

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on February 18, 1989, at 7:30 a.m.

#### ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown announced the committee would take executive action on HB 57, HB 493, HB 169, HB 716.

#### DISPOSITION OF HOUSE BILL 57

Motion: Rep. Boharski moved HB 57 DO PASS. Rep. Addy seconded the motion.

Discussion: Rep. Mercer said after the hearing on this bill he spoke with Bill Rosback and he suggested that a locality rule be adopted. Mike Sherwood put together a handout (EXHIBIT 1) that instead of saying one is responsible only for willful or wanton acts, would say one is liable only for an act or a mission which fails to meet the standard of care that a reputable member of the health care profession in a like case, under similar conditions, in a similar locality would do.

Amendments, Discussion, and Votes: Rep. Mercer moved proposed amendments (EXHIBIT 1) to HB 57. Rep. Stickney seconded the motion.

Rep. Boharski said he is curious as to whether this would include a situation such as when a doctor gets a patient he has never seen before and it is an emergency situation and the patient dies, is the doctor liable for a malpractice suit? Rep. Mercer stated that these amendments attempt to address that situation. They would provide that the doctor is only responsible to do what any normal person would do in a similar situation. This would protect them more than they are protected now.

Rep. Addy commented that this is what everybody was trying to do all along. The locality rule, however, does lower the standard. It is an appropriate standard. It says that they are going to take the individual circumstances into account in deciding how to evaluate the evidence. He said he's glad this compromise has been reached and he supports it.

Rep. Brown asked for an explanation of the difference between the Good Samaritan application and what's being done in this bill. Rep. Mercer responded that essentially the Good Samaritan uses the willful and wanton standard and it speaks to doing something without pay and refers to something other than the normal medical setting. The main difference is this protects doctors in the normal course of their business where they are collecting a fee but it doesn't elevate it to the willful and wanton standard. It makes judgment based on the situation and the doctor's capability. The Good Samaritan has more latitude.

A vote was taken on the proposed amendments (EXHIBIT 1) and CARRIED unanimously.

Recommendation and Vote: Rep. Mercer moved HB 57 DO PASS AS AMENDED, motion seconded by Rep. Darko. Motion CARRIED with Rep.'s Brown and Strizich voting Nay.

#### DISPOSITION OF HOUSE BILL 493

Motion: Rep. Gould moved to TABLE HB 493. Rep. Boharski seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion to TABLE HB 493 CARRIED with a unanimous vote.

#### DISPOSITION OF HOUSE BILL 169

Motion: Rep. Mercer moved to reconsider previous action taken on HB 169 and remove it from the Table. Rep. Nelson seconded the motion.

Rep. Mercer moved HB 169 DO PASS, motion seconded by Rep. Darko.

Discussion: Rep. Mercer said this is the expungement bill. It presents the idea that if one has a deferred sentence and lives up to it, at the end the record should be cleaned. The concern of the criminal justice people is that they want to keep the information for future use. Judges may also want the information in the future. Also, it's difficult to erase records. The proposed amendment (EXHIBIT 2) would provide that the record not be expunged, but the charge would be put in a confidential criminal justice status so no

one could get access to it except by a district court order.

Amendments, Discussion, and Votes: Rep. Mercer moved the proposed amendments (EXHIBIT 2), motion seconded by Rep. Stickney.

Rep. Rice said this is a real problem for the Attorney General's office. Sometimes there is a clerk of court trying to destroy records and the County Attorney says no and it's a real mess. This is an attempt to solve that problem.

Rep. Mercer said this is attempting to strike a balance by saying that if the charge is dismissed, any and all records that relate to the charge are considered confidential criminal justice information. No one has access to that except criminal justice agencies. If an inquiry was made by anyone, the answer would be "those are criminal justice records and we cannot reply in any way as to whether or not anything exists."

Rep. Brown asked John Connor to explain the problems this issue creates. Mr. Connor said the biggest problems are those that have to do with record keeping responsibilities that various state and local officials have. There is a concern by law enforcement that if someone got a deferred sentence and there was no way ever to find out about it later, that he could continually get deferred impositions of sentence. The concern of the County Attorney's Association and the Department of Justice is that the expungement creates all sorts of problems as to what to do with these records. Some clerks of court are shredding the records and others are ignoring the law altogether.

Rep. Addy said he doesn't have a record as he has never been convicted of anything other than speeding and one reckless driving offense. He said he assumes then, that if anyone wrote to get his record they would say he doesn't have a record. He asked if that was correct. Mr. Connor said he assumed so. Rep. Addy asked if he were convicted of a more serious offense, such as shoplifting, and received a deferred sentence and satisfied the conditions of the deferral and had it erased, the department would then have to write back and say that no information could be released. Mr. Connor said there would have to be some innocuous language that would not suggest the person does or does not have a record. The agency would have to say something like, "This agency is prohibited by law from responding to such inquiries." Rep. Addy said the problem is that there is a difference between the two responses no matter how it is stated. Therefore, you either know a person doesn't have a record or you assume he does and most people will assume the worst. There is a real dilemma there and I'm not sure it could be solved.

Rep. Hannah asked John Connor if, in some jurisdictions an employer would get a report back that someone they had asked about had received a deferred imposition of sentence. Mr. Connor said he believes that is true. He said that from talking to County Attorneys in different jurisdictions he knows that the law is being construed differently and is being effectively managed in some jurisdictions and not in others.

Rep. Hannah asked if the option of the committee is to allow those records to be released as they are currently being released in some jurisdictions or to try and put in a privacy clause to make some attempt to provide insulation so that no information would be sent out. Mr. Connor said yes.

Rep. Hannah said he wasn't aware that there were some jurisdictions where information is currently available on deferred impositions. John Connor said that part of the problem is that the law is relatively new and the Attorney General's opinion of last July interpreting it is very new. The problems with the differences in interpretation stem from the fact that people aren't used to it yet.

Rep. Addy said he really questions whether the problem is interpreting the law or doing a good job of keeping the records. It seems like you're saying it's too much work so we'll just change the law. John Connor said it is not just an administrative inconvenience. Local governments are being exposed to incredible problems with liability. I think this amendment takes care of the defendant and it also cures the administrative problems.

A vote was taken on Rep. Mercer's proposed amendments and CARRIED with Rep.'s McDonough, Addy, Brown, and Strizich voting in opposition.

Rep. Addy moved to TABLE the bill. Rep. McDonough seconded the motion. The motion FAILED.

Recommendation and Vote: Rep. Mercer moved HB 169 DO PASS AS AMENDED, motion seconded by Rep. Rice. Motion CARRIED with Rep.'s McDonough, Wyatt, Strizich, Addy, Nelson, and Brown voting against the motion.

#### DISPOSITION OF HOUSE BILL 716

Motion: Rep. Eudaily moved to reconsider previous action taken on HB 716 and remove it from the Table. Motion was seconded by Rep. Rice.

The motion CARRIED with Rep. Brooke, Rep. Addy and Rep. McDonough voting Nay.

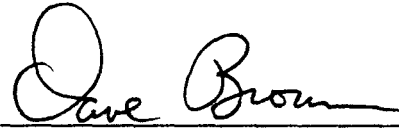
Rep. Eudaily moved DO PASS, motion seconded by Rep. Gould.

Discussion: Rep. Mercer said he would like to see the bill survive. Rep. Addy commented that perhaps Rep. Thomas should put an appropriation in the bill and ask to have it moved to the Appropriations Committee. That would keep the bill alive for another two weeks. Rep. Brown said at this point the bill will be left sitting in committee and if this doesn't work he will call a meeting on the House floor.

Recommendation and Vote: No further action was taken. Hold HB 716 for further consideration.

ADJOURNMENT

Adjournment At: 8:00 a.m.

A handwritten signature in cursive script that reads "Dave Brown". The signature is written in dark ink and is positioned above a horizontal line.

REP. DAVE BROWN, Chairman

DB/je

4208.min

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 18, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 57 (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_  
Dave Brown, Chairman

And, that such amendments read:

1. Title, lines 7 and 8.

Strike: "GROSS" on line 7 through "ACTS" on line 8

Insert: "FAILURE TO EXERCISE THE DEGREE OF CARE AND SKILL  
ORDINARILY EXERCISED IN A LIKE CASE UNDER A SIMILAR  
EMERGENCY SITUATION IN THE SAME OR A SIMILAR LOCALITY"

2. Page 1, lines 21 and 22.

Strike: "gross negligence" on line 21 through "assistance" on  
line 22

Insert: "an act or omission that fails to meet the degree of care  
and skill ordinarily exercised by reputable members of the  
health care provider's profession, occupation, or  
association in a like case under a similar emergency  
situation in the same or a similar locality"

3. Page 2, lines 7 and 14.

Strike: "."

Insert: "; and:"

4. Page 2, lines 8 and 15.

Following: lines 7 and 14

Insert: "(i) is a condition the provider would not ordinarily  
attempt to treat, but would refer the patient to another  
provider if the patient did not require immediate services;  
or

(ii) is a condition of which the patient is aware and  
the patient had the time to consult a provider before  
immediate services were required but did not do so."

5. Page 2, lines 9 and 10.

Strike: ", whether" on line 9 through "room," on line 10

2-18-89



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### REPRESENTATIVE DAVE BROWN

HOUSE DISTRICT 72

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COMMITTEES:  
JUDICIARY, CHAIRMAN  
LOCAL GOVERNMENT  
RULES

TO: John Vincent, Speaker of the House  
FROM: Dave Brown, Chairman, House Judiciary Committee *Je*  
DATE: Feb. 18, 1989  
SUBJECT: House Bill 493

The House Judiciary Committee has TABLED HB 493 on  
Feb. 18, 1989.

DB/je



2-18-89  
1:45pm  
W.O.

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 169 (first reading copy -- white) do pass as amended .

Signed: Dave Brown  
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "EXPUNGED;"

Insert: "PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS;"

2. Page 1, lines 19 and 20.

Following: "dismissed." on line 19

Strike: "Upon dismissal of the charges,"

3. Page 1, lines 21 and 22.

Following: "~~expunge~~" on line 21

Strike: "the defendant's record may not be expunged."

4. Page 1, line 25.

Following: "~~expunged.~~"

Insert: "A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed all records and data relating to the charge are confidential criminal justice information as defined in 44-5-103 and public access to the information can only be obtained by district court order upon good cause shown."

2-18-89



*The Big Sky Country*

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COMMITTEES:  
JUDICIARY, CHAIRMAN  
LOCAL GOVERNMENT  
RULES

TO: John Vincent, Speaker of the House

FROM: Dave Brown, Chairman, House Judiciary Committee *je*

DATE: Feb. 18, 1989

SUBJECT: House Bill 716

The House Judiciary Committee has removed HB 716 from  
the TABLE and is holding it for further consideration.

DB/je

House Bill No. 57

Introduced by Representative Marks

A BILL FOR AN ACT ENTITLED: " AN ACT PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR LIABILITY FOR DAMAGES CAUSED BY GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS FAILURE TO EXERCISE THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED IN A LIKE CASE, UNDER A SIMILAR EMERGENCY SITUATION, IN THE SAME OR SIMILAR LOCALITY; AND PROVIDING AN APPLICABILITY DATE."

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

SECTION 1. Limits on liability for care rendered in emergency situations in hospital or physician's office.

(1) (a) Except as provided in subsection (1) (b), a health care provider who in good faith renders care or assistance in an emergency situation occurring in the provider's office or in a hospital is not liable for any civil damages for acts or omissions committed in rendering the emergency care or assistance.

(b) A health care provider is liable for damages caused by ~~gross negligence or by willful or wanton acts or omissions when rendering such emergency care or assistance.~~ an act or omission which fails to meet the degree of care and skill ordinarily exercised by reputable members of the health care provider's profession, occupation or association in a like case, under a similar emergency situation, in the same or similar locality.

(2) As used in this section, the following definitions apply:

1 (a) "Emergency situation occurring in the provider's office"  
2 means a situation that occurs in an office, other than a hospital, used  
3 by a health care provider for the examination or treatment of  
4 patients and that requires immediate services for alleviation of  
5 severe pain or immediate diagnosis and treatment of medical  
6 conditions that, if not immediately diagnosed and treated, would lead  
7 to serious disability or death; and:

8 (i) is a condition the provider would not ordinarily attempt to  
9 treat, but would refer the patient to another provider if the patient  
10 did not require immediate services; or

11 (ii) is a condition of which the patient is aware and had the  
12 time to consult a provider before immediate services are required  
13 but does not do so.

14 (b) "Emergency situation occurring in a hospital" means a  
15 situation that occurs in a hospital, ~~whether or not it occurs in an~~  
16 emergency room, and that requires immediate services for  
17 alleviation of severe pain or immediate diagnosis and treatment of  
18 medical conditions that, if not immediately diagnosed and treated,  
19 would lead to serious disability or death;

20 (c) "Health care provider" means:

21 (i) a physician, dentist, osteopath, chiropractor, optometrist,  
22 chiroprapist, registered professional nurse, licensed practical nurse, or  
23 physician's assistant, duly licensed under the provisions of Title 37;  
24 or

25 (ii) a hospital.

26 (d) "Hospital" means a licensed hospital, infirmary, or health  
27 care facility as defined in 50-5-101.

28 (3) Nothing in this section may be construed to authorize  
29 practice by a health care provider beyond the scope and limitations  
30 of his license.

31  
32  
33  
34 REST OF ORIGINAL TEXT OF BILL  
35 REMAINS THE SAME

AMENDMENTS TO HOUSE BILL NO. 169

1. Title, line 7.  
Following: "Expunged;"  
Insert: "PROVIDING FOR NOTICE OF DISMISSAL AND  
RESTRICTING PUBLIC ACCESS TO THE RECORD."
2. Page 1, line 19.  
Following: "dismissed."  
Strike: Remainder of line 19 and line 20.
3. Page 1, line 22.  
Strike: "defendant's record may not be expunged."
4. Page 1, line 25.  
Following: "expunged;"  
Insert: "A copy of the order of dismissal shall be  
sent to the prosecutor and to the department of justice  
accompanied by a form prepared by the department of justice  
containing identifying information about the defendant.  
After the charge is dismissed as provided herein, any and  
all records or data relating to the charge shall be  
considered confidential criminal justice information as  
defined in 44-5-103, MCA." Public access to this type of  
confidential criminal justice information can only be  
obtained by district court order allowing such access.

*upon good cause shown,*