MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 21, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, February 21 , 1985, at 7:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. Brown.

CONSIDERATION OF HOUSE BILL NO. 808: Rep. Jack Ramirez, House District #87, sponsor of H.B. 808, appeared and offered testimony. He said this bill is an attempt to clarify the laws on contract for deeds. He said there is quite a bit of uncertainty as to whether or not contracts are enforcable according to the terms.

Joe Gerbase, an attorney from Billings, testified as a proponent to HB 808. He said that some special language was placed in this bill that is not in the Arizona law. The language excludes banks from using contracts for deed as a primary tool for securing loans. That doesn't necessarily mean that if a bank takes an assignment of a contract for a deed after it has been created between two parties, that it would be prohibited from doing so. As a primary financing tool, banks would be relegated using mortgages and trust indentures. It provides, depending upon how much equity a person paid down on the property, a grace period commencing with 30 days up to a maximum of 180 days before the person can be given a notice of default. A second procedure takes place when a person is given a notice of default, and the person has 20 days within which to make his payment. Mr. Gerbase stated that this bill will bring conformity to the laws dealing with contract for deeds.

Terry Carmody, representing the Montana Association of Realtors, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Ramirez closed.

The floor was opened for a questioning period.

In response to a question asked by Rep. Hannah, Mr. Gerbase stated that the supreme court did not decide that the contract was in force order necessarily in First Bank vs. Erickson. They decided that the bank holding those rights

by assignment with the name of both the buyer and seller was a mortgagee, and they had to foreclose it. Mr. Gerbase doesn't feel the decision was necessarily bad. The supreme court may still so decide, but as for the contract for deed, that item would merely be expanded -- for example to apply between the actual buyers and sellers.

There being no further questions, the hearing closed on HB 808.

CONSIDERATION OF HOUSE BILL NO. 807: Rep. Tom Hannah, District #86, sponsor of HB 807, appeared and testified in support of this bill. He said that HB 807 is an act providing for the protection of certain handicapped, injured, or otherwise seriously ill children by requiring that they be given medical treatment. He informed the committee that the language in HB 807 was derived from the Louisiana statute. After the bill was introduced, Rep. Hannah sent it to the Department of S.R.S. and other interested parties to find out their stand. That is when he discovered some real problems with the bill. He said that HB 807 does a lot more and is extended much further than he had intended it to be. Rep. Hannah submitted a copy of the law passed by the U.S. Congress pertaining to this issue. Rep. Hannah introduced HB 807 because he feels that Montana law still does not address the problem properly, and also the federal government has said that our laws must conform with federal statute in order to not jeopardize the position for federal funding. (A copy of the portion taken from the Federal Register was marked as Exhibit A and attached hereto.) Furthermore, Rep. Hannah submitted proposed amendments to HB 807 which were marked Exhibit B and attached hereto.

Jeff Strickler, M. D., chairman of the Montana Chapter of the American Academy of Pediatricians, testified as a proponent. He said that he first came to testify at the hearing as an opponent, but with the proposed amendments, he is in favor of the bill. (He pointed out that pediatricians were prominent in the coalition that helped write the federal law.)

Norma Harris, administrator of Community Services Division of the Department of S.R.S., wished to go on record as supporting this legislation. She stated that Rep. Hannah had mentioned the fact that the original federal regulations regarding the bill were recinded, and new regulations were issued. The comment period is now over, and they expect that the new regulations will be finalized in April or May. She stated that the Division is currently responding to referrals and reports of suspected medical neglect in handicapped individuals and this legislation will really support what the Division has already.

Dr. Don Espeland, a pediatrician and currently on staff at the Department of Health and Environmental Sciences, wished to go on record as supporting this bill.

Gary Strong, a dentist from Billings, testified as a proponent. Dr. Strong is the parent of a child born with Down's Syndrome. He informed the committee that his son is progressing very well both mentally and physically. (His son was present.) He mentioned that experts in the field of Down's Syndrome expect people who are born with the defect can live semi-independent lives if raised properly.

Kathy Eddy and her son, Dustin Eddy, urged the committee to pass HB 807.

Also appearing as a proponent was Bev Glueckert, a Helena housewife, and Rep. Budd Gould wished to be listed as one of the proponents.

There being no further proponents, opponents were given a chance to testify.

Dana B. Copp, M.D., M.P.H., testified as an opponent to the bill. He stated that this child protection bill is well-intended, but suffers from an inherent flaw found in many proposals of this type. This bill attempts to legislate morality and ethical conduct. A copy of Dr. Copp's written testimony was marked as Exhibit C and attached hereto.

There being no questions, hearing closed on HB 807.

CONSIDERATION OF HOUSE BILL NO 797: Rep. Kurt Krueger, House District #69, appeared and offered testimony in support of this bill. HB 797 is an act allowing the joinder of an insurer of a motor vehicle in any action for damages caused by the negligent operation, management, or control of the motor vehicle. It allows the actual insurance company to be named as a party in the action and would remove some of the facade that is presently seen in the system in relation to those who have insurance and those who do not.

Jim Moore, a practicing attorney in Kalispell, testified in support of the bill. Mr. Moore originally introduced this type of legislation in the 1975 legislative session. He further explained the intent of the bill to the committee. He said that today insurance is mandatory, and jurors are still confused during jury deliberations on this fact.

Karl Englund, representing the Montana Trial Lawyers Association, testified in support of the bill. Mr. Englund referred to the rules of evidence dealing with this particular subject. This was originally enacted when not many people had insurance. It was decided at that time that the evidence of insurance was some sort of an admission by a person who had liability auto-

mobile insurance that he was not a good driver so that's why he needed insurance. This bill does not place the issue of the limits in that insurance policy before the jury. It also doesn't allow any inference to be drawn from the fact that a person is insured. This bill simply says that the party who calls the shots in a case ought to be named.

There were no further proponents or opponents, and Rep. Krueger closed.

The floor was oepned to questions from the committee.

In response to a question, Mr. Moore said the whole purpose of this bill is to permit the jury to lay aside the speculation of the insurance question and decide the case on its merits.

Rep. O'Hara wanted to know if awards would be raised as a result of this legislation. Mr. Moore stated that it is possible that some awards may be raised.

There being no further questions, hearing closed on H.B. 797.

CONSIDERATION OF HOUSE BILL NO. 781: Rep. Gary Spaeth, House District #84, appeared as chief sponsor of HB 781, and testified in support of this bill. He said this bill will allow prosecutors the right to appeal from justice's or city courts to district court. It would provide fairness on both sides of the aisle. Rep. Spaeth pointed out that this bill was introduced at the request of the Attorney General's Office. Under the present law, only the defendant can appeal to district court but the prosecutor may not.

Kim Kradolfer, representing the Attorney General's Office, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Spaeth closed. There being no questions from the committee, hearing closed on HB 781.

CONSIDERATION OF HOUSE BILL NO 809: Rep. Harry Fritz, House District #56, testified in support of HB 809 as its chief sponsor. Rep. Fritz said that HB 809 was introduced at the request of the Department of Justice which thinks it is getting ripped off by defense counsel from certain arrests that have been made, particularly by the Department of Fish, Wildlife and Parks and the Department of Justice. The bill eliminates the requirement that expenses must be borne by the state agency -- those agencies who have made the arrests.

Kimberly Kradolfer, representing the Attorney General's Office, testified as a proponent. A copy of her written testimony was marked as Exhibit D and attached hereto. Ms. Kradolfer also submitted the deposition of Clyde Lindell

in the case of State of Montana vs. Marcia Mathias Finley which was marked as Exhibit E and attached. Also submitted were amendments to HB 809 which were marked as Exhibit F and attached hereto.

There being no further proponents or opponents, Rep. Fritz closed.

The floor was opened up for questions.

Rep. Mercer stated that he feels the cost of public defenders is completely out of control. Rep. Mercer asked the question of what is going to keep them from shipping these costs to local government. Ms. Kradolfer addressed this question at length.

Hearing closed on HB 809.

CONSIDERATION OF HOUSE BILL NO. 794: Rep. John Cobb, House District #42, appeared and testified as chief sponsor of HB 794. This is an act to provide for and regulate the interception by law enforcement authorities of wire or oral communications. Rep. Cobb outlined the provisions of the bill.

Harold Hanser, county attorney for Yellowstone County, testified as a proponent to this bill. He said that HB 794 is an investigative tool which Montana law enforcement doesn't presently have. He feels that if we are really concerned with the drug activity that is taking place in this state, HB 794 should be adopted to provide an additional tool. He further pointed out that this bill was simply written based on the federal standard. He feels this bill will provide law enforcement the ability to place organized criminals in prison. He said that Montana has neither the tools nor the resources to deal with organized criminal activity in this state, and that is why Montana has become such a haven for drugs. Mr. Hanser submitted a letter from Byron Dunbar, United States Attorney for the District of Montana to the members of this committee. Mr. Dunbar stated his strong support for this legislation, and a copy of the letter was attached and marked Exhibit G.

Marc Racicot, representing the Attorney General's Office, testified before the committee. He suggested that the committee change a few portions of the bill. He recommended replacing the word "willingly" with the word "purposely" on page 3, line 17 and line 20 of the bill. He said "purposely" is the language used in the general criminal statutes. Furthermore, the change should be reflected in the same manner on page 6, line 16. He said that this is a very strict piece of legislation, but there are those incidents that require the type of investigative technique that this bill would provide.

Mike Schafer, sheriff from Yellowstone County, testified as a proponent to this bill. He informed the committee that he is speaking on behalf of several other counties. He said that as a law enforcement officer, he feels this type of legislation is very much needed.

There were no further proponents.

OPPONENTS: Susan Cottingham, representing the Montana Chapter of American Civil Liberties Union, testified as an opponent. She said the Union has always strongly opposed wire tapping. This is a bill that enables Montana to set up a wire tapping system similar to the federal system, and it is patterned after a lot of the portections that are on the federal level. She read from the ACLU's Policy 251 which has been in existence for over 20 years. She said that a "compelling state interest" determination is very different from probable cause. She asked the committee to look at what is a compelling state interest and how that is distinguishable from the provisions of probable cause in this legislation. She also stated that she had specific problems with section 10 of the bill. She is also concerned that page 19, line 19 through 21, is getting back into the good faith problem. She pointed out that the Montana Supreme Court has appointed a group of attorneys to totally review Title 46 which is the criminal procedure code. She thinks this bill is a very broad and unwarranted intrusion just for the sake of the 10 cases which may be very important and ones in which there may be a lot of interstate drug activity which would, therefore, be subject to the wire tapping under federal law. She further feels this system could be subject to a lot of potential abuse.

There being no further opponents, Rep. Cobb closed.

The floor was opened up for questions from the committee.

Rep. Keyser directed questions to Ms. Cottingham on the subject of what a compelling state interest is. Again, Ms. Cottingham said there are enough problems and loopholes in this bill, and it may certainly be abused.

Following further questions, hearing closed on HB 794.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO 808: Rep. Addy moved that HB 808 DO PASS. The motion was seconded by Rep. Bergene.

Rep. Hannah stated his concern with regards to the grandfather clause. Rep. Addy stated the reasons for the grandfather clause.

Following further general discussion, the question was called, and the do pass motion carried unanimously.

ACTION ON HOUSE BILL NO. 807: Rep. Rapp-Svrcek moved that HB 807 DO PASS. The motion was seconded by Rep. Brown.

Rep. Rapp-Svrcek moved to adopt the amendments proposed by Rep. Hannah during the hearing. The motion was seconded by Rep.Darko and carried unanimously.

Rep. Keyser further moved that HB 807 DO PASS AS AMENDED. The motion was seconded by Rep. Brown and carried unanimously.

ACTION ON HOUSE BILL NO. 809: Rep. Keyser moved that HB 809 DO PASS. The motion was seconded by Rep. Montayne.

Rep. Miles moved to adopt the amendments as proposed by the Attorney General's Office during the hearing. The motion was seconded by Rep. Darko.

Rep. Mercer spoke against the motion to adopt the amendments. He feels these amendments could make the bill ineffective and the language is loosely written.

Rep. Brown said that he has a little problem with saying that we should pay for state courts.

Brenda Desmond, committee researcher, stated that after talking with Rep. Mercer, she suggested that a new subsection (b) be added to Section 2 of the bill which would address his concerns. The language would include:

> "when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

On that note, Rep. Miles moved that the amendments, in addition to the one suggested by Ms. Desmond, be adopted. The motion was seconded by Rep. O'Hara and carried unanimously. (See standing committee report for complete amendments.)

Rep. Brown further moved that HB 809 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 781: Rep. O'Hara moved that HB 781 DO PASS. The motion was seconded by Rep. Addy and carried unanimously.

ACTION ON HOUSE BILL NO. 767: Rep. Brown moved that HB 767 DO PASS. The motion was seconded by Rep. Darko.

Rep. Brown stated that although he doesn't feel this piece of legislation is the way to go, he moved for a do pass because he supports the concept of the bill. However, Rep. Brown pointed out that he had a question about raising the automobile fees. He feels the monies should come out of the general fund.

Rep. O'Hara said that the more distance that we get from local people, the more this system can be abused. He would rather see the county commissioners have some say on this question of restraining court expenses. He doesn't know if HB 767 is the answer.

Rep. Keyser said he likes the bill because it is one of the better bills he has seen which deals with this problem. He said from the testimony given, the counties view this as a major problem. However, he too is hesitant of raising automobile fees.

Rep. Eudaily doesn't like the idea of placing burdens on the counties that have district courts. He also said that he would like to see what happens with other legislation that has been proposed to raise automobile fees.

Rep. Darko argued that this problem needs to be addressed. She doesn't feel that we can continue to treat local governments this way. She said that the legislature is not acting responsibly by not addressing these issues.

Rep. Gould pointed out that this bill could be considered a revenue bill and wouldn't need to be acted upon immediately.

Rep. Brown moved TO TABLE HB 767. The motion was seconded by Rep. Keyser. The question was called, and the motion carried with Reps. Kreuger, Montayne and Darko dissenting.

ACTION ON HOUSE BILL NO 794: Rep. Keyser moved that HB 794 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Addy moved to amend the bill on page 3, line 17 by striking "willfully" and inserting "purposely"; on page 3, line 20, strike "willfully" and insert "purposely"; page 4, line 4, strike "willfully" insert "purposely"; page 4, line 9, strike "willfully" and insert "purposely". Furthermore, on page 13, line 3 following "dangerous;" insert "and". The motion was seconded by Rep. Keyser and carried unanimously.

Rep. Keyser moved that HB 794 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara.

Rep. Mercer moved on page 18, line 3 following "authorized" to insert "and a duplicate recording or transcript of the contents of the communication". The motion was seconded by Rep. O'Hara.

Rep. Addy suggested that the word "recording" be added to Rep. Mercer's amendments. Rep. Mercer moved on page 18, line 1 following "copy" to strike "of" and insert "thereof and a copy of". The motion was seconded by Rep. Hammond.

Rep. Krueger requested that action on HB 794 be delayed on this particular motion.

ADJOURN: A motion having been made by Rep. Keyser, and the motion having been seconded, the meeting adjourned at 10:05 a.m.

Tom Hannah
Rep. TOM HANNAH, Chairman

crf

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/21/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)		✓	
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 21 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 307

FIRST reading copy (WHITE color)

PROTECTION OF CHILDREN BY REQUIRING MEDICAL TREATMENT BE PROVIDED

Respectfully report as follows: That HOUSE Bill No. 307

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Strike: "SECTIONS"
Insert: "SECTION"
Strike: "41-3-102," through "41-3-609," on line 8

2. Page 1, following enacting clause:
Strike: sections 1 and 2 in their entirety
Renumber: subsequent sections

3. Page 5, line 11.
Following: "care"
Strike: "medical" through "otherwise" on line 17.
Insert: ", including the prevention or the withholding of medically indicated treatment,"

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

4. Page 5, following line 12.
Insert: "(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age."
Renumber: subsequent subsections.

5. Page 7, line 1.
Strike: Sections 4 through 10 in their entirety.
Renumber: subsequent section.

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AND AS AMENDED,
DO PASS

STATE PUB. CO.
Helena, Mont.

REP. TOM HAINAN Chairman.

STANDING COMMITTEE REPORT

February 21 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 809

FIRST reading copy (WHITE)
color

ELIMINATE STATE AGENCY RESPONSIBILITY FOR COSTS OF APPOINTED COUNSEL

Respectfully report as follows: That HOUSE Bill No. 809

be amended as follows:

1. Title, line 5.
Following: "AN ACT"
Strike: "ELIMINATING"
Insert: "LIMITING"

2. Title, line 7.
Following: "AGENCY"
Strike: "CAUSING AN ARREST"
Insert: "TO SITUATIONS IN WHICH THE STATE AGENCY PROSECUTES THE CHARGE"

3. Page 1, line 19.
Following: "county"
Strike: "or"
Insert: "agency, state agency, or"

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

6.4. Page 2, following line 17.
Insert: "; and
(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency"

4. Page 2, line 9.
Following: "that"
Insert: ":"

5. Page 2, line 10.
Following: line 9.
Insert: "(a)"

AND AS AMENDED,
DO PASS

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH Chairman.

STANDING COMMITTEE REPORT

February 21 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 781

FIRST reading copy (WHITE color)

PROSECUTOR MAY APPEAL FROM JUSTICE'S OR CITY COURT TO DISTRICT COURT

Respectfully report as follows: That HOUSE Bill No. 781

DO PASS

REP. TOM HANNAH
Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 21 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 308

FIRST reading copy (WHITE color)

FORFEITURE/REINSTATEMENT UNDER CONTRACT FOR DEED FOR REAL PROPERTY

Respectfully report as follows: That HOUSE Bill No. 308

DO PASS

REP. TOM HANNAH Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

EXHIBIT A
2/21/85

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes a new basic State grant requirement to implement the Child Abuse Amendments of 1984 (Pub. L. 98-457). As a condition of receiving State grants under the Child Abuse Prevention and Treatment Act, States must establish programs and/or procedures within the State's child protective service system to respond to reports of medical neglect, including reports of the withholding of medically indicated treatment for disabled infants with life-threatening conditions. Other changes in regulations required by these Amendments will be published as a separate NPRM at a later date.

DATE: To ensure consideration, comments must be submitted on or before February 8, 1985.

ADDRESSES: Please address comments to: National Center on Child Abuse & Neglect, U.S. Children's Bureau, HHS, P.O. Box 1182, Washington, D.C. 20013.

It would be helpful if agencies and organizations submitted comments in duplicate. Comments will be available for public inspection in Room 3758, Donohoe Building, 400 Sixth Street, SW., Washington, D.C. 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 245-2859, or Mary McKeough, (202) 245-2892.

SUPPLEMENTARY INFORMATION:

Background

The Child Abuse Prevention and Treatment Act (Pub. L. 93-247, 42 U.S.C. 5101, *et seq.*) was signed into law in 1974. It established in the Department the National Center on Child Abuse and Neglect. The National Center is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under this Act, the National Center carries out the following responsibilites:

- Makes grants to States to implement State child abuse and neglect prevention and treatment programs.
- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and on-going research on child abuse and neglect, and maintains an information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs and activities, in part through the Advisory Board on Child Abuse and Neglect.

The Act has been extended and amended several times since its passage. Regulations for the State grant and discretionary fund programs are found at 45 CFR Part 1340; the most recent revisions were published on January 28, 1983 (48 FR 3698). The fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands are eligible to apply for State grants. Fifty-one of the fifty-seven eligible jurisdictions meet the requirements of the Act and the regulations and currently receive State grant funds. We will refer to these jurisdictions as "States" in this preamble discussion.

In this Notice of Proposed Rulemaking (NPRM), the Department is proposing to implement a major new requirement of Pub. L. 98-457, the Child Abuse Amendments of 1984. This requirement, found in a new clause (k) in section 4(b)(2), mandates that, as a condition of receiving State grant funds under the Act, States must establish programs and/or procedures within the State's child protective service system to prevent instances of medical neglect, including the witholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from disabled infants with life-threatening conditions. Other changes required in regulations as a result of these Amendments will be published in a separate NPRM.

The amendments add a new program of grants to assist States to meet the requirements of clause (k). In addition, they authorize the Department to fund training, technical assistance, and clearinghouse activities to improve the provisions of services to these infants and their families.

The Child Abuse Amendments of 1984 represent a substantial consensus among many medical, professional, and advocacy organizations that action was needed to adopt protections for disabled infants with life-threatening conditions. This consensus formed the basis for the extensive and cooperative participation in the development of these new statutory requirements, and the development of the "Joint Explanatory Statement By Principal Sponsors Of Compromise Amendment Regarding Services And Treatment For Disabled Infants". (See H.R. Conference Report No. 98-1038, 98th Congress, 2nd Session, 19, 40-4 (1984); *Congressional Record*, H-9805, September 19, 1984.) (These groups include: American Academy of Pediatrics, American Association of Mental Deficiency, American Coalition of Citizens with Disabilities, American College of Obstetricians and Gynecologists, American College of Physicians, American Hospital Association, American Life Lobby, American Nurses Association, Association for Persons with Severe Handicaps, Association for Retarded Citizens, California Association of Children's Hospitals, Catholic Health Association, Christian Action Council, Disability Rights Center, Down's Syndrome Conference, National Association of Children's Hospitals and Related Institutions, National Child Abuse Coalition, National Right to Life Committee, Nurses Association of the American College of Obstetricians and Gynecologists, Operation Real Rights, People First of Nebraska, and Spina-Bifida Association of America.)

In substantial respect, this consensus is an outgrowth of prior efforts to articulate fair and reasonable guidelines to deal with this complex issue, including the landmark "Principles of Treatment of Disabled Infants", issued in 1983 by a broad coalition of leading medical associations and advocacy organizations for the disabled. (*Pediatrics*, vol. 73, no. 4, April 1984, p. 559.). This document stated:

> When medical care is clearly beneficial, it should always be provided. When appropriate medical care is not available, arrangements should be made to transfer the infant to an appropriate medical facility. Considerations such as anticipated or actual limited potential of an individual and present or future lack of available community resources are irrelevant and must not determine the decisions concerning medical care. The individual's medical condition should be the sole focus of the decision. These are very strict standards.
>
> It is ethically and legally justified to withhold medical or surgical procedures which are clearly futile and will only prolong the act of dying. However, supportive care should be provided, including sustenance as medically indicated and relief of pain and

PART B—SERVICES AND TREATMENT FOR DISABLED INFANTS

NEW DEFINITION

42 USC 5102.

SEC. 121. Section 3 of the Act is further amended—

(1) by striking out "this Act the term 'child abuse and neglect' " and inserting in lieu thereof the following: "This Act—

"(1) the term 'child abuse and neglect' ";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding after clause (2) (as added by section 102(3) of this Act) the following new clause:

"(3) the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survivial of the infant and the treatment itself under such circumstances would be inhumane.".

NEW BASIC STATE GRANT REQUIREMENT

SEC. 122. Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)) is amended—

(1) by striking out "and" at the end of clause (I);

(2) by striking out the period at the end of clause (J) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by inserting after clause (J) the following new clause:

Ante, p. 1749.

"(K) within one year after the date of the enactment of the Child Abuse Amendments of 1984, have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.".

ADDITIONAL STATE GRANTS AND ASSISTANCE FOR TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

SEC. 123. (a) Section 4 of the Act is further amended by—

42 USC 5

(1) redesignating subsection (c) as subsection (d), subsection (d) as subsection (e), and subsection (e) as subsection (f); and

(2) inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

Public informatio

"(A) the procedures or programs required under clause (K) of subsection (b)(2) of this section;

EXHIBIT B
2/21/85
HB 807

Proposed Amendments to HB 807

1. Title, line 7.
Strike: "SECTIONS"
Insert: "SECTION"
Strike: "41-3-202," through "41-3-609" on line 8

2. Page 1, following enacting clause:
Strike: sections 1 and 2 in their entirety
Renumber: subsequent section.

3. Page 5, line 11.
Following: "care"
Strike: "required" through "otherwise" on line 12.
Insert: ", including the prevention of the withholding of medically indicated treatment"

4. Page 5, following line 12.
Insert: "(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age."
Renumber: subsequent subsections.

5. Page 7, line 1.
Strike: Sections 4 through 10 in their entirety.
Renumber: subsequent section.

EXHIBIT C
2/21/85
HB 807

WITNESS STATEMENT

NAME DANA B. COPP, M.D., M.P.H. BILL NO. HB-807

ADDRESS 721 CAVE ROAD, BILLINGS, MT. 59101 DATE 2/21/85

WHOM DO YOU REPRESENT? SELF

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

THIS CHILD PROTECTION BILL IS WELL-INTENDED, BUT SUFFERS FROM AN INHERENT FLAW FOUND IN MANY PROPOSALS OF THIS TYPE. IT ATTEMPTS TO LEGISLATE MORALITY AND ETHICAL CONDUCT. ONE DOES NOT HAVE TO BE A STUDENT OF HISTORY TO APPRECIATE THAT SUCH ATTEMPTS HAVE INVARIABLY BROUGHT LITTLE TO SOCIETY BUT DISAGREEMENT, DISRESPECT FOR THE LAW, AND INCREASED HUMAN SUFFERING.

JUDGEMENTS ABOUT THE PROGNOSIS FOR THE MENTAL AND/OR PHYSICAL VIABILITY OF A NEWBORN CHILD, AND THE PROPER RESPONSE TO THOSE JUDGEMENTS, HAS ALWAYS BEEN THE APPROPRIATE CONCERN OF THE PARENTS IN CONJUNCTION WITH COMPETENT MEDICAL ADVISORS. THIS ALLOWS FOR ETHICAL DECISIONS TO BE MADE IN THE CONTEXT OF THE PARTICULAR SITUATION, — CONSIDERING ALL MEDICAL FACTS, RELIGIOUS BELIEFS AND OTHER CIRCUMSTANCES.

IT IS IMPOSSIBLE TO WRITE LEGISLATIVE STANDARDS OR RULES AS A BASIS FOR ETHICAL DECISIONS REGARDING SITUATIONS WHICH ARE INFINITELY VARIABLE.

SIMILAR RULES HAVE BEEN PROMULGATED BY FEDERAL AGENCIES DURING THE PAST TWO YEARS AND WERE SUBSEQUENTLY OVERTURNED BY THE COURTS. WHILE I AM CONFIDENT THAT THESE LEGISLATORS BELIEVE THEY ARE SPONSORING A HUMANE LAW BASED ON CHRISTIAN ETHICS, I AM EQUALLY CONVINCED THAT THEY DO NOT APPRECIATE THE ADVERSE EFFECTS OF WHAT THEY PROPOSE.

I URGE YOU TO CAREFULLY RECONSIDER THIS BILL AND TO SEEK THE ADVICE OF THE AMERICAN ACADEMY OF PEDIATRICS, AS WELL AS OTHER PROFESSIONAL MEDICAL ORGANIZATIONS BETTER ACQUAINTED WITH THE ETHICAL CONSIDERATIONS INVOLVED, BEFORE PROCEEDING. YOU MAY WISH TO READ WORKS BY ONE OF THE COUNTRY'S LEADING SCHOLARS IN MEDICAL ETHICS, — JOSEPH FLETCHER.

Exhibit D
2/21/85

My name is Kimberly Kradolfer and I represent the Attorney General. The Attorney General supports HB809

HB 809--An Act eliminating the requirement that expenses for appointed counsel in a criminal proceeding be borne by the state agency causing the arrest.

This bill will eliminate the requirement that state agencies pay the defense costs resulting from arrest made by state agencies--specifically the Department of Justice and the Department of Fish, Wildlife and Parks.

The requirement was applied to state agencies in 1974 in order to provide defense costs for Department of Justice prosecutions in the Workers' Compensation trials. It has outlived its intended use. It also presents practical problems where the state agency is not actually prosecuting a case but is trying to monitor the costs from a distance.

The act would eliminate the practical problems which have arisen where: (1) there is limited use of the statute but a potential for great use; (2) there is considerable abuse of the statute where it is used; and, (3) there is no practical way to monitor or scrutinize the appointments and payments from a distance.

The Department of Justice receives bills from appointed counsel long after a case is resolved. At that point, there is no way to determine whether: (1) there should have been a challenge to defendant's claim of indigency or a request that some or all of the defense costs be repaid as part of the defendant's sentence; (2) whether a challenge should have been made to defense costs which might not be "reasonable" in light of the nature of the case (not only the offense charged, but the potential defenses possible under the facts of the case). There is not even an indication on most of the orders received of what offense was charged.

---In the last 3 years, all Justice Department payments under this statute have gone to attorneys who were holding the public defender contracts for their county.

---There has been no scrutiny; the district judge signs off on orders prepared by the appointed counsel on the basis of the hours spent on the case. The attorneys are appointed by the JP on the basis of an statement of indigency signed by the defendant. Most of the cases are tried in JP court. The district court often has had no direct contact with the case.
.....there is therefore no incentive for the attorney to be efficient to any degree or to forego meritless appeals and/or meritless defenses.

---There have been cases in which the Department of Justice later discovered that the defendant was not indigent.

---The appointments have been abused
---appealing meritless cases and trying meritless defenses.
---depositions of officers on matters that have nothing to do with the charges on which the attorney was appointed.
---other extensive and unjustified investigations.

HOUSE BILL NO. 809

INTRODUCED BY [signature]

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT EXPENSES FOR APPOINTED COUNSEL IN A CRIMINAL PROCEEDING BE BORNE BY A STATE AGENCY CAUSING AN ARREST; AMENDING SECTIONS 46-8-114 AND 46-8-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county or ~~state--agency~~ local government unit responsible for the expenses of court-appointed counsel as provided for in 46-8-201."

Section 2. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

~~(a)~~ in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; ~~and~~

~~(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest.~~"

NEW SECTION. Section 3. Effective date. This act is effective July 1, 1985.

-End-

INTRODUCED BILL
HB 809

kim

STATE
OF
MONTANA

DEPARTMENT OF JUSTICE

CENTRAL SERVICES DIVISION

[illegible] 215 North Sanders Helena, Montana 59620 (406) 444-3860

Date: January 17, 1985

To: Kim Kradolfer

From: Cindy Foster

Subject: Expenditures for Legal Services Rendered in Polson, Mt.

I have attached a list of the dates invoices were paid from Attorney's Brian J. Smith*, Thomas Kragh* and Keith Rennie* and the name the legal service was rendered to, the hours and minutes charges and the hourly rate of each.

The breakdown by fiscal year is as follows:

Fiscal Year	Hours	Minutes	Total Cost
FY-85 to date	87	436	$3,392.39
FY-84	109	578	$4,279.00
FY-83	73	446	$2,999.75

If I can be of any further help, please let me know.

cc: Col. Robert Landon

* NOTE: Each of these attorneys had been awarded the Lake County public defender's contract for the period in which these claims were made.

DATE PAID	TO	FOR				
11-2-83	Brian J. Smith	Robert Lee Qu				
10-27-83	Brian J. Smith	Wilma Burke				
7-7-83	Brian J. Smith	Joseph L. Arlee				
6-24-83	Brian J. Smith	Wm. P. Irvine				
5-24-83	Brian J. Smith	Peter Stacco				10
4-26-83	Brian J. Smith	Duane D. Matt				4
9-24-82	Keith Rennie	Karl Davis				7
11-24-82	Keith Rennie	Wm. C. Fraley				0
2-22-83	Keith Rennie	Keon Weaselhead				2
3-7-83	Keith Rennie	Betty Ann Watson				10
3-25-83	Keith Rennie	Linda Gardipe		5		55
9-1-83	Keith Rennie	Anthony DuBray		2		12
8-23-83	Keith Rennie	Roger Pablo		2		45
		Keith Mischel		4		$
		Malvern Alsburh		1	15	$35
		Ignace Adams		2	0	$35
		Henry Courville		2	45	$35
					0	$35
				2	3	$45
				5	30	$35 151.2
				2	15	$45
				16	45	$35 94.25
				7	45	$35 78.75
				22	36	$45
				1	45	$35 325.0
					0	$45

DATE PAID	TO	FOR	HOURS & MINUTES @ RATE			TOTAL INV.
1-14-85	Thomas Kragh	Frederick Reevis III		15	$35	8.75
1-14-85	Thomas Kragh	Arla Azure	3	30	$35	127.
1-14-85	Thomas Kragh	Marcia Finley	2	30	$35	87.50
12-14-84	Thomas Kragh	Marcia Finley	10	10	$35	
			1		$45	400.82
12-5-84	Thomas Kragh	Dennis Barnhouse	12	5	$35	
			1	30	$45	490.42
12-5-84	Keith Rennie	Cleo Kenmille	9	30	$35	332.50
11-21-84	Thomas Kragh	Hendrik Huiger	6	15	$35	218.75
10-26-84	Thomas Kragh	Arla Azure	2		$35	
			6		$45	340.00
10-25-84	Thomas Kragh	Frederick Reevis III	3	20	$35	
				50	$45	154.15
10-25-84	Thomas Kragh	Marvin Coe	12	15	$35	
			2	45	$45	518.75
8-14-84	Brian J. Smith	Charles Hammond	2	30	$35	87.50
8-14-84		Nedilita Caye	2	6	$35	73.50
		Joe Arlee	8	55	$35	313.25
8-3-84	Brian J. Smith	Linda Rae Michell	4	50	$35	169.00
		Wilma Jean Bukke	2		$35	70.00
6-28-84	Brian J. Smith	John T. Contume	2	50	$35	101.50
5-11-84	Brian J. Smith	Phillip J. Pierre Sr.	7	48	$35	273.00
4-18-84	Brian J. Smith	Lynn C. Munsell	9	30	$35	332.50
3-6-84	Brian J. Smith	Marvin Bourdon	5	51	$35	204.75
2-9-84	Brian J. Smith	Robin Kallowatt	3	12	$35	
			1	9	$45	163.75
2-6-84	Brian J. Smith	Victor McClure	4	18	$35	150.00
1-23-84	Brian J. Smith	Robert Adams	4	33	$35	159.25
1-30-84	Brian J. Smith	Rose Sheridan	4	0	$35	140.00
1-17-84	Brian J. Smith	Margaret Schwarz	18	0	$35	
			6	0	$45	900.00
		Duane Matt	3	15	$35	113.75
		Martin Doore	3	3	$35	106.75
11-26-83	Brian J. Smith	Twila Azure	1	57	$35	68.25

MONTANA HIGHWAY PATROL

(Servitum Cum Humilitate)

To: KIM KRADOLFER

Date FEBRUARY 1, 1985

From: LT. COL. ROBERT J. GRIFFITH

File No. _____

Subject: THOMAS ALAN KRAGH, ATTORNEY AT LAW

Kim:

I have enclosed a bill from Kragh regarding the deposition to your attention.

I am also enclosing a copy of a bill from Kragh on another matter which I have approved. You can add this to your accumulated expense file.

RJG:sam

Enclosure

Rosscup & Kragh
Attorneys at Law
410 1st Street East
Polson, Montana 59860
(406) 883-9327

January 28, 1985

Montana Highway Patrol
Department of Justice
303 North Roberts
Helena, Montana 59601

Re: State of Montana v. Marcia E. Finley
Cause No. DC-84-71

FEE STATEMENT

December 19, 1984	Telephone conference with Deputy County Attorney; telephone conference with client on continuance of hearing; telephone conference with Judge Wheelis; telephone conference with Clerk of Court. (15 min.)
January 2, 1985	Review of additional Discovery presented by State. (10 min.)
January 14, 1985	Scheduling and preparation of Notice of Deposition and issuance of Subpoenas to potential witnesses. (20 min.)
January 22, 1985	Deposition of Montana Highway Patrol Officer Clyde Lindell. (120 min.)
Total Time Billed:	2 hours 45 minutes at $35.00 per hour...$96.25

ROSSCUP & KRAGH

Thomas Alan Kragh

SO ORDERED THIS 30th DAY
OF JANUARY, 1985

JUDGE

Rosscup & Kragh
Attorneys at Law
410 1st Street East
Polson, Montana 59860

(406) 883-9327

Montana Highway Patrol
Department of Justice
303 North Roberts
Helena, Montana 59601

Re: State of Montana v. Marcia E. Finley
Cause No. DC-84-71

Dear Sirs:

Our firm was appointed by the Court to represent the above referenced Defendant on charges initiated by the Montana Highway Patrol. We are enclosing herein a fee statement for services rendered which has been approved by the Lake County District Court Judge.

Remittance of our fee should be made directly to our office. If you have any questions please feel free to contact our office. Thank you for your cooperation and assistance.

Sincerely,

ROSSCUP & KRAGH

By: Tom Kragh

Enclosure
TAK:sb

Rosscup & Kragh
Attorneys at Law
410 1st Street East
Polson, Montana 59860

(406) 883-9327

January 28, 1985

Montana Highway Patrol
Department of Justice
303 North Roberts
Helena, Montana 59601

Re: State of Montana v. Frederick J. Reevis, III
Cause No. 10-2583-4

FEE STATEMENT

December 14, 1984	Telephone conference with Mrs. Lea Jeager concerning present status of client and enrollment in Galen Alcohol Treatment Program. (15 min.)
January 22, 1985	Receipt and review of January 17, 1985 correspondence from Lea Jeager; transmittal of same to Justice of the Peace and preparation of memo to the file. (15 min.)
Total Time Billed:	30 minutes at $35.00 per hour.....$17.50

ROSSCUP & KRAGH

SO ORDERED THIS 30th DAY OF JANUARY, 1985.

Thomas Alan Kragh

JUDGE

APPROVED BY
LT. COL.

Rosscup & Kragh
Attorneys at Law
410 1st Street East
Polson, Montana 59860

(406) 883-9327

Montana Highway Patrol
Department of Justice
303 North Roberts
Helena, Montana 59601

Re: State of Montana v. Frederick J. Reevis, III
CAUSE NO. 10-2583-4

Dear Sirs:

Our firm was appointed by the Court to represent the above referenced Defendant on charges initiated by the Montana Highway Patrol. We are enclosing herein a fee statement for services rendered which has been approved by the Lake County District Court Judge.

Remittance of our fee should be made directly to our office. If you have any questions please feel free to contact our office. Thank you for your cooperation and assistance.

Sincerely,

ROSSCUP & KRAGH

By: TM Kragh

Enclosure
TAK:sb

Rosscup & Kragh
Attorneys at Law
410 1st Street East
Polson, Montana 59860

(406) 883-9327

Montana Highway Patrol
Department of Justice
303 North Roberts
Helena, Montana 59601

Re: State of Montana v. Billie Warren Phillips, Cause No. 10-2417-4

FEE STATEMENT

September 4, 1984	Initial office conference with client following appointment as counsel; (30 min.) appearance letter to County Attorney and informal request for discovery; (10 min.)
September 10, 1984	Telephone conference with client; (15 min.) telephone conference with County Attorney's Office to remind of discovery request; (5 min.) telephone conference with Justice Court; (5 min.)
September 11, 1984	Conference with Justice Court Judge concerning release of bail; (10 min.) correspondence to client; (15 min.)
September 13, 1984	Telephone conference with client; (10 min.)
September 14, 1984	Preparation of filing of Motion for Production of Evidence; (15 min.)
September 19, 1984	Legal research; (60 min.)
October 1, 1984	File review and organization; (10 min.)
October 5, 1984	Receipt and review of Montana Highway Patrol investigative reports; (10 min.) correspondence and transmittal of investigation reports to client; (5 min.)
November 1, 1984	File review and correspondence to client (15 min.)
November 13, 1984	Telephone conference with client (5 min.)
December 3, 1984	Telephone conference with client and continued file review (20 min.)
December 4, 1984	Telephone conference with Deputy County Attorney concerning potential plea bargain and follow up

December 4, 1984 (Cont.)	telephone conference with client (10 min.); file review (5 min.); second telephone conference with client (10 min.); telephone conference with attorney Brian Smith (10 min.
December 5, 1984	Receipt and review of Officer Caperton's statement (10 min.); telephone conference with Deputy County Attorney on potential plea (5 min.); telephone call to residence of client, left message to return call.(5 min telephone conference with Montana Highway Patrol Officer Phillip Caperton (15 min.) Telephone conference with client (20 min.) trip to the Lake County Sheriff's Department to attempt to meet with Officer Bruce Phillip (5 min.); trial preparation (45 min.)
December 6, 1984	Continued trial preparation (40 min.); preparation of potential jury instructions (20 min.); office conference with Officer Bruce Phillips (30 min.)
December 7, 1984	Telephone conference with client (15 min.) telephone conference with Officer Bruce Phillips (5 min.)
December 10, 1984	Office conference with client (60 min.); continued trial preparation (50 min.); telephone conference with Officer Bruce Phillips (20 min.)
December 11, 1984	Trial preparation (45 min.); actual trial time (360 min. at $45.00 per hour); continued trial preparation over trial recess (60 min.) office conference with client following return of verdict (20 min.)

Total Time Involved: 12 hours 25 minutes at $35.00 per hour = $434.55

Court Time: 6 hours at $45.00 per hour 270.00

Total Amount Due and Owing $704.55

ROSSCUP & KRAGH

Thomas Alan Kragh

Thomas Alan Kragh

SO ORDERED THIS 21 DAY OF ~~DECEMBER, 1984~~ January 1985

JUDGE

would otherwise be entitled to receive bring the respondent within the "common fund doctrine." Accordingly, it is entitled to recover reasonable attorney fees and costs incurred in that effort out of the common fund.

We therefore affirm the order and judgment of the District Court and remand the cause to the District Court for an evidentiary hearing with respect to attorney fees and costs to which respondent is entitled by reason of this appeal. The matter of attorney fees to be awarded on appeal, where proper, is completely within our prerogative, but when, as here, we find an evidentiary hearing is necessary, we request and order the District Court to determine a reasonable attorney fee and costs for appeal and to submit the same to us in an order for our approval. Meanwhile, time for petitions for rehearing and remittitur shall run from the date hereof in the usual course.

HASWELL, C. J., and DALY, HARRISON and SHEA, JJ., concur.

The STATE of Montana, Plaintiff and Respondent,

v.

David Alton BOYKEN, Defendant and Appellant.

No. 81-287.

Supreme Court of Montana.

Submitted Oct. 19, 1981.

Decided Dec. 23, 1981.

A court-appointed attorney sought by motion to have the trial court waive its local rule setting forth a maximum amount of attorney fees. The District Court of the Eighth Judicial District, County of Cascade, Joel G. Roth, J., denied motion, and attorney appealed. The Supreme Court, Haswell, C. J., held that an award to a court appointed attorney for representing an indigent criminal defendant is unreasonable and amounts to an abuse of discretion regardless of local rules when attorney submits an affidavit from his accountant showing that his overhead costs alone for period of time that he worked on case exceeded award, leaving nothing to be applied toward his own support.

Reversed and remanded.

1. Attorney and Client ⇐132

Fees awarded to a court-appointed attorney for representing an indigent criminal defendant must reimburse the attorney for office overhead and expenses and yield something toward his own support. MCA 46-8-201(1).

2. Attorney and Client ⇐132

An award to a court-appointed attorney for representing an indigent criminal defendant is unreasonable and amounts to an abuse of discretion regardless of local rules when attorney submits an affidavit from his accountant showing that his overhead costs alone for period of time that he worked on case exceeded award, leaving nothing to be applied toward his own support. MCA 46-8-201(1).

Joe Bottomly argued, Great Falls, for defendant and appellant.

Mike Greely, Atty. Gen., Helena, J. Fred Bourdeau, County Atty., Randall Snyder argued, Deputy County Atty., Great Falls, for plaintiff and respondent.

Lawrence Anderson and Daniel Donovan, Great Falls, for amicus curiae.

HASWELL, Chief Justice.

Joe Bottomly, a court-appointed attorney, moved the District Court to waive its local rule which sets forth a maximum amount in attorney fees to be awarded a court-appointed attorney for representing an indigent criminal defendant. The District

Standards for awarding fees

Court denied the motion and Bottomly appeals. We reverse.

Bottomly was appointed by the District Court of the Eighth Judicial District to represent David Alton Boyken. Boyken had been charged with three felonies: aggravated assault, robbery and felony theft. A trial on these charges began on March 26, 1981, and lasted for four days. After deliberating for over nine hours the jury returned verdicts of acquittal on the robbery and aggravated assault charges but was unable to reach a verdict on the felony theft charge.

Following the trial, Bottomly moved the District Court for compensation and submitted an affidavit itemizing his work hours and expenses. He requested a total of $3,431.98 for 129.5 hours of out-of-court time at $20.00 per hour, 27 hours of in-court time at $30.00 per hour, and $31.98 for expenses. The District Court denied his request and limited his compensation to $1,000 for attorney fees plus $31.98 for expenses.

Rule 45 of the Rules of the Eighth Judicial District Court provides that a court-appointed attorney shall be compensated at a rate of $30.00 per hour for in-court time and $20.00 per hour for out-of-court time. However the rule also provides that such compensation shall not exceed $1,000 in a case in which one or more felonies are charged unless the case is an extended or complex representation.

The District Court concluded that this case was not the type of case contemplated by Rule 45 for allowing fees in excess of the $1,000 maximum. In his order denying Bottomly's request and setting attorney fees at $1,000, the District Court judge noted that more than the usual number of outside attorneys were being appointed to represent indigent defendants charged with criminal offenses. The judge also noted that an unknown amount of expenses still had to be paid out of the District Court's budgeted funds.

On April 17, 1981, Bottomly moved the District Court to reconsider its order. A hearing was held and Bottomly submitted the affidavits of three experienced criminal lawyers which stated in substance that the case was complex from both a legal and factual standpoint, that the number of hours spent by Bottomly was reasonable and that a private attorney handling a similar case would charge at least $50.00 per hour. An affidavit from Bottomly's accountant was also submitted showing that Bottomly's share of his firm's monthly overhead for the time he spent on this case was approximately $1,006.20.

The District Court reaffirmed its earlier order and Bottomly appeals.

The following issues are presented for review:

1. Whether the District Court abused its discretion in this case in limiting the award of attorney fees to $1,000.

2. Whether the award of attorney fees in this case constitutes an unconstitutional denial of the indigent defendant's right to effective assistance of counsel.

3. Whether the District Court's award of attorney fees violates the Fifth and Fourteenth Amendments to the United States Constitution and corresponding sections of the 1972 Montana Constitution by taking defense counsel's property without just compensation or by denying him equal protection of the laws.

4. Whether a Montana District Court has inherent authority to order that court appointed counsel be compensated.

To determine whether the District Court abused its discretion in limiting Bottomly's fees to $1,000 it is necessary to refer to section 46-8-201(1), MCA. It provides:

> "Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding."

This statute requires that a "reasonable compensation" be paid a court-appointed attorney.

This court has adopted guidelines to be followed when awarding a court-appointed attorney reasonable compensation. They are as follows:

"'The fee need not be of an amount equal to that from a paying client, but should strike a balance between conflicting interests, including the professional obligation of a lawyer to make legal counsel available and the increasingly heavy burden on the legal profession created by expanded indigent rights. Court appointed counsel should neither be unjustly enriched nor unduly impoverished, but *must* be awarded an amount which will allow the financial survival of his practice. A county *shall* pay a reasonable amount for all professional services which are not donated.

"'Elements of consideration in fixing fees include: the amount of time and effort expended; the nature and extent of the services rendered; the fees paid for similar services in other jurisdictions; the traditional responsibilities of the legal profession; the amount of public funds made available for such purposes, and a judicious respect for the tax paying public as well as the needs of the accused.'" *State v. Allies* (1979), Mont., 597 P.2d 64, 36 St.Rep. 820, citing *State v. Lehirondelle* (1976), 15 Wash.App. 502, 550 P.2d 33.

[1] A court-appointed attorney must be awarded an amount that will allow the financial survival of his practice. We agree that "fees awarded appointed counsel must reimburse the attorney for office overhead and expenses and yield something toward his own support." *People v. Johnson* (1981), 93 Ill.App.3d 848, 49 Ill.Dec. 235, 417 N.E.2d 1062.

In *Allies*, supra, this Court set forth a guideline regarding the maximum hourly rate to be awarded a court-appointed attorney. This guideline was abolished in *In re Petition to Adopt Rule, Etc.* (1981), Mont., 634 P.2d 1185, 38 St.Rep. 1613, but the other guidelines set forth in *Allies*, supra, remain in effect.

[2] In this case the District Court did not indicate that it had ever considered the guidelines set forth in *Allies*, supra, when it determined that Bottomly should be awarded the $1,000 maximum established by its own local rule. The $1,000 award is not reasonable compensation in this case and the District Court abused its discretion in limiting Bottomly's compensation to this amount. Bottomly submitted an affidavit from his accountant showing that his overhead costs alone for the period of time that he worked on this case exceeded the $1,000 award, leaving nothing to be applied toward his own support. Regardless of its own local rules, a District Court must award an amount which will allow for the financial survival of the court-appointed attorney's practice, and the elements set forth in the *Allies* case must be considered when fixing a fee.

Since we have determined that the award of attorney fees in this case was unreasonable, we need not address the remaining issues raised in this appeal.

We reverse and remand this case to the District Court for a reconsideration and redetermination of the award of attorney fees following the guidelines set forth in *Allies*, supra, as modified by *In re Petition to Adopt Rule, Etc.*, supra.

MORRISON, HARRISON, SHEEHY, WEBER, SHEA and DALY, JJ., concur.

Appropriate review by District Court in awarding fees

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF RAVALLI

* * * * * * * * * * *

FILE

THE STATE OF MONTANA, Plaintiff, -vs- JERRY THOMAS KORELL, Defendant.	)	No. CR-82-49 ORDER AFFIXING MARGARET A. STELL ATTORNEY'S FEES AND APPROVING CLAIM

* * * * * * * * * *

The Court has received and carefully reviewed the claim of John C. Doyle, appointed attorney in this matter.

In this matter, the Court now determines that a reasonable attorney's fee is the sum of $12,000.00.

An explanation of this amount is necessary. The total claim submitted by the appointed attorney and his part for all services, including out-of-pocket expense is the sum of $24,515.53.

The nature of the defense was mental disease or defect. Most of the effort of the defense counsel was direc to obtaining facts which are best characterized as history. Indeed, the proof presented by the defense at the trial consisted of the testimony of relatives and friends in regard t prior acts and activities of this defendant. While this had some interest, it was largely irrelevant. This information need not be heard by the jury. It is foundational evidence to the testimony of the experts and might well have been admitted by their testimony as history where it was relevant Because of its irrelevant nature, it mainly became evidence centered upon sympathy for the defendant.

While some investigation of the happenings at the scene of the offense were required of defense counsel, these appear to have been carried to absurd lengths. There was no contest as to the happenings. No evidence contrary to the victims' description appeared. No ballistic or other expert evidence was indicated or utilized. Counsel originally told the Court that it would be necessary to enter into a complet investigation of those facts and yet counsel did not utilize information available through the Sheriff's office. Indeed, at a hearing in December of 1982, the defense counsel attemp to get the Court to dismiss the charges because the State ha destroyed evidence. The testimony at that hearing shows tha the defense did not attempt to utilized in any way the evide available from the State. Rather, the thrust of that hearin was that since the County Attorney and the Sheriff had autho the victims to repair the demolition to their house that the State had participated in the destruction of evidence;

The defense insisted that it had some new theory involving the Montana statutes on mental disease or defect. They attempted to get a Writ of Supervisory Control and were

RECORDED

unsuccessful.

In State v. Poyken, 38 St.Rep. 2184, the Supreme Court adopted these guidelines for the Court in determining reasonable compensation:

> ""'The fee need not be of an amount equal to that from a paying client, but should strike a balance between conflicting interests, including the professional obligation of a lawyer to make legal counsel available and the increasingly heavy burden on the legal profession created by expanded indigent rights. Court appointed counsel should neither be unjustly enriched nor unduly impoverished, but must be awarded an amount which will alow the financial survival of his practice. A county shall pay a reasonable amount for all professional services which are not donated.
>
> "'Elements of consideration in fixing fees include the amount of time and effort expended, the nature and extent of the services rendered, the fees paid for similar services in other jurisdictions, the traditional responsibilities of the legal profession, the amount of public funds made available for such purposes, and a judicious respect for the tax paying public as weel as the needs of the accused.'" State v. Allies (1979), ___ Mont. ____, 597 P.2d 64, 36 St.Rep. 820, citing State v. Lehirondelle (1976), 15 Wash.App. 502, 550 P.2d 33."

The Court concludes then:

1. That the defense of this case was not particularly complicated nor would an experienced lawyer have required endless hours of research.

2. In the general community of Montana, a paying client would have been able to have received this same defense for the amount hereinapproved by the Court, namely $12,000.00 through complete trial and post-trial motions in the District Court.

3. That the sum hereinawarded will neither unjustly enrich nor unduly impoverish the counsel for the defense and this amount will assure the financial survival of his practice.

4. The Court has considered the amount of time claimed in the attorney's claim and while the Court finds and concludes that counsel did spend the stated time upon this case, that much of the effort was either misdirected or expended because of the inexperience.

5. This Judge has been called upon in the general area west in Montana to fix attorney's fees in this type of case numerous times and believes that the amount fixed in this case to be fair and equitable based upon that experience.

6. Lastly, must be added a philosophical note. Couns for the defendant made many demands as this case progressed for the expenditure of money. He claims that he has a "right" to every service that might be available to him. I do not believe that is the rule. I believe that the rule is the right of presenting a "reasonable defense", one which a person paying their own way in life would reasonably finance. Just because the public coffers are available does not mean that the defendant has a right of exploring every highway and bi-way in this vast field of litigation and then expect the public to foot the bill. It seems in this case that was the approach.

7. As stated above, the allowance of the sum of $12,000.00 covers all claims submitted by the defense counsel through the post-trial motions in the District Court.

DATED March 16, 1983.

ROBERT M. HOLTER
District Judge

IV. SENTENCING

[12] Four doctors testified before the jury concerning Korell's mental condition. The State produced Dr. Herman Walters, Ph.D., a clinical psychologist, and Dr. Verne Cressey, M.D., a psychiatrist. The defendant called Dr. William Stratford, M.D., a forensic psychiatrist, and Dr. Michael Marks, Ph.D., a clinical psychologist. Additionally, a psychiatrist, Dr. Noel Howell, M.D., was retained by the defense and filed an evaluation with the court although he did not testify.

These expert witnesses were allowed to express their opinions concerning Korell's medical diagnosis, whether he suffered from mental disease or defect at the time of the shooting, his capacity to form the requisite intent and his ability to control his behavior. Additionally, Dr. Stratford was called to testify at the sentencing hearing on his recommendations for treatment of Korell. All the doctors filed written evaluations with the court.

Immediately after announcing sentence, the trial judge stated:

> "I'm going to address myself in regard to your mental condition. Let me say that the jury heard the evidence by all of the various doctors in regard to your mental condition. The jury reached their conclusion after some twenty-four to twenty-six hours, and in that conclusion they found that you were responsible and that you did have the mental state required by the statute. For me to indulge otherwise would amount to nothing but nullification of the jury's effort, and I will not do so."

This pronouncement flies in the face of the court's basic duty to independently evaluate the defendant's mental condition. The trial judge's refusal to act compels this Court to vacate the defendant's sentence and remand for resentencing.

As Part I of this opinion established, whenever mental disease or defect is put in issue, the trial judge must review the defendant's mental condition prior to sentencing. Deferring to a jury verdict indicates a misunderstanding of the distinct roles of the jury and court.

[13] The jury has a narrow duty under the statutes: to consider mental disease or defect insofar as it relates to criminal state of mind. The fact that a jury has found the existence of a requisite mental state does not conclusively establish the defendant's sanity or fitness for penal punishment. That determination must be independently made by the sentencing judge and the record must reflect the deliberative process.

If problems of cruel and unusual punishment of the insane are to be avoided, the sentencing judge must faithfully discharge the review duties of sections 46-14-311 and 46-14-312, MCA. The sentence is vacated.

V. ATTORNEY FEES

[14] As a final matter, defense counsel appeals the order affixing his attorney fees. The court determined that reasonable fees for Korell's defense were $12,000 and awarded the appointed attorney this amount. Counsel contends that the amount is unfair in light of the defense presented.

This Court has adopted guidelines to be followed when awarding a court-appointed attorney compensation. Those guidelines are set forth in *State v. Boyken* (1981), 196 Mont. 122, 637 P.2d 1193, and the District Court order at issue. That order reflects that the District Court properly considered the *Boyken* factors of time expended, nature of the defense, fees paid for similar services elsewhere, public funds available, the responsibility of the legal profession, and needs of the accused. Having so reached its decision, we will not disturb the trial court's award of fees.

We remand this cause to the District Court for resentencing consistent with this opinion.

WEBER, HARRISON and GULBRANDSON, JJ., concur.

MORRISON, Justice, and dissenting in part.

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MTSCt upheld Korell fees awarded by district court

EXHIBIT E
2/21/85
HB 809

85-92

MARTIN
LAKE & ASSOCIATES OFFICIAL-FREELANCE COURT REPORTERS

199 West Pine • P.O. Box 7765 • Missoula, Montana 59807
MISSOULA – 728-0568

ATTORNEY GENERAL'S OFFICE
HELENA, MONTANA
FEB 19 1985
RECEIVED

February 13, 1985

Larry Nistler
Deputy County Attorney
Lake County Courthouse
Polson, Montana 59860

Re: State of Montana vs. Marcia Mathias Finley
Cause No. DC-84-71

Dear Mr. Nistler:

Attached please find a copy of the deposition of CLYDE LINDELL in regard to the above cause of action, as well as a sheet entitled "Corrections to Deposition." Please have Mr. Lindell read your copy of his deposition and make any corrections on the correction sheet. Please return the correction sheet to our office and we will attach same to the original deposition and file with the Court.

Since Court rules require that depositions be filed promptly, unless we hear from you within approximately thirty (30) days, an affidavit will be attached to the deposition setting forth the reasons for filing without the witness' signature.

Thank you.

Sincerely,

MARTIN-LAKE & ASSOCIATES

Barb Mount
Secretary

Attachments

cc: Thomas Kragh, Esq.

DEPOSITION OF CLYDE LINDELL

State of Montana vs.
Marcia Mathias Finley

Cause No. DC-84-71

EXHIBIT F
2/21/85
HB 809

PROPOSED AMENDMENTS TO HB 809, INTRODUCED COPY

1. Title, line 5
   Following: "Entitled: 'An Act'"
   Strike: Eliminating
   Insert: "Limiting"

2. Title, line 7
   Following: "agency"
   Strike: Remainder of line 7 and line 8 through the word "arrest"
   Insert: "to situations in which the state agency prosecutes the charge"

3. Page 1, line 19
   Following: "county"
   Insert: "agency"
   Following: "or"
   Insert: "state agency or"

4. Page 2, line 13
   Following: "arose"
   Insert: "; and
   (b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by the ~~state agency~~ person, agency, or which made the charge, the expense must be borne by the prosecuting state agency."

EXHIBIT G
2/21/85
HB 794

U.S. Department of Justice

United States Attorney
District of Montana

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Post Office Box 1478
Billings, Montana 59103

406/657-6101
FTS/585-6101

February 20, 1985

Honorable Tom Hannah, Chairman
Honorable Dave Brown, Vice-Chairman
Honorable Kelly Addy
Honorable Toni R. Bergene
Honorable John Cobb
Honorable Paula Darko
Honorable Ralph Eudaily
Honorable R. Budd Gould
Honorable Ed Grady
Honorable Joe Hammond
Honorable Kerry Keyser
Honorable Kurt Krueger
Honorable John Mercer
Honorable Joan Miles
Honorable John Montayne
Honorable Jesse O'Hara
Honorable Bing Poff
Honorable Paul Rapp-Svrcek

Re: Need for Montana State statute addressing interception of oral communications.

Dear Members of the House Judiciary Committee:

In support of House Bill 794 now being considered in the Montana Legislature, as the U. S. Attorney for the District of Montana, I would like to present my views regarding the urgent need for such legislation.

Presently it appears that 29 states plus the District of Columbia have a state interception of oral communication statute of some type. Sister states that have similar statutes are Washington, Oregon, Idaho, Colorado, South Dakota, and Nebraska. In addition, Canada, our neighbor to the north, has for many years had a much broader ability to intercept oral communication of a suspect.

The type of persons or organizations that are being investigated are impossible to investigate by traditional law enforcement methods. Therefore, because of sophisticated techniques known and used by criminals, and in particular organized crime, it is necessary to

employ undercover techniques; and, in addition thereto, the interceptions of oral communication are necessary for the following reasons:

a. There is a drastic need, and in particular in this day and age, to corroborate undercover investigative techniques and undercoyer operatives testimony.

b. At the state level one of the last reasonable methods for the state investigators to employ is to request federal involvement and ask for a Title III order; however, this necessitates a federal violation in order to coordinate with federal agencies in attempting to obtain and maintain an interception.

c. This is a method of deriving direct evidence and not just circumstantial evidence.

d. Hearing a defendant's voice making plans and arrangements before a jury makes a much better case for prosecution.

e. Conspiracy cases are enhanced where knowledge of the plan and agreement are necessary elements.

f. Numerous other defendants are found from interception information that would never have been discovered otherwise, as each person or member's part in a conspiracy is important and revitalizes and allows the conspiracy to grow and flourish.

g. Enlightened organized crime persons do not get themselves involved in handling criminal instruments, such as narcotics or monies in the form of cash that need to be laundered. Yet, at the same time, these individuals defined as the leaders, or the hierachy, keep track of their organization or organizations and direct or orchestrate the criminal activities by oral communications through utilization of the telephone, personal beepers, and other modern means of communication.

Hand-in-hand with the urgent need for a state interception statute is the need to protect an individual's expectation of privacy. The proposed statute at the state level is identical to the federal statute. That is, an application by affidavit must on its surface clearly indicate a crime being committed by the person to be intercepted. Contained in the affidavit is a statement and verification that all traditional investigative means have been utilized and they haye failed or are not fruitful; and therefore, an oral interception is the only means available to prove the offense. The Court is in control of all authorized interceptions and the person making the interception must be and is accountable to the Court by reporting to the Court under oath and advising the Court on all the safeguards that haye been taken. The important safeguard of minimization is interpreted as allowing only those conversations attributable to the criminal offense to be monitored and recorded. In addition, the supervising attorney must daily monitor the activities of an interception to insure there is no breach of individual privacy and no monitoring of conversations not related to the criminal act.

These built-in assurances guarantee the extraordinary judicial control involved in oral interception statutes. These few factors refute any notion of excessive use or abuse of such a statute. In addition, evidence received in violation of a Court authorized interception would be suppressed; and the threat of criminal or civil action to the attorney or investigator violating the Court order maintains the integrity of the process.

The excessive use of organized criminality points out that in order to successfully prosecute these prohibited actions that the effective use of oral interception must be accomplished.

Statistics indicate that intercepts are used to investigate the following categories of crimes: narcotics, bribery, theft, counterfeiting, gambling, and extortion.

It has been the intent of this office to endeavor to coordinate investigation activities against organized crime as it exists in Montana and to offer all resources available to extinguish the problem, This concept is based upon a poll that most law enforcement officials in Montana, including sheriffs, city police, county and city prosecutors, and federal enforcement agencies, believe that narcotics is the single most important criminal matter to be investigated in our state. This law enforcement poll revealed with equal consensus that the necessary tools in the form of a state oral interception statute was not available to deal with major narcotic distributors. The federal law is not effective as it is strictly limited to those priority cases established by a Task Force Committee meriting its utilization.

I have personally met with all Drug Task Force groups in the Mountain States area and have been informed that such an intercept law is the single most important implement used to attack the insidious drug distributors that have invaded our boundaries. It is inconceivable to me that we can use the concept of expectation of privacy to the detriment of parents, school children, and law abiding citizens to have our state recognized as a haven for the drug distributor and smuggler. The Omnibus Crime Bill which established the prerogative of the states to enact legislation on its own for the purpose of intercepting oral communications was an announcement to each state that interception statutes are absolutely essential if we are to deal effectively with the sophisticated crime we are now experiencing.

I overwhelmingly and without reservation support the use of interceptions of communication as proposed in House Bill 794.

Sincerely yours,

Byron H. Dunbar

BYRON H. DUNBAR
UNITED STATES ATTORNEY

BHD/mjl

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 781 (Spaeth); 794 (Cobb); 797 (Krueger); 807 (Hannah) ~~808 (Ramirez); 809 (Fritz)~~ DATE February 21, 1985

SPONSOR _____

Please state bill #808

NAME (please print)	~~RESIDENCE~~ REPRESENTING	SUPPORT	OPPOSE
Joe Gerbasi	Anderson, Brown, Gerbase Cebull & Jones, P.C.	✓	
Karen Larson HB807	self	✓	
Dyane Sands HB 807	M.T. Pro-Choice		✓
Kathy Eday HB 807	Right to Life	~~✓~~	
Norma Hubert HB807	SRS	✓	
~~Beverly Blueskert HB807~~	~~myself~~	~~✓~~	~~✓~~
~~Margaret Tripplehorn HB 807~~	~~self & family~~	~~✓~~	~~✓~~
Jim Moose HB 797	self	✓	
Kurt Krueger HB884	Attorney General	✓	
Judy Olson HB 807	MT Nurses' Assoc.		
Beverly Blueskert HB 807	self & family	✓	
Maggie Tripplehorn HB 807	self & family	✓	
Robert D Pratt HB819	MT Ob Gyn Assoc MT Funeral Directors Assn	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. 794 DATE February 21, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Harold Hanser	Billings	✓	
Mike Schafer	Billings	✓	
Susan Cottingham	Helena Mt ACLU		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.