

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 18, 1983

The forty-sixth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 18, 1983, at 10:03 a.m., in Room 325, State Capitol.

ROLL CALL: All Committee members were present.

CONSIDERATION OF HOUSE BILL 678: Representative Kitselman, sponsor of this bill, explained that this bill is designed to protect law enforcement officers. It is Representative Kitselman's belief that our law enforcement officers' jobs are complicated enough without criminals having access to armor-piercing ammunition. He also explained that although this bill cannot stop the use of armor-piercing ammunition, it does provide for an additional penalty if this type ammunition is used in committing a crime. Representative Kitselman suggested that HB678 be amended on p. 1, line 20, to read "not to exceed 25 years" rather than "or more than 25 years." Representative Kitselman pointed out to the Committee that HB678 is not intended to inhibit the responsible sportsman.

PROPOSERS: Col. R. W. Landon, representing the Montana Highway Patrol, circulated a bullet proof vest and armor-piercing bullet among the members of the Committee. Col. Landon pointed out that although members of the Montana Highway Patrol are encouraged to wear these bullet proof vests, the vests are not effective against armor-piercing bullets. Col. Landon informed the Committee that seven states have passed similar legislation to protect their law enforcement officers and urged the Committee to pass HB678.

Lewis and Clark County Sheriff Chuck O'Rielly, representing the Montana Sheriff's and Peace Officer's Association, testified that when he first became involved in law enforcement, he received 5-10 weapon-related calls a year. Now, Sheriff O'Rielly receives 5-10 weapon-related calls per week. He testified that the bullet proof vests are a small consolation to the officers who must answer these calls. Sheriff O'Rielly urged the Committee to give favorable consideration to HB678. There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Crippen questioned whether a person could buy armor-piercing ammunition that were regular factory loads. He was told that most of these types of ammunition are loaded by people in their own homes and considered to be "hot loads."

CONSIDERATION OF HOUSE BILL 618: Representative Keyser, sponsor of HB618, stated that this bill merely updates and modifies the Montana Medical Malpractice Act. Representative Keyser testified that this Act works very well. Representative Keyser then reserved the right to close.

PROPOSERS: Gerald J. Neely, representing the Montana Medical Association and Montana Medical Malpractice Panel, circulated an explanation of the proposed Panel Amendments (see attached Exhibit "A") and explained these amendments to the Committee. There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek had questions with the definition of "health care facility" defined on p. 1, line 25 of the bill.

Senator Keyser then closed the hearing by asking the Committee to give this bill a do pass, and requesting Senator Turnage to carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 438: Marc Racicott, testified that HB438 provides three new offenses under the law. These are negligent assault, negligent vehicular assault and negligent endangerment. Mr. Racicott testified that these offenses are set up because our laws currently contain "black holes." He explained these laws could pertain to many child abuse cases, hunting accidents and auto accidents. It is Mr. Racicott's belief that if a person causes an auto accident where another person loses his life, and consequently that person is charged with negligent homicide, that, under the law, if that same person is merely injured, then the person who caused the accident should be charged with vehicular assault. There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Turnage questioned whether negligent vehicular assault applies to any accident in which one of the parties is injured. Mr. Racicott pointed out that the courts would have to use discretion. There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 467: Representative Jensen, sponsor of the bill, submitted proposed amendments (see attached Exhibit "B"), and testified that HB467 is intended to tighten up a coroner's duties. Representative Jensen testified that the only qualifications a coroner must meet is the residency requirement and Representative Jensen believes some situations require more expertise.

PROPOSERS: Representative Brown testified that he feels the job of coroner has little function in our society. He urged the Committee for a favorable consideration of HB467.

Mr. Charles Gravely testified that he does not agree the office of coroner should be replaced by the state examiner. He believes

that this transfer would be cost prohibitive since a doctor would charge much higher fees to sit through an inquest or to go out of town to investigate a traffic accident. Mr. Gravely supports the bill without the amendments offered by Representative Jensen. He urged the Committee to take no action on HB467 until the amendments have been reviewed by the County Coroner's Office. It is Mr. Gravely's opinion that these amendments will not fit into the title of the bill.

Mr. M. E. "Mickey" Nelson, Lewis and Clark County Coroner, testified that even if the word "coroner" were stricken from the bill, the duties of the coroner would always be present. He urged passage of the bill without the amendments offered by Representative Jensen.

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

CONSIDERATION OF HOUSE BILL 662: Mr. Matthew Kniekim, attorney for the Milk River Irrigation District, testified that the Milk River Irrigation District needs to participate in projects such as the one proposed in HB662 in order to generate revenue. He stated that some people believe that a project such as this one could increase the price of utilities; however, it is Mr. Kniekim's belief that this would not be true. Mr. Kniekim explained that the avoided cost--that is the cost of a utility if you had to generate the power yourself--would greatly help the economic needs of the people in the Milk River Irrigation District.

PROPOSERS: Senator Mark Etchart testified that the people of the Milk River Irrigation District should be allowed to compete with other utilities. It is Senator Etchart's feeling that HB662 will allow Montana to use its water more beneficially. Senator Etchart submitted proposed amendments to the Committee (see attached Exhibit "C"). He explained that amendments 1 through 9 simply bring the law to the present status and amendment 10 contains new language. Senator Etchart asked the Committee to pass HB662 with his proposed amendments.

Ms. Jo Brunner, representing Women Involved in Farm Economics, submitted written testimony (see attached Exhibit "D") stating that she supports HB662 because of demand, conservation and the high costs of energy. Ms. Brunner feels that this use of energy as proposed in HB662 would be more cost efficient since the use period would be consistent with the availability period. She urged the Committee for a favorable recommendation.

Senator Hammond circulated a map among the Committee illustrating where the water will come from, where it has to go and what land will be irrigated. Senator Hammond stated that Tiber Dam was created for the benefit of the irrigation district. Upon question from Senator Crippen, Senator Hammond explained that the land needed would be sought by condemnation as provided for in the statutes. Senator Etchart explained to Senator Turnage that this water would irrigate 110,000-250,000 additional acres of land and the proposed powerplant would generate 12 megawatts of electricity. It was explained to the Committee that private financing would be mainly responsible for building the powerplant, and the Bureau of Reclamation would help with the irrigation project.

OPPONENTS: Mr. Steve Brown, representing Montana Renewable Resources, testified that everyone realizes there is a definite water shortage in this area, but there are problems which need to be solved. He stated that while it is true Gillette, Wyoming, is also planning to build its own powerplant, that project will also be challenged because it is not economically feasible. Mr. Brown stated that it will be the responsibility of the taxpayers of Liberty County to pay for the canal crossing roadways and highways. He feels this is an unfair burden on the taxpayers. Mr. Brown stated that power generation is not a simple matter. It is big business to many people outside of Montana. Mr. Brown testified that an \$80,000,000 project such as this one must be economically feasible. It is Mr. Brown's opinion that if we allow the Milk River Irrigation District to operate outside of its own district, we will cause many problems.

Mr. Hugh Brown, Liberty County Public Defender, circulated a map of the 83-mile irrigation ditch. He informed the Committee that Liberty County and the town of Chester have applied for a permit to build a powerplant. He stated the town of Chester and the 8 irrigation districts will not work together on this even though the town has tried to set up meetings with the members of the irrigation district. Mr. Brown does not feel the district should be allowed to obtain water from out of their district.

Mr. John Seidlitz, a resident of Liberty County and the town of Chester, stated that Chester also needs the revenue from a project such as this one and the County of Liberty needs the tax base. It is his feeling that the proposed canal is not economically feasible. Mr. Seidlitz testified that he opposes HB662 and feels private development should be allowed to continue.

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

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Senator Crippen questioned whether the power could be sold to municipalities such as Chester. Mike Zimmerman from The Montana Power Company stated that under federal law, The Montana Power Company would be required to purchase the excess power. Senator Shaw questioned whether the canal would take a lot of water out of the Mirias River. He was informed that the amount of water would not be substantial.

Senator Turnage stated that this project will be quite a burden on the landowners. He wanted to know how the landowners would pay for the project if they had to default on their bonds. Senator Turnage reminded the proponents that they will not have the ability to pass any losses on to the consumer.

The Committee agreed that HB662 would need more consideration.

There being no further business to come before the Committee, the meeting was adjourned at 11:55.



JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 031883

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)	✓		

DATE \_\_\_\_\_

COMMITTEE ON \_\_\_\_\_

# VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Terrance T. Luskett	Mt. Medical Assn	618	✓	
G. Brian Fins	Wt. Medical Assoc.	618	✓	
Lavonne Arnold	MT Medical Assoc	618	✓	
Cerold J Neely	Mt. Medical Officers' Panel	618	✓	
M.E. "Mickey" Nelson	MT Coroner's Assn	467	-	
Col. R.W. London	HIGHWAY PATROL	678	X	
Senator Mark Ethelbert	Senate district 2	662	✓	
Matthew KNIERIM	Milk River Irrigation District	662	✓	
BET HRONEK	SELF	662	✓	
Jay Brunner	W.I.F.K.	662	✓	
Danny Anderson	Self	662		✓
Hugh Brown	self, IMRR	662		✓
Chuck O'Reilly	Mt. Sheriff & Peace officers	678	✓	
Dave Brown	Rep. Dist. 83	467	X	
Senator Hammond				
John E Seiditz f	Liberty County / Chester	662		X
Marvin Cheek	Liberty Co. Comm	662		X
James Giffman	Town of Chester	662		X
Frank Hood	SELF	662		X
Steve Brown	Mt. Renewable Resources	662		X
(				

(Please leave prepared statement with Secretary)

EXPLANATION OF PROPOSED PANEL AMENDMENTS

Section 1 and 3: Name of Panel. The name of the Panel is changed to the "Montana Medical Legal Panel" in these sections.

Section 2: Definition of Health Care Provider. The proposed amendment clarifies the definition by tying it to the licensing statutes and only changes the current statute by eliminating certain government infirmaries, the claims against which can still be handled by the Montana Tort Claims Act, §2-9-101, et. seq., these infirmaries being part of an institution which is not devoted primarily to health care.

Section 4: Change in Assessments. The current provision requires assessment amongst all health care providers on a per capita basis unless the Supreme Court authorizes a different allocation.

In an application to the court, the court indicated that the terms of this section may impose on the court an impermissible legislative task. Thus, without a change by legislation, a change in the method of assessment is not possible.

The proposed change is to place the assessment burden on the physicians, hospitals, and non-hospital health care facilities in the proportion to the number of their groups brought before the Panel.

Through 1982, claims have been closed against health care providers of whom 72% were physicians, 27% were hospitals. One claim has been brought against a non-hospital facility, a total of 4/10ths of 1% of the claims.

Under the current per capita provision, the hospitals, responsible for 27% of the health care providers with claims are paying 5% of the Panel assessment. The physicians, responsible for 72%, are paying 88% of the Panel assessment. The non-hospital health care facilities, responsible for .40%, are paying 7% of the Panel assessment.

The proposed amendment is to set the assessment on the basis of the extent that each group uses the Panel, as determined annually, with members within each group being assessed as follows: hospitals, on a per-bed basis; other health care providers on an equal per capita basis.



Proposed amendments to HB 467

1. Title, line 5.

Following: "STATUTES"

Insert: "LIMITING THE DUTIES OF THE COUNTY CORONER; TRANSFERRING  
CERTAIN DUTIES OF THE COUNTY CORONER TO THE MEDICAL EXAMINER;"

Following: "SECTIONS"

Insert: "3-1-501, 3-15-105, 3-15-203, 7-3-1347, 7-4-2915,  
7-4-2916, 7-4-2923, 25-3-205, 25-3-206, 26-2-503, 27-2-209,  
35-21-307, 37-61-203, 37-61-418, 37-61-419, 39-72-606,  
41-3-201, 41-3-206, 44-3-211, 44-3-213, 44-3-214, 44-3-402  
THROUGH 44-3-404, 46-4-102 THROUGH 46-4-104,"

2. Title, line 6.

Following: "46-4-204"

Insert: "46-4-206, 46-16-304, 49-4-503, 50-15-403, 50-15-404,  
50-15-405, 50-21-103"

Following: "MCA"

Insert: "; REPEALING SECTIONS 7-4-2901, 7-4-2903, 7-4-2911,  
7-4-2913, 7-4-2914, 46-4-101, MCA"

3. Page 1, line 14.

Strike: "coroner"

Insert: "medical examiner"

4. Page 1, line 21.

Strike: "county attorney"

Insert: "medical examiner"

5. Page 2, line 12.

Strike: "coroner"

Insert: "medical examiner"

6. Page 2, following line 14.

Strike: subsection (4) in its entirety

7. Page 3, line 4.

Strike: "coroner"

Insert: "medical examiner"

8. Page 3, line 8.

Strike: "coroner"

Insert: "medical examiner"

9. Page 3, line 13.

Strike: "coroner"

Insert: "medical examiner"

10. Page 3, line 20.

Strike: "coroner"

Insert: "medical examiner"

11. Page 3, following line 24.

Insert: "Section 4. Section 3-1-501, MCA, is amended to read:  
"3-1-501. What acts or omissions are contempts. (1) The

following acts or omissions in respect to a court of justice or proceedings therein are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, ~~coroner~~ medical examiner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as such or improperly conversing with a party to an action to be tried at such court or with any other person in relation to the merits of such action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer."

Section 5. Section 3-15-105, MCA, is amended to read:

"3-15-105. Jury of inquest defined. A jury of inquest is a body of persons summoned from the citizens of a particular district before the sheriff, ~~coroner~~ medical examiner, or other ministerial officer to inquire concerning particular facts."

Section 6. Section 3-15-203, MCA, is amended to read:

"3-15-203. Fees in courts not of record and coroner's inquests. (1) Jurors in courts not of record, in both civil and criminal actions, shall receive a fee of \$12 per day. In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(2) Jurors in coroner's inquests shall receive a fee of \$7.50 per day."

Section 7. Section 7-3-1346, MCA, is amended to read:

"7-3-1346. Department of health. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in this part or part 12, the director of the department of health shall have the powers and perform the duties conferred on and required of coroners medical examiners, and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance."

Section 8. Section 7-4-2915, MCA, is amended to read:

"7-4-2915 Dead bodies to be held pending investigation. A dead body in the custody of a county coroner medical examiner shall be held until such time as the coroner he after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations."

Section 9. Section 7-4-2916, MCA, is amended to read:

"7-4-2916. Removal of a dead body. (1) If a county does not provide a morgue or morgue facilities for the use of the county coroner medical examiner, the coroner medical examiner may use existing hospital facilities for such purposes.

(2) The person lawfully entitled to custody of the deceased person's remains shall be notified of the death as soon as is practicable, and at this time the coroner medical examiner shall obtain permission to release the body to a funeral home.

(3) A post-mortem examination may be conducted at a funeral home when so ordered by the county--coroner medical examiner."

Section 10. Section 7-4-2923, MCA, is amended to read

"7-4-2923. Computation of mileage for reimbursement. When any coroner medical examiner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than 1 mile actually traveled."

Section 11. Section 25-3-205, MCA, is amended to read:

"25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner-of-the-county a deputy sheriff."

Section 12. Section 25-3-206, MCA, is amended to read:

"25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

(a) The sheriff and coroner a deputy sheriff are both parties.

(b) Either of these officers is a party and the process is against the other.

(c) Either of these officers is a party and there is a vacancy in the office of the other.

(d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge thereof that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor."

Section 13. Section 26-2-503, MCA, is amended to read:

"26-2-503. Witnesses in courts not of record -- criminal actions and on coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive \$3 per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return."

Section 14. Section 27-2-209, MCA, is amended to read:

"27-2-209. Actions against local government or local government official. (1) The period prescribed for the commencement of an action against a sheriff, coroner, medical examiner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years; but this subsection does not apply for an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county which have been rejected by the county commissioners must be commenced

within 6 months after the first rejection thereof by such board.

(4) The period prescribed for the commencement of an action against a municipal corporation for damages or injuries to property caused by a mob or riot is within 1 year."

Section 15. Section 35-21-307, MCA, is amended to read:

"35-21-307. When removals excepted. Sections 35-21-305, 35-21-306 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place, nor does it apply to the disinterment of remains upon order of court or coroner the medical examiner."

Section 16. Section 37-61-203, MCA, is amended to read:

"37-61-203. Clerk, sheriff, or coroner may not practice law. The A clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner medical examiner must not, during his continuance in office, practice as attorney and counselor in any court."

Section 17. Section 37-61-418, MCA, is amended to read:

"37-61-418. Attorney may see prisoner. All public officers, sheriffs, ~~coroners~~, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay \$100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction."

Section 18. Section 37-61-419, MCA, is amended to read:

"37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner, or medical examiner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail."

Section 19. Section 39-72-606, MCA, is amended to read:

"39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an

autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the ~~county--coroner--or--a~~ medical examiner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the division."

Section 20. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, ~~coroner~~, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the

injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 21. Section 41-3-206, MCA, is amended to read:

"41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner ~~or coroner~~ shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician."

Section 22. Section 44-3-211, MCA, is amended to read:

"44-3-211. Duties of state medical examiner -- general. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, ~~coroners~~, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology; and

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers; "

(5) performing investigations into deaths and other investigations required by law;

(6) holding inquests; and

(7) performing autopsies."

Section 23. Section 44-3-213, MCA, is amended to read:

"44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, ~~whether by review of a coroner's report or by personal examination~~, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death."

Section 24. Section 44-3-214, MCA, is amended to read:

"44-3-214. Records. Copies of records and detailed findings of inquests, autopsy and laboratory investigations, and other investigations required of the state medical examiner

by law shall be maintained by the state medical examiner's office."

Section 25. Section 44-3-402, MCA, is amended to read:

"44-3-402. Disposition of property of deceased. Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner ~~or the coroner~~ to the appropriate public administrator to be held until disposed of according to law."

Section 26. Section 44-3-403, MCA, is amended to read:

"44-3-403. Burial of corpse. (1) When a medical examiner ~~or coroner~~ takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county."

Section 27. Section 44-3-404, MCA, is amended to read:

"44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than \$500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the ~~coroner or~~ state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death."

Section 28. Section 46-4-102, MCA, is amended to read:

"46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner medical examiner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner medical examiner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner--of--the--county--in--which--death---apparently occurred medical examiner.

(3) In cases where criminal conduct is suspected, the coroner medical examiner shall notify the--state--medical examiner--and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case."



Section 29. Section 46-4-103, MCA, is amended to read:

"46-4-103. Autopsy -- when conducted, record, scope.

(1) If in the opinion of the coroner medical examiner an autopsy is advisable, he shall ~~order one and shall retain a medical examiner to~~ perform it. Performance of autopsies is within the discretion of the coroner medical examiner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner medical examiner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the ~~coroner and~~ medical examiner retaining one copy and delivering the other to the county attorney.

(3) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney ~~or county coroner.~~"

Section 30. Section 46-4-104, MCA, is amended to read:

"46-4-104. Liability of a mortuary or physician. No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner medical examiner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter."

Section 31. Section 46-4-206, MCA, is amended to read:

"46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before ~~the coroner's~~ an inquest jury must be reduced to writing by the coroner medical examiner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner medical examiner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner medical examiner in the same manner as other claims against the county are paid."

Section 32. Section 46-16-304, MCA, is amended to read:

"46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on as a coroner's-jury juror for the inquest which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused."

Section 33. Section 49-4-503, MCA, is amended to read:

"49-4-503. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a

deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a an coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana."

Section 34. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) (a) present the death certificate to the physician last in attendance upon the deceased, ~~the coroner having jurisdiction,~~ or the state medical examiner, who shall certify the cause of death according to his best knowledge and belief; or

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence."

law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial."

Section 32. Repealer. Sections 7-4-2901, 7-4-2903, 7-4-2911, 7-4-2913, 7-4-2914, and 46-4-101, MCA, are repealed.

Section 33. Codification instruction. Sections 8, 9, and 10 are intended to be codified as an integral part of Title 44, chapter 3, part 4."

HOUSE BILL 662: THIRD READING

AMENDMENT

1. Title, line 6.  
Following: "MCA"  
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Page 1, line 10.  
Following: "date"  
Strike: "Irrigation districts"  
Insert: "Districts organized prior to certain date"
3. Page 1, line 11.  
Following: "continue"  
Strike: "engage in"  
Insert: "continue"
4. Page 1, line 13.  
Following: "was"  
Strike: "is"  
Insert: "was"
5. Page 1, line 13.  
Following: "1981"  
Insert: "prior to March 30, 1981,"
6. Page 1, line 14.  
Strike: "or described in 85-7-110"
7. Page 1, line 15.  
Following: "continue"  
Strike: "engage in"  
Insert: "continue"
8. Page 1, line 16.  
Following: "1981"  
Insert: "it conducted prior to March 30, 1981"
9. Page 1, line 17.  
Following: "by"  
Insert: "subsection (1)"
10. Page 1, line 20.  
Insert: "(3) In addition to the authority otherwise provided in this section and Title 85, Chapter 7, MCA, irrigation districts or projects organized under Title 85, Chapter 7 or described in 85-7-110, MCA, may construct, install, operate and maintain facilities to generate, transmit and sell, as well as any associated facilities necessary to that end, electricity using the water power potential of irrigation projects or works or federally owned water impoundment projects where electric power generation facilities have not heretofore been installed and licensed under the Federal Power Act."

AMENDMENT TO HOUSE BILL NO. 662

Continued

Page 2

11. Page 1,

Following: Line 20

Insert: "Section 2. Effective date. This act is  
effective on passage and approval."



# WIFE Women Involved in Farm

NAME JO BRUNNER

BILL NO. HB 662

ADDRESS 563 3rd St. HELENA

DATE March 18, 1983

REPRESENT WOMEN INVOLVED IN FARM ECONOMICS

SUPPORT X

OPPOSE

AMEND

## COMMENTS:

Mr. Chairman, members of the committee my name is Jo Brunner and I represent the members of the Women Involved in Farm Economics organization.

Mr. Chairman, W.I.F.E. concurs with HB 662. We have over the years developed policy that supports development of ~~hydro~~ hydro facilities that would be beneficial to our operations. Many of our members live on irrigation projects and districts and because of the demand for water, for the conservative use of water, and of the cost of electricity-- and burden of use during peak hours, our efforts to turn to more efficient means of irrigation seem to be in conflict with one or the other. If the energy is available it is not cost efficient.

Many of our projects do have existing drops or facilities that hydro development could utilize, and since the use period would be consistent with the availability period, we feel that such development, if cost efficient, would be beneficial. *in this instance specific*

As an example, the Greenfields Irrigation District where I live has at least 2 such drops, and could prove practical.

We ask that you do pass this bill.

Thank you.