treated fairly and was taken advantage of by the attorney. Frequently, an investigation reveals that one of the parties has secured the services of an attorney, and the other party does not secure counsel and simply signs the agreement as prepared by the attorney. Again, all too often the other party, in hindsight, contends that he or she relied on the attorney for fair and equitable treatment, and considered that the attorney represented both parties.

The problems that can arise with multiple representation are vividly demonstrated in the Montana case of *Pilati v. Pilati*, cited in Volume 36, State Reporter, at Page 619.

With the legislative authorization of the filing of joint petitions and the mandates prohibiting multiple representation in most cases, what can the practitioner do to avoid being the subject of inquiry by the Commission? Our personal views are these:

1. Urge independent representation in all cases.
2. Avoid, if possible, the filing of joint petitions. (With the abolishment of cause for divorce, there is no particular stigma attached to being either a petitioner or a respondent).
3. If circumstances are such that a joint petition is used, secure a document in writing from the other party that you are only representing Client A, and that Client B is urged to seek independent counsel.
4. Sign a joint petition as "Attorney for Petitioner 'A'," rather than as attorney for both petitioners.
5. In framing a property settlement, use the proposed terminology in the Montana Legal Secretaries Handbook: "(Husband, wife) has retained and been represented by (name of attorney) in connection with the negotiations for the drafting of this agreement. (Husband, wife) is not represented by counsel, although (he, she) understands (his, her) right to be so represented, and has knowingly waived the services of counsel."

Lastly, it should be noted that decisions of other jurisdictions indicate that in advising that separate counsel be obtained for one of the parties, it is considered unethical to recommend a specific attorney for the other party's representation.

I am hopeful that by following these simple guidelines, Montana practitioners can avoid the embarrassment of receiving a letter from the Commission on Practice."

Canons of Professional Ethics: The Supreme Court adopted the Canons of Professional Ethics to govern the conduct of attorneys on May 1, 1973. The Canons were amended in an Order dated June 24, 1980, to be effective July 1, 1980. The compiler has incorporated the amendments into the Canons. Although the Canons are not designated as a Supreme Court rule, the compiler has included them here, as they seem to fall under the authority of the court to govern the conduct of the members of the bar set forth in Art. VII, sec. 2, subsection (3), Mont. Const.

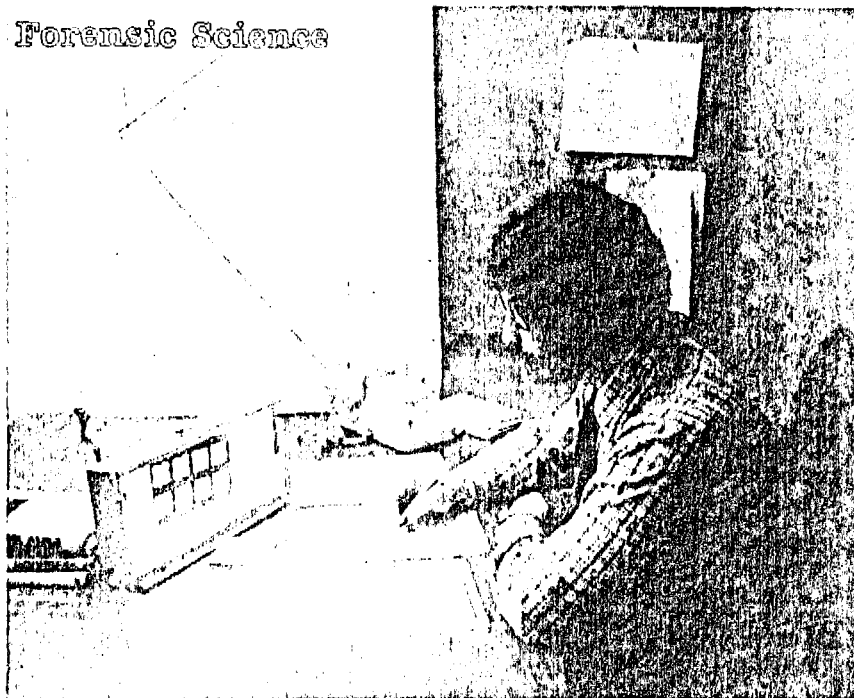


Exhibit F
HB 609
2/11/83

By
PAUL PANE
*Criminal Identification Specialist
Bureau of Criminal Statistics and
Special Services
California Department of Justice
Sacramento, Calif.*

Dental Identification Program: An Overview

Skeletal remains are unearthed in a desert. A woman's body is washed up on shore. The mutilated and scorched body of a man is found in a vacant field. Many times, in cases such as these, the identity of the body is never known. To enhance the probability of identification, California implemented in 1979 the first statewide dental identification program in the United States. The program, which is administered by the California Department of Justice (DOJ), assists law enforcement agencies and coroners in identifying unidentified deceased persons by comparing their dental charts with the charts of persons reported missing by law enforcement agencies throughout the western United States.

Case Histories

On February 25, 1979, the San Diego County Coroner's Office was notified of an unidentified deceased person who was a victim of the "Freeway Killer" in southern California. The dental charts of this homicide victim were

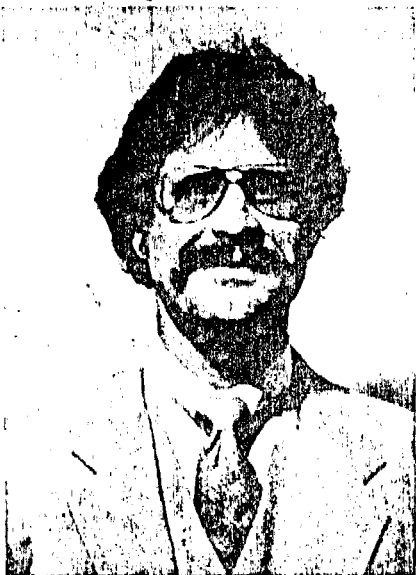
submitted to the DOJ dental identification program for comparison against the dental charts of missing persons. The search resulted in a possible match with records of an individual reported missing by the Milpitas Police Department, 450 miles north of San Diego. The deceased person was positively identified by the San Diego County Coroner's Office as the missing person from Milpitas.

On January 25, 1981, the San Bernardino County Coroner's Office was notified that two human legs had been found. A female torso, with head, legs, and hands severed, was discovered on January 28th, 30 miles from the location of the legs. The hands were not located, but the head was eventually found a month later, 200 feet from where the legs were found. A forensic anthropologist confirmed that all body parts were from the same victim. The dental chart of the victim was submit-

ted to the dental identification program. A search of program files resulted in a probable match with dental records of an individual reported missing by the Santa Ana Police Department in Orange County, which is southwest of San Bernardino County. The deceased person was positively identified by the San Bernardino County Coroner's Office as the missing person from Orange County.

Program Implementation

The idea for the California program was initiated by two San Diego dentists, Dr. Norman "Skip" Sperber and Dr. Robert Siegal, who specialize in forensic odontology—the scientific study of teeth. Their enthusiasm resulted in support and passage of legislation which became effective January 1,



Mr. Pana



George Deukmejian
California Attorney
General

1979. The law requires local law enforcement agencies and coroners to supply dental records for missing persons and unidentified deceased persons to the California Department of Justice.

In accordance with the new law, the local law enforcement agency completes a DOJ missing persons report and provides the immediate family or next of kin with a DOJ release form requesting that they obtain the missing person's dental records. After conferring with the county coroner about unidentified deceased persons that may be the missing person, the law enforcement agency forwards the DOJ missing persons report and dental records to the dental identification program.

Dental charts of unidentified deceased persons are submitted to the program by county coroners after they have exhausted all attempts to identify the individuals. These dental charts are compiled for the specific purpose of comparison with dental records of missing persons. If a match occurs, the coroner who submitted the dental chart is notified and sent the dental records of the missing person for positive identification.

Prior to implementation of the program, DOJ maintained separate files on missing persons and unidentified deceased persons which contained physical descriptors that were compared for possible matches. However, in many cases, it was difficult to obtain physical descriptors of fingerprints needed for identification because the bodies were badly mutilated or decomposed. With the use of dental charts and records, positive identification is facilitated since most people have had some type of dental work done while there are many people who have not been fingerprinted.

To date, the program has identified 29 unidentified deceased persons. In many cases, unidentified deceased persons were positively identified as missing persons reported by California agencies hundreds of miles away from where the bodies were discovered. A majority of the persons identified—25 of the 29—were victims of homicide. This included homicide victims in Nevada and Arizona who were identified through the program as missing persons from California. This was possible because law enforcement agencies and coroners throughout the western United States may use the program.

Through the program, positive identification was also made for an additional 17 unidentified deceased individuals for whom coroners had possible names. In such cases, the program was able to furnish a missing persons report and dental records to the coroners to assist in establishing the identity of the deceased.

The current file includes dental records of 600 missing persons and 300 unidentified deceased persons. Dental records and charts of missing and unidentified deceased persons are maintained for as long as the submitting agency wishes and are continually compared against incoming reports.

The dental identification program has saved law enforcement agencies and coroners valuable time in their investigations by providing a means to make positive identifications through the use of dental records and charts. Most importantly, however, the program has aided the families of missing and unidentified deceased persons by clearing some of the uncertainties confronting them.

FBI

Exhibit G
HB 609
2/11/83

HB 609: Department of Justice, Revised Cost Estimate

MISSING PERSONS/UNIDENTIFIED DEAD

Expenditures by Category:

	<u>FY 1984</u>	<u>FY 1985</u>	<u>Biennium</u>
Personal Services:			
Salary (1 FTE, Grade 13, step 2)	\$ 18,397	\$ 18,397	\$ 36,794
Employee benefits 20%	3,679	3,679	7,358
Total	\$ 22,076	\$ 22,076	\$ 44,152
Operating Expense:			
Contracted Services;			
Printing, Release of dental records form	\$ 100	\$ -	\$ 100
Missing person report form	100	-	100
Supplies & Materials;			
X-ray film	175	175	350
X-ray viewer	50	-	50
Misc	100	100	200
Communications;			
Postage	600	600	1,200
Travel;			
Six training sessions	450	-	450
On-going training	100	100	200
Rent;			
Office Space	450	450	900
Total	\$ 2,125	\$ 1,425	\$ 3,550
Equipment:			
File cabinet	\$ 277	-	\$ 277
Typewriter	800	-	800
Duplicating,			
X-ray Film Machine	350	-	350
Total	\$ 1,427	\$ -	\$ 1,427
TOTAL PROGRAM COSTS	\$ 25,628	\$23,501	\$ 49,129

ASSUMPTIONS:

1. Create a statewide file system containing dental records, physical characteristics, and related reports on missing/unidentified deceased persons.
2. Store dental records and records on physical characteristics of missing and unidentified persons for easy retrieval by law enforcement agencies on request.
3. Assist local law enforcement agencies in locating missing persons and identifying deceased persons through comparison of dental records and physical characteristics.
4. There were approximately 650 missing persons reported in 1982.
5. There were 4 unidentified deceased persons reported in 1982.

STATE
OF
MONTANA
DEPARTMENT OF JUSTICE
LAW ENFORCEMENT SERVICES DIVISION
303 Roberts, Helena, Montana 59601 (406) 449-2769

Exhibit H
HB 609
2/11/83

Good morning. My name is Bill Hull. I have been actively involved in law enforcement in Montana for the last 12 years. Since September 1981 I have been the Regional Training Coordinator at the Montana Law Enforcement Academy in Bozeman, which is charged with the responsibility for the training of all law enforcement officers in Montana.

In my work at the Law Enforcement Academy, I am very often in contact with law enforcement agencies throughout the State.

One of the major problems which face these law enforcement agencies is the lack of a central repository for information about missing persons and unidentified dead bodies.

Presently, missing persons are reported to the local law enforcement agency, which transmits a teletype message to other Montana law enforcement agencies attempting to locate the missing person.

Most of the departments, large and small, file these missing persons on a clip-board along with the other missing persons teletypes they have received from throughout the state, and from throughout the U.S. These messages are then purged once a month or every two months and thereafter end up in a trash can.

The Montana Uniform Crime Reporting system handles missing persons as an optional field in its reporting system as a courtesy to the requesting agency. There are no statistics readily available to accurately ascertain exactly how many missing persons there are throughout the state in a given year or how many are actually missing persons, rather than "attempts to locate" to give these people important messages or to check on their welfare.

Most of the missing person reports are handled as an A.T.L. (Attempt To Locate) and a teletype is sent out and for the most part is forgotten soon afterwards.

Our concern in considering this system should be with the missing persons, some of whom may be the victims of foul play, who sometimes wind up as unidentified dead bodies. Many missing persons are elderly or senile or mentally incompetent, depressed and/or suicidal. Another major concern are the run-away Juveniles who may also fit into all of the above categories. All of these missing persons also have people at home who are under a great deal of stress and genuine concern as to the welfare and whereabouts of the missing person. Thankfully, the number of unidentified dead we have in Montana are few, however, Montana's missing persons sometimes end up as unidentified dead in another state.

ADMINISTRATION

The new system as envisioned by H.B. 609 would require files and cross reference files, i.e. name file, age, sex, race, approximate time missing/found and dental chart file classification; physical descriptions, as well as fingerprint records, if any are available. This will also require daily review of the incoming teletype messages and many phone calls.

PERSONNEL

The system should require one full-time employee. This person should be familiar with the law enforcement community and its procedures, languages, etc. He/she should be capable of maintaining a fairly complex filing system. He/she would require additional training in the area of dental charting procedures.

PRE-REQUISITES

A definite pre-requisite to the implementation of the system will be the familiarization of the person, with the functioning, procedures and requirements of similar systems existing in other states to ensure compatibility with our system so that we can check with them to see if they have located our missing persons. It will be imperative that a training program be carried out to familiarize all law enforcement agencies in the state with the new missing persons/unidentified dead body file to ensure that they understand the system and submit

the required forms so that law enforcement officers, coroners, dentists, can all make certain that the new system works to assist us in locating missing persons and to identify unidentified dead bodies.

Thank you. I'd be happy to answer any questions.

WITNESS STATEMENT

Name ROGER TIPPY Committee On JUDICIARY
Address P.O. Box 514 Date 2/11/83
Representing Montana Dental Association Support x
Bill No. HB 609 Oppose _____
Amend x _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Dentists Support concept, want to retain records--amendments offered to handle problem in introduced bill

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Exhibit I
HB 501
2/11/83

Proposed Amendment to House Bill 501 (Introduced Bill)

Title, line 5 and 6

Following: "AMEND"

Strike: "Section 49-2-303, MCA"

Insert: "Sections 49-2-303 and 49-3-103, MCA"

Page 3

Following: line 1

Insert: "Section 2. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause." "

Exhibit J
HB 501
2/11/82

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS
PROPOSED BILL TO PROVIDE AN EXCEPTION TO THE LAWS PROHIBITING DISCRIMINATION
IN EMPLOYMENT ON THE BASIS OF MARITAL STATUS WHEN THE REASONABLE DEMANDS OF
THE POSITION REQUIRE A MARITAL STATUS DISTINCTION.

In May, 1981, the Montana Supreme Court decided a case which interpreted the Montana Human Rights Act's prohibition against marital status discrimination, Thompson v. Board of Trustees, School District No. 12. The case involved a nepotism policy adopted by a school board which provided that a school administrator employed in the school district could not also have a spouse employed with the district. The court held that the term "marital status" includes the identity and occupation of one's spouse as well as the state of being single, married, divorced, widowed, and so on. The Court also held that the statute did not provide for any exceptions to the prohibition of discrimination. In view of the broad construction of the term "marital status" adopted by the Court, the Commission believes that some limited exceptions to the prohibitions of marital status discrimination in employment should exist, for example, in situations where an employee audits the work of another employee or in the case of governmental employment, where nepotism is prohibited by law. The language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed.

HB 501
Exhibit
2/11/83

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAINT EITHER BEFORE THE COMMISSION OR IN DISTRICT COURT.

Title VII of the Civil Rights Act of 1964 provides that an individual alleging a violation of the Act must file a complaint with the Equal Employment Opportunity Commission. After the Complaint has been investigated by the Commission, the Commission issues a "right to sue" letter, authorizing the complainant to file a lawsuit in U.S. District Court. This proposed bill would establish a similar procedure for complaints alleging a violation of the Montana Human Rights Act.

There are several reasons the Commission proposes this legislation. First, many complainants who are represented by counsel from the outset would prefer to pursue their complaints in court rather than at an administrative hearing. Secondly, because of the inadequate funding of the Commission, the number of cases awaiting hearing is large and growing. While the number is not large compared to the number of cases which are resolved by the Commission staff through investigation and conciliation prior to hearing, it does contribute to the Commission backlog. Furthermore, in many cases, damages continue to accrue while cases are awaiting hearing and this seems particularly inequitable to Respondents.

WITNESS STATEMENT

Name Chip Edmann Committee On H Jud.
Address Helena Date 2/11/83
Representing MT School Bd Assoc Support ✓
Bill No. HB 501 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill would partially restore the nepotism statute dealing with public employees.
2. It would institute a "reasonable" basis for the hiring of a spouse.
3. We feel this would provide a much needed change in this area.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

EX-1017K
2/11/83
46-18-234
HB 589

dance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505,

45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118."

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 198, L. 1981 (SB 14), read: "An act providing for fines and assessment of costs in felony and misdemeanor criminal cases; allowing community service as a condition of deferred or suspended sentences; amending section 46-18-201, MCA."

Interim Study Committee Bill: Chapter 198, L. 1981 (SB 14), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

Exhibit L.
HB 589
2/11/83

DAVID L. NIELSEN
ATTORNEY AT LAW
402 2ND AVENUE SOUTH - P.O. Box 1187
GLASGOW, MONTANA 59230

406/228-2483

February 4, 1983

Representative Ted Schye
Capitol Station
Helena, Montana 59601

Dear Ted:

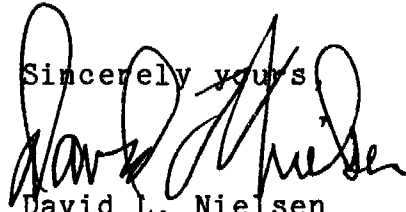
The purpose of this letter is to set forth the reason for the proposed amendment of M.C.A. Sec. 46-8-113, as is set forth in House Bill No. 589.

Presently paragraph (2) of 46-8-113 appears to be in conflict with M.C.A. Sec. 46-18-232. M.C.A. Sec. 46-8-113 at the present provides that when a defendant is appointed counsel by the court, then he cannot be made to pay as part of a sentencing those costs which would include expenses inherent in a constitutionally guaranteed jury trial. As a practical matter, the only costs inherent in a jury trial are the costs of jury service. M.C.A. Sec. 46-18-232 specifically allows for a court to require a convicted defendant to pay costs plus costs of jury service as part of his sentence. That section also sets forth the protection for the defendant that he may not be required to pay these costs unless the court makes a determination that he is able to pay the costs and is able to take into account the resources of the defendant and the nature of the burden that payment of these costs will impose. This test which the court is required to apply before ordering costs is the same test set forth in 46-8-113. Since the defendant under both sections is protected from having to pay costs if he is financially unable to do so, there seems to be no reason why a defendant who is sentenced when he has received court appointed counsel should be excused from the payment of costs of jury service as set forth in 46-18-232. At the present it seems that the indigent defendant who has the court appointed counsel who might have an ability to pay the costs in the future is given the benefit of not having to pay those costs for jury service whereas a defendant who has to hire his own attorney could be required to pay the jury costs. The defendant is adequately protected and in order to remove the

Representative Ted Schye
M.C.A. Sections 46-8-113(2)
and 46-18-232
February 4, 1983
Page 2

confusion it would be best that the amendment proposed in
House Bill No. 589 be approved so that the defendants are put
on equal footing.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David L. Nielsen". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Nielsen" written in a smaller, more compact script.

David L. Nielsen
Valley County Attorney

Exhibit A
HB 585
2/11/83

STATISTICS FOR HB 585

1. Average Sentences to prison (only).

Overall 7.99 yr.
Non-Dangerous 7.7 yr.
Dangerous 10.4 yr.
Offense against person 14.0 yr.
Offense against property 5.3 yr.
Assaultive offense 14.2 yr.
Sex Offense 10.3 yr.

2. Percentage of Admissions

A. Dangerous = 12%
Non-Dangerous = 88%

B. Offense against Person 29.2% *
Offense against Property 56.9%
Other 13.9%

3. Cross-Tabulation on Dangerous Designation

	Dangerous	Non-Dangerous
Offense Against Person	20%	80%
Offense Against Property	8%	92%
Other	11%	89%
Sexual Offense	31%	69%
Assaultive Offense	20%	80%
First Commitment	4%	96%
Subsequent Commitment	18%	82%

4. Breakdown of average sentences by Dangerousness and crime category.

	Dangerous	Non-Dangerous
Offense Against Person	14.5 yr.	13.9 yr.
Offense Against Property	5.4 yr.	5.3 yr.
Other	10.0 yr.	5.9 yr.

* This figure (29.2% differs from that reported on the sample done 5/82 of 51% offenders against person and OBSCIS Rept 106 figures of 47.3%. Violent because it measures only inmates admitted 7/1/82 to 12/81/82. These offenders have longer sentences and thus tend to accumulate in the prison population driving the percentage up. I use the 29.2 % figure as HB 585 would only affect admissions.

All figures are from admission to prison 7/1/82 to 12/31/82. It is not a sample.

5. Projected prison admissions (prepared for Special Session 2)

1984	-	466
1985	-	465
1986	-	460
1987	-	453
1988	-	445

6. In order to estimate population impact it is necessary to assume that all offenses listed in HB 585 are offenses against persons. (They are not, several are drug offenses.)

A. From 4, above, note there is very little difference in the average sentence given an offender against the person whether dangerous or non-dangerous (14.5 yr. vs. 13.9 yr.). The same is true of property offenders. This means the impact of HB 585 is in the length of stay increase due to being designated dangerous.

B. From 3, above, note offenses against person are 20% dangerous and 80% non dangerous designation. Under this bill this becomes 100%.

C. From 2, above, note 29.2% of admissions are for offenses against persons.

D. Thus the percentage of admissions affected is:

1984	-	466	x	.292	=	136	Inmate admission
1985	-	465	x	.292	=	136	Inmate admission
1986	-	460	x	.292	=	134	Inmate admission
1987	-	453	x	.292	=	132	Inmate admission
1988	-	445	x	.292	=	130	Inmate admission

7. Estimate of length of stay increases

A. Dangerous serves about 37% of sentence. A non-dangerous serves 20%.

B. $.37 \times 14.5 \text{ yrs.} = 5.4 \text{ yrs. served}$
 $.20 \times 13.9 \text{ yrs.} = 2.8 \text{ yrs. served}$

C. The effect of HB 585 is that all offenders would now serve 5.4 yrs. as dangerous or up 2.6 year for previously non-dangerous offenders.

- D. This affects those previously non-dangerous (See 3) or 80% of admissions.

1984 .8x 136 = 109 Inmates
1985 .8x 136 = 109 Inmates
1986 .8x 134 = 107 Inmates
1987 .8x 132 = 106 Inmates
1988 .8x 130 = 104 Inmates

- E. Thus in 1984, 109 inmates stay in 2.6 years longer. In 1985, the same. In 1986, 107 stay in 2.6 years longer. In 1987, 106 stay in 2.6 years longer. In 1988, 104 stay in 2.6 years longer.

- F. However, since the impact won't be felt until those normally releaseable must stay longer the impact is delayed 2.8 years. (33 months) (13.9 years average sentence for non-dangerous times 20%).

In 33 months the impact will be 109 inmates the first year.
218 the second. 281 the third and 278 the fourth year.

	YEAR			
	1	2	3	4
Inmates staying	109	109	65*	
2.6 yrs. longer;		109	109	65
(33 months from			⁷ 109	⁷ 109
effective date of				
HB 585)				106
<hr/>				
TOTAL	109	218	281	278

* Plus a portion which overlap as the length of stay in 7.6 years.

Exhibit N
HB 525
2/11/83

Exhibit

HOUSE BILL NO. 575

2/11/83

Mr. Chairman: I move to amend House Bill No. 575 as follows:

1. By adding on page 1 in line 19 before the period the words: "without limitation by reason of any provision of Title 39, Chapters 71 and 72, MCA".

2. By adding an additional section:

Section 2. Section 71-3-1112, MCA is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, and hospitals when a person receiving medical treatment:

(1) is injured through the fault or neglect of another;
or

(2) is either insured or a beneficiary under insurance."

Exh. 6.1 + 290
HB 220
2/11/83

Amend220/BCDII

Proposed Amendments to HB220.

1. Title, line 7

Following: SECTION

Strike: 70-24-421

Insert: 70-24-427

2. Page 1, following enacting clause,

Strike: remainder of bill in its entirety

Insert: Section 1. Section 70-24-427, MCA, is amended to read:

"70-24-427. Landlord's remedies after termination-payment of rent into court. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement. (2) If, in an action filed pursuant to (1), the pleadings show, or it is otherwise shown, as required in 25-8-101, that the landlord is entitled to receive the rent and that the tenant has the rent in his possession, the court, upon motion of the landlord, shall order the tenant to pay the rent into court pursuant to 25-8-103 pending resolution of the action.