MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 7, 1983

The thirty-sixth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 7, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Berg who was excused.

CONSIDERATION OF HOUSE BILL 562: Representative Harper advised that he was sponsoring this bill at the request of the Montana Incest Prevention Coalition. Incest crimes are serious and more prevelent then we once thought. The purpose of HB562 is to expand the definition of the crime of incest to include sexual contact other than intercourse. It also expands the definition to include any stepson or stepdaughter who has not been adopted by the person committing the offense. This bill should broaden prosecutors' options.

PROPONENTS: Celinda Lake, representing the Women's Lobbyist Fund, testified in favor of the bill and submitted her written testimony (see attached Exhibit "A"). She also distributed to the Committee a copy of a letter from Ann German of the law firm Keller & Gilmer, which also supports this legislation (see attached Exhibit "B"). A letter from James B. Wheelis, District Judge for the Fourth Judicial District (see attached Exhibit "C") was also read to the Committee which supports this legislation.

Alice Morse, representing the Wouthwest Mental Health Center, supported the bill. In her practice as a psychiatric social worker she has dealt with 20 children during the past nine months who have been victims of incest and sexual abuse. Her written statement was submitted for inclusion in these Minutes which gives statistics for these types of abuses (see attached Exhibit "D").

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan questioned why the language regarding consent was stricken from the bottom of page 1. Reprsentative Harper advised this was done because it is hard to prove consent.

Senator Mazurek was concerned with the bill applying to consenting adults related by marriage and felt the stricken language should be reinserted. Representative Harper advised the Committee to exercise its own judgement. Chairman Turnage was also concerned

how this bill would affect marriages that now exist between step-children and parent and questioned if the prohibition against ex post facto application of laws would apply to this situation.

Representative Harper closed by stating the original purpose of the incest laws were to keep bloodlines pure, but there are now other reasons for amending these laws.

CONSIDERATION OF HOUSE BILL 628: Representative Harper, sponsor, advised that this bill will insure a person's right to review of a court order finding him to be seriously mentally ill. HB628 will better protect those people who are civilly committed but are not timely informed of their right to appeal.

Marilyn Gray, a woman who was denied an insanity appeal, testified in favor of the bill and submitted her written testimony (see attached Exhibit "E.")

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek expressed confusion as to why the petitioner would go to the Supreme Court for a fact finding hearing. Counsel advised that as a practical matter, petitioner would receive more thorough relief by going to the Supreme Court rather than going to the District Court Judge who found them mentally ill.

Senator Shaw questioned how many cases this bill will affect. Representative Harper did not have an answer, but emphasized how important the Marilyn Gray case is.

Representative Harper closed by advising the Committee that there is a need to resolve the question of retroactivity of this if this law is enacted. The Supreme Court has said that retroactivity of a law must be stated explicitly.

RECONSIDERATION OF HOUSE BILL 589: Representative Schye advised that he was present to answer any questions regarding this bill. He also advised that Marc Racicot was available to answer any questions.

Marc Racicot, representing the County Attorney's Association, informed the Committee that he had testified before the House Judiciary Committee in favor of this bill. There is currently a conflict between those sections of the statutes which state who is responsible for costs of a jury trial. This bill would state that those people who had court appointed counsel or their own counsel can be required to pay the jury costs.

It was noted that Senator Daniels had requested that this bill be returned to the Committee for reconsideration. Unfortunately, he was not present at this time to ask questions.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 575: Representative Lory, sponsor, advised that the purpose of this bill is to provide a lien for medical practioners and hospitals against payments awarded by the workers' compensation division for medical services. When an award is made for medical and hospital services, it does not pay for the services as he thinks the workers' compensation division has already done so. The hospital is then forced to bring a civil contract action payment. This bill will give medical practioners and hospitals a more effective way of obtaining payments. An amendment was also distributed which would clear up any question of assignment or attachment of payments (see attached Exhibit "F").

PROPONENTS: Chad Smith, representing the Montana Hospital Association, testified in favor of the bill. He stated that it would protect hospitals and medical providers for services payment. HB575 is not directed against insured workmen. It is directed against the insurer who deliberately avoids making medical payments.

Gary Blewett representing the Workers' Compensation Division, supported the bill. He stated that the amendment would protect a worker against civil actions and require the maintenance of any action against the insurer.

Jim Murry, representing the Montana AFL-CIO, advised that he supports the bill with the proposed amendments.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Chairman Turnage asked Chad Smith how it would be known that full liability is accepted by the insurer, as stated in the proposed amendment. Chad Smith advised that this would be known through a written statement or a determination by the Division. Chairman Turnage was concerned with the word "accepted" in the amendment and suggested inserting language which would provide that the insurer is fully liable.

George Wood Executive Secretary of the Montana Self-Insurers Association, explained the acceptance of liability. In his words, once payment is made, acceptance is made. He felt the amendment was good.

Chairman Turnage suggested that the word "full" should be stricken from the amendment. He was advised that "full" is needed for situations where only partial payment is made. Chad Smith indicated it is necessary to make sure that the insurer has responsibility.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 512: Representative McCormick, sponsor, advised that this bill will assure that the injured claimant is not made responsible for attorney fees when a workers' compensation insurer reverses a decision to deny or terminate compensation for a claim.

PROPONENTS: Jim Murry, representing the Montana AFL-CIO, testified in favor of the bill and submitted his written testimony (see attached Exhibit "G").

Karla Gray, representing the Montana Trial Lawyers Association, urged a do pass recommendation from the Committee. She pre-addressed the question of HB512 being an attorney's relief bill. It was her opinion that someone in the end will have to pay for the attorney, but that it was not fair for that somebody to be the insured.

OPPONENTS: George Wood, representing the Montana Self-Insurers Association, testified in opposition to the bill and submitted his written testimony (see attached Exhibit "H"). He felt the bill was unclear and he specifically objected to the "penalty" provision for liability for attorney fees.

Glen Drake, representing the American Insurance Association, also testified in opposition to HB512, as he felt it would add another benefit which would have to be paid for by the insured in one way or another.

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Chairman Turnage questioned if this bill should apply to strictly medical/hospital benefits. It was Glen Drake's opinion that this would not make the bill any better and that it is up to the injured worker to take the responsibility of getting the claim started by submitting the appropriate paperwork when there is an injury so that there is no question to the workers' compensation insurer that a claim exists.

Senator Mazurek felt the circumstances covered in the bill are already adequately covered in current law. Karla Gray advised him that the bill is designed to address pre-ajudication situations.

Chairman Turnage questioned if there are many complaints about the problem addressed by the bill, and he was advised that there are not a lot. He then suggested changing the language to cover only

those instances in which an attorney had to be hired to force the insurer to reverse its position. He felt that if it is necessary for a claimant to hire an attorney to secure a reversal, he should not have to bear the cost of the attorney fees.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 589: Senator Daniels arrived and was informed that Marc Racicot had been present for questions concerning this bill. Senator Daniels was opposed to this bill, as he felt that when the Constitution guarantees a jury trial, the defendant should not have to bear the costs. Chairman Turnage concurred with this assessment. Senator Daniels moved HB589 BE NOT CONCURRED IN. This motion carried unanimously. It was the consensus of the Committee that the Constitution grants a jury trial to an accused, NOT just upon the condition that he can pay for it.

ACTION ON HOUSE BILL 376: The Committee had previously passed a Senate Bill which deals with the grandparents visitation rights; however, it is not as complex as HB376. HB376 gives more guidance to the courts, where as the Senate Bill leaves more discretion. Senator Crippen objected to the language on page 3, lines 7 through 11. Senator Crippen moved to TABLE HB 376. This motion carried unanimously.

ACTION ON HOUSE BILL 577: The Committee discussed SB145 and agreed that it would be wise to legislate that bar examination fees are commensurate with costs. Senator Halligan moved HB577 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 512: The Committee felt that the bill needed to be amended in order for it to be workable. It was suggested that the new language in section 1 should be deleted and a new subsection (2) should be added which would provide that attorney fees are to be paid in the event the insurer denies liability for medical or hospital services and subsequently reverses its decision and honors the claim only because of action by the claimant's attorney. It was determined that the problems lie in small claims. The Committee debated limiting the bill to apply only to medical services. Senator Mazurek felt this area is already covered in the law. It was agreed that as a practical matter attorney fees are paid on all claims where an attorney is retained. Senator Shaw moved to TABLE HB512. This motion carried unanimously,

FURTHER CONSIDERATION OF HOUSE BILL 562: The Committee agreed the bill needed to be amended. Senator Mazurek suggested inquiring of Marc Racicot what the rationale was for eliminating the consent language. The Committee was concerned with marriages between stepchildren and parents and did not want to include adults under the provisions of the bill. Action was deferred for further consideration.

Jean A. Turnage
Chairman

FURTHER CONSIDERATION OF HOUSE BILL 575: The Committee agreed it is necessary to remove the words "fully" and "full" from the amendments proposed by Representative Lory (see Exhibit "F"). Senator Mazurek moved to adopt the amendment with this change. This motion passed unanimously. Senator Mazurek then questioned if subsection (2) of Section 2 should be amended to read "a named beneficiary under the insurance contract." It was agreed that this portion of the bill is complicated and that further consideration should be deferred until a later date.

FURTHER CONSIDERATION OF HOUSE BILL 628: It was agreed that there could be problems making this law retroactive. Since the statute of limitations would be stretched to cover five years, there would be more of a time span to sue someone. It was the consensus of the Committee that if the Committee does do anything, they should amend the bill to require written notice of the right to appeal to be served on the party and the party's guardian. Most Committee members felt this was a bad bill and it would cause everybody who has been involuntarily committed to want their records cleared. It was also suggested that the bill should be amended to provide waiver of the appellate rules which would allow the party to go back to the district court within sixty days. The bill was referred to counsel for review and research.

ADJOURN: There being no further business to come before the Committee the meeting was adjourned at 11:50.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3-7-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)			✓
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

DATE 3-7-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ellen Engle	Am Fed Assn	512		—
Alice Morse	S.W. Mental Health Ctr	562	✓	
Celinda Lake	Women's Lobbyist Fund	562	✓	
Karla Gray	MTLA	512	✓	
George Wood	Montana Self Insurers Assn	512		✓
Earl Lory	Ref Dist Pg	575	✓	
Chas Smith	Mont Hosp Assn	575	✓	
Jim Murry	Mont. AFL-CIO	512	✓	
" "	" "	575	✓	

(Please leave prepared statement with Secretary)

WOMEN'S LOBBYIST FUND
Box 1099
Helena, MT 59624
449-7917

EXHIBIT "A"
March 7, 1983

TESTIMONY OF CELINDA C. LAKE, WOMEN' LOBBYIST FUND, IN SUPPORT OF HB 562, BEFORE SENATE JUDICIARY COMMITTEE ON MARCH 7,1983

The Women's Lobbyist Fund supports HB 562. We were asked by the Montana Incest Prevention Coalition to work on this piece of legislation. Incest is a growing problem of which we are just becoming aware of the magnitude. According to the Family Violence Research Program at the University of New Hampshire, 1 in 30 children is a victim of sexual abuse by a parent or relative. Of all incest cases according to the American Humane Association's study of Child Abuse, 35% of the offenders in sexually maltreated incidents with children are stepfathers. Their studies also show that the average age of onset of sexual abuse is 3 years and the average age of first report of sexual abuse is 7 years.

Figures for Montana are not universally available in the same form, but for Missoula County last year there were 51 reported cases of child sex abuse serviced by the intake service of the Missoula County social services. That was an increase in reporting of 34%, which has been the average increase in the last couple of years. In Missoula County 36% of the cases of sexual abuse involved a stepfather who had not adopted his stepdaughter or stepson. In Lewis and Clark County about 30% of the cases of sexual abuse of children involve a stepfather who had not adopted his stepdaughter or stepson. Under our current incest laws these offenders can not be prosecuted under the incest statutes, but must be prosecuted under the sexual assault statutes. This is common since incest statutes usually describe the offenders in terms of blood relationships. However, the stepfather/stepchild abuse is even more common than the father/child abuse because the incest taboo is diluted in these cases. This is also the fastest growing type of incest being reported. Statewide incest personal believe that it is important to recognize this reality in our incest statutes.

Incest, unlike sexual assault, is a crime characterized by a "pathological paradox" involving the entire family. It is frequently important to the victim and to treatment personel to call and prosecute incest by its real name and thus to recognize the violation of the familial bond. While cases of incest between stepparents and stepchildren can currently now be prosecuted under sexual assault statutes -- that is really a very different type of crime and puts the victim in a very different position in terms of relationship and bond to the assailant and in terms of presumed consent. Calling this crime incest is also important in setting the tone for treating the offender. In incest one goal may be to keep the assailant relating to the victim -- something which is not a goal in sexual assault. Judy Smith of the Incest Prevention Coalition has also found that in some counties in Montana it is a common matter of policy to waive prosecution if the family will go into counseling when the crime charged is incest, but that is not always practiced when the same crime charged is sexual assault.

The other change proposed in HB 562 is to broaden the definition of incest to include sexual contact, as the sexual assault statutes do. Particularly, in a family setting sexual abuse often includes fondling and harassment in early stages when the crime does not yet include intercourse. Under our current incest statutes this crime can not be presecuted as incest.

Many prosecutors hesitate to use the incest statutes even where they are now applicable because charging someone with incest implicitly identifies the victim. It is thus important to point out that HB 562 would not in anyway change the sexual

assault statutes, but would broaden the options open to victims and prosecutors. If prosecuters preferred to use our sexual assault statutes for reasons of anonymity, that option would in no way be changed by this bill. The changes suggested in HB 562 would, however, allow the incest statutes to be more accurately applied to presecute the crimes which are really occurring in families. For these reasons we urge support of HB 562.

EXHIBIT "B"
March 7, 1983

KELLER & GILMER
ATTORNEYS AT LAW
SUITE 18, WHIPPS BUILDING
KALISPELL, MONTANA 59901

ROBERT S. KELLER
BRENDA J. GILMER
Ann C. German

P.O. BOX 1954
(406) 755-1300

March 6, 1983

Senator Jean Turnage
Senate Judiciary Committee
Montana Senate
Capitol Station
Helena, Montana 59621

Re: H.B. 562, regarding the crime of incest

Dear Senator Turnage,

I am writing to urge passage by your committee of H.B. 562, a bill designed to amend the definition of the crime of incest. I had hoped to appear in person to testify in support of this bill, but I just learned today that the hearing will be tomorrow morning, and I am unable to appear on such short notice. I will, therefore, express my views in favor of this legislation and attempt to meet any opposing arguments. (I understand that there has been no adverse testimony to date, but I have discussed the bill with several attorneys who question the need for the amendments.)

I believe that I am well qualified to express my views on this subject as I have spent the last seven years as an attorney advocating the rights of children, and I have worked with many incest victims, both children and adults. I have long thought that the current definition of "incest" in the Montana Criminal Code did not adequately reflect the factual reality of incestuous abuse in Montana families; that is, my experience with incest victims and abusers and related family members demonstrates that the criminal behavior is not merely nonconsensual sexual assault or intercourse, but the violation of the trust relationship between the parent and child. The current statute merely reflects eugenic and moral concerns: the prohibition of marriage between certain family members, for instance, does nothing to prevent the sexual abuse of the six-year-old child by her stepfather.

I have been active in educating the public about incest, and am currently one of the organizers of a state-wide effort to increase awareness of the high incidence of this abuse.

As a side effect of this work, I have met many incest "survivors" (adult women and men) who feel very strongly that their treatment by family members during their childhood has marked them in a tragic and long-lasting way, and they have chosen, through therapy or other ways, to identify themselves as incest victims, not rape victims. As with rape victims in the early 70's, it is recognized by professionals who treat psychological trauma that a large degree of recovery depends upon the ability of the patient to honestly identify the cause of the problem. Although this may not be the primary purpose of a criminal definition, it is true that many of these victims would be regarded as victims of non-differentiated sexual abuse as the familial relationship is not present in the current incest statute.

Similarly, the current definition is not helpful to the social services personnel or the judiciary, as the word "incest" is a word of legal art, and is much broader than the current statutory definition. I have discussed this problem with prosecutors, social workers, teachers and judges, and the majority agree that the definition should be expanded to include "parent" figures who are not related by blood or adoption.

For these reasons, I urge a "do pass" vote by your committee, and I would be happy to talk with you about the bill if you desire. Again, my apologies for my inability to appear personally at the hearing.

Sincerely,

Ann C. German

James B. Wheelis
District Judge

EXHIBIT "C"
March 7, 1983

Missoula County Courthouse
Missoula, MT 59801
(406) 543-7612

February 9, 1983

To the House Judiciary Committee:

I am writing to encourage support of House Bill 562, sponsored by Representative Hal Harper, which would broaden the statutory definition of incest to include assaults by step-fathers upon their step-children.

As a district court judge, I am directly involved with incest cases, and I know that step-fathers are sometimes the offenders. Currently assaults by step-fathers are defined not as incest, but as criminal sexual assault, which ignores the familial nature of the problem, and limits the options of the courts in addressing it.

By including assaults by step-fathers in the definition of incest, HB562 would allow both the courts and the Department of Social and Rehabilitative Services to address this matter as a crime and as a family crisis. I belive the result would be a better opportunity for rehabilitation of offenders, and, more important, reduced trauma and increased assistance to family victims.

Again, I strongly encourage support of HB562.

Sincerely,

James B. Wheelis
District Judge
Fourth Judicial District

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Not Printed at Public Expense

(This sheet to be used by those testifying on a bill.)

EXHIBIT "D"
March 7, 1983

NAME: Alice Morse DATE: 3-7-83

ADDRESS: 1621 6th Ave

PHONE: 442-6107

REPRESENTING WHOM? S.W. Mental Health Center

APPEARING ON WHICH PROPOSAL: HB 562

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

In my practice as a psychiatric social worker, with a specialty in working with children, I have seen in treatment 20 children in the last 9 mos. who are victims of incest and sexual abuse. Of these only 4 were molested by their natural father, 3 by older brothers or foster brothers & 13 or over 70% by step-fathers. Abt 5 or 7 of these youngsters were subjected to intercourse. The other 50% submitted to fondling, oral manipulations, & other sexual acts, but not intercourse.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT "E"
March 7, 1983

HB 628 (Reps. Harper and O'Connell)

HB 628 provides an avenue of Supreme Court review for a mental commitment order, if the person missed his chance to appeal in the normal way because he was not told of his right to appeal.

The proposed procedure is similar to the "post-conviction relief" available to criminal defendants.

The Rules of Appellate Civil Procedure require a notice of appeal to be filed within 30 days of the order, or 60 days if the state is a party. It can be extended for 30 days for excusable neglect.

A person actually in a mental hospital can seek Supreme Court review through a petition for a writ of habeas corpus.

But a person who fails to file a notice of appeal within the time limit and who has been released from the hospital has no way of getting Supreme Court review.

Such is my case.

I was railroaded into Warm Springs State Hospital in December of 1981. I was released in March after 61 days of unjustifiable confinement. A continuing unjustifiable stigma of mental illness hangs over my head, which I want the Supreme Court to remove.

At no point in the commitment proceeding or after was I told of my right to appeal to the Supreme Court.

My court-appointed lawyer didn't tell me, the prosecutor didn't tell me, and the judge didn't tell me, contrary to the clear mandate of Sec. 53-21-114.

Nobody told me about my right to appeal after I arrived at Warm Springs or at any time while I was there, contrary to the clear mandate of Sec. 53-21-168.

I learned about it later - some four months after the commitment order - while being interviewed by a Great Falls Tribune reporter who was doing a series of articles on the mental commitment laws.

After considerable difficulty in trying to find a lawyer to represent me, I undertook to appeal on my own. As soon as I was able to learn the required procedures, I followed them to the letter, which is more than can be said for the County Attorney, who missed

the deadline for filing his response brief by three weeks before seeking an extension.

I filed three separate appeals: an appeal of my commitment to Warm Springs, an appeal of a prior order committing me to the Deaconess Hospital psychiatric ward in Great Falls, and an appeal of a finding of mental illness in an unsuccessful attempt to commit me a year earlier.

I raised and argued a total of 29 issues, mostly relating to my constitutional right to Due Process of Law. They included: lack of probable cause, wrongful detention pending hearing, detention prior to trial in excess of the five-day limit, denial of my right to a jury trial, introduction into evidence of the fact of a prior mental evaluation, trial in absentia, denial of notice, violation of my freedom of religion, and going ahead with a hearing on the date originally set even though it had been reset to a date three weeks later.

At the top of the list of issues and arguments was one that I should be given an exception to the time limit for filing a notice of appeal.

I argued that despite the seeming inflexibility of Rule 5, the court had good reason to grant an exception in my case in particular and in mental commitments in general. A mental commitment is not an ordinary civil action. Because of the deprivation of liberty at stake, it's more a criminal action. A criminal action provides for post-conviction relief in the event that relief was not available by appeal.

In short, I asked the Supreme Court in effect to grant me "post-commitment relief," even though such relief is not spelled out in the law.

The Supreme Court ruled simply that because I had failed to appeal within the time required by the rules, the court had no jurisdiction.

HB 628 would correct this horrendous defect in the rights of the allegedly mentally ill.

Even though I have long since been released from custody, I contend for a multitude of reasons that I was improperly adjudged to be mentally ill. I want that judgment set aside.

"4" 1-83
3

The U.S. Supreme Court declared in Addington v. Texas (1979) that: "It is indisputable that involuntary commitment to a mental hospital after a finding of probable dangerousness to self or others can engender adverse social consequences to the individual. Whether we label this phenomena 'stigma' or choose to call it something else is less important than that we recognize that it can occur and that it can have a very significant impact on the individual."

To put my plight in perspective, ask yourself where you would be today or what your political or career prospects would be if you had been, rightly or wrongly, adjudged mentally ill, whether recently or in the distant past.

My intention is to re-file my appeals as soon as this bill is enacted.

As I understand it, the intent of the bill is that it would be effective for any order within the five years preceding enactment. If the committee thinks that should be explicitly stated, I would ask that it be amended accordingly.

Beyond my own case, however, enactment of HB 628 should put some much-needed teeth into the notice requirements already in the Mental Commitment Act.

Thank you for your consideration.

Marilyn Gray
Missoula

Great Falls woman denied an insanity appeal when Supreme Court says it was filed too late

By FRANK ADAMS
Tribune Capitol Bureau

HELENA — The Montana Supreme Court has refused to consider an appeal by "Shirley Smith" of her insanity commitment to Warm Springs, saying she did not file the appeal within the time required by law.

Ironically, one of the points of her appeal was that nobody informed her of her right to appeal, contrary to a law which requires that people committed to mental treatment shall be so informed.

SMITH, FROM a Great Falls family, was one of the subjects of a 12-part Tribune series on the state's mental commitment laws last May. A pseudonym was used to protect her children from embarrassment.

She claims she was railroaded into the state mental institution by her husband and brother after confronting her husband with her suspicion that he was a homosexual.

She was released from Warm Springs March 2 after 61 days of what she terms "unjustifiable confinement," and is now divorced and living in Missoula with her three children.

A civil appellate rule requires a notice of appeal to be filed within 30 days of the judgment, and allows another 30 days at the discretion of the district judge.

Smith told the Supreme Court she took steps to initiate an appeal as soon as possible after she learned of her right to appeal, which she said was around April 1. She was unable to find a lawyer to represent her, and by the time she figured out what to do and got her notice of appeal in, six months had passed since Judge William Coder's commitment order.

Deputy Cascade County Attorney Barbara Bell asked the Supreme Court to dismiss the appeal, saying her court-appointed lawyer, Robert Tucker, "certainly knew how to file an appeal and, for whatever reason, did not pursue an appeal."

Smith argued an exception should be made to the time limit because the state violated its affirmative duty to tell her about the right to appeal.

The law says every person ordered to undergo mental treatment "shall be advised of his right to appeal the order by the court at the conclusion of any hearing the result of which such order may be entered."

The wording is ambiguous enough that it could be read as requiring the judge to advise the person, or as not saying who shall advise him.

Research for the Tribune series disclosed that in many cases neither the judge, the prosecutor or the defense lawyer provides the information.

Another section of law requires the allegedly insane to be given a statement of "all his rights" under the mental commitment act promptly upon admission to a mental facility.

THE LIST IS also supposed to be posted in each ward. Neither the rights list at Deaconess Medical Center, where Smith was first taken, nor the one at Warm Springs, mentioned the right to appeal. Neither did the list of rights attached to the county attorney's commitment petition.

Smith told the Supreme Court she was astounded that Bell would "seek strict application of the appeal procedures against me when she never attempted to even loosely do her duty to inform me of my appeal and other rights."

She added that once she learned the procedures, "I went to great lengths to follow them, even getting up from my hospital bed after having given birth to a son to drive to Helena to file my brief on time.

"This could be contrasted to Cascade County's lackadaisical approach... when it let three weeks go past its deadline for filing a response brief before asking for an extension."

The three-sentence order dismissing the appeal gave no explanation other than simply stating that Smith had failed to file in time.

That and the fact that it was a "per curium" order, signed only by Chief Justice Frank Haswell, gives no clue as to how well acquainted the seven judges were with Smith's arguments or how many of them actually participated in the order.

Smith raised 11 due process of law arguments in her appeal, including denial of her right to a jury trial.

She also argued there was insufficient evidence for a commitment to Warm Springs, even if she had been given the fair trial she claims she was denied.

Smith filed two other appeals in related cases. Both were dismissed for the same reason.

In a letter to Haswell, Smith expressed confidence the court could find a way around the filing deadline and get to the meat of the issues "if anybody had the conscience to do so."

She claimed the court blew an opportunity to make the courts follow the law in dealing with the allegedly mentally ill.

"Civil and constitutional rights of allegedly mentally ill people are violated every day in the courts of Montana and many people are actually railroaded through the court systems and unjustifiably confined like I was in Warm Springs," she wrote.

"JUDGES, PROSECUTORS, psychiatrists, and policemen are not following proper procedures and laws in apprehending, detaining or committing people in the State of Montana."

She told Haswell she will seek redress in federal court.

EXHIBIT "F"
March 7, 1983

48th Legislature HB 0575/03

Amendments

(1) Amend title

Title, line 7.
Following: 71-3-1112
Strike: AND
Insert: ","

Title, line 7
Following: "71-3-1118,"
Strike: ","
Insert: "AND 39-71-743."

(2) New material

Page 2.

Following: line 8
Insert: "SECTION 3. SECTION 39-71-743, MCA, IS AMENDED TO READ:

39-71-743. Assignment or attachment of payments. (1) No payment under this chapter shall be assignable, subject to attachment or garnishment or be held liable in any way for debts~~.~~ , except as provided in section 71-3-1118, MCA.

(2) After determination that the claim is fully covered under the workers' compensation or occupational disease acts, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if full liability is accepted by the insurer."

EXHIBIT "G"
March 7, 1983

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 512, HEARINGS OF THE SENATE JUDICIARY COMMITTEE, MARCH 7, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO.

We support House Bill 512, because it gives a break to injured workers.

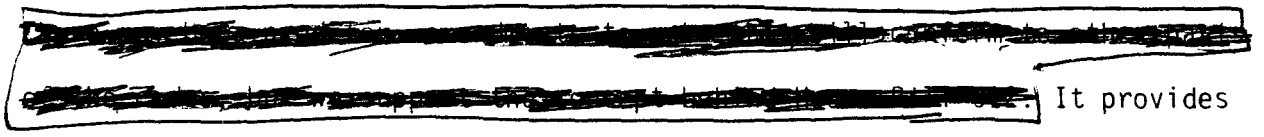
As we understand it, House Bill 512 would basically apply to very small claims which are disputed.

Under current law, if an insurer, either workers' compensation or a private carrier, denies a claim or ends benefits, the injured worker has the right to hire an attorney and contest the denial or termination. If the insurer wins, then the injured worker is out of luck. But if the injured worker wins the court case, either before the workers' compensation judge or in another court, then the insurer has to pay reasonable costs and attorney's fees, as set by the workers' compensation judge.

House Bill 512 only concerns cases in which an injured worker is denied benefits, hires an attorney, and then settles out of court. As far as we know, the typical case when this happens is a minor injury, like receiving a cut on the arm that requires stitches. The worker goes to the doctor, and is back on the job the next day. But in two months, by the time the doctor's bill has reached workers' compensation, and notice has been given to the company, the company refuses the claim, either because the superintendent refused or simply failed to file an accident report. The worker then hires an attorney who points out to the company that the worker had been at work, and left to go to the doctor. The company then relents, so the doctor bill is paid.

1-83

At that point, there has been no court case, so the worker is left with an attorney's fee. This bill is intended to address that inequity.



It provides a little more help to workers who are not seriously injured, who have their doctor's bills paid, but who are left with attorney's bills.

We ask you to support House Bill 512.

EXHIBIT "H"
March 3, 1983

GEORGE WOOD
Executive Secretary

MONTANA SELF-INSURERS ASSOCIATION

Box 2899
MISSOULA, MONTANA 59806
(406) 543-7195

HOUSE BILL 512

MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION AND I ARISE IN OPPOSITION TO HOUSE BILL 512.

THE PRESENT LAW PROVIDES FOR PAYMENT OF ATTORNEY'S FEES AND COSTS WHEN AN INSURER DENIES LIABILITY FOR A CLAIM FOR COMPENSATION OR TERMINATES COMPENSATION BENEFITS WHICH ARE LATER JUDGED COMPENSABLE BY THE WORKERS' COMPENSATION COURT OR ON APPEAL. THE LAW IS BASED ON ASSUMPTION THAT THE SERVICES OF THE ATTORNEY HAS RESULTED IN THE PAYMENT OF BENEFITS TO AN INJURED WORKER AND THE ATTORNEY IS ENTITLED TO BE PAID FOR THESE SERVICES.

THE AMENDMENT "OR IN THE EVENT THE INSURER DENIES LIABILITY AND SUBSEQUENTLY REVERSES ITS DECISION AND HONORS THE CLAIM." THE AMENDMENT IS UNCLEAR. THE SENTENCE TO WHICH THE AMENDMENT IS ATTACHED SPEAKS OF DENIAL OF LIABILITY FOR A CLAIM FOR COMPENSATION OR TERMINATES COMPENSATION BENEFITS. IS DENIAL OF "LIABILITY" AS USED IN THE AMENDMENT MERELY REPETITIOUS OR DOES IT INTEND TO EXPAND THE DENIAL OR TERMINATION BEYOND COMPENSATION?

IT IS UNCLEAR HOW THE TERM "REASONABLE COSTS" WOULD BE APPLIED WHEN AN ATTORNEY IS NOT INVOLVED.

THE VOLUNTARY ACTION ON THE PART OF THE INSURER IN PAYING THE BENEFITS PROVIDED BY LAW WOULD CALL FOR A PENALTY ASSESSMENT, THE PAYMENT OF REASONABLE COSTS AND ATTORNEY'S FEES. THE PAYMENT OF BENEFITS IS NOT AN ACTION WHICH SHOULD CALL FOR THE ASSESSMENT OF A PENALTY, THE PAYMENT OF REASONABLE COSTS AND ATTORNEY FEES. ARE THERE ANY OTHER LAWS THAT REQUIRE A PARTY TO A DISPUTE TO PAY COSTS AND ATTORNEY FEES PRIOR TO ADJUDICATION?

"H" 3-7-83

I'M UNSURE EXACTLY WHAT "HONOR THE CLAIM" MEANS. DOES THE PENALTY APPLY WHEN COMPENSATION IS SUSPENDED IN ACCORDANCE WITH THE LAW AND LATER SUSPENDED IN ACCORDANCE WITH THE LAW AND LATER RE-INSTATED WITHOUT COURT ACTION? DOES THE PENALTY APPLY ONLY TO DENIAL OF LIABILITY AND SUBSEQUENT ACCEPTANCE OF LIABILITY WITHOUT ADJUDICATION? DOES THE PENALTY APPLY WHEN LIABILITY IS NOT ACCEPTED BUT COMPENSATION PAYMENTS ARE MADE ON A BI-WEEKLY BASIS AND LIABILITY IS SUBSEQUENTLY ACCEPTED WITHOUT COURT ACTION?

SECTION 39-71-606, M.C.A., REQUIRES AN INSURER TO DENY LIABILITY WITHIN 30 DAYS OF THE RECEIPT OF A CLAIM FOR COMPENSATION. AT TIMES, ALL AN INSURER HAS AT THE END OF 30 DAYS IS THE CLAIM FOR COMPENSATION AND LIABILITY IS DENIED. WHEN THE NECESSARY INFORMATION IS RECEIVED, LIABILITY IS ACCEPTED AND BENEFITS PAID. WOULD THE PENALTY PROVISION APPLY?

WHEN THE DISPUTE INVOLVES THE AMOUNT OF PERMANENT DISABILITY BENEFITS DUE, MANY COMPLICATING FACTORS ARE INVOLVED AND IF THIS AMENDEMENT APPLIES, THE INSURER WOULD BE REQUIRED TO PAY COSTS AND ATTORNEY FEES IN MANY CLAIMS SIMPLY BECAUSE AN ATTORNEY IS INVOLVED. THE AMENDMENT DOES NOT ADDRESS THE REASONABLENESS OF THE POSITIONS OF THE INSURER OR THE CLAIMANT'S ATTORNEY WHICH MAY HAVE CAUSED THE DISPUTE.

THE AMENDMENT WOULD LEAD TO INCREASED LITIGATION BECAUSE OF THE NEED FOR EVIDENTIARY HEARINGS TO DETERMINE REASONABLE COSTS AND ATTORNEY FEES.

SECTION 39-71-611, M.C.A., DOES NEED AMENDEMENT IN THE INTERESTS OF JUSTICE. IT WOULD BE A MUCH BETTER LAW IF AMENDED ONLY TO REMOVE THE WORD "SHALL" AFTER THE WORD INSURER AND SUBSTITUTING THE WORDS "MAY BE ORDERED TO."

THE BILL UNDER CONSIDERATION IS NOT A GOOD BILL. I WOULD RESPECTFULLY REQUEST THAT THIS COMMITTEE REPORT HOUSE BILL 512, "DO NOT PASS."

Gary Wood

STANDING COMMITTEE REPORT

March 7 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 577

McBride/Halligan

Respectfully report as follows: That House Bill No. 577

third reading bill,

BE CONCURRED IN

~~DO PASS~~

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 7, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 589

Schye (Daniels)

Respectfully report as follows: That House Bill No. 589

third reading bill,

BE NOT CONCURRED IN

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.