

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

January 29, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 29, 1987, at 8:00 a.m., in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Grady, Hannah and Brown who were absent, and Rep. Rapp-Svrcek who was excused.

HOUSE BILL NO. 309: Rep. Quillici, District No. 71, sponsor, stated HB 309 revises the crime victims compensation act of Montana. He explained in 1976, there was a committee formed by the Montana Association of Churches, and others, to look into a study on victims of crime and also the offenders. After a one year study, a bill was drafted which is the Victims Compensation Program. HB 309 will transfer the program from the Workers' Compensation Division. There are not any guidelines changed in this bill. It is set up to help with administration costs, fine tune it and make for a better program. An appeal from a department determination concerning a claim will be made to the district court and provides for confidentiality of certain records.

PROPOSERS: CHERYL BRYANT, Crime Victims Program, supported this legislation.

MIKE LAVIN, Administrator for the State Board of Crime Control, stated that the passage of this bill will make a good program better.

LENORE F. TALIAFERRO, Family Abuse Specialist for the Friendship Center, Helena, pointed out that in the past year there have been services provided for about 500 clients. The Center's program currently receives some funding through the Board of Crime Control and it is very important funding to their services. She strongly urged support for this legislation.

TOM HARRISON, representing the Sheriff and Peace Officers Association, supported this transfer of funds and supported HB 309.

BILL WARE, Helena Police Chief, supported this legislation.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 309: Rep. Addy asked Rep. Quilici how much money was collected in a year and he stated that the budget is around \$430,000.00. Rep. Quilici said there might be attempts to take some of the funds and help support the general fund but he would oppose that.

Rep. Daily asked Rep. Quilici to briefly describe where the money comes from. He stated the money comes from the Highway Patrol fine program and 18% of each citation goes into the victims compensation program.

Rep. Quilici closed the hearing on HB 309.

HOUSE BILL NO. 267: Rep. Mercer, sponsor, District No. 50, stated that he needs to first describe the problem and then he can explain what the bill deals with. He explained that if there is a situation where a mental health professional is serving an individual who is a client and that client makes a specific threat of physical harm to an individual and informs the mental health professional about it, the professional then has a confidentiality duty not to disclose that threat to anyone but yet there is a fear that if they do not disclose that threat, and the threat is carried through, they will get into trouble. This bill addresses that issue and makes it clear when the mental health professionals have the duty to warn and also how they can discharge that duty. The duty arises when the actual threat of physical violence is by a specific means. The professional has the duty to warn of violent behavior or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The professional must also supply the requesting law enforcement agency with any information he has concerning the threat of violence. He pointed out that section 3 deals with the immunity issue and it says there is no liability for failure to protect or warn or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior.

PROPONENTS: STEVE WALDRON, Mental Health Centers in Montana, stated that an essential part of therapy is open communication with the client. The Supreme Court of California acknowledged that confidentiality is essential but went on to say that professionals should be able to single out the real threats and predict dangerous threats. The best predictor of violence is whether or not a person has been violent in the past. This bill established liability for mental health professionals and tells when the

confidentiality must be broken. He pointed out that in the child abuse reporting statute, 41-3-201, it requires a professional to break confidentiality when they become aware of child abuse. The statute does not have a requirement that you tell children when you are treating them that you may break confidentiality. There seems to be some areas that need amending in regard to confidentiality.

CLIFF MURPHY, Mental Health Association of Montana, submitted an amendment in regard to the duty to warn. (Exhibit A). He stated they favor the bill with the amendment.

ROBERT BATEEN, Psychologist, Helena, representing the Montana Psychological Association, stated they must do whatever is necessary to protect a patient from carrying through with a violent act and this bill allows them to effectively do that. He disagreed with the proposed amendment because it has been already covered under the code of ethics.

JOAN REBICH, Vice President of the Montana Mental Health Counselors Association, favored the bill and did not think the amendment was necessary.

DAVID BRIGGS, Executive Director of Region 4 Community Health Center, Helena, supported the legislation.

NANCY ADAMS, Montana House Director for the Seriously Mentally Ill, Helena, supported the bill. It is their duty to protect the person who is threatening to hurt somebody. She urged that no amendments be made to the bill.

CRAIG SIMMONS, Licensed Social Worker in the private practice of child and adult therapy, representing the Montana Chapter of National Association of Social Workers, supported HB 267 as it is written.

CURT CHISOLM, Deputy Director of the Department of Institutions, supported the legislation. He stated he has one concern and that is it applies to both public and private employees and the bill limits liability. It would have to pass with 2/3 majority in both Houses.

OPPONENTS: TOM POSEY, Executive Director of Montana Mental Health Consumer Advocate Project, stated he is not in opposition to the bill in theory, but does oppose it as presently written. He said it may protect the professional but turns around and places the client in jeopardy. Mental health consumers have falsely assumed that the right of confidentiality between them and their therapist is virtually the confidentiality of the confessional. Consequently, they felt there could be no breach, as such, unless they are

warned. He felt a warning would be heeded. He also felt the amendment should be considered.

SUZANNE TAUNT, President of the Montana Alliance for the Mentally Ill, favors the bill for the protection of the mental health professionals for the liability involved. The Alliance also favors the amendment to protect the rights of the consumer or the client.

QUESTION (OR DISCUSSION) ON HOUSE BILL NO.267: Rep. Gould asked Mr. Murphy about the amendment in regard to adopting it because it seemed to him that the number one problem is to get information in order to get to the root of a client's problem; the amendment would make it harder to get information needed to treat the problem. Mr. Murphy explained that he tried to meet that objection. It would not make it too much more difficult. Rep. Gould also asked Mr. Waldron the same question. Mr. Waldron stated that you may be able to give a warning to a client in the onset of dealing with him but in a case where you have an emergency call, it would be impossible to give a warning, especially in a suicide case. The amendment tells the professional that they have to stop the emergency caller and tell them the professional will have to call the police if they are planning to commit a violent act. This can be a real problem. The focus of the bill, only in part, is to protect the professional. The main focus is to allow the professional to protect individuals from possibility of violent acts by a client. The third party must be protected first.

Rep. Strizich asked Mr. Murphy if the particular amendment has the full support of your association or just drafted on their behalf. Mr. Murphy stated that the association is made up of a great many members and the board acts upon all the issues that the organization faces. The Board did recommend the amendment.

Rep. Mercer closed the hearing by stating that the first issue that needs to be addressed is whether or not it is good public policy to require mental health professionals to disclose this information and it would be his viewpoint, that it is. The second issue is do they need to put the amendment on the bill and in his viewpoint, it is a bad idea. Primarily because warnings may set back a client. There are certain times when a professional may want to disclose this warning to a client and the professional will know the situations where that needs to happen. He stated this is a good piece of legislation and hoped all would support it.

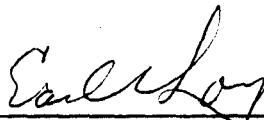
EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 188: Rep. Daily moved, DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 322: Rep. Eudaily moved an amendment to take "a" out of page 3, line 18. Question was called and a voice vote was taken. The motion PASSED unanimously. Rep. Eudaily moved DO PASS AS AMENDED. Question was called. Rep. Darko asked Rep. Eudaily about the limitation of the bill in regard to game wardens being in short supply. She asked him if law enforcement officers could also make arrests and he stated they can. Chairman Lory asked Mr. MacMaster to explain the Statement of Intent. Mr. MacMaster stated that the Statement of Intent needed to be rewritten before the bill was reported out of committee. Rep. Daily asked Rep. Eudaily if it was his intention to have this apply to motor boats, floating and all water activities. Rep. Eudaily said he thought it applied to all water activities. Rep. Daily stated he sees a potential for abuse to this because floaters will more than likely have a few beers while floating and he could see a lot of people being arrested. He preferred that this bill apply only to boaters. Rep. Eudaily stated he assumed the department was just trying to do something about the safety of the people on the lake and put standards in. Rep. Eudaily requested that the bill be held until he can discuss this with the department and he withdrew his motion. The bill is still in committee.

ACTION ON HOUSE BILL NO. 267: Rep. Gould moved HB 267 DO PASS. Question was called. A voice vote was taken and the motion CARRIED unanimously.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:45 a.m.



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EARL LORY, Chairman

DAILY ROLL CALL  
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)		✓	
PAUL RAPP-SVRCEK (D)			✓
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

# STANDING COMMITTEE REPORT

JANUARY 23,

19 87

## JUDICIARY

Mr. Speaker: We, the committee on \_\_\_\_\_

**HOUSE BILL NO. 267**

report \_\_\_\_\_

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

\_\_\_\_\_  
Chairman

**"AN ACT IMPOSING A DUTY TO WARN POTENTIAL VICTIMS OF A PATIENT'S VIOLENT BEHAVIOR AND GRANTING IMMUNITY FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES TO MENTAL HEALTH PROFESSIONALS."**

**FIRST** reading copy ( **WHITE** )  
color

# STANDING COMMITTEE REPORT

JANUARY 29,

19 **87**

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 183

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

\_\_\_\_\_  
Chairman

**"AN ACT REVISING THE LAWS RELATING TO THE ADOPTION OF CHILDREN TO CLARIFY THE PROCEDURE FOR ADOPTION; AND AMENDING SECTIONS 40-8-109 AND 40-8-121 THROUGH 40-8-124, MCA."**

*White*  
**FIRST**

**WHITE**

reading copy ( \_\_\_\_\_ )  
color





# Mental Health Association of Montana

A Division of the National Mental Health Association

State Headquarters  
555 Fuller Avenue  
Helena, Montana 59601  
(406) 442-4276

EXHIBIT A  
DATE 1-29-87  
HB #267

1/29/87

amendment to HB 267 - Duty to Warn

Page 2, line 9

following: "violence"

delete: "."

insert: "; and

(3) made reasonable efforts to communicate to the client at the onset of the course of treatment that confidentiality will be breached in the course of the duty to warn."

## BOARD MEMBERS

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Helena  
Vivian Gibson—Vice President  
Outlook  
Bonnie Hyatt-Murphy—Secretary  
Livingston  
Bernie Hedrick—Treasurer  
Big Timber  
Charles Averill  
Choteau  
Jim Bergman  
Great Falls  
John Bross  
Billings  
Rev. William Burkhardt  
Billings  
Patricia Child  
Sidney  
Edith Gronhovd  
Billings  
Stella Jean Hansen  
Missoula  
Dorothy Hovet  
Antelope  
Dr. Larry Jarvis  
Havre  
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Kelly Moorse  
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Cliff Murphy  
Billings  
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Harlowton  
Timothy Tate  
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## DELEGATE DIRECTOR TO NATIONAL M.H.A.

Joan-Nell Macfadden  
Great Falls

## DIRECTOR-AT-LARGE

Jayne Winegardner  
Billings

WITNESS STATEMENT

NAME Cliff Murphy BILL NO. 267  
ADDRESS 1301 Remond Rd. Bly. 59102 DATE 1/29/87  
WHOM DO YOU REPRESENT? Mental Health Assoc. of MT.  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 309

DATE 1/29

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MIKE LAVIN	HELONA	X	
MARVIN DYE	HELONA	X	
HIRAM SHAW	WORKERS' Comp	X	
CANDACE WIMMER	CATNEY	X	
BOB ROBINSON	WORKERS' Comp	X	
Cheryl Bryant	Crime Victims	X	
Emore J. Joliasero	Helena - Friendship Ltr.	X	
[Signature]	Beate	X	
Bill Stone	Helena	X	
Phil Murphy	MHAM - B Lys.	✓	
Tom Harrison	Sheriff + Peace Officers Assoc	✓	

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. HB 267

DATE 1-29-87

SPONSOR Mercer

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<del>Marvin Dye</del>	<del>Helena</del>		
Robert BATEEN	2212 Gold Rush Helena	X	
PAT CALIBECK HARPER	301 S. OAKES, HELVA	X	
Cyril Leitch	1721 Lincoln Helena	X	
Walter Bagg	512 Logan, Helena	X	
Suzanne F. Gannet	1890 Colorado Gulch		X
John Bruce	12 W. Meadows Billings		X
Craig Gammis	36 N. LAST CHANCE GULCH HELENA	X	
Steve Waldron	Helena Mental Health Center, Helena -- MT. Mental Health Counselors Assn.	X	
Ted J. Doney	Mental Health Assn of MT	X	
Gileen F Morgan	Montana Association of School Psychologists	X	
NANCY ADAMS	HELENA MENTAL HEALTH SERVICES, INC	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.