

MINUTES OF THE JUDICIARY COMMITTEE
March 4, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 9:05 a.m. All members were present with the exception of Representative Daily, who was excused. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

SENATE BILL 196

SENATOR VAN VALKENBURG explained that this bill would provide for an increase in court reporters' salaries; secondly, it would require that official notes of the proceedings be stored for ten years; and, finally, it would provide for some needed change in the way court reporters are compensated for recording transcripts on appeals. He stated that, at the present time, the compensation for recording transcripts is based on a folio rate and that this is an antiquated method, which is based on a 100-word rate. He stated that this does not give good notice to litigants as to what is expected. He contended that it also does not adequately compensate an official court reporter for the kind of work that is involved in preparing a transcript on appeal.

JEROME ANDERSON, representing the Montana Court Reporters Association, offered a letter to the committee from DIAN G. BARZ, District Judge in Yellowstone County, Billings, Montana. See EXHIBIT A. He also offered testimony in support of this bill. See EXHIBIT B.

MARILYN JORDON, President of the Montana Court Reporters Association and a former court reporter for Judge Green in Missoula, Montana, presented to the committee a schedule of a typical week's workload, and indicated that this schedule almost did her in and she only lasted for a year. She stated that she typed her own transcripts and she would go home at around 7:00 p.m. and have to work on these transcripts. She indicated that it takes about four hours of transcription for every hour that is spent in the courtroom so the committee could see that there would be a good many hours involved in the preparation of an appeal. She explained that the reason it takes so much time to do this is that you must, first of all, read the notes, punctuate properly, there is research that has to be done on a transcript so that it is as accurate as possible and she indicated that, during this year, she saw very little of her husband.

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She further informed the committee that, as far as salaries are concerned, it is becoming harder and harder for judges to hire qualified reporters when salaries are so low. She alleged that she personally worked as a free-lance reporter before she went to work for Judge Green, and she could make around \$25,000.00 a year in this capacity rather than the \$18,000.00 which was the maximum she would be paid. She testified that free-lance reporters now outnumber court reporters in the state of Montana and are doing most of the depositions. She explained that she was now working in federal court in Missoula, is under contract for \$30.00 an hour with a maximum limit on what she can make at \$200.00 per day. She explained that they felt the proposed transcript rate was a good medium rate that would compensate them fairly for a few years.

TIM SKELTON, Court Reporter of the Third Judicial District, commented that he was in favor of what MS. JORDON had to say. He indicated that he had made about \$3,500.00 on appeals; and out of that figure, he had probably made \$375.00. He stated that he paid a typist 70 cents a page, binding comes to about 40 cents a page, and that leaves him about 30 cents a page for a profit margin on overtime hours. He attested that it was not much of an incentive to put in these kind of hours.

PHIL FORDAHL, Court Reporter in Great Falls, stated that this is one of the busiest districts and he commented that his experience is comparable to Mr. Skelton. He said that his typist could put out about 10 to 12 pages an hour and he pays her 75 cents a page, which he feels should be raised because of the amount of expertise they need.

JEROME ANDERSON stated that Helena has just lost a court reporter in January, moving to Lander, Wyoming where he is making \$27,500.00 compared to \$14,700.00 in Helena.

There were no further proponents.

REPRESENTATIVE PISTORIA, Great Falls, District 39, assured the committee that he was not opposing the court reporters - we have to have them; but he explained that he has found out that court reporters do have a monopoly; that while getting

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salaries, they also do outside work in taking depositions and they are hardly there all day. He contended that, while they are taking these depositions, the taxpayers are paying their salaries. He passed some pictures around showing boxes of paper, which he contended the court reporters were using for transcribing depositions; and he also passed a picture around of a desk which showed numerous papers, tapes, a tape recorder, etc. He contended that they were doing this during the day at taxpayers' expense. He cited a case where, in 1980, he was sued and he had to pay \$814.00 for a transcript; and, under this new proposal, he would have to pay around \$2,200.00. He exclaimed that he would like to see their income tax returns, and he was sure that they made more than the district judges.

SENATOR VAN VALKENBURG said that he would like to respond to Representative Pistoria's remarks; and he insisted that things are changing in the district courts; that there is a much greater workload; and courts are requiring more and more actual courtroom work by the official court reporters. He contended that what is happening, especially in the large caseload districts, court reporters are spending all day on their official court-reporting duties and with the judge. He indicated that court reporters are not sitting around with nothing to do and working on despositions, as contended by Representative Pistoria. He continued that these arguments may have had some merit in years goneby, but that is not the case anymore. He attested that court reporters are leaving Montana; they are going into federal courts; they are free-lancing; and to continue to attract competent, qualified court reporters, they are going to have to pay them adequately.

VICE-CHAIRMAN ADDY asked MS. JORDAN if she cared to respond to these remarks. She informed the committee that the photograph of boxes of paper was stenograph paper, which is the paper that fits into the court reporters machine; and she said that, in state court, the counties provide this paper. She declared that there may be instances, of which she is not aware, that there may be abuses; but, in federal court, she provides all of her own materials, her own machine, her own ink, her own ribbons, her own stenograph and transcript paper; and if she would like to have an office, they will

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provide the space, but she must furnish the office. She further continued that, as far as official court reporters are concerned, they do have a monopoly, as they are the only person who an individual can turn to if they would like a transcript and that is why that transcript rate must be regulated by the people in the legislature.

REPRESENTATIVE KEYSER questioned in a criminal transcript, who basically requests and receives the transcript. MS. JORDAN replied that it depended on who loses the case.

REPRESENTATIVE KEYSER wondered if the county attorney pays for this. MS. JORDAN responded that the county attorney does not pay for it, unless he ordered the transcript himself; and generally, it is the criminal who has been convicted and he often is indigent.

REPRESENTATIVE KEYSER asked if, in the criminal cases, most of the requests come from the defendant's attorney and MS. JORDAN replied that that is correct.

REPRESENTATIVE KEYSER noted that times are very tough and they come in and ask for a 33 per cent increase of a top salary maximum, and he wondered why they should give court reporters more money than they are giving anybody else in state government this year. SENATOR VAN VALKENBURG responded that they are not setting salaries, they are setting the range; there is a real need to be able to attract qualified court reporters; it may be difficult to get someone to go to the Fifth Judicial District and work in Virginia City, Dillon or Boulder and Senator Hazelbaker was extremely concerned about that. He said that it was possible that the district court judges may grant the full increase, but he felt that is where it should be.

MR. ANDERSON clarified that the reason for expanding the range is to prevent the necessity of coming in biennially for a salary adjustment as court reporters have been doing for the last four or five sessions. He said that it is not contemplated that the judges will raise the salaries up to \$26,000.00.

REPRESENTATIVE KEYSER wondered on what assumption does he base this - that he had not seen anything in the past that would

indicate that he was correct. MR. ANDERSON contended that every court reporter in Montana is not making \$20,000.00 now. REPRESENTATIVE KEYSER said they are very close, aren't they. MR. ANDERSON replied the major portion of them do, but one in Glasgow is making \$15,000.00, one making \$17,000.00 and two making \$18,000.00.

REPRESENTATIVE EUDAILY presented a letter from JACK L. GREEN, Judge of the District Court, Missoula, Montana. See EXHIBIT D. REPRESENTATIVE EUDAILY noted that, under the assumptions on the fiscal note, it listed 32 court reporters anticipated; there are several bills before the legislature to increase the number of judges, so that will increase the number of court reporters; and that there would be a fiscal impact in that respect. He cited that, assuming the judges did increase these salaries to the maximum, using \$25,500.00 and just 32 judges, instead of an increase, he figured an increase of \$192,000.00 on the counties. He said that all through this session, they have heard a cry that the counties cannot make it. He wondered how did they propose to pay for it. MR. ANDERSON said that part of the funding from the district court budget is taken from filing fees; and the judge sits down with the county commissioners and they arrange the salary schedules.

REPRESENTATIVE EUDAILY contended that is it not true that the judges set the salaries and the county commissioners just stamp it. MR. ANDERSON replied that if he were a county commissioner, he would take a position on it. He felt that most judges want to be reelected to office and are responsive to what the county's needs are.

REPRESENTATIVE HANNAH cited that he understood in Billings that the county commissioners are concerned, as the judges do not negotiate or visit with the county commissioners about setting salaries. He noted that there are 32 court reporters and he mentioned there were four that are not at the maximum and he wondered if there were more than that. MR. ANDERSON replied that that is about it.

REPRESENTATIVE HANNAH asked if he really believed that the county commissioners were going to have any influence on the judges. MR. ANDERSON replied that he understood that in most

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of the districts in Montana, they do get together and discuss salary increases.

REPRESENTATIVE HANNAH asserted that most of the free-lance transcript work in Yellowstone County is done by the district and federal court reporter. MR. ANDERSON replied that that is entirely incorrect; there is a substantial number of free-lance court reporters in Billings; they are very successful and make a substantial amount of money.

REPRESENTATIVE HANNAH noted that there was nothing in the bill relating to daily copy. MR. ANDERSON responded that he would not expect a court reporter to supply a daily copy at the rates set forth in this bill. He contended that a single reporter just cannot do it.

REPRESENTATIVE HANNAH wondered how they could handle that if they wanted daily copy. MR. ANDERSON replied that the necessity for daily copy varies from case to case; he explained that in a case he was involved in they arranged for a reporting service from Denver; the reporters would rotate; they would take a half-hour of testimony and then another would take another half-hour while the first was typing. He contended that there would be no way to set this out in a bill. He further explained that a daily copy is a rough draft of the testimony that is taken on that day during the course of the trial; it is pounded out as rapidly as possible; errors are not corrected; there is xing out; it is not cleaned up but that rough draft may be used in the transcript on appeal.

REPRESENTATIVE PISTORIA told the committee that in his case they would not give him a transcript until he put some money down. MR. ANDERSON responded that if a litigant cannot pay for a transcript, he can request by petition that the transcript be paid for him. He stated that the reason the recorders want some up-front money is the same reason why lawyers request a retainer.

SENATOR VAN VALKENBURG stated that in the appropriations process, there is a proposal that they provide \$1.8 million to local governments for grants in aid for district court operations, which is about \$1 million increase over what the legislature is now providing and it does provide for a basis for this increase in fees and is one which is likely to pass.

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REPRESENTATIVE EUDAILY asked if this would not be sent to appropriations for consideration as long as it is in the governor's budget. SENATOR VAN VALKENBURG replied that that is a matter that is solely in the discretion of the House.

MS. JORDAN commented that when she worked for Judge Green in Missoula, she took five depositions in that year; as a free-lancer, she took five in a day; she took two at 7:00 in the morning; she took one at 8:00 at night and the others she took in Polson for the county attorney from Hamilton, who needed them for a criminal case the following week; and she emphasized that never, under any circumstances, would she take county money and go out and do free-lance work at the same time.

REPRESENTATIVE ADDY asked REPRESENTATIVE PISTORIA if he thought we could attract good court reporters for the salary we pay them, when a free-lance court reporter in taking a deposition from a doctor, is charging more than the doctor. REPRESENTATIVE PISTORIA emphasized that he knows that there are three or four court reporters in Great Falls that go out and take depositions for other attorneys and he bet it was going on in Missoula in some of the courts.

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

SENATE BILL 218

SENATOR VAN VALKENBURG stated that this was a bill requested by the sheriffs which would change some antiquated language in the statutes about how they are to house prisoners in county jails. He said that presently they are suppose to segregate prisoners based on whether they are pre-trial, whether they have been convicted or whether they are being held on civil process. He contended that county jails are really not capable of being broken up in that fashion and this does not work to the prisoner's best interest. He said this bill would allow the sheriff to judge as to whom are the dangerous people and those considered to be non-dangerous. He indicated that there is a real problem in putting people who are charged with a DUI in with people who are charged with

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murder. He said that he was asked by the Sheriff of Lewis and Clark County to propose an amendment to the bill on page 2, line 4, by striking "be kept or put into the same room" and insert "housed".

CHUCK O'REILLY, Sheriff of Lewis and Clark County, said that the sheriffs' association does stand in support of this bill.

RAY WORRING, appearing on behalf of Sheriff Ray Froehlich of Missoula County, gave testimony in support of this bill. See EXHIBIT E.

JERIMIAH JOHNSON, Chief Probation Officer of the Fourth Judicial District, stated that there is a section in the bill that mentions juveniles and he would be in support of this bill.

There were no further proponents and no opponents.

SENATOR VAN VALKENBURG closed.

REPRESENTATIVE EUDAILY commented that he was a little confused on the liability - that as the current law reads, the sheriff can follow these and he would have some protection - the proposed one would put the judgment entirely on the sheriff and he wondered how this would lessen his liability; he thought it might increase his liability if he should place somebody in the wrong place. SENATOR VAN VALKENBURG replied that as proposed, he would be held to a reasonable man's standard; assuming he makes a reasonable decision, even though wrong, he should not be held liable. He noted that the problem under existing law is that in practice, he cannot follow what the statute says as they have daily problems that are just enormous in terms of fights that break out - real serious problems - so they do not do it. He declared that they want statutory protection.

SHERIFF O'REILLY explained that as a practical matter, he is not aware of one jail in the state that is designed so that it will allow any sheriff to follow the laws that exist today. He contended that in some cases, they would have to double the size of the jails. He stated that (1) they try to follow what would be practical or common sense and keep the people separated that could be injurious to one another and (2) they have many guidelines that they have to follow.

REPRESENTATIVE BERGENE wondered if the jails in this state are separating the juveniles in an area which is physically and visibly segregated. SHERIFF O'REILLY replied that most of them do. He explained that Chester is a one-room jail, but they don't have many prisoners and he was not aware of any problem where they had to put juveniles with adults. He continued that there has been a tremendous effort in the past two-and-a-half years to comply with the Youth Court Act, particularly since these issues were raised about seven years ago when this became a national issue. He also explained that there are arrangements for these departments that do not have the facilities to contract with adjoining counties; in Helena, they send their female juveniles to Townsend so they can comply with the law and Townsend sends their male juveniles to Helena.

REPRESENTATIVE EUDAILY noted that with the proposed amendment on page 2, in taking an inebriated person, and where it says "must not be housed with other prisoners", he wondered if that meant they would be isolated and, if so, how with all these DUI bills are you going to take care of that. SHERIFF O'REILLY said that when they asked for the amendment, with the original language, when they have a kegger bus, they might bring in twenty juveniles; their jail is so designed that there is one large area that is the booking area, which is one room, even though it is separated by cells, they might have adults being booked in there at the same time and, right now, we are not in compliance with the law the way it reads. REPRESENTATIVE EUDAILY said that the way he reads it, if they are inebriated, they must not be housed with other prisoners. He said that his question is then where are you going to put them. SENATOR VAN VALKENBURG responded that most jails have what is commonly referred to as a drunk tank, which is a temporary holding cell where they put people until they sober up. REPRESENTATIVE EUDAILY questioned if there are other prisoners there. SENATOR VAN VALKENBURG replied that in Billings, they have cameras so that they can monitor what is going on there and they do keep more than one person in there on occasion. He said that if they don't have cameras, you cannot do that, so you have to isolate them.

REPRESENTATIVE EUDAILY questioned if this does not say that you cannot house them with other prisoners. He said his point is does this person have to be alone, completely isolated from everybody else. SENATOR VAN VALKENBURG answered that you are talking six to eight hours to sober up.

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SHERIFF O'REILLY explained that most jails have a large room with lots of cells (maybe in tiers or side by side), but it is still one room; whereas housing would be in individual cells; and with this proposal, you could not put an inebriated person in the same cell with one that was not.

REPRESENTATIVE ADDY asked if he could put him in the same cell with one who was. SHERIFF O'REILLY answered that he would assume that you could, but he did not think that would be a good idea.

REPRESENTATIVE ADDY wondered if they should amend by saying, "must not be housed with other prisoners who are violent, disturbed or inebriated. SHERIFF O'REILLY said that maybe it could be changed to "must not be housed with any other prisoner". He contended that when you get a prisoner in that is so drunk he is unconscious, he will just lay there and there are some jails that are two or three-cell jails and if the other cells are filled with felons, he wondered what you would do if you got two inebriated people in.

REPRESENTATIVE ADDY said that he thought the intent was to keep violent people isolated, disturbed people isolated, and inebriated people in the same cell away from people who are not inebriated. He commented that you would not want to have two violent people in the same cell, two disturbed people in the same cell, but you would want to put all the people who are inebriated in another cell. SHERIFF O'REILLY said that they want to cut down the assaults and the injuries and they want to have the discretion to be able to keep these people separate. He said that the mentally ill are, in many cases, put in with everybody else.

REPRESENTATIVE HANNAH questioned about a kegger bus and how would they handle that. SHERIFF O'REILLY explained that you would bring them in; you would have to have a place to hold them - could be a drunk tank - could be a separate cell - then you would book them one at a time; then if you were going to keep them, you would take them one at a time and house them in your facility.

REPRESENTATIVE HANNAH said that, in his mind, housing them would be after they are booked; and, before that time, they are not housed. SHERIFF O'REILLY replied that is correct.

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REPRESENTATIVE KEYSER commented that it seems to him that with this language contained in this amendment, you will not absolutely put two drunks together. SHERIFF O'REILLY replied that he does not read it that way. REPRESENTATIVE KEYSER explained that it does not say of the same kind or anything like that; it says, "Persons who are violent, disturbed or inebriated must not be housed with other prisoners." He questioned isn't another drunk another prisoner.

VICE-CHAIRMAN ADDY thought that the intent was clear now, and they just had to work on the proper language.

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

SENATE BILL 177

SENATOR VAN VALKENBURG explained that this bill was designed, in essence, to overturn a Montana Supreme Court decision; in September of 1981, the Supreme Court decided a case of White vs. White, which was on appeal from Judge Bennett's court in Helena. In the case, the district court said, and the Supreme Court affirmed, that when there is an order requiring payment of support or alimony, the person entitled to collect support cannot go out and execute on the wages of the defendant if the defendant files an affidavit saying that his wages are necessary for the support of his family. This, he said, is an exemption we have in our statutes right now. He attested that the problem with that is that, in essence, this says that the second spouse and the second set of children are going to benefit to the exclusion of the first spouse and the first set of children. He informed the committee that under his bill earnings for personal services are exempt from judgments or orders for maintenance or child support only to the extent allowed by Section 15 U.S.C. 1673. He noted that this was misprinted in the bill as Section 16 and will need to be amended. MS. DESMOND presented a copy of Section 15 U.S.C. 1673 to the committee. See EXHIBIT F.

There were no proponents and no opponents.

SENATOR VAN VALKENBURG closed.

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

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SENATE BILL 168

SENATOR VAN VALKENBURG informed the committee that this started out as a fairly controversial bill and, by the time, the Senate amended it, he does not feel that it has any controversy in it. He stated that this bill makes some changes in the after-care laws dealing with revocation of after-care agreements; right now, an individual is committed to the Department of Institutions for a six-month commitment (that is, they are not put in Pine Hills or Mountain View) and there is no procedure to revoke that if there is a violation of their after-care agreement. He commented that, in some instances, youth have just thumbed their noses at their after-care counselor or supervisor. He explained that on page 5 of the bill, the other substantive change is to strike "~~Any order of the court may be modified at any time.~~" and insert, "Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing." He said that the reason this is necessary is there have been some instances in which the district court judges have just changed their orders in the middle of the night without the people in Pine Hills or Mountain View knowing about it; there may have been a treatment plan that was initiated for that youth and the department would at least like the opportunity to come in and tell the district judge why they think it is important that that treatment plan be continued or recommend modifications.

NICK ROTERING, Attorney for the Department of Institutions, said that it had been amended at least twice in the Senate and the purpose of the bill is the problem they have with the six-month commitment; in the Youth Court Act, there is an indication that, if they have a six-month commitment, they cannot put them in Pine Hills or Mountain View, but sometimes you have to take them out of the family or out of a community where they have been in trouble and usually put them in a group home in another community, an agreeable school or some kind of a vo-tech program. He explained that there is some uncertainty in the law if the youth starts to give you some problems, and this bill clarifies that problem.

JEREMIAH JOHNSON, Chief Probation Officer of the Fourth Judicial District and President of the Montana Probation Officers'

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Association testified that they were in support of this bill as amended, and it clears up any problems that they have with it.

There were no further proponents and no opponents.

SENATOR VAN VALKENBURG closed.

REPRESENTATIVE EUDAILY wondered about the deleted language on page 6. MR. ROTERING replied that this is the existing language right now. He said that they tried to put some consistency in the bill, but some people felt that the statute should be left as it is right now.

REPRESENTATIVE EUDAILY asked who makes the decision. MR. ROTERING responded that the court does.

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

EXECUTIVE SESSION

SENATE BILL 168

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE EUDAILY. The motion carried unanimously.

SENATE BILL 177

REPRESENTATIVE HANNAH moved that the bill BE CONCURRED IN. REPRESENTATIVE VELEBER seconded the motion. REPRESENTATIVE JENSEN moved that the bill be amended on Page 1, line 23, by striking "16" and inserting "15". The motion was seconded by REPRESENTATIVE KEYSER. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE VELEBER seconded the motion. The motion carried unanimously.

SENATE BILL 218

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion.

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REPRESENTATIVE SEIFERT said that he did not see where we need to amend this because on lines 13, 14 and 15 on page 1, it says, "Each county jail must contain a sufficient number of rooms to allow the sheriff to separately confine classes or prisoners as may be necessary to the security and safety of those prisoners and the jail" and then on page 2, it says, "persons who are violent, disturbed or inebriated must not be kept or put into the same room with other prisoners. He said it is clear enough for him and he could not see where it is that big a problem.

REPRESENTATIVE EUDAILY asked if he was saying to keep it in the original language and not to amend it. REPRESENTATIVE SEIFERT replied that he would think so. REPRESENTATIVE EUDAILY noted that the original language is more what they want.

REPRESENTATIVE KEYSER indicated that if we left the language as it is and added on, "except in the booking process" that this might take care of the problem. SENATOR VAN VALKENBURG responded that he would have no problem with that and he did not feel that it was any problem to leave it as it is.

A vote was taken on the motion that the bill BE CONCURRED IN. The motion carried unanimously.

SENATE BILL 196

REPRESENTATIVE EUDAILY moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE KEYSER moved to amend the bill on page 1, line 19 by striking "\$26,000" and inserting "\$23,000", seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE KEYSER explained that the reason he is doing that is it allows for a six per cent increase per year, which is what they are talking about for other state employees; and while he is in sympathy with trying to get people who are of better quality, he does not feel that he could vote for this bill, as he feels there will be an additional cost to the county and he told his county commissioners that he would not be for any additional cost to the counties. He indicated that if they go to \$26,000.00, they are talking about an almost 33 per cent increase at the top level.

REPRESENTATIVE HANNAH agreed with REPRESENTATIVE KEYSER, saying that they are clarifying the rates they will be getting for.

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their transcripts and the end result of that is that they will be making more money off of their transcripts.

REPRESENTATIVE ADDY indicated that he realized that this is a 30 per cent increase, or 15 per cent per year; but he felt they were talking about a group of people that they are trying to catch up with the private sector so that they can attract qualified people. He said that he has a great deal of difficulty finding any court reporter that is available to take a deposition in Yellowstone County. He also felt that people are going to be attracted away from court reporting in rural areas. He moved to amend the amendment by making this a maximum of \$24,000.00 over the next two years. REPRESENTATIVE SPAETH seconded the motion. A vote was taken on this amendment and it failed with 6 voting aye and 8 voting no. See ROLL CALL VOTE.

A vote was taken on the amendment to change the maximum to \$23,000.00. The vote was 8 ayes and 7 nos. See ROLL CALL VOTE.


REPRESENTATIVE SPAETH moved that the bill be amended on pages 4 and 5 in section 3, on line 23 on page 4, by reinserting the old language, as he felt that the judge should get a free copy of the transcript. REPRESENTATIVE DAVE BROWN seconded that motion. The motion carried with REPRESENTATIVE JENSEN and REPRESENTATIVE SCHYE voting no.

REPRESENTATIVE SPAETH moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The motion carried with REPRESENTATIVE FARRIS voting no.

The meeting adjourned at 11:14 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

..... March 4, 1933.....

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **168**

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color

**A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
YOUTH COURT ACT CONCERNING 6-MONTH COMMITMENTS TO THE
DEPARTMENT OF INSTITUTIONS AND THE COMMITMENT REVOCATION
PROCESS; AMENDING SECTIONS 41-5-403 AND 41-5-523, MCA."**

Respectfully report as follows: That..... **JUDICIARY** Bill No. **168**

BE CONCURRED IN

~~XXXXXX~~

STANDING COMMITTEE REPORT

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MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **177**

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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT INCOME OF
A JUDGMENT DEBTOR NECESSARY FOR THE SUPPORT OF HIS FAMILY IS
NOT EXEMPT FROM EXECUTION TO SATISFY JUDGMENTS OR ORDERS FOR
MAINTENANCE OR CHILD SUPPORT ONLY TO THE EXTENT ALLOWED BY
FEDERAL LAW; AMENDING SECTION 25-13-614, MCA."

Respectfully report as follows: That **SENATE** Bill No. **177**

BE AMENDED AS FOLLOWS:

1. Page 1, line 23.
Strike: "16"
Insert: "15"

AND AS SO AMENDED,
BE CONCURRED IN

XXXX
DO PASS

STANDING COMMITTEE REPORT

..... March 4, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **218**

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A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE SHERIFF
DISCRETION IN THE SEGREGATION OF PRISONERS CONFINED IN THE
COUNTY JAIL; AND REQUIRING JUVENILES TO BE CONFINED UNDER
CONDITIONS COMPLYING WITH OTHER PROVISIONS OF LAW; AMENDING
SECTION 7-32-2221, MCA."

Respectfully report as follows: That **SENATE** Bill No. **218**

BE CONCURRED IN

~~XXXXX~~
DO PASS

STANDING COMMITTEE REPORT

March 4, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **196**

third reading copy (blue)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AN INCREASE
IN COURT REPORTERS' SALARIES AND ~~FOR AN ANNUAL COST OF LIVING~~
INCREASE; REQUIRING THAT OFFICIAL NOTES OF PROCEEDINGS BE
STORED FOR 10 YEARS IN THE COUNTY WHERE THE PROCEEDINGS WERE
HELD; AND PROVIDING FOR CHANGES IN COURT REPORTERS' DUTIES
CONCERNING TRANSCRIPTS AND TRANSCRIPT FEES; AMENDING SECTIONS
3-5-602 THROUGH 3-5-604, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **196**.

BE AMENDED AS FOLLOWS:

1. Page 1, line 19.

Strike: "\$26,000"

Insert: "\$23,000"

2. Page 4, line 23.

Following: "therefor."

Insert: "If the judge requires a copy in a civil case to
assist him in rendering a decision, the reporter must furnish
the same without charge therefor."

3. Page 4, line 24.

Following: "by"

Strike: "the judge or"

AND AS AMENDED
BE CONCURRED IN

DO PASS

A's to SB 196

3 Page 4, line 24
Following = " by "
Strike = " the judge or "

~~to~~

March 3, 1983

	Date: 3/3 No: 196 Addy - \$24,000.	Keyser Date: 3/3/ No: 196	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	---	no				
ADDY, Kelly	yes	no				
BERGENE, Toni	----	---				
BROWN, Jan	no	yes				
CURTISS, Aubyn	no	yes				
DAILY, Fritz	----	---				
DARKO, Paula	yes	yes				
EUDAILY, Ralph	yes	no				
FARRIS, Carol	no	yes				
HANNAH, Tom	no	yes				
IVERSON, Dennis	---	---				
JENSEN, James	yes	no				
KENNERLY, Roland	no	yes				
KEYSER, Kerry	no	yes				
RAMIREZ, Jack	---	---				
SCHYE, Ted	no	no				
SEIFERT, Carl	no	yes				
SPAETH, Gary	yes	no				
VELEBER, Dennis	yes	no				

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 196

DATE March 4, 1983

SPONSOR SENATOR VAN VALKENBURG

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Jerome Anderson Committee On Judiciary
Address Building Date _____
Representing Montana Shorthand Typists Assn Support ☒
Bill No. SB 196 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

3.

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

WITNESS STATEMENT

Name Martine B. Jordan Committee On Judiciary
Address Missoula Date 3/4/88
Representing Reporters' Association Support ✓
Bill No. 196 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

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

WITNESS STATEMENT

Name Robert T. Skelton Committee On SB 196
Address 701 Chestnut, Anacosta Date March 4, 1983
Representing _____ Support ✓
Bill No. _____ Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Agree

2.

3.

4.

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

WITNESS STATEMENT

Name Melody Jeffries Committee On Judiciary
Address Mesa, MT Date March 4, 83
Representing MT Shorthand Reporters Assoc Support ✓
Bill No. 196 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I agree & support the statements & comments made by the Proponent.

2.

3.

4.

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

WITNESS STATEMENT

Name Mary Huus Committee On Judiciary
Address Missoula, Montana Date March 4, 1983
Representing MT Shorthand Reporters Support ✓
Bill No. 196 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I agree with the position set forth by the proponent.

4.

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

WITNESS STATEMENT

Name Julie M. Nake Committee On Judiciary
Address Missoula Date 3/4/83
Representing MT Shorthand Reporters Assoc. Support ☒
Bill No SB 196 Oppose ☐
Amend ☐

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I agree with the position set forth with ~~with~~ by the proponent.

2.

3.

4.

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

WITNESS STATEMENT

Name Philip R. Fordahl Committee On Judiciary
Address PO Box 6730 Date 3-4-82
Representing Court Reporters Support ☒
Bill No. SB 196 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Ague

2.

3.

4.

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

WITNESS STATEMENT

Name Christine Lively Committee On Judiciary
Address Dillon, MT Date 3/4/83
Representing MT. Shorthand Reporter Support ✓
Bill No. SB 196 Oppose _____
Amend _____

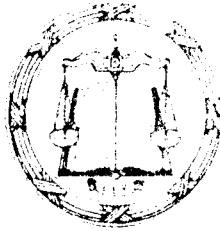
AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *I fully agree with the comments & position set forth by the proponents.*
- 2.
- 3.
- 4.

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

Exhibit A
3/4/83
SB 196



Thirteenth Judicial District

Counties
BIG HORN
CARBON
STILLWATER
TREASURE
YELLOWSTONE

DIANE G. BARZ

District Judge

P.O. Box 35026, Yellowstone County Courthouse
BILLINGS, MONTANA 59107

February 25, 1983

The Honorable Kelly Addy
Representative for the State of Montana
Capitol Building
Helena, Montana 59601

Dear Representative Addy:

I write to encourage your support of SB 196. By virtue of my work, I am intimately familiar with the court reporting profession and the matters addressed by SB 196.

The bill clarifies and provides a uniform payment for transcripts which is fair. Under present law, it is impossible to determine what a folio is. Should we fail to provide competitive salaries and realistic page rate allowances, competent court reporters will be difficult to find.

In addition, in our busier judicial districts, the official court reporters are deprived of opportunities to earn outside income because of the time they must spend in Court. It is important that the Courts have the means to attract good reporters for courtroom work.

I urge your support of SB 196.

Sincerely,

Diane G. Barz

DGB/jcb

Exhibit B
SB 196
3/4/83

COMMENTS IN SUPPORT OF S.B.196

Senate Bill 196, introduced by Senator Van Valkenberg and others, addresses three principal matters concerning official court reporters--those being: (1) salary limitations; (2) cost of living adjustments; (3) compensation for preparation of transcript on appeal; and (4) provision of storage facilities for reporters' notes. This legislation does not affect "free-lance" reporters who are not employed by a district judge.

SALARY AND COST OF LIVING ADJUSTMENT

Present law provides that a court reporter shall be paid an annual salary of not less than \$14,000 nor more than \$20,000. The actual salary amount is set by the Judge for whom the reporter works. SB196 proposes to raise the salary range to not less than \$18,000 nor more than \$26,000 per year.

SB196 also adds to the statute a provision for an annual cost of living adjustment to be added to the court reporter's base annual salary each year. The proposed cost of living adjustment is the same as that now provided for juvenile probation officers. The amount of the adjustment is the equivalent of 70% of the previous calendar year's consumer price index.

The increase in annual salary levels and the application of a cost of living adjustment is requested in SB196 to end the necessity for court reporters to come to each general session of the legislature seeking salary adjustments.

Salaries of official court reporters in Montana vary from \$15,000 to \$20,000 per year. In contrast, one Federal Court reporter in Montana is paid \$32,000 per year and another is working for a Federal Judge under contract for \$30.00/hour with a \$200.00 per day maximum.

Salaries for court reporters in surrounding states are generally higher than Montana and in some cases include cost of living adjustments. Salaries in other states are:

North Dakota

Class I	\$18,000 to \$27,000	(The lower figure is entry figure; after 6 months the salary is increased.)
Class II	\$21,600 to \$31,000	(Average salary being paid Class II reporters is \$28,000 per year.)

Idaho

\$24,000 per year with cost of living index.

Wyoming

\$27,795 per year.

Washington

\$15,000 to \$30,000 per year, varying with the size of the counties and with cost of living index for lower paid reporters.

Utah

\$21,000 per year with 3% increment.

South Dakota

\$17,180 per year with cost of living adjustment.

During the month of January 1983, a court reporter for a District Judge in Helena accepted a position with a Judge in Lander, Wyoming, at the Wyoming salary of \$27,795 per year.

The statutory salary maximum for court reporters was \$16,000 per year in 1975 and was increased to \$18,000 per year in 1979, and to \$20,000 per year in 1981. If a 7% per year increase had been applied during the period 1975 through 1981, the salary maximum should have been set at \$24,000 rather than the present \$20,000 figure.

The proponents believe that the amounts set in SB196, together with the COLA, allow sufficient flexibility in establishing reporters' salaries so that reporters will not have to come back to the legislature session after session for salary relief.

COMPENSATION FOR PREPARATION OF TRANSCRIPTS ON APPEAL

Section 3 of SB196 provides for specific amounts to be paid by litigants for preparation of transcripts on appeal. This is the amount set by the U.S. Judicial Conference to be paid in connection with appeals in Federal Court.

Whenever a party in a civil or criminal action desires to appeal from a judgment or order of a district court or administrative agency under circumstances where a hearing or trial has been held, all or certain portions of the testimony or proceeding in the district court will be designated as part of the record on appeal. This is called the transcript and is prepared by the court reporter from the stenographic notes made by the reporter at the time of the testimony or proceedings. The cost of preparation of the transcript is

paid by the parties to the law-suit. The only time the cost is borne by the county or the state is in cases of appeals by indigent defendants in criminal cases or when the state is a litigant.

Montana law (Sec. 3-5-604, MCA) presently provides that the reporter be compensated at the rate of 10¢ per folio for preparation of the transcript. While there is some variance as to the definition of a "folio" it is generally accepted that one page contains three (3) folios. Thus, the present statute only allows payment of 30¢ per page. The appellant must file one original and four copies of the transcript. Thus, the reporter is paid \$1.50 per page for one original and four copies of the transcript. This amount does not adequately compensate a reporter for the work done and materials furnished by the reporter in preparation of the transcript. It is pertinent to note that transcript preparation involves work done by the reporter which is in addition to the reporter's normal duties and is generally accomplished at night or on weekends.

In contrast, the following transcript rates are paid in surrounding states:

Wyoming

\$2.25 per page for original and for one copy.
.90 per page for each additional copy

(Is \$4.95 per page for 1 original and 4 copies,
as compared to \$1.50 per page in Montana.)

South Dakota

~~1.50~~ ^{1.50} per folio or ~~1.50~~ per page for original.
.50 per folio or ~~1.50~~ per page for copies.

^{3.50} (Is \$~~1.50~~ per page for original and 4 copies
as compared to \$1.50 per page in Montana for
the same number.)

Washington

\$2.00 per page for indigents.

(Is \$10.00 per page for original and 4 copies
as compared to \$1.50 per page for same number
in Montana.)

In all other cases the rate is established by agreement between the reporter and the appellant.

North Dakota

\$1.90 per page for original
.35 per page for first copy
.15 per page for each additional copy

North Dakota (continued)

(Is \$2.70 per page for original and 4 copies as compared to \$1.50 per page for same number in Montana.)

Idaho

\$2.00 per page for original. Copies in the amount agreed to.

Utah

\$0.50 per folio for all pages. (Is \$1.50 per page.)

(Is \$7.50 per page for original and 4 copies as compared to \$1.50 in Montana.)

A review of the above figures makes it clear that reporters in Montana receive substantially less than reporters in other surrounding states for transcript work.

The amount of transcript work done by each reporter varies with the activity of the court in which they serve. Some may have none during a year's time and others may have several.

We re-emphasize that transcript work is work that is in addition to the normal work done by reporters.

SB196 additionally provides that in civil cases all transcripts required by the judge or the county shall be furnished by the reporter and only the reporter's actual costs of preparation (paper, ink, etc.) shall be paid by the county.

STORAGE OF REPORTERS' NOTES

Section 2 of SB196 adds a provision in the statute which requires the county to provide for the Clerk of Court a safe and secure place for the storage of all official notes of court proceedings. These are notes taken by the court reporter. Present practice with regard to storage of these notes has varied from one district to another because, in many districts, the Clerks of Court have not had sufficient room available for such storage. Such notes should be filed with the Clerk of Court so that the notes are in the custody of a permanent and continuing office. This provision of SB196 simply ensures that a place will be made available for such storage.

-o0o-

Exhibit C
SB 196
3/4/83

TYPICAL WEEK'S SCHEDULE

Monday - Missoula (Law & Motion):

8:30 a.m. - 6:00 p.m.

Reporter's Duties:

Number of Hours

In-court duties; i.e., making a verbatim stenographic record of all matters before the Court, including criminal cases; probates, default divorces, and other ex parte matters; show-cause hearings; non-jury trials; and sanity hearings 6

Duties performed for judge, including reading of stenographic notes in cases pending decision, screening of phone calls, and transcription of judge's comments made to defendants on sentencing in criminal cases (no fee charged for transcripts) 2.5

Assembly of notes to be filed with the Clerk of Court 1/2

Miscellaneous duties, including filing of notes, calendaring of cases, scheduling of judge's appointments, and maintenance of shorthand machine 1/2

[Lunch] 1/2

Total Number of Hours 10

Tuesday - Thompson Falls (Law & Motion)

7:00 a.m. - 2:45 p.m.

Reporter's Duties:

Number of Hours

Meet judge for drive (windshield time) 2

In-court duties 2.5

[Lunch] 3/4

Return drive (windshield time) 2

Number of Hours (Subtotal) 7.25

Tuesday - Missoula (Non-jury trials; show-cause hearings)

2:45 p.m. - 6:00 p.m.

<u>Reporter's Duties:</u>	<u>Number of Hours</u>
In-court duties	2
Duties performed for judge	1
Assembly of notes and miscellaneous duties	<u>1/4</u>
Number of Hours (Subtotal)	3.75
Total Number of Hours	11

Wednesday - Polson (Law & Motion)

7:30 a.m. - 7:00 p.m.

<u>Reporter's Duties:</u>	<u>Number of Hours</u>
Meet judge for drive (windshield time)	1.5
In-court duties	6
Assembly of notes	1/2
Duties performed for judge	1
[Lunch]	3/4
Return drive (windshield time)	1.5
Miscellaneous duties (Missoula)	<u>1/4</u>
Total Number of Hours	11.5

Thursday - Polson (Law & Motion; non-jury trials)

7:30 a.m. - 7:30 p.m.

<u>Reporter's Duties:</u>	<u>Number of Hours</u>
Meet judge for drive (windshield time)	1.5
In-court duties	6
Assembly of notes	1/4
Duties performed for judge	1.5
[Lunch]	3/4

Thursday (continued)

<u>Reporter's Duties:</u>	<u>Number of Hours</u>
Return drive	1.5
Miscellaneous duties (Missoula)	<u>1/2</u>
Total Number of Hours	12

Friday - Missoula (Non-jury trials)

8:30 a.m. - 7:30 p.m.

<u>Reporter's Duties:</u>	<u>Number of Hours</u>
In-court duties	6.5
Assembly of notes	1/4
Duties performed for judge	2
Miscellaneous duties	1.5
[Lunch]	<u>3/4</u>
Total Number of Hours	11
 TOTAL NUMBER OF HOURS FOR WEEK	 <u>55.5*</u>

*N.B. When jury trials are scheduled, of course, this schedule could not apply. The number of hours spent during jury terms, generally speaking, would add another two hours for each day of the week, so that the total would be 65.5 hours spent in one of those weeks. Jury terms usually last for at least a month at a time.

Jack L. Green
JUDGE OF THE DISTRICT COURT
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802

CERESE S. WARDEN
COURT REPORTER

Exhibit D
SB196
3-4-83

March 1, 1983

Representative Ralph S. Eudaily
Montana State House of Representatives
Capitol Station
Helena, Montana 59601

Dear Representative Eudaily:

Senate Bill 196, a bill for an act to increase the salaries and transcript fees paid to court reporters, has my support, and your support would be appreciated as well.

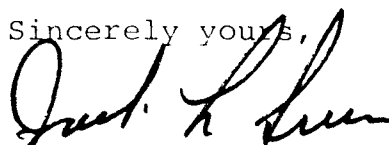
Reporters in this state are paid at the lowest rates in the country for their in-court work. I appreciate that there are problems with salary bills because of the current economic situation, but I feel that this proposal should be given consideration simply so that we can continue to have reporters who are well-qualified and experienced in our courts.

The transcript fees, which are largely paid by private litigants rather than through State or county funds, are extremely low. Reporters in our district have the same heavy caseload we judges do, and their work on appeal transcripts must be done in the evenings and on weekends, after they have completed their duties in court.

The honest, hard-working reporter who charges the statutory rate for his transcripts is barely compensated for his expenses of production, and receives little or no compensation for the great number of overtime hours he must spend on appeal work. Reporters in most other states are paid more for the original transcript alone than our reporters receive for the original and all copies required under the current appellate rules.

The transcript rate has been raised only twice since the 1890's, yet the reporters' costs have increased regularly. I believe that the reporters are entitled to a fair return for the hours they devote to transcript production, and would urge strongly that you vote for this measure.

Sincerely yours,


Jack L. Green

JLG:csw

cc

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 218

DATE March 4, 1983

SPONSOR SENATOR VAN VALKENBURG

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1/31/83
Exhibit E
58218
3-4-83

My name is Ray Worring, and I am testifying as a proponent of this bill both as jail planner for Missoula County, and on behalf of Sheriff Ray Froehlich who couldn't be here today.

I would like to begin by reading a very short prepared statement of Sheriff Froehlich's:

"There is a growing problem among Montana jails because of the widespread inability to segregate ^{inmates,} and specifically, the requirement that those convicted of a crime and held under sentence cannot be confined in the same room with pre-trial detainees awaiting trial. For some time now we ^{have} heard the oft-repeated phrase that: "I am a pre-trial detainee and ^{therefore} ~~thus~~ am entitled not only to be separated from a convicted individual, but ~~that~~ I have more privileges than those already convicted because of my presumption of innocence." In 1979 Belle V. Wolfish, ^{a U.S. Supreme Court decision,} laid to rest this fallacy and indicated that: "the presumption of innocence extends only to the courtroom and that all incarcerated individuals are entitled to equal treatment and privileges." What I am proposing is that with the advent of Belle V. Wolfish, Montana law is not keeping pace with the present Supreme Court rulings and should be ~~drastically~~ revised to eliminate the requirement of separation of pre-trial from convicted and, instead, address the more modern penology concept ^{which stresses} of the separation of the ~~of~~ mentally or emotionally disturbed; the inebriated; violent persons; and of course, male from female. I strongly suspect that most jails, percentage-wise, run about the same as my own with something in excess of 70 percent being pre-trial detainees approximately 20 percent convicted, and the balance consisting of in-transit or parole and probation violations. Inasmuch as the above categories represent those individuals whom we would normally segregate anyway, it seems an undue hardship to statutorily require ^{Sheriff} us to continue to separate pre-trial from convicted in that most of us do not have the luxury of ^{this} ~~as~~ much segregation ^{space} available. I know that this statute is being violated in my own jail daily, primarily because I do not have a jail with the single cell concept design, and with my normally high population reaching now into the 60's, am hard-pressed to separate the mandatory categories

As jail planner for Missoula County, I would add the following remarks.

First of all, I think it important to re-emphasize that the U.S. Supreme Court in *Belle v. Wolfish* made it clear that it is not a violation of pre-trial detainees constitutional rights to have them housed together with sentenced inmates.

Second, I would add that another appellate court case, *Greenholtz v. Inmates of the Nebraska State Penitentiary*, has held that state standards, if higher than federal standards, become the standard of liability. Therefore, every jail in the State of Montana is currently liable right now due to the unnecessarily restrictive statute requiring separation of pre-trial detainees from sentenced inmates. In essence, then, with this bill we are asking the legislature to reduce the tremendous liability that Montana counties now face. I would further add that it would be exorbitantly expensive for Montana counties to upgrade their jail facilities to conform to the law as written. The change in the law, then, will eliminate the liability potential, make expensive renovation and construction unnecessary, and yet will conform to federal constitutional standards. A major point to be made here is that this bill will cost the taxpayers nothing, and in fact, it may save them money in the form of large liability awards prevented.

I'd like to conclude with an observation. I have studied many jails and found that there is little if any justification for one of the original reasons for this statute, which was to separate pre-trial detainees from the hard-core sentenced criminals. It has been my observation, and jail ~~stat~~ population data supports this, that there is really very little difference between the two classes of inmates. Most of the sentenced inmates are misdemeanants and low order felony offenders. The hard-core serious offenders are by-and-large quickly shuffled-off to the state prison.

So, with the limited ability that most sheriffs have to segregate prisoners given the constraints of their facilities, I believe that this new bill is needed to give them the latitude to segregate more important classes of inmates, such as the violent, inebriated, and mentally or emotionally disturbed.

Exhibit F
3-4-83
SB177

15 USCS § 1671, n 6

COMMERCE AND TRADE

enforcement of punitive provisions is left entirely to Secretary. *Simpson v Sperry Rand Corp.* (1972, WD La) 350 F Supp 1057, vacated on other grounds (CA5 La) 488 F2d 450.

Where employee is discharged in violation of 15 USCS § 1674(a), implication of private civil remedies is necessary to insure full effect of congressional purpose behind § 1674(a). *Stewart v Travelers Corp.* (1974, CA9 Cal) 503 F2d 108.

That portion of Consumer Credit Protection Act which has to do with restrictions on garnishment (15 USCS §§ 1671-1677) does not give rise to private civil action to enforce provisions; action must be brought by Secretary of Labor. *Oldham v Oldham* (1972, WD Iowa) 337 F Supp 1039.

No private right of action exists for violation of antigarnishment provisions of 15 USCS §§ 1671-1677. *Western v Hodgson* (1973, SD W Va) 359 F Supp 194, 71 CCH LC ¶ 53110, affd (CA4 W Va) 494 F2d 379.

In action seeking reinstatement to position which plaintiff had held prior to his discharge in violation of 15 USCS § 1674, judgment would not be amended to award plaintiff attorney's fees or damages for back wages. *Nunn v Paducah* (1973, WD Ky) 367 F Supp 957.

15 USCS §§ 1671 et seq. provides only for administrative remedy through division of Department of Labor and does not authorize private civil action to enforce provisions unless all administrative remedies have been exhausted. *Hooter v Wilson* (1973, La) 273 So 2d 516.

Annotation:

Validity, construction, and application of §§ 301-307 of Consumer Credit Protection Act (15 USCS §§ 1671-1677) placing restrictions on garnishment of individual's earnings. 14 ALR3d 447.

§ 1672. Definitions

For the purposes of this title [15 USCS §§ 1671 et seq.]:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(May 29, 1968, P. L. 90-321, Title III, § 302, 82 Stat. 163.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Section effective July 1, 1970, see note to 15 USCS § 1671.

CODE OF FEDERAL REGULATIONS

Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers, 14 CFR Part 374.

CROSS REFERENCES

Findings of Congress and purpose of Act, 15 USCS § 1671.

Restrictions on amount of disposable earnings which may be garnished, 15 USCS § 1673.

transaction outside scope of Federal restrictions on garnishment [15 USCS § 1671 et seq.] *Atwater v Roudeshush* (1976, ND Ill) 452 F Supp 622.

Term "garnishment," as defined in 15 USCS § 1672(c), is not restricted but includes any legal or equitable procedure through which earnings of individual are required to be withheld for payment of any debt, thus encompassing orders of support as well as ordinary creditor-debtor

garnishments. *General Motors Acceptance Corp. v Metropolitan Opera Asso.* (1978) 98 Misc 2d 307, 413 NYS2d 818.

Annotation:

Validity, construction, and application of §§ 301-307 of Consumer Credit Protection Act (15 USCS §§ 1671-1677) placing restrictions on garnishment of individual's earnings. 14 ALR3d 447.

§ 1673. Restriction on garnishment

(a) **Maximum allowable garnishment.** Except as provided in subsection (b) and in section 305 [15 USCS § 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USCS § 206(a)(1)] in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) **Exceptions.** (1) The restrictions of subsection (a) do not apply in the case of—

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code [11 USCS §§ 1301 et seq.]

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited. No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(May 29, 1968, P. L. 90-321, Title III, § 303, 82 Stat. 163; May 23, 1977, P. L. 95-30, Title V, § 501(e)(1)-(3), 91 Stat. 161; Nov. 6, 1978, P. L. 95-598, Title III, § 312(a), 92 Stat. 2676.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Section effective July 1, 1970; see note to 15 USCS § 1671.

Amendments:

1977. Act May 23, 1977 (effective the first day of the first calendar month after May 23, 1977 as provided by § 501(e)(5) of such Act), in subsec. (b), added "(1)", redesignated clauses (1), (2), and (3) as clauses (A), (B) and (C), respectively, and substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in clause (A) as redesignated, and added para. (2); and, in subsec. (c), added ", and no State (or officer or agency thereof),".

1978. Act Nov. 6, 1978 (effective Oct. 1, 1979, as provided by § 402(a) of such Act which appears as a note prec 11 USCS § 101), in subsec. (b)(1)(B), substituted "court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code" for "court of bankruptcy under Chapter XIII of the Bankruptcy Act".

CODE OF FEDERAL REGULATIONS

Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers, 14 CFR Part 374.

CROSS REFERENCES

Findings of Congress and purpose of Act, 15 USCS § 1671.

Definitions of "earnings," "disposable earnings," and "garnishment," 15 USCS § 1672.

Restriction on discharge from employment by reason of garnishment, 15 USCS § 1674.

Exemption of state-regulated garnishment, 15 USCS § 1675.

VISITOR'S REGISTER

HOUSE JUDICARY

COMMITTEE

BILL SENATE BILL 168

DATE March 4, 1983

SPONSOR SENATOR VAN VALKENBURG

[illegible]

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