MONTANA STATE SENATE JUDICIARY COMMITTEE MINUTES OF THE MEETING

March 13, 1987

The forty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 13, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building

ROLL CALL: All members were present.

CONSIDERATION OF HJR 13: Representative Nancy Keenan of Anaconda presented HJR 13, which urges the court to adopt guidelines for child abuse witness. She handed out guidelines that were provided by the American Bar Association (see Exhibit 1).

PROPONENTS: Noel Larrivee, representing himself, testified in support of the bill.

John Madson, SRS, went on record for support of HJR 13.

OPPONENTS: None.

DISCUSSION ON HJR 13: Senator Blaylock asked if sexual abuse has increased or is society finding out that more of it goes on then we think. Mr. Larrivee said there is an alarming rate of sexual abuse of children in this nation.

ACTION ON HJR 13: Senator Halligan moved the bill BE CONCURRED IN. The motion CARRIED.

CONSIDERATION OF HB 800: Representative Paul Rapp-Svrcek of Polson introduced HB 800 (see Exhibit 2). He stated he had a constituent that was a first time offender in not paying his child support and he wanted to do something to clear his name. He said the fellow simply forgot to pay one month.

PROPONENTS: None

OPPONENTS: Marsha Detes, Helena, stated that she has received child support payments up to four months late and no authority seems to care. She said the system should be tighten up more, instead of eased as this bill will do. She felt if an offender of not paying child support gets away with it once, he will do it again.

Donna Ecklan, Helena, said her income is child support. She said the

child support is used all the time by both parents to cause trouble. She said child support is the child's right, not hers. She said the legislature surely doesn't space out taxes, so why let these child support offenders get away with it.

DISCUSSION ON HB 800: Senator Pinsoneault asked Representative Rapp-Svrcek if he really believed that the constituent really did forget to give child support for one month. The Representative answered yes. Senator Pinsoneault questioned if the Representative makes a bill on every constituent's whim. There was no reply.

Senator Beck asked if it takes some time to garnish a man's wages. Representative Rapp-Svrcek replied that it does take time and a \$5 service charge each time it happens.

Ms. Detes said that each time she doesn't receive child support, it hurts her credit with people.

Senator Halligan asked how up to date is the department with garnished wages. John McRae, Child Support Program, replied that the department is right on top of each one right now. He said as soon as there is a late payment, we take steps to garnish the wages after the notice has been received by the child supporter.

Representative Rapp Svrcek explained in closing that the bill only gives one chance to let this happen, and then the procedures will begin.

CONSIDERATION OF HB 78: Representative Jan Brown of Helena introduced HB 78 to the committee (see Exhibit 3).

PROPONENTS: John McRae, Child Support Program, stated that if a worker is married and is injured, and workmen's comp. pays for it, that worker must share those benefits with his family. He said when the worker is divorced and is injured, he doesn't have to share those benefits with the family, which is no longer living with him. He felt this was unfair to the ex-wife and the children, which usually don't do as well as the ex-husband does financially after a divorce. He said there are 52 cases like this in Montana right now. He said these fathers that are getting workmens' comp. and are not paying child support are being double funded.

OPPONENTS: Noel Larrivee, representing himself, said he did not agree with the House on allowing the lump sum payment from workmens' comp. also include past missed child support cases.

DISCUSSION ON HB 78: Senator Mazurek asked what this bill has to do with court operations. Mr. Larrivee said the bill just brings in more litigation problems in the child support area.

Senator Beck inquired why the bill ran into trouble in the House. Representative Jan Brown stated that some people in the House did not agree that workmens' comp. benefits go toward the family in a statute, but just the injuried worker.

Senator Mazurek said the bill would give families that have one parent paying child support a big check at one time, but would not help the family on a regular basis.

Representative Brown closed on the bill.

CONSIDERATION ON HB 605: Representative Jan Brown from Helena presented the bill to the committee (see Exhibit 4).

PROPONENTS: Norma Harris, SRS, explained every section of the bill (see Exhibit 5).

Steve Waldron, Mental Health Centers, supported the bill.

Noel Larrivee, representing himself, said the bill will not have an impact on the confidentiality of the system at all.

OPPONENTS: None.

DISCUSSION ON HB 605: Senator Halligan asked if there is an attorney for the non custodial parent, does that attorney have access to this information that is in this bill. Ms. Harris said the privilege doesn't extend to attorneys' of the non custodial parent.

Representative Brown closed on the bill.

CONSIDERATION OF HB 188: Representative Dorothy Bradley of Bozeman introduced HB 188 (see Exhibit 6).

PROPONENTS: John Madson, SRS, supported the bill.

OPPONENTS: None

DISCUSSION ON HB 188: None

Representative Bradley closed.

EXECUTIVE ACTION:

ACTION ON HB 605: Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

ACTION ON HB 188: Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

ACTION ON HB 546: Senator Blaylock moved to strike the language on page 1, line 16 through 17 and insert the word "or". Senator Crippen asked if this amendment will put the amount under \$500. Senator Mazurek said if there is a \$500 fine or more and a jail sentense, then that is where one goes to (2) of the bill. The motion CARRIED.

Senator Mazurek said he would like to see section 45 2 104 be put into the bill. Senator Galt moved to put the section in on page 3, line 20 and page 4, line 4. The motion CARRIED. Senator Beck moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

CONSIDERATION OF HJR 21: Senator Crippen said many people were not to sure about having a "several judge trial". Senator Mazurek stated that is tough on the smaller towns to get a judge. The committee decided to sit on the bill for awhile.

CONSIDERATION OF HB 435: Robert Scott, testified yesterday, gave written testimony to the committee (see Exhibit 7). Senator Yellowtail moved the bill BE NOT CONCURRED IN. He felt the bill was way too extreme for having a minute amount of drugs on a piece of property that belongs to a person.

Senator Bishop said if we put the drug seller or drug grower in jail, then they will not need a car or property, like a trailor house for awhile.

The motion CARRIED with Senator Galt voting no.

ACTION ON HB 800: Senator Pinsoneault moved the bill BE NOT CONCURRED IN. Senator Bishop thought it was a little funny that a man forgets only one payment out of several as Representative Rapp Svrcek stated. The motion CARRIED with Senators Yellowtail and Blaylock voting no.

ACTION ON HB 163: Senator Mazurek said he had concerns about the concept of the "slightest degree diminished". He felt that the term was too broad and wasn't easy to define. He said if the committee passes the bill out like it is now, the courts will have nothing but a bunch of "mushy" language to work with.

Senator Galt suggested using the words "appreciately diminished". Senator Mazurek thought of the words "significantly diminished", he felt it tighten the bill too much. Senator Galt moved to insert the word "appreciably" on page 2, line 7. The motion CARRIED. Senator Brown moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

Senator Mazurek assigned a subcommittee to HB 241. They are Senators Pinsoneault, Chairman; Halligan, Galt, and Beck.

The committee adjourned at 12:00 p.m.

Chairman

DATE March 13th

COMMITTEE ON____

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BE IT RESOLVED, that the American Bar Association approves the "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse Is Alleged" dated May 1985.

SENATE JUDICIARY

EXHIBIT NO ...

"Guidelines for the Fair Treatment of Child Witnesses in Cases Where BILL NO H. Child Abuse Is Alleged" - dated May 1985

A TEAM APPROACH

- 1. A multidisciplinary team involving the prosecutor, police and social services resource personnel should be utilized in the investigation and prosecution of cases where a child is alleged to be a victim of or witness to abuse in order to reduce the number of times that a child is called upon to recite the events involved in the case as well as to create a feeling of trust and confidence in the child.
 - a) Members of such teams should receive specialized training in the investigation and prosecution of cases where children are alleged victims and witnesses of abuse.
 - b) Whenever possible, the same prosecutor should be assigned to handle all aspects of a case involving an alleged child victim or witness including related proceedings outside the criminal justice system.

A SPEEDY TRIAL

2. In all proceedings involving an alleged child victim, the court should take appropriate action to ensure a speedy trial in order to minimize the length of time a child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of a child.

PROCEDURAL REFORM

- 3. In criminal cases and juvenile delinquency and child protection proceedings where child abuse is alleged, court procedures and protocol should be modified as necessary to accommodate the needs of child witnesses including:
 - a) If the competency of a child witness is in question, the court should evaluate competency on an individual basis without resort to mandatory or arbitrary age limitations.
 - b) Leading questions may be utilized on direct and cross-examination of a child witness subject to the court's direction and control.
 - c) To avoid intimidation or confusion of a child witness, examination and cross-examination should be carefully monitored by the presiding judge.
 - d) When necessary, the child should be permitted to testify from a location other than that normally reserved for witnesses who testify in the particular courtroom.

- re) —A person supportive of the child witness should be permitted to be present and accessible to the child at all times during his or her testimony, but without influencing the child's testimony.
- f) The child should be permitted to use anatomically correct dolls and drawings during his or her testimony.
- g) When necessary, the child should be permitted to testify via closed-circuit television or through a one-way mirror or any other manner so long as the defendant's right to confrontation is not impaired.
- h) Persons not necessary to the proceedings should be excluded from the courtroom at the request of the child witness or his or her representative during pretrial hearings in cases where the child is alleged to be the victim of physical, emotional or sexual abuse.
- i) At pretrial hearings and in child protection proceedings the court, in its discretion, if necessary to avoid the repeated appearance of a child witness, may allow the use of reliable hearsay.
- j) When necessary the court should permit the child's testimony at a pretrial or noncriminal hearing to be given by means of a videotaped deposition.

LEGISLATIVE INITIATIVE

- 4. State legislatures should, where necessary, enact appropriate legislation to permit modification of court procedures and evidentiary rules as suggested herein and in addition should:
 - a) extend the statute of limitations in cases involving the abuse of children;
 - b) establish programs to provide special assistance to child victims and witnesses or enhance existing programs to improve the handling of child abuse cases and minimize the trauma suffered by child victims, in cooperation with local communities and the federal government.

MEDIA RESPONSIBILITY

5. The public has a right to know and the news media have a right to report about crimes where children are victims and witnesses; however, the media should use restraint and prudent judgement in reporting such cases and should not reveal the identity of a child victim.

SENATE JUDICIARY	
EXHIBIT NO/	į
DATE 3-13-8	7
BILL NO. H.J. R.	13.

EXHIBIT NO. Z

DATE 11/22ch 13, 198

BILL NO. 48 800

SUMMARY OF HB800 (RAPP-SVRCEK) (Prepared by Senate Judiciary Committee staff)

HB800 amends the laws relating to administrative income withholding for child support. Under current law, if child support is being enforced through the Department of Revenue and the child support obligation has been established through court order or administrative process, the Department of Revenue can order an obligor's employer or other payor to withhold an amount from the obligor's income sufficient to meet the support obligation. Before the Department can order income withholding, the Department must serve the obligor with a notice of intent to withhold income. The obligor can request an administrative If no hearing is requested, or the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support payment, the Department shall immediately serve an order to withhold and deliver income upon any payor or combination of payor. provides a first-time offendor an opportunity to discharge child support delinquencies and terminate the administrative proceedings by payment of an amount equal to or in excess of 1 month's support payment. This is a one time only opportunity. COMMENTS: None.

C:\LANE\WP\SUMHB800.

SENATE JUDICIARY	
EXHIBIT NO.	
DATE March 13.	1981
BILL NO. #188 78	

SUMMARY OF HB78 (J. BROWN)
(Prepared by Senate Judiciary Committee staff)

HB78 is by request of the Department of Revenue and amends the law relating to attachment or garnishment of Workers' Comp benefits. This bill allows attachment or garnishment of Workers' Comp benefits for the payment of certain child support obligations. Under current law, Workers' Comp benefits are not subject to attachment or garnishment, except that payments for medical or hospital services are attachable under the provisions relating to liens of physicians, nurses, and hospitals in personal injury claims (section 71-3-1118).

Workers' Comp payments can be of two types: lump-sum or installment and child support obligations can be of two types: current or past-due. As originally drafted, this bill would have allowed attachment or garnishment of either lump-sum or installment type payments for current or past-due child support payments. The House amended the bill in an apparent attempt to make its provisions apply only to lump-sum benefits. As originally drafted, the attachment of installment benefits was limited to an amount above \$110 up to a maximum of 50% of the installment payment. As amended by the House, the limitations in subsection (2) limit attachment of lump-sum payments to attachment for past-due child support and for only that amount designated as child support.

COMMENTS: The Department of Revenue has brought to my attention that the House amendments (besides being difficult to understand) do not really accomplish what was intended by the House. The House apparently intended to permit attachment or garnishment of lump-sum benefits (for current as well as past-due support) but not permit attachment or garnishment of installment benefits. But what the House amendments actually do is permit attachment or garnishment of lump-sum benefits for past-due child support only (not current) and permit attachment or garnishment of installment benefits without limitation. The Department will offer amendments to correct the problem.

C:\LANE\WP\SUMHB78.

SENATE JUDICIARY,

EXHIBIT NO. 4

DATE 11 arch 13, 198

BILL NO. 4B 605

SUMMARY OF HB605 (J. BROWN) (Prepared by Senate Judiciary Committee staff)

HB605 is by request of the Department of Social and Rehabilitation Services and amends the laws relating to confidentiality and disclosure of case records on reports of child abuse and neglect.

Under current law, case records of SRS, the county welfare department, the county attorney, and the courts relating to such cases must be kept confidential; except that interagency interdisciplinary child protective teams may use the records and the records may be disclosed to a court for in camera (in chamber, not in open court) inspection if relevant to an issue before it. The court can further disclose the information if it finds such disclosure to be necessary for the fair resolution of an issure before it.

Under this bill, such records can be disclosed to the following entities or persons in this state or any other state, in addition to the above persons and entities:

a) state and federal agenies legally authorized to receive, inspect, or investigate such reports;

b) a licensed youth care facility or licensed childplacing agency providing services to the child or family;

c) a licensed health or mental health professional who is treating the family or child;

d) a parent or guardian of the child or other person responsible for the child's welfare, without disclosure of th identity of any person who reported or provided information;

e) the allegedly abused or neglected child or his guardian ad litem;

f) members of an interdisclipinary child protective team for the purpose of assessing the needs of the child and the family, formulating a treatment plan, and monitoring the plan;

g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency;

h) an employee of the department if necessary for administration of programs to help the child;

I) an agency of an Indian tribe or the relatives of an Indian child if disclosure is necessary to meet the requirements of the federal Indian Child Welfare Act;

j) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; or

k) a foster care review committee.

Persons receiving records under this bill must keep the information confidential, except that any such person can disclose the information to any other person described above. SRS is authorized to adopt rules relating to procedures for the disclosure of records under this bill.

COMMENTS: The provisions of the bill apply to disclosure of records by SRS, the county welfare department, the county

attorney, and courts. The rulemaking authority granted to SRS can extend only to SRS records and possibly county welfare records.

C:\LANE\WP\SUMHB605.

HB 605 TESTIMONY BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Mr. Chairman, members of the committee my name is Norma Harris I represent the Department of SRS.

The department has proposed a general revision of the confidentiality statutes which pertain to child abuse and neglect records. Under the existing statutes, the department could not disclose any informations contained in its records concerning reports of child abuse and neglect, except pursuant to court order or to a child protection team authorized under section 41-2-108, MCA. A recent Attorney General's Opinion interpreted the statute to preclude the department from disclosing information concerning child abuse and neglect cases to natural parents, foster parents, psychologists, etc.

The existing statute has made it difficult for the department to provide information necessary to the provision of protective services to the family. Under the existing statute, the department cannot disclose information regarding incidents of suspected abuse or neglect with psychologists, physicians, foster homes and treatment facilities which provide services to the family without first obtaining a court order. These service providers need information about the child and the circumstances surrounding the suspected abuse or neglect to provide appropriate services to the child. Also, it is necessary to provide information contained in child abuse and neglect records to the natural parents to assist them in obtaining services and preparing their defense in child abuse and neglect proceedings.

Many county attorneys and social workers have requested a change in the existing statutes to allow for greater disclosure. Therefore, the department proposes amendment of the statute to allow for a broader range of disclosure. This will assure that the department will be able to promptly disclose information to those persons and agencies that the department uses as resources in its efforts to reunite the family and provide the necessary protective services to the child without running the risk of being charged with a misdemeanor.

SENATE JUDICIARY

EXHIBIT NO.

DATE // CACK

BILL NO HB (d

The Bill is designed to identify with as much specificity as possible those persons and agencies who need information from child abuse and neglect files in order to provide services to the family and the child. The proposed amendments were drafted to be consistent with the federal regulations restricting the disclosure of records pertaining to child abuse and neglect. Under 45 CFR § 1340.14, a state must provide by statute that all records concerning reports of child abuse and neglect are confidential to receive federal funding for child abuse and neglect services. However, the federal regulations specify that a state may choose to authorize by statute disclosure to persons or agencies specified in the federal regulations. 45 CFR section 1340.14 is attached for your reference. The proposed amendments are based upon the general guidelines of the federal regulations, but provide for greater specificity designed to meet the particular needs of the department in providing protective services to children who are victims of child abuse and neglect.

The proposed amendments allow the department to adopt rules to govern the disclosure of such records within the frame work of the statute. Administrative regulations will be necessary to establish procedures pertaining to the disclosure of information contained in the department's case records.

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SENATE JUDICIARY
EXHIBIT NO 5

DATE 3-/3-8

BILL NO. H.B. LO

EXHIBIT NO. 6
DATE March 13, 1987
BILL NO. HB 188

SUMMARY OF HB188 (BRADLEY) (Prepared by Senate Judiciary Committee staff)

HB188 amends the laws relating to procedures for adoption of children to allow a court to issue a summary final decree of adoption and waive the requirement of an interlocutory decree and the 6 months waiting period.

The way the statutes are currently written, once a petition for adoption is made, the court must order an investigation and after an investigation is made, the court can enter an interlocutory decree placing the child in the adoptive home for six months. After six months, the court can enter a final decree of adoption based upon the recommendations of a investigator who has observed the child in the home during the six months. (The court can just issue a summary final decree if the child is a member of the extended family of one of the petitioners or the court finds that the best interests of the child will be furthered thereby.)

Under this bill, the court could issue a summary decree, waiving the interlocutory decree and 6 months waiting period, if the child has been placed in the home by the Department of SRS or a licensed child placing agency for 6 months or more and the department or agency has conducted an investigation during that period.

COMMENTS: None.

C:\LANE\WP\SUMHB188.

SENATE JUDICIARY

EXHIBIT NO._

DATE //

Summary of Argument in Opoosition to HB 435 Amel Anong 15 / S44-12-102 and \$44-12-205, MCA

Robert Scott -- 12 March, 1987

I. Regarding proposed deletion of §44-12-102(2)(d), p. 3, lines 19-21, the effect would be to authorize forfeiture, pursuant to §44-12-102(1)(d), of a vehicle in which any amount of marijuana is unlawfully possessed by an occupant (subpart iii) or in which any amount of marijuana has been unlawfully kept, deposited or concealed (subpart ii). Is such a drastic penalty truly justified for mere possession of marijuana? (Possession of small amounts is only a misdemeanor offense).

Further, §44-12-102(2)(b) does not adequately protect the innocent owner of the vehicle. If a passenger upon observation that the car might be searched concealed his marijuana in the car (ashtray, floormat, seat), the driver/owner would be presumed to be in control of the vehicle and its contents and would thus have the burden of somehow proving that he was not aware of the presence of the substance.

- II. Regarding proposed subpart (1)(h), p. 2, line 25, and p. 3, lines 1-5, there is <u>no</u> protection for the innocent co-tenant or joint tenant provided under the statute as amended by this bill. Further, it penalizes a violater who utilizes his own property but not one who leases or rents.
- III. Regarding proposed amendment to HB 435, insertion of proposed subpart (1)(i) allowing forfeiture of "any real property that assisted, facilitated, or was used or intended for use in the

Summary of Argument Robert Scott to Yellowtail Page 2

commission of a violation of Title 45, chapter 9" in fact authorizes forfeiture of a home or other real property which was used for <u>possessing</u> marijuana in violation of Title 45, Chapter 9, Section 102.

Potential forfeiture of the fruits of a life's work of tens of thousands of dollars value is certainly not justified for a mere possessory offense.

In summary: If the intent here is to deprive the wrong-doer of the benefit of his ill-gotten gains, proposed subpart (1)(i) is wholly unnecessary and should be deleted, as should any forfeiture for simple possession.

SSP/ls

SENATE JUDICIARY

EXHIBIT NO. 7

DATE 3 - 13 - 2

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Senator Mazurek Chairman.

Chairman.

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Senator Hazurek Chairman.

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Chairman.

Senator Mazurek

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Senator Mazurek Chairman

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Senator Mazurek

Chairman.

March 13	19
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Senator Hazurek Chairman.