MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 22, 1985

The eleventh meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on January 22, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

Chairman Mazurek turned the chair over to Vice Chairman Daniels, as he was the chief sponsor of SB 91 to be heard before the committee.

CONSIDERATION OF SB 91: Senator Mazurek, sponsor of SB 91, stated this is an act to revise the venue statutes in the state of Montana. At the request of the Supreme Court, Senator Turnage introduced SJR 24 last session calling for a study by the Montana Supreme Court, in cooperation with the State Bar and the Legislative Council, to review the venue statutes. The problem which exists is the venue statutes were adopted in 1864 and have not been rewritten. This bill will bring the venue statutes into conformance with what the case law has determined them to be. The bill represents an attempt by the committee to clearly state the current state of the law.

PROPONENTS: Sam Haddon, a lawyer from Missoula and Chairman of the Montana Supreme Court Committee on Rules of Evidence, appeared in that capacity in support of the bill. He was there with the approval of the court and with its request that he appear in support. The work which the evidence commission undertook was the result of last session's SJR 24 which stated the court, through the commission, should undertake a study of the current statutes relating to venue. The current bill deals only with the venue proportions of that joint resolution. The initial work was undertaken by Professor Crowley. He distributed the commission's report, which indicated there are hundreds of cases on venue (see Exhibit 1). The purpose of the study the commission undertook was not to change the law, but to include as a first purpose within the code sections themselves the rules that have become settled over the years though the case law. The second purpose of the study was to update the language and clarify it in modern terminology. The third purpose was to clarify any areas where there seemed to be some ambiguity in the present state of the law. The bill came to the committee with the recommendation of the commission and with the approval of the court. William F. Crowley, Professor of Law at the University of Montana, stated he was the person mainly guilty for the form of the bill. In

drafting it, they tried to work carefully within the guidelines that were provided two years ago to simply put into the statutes what had been supplemented by the supreme court over the years and where the statutes were implemented to clarify it. The new sections at the beginning of the bill are basically things that the supreme court has held over the years but do not appear in the statutes themselves. Patrick E. Melby, representing the State Bar of Montana, stated he was there to lend the Bar's whole-hearted support of the bill, as they feel it is excellently drafted. They think the summary (Exhibit 1) explains the proposed changes very well. (See witness sheet attached as Exhibit 2.)

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked if we were talking about civil matters--we do not address criminal matters in this bill. Mr. Haddon stated that was correct. Senator Towe asked Professor Crowley if the purpose of the bill was not to make any substantive changes in the venue laws but to codify the existing situation. Senator Towe expressed a concern with page 3, lines 12-18 of the bill, where the language "or where the plaintiff resides and the defendants or any of them may be found" has been deleted. Professor Crowley stated the provision that is stricken that is one of the changes which was discussed at some length at their meetings. That provision was only before the Supreme Court once in all of the years it was there, and it resulted in a 3 to 2 decision because the dissenting judges said this is a provision that could be extremely conducive to fraud. There was an enormous dissent written on the case. The only cases they could find where lawyers are currently using it are in domestic relations cases.

CLOSING STATEMENT: Senator Mazurek stated Exhibit 1 is a very detailed explanation of the case law behind the bill.

Hearing on SB 91 was closed.

ACTION ON SB 85: Senator Towe moved the committee adopt the amendments proposed by the Attorney General (Exhibit 3). The motion carried unanimously. Mr. Petesch indicated the bill needed a statement of intent. Senator Shaw moved the committee recommend the bill DO PASS AS AMENDED. The motion carried unanimously. Senator Towe moved the statement of intent (Exhibit 4) be added to the bill. The motion carried unanimously.

ACTION ON SB 91: Senator Crippen moved the committee recommend SB 91 DO PASS. Karl Englund, on behalf of the Montana Trial Lawyers Association, stated he had reviewed the bill and stated they had no objection to it. The motion carried unanimously.

of the guillotine. Senator Pinsoneault stated the defendant is entitled to a speedy trial. He believes time is always in the defense counsel's favor. He believes this bill adds to the process in speeding up the process, because, as the defense counsel, the meter fee keeps running; it is a giant step forward on both sides. Senator Yellowtail stated he is in sympathy with efficiency and cost effectiveness, but thinks we have to be concerned for the defendant that is stuck with a public defender. Senator Daniels stated this bill will not eliminate ingenuity from the courts of law. Senator Towe stated this bill cuts both ways. If it is constitutionally required and not protected by the fifth amendment, which the courts have so ruled, and if the prosecution can get it anyway if he files the right motion, then he has no problem with this bill. Senator Mazurek stated one of the principal reasons the prosecution brought this bill is because of the Van Dyken case in Missoula. Senator Crippen stated the committee should not rely on the search for the truth, because that is falacious. The motion to recommend SB 90 DO PASS AS AMENDED carried, with Senators Crippen, Galt, and Yellowtail voting in opposition.

FURTHER CONSIDERATION OF SB 63 AND SB 110: Senator Mazurek stated there has been some concern expressed to him that we should not allow arbitration in the insurance area. Senator Towe stated he was concerned with parties of unequal bargaining positions. Senator Pinsoneault stated the arbitration caluse should be put in bold face print on the first page of the contract and have both parties initial it. Senator Mazurek stated if you have an adhesion contract, you lose that defense. Senator Towe stated he wants a comparable bargaining position and asked that Mr. Petesch look into this. Senator Mazurek asked Mr. Petesch to see what other states are doing. Chairman Mazurek stated Senator Halligan has been working with Mr. Petesch on some proposed changes in the area of defining plain language on page 2 of the bill, and the committee will not act on it until he has had a chance to work with Mr. Petesch.

There being no further business to come before the committee, the meeting was adjourned at 11:40 a.m.

Chairman

CONSIDERATION OF COMMITTEE BILL DRAFTING REQUEST: Senator Mazurek stated a constituent of Senator Brown's came to him from the Montana Juvenile Probation Officers' Association. They had met yesterday to consider some proposed legislation which came up with a bill, but the deadline for introduction of bills had passed, unless it can be submitted as a committee bill. Senator Towe moved the committee submit Exhibit 5 as a committee bill. Senator Mazurek stated this is not a commitment to support the bill; it would just allow it to be drafted. Senator Crippen stated he had some question about the language on page 2, lines 1-3. The motion carried unanimously.

(cks) Action on ~~FURTHER CONSIDERATION OF~~ SB 90: Senator Towe stated he had some concern with page 6, lines 17-19. He proposed we add "or when the evidence becomes reasonably available" and "such evidence must be revealed as set forth in section 7." Mr. McGrath stated he had no problems with that provision. Senator Pinsoneault stated he agreed with Senator Towe, but thinks it is redundant, as the judge will decide whether or not there is good cause. Senator Towe was concerned that some judge might say you could have tried harder. Senator Mazurek stated the 20 days is only when the time period starts. It is an ongoing process which terminates 5 days in advance of trial unless there is good cause. Senator Towe stated it does not say that, but that is what he wants it to say. Senator Mazurek asked why have the bill at all if you get 5 days before trial and they decide to give you the evidence. Senator Blaylock asked when the defendant has to produce evidence now. Senator Mazurek responded he doesn't. Senator Blaylock suggested upping the 20 days to 40. Senator Towe stated he had no problem with 20 days in the event you make it clear the defendant must reveal the information when it becomes reasonably available. He is nervous about the language here without making sure the judge will "for good cause shown." Senator Pinsoneault stated the judge will make that determination. He thinks adding that lannuage is unnecessary and it confuses rather than clarifies, because he would hope the judge would have enough intelligence to realize it. Senator Mazurek stated he thought it would be extremely rare when a judge would preclude a defendant's bringing in evidence that would exonerate him. Senator Towe stated he had no problem with evidence that might exonerate him, but asked about insignificant evidence. Senator Mazurek stated 20 days is the commencement of the period--you don't have to get everything in in the first 20 days. Senator Daniels stated you will never eliminate gamesmanship from criminal trials. Senator Shaw moved that SB 90 be recommended DO PASS. He then withdrew his motion. Senator Shaw moved that SB 90 be amended as follows:

Page 3, line 25.
Following: "4"
Strike: "(2)"
Insert: "(3)"

This amendment deals with disclosure of the informant's identity. The amendment carried unanimously. Senator Towe moved SB 90 be amended as follows:

Page 6, line 20.
Following: "shown."
Insert: "Any evidence that reasonably becomes available after the initial 30 days shall be admitted if (section 7) is complied with."

Senator Yellowtail stated he still was not sure that solved the problem if this were read literally. He suggested we strike the word, within, on page 6, line 4. Senator Towe's motion to amend the bill carried unanimously. Senator Blaylock asked when the defendant gets a lawyer. Senator Mazurek responded if not before, he will have one after the initial appearance, but prior to arraignment. Karl Englund, from the Montana Trial Lawyers Association, stated the statute provides a one-day period after his appearance in district court for his arraignment. If there is a question about mental competency or proper venue, the arraignment is put off. Generally, he will be arraigned on the day of his initial appearance or within 24 hours thereafter. Senator Towe explained oftentimes they will attempt arraignment at the initial appearance. Senator Blaylock moved to amend the bill as follows:

Page 6, line 4.
Following: "Within"
Strike: "20"
Insert: "30"

In addition to this change, his motion carried with it an amendment to Senator Towe's previous amendment which would change the 30-day period to 20 days. The motion carried unanimously. Senator Towe moved to amend the bill as follows:

Page 9, line 3.
Following: "requirement"
Insert: "or that other good cause is shown"

The amendment carried unanimously. Senator Shaw moved that the bill be recommended DO PASS AS AMENDED. Senator Crippen stated the comment was made that this was a bill that was a search for the truth. He believes our criminal justice system is based on the fact the defendant is innocent until proven guilty. He believes we will be codifying some case law he disagrees with. He is still persuaded it is up to the state to prove that the defendant is guilty. It is not up to the defendant to help him in any way. It's the state that brings the charge, it's the state that must prove the offense, and anything less is back in the days

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 012285

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE January 22, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER SB 91

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Michael Ashley	Supreme Court	SB 91	✓	
Lee Heiman	Legislative Council	SB 91		
Pat Melby	State Bar of Mont	SB 91	✓	
Kate Edwards	Mt. Trial Lawyers	SB 91	✓	
Sam E Haddon	Comm'n on Rules of Evidence	SB 91	✓	
W.F. Crowley	✓ ✓ ✓	SB 91		
Jack Dalthyle	Mont PIRG			

(Please leave prepared statement with Secretary)

Recommendations for Revisions in Venue Statutes
Prepared by the Montana Supreme Court Commission
on the Rules of Evidence

PREFACE

This report and the accompanying draft bill are submitted to partially fulfill the request of Senate Joint Resolution 24 of the 48th Legislature that the Supreme Court Commission on the Rules of Evidence prepare draft legislation for submission to the 49th Legislature to provide that "statutory provisions on venue . . . accurately reflect the current usages and interpretations of those laws . . . ."

The Resolution recognized that the existing statutes "no longer reflect on their face the present state of the law," and expressed a desire that new draft statutes be prepared incorporating the "logical, useful, and consistent" rules and practices which have evolved by judicial construction of the present laws.

The current venue statutes were adopted in 1864 at Bannack and are substantially the same today as when they were enacted. Throughout the 120 years of their existence these venue statutes have been the subject of dozens, perhaps hundreds, of appeals to the Montana Supreme Court. Many of the appeals were caused by the silence of the statutes on principles necessary to their operation; other appeals resulted from the ambiguity of certain fundamental language. The commands of various venue sections that particular kinds of cases "shall," "may," or "must" be tried in specified counties resulted in seemingly unending litigation. Concerning one of these sections, Justice Sheehy, writing for a unanimous court, complained in 1978:

> Possibly no statute has spawned more litigation in this state than section 93-2904 relating to the proper place of trial. Year after year we are called upon to interpret anew what are seemingly simple code provisions and to explain again the impact of our decisions under the statute. (Clark Fork Paving, Inc. v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779.)

Justice Sheehy went on to extract, from what he termed "the mountain of cases which have arisen," the long-standing rules that decided the issue, and restated them for the thirtieth or fortieth time.

The Clark Fork case illustrates the fundamental problem: basic rules exist but many cannot be found in the statutes. They must be located in, and sifted from, a "mountain of cases." When attorneys have not found the applicable Supreme Court opinion in the 190-odd volumes of Montana Reports (or hope that their opponents have not), the same legal questions are hauled before the Court again and again and again.

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The new statutes proposed in this draft have three objectives:

(1) to include in the Montana Code Annotated those rules which have been declared and are settled by the Supreme Court but are not now stated in the Code;

(2) to change the language, without changing the meaning, of the sections that have caused the most litigation (primarily by substituting the designation "proper place of trial" for the ambiguous command that cases "shall," "may," or "must" be tried in particular counties);

(3) to settle the few matters where there is still a seeming ambiguity, following general principles along the lines that the Court seems to feel would be best derived from what the Court has held in other situations.

NEW SECTION. Section 1. Scope of part. The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

Explanation: The only purpose of this section is clarity. It is simply an expression of the fundamental principle incorporated but unstated in the present Code and its predecessors.

NEW SECTION. Section 2. Designation of proper place of trial not jurisdictional. The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

Explanation: This new section is intended to codify the results of a series of cases dealing with recurrent problems caused by the form and language of the current statutes. Although intended

only to set rules of venue, the phrasing of the present statutes has caused many litigants to believe they prescribe jurisdictional requirements. The Supreme Court has had to rule repeatedly that these statutes do not in any way affect the jurisdiction of District Courts to try cases brought before them. All District Courts have equal power to try any action of which the district courts, as a group, have jurisdiction (Miller v. Miller, ___ Mont. ___, 616 P.2d 313 (1980); State ex rel. Foster v. Mountjoy, 83 Mont. 162, 271 P. 446 (1928)). Even if a court is not the proper one as designated by the venue statutes, it can try a case if there is no objection from a party through a motion for a change of venue (Miller v. Miller, supra; Bullard v. Zimmerman, 82 Mont. 434, 268 P. 512 (1928)). Unless there is a demand by one of the parties, a court is not authorized to order the case transferred to another county or to refuse to try the case (State ex rel. Gnose v. District Court, 30 Mont. 188, 75 P. 1109 (1904); Danielson v. Danielson, 62 Mont. 83, 203 P. 506 (1921)).

Since these questions have arisen repeatedly over a long period of time, it seems sensible to include this or a similar provision to prevent endless recurrences in the future.

NEW SECTION. Section 3. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

Explanation: This section is simply a consolidation into a single section a principle now expressed separately and not very clearly in each statute. Every venue statute now, after designating the proper county or counties for particular purposes, includes a provision that it is "subject, however, to the power of the court to change the place of trial as provided in this code." The Supreme Court has had to state on many occasions that the clause is intended only to preserve the trial courts' discretionary power of granting changes of venue to secure impartial trials or to promote convenience of witnesses or the ends of justice. The proposed section incorporates these declarations and should make the meaning clear.

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NEW SECTION. Section 4. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

Explanation: This section and section 5 specify that the right to move for a change of place of trial on the ground that the action is brought in the wrong county belongs exclusively to a defendant. It might be argued that this right should extend to some other classes of litigants, such as involuntary plaintiffs under Rule 19(a), M.R.Civ.P. or some intervenors (Rule 24, M.R.Civ.P.). The courts have always held that such parties must accept the status of the ongoing action as they find it at the time of their entry. Further, Rule 12(b)(ii), M.R.Civ.P. provides that only defendants can move for a change of venue on this ground, which is consistent with all of the Supreme Court holdings.

NEW SECTION. Section 5. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county, and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

Explanation: Present statutes do not deal with this situation.

This section codifies a number of Supreme Court holdings that do. In many cases (particularly tort and contract actions) alternative venues are authorized, but the manner of choosing between them is not stated. A sizeable amount of litigation has resulted. All of the cases have held that the plaintiff has the initial choice and, if he selects a county that is proper, the issue is closed, but that if the plaintiff files the action in a county that is not one of those designated, he has waived the right to choose, which passes to the defendant. Defendant can then decide to which of the proper counties he wants the case transferred. Of the many cases dealing with the problem, Seifert v. Gehle, 133 Mont. 320, 323 P.2d 269 (1958), a tort action, gives the clearest statement:

> In this case the statute means that either the county of defendant's residence or the county where the tort was committed is a proper county for the trial of the action, and had the plaintiff chosen either of those counties, the defendant could not have had it removed.
>
> In this case plaintiff waived his right to have it tried in one of the proper counties. Therefore, the defendant has the right upon proper demand to have the place of trial changed either to the county where he resides or to the county where the tort was committed, whichever he elects.

This proposed section will preserve the rule of Seifert and other cases. It allows the plaintiff first choice among the proper venues and provides that a correct choice by him cannot be changed. If the plaintiff's selection is not one of the designated counties, the initiative passes to the defendant. He can move for a change to the proper county of his choice, and section 25-2-201 MCA requires that the trial court grant the motion.

NEW SECTION. Section 6. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for

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trial under Rule 42(b) of the Montana Rules of Civil Procedure.

Explanation: The present statutes do not cover this situation. This section codifies the holdings of the Supreme Court in cases that have raised the question. Our statutes have no provision for the multiple claim situation in which the county where the plaintiff files is correct on one claim but not for one or more of the others. It is possible, at least since the adoption of Rule 42(b), for a court to split the action and grant a change on one or more claims, but this causes multiple trials and may be a cure worse than the disease. For a great many years our Court has ruled consistently that a defendant entitled to a change of venue on one claim should have it on the entire action. The Court feels the rule is necessary to prevent a plaintiff from controlling venue by adding spurious claims that have little or no validity, but are triable in the forum the plaintiff chooses rather than at the normal situs which would be the defendant's residence or another location more favorable to the defendant.

This new provision codifies the result of this unbroken line of opinions: Yore v. Murphy, 10 Mont. 304, 25 P. 1039 (1891); Heinecke v. Scott, 95 Mont. 200, 26 P.2d 167 (1933); Beavers v. Rankin, 142 Mont. 570, 385 P.2d 640 (1963). It makes no change in existing law, but simply enacts it into the Code where it is available.

NEW SECTION. Section 7. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

Explanation: On a few occasions, the Supreme Court has had to deal with the problem posed by multiple defendants with conflicting venue rights. Most situations involve defendants who live in different counties, but this presents no difficulty since the statutes (Section 25-2-108 MCA; amended in section 7 of this draft) have always allowed the plaintiff to file at the residence of any of them. Tort, contract, and real property actions, however, which present choices other than residence, have been troublesome. Heinecke v. Scott, 95 Mont. 200, 26 P.2d 167 (1933) raised but did not give a definitive answer to the question of possible priorities between defendants whose venue rights arise under different statutory provisions. That case involved contract, tort, and real property claims, and was brought at the plaintiff's residence where none of the defendants lived. The Court held that the action was basically one for recovery of real property, to which the tort and contract claims were subsidiary. Since all of the defendants were residents of the county where the land was situated, a change of venue to that county was awarded. The court noted that small differences in the facts might have presented much more complex questions. These questions are what this proposed section attempts to meet. The section would simply extend the same "good as to one, good as to all" principle that has always governed venue based on residence to all situations. Rule 42(b), which was not available at the time of the Heinecke case, could be used to alleviate the difficulties of a defendant placed at a real disadvantage.

This proposed section does not change existing law or establish any new principle. Like the other new provisions it simply tries to codify existing case law (although, in this instance, cases are neither plentiful nor clear-cut) so that all the fundamental principles will be gathered together in one place and stated as plainly as possible.

Section 8. Section 25-2-108, MCA, is amended to read:

"25-2-108. ~~Other--actions~~ Residence of defendant. ~~In all other cases, the action shall be tried in~~ Unless otherwise specified in this part:

(1) the proper place of trial for all civil actions is the county in which the defendants or any of them may reside

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at the commencement of the action ~~or where the plaintiff resides and the defendants or any of them may be found; or~~

(2) if none of the defendants reside in the state, ~~or, if residing in the state, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint, subject, however, to the power of the court to change the place of trial as provided in this code~~ the proper place of trial is any county the plaintiff designates in the complaint."

Explanation: This revised section changes the location and arrangement of the most basic rules but does not alter their content significantly. Currently, section 25-2-108, which states the most fundamental of all venue rules--that the defendant has the right to have the trial in his county of residence--is the last section in Part 1, Chapter 2, Title 25, preceded by a long list of exceptions to it. The sequence is confusing and has caused much needless litigation. This revision tries to put first things first, beginning with the most fundamental proposition, and following it with the exceptions.

Subsection (1). This subsection extracts from the confusing welter of statutes what the Supreme Court has repeatedly called the "principal rule" of venue (see Hardenburgh v. Hardenburgh, 115 Mont. 46, 146 P.2d 151 (1944); Love v. Mon-O-Co Oil Corp., 133 Mont. 56, 319 P.2d 1056 (1957); Clark Fork Paving v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779 (1978)) and places it at the beginning, rather than the end, of the related group of rules. The proper relationship between this principle and others that are subordinate to it has generated most of what Justice Sheehy, in Clark Fork Paving, called the "mountain of cases" that the present statutes have spawned. This new order and placement is intended to emphasize the pre-eminence of this rule and the Court's repeated insistence upon it.

The stricken material "or where the plaintiff resides and the defendants or any of them may be found" at the end of subsection (1) is part of the current rule, but, in the judgment of the Commission, should be eliminated entirely. This deletion constitutes a substantive change in current law, the only such change in the draft bill. Unlike the fundamental principle to which it

is attached, this separate method of fixing venue is legally questionable and almost never used except in domestic relations actions. As a built-in exception to the rule that a defendant is entitled to trial in his own county, it is an open invitation to subterfuge and sharp practice by plaintiffs' attorneys, and was so characterized in the single case construing it that has reached the Supreme Court. By a 3-2 decision in Shields v. Shields, 115 Mont. 146, 139 P.2d 528 (1943) the Court held that this portion of the statute permitted a plaintiff to keep a divorce case in his own home county rather than that of the defendant by serving her when she had to leave her home county and come to the plaintiff's in connection with other litigation between them. The two dissenting judges called the plaintiff's action fraudulent. They argued that the provision was intended to be used only when the defendant had no residence in Montana, or had one but could not be found there. The dissenters' contention, though it did not prevail, apparently cast so much doubt on the practice that it has never again, in over 40 years, come before the Supreme Court. The Commission recognizes that this deleted language is often used in domestic relations cases; to preserve this existing use, similar language could be incorporated into 40-4-105(3), MCA. The situation for child custody is covered in 40-4-211, MCA.
The legitimate uses of the deleted language--to set venue in the cases of non-residents or residents whose whereabouts cannot be ascertained--are substantially covered by subsection (2) of the current draft.

Subsection (2). This provision clarifies the portion of section 25-2-108 dealing with nonresident defendants. Since, by definition, a nonresident of the state is not resident in any county, the basic rule of subsection (1) cannot apply. In this situation the statute has always given the right of choosing venue to the plaintiff, and this draft contemplates no change.

Most of the litigation under this provision has dealt with nonresident corporations. An unbroken chain of decisions holds that a foreign corporation has no Montana residence for venue purposes, can be sued in any county selected by the plaintiff, and has no right to a change of venue for improper county (Pue v. Northern Pacific Ry. Co., 78 Mont. 40, 252 P. 313 (1926); Hanlon v. Great Northern Ry. Co., 83 Mont. 15, 268 P. 547 (1928); Truck Insurance Exchange v. NFU Property and Casualty, 149 Mont. 387, 427 P.2d 50 (1967); Foley v. General Motors Corp., 159 Mont. 469, 499 P.2d 774 (1972)). Since, under this statute, any county selected by the plaintiff is a proper place of trial, a nonresident is not entitled to a change even in those instances, like tort and contract actions, where alternative venues are authorized (Morgan and Oswood v. U. S. F. & G., 167 Mont. 64, 535 P.2d 170 (1975)).

All of the existing case holdings would be undisturbed by subsection (2). The law will remain just as it is.

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It should be noted that subsection (2) applies only to the nonresident and does not affect the rights of a resident who may be joined as co-defendant with the nonresident. The resident retains whatever rights he may have to a venue change (Foley v. General Motors Corp., supra).

The stricken language providing for designation of a proper county by a plaintiff was deleted as redundant with section 4. A plaintiff, whether he knows the residence of the defendant or not, may file in any county subject to defendant's right to move the trial.

Section 9. Section 25-2-101, MCA, is amended to read:

"25-2-101. ~~Contract actions~~ Contracts. ~~Actions~~ (1) The proper place of trial for actions upon contracts ~~may be tried in~~ is either:

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed~~, subject, however, to the power of the court to change the place of trial as provided in this code~~. The county in which the contract was to be performed is:

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurs or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built."

Explanation: Present section 25-2-101 was, until the recodification of 1979, part of section 93-2904, RCM 1947, which lumped together in a single paragraph the basic rule of venue and all its major exceptions. This was the provision about which Justice Sheehy said, in Clark Fork Paving v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779 (1978), "Possibly no statute has spawned more litigation in this state . . . ." The portion that has become section 25-2-101 was the focus of a major portion of that litigation.

The original intent of the "contract exception" to the general rule placing venue at the residence of the defendant was to permit an alternative place of trial. The plaintiff could, if he chose, elect to file his action in the county where the contract was to be performed rather than at defendant's residence. The

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Supreme Court, however, in Interstate Lumber Co. v. District Court, 54 Mont. 602, 172 P. 1030 (1918), held that the word "may" in the statute meant "must" and construed the provision to mean that contract actions were properly triable only in the county of performance. This decision, in conjunction with the earlier case of State ex rel. Coburn v. District Court, 41 Mont. 84, 108 P. 144 (1910), which had ruled that the place of performance of all contracts calling for payment of money was at the place of the payment, effectively established the venue of practically all contract actions at the plaintiff's, rather than the defendant's, residence. The Coburn and Interstate Lumber cases were overruled in Hardenburgh v. Hardenburgh, 115 Mont. 469, 146 P.2d 151 (1944) which decided that "may" means "may" rather than "must" and set out rules for determining the place of performance of various types of contracts that have been followed down to the present.

The last sentence of subsection (1)(b) and subsection (2) through the end of the section is an attempt to codify the results of an extensive line of cases dealing with the problems created by section 25-2-101, MCA, and its predecessor, particularly those cases struggling with the meaning of the "place of performance" language of the statutes.

The contract venue statutes since their beginning have clearly intended to allow alternative venues when a contract is to be performed in a county other than the one where the defendant lives, but they have not proven easy to apply. Although the Hardenburgh case got rid of an obviously erroneous interpretation that had robbed the alternative provision of much of its benefit, the decision did not settle all the problems. Determining the place where a contract is to be performed is frequently not an easy task. Most contracts call for a monetary payment of some sort, and when, under the Coburn and Interstate Lumber cases, this was made the single determinative factor, the location was normally clear. After those decisions were changed, that certainty disappeared. The Hardenburgh court, anticipating the difficulties that could result, laid down a succession of interpretive rules which have generally been followed and developed in later cases.
This portion of the section seeks to state the case rules in a form as brief and complete as possible although, in dealing with a series of court opinions that are lengthy and diverse, and extend over a period of 40 years, the rules are not always simple and clear.

The Hardenburgh rules establish a basic framework. If a contract specifies a place of performance, the matter is settled; the courts will accept the designation. Where the contract is not specific, the court will look to see whether the contract allows performance to occur only at a particular site. If so, that is the location "by necessary implication." Some of these determinations are reasonably simple, others complex. In the uncomplicated category are such cases as Colbert Drug v. Electrical Products, 106 Mont. 11, 74 P.2d 437 (1937) where the contract, although it did not specify any county as the place of perfor-

mance, was to maintain neon signs in Butte; Thomas v. Cloyd, 110 Mont. 343, 100 P.2d 938 (1940) in which the defendant contracted to secure employment for the plaintiff in Butte; and Love v. Mon-O-Co Oil, 133 Mont. 56, 319 P.2d 1056 (1958), an action on a contract to drill an oil well on a described tract of land which lay in Fallon county. In each case the Court found a county of performance specified by necessary implication.

Where both parties have duties and obligations which must be carried out at different locations, fixing the place of performance becomes more difficult. Before Hardenburgh, place of payment was the sole determining factor in most cases. After Hardenburgh, the court, in a search for a similar touchstone, experimented with a number of factors; place of negotiation, place of execution, place of payment, or some combination of them. Ultimately, it settled on the "county of activity," that is, the county where the primary purpose of the contract was to be accomplished.

Determining "county of activity" as outlined in the series of cases which fixed this as the test, involves several steps. It begins with a consideration of all the duties and obligations of all the parties (Hardenburgh); then the court seeks to determine the ultimate purpose to be achieved and decide which of the various acts are primary and which subsidiary to that purpose. The county where the primary actions are to be performed is the county of activity. The process was most clearly demonstrated in Brown v. First Federal Savings and Loan, 144 Mont. 149, 394 P.2d 1017 (1964), which also contains the clearest expression of the principle. The plaintiffs, residents of Lewis and Clark County, received a loan from the defendant loan association to build a house in Helena. The association's office was in Great Falls; the loan was made there, payments were to be received there, the contractors and subcontractors were to be supervised and paid from there, and all the financial activities performed there. The actual construction, however, was all in Lewis and Clark County. The plaintiffs' action was for breach of defendant's obligations to supervise and pay the contractors properly. Defendants claimed venue was in Cascade County because the suit concerned duties to be performed there. Plaintiffs maintained that the contract existed primarily to build a house in Lewis and Clark County, and that was the proper county of performance. The Supreme Court held for the plaintiffs, saying, in part, "The theatre of performance, by necessary implication of what the parties intended as evidenced by the terms of the contract, is Helena."

Brown is one of a number of cases holding that it is the overall purpose of the contract, not the particular provision that is in contest in the action, which governs venue. It is also one of a series, again beginning with Hardenburgh, which have decided what what is "necessarily implied" about performance of particular

kinds of contracts. It is these rules that are set out in subsections (2)(a) through (2)(d) of the draft bill.

The lead-in to subsection (2) recognizes that the contracts named in the subsection are not an exclusive list of contracts, but merely those in which a rule has evolved. The Commission does not intend to require that all contracts somehow be pigeon-holed into one of the categories to establish venue. Contracts not within the list are subject to analysis under subsection (1)(b)(ii) to establish venue.

Subsection (2)(a) incorporates the holding of the Hardenburgh case, which involved the sale of a business and included real and personal, tangible and intangible property; McNussen v. Graybeal, 141 Mont. 571, 380 P.2d 575 (1963) dealing with sale of milk produced and gathered in Lake county but sold in Missoula (venue was held to be in Missoula county where delivery and sale was made); and Hopkins v. Scottie Homes, 180 Mont. 498, 591 P.2d 230 (1979) where a mobile home was financed and sold in Valley county for delivery and erection in Musselshell county (venue lay in Musselshell county where delivery was to be made and the home set up).

Subsection (2)(b) adopts the rule declared in Hardenburgh for employment contracts. The Hardenburgh decision specifically overruled the portion of State ex rel. Coburn v. District Court, 41 Mont. 84, 108 P. 145 (1910) which had held that the venue of any contract calling for payment of money was at the residence of the creditor, but adopted the holding of Coburn that the place of performance of a labor contract was the place where the labor or services were to be performed. No subsequent cases have dealt with the question, so the basic rule of Coburn and Hardenburgh is clearly in force and is expressed in this subsection.

Subsection (2)(c) sets out the "insurance and indemnity" rule expressed in Hardenburgh, Hartford Accident and Indemnity Co. v. Viken, 157 Mont. 93, 483 P.2d 266 (1971), and General Insurance Co. v. Town Pump, ___ Mont. ___, 640 P.2d 463 (1982). Hardenburgh did not deal with insurance, so its discussion of the subject is technically dictum, but the Court was trying to deal with all the implications of the basic change it had made by overruling the Coburn and Interstate Lumber cases. The later Hartford and General Insurance opinions adopted Hardenburgh's rationale and applied it to the insurance contracts at issue in those cases. Using the "principal activity" test of Brown v. First Federal, supra, the Court in Hartford ruled that the performance called for in an insurance or indemnity contract is payment by the insurer on the happening of the named contingency. General Insurance made this doctrine more specific by holding that the place of performance of an insurance contract covering property in a number of different locations was in the county where the particular property involved in the claim at issue was situated.

The language of subsection (2)(c) is taken from the opinions in the Hardenburgh and Hartford cases.

Subsection (2)(d) is the rule of Brown v. First Federal, supra. Brown dealt with a contract for the original construction of a building, but the conclusion seems inescapable that its rationale is equally applicable to repair contracts, so they are included.

Note: Not all of the cases construing the contract exception to the basic venue rule, even those beginning with Hardenburgh, are totally reconcilable. Considering their numbers, it would be a miracle if they were. This proposed section is based on the large majority of the cases, which includes all of those that are most detailed and thoroughly considered, holding that contract venue lies in the county where the principal activity is to take place. A few opinions seem to state that a contract can have more than one place of performance, depending on the part of the contract sought to be enforced or the purpose of the specific litigation. These cases ignore the statutory language referring to the county in which the contract was to be performed, and are an open invitation to continue the endless round of litigation that the contract exception has spawned in the past. The proposed section therefore presumes a single place of performance of any contract, located in the county of its principal activity.

This proposal would follow and reaffirm Hardenburgh, Brown, McNussen v. Graybeal, and Hopkins v. Scottie Homes, but reject the rule of Peenstra v. Berek, ___ Mont. ___, 614 P.2d 521, which held that a contract for sale of goods was divisible into separate performances by buyer and seller. Each was to occur in a different county--the seller was to deliver the goods in the buyer's county, and the buyer was to make payments in the seller's county. Since the seller's performance was complete and he had brought the action for payment, the Court said, venue lay in the county where the buyer was to perform by making payment. Peenstra casts doubt on the entire sequence of decisions since Hardenburgh and throws the law back into uncertainty. The proposed section rejects it and any other decisions based on a "multiple performance" concept.

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Section 10. Section 25-2-102, MCA, is amended to read:

"25-2-102. ~~Tort actions~~ Torts. ~~Actions for torts may be tried in the~~ The proper place of trial for a tort action is:

(1) The county in which the defendants, or any of them, reside at the commencement of the action; or

(2) The county where the tort was committed~~, subject, however, to the power of the court to change the place of trial as provided in this code~~. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort is committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed."

Explanation: This section changes the form but not the substance of the tort exception to the basic venue rule, and adds, in the last sentence of subsection (2), the essence of the Supreme Court's holding in Slovak v. Kentucky Fried Chicken, 164 Mont. 1, 518 P.2d 791 (1974).

The present language of section 25-2-102, like the identical wording of the contract exception, that the action "may be tried" in the county where the tort was committed, has contributed to the "mountain of cases" that Justice Sheehy complained of in the Clark Fork Paving case. The principal case, Seifert v. Gehle, 133 Mont. 320, 323 P.2d 269 (1958) followed the Hardenburgh interpretation--that the language was permissive and created an alternative to the basic rule that venue lies at the defendant's residence. This holding has not been seriously questioned since it was handed down. It accords with the contract cases and makes the interpretation uniform.

The problems that arose after Seifert were in fixing the situs of torts that involved no physical injury. Three times in 10 years the Supreme Court had to determine the county where torts would be held to be committed if they arose from a business relationship (Brown v. First Federal, supra; Foley v. General Motors, 159 Mont. 469, 499 P.2d 774 (1972); Slovak v. Kentucky Fried Chicken, 164 Mont. 1, 518 P.2d 791 (1974)). The common factor in all the cases was the existence of a contract between the parties, out of which the tort was claimed to have sprung.

In Brown and Foley the question was not reached because other considerations were decisive, but the issue was central and squarely presented in Slovak. The Court decided that in tort actions arising from contractual relationships, the tort has the same situs, for venue purposes, as the contract.

This proposed section codifies the rules of Seifert and Slovak.

Section 11. Section 25-2-103, MCA, is amended to read:

"25-2-103. ~~Actions involving real~~ Real property. (1) ~~Actions~~ The proper place of trial for the following ~~causes must be tried in~~ actions is the county in which the subject of the action or some part thereof is situated~~, subject to the power of the court to change the place of trial as provided in this code~~:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) ~~All~~ The proper place of trial for all actions for

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the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property ~~must---be commenced--in~~ is the county in which the real property, or any part thereof, affected by such action or actions is situated."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 12. Section 25-2-104, MCA, is amended to read:

"25-2-104. ~~Actions--to--recover~~ Recovery of statutory penalty or forfeiture. ~~Actions~~ The proper place of trial for the recovery of a penalty or forfeiture imposed by statute ~~must--be-tried-in~~ is the county where the cause or some part thereof arose, ~~subject-to-the-power-of-the-court--to--change the--place--of--trial;~~ except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 13. Section 25-2-105, MCA, is amended to read:

"25-2-105. ~~Actions against~~ Against public officers or their agents. ~~Actions~~ The proper place of trial for an action against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who, by his command or in his aid, does anything touching the duties of such officer ~~must be tried in~~ is the county where the cause or some part thereof arose~~, subject to the power of the court to change the place of trial~~."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 14. Section 25-2-106, MCA, is amended to read:

"25-2-106. ~~Actions against~~ Against counties. ~~An~~ The proper place of trial for an action against a county ~~may be commenced and tried in such~~ is that county unless such action is brought by a county, in which case ~~it may be commenced and tried in~~ any county not a party thereto is also a proper place of trial."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

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Section 15. Section 2-9-312, MCA, is amended to read:

"2-9-312. ~~Venue of actions~~ Against state and political subdivisions. (1) ~~Actions~~ The proper place of trial for an action against the state ~~shall be brought~~ is in the county in which the ~~cause of action~~ claim arose or in Lewis and Clark County. In ~~addition,~~ an action brought by a resident of the state, ~~may bring an action in~~ the county of his residence is also a proper place of trial.

(2) ~~Actions~~ The proper place of trial for an action against a political subdivision ~~shall be brought~~ is in the county in which the ~~cause of action~~ claim arose or in any county where the political subdivision is located."

Explanation: Amended to conform to the rest of the bill in terminology for inclusion into Title 25, chapter 2, part 1. Section was originally enacted relating to sovereign immunity actions, but the Commission believes it should properly be moved to general venue provisions.

NEW SECTION. Section 16. Specific statutes control. The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

Explanation: This section is to reaffirm that general venue statutes, even though they are later enactments, are not intended to disturb specific code sections establishing venue. In such cases the specific statute not within Title 25, chapter 2, part 1 is controlling.

NEW SECTION. Section 18. Repealer. Section 25-2-107, MCA, is repealed.

25-2-107. Actions in which defendant is about to depart. If any defendant or defendants may be about to depart from the state, the action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the court to change the place of trial as provided in this code.

Explanation: This section is redundant and repeal prevents possible confusion. A plaintiff may file an action in any county, whether or not the defendant is about to depart the state, and the defendant may move to move the place of trial. The long-arm statutes have eliminated the necessity for a quick filing for fast service in any case.

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DATE 01/28/85
BILL NO. SB 91

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

NAME: PAT MELBY DATE: 1-22-85

ADDRESS: 4th Floor Montana Club, P.O. Box 1144 Helena 59624

PHONE: 442-7450

REPRESENTING WHOM? State Bar of Montana

APPEARING ON WHICH PROPOSAL: S.B. 91

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

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 012285
BILL NO. SB 91

SB 85

1. Title, line 8.
Following: line 7
Strike: "SECTIONS"
Insert: "SECTION"
Following: "44-5-102,"
Strike: "44-5-303, AND 44-5-402,"

2. Page 1, line 16.
Following: "section"
Strike: "directly responsible to the attorney general"

3. Page 5, line 9.
Following: "rights"
Insert: "as provided in the Montana Criminal Justice Act of 1979, Title 44, chapter 5"

4. Page 5, line 19 through line 22, page 6.
Strike: Sections 10 and 11 in their entirety
Renumber: subsequent sections

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 01-22-85
BILL NO. SB 85

STATEMENT OF INTENT

SENATE BILL NO. 85

A statement of intent is needed for this bill because section 8 requires the attorney general to adopt standards and procedures for operation of the criminal intelligence information section.

The standards and procedures should particularly address relations and the exchange of information between the section and participating agencies, information processing and distribution systems, the security of such systems and the information collected, and the safeguarding of individual privacy.

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY A DEPENDENT CHILD FROM ONE BEING SIXTEEN TO EIGHTEEN YEAR OF AGE; AMENDING SECTION 45-5-622."

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

Section 1. Section 45-5-622, MCA, is amended to read:

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than ~~16~~ 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support."

(2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than ~~16~~ 18 year old by:

(a) supplying or encouraging the use of intoxicating substances by the child; or

(b) assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian;

(ii) enter a place of prostitution; or

(iii) engage in sexual conduct.

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DATE 012285
BILL NO. committee bill

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The Court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

STANDING COMMITTEE REPORT

January 22 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 35

first reading copy (white color)

CRIMINAL INTELLIGENCE INFORMATION UNIT

Respectfully report as follows: That SENATE BILL No. 35

be amended as follows:

1. Title, line 8.
Strike: "SECTIONS"
Insert: "SECTION"
Following: "44-5-102,"
Strike: "44-5-303, AND 44-5-402,"

2. Page 1, line 16.
Following: "section"
Strike: "directly responsible to the attorney general"

3. Page 5, line 9.
Following: "rights"
Insert: "as provided in the Montana Criminal Justice Act of 1979, Title 44, chapter 5"

4. Page 5, line 19 through line 22, page 6.
Strike: Sections 10 and 11 in their entirety
Renumber: subsequent sections

AND AS AMENDED

DO PASS

~~BE NOT PASS~~

STATEMENT OF INTENT ATTACHED

Chairman.

January 22 19 85

MR. PRESIDENT:

WE, YOUR COMMITTEE ON JUDICIARY, HAVING HAD UNDER CONSIDERATION SENATE BILL NO. 85, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SENATE BILL NO. 85

A statement of intent is needed for this bill because section 6 requires the attorney general to adopt standards and procedures for operation of the criminal intelligence information section.

The standards and procedures should particularly address relations and the exchange of information between the section and participating agencies, information processing and distribution systems, the security of such systems and the information collected, and the safeguarding of individual privacy.

CLERICAL

Date: 1/22/85

Time: 5:20 PM

Senate Bill 85

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Judiciary Comm Report of 1/22

#3 insert: "as provided in the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"

1/23/85
14:00

Sponsor

Secretary of Senate
or
Chief Clerk

cd DS

Legislative Council

STANDING COMMITTEE REPORT

January 22 19 65

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 90

first reading copy (white color)

EXPANSION OF DISCOVERY IN CRIMINAL CASES

Respectfully report as follows: That SENATE BILL No. 90

be amended as follows:

1. Page 3, line 25.
Following: "4"
Strike: "(2)"
Insert: "(3)"

2. Page 6, line 4.
Following: "within"
Strike: "20"
Insert: "30"

3. Page 6, line 20.
Following: "shown."
Insert: "Any evidence that reasonably becomes available after the initial 30 days shall be admitted if (section 7) is complied with."

4. Page 9, line 3.
Following: "requirement"
Insert: "or that other good cause is shown"

AND AS AMENDED

DO PASS

XXXXXXXXXXXX

Chairman.

STANDING COMMITTEE REPORT

January 22 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 91

first reading copy (white color)

GENERAL REVISION AND CLARIFICATION OF VENUE STATUTES

Respectfully report as follows: That SENATE BILL No. 91

DO PASS

~~DO NOT PASS~~

Chairman.