

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 27, 1989, at 10:00 a.m. in Room #325 at the State Capitol.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Bob Brown, Mike Halligan, John Harp, Loren Jenkins, Joe Mazurek, Dick Pinsoneault, Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: Senator Mazurek introduced Mr. James Chang, the Council General of the Republic of China office in Seattle, and Mr. Matthew Lee of Taiwan to the committee. He welcomed them to Montana and wished them an enjoyable evening at the Governor's Ball.

HEARING ON SENATE BILL 209

Presentation and Opening Statement by Sponsor: Senator Bob Brown of Whitefish, representing District #2 stated that the bill increased the salaries of court reporters and revised the court filing fees. The increase in court filing fees would bring in about \$200,000 into the county each year, he stated, which would pay for the bill.

List of Testifying Proponents and What Group they Represent:

Jerome Anderson, Montana Court Reporters Association  
Robert Nieboer, Montana Court Reporters Association

List of Testifying Opponents and What Group They Represent:

Linda Stall Anderson, Montana Association of Counties  
Howard Geip, Flathead County Commissioner

Testimony:

Jerome Anderson presented written testimony to the committee. (See Exhibit #1)

Robert Nieboer read written testimony into the record. (See Exhibit #2.)

Linda Stall Anderson appeared as an opponent, stating that she didn't think the job of court reporters was very different from other county employees. She felt that a \$9,000 to \$11,000 increase in salary was too much, and that it would be difficult for the counties to come up with the additional funds.

Howard Geip stated that his county had been living under budget constraints for the last few years. His board of commissioners felt that would be wrong to have legislation for an increase in wages for anyone in their county government. The court reporters in Flathead County were the only people who had private businesses in the county buildings, he stated, and charged the county for their services, he said.

Questions From Committee Members: Senator Halligan asked Jerome Anderson if a new, graduating court reporter would get a starting salary of \$25,000 and Mr. Anderson stated that was correct, if the bill passed in its present form.

Senator Yellowtail asked Mr. Anderson what the average salary was for a court reporter. Mr. Anderson stated it is at a level of \$23,000 at present. He said the increase was based upon a salary set by the judges, who considered the background and training of the individual before applying a salary increase.

Sen. Dick Pinsoneault asked Mr. Anderson if the court reporter's job required him to do outside reporting. Mr. Anderson said it did not. The official court reporters no longer have time to take depositions anymore, he stated, so it is being done by free-lance reporters.

Closing by Sponsor: Sen. Bob Brown stated that the lowest increase in the bill is discretionary, that all court reporters would not necessarily receive the maximum raise. There hasn't been a raise since 1983, he said, and added that their work-load has increased since then.

HEARING ON HOUSE BILL 91

Presentation and Opening Statement by Sponsor: Rep. Randy Roth, representing District #96 stated this bill would allow for an increase in fee charged by the county clerk and recorder for a certified copy of a birth or death certificate. The present \$2 fee would be increased to \$3 for birth and death certificates. He said that other increases had been proposed, but he felt that only the one increase should be made. The increased fees should more accurately cover the cost of providing copies, he felt.

List of Testifying Proponents and What Group they Represent:

Court Harrington, Montana Association of Clerk & Recorders

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Court Harrington stated that under the current law, the Clerk and Recorder charges \$.50 for the first page of any document and \$.25 thereafter. The Association requested that the fee for a certified copy of a birth and death certificate be increased from \$2 to \$5, because there was a standard charge in other places, he said. On the floor of the House it was reduced to \$3, but he said the Association would like to see it returned to the \$5 charge. (See Exhibit #3.)

Questions From Committee Members: None.

Closing by Sponsor: Rep. Roth said he felt the \$1 increase for birth and death certificates would be an adequate fee raise for the present. He saw no reason for increasing the fees to match the fees others charge. He closed the hearing.

HEARING ON SENATE BILL 138

Presentation and Opening Statement by Sponsor: Senator Bob Brown of Whitefish, representing District #2. opened the hearing on the bill which required loan and credit

agreements to be in writing in order to be enforceable. He stated that SB 138 was originally considered by the Business and Industry Committee and was given a "Do Pass" recommendation by that committee. When the bill was discussed on the Senate Floor, he said, it was felt that it might have a broader application than the Business and Industry committee had considered. The bill was brought before the Judiciary Committee for a re-hearing, he said, because of some financial concerns.

List of Testifying Proponents and What Group they Represent:

George Bennett, Montana Bankers Association  
Roger Tippy, Montana Independent Bankers Association  
Chip Erdmann, Montana Savings & Loans

List of Testifying Opponents and What Group They Represent:

None

Testimony:

George Bennett stated that bankers, representatives of savings and loans and and credit unions originally testified as to the need for the bill. He said the bill considered the statute of frauds. This bill would require certain things to be in writing to avoid charges of fraud. At present, banks are being sued by people claiming there were oral promises for loans which were later denied. This bill would require the writing of a loan transaction, said Mr. Bennett.

Roger Tippy stated that large and small banks agree with this bill.

Chip Erdman stated that the savings and loans institutions were in support of this bill. He said it was important in order to avoid misunderstandings in loan transactions.

Questions From Committee Members: Sen. Mazurek mentioned to Mr. Bennett that the language on page 2, line 7 "...to grant or extend credit" had a broad application. That agreement would not be enforceable if it were not in writing, he felt. Mr. Bennett said that there had been a suggestion to limit this provision to financial institutions, but that his principal concern was lender liability.

Sen. Crippen asked Mr. Bennett if he would be willing to work with the sponsor and look at the proposed amendment. He stated that he would.

Sen. Halligan the focus of the amendments should be on institutions, who in the regular course of business, handle loans.

Closing by Sponsor: Senator Brown thanked the committee for hearing the bill and closed the hearing.

HEARING ON SENATE BILL 208

Presentation and Opening Statement by Sponsor: Senator Bob Brown of Whitefish, representing District #2, said that the bill provided several actions regarding tort claims. In 1985, the legislature passed SB 91, which was a product of the Montana Supreme Court Committee on Rules and Evidence. Prior to that time, the law pertaining to venue was contained in one section of the law. But the problem, he stated, was the requirement for a tort action trial to be held in the county in which the tort was committed. The problem became evident in 1987 when the Montana Supreme Court heard the case of "Mackaleer vs. Casey". The bill was written to return the law to the way it had been. He said that amendment might be considered regarding applicability.

List of Testifying Proponents and What Group they Represent:

Zander Blewett, attorney from Great Falls representing himself.  
Mike Sherwood, Montana Trial Lawyers Association  
Jacqueline Tirrell, American Insurance Association

List of Testifying Opponents and What Group They Represent:

Jim Robishon, Montana Liability Coalition  
John Alke, Attorney for Montana Dakota Utilities  
John Fitzpatrick, Dir. Community & Regulatory Affairs  
for Pegasus Corporation.  
Jim Reynolds, Attorney in Helena  
John Dudas, Attorney in Kalispell

Testimony:

Mr. Zander Blewett stated that when the "Mackaleer vs. Casey" decision was made, it became clear to him that the intention of the legislature had been overlooked in the Supreme Court decision. This bill, he said, would not change the law at all, but would clarify the way the law had been since 1871. It would let an injured plaintiff proceed to a county that is least expensive or most convenient for him to file. The law should not be in question, he stated, after its existence for over 100 years. He presented two exhibits to the committee: Letters from Judge Keller and Dennis Clarke which refer to the intent of the Commission being revision of the venue statutes. (See Exhibits #4 and #5.) He said some people opposed the bill calling it "forum shopping." He explained that the Mackaleer vs. Casey case was a case of sexual discrimination. Mackaleer tried to sue his former secretary (who had moved to Pennsylvania) in White Sulphur Springs for slander. Mr. Blewett felt the Supreme Court completely overlooked the intent of the legislature in the decision. He urged the committee to pass the bill.

Mike Sherwood appeared in support of the bill. (See Exhibit 6.)

John Alke stated that he opposed this statute, because there had been examples of non-tort side use of the venue statute which prevents forum shopping. He told of a non-tort dispute which arose in Wolf Point involving Montana Dakota Utilities who, specifically, does business in Eastern Montana. When a case involving the company came up, it was not litigated in Eastern Montana where it would have been convenient. But, it was litigated in Western Montana, to use a court which had decided against a utility in a similar case. This bill would prevent a situation of that type, he said. He felt this type of litigation denegated the judicial system. He suggested that, if this bill was to be considered, it should be amended to say that one of the elections is the plaintiff's place of residence when the action was brought. He said that, if Mr. Blewett would not agree with that amendment, he wanted to "forum shop;" but, if his answer was yes, then he was only concerned about convenience.

Jim Robishon read testimony into the record. (See Exhibit #6.)

John Fitzpatrick stated that he was troubled with the bill's broadness. This bill would open the statute wide open. He said that Pegasus was a non-resident corporation and is presently involved in a case being tried in Malta. He said that may be justice in the point of view of some trial lawyers, but he disagreed.

Mr. Jim Reynolds stated he was the defending attorney in the Mackaleer vs. Casey suit. The case was a woman working for an attorney, Alan Mackaleer. She worked in his office for a short time and during that time she was subjected to certain sexually inappropriate comments and actions by him which incurred in his office in Bozeman, and also during business trips to Missoula. She left his employ and filed a sex discrimination claim with the Montana Human Rights Commission. Mr. Mackaleer responded by filing a law suit against her for slander and defamation. She filed in Meagher County and then in Gallatin County and changed the venue. Mr. Mackaleer appealed to the Supreme Court and the Supreme Court agreed that Gallatin County was the best place to hear that law suit. He said he thought the Supreme Court unanimous decision was rejecting Mr. Mackaleer's appeal to make this a convenient lawsuit for my client. He felt there should be some requirement of venue.

John Dudas stated he opposed the bill because, in his opinion, it was a "forum shopping" bill.

Jacqueline Tirrell stated that her association disapproved of this legislation.

Questions From Committee Members: Senator Beck asked Mr. Blewett would be satisfied if this bill was amended to the county of residence. Mr. Blewett he would not. He stated that he doesn't want the committee to change the venue laws, but to leave them as they are.

Sen. Pineseault asked Mr. Blewett if he was denying that forum shopping occurs. Mr. Blewett stated that the plaintiff would be given the choice of forum when the defendant lives out of state, because the basis for the defendant being able to be sued in that county of reference is not available to an out-of-state

defendant. He said that "forum shopping" was not a dirty word, but has been the law for 113 years. It can't possibly be a wrong to the defendant, he said, because it has been used time and time again. Senator Pineseault said that if the plaintiff selects a site because he knows he is going to get a better determination from the judge and jury, then what remedy would the defendant have. Mr. Blewett stated the defendant has the precise remedy that Mr. Robishon already told about in the hearing. He can go to the court and give his reasons. If the venue is unfair, the court can move the venue.

Sen. Harp asked Mr. Blewett why the Supreme Court gave such a decision when Montana's 113-year-old law has worked so well. Mr. Blewett said that the Supreme Court made an obvious mistake. Sen. Harp asked if it was a split decision or a unanimous decision. Mr. Blewett did not know.

Sen. Crippen asked Mr. Blewett where in statute this problem was found. Mr. Blewett said that is in 118 Sub (2). It deals with resident and defendants, he stated. Senator Crippen asked what causative action would that section apply to. Mr. Blewett said it has always applied to civil cases. Sen. Crippen said, if that is the case then why in 25-2-122 was that language specifically excluded. Mr. Blewett said, in 1947, all of these laws were in the same statute. All they did was take out the precise language and put it in different parts of statute in the bill that was passed last session.

Sen. Beck asked Sen. Brown what would happen with the two cases already decided. Sen. Brown stated that the reason the bill was before the committee was to allow the time-honored tradition of allowing the Montana resident plaintiff to determine his own forum. If an effective date was placed on the bill, it would appear that it was an attempt to change the statute. Rather, it is an attempt to clarify that the way the law has always been, he said.

Closing by Sponsor: Sen. Brown thanked the committee for hearing the bill. He urged passage of this bill.



## DISPOSITION ON SENATE BILL 164

Discussion: Sen. Crippen announced that discussion would proceed on proposed amendments. The first amendments discussed were Senator Mazurek's (Exhibit 7) entitled A. Sen. Rasmussen's were entitled B (Exhibit 8). The Montana Trial Lawyers Association amendments became C. (Exhibit 9) Senator Jenkins's amendments became D (Exhibit 10). Senator Yellowtail's amendments became E. (Exhibit 11.) Valencia said there had been three additional amendments brought in, one by Senator Rasmussen (Exhibit 12), and two by Senator Mazurek (Exhibits 13 and 14).

Discussion on A amendments:

Senator Crippen asked Valencia Lane to explain the A Amendments which had been requested by 5 members of the committee. She reviewed them number by number. She also explained the two amendments added by Senator Mazurek after A was prepared. Substance of the amendments were: title, change of the requirement from notifying both parents to one, exemptions from notification requirement, removal from statutory reference to definition of "emancipated", removal of requirement that the doctor gets the minor's written consent, remove inappropriate references to consent replacing with exemption, remove references to majority rights and guardian, and appointment of a guardian. She told the committee that, nowhere in the bill was there any provision for payment of the appointment of a guardian or for cost of counsel. She continued saying on p. 4, line 3, saying the reference to "24 hours" is removed, replace consent standards with notification standards, deletion of Sections 7 and 8 of the bill (Sec. 7 grants immunity to doctors performing abortions and if that is removed regular tort laws apply and Sec. 8 requires the doctor to get consent of the minor), change the penalty to a misdemeanor, change title, add a new section on confidentiality, and require that a Youth Court judge render a decision within 24 hours.

Sen. Jenkins wanted to know in section (a) why Senator Mazure would remove "against a minor's will". Sen. Mazurek stated that the concern was that we don't have requirements of formal written consent for any other medical procedure.

Sen. Crippen stated that was a significant change. If a situation occurs where there is incest, dominance on the part of the perpetrator might affect the consent form which

would be signed by the parent. Once the form was signed, it would then be difficult for anyone to come in and say it was signed under duress, he said. People might argue that it was another opportunity for someone to walk in and say there wasn't really duress, that there was no obvious intent.

Sen. Yellowtail stated that, as drafted, the section refers back to court decrees against the minors will and other issues that are not appropriate to the matter of notification. He said that inconsistency had been corrected earlier. To be consistent with that, there needed to be proof of that reference.

Sen. Crippen commented on section (7) reducing it to a misdemeanor, saying it was a very significant change. Six months in jail per offense is not an insignificant penalty. He said it might be acceptable to a court, if it were willing to hand out that type offense rather than a felony. It might act as a deterrent. This is a strong departure from the bill.

Sen. Yellowtail stated that the only records he could understand on the issue of parental consent seemed to be in 41-1-204, and that only implied parental consent. He said he couldn't find a penalty for a failure to seek parental consent. He felt the bill created a substantial new penalty.

Discussion on B Amendments:

Valencia Lane explained the amendments to the committee. She said amendments #1 and 2 were to the title and not significant unless the other amendments were adopted.

Amendments #3 is a very significant amendment, in that it would change the 48-hour waiting period to "at least" 48 hours. Valencia said there was definite concern about the possibility of that being unconstitutional. She explained that the first part of the amendment allowed the physician or "his agent" would have to contact the parent. See motion below.

Amendment #4, clarifying the time of constructive notice, deemed that notice would be given at noon the day after the letter was deposited in the mail. Senator Mazurek thought it would benefit the minor. It was discussed and moved. See below.

Amendment #5 was dropped by Senator Rasmussen.

Amendments #6 would clarify that the hearing on petition must be within 5 days. It was moved and passed See below.

Amendments #7 would delete the amendment in the bill to 50-20-108 -- the spousal notification requirement. That amendment in the bill, as it's drafted, clarified 50-20-108 dealing with protection of premature infants born alive. It would insert in that section a statement that that section does not require prior spousal notice of an abortion. The Rasmussen Amendment #7 would take out that amendment, and that is related to the next amendment (#8), she said, which leaves the spousal notification requirement on the books. Doug Kelly, an attorney representing the proponents, said there had been an error in the drafting and that was the reason for this amendment. He said Senator Rasmussen's intent was to leave this portion of the law as it presently exists. Valencia said it was her understanding that the requirement for spousal notification had been declared unconstitutional under Montana Constitution. Numbers 7 and 8 were moved and failed. See below.

Discussion on C Amendments: This set of amendments was dropped from consideration.

Discussion on D Amendments: These amendments were dropped from consideration.

Discussion on E Amendments: These amendments were dropped from consideration. Senator Yellowtail said that the risk of abortion is less than the risk of carrying to term. He felt that both sides should be explained to the minor. Senator Mazurek said he felt that all medical aspects should be explained to an extremely young girl. Senator Pinsoneault said there is a question of when life actually starts. He said this would open the door to conflicting with morals of many people. Senator Mazurek suggested deleting the subsection, leaving the decision up to the M.D. to do the counselling. Doug Kelly said that abortion was treated differently by the Supreme Court and the Legislature. He felt they should be fully advised. Senator Mazurek said there were risks on all medical procedures. See below for motions on E amendments.

Amendments and Votes: Senator Brown MOVED the A amendments, attaching the additional Mazurek amendment dated 1-27-89 (Exhibit 7 and Exhibit 13). Senator Yellowtail said he supported them because they changed the bill to a notification bill, rather than a consent bill. After

considerable discussion, the MOTION CARRIED by a vote of 9 to 1, with Senator Crippen voting no.

Senator Brown MOVED #2 of B Amendments. The MOTION CARRIED UNANIMOUSLY.

Senator Brown MOVED #3 of B Amendments. The MOTION CARRIED UNANIMOUSLY.

Sen. Brown MOVED to include #4 from amendment #B. The vote CARRIED on a vote of 9 to 1, with Sen. Yellowtail voting NO.

Amendment #6 was MOVED by Senator Mazurek. The MOTION CARRIED UNANIMOUSLY.

Senator Harp MOVED to include amendments #7 and #8 of amendments #B. The MOTION FAILED on a 5 to 5 vote with Senators Beck, Harp, Jenkins, Pinsonault and Crippen voting YES. Senators Bishop, Brown, Halligan, Mazurek, and Yellowtail voted NO. The motion FAILED.

The committee decided that Amendment #C would no longer be considered.

Amendments #D were MOVED by Senator Harp, then withdrawn.

Senator Yellowtail MOVED Amendments #E, his handwritten amendments. The committee discussed them. Senator Pinsonault made a SUBSTITUTE MOTION to delete lines 6 and 7 on page 3. Sen. Mazurek then made a SUBSTITUTE MOTION to delete "abortion" and insert "her decision". The MOTION CARRIED UNANIMOUSLY.

Senator Harp MOVED Rasmussen's handwritten amendments (Exhibit F). After discussion, he WITHDREW his motion.

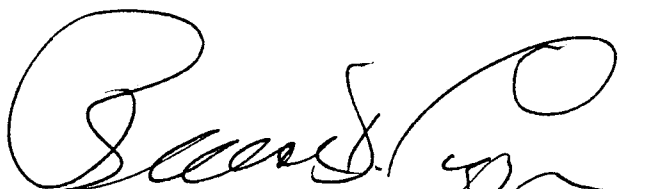
Recommendation and vote:

Senator Harp MOVED that Senate Bill 164 DO PASS AS AMENDED. The MOTION CARRIED by a 7 to 3 vote with Senators Bishop, Halligan and Yellowtail voting NO.

Senator Crippen thanked the staff attorney for all her work on the amendments.

ADJOURNMENT

Adjournment At: 12:35 p.m.



SEN. BRUCE CRIPPEN Chairman

RJ/MINRJ.127

MINRJ.127

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan 29

| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN     | ✓       |        |         |
| SENATOR BECK        | ✓       |        |         |
| SENATOR BISHOP      | ✓       |        |         |
| SENATOR BROWN       | ✓       |        |         |
| SENATOR HALLIGAN    | ✓       |        |         |
| SENATOR HARP        | ✓       |        |         |
| SENATOR JENKINS     | ✓       |        |         |
| SENATOR MAZUREK     | ✓       |        |         |
| SENATOR PINSONEAULT | ✓       |        |         |
| SENATOR YELLOWTAIL  | ✓       |        |         |
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Each day attach to minutes.

SENATE STANDARDS COMMITTEE REPORT

January 23, 1999

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 164 (first reading copy -- white), respectfully report that SB 164 be amended and as so amended do pass:

1. Title, line 6.

Following: "FOR"

Strike: "CONSENT AND"

Insert: "A"

Following: "JUDICIAL"

Strike: "BYPASS"

Insert: "EXEMPTION FROM THE NOTIFICATION REQUIREMENT"

2. Title, line 8.

Strike: "FELONY"

Insert: "HIDEHEAROE"

3. Page 1, line 16.

Following: "physician"

Insert: "or his agent"

4. Page 1, line 17.

Following: "abortion to"

Strike: "each"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor"

5. Page 1, line 23.

Following: "address."

Insert: "The time of delivery of constructive notice is considered to occur at noon on the next day on which regular mail delivery takes place, subsequent to mailing."

6. Page 1, line 24 through page 2, line 2.

Following: "emancipated" on line 24

Strike: remainder of line 24 through "(1)(b)." on page 2,  
line 2

Insert: "; or"

7. Page 2, lines 2 and 4.

Following: "granted" on line 3

Strike: remainder of line 3 through "abortion" on line 4

Insert: "an exemption from the notification requirement of subsection (1)"

8. Page 2, lines 5 through 10.

Following: "[section 5]" on line 5

Strike: remainder of line 5 through "[section 8]" on line 10

9. Page 2, lines 11 through 14.

Following: "Procedure." on line 11

Strike: remainder of line 11 through "by a" on line 14

Insert: "The minor may be granted an exemption from the notification requirement of [section 1] by the youth"

10. Page 2, line 16.

Strike: "majority rights"

Insert: "exemption from parental notification requirement"

11. Page 2, line 17.

Following: "minor"

Strike: "or her guardian"

12. Page 2, line 18.

Following: "minor"

Strike: "or guardian"

13. Page 2, line 21.

Following: "minor"

Strike: "or the guardian of the minor"

14. Page 2, line 25.

Strike: "each"



15. Page 3, line 1.

Following: "(i)"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor  
or the guardian of the minor"

Following: ";"

Insert: "or"

16. Page 3, line 2.

Following: line 1

Strike: subsection (ii) in its entirety

Re-number: subsequent subsection

17. Page 3, line 7.

Following: "consequences of"

Strike: "the abortion"

Insert: "her decision"

18. Page 3, line 10.

Following: "abortion;"

Insert: "and"

19. Page 3, lines 11 through 19.

Strike: subsections (f), (g), and (h) in their entirety

Insert: "(f) a statement that the minor requests appointment of  
counsel or a guardian ad litem."

20. Page 3, lines 20 and 21.

Following: "minor" on line 20

Strike: remainder of line 20 through "guardian" on line 21

21. Page 3, line 23.

Following: "on"

Strike: "the merits of"

22. Page 3, lines 23 and 24.

Following: "petition" on line 23

Strike: remainder of line 23 through "[section 3]" on line 24

23. Page 3, line 25.

Following: line 24

Strike: "or"

24. Page 4, line 1.

Following: "fee"

Strike: "for the hearing"

25. Page 4, lines 1 and 2.

Following: "If" on line 1

Strike: remainder of line 1 through "party" on line 2

Insert: "the minor"

26. Page 4, line 3.

Following: "counsel"

Strike: "at least 24 hours before the time of the hearing"

Insert: "for the minor"

27. Page 4, lines 7 and 8.

Following: "(2) the" on line 7

Strike: remainder of line 7 through "abortion" on line 8

Insert: "circumstances of the relationship between the minor and the parent, guardian, or person standing in loco parentis to be notified under [section 1]"

28. Page 4, lines 9 through 12.

Following: "find" on line 9

Strike: remainder of line 9 through "minor" on line 12

Insert: "relevant in determining whether the minor shall be granted an exemption from the notification requirement of [section 1]"

29. Page 4, line 15.

Following: "its decree"

Insert: "within 24 hours"

30. Page 4, lines 17 through 21.

Following: "petition for" on line 17

Strike: remainder of line 17 through "finding" on line 21

Insert: "an exemption from the notification requirement of [section 1]"

Renumber: subsequent subsection

31. Page 4, line 24.

Following: line 23

Insert: "NEW SECTION. Section 6. Confidentiality of proceedings.

(1) All hearings held on a petition under [sections 3 through 7] shall be confidential and shall be held in closed court without admittance of any person other than the minor, her counsel, or her guardian ad litem.

(2) All papers and records pertaining to the petition shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records."

Renumber: subsequent sections

32. Page 5, line 2.

Following: line 1

Strike: "or by a parent or guardian of the minor"

33. Page 5; lines 3 through 5.

Following: "appeal." on line 3

Strike: remainder of line 3 through "order." on line 5

34. Page 5, line 9.

Following: "shall"

Strike: ", by court rule,"

35. Page 5, line 11 through page 6, line 5.

Strike: sections 7 and 8 in their entirety

Renumber: subsequent sections

36. Page 6, line 6.  
Following: "Violation."  
Strike: "Performance of"  
Insert: "A person convicted of performing"

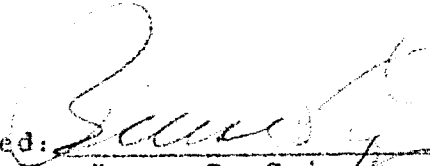
37. Page 6, line 7.  
Following: "of"  
Strike: "[sections 1 through 8] is a felony"  
Insert: "[section 1] shall be fined an amount not to exceed \$500  
or be imprisoned in the county jail for a term not to exceed  
6 months, or both"

38. Page 9, line 21.  
Strike: "9"  
Insert: "8"

39. Page 9, lines 22 and 23.  
Strike: "Title 50, chapter 20, part 1"  
Insert: "Title 41, chapter 5"

40. Page 9, line 24.  
Strike: "9"  
Insert: "8"

AND AS AMENDED DO PASS

Signed:   
Bruce D. Crippen, Chairman

H.C.  
1/30/89  
3:04  
P



STATEMENT ON BEHALF OF THE MONTANA COURT REPORTERS ASSOCIATION  
IN SUPPORT OF SENATE BILL 209

Mr. Chairman and Members of the Committee:

Senate Bill No. 209, introduced by Senator Brown, is a bill which would provide for an increase in the maximum and minimum amounts within which annual salaries are set for court reporters. The present statute provides that each reporter is entitled to receive a salary of not less than \$16,000 nor more than \$23,000 annually. This salary level was set by the legislature in 1983. Senate Bill 209 would increase those salary levels to a salary of not less than \$25,000 nor more than \$35,000 annually.

Court reporters' salaries are set by the District Judge for whom the reporter works. The salary is paid out of the general funds of the counties which are included within each judicial district and also out of an appropriation made to the State Department of Commerce. The amounts paid by each county and by the state is based upon a formula set forth in Section 2 of the statute being amended in Section 1 of the bill.

As is the case with judges in Montana, the salary levels for court reporters in this state are low as compared to the remainder of the United States. Montana ranks 44th among all states with respect to the entry-level salary. Montana ranks last with respect to the states surrounding us. The entry levels for the surrounding states are:

Wyoming - \$30,086 annually  
Idaho - \$27,000 annually  
North Dakota - \$23,700 annually  
South Dakota - \$19,406 annually

In North Dakota and South Dakota, as well as in Idaho, salary increases are set by the legislature. In Wyoming salary increases are set by the Supreme Court subject to legislative approval. Utah's entry-level salary is \$23,928 and Washington's varies from \$22,000 to \$35,316 annually among the various counties. Clearly Montana's salary provision is low as compared to other states. While inflation has eaten away the value of the dollar and the purchasing power of the salaries now received by court reporters, those salary levels have remained unchanged since 1983.

The workload of official court reporters has increased over the past six years. Because of the increased level of appeals from court decisions and the resultant need for a record of all proceedings, judges today require more transcription of proceedings than ever before. Reporters are now reporting matters such as probate proceedings, default divorce hearings, etc., which were not reported in previous years. Much of the equipment used by the reporters is purchased by them at their own expense. Word processors, computer equipment, et al., which makes it possible for a reporter to keep up with the workload, are in many cases paid for by the reporter out of pocket with no reimbursement by the counties or the state despite the fact that

SENATE J. . . . Y  
EXHIBIT NO. 1, pt. 1, p. 2  
DATE 1-27-89  
BILL NO. SB 209

the equipment is used primarily for the Court's business.

Present law calls for a payment of \$3.00 by each party in a civil action that goes to trial. This amount goes to the county and is to be applied to the payment of the salary of the reporter. Senate Bill No. 209 amends the statute which calls for such payment. The bill provides for a fee of \$10.00 to be paid at the time of filing of all civil actions which amount goes to the county to be applied to the court reporter's salary. Thus a method is provided to recoup at least a portion of the salary increase. There were 22,036 civil actions filed in Montana in 1987 and 19,866 filed in 1988. Thus the fee provided in Section 2 of the bill would raise approximately \$200,000 annually to be applied to the payment of court reporters' salaries.

We urge your support of Senate Bill 209.

Respectfully submitted,

Jerome Anderson  
Representing the Montana  
Court Reporters Association



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# Montana Court Reporters Association, Inc.

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P.O. Box 20211 Missoula, MT 59801 Ph. 543-6447 or 756-5613

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## TOWARD THE COURTROOM OF THE FUTURE:

### Montana's Court Reporters 1989 Legislative Packet

The Montana Court Reporters' Association, Inc. is comprised of approximately 90 members drawn from throughout the state. Half of our members are salaried employees or "official reporters," who work directly for a court or government agency. Half are independent court reporters who are paid on a fee basis by the person or company hiring them. Official reporters also travel with the judges to outlying areas as needed.

The Montana association is a branch of the National Shorthand Reporters' Association, and operates under its guidelines and Code of Professional Conduct. Our aim is to constantly improve our professionalism and to regularly upgrade our credentials through continuing education.

Court reporters prepare for their careers by attending special training schools for 2-3 years (the nearest to Montana are in South Dakota and Colorado), then serving an internship under another reporter's tutelage. Reporters receive extensive computer training and are very familiar with computer technology. In addition, they annually attend continuing education classes, workshops and seminars designed to keep them abreast of their own field and of changes in the legal community.



## An Introduction to Court Reporters

Montana's legal system would be much the poorer and heavily crippled were it not for a legion of silent partners helping judges and attorneys. These partners listen carefully to each word being said, enter the proceedings into a computerized system, and reproduce a written record precisely, accurately - and often instantaneously.

This is the court reporter, the most unobtrusive and accurate observer in the courtroom. Because court reporters work in silence with a minimum of intrusion into the proceedings, their work is often overlooked or misunderstood. The written transcripts court reporters provide enable fast and accurate review of the record for appellate proceedings, depositions, and a number of other matters. The court reporter enables justice to be carried out simply by being able to relate exactly what was said in a courtroom.

It takes a great deal of education and experience to record the proceedings in silence. A court reporter will:

- not have to have legal terms or specialized language explained;
- maintain full confidentiality and complete discretion;
- work with quiet efficiency.

The new computer-aided transcription (CAT) systems now in use by a growing number of reporters have produced welcome changes both in the courtroom and in the world of freelance work. As the reporter types the proceedings into a stenographic machine linked to a CAT system, the computer translates the stenographic symbols into English. Back at the office, the reporter edits and processes the electronic document into a comprehensive, clear transcript of the proceedings and prints it out.

Outside of court, these systems have come into wide use for captioning televised events for the hearing impaired. And finally, computer-aided transcription has dramatically increased the speed with which transcripts can be edited and produced.

The reason some people have not been very much aware of court reporters until now is because - in the courtroom - they're not supposed to be. We take that as a sign of our success.

But we wanted you to know who we are and what we do. We're proud of our work, and proud to be an integral part of the system which safeguards the legal process in this country.

Please read on to understand the concerns we have during the current legislative session.

SENATE JUDICIARY  
EXHIBIT NO. 1, pt 2, p. 3  
DATE 1-27-89  
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## Court Reporters' Salaries

As official reporters, our salary is mandated by state law.

We are professionals at what we do. We receive highly specialized training for a highly specialized field. Our knowledge of communications, the law and computer technology combines to provide the legal system with accuracy, efficiency and discretion of the highest quality.

We're often on call, and adjust to constant changes in schedules. We continually upgrade our skills and knowledge through annual training sessions and seminars. We often work nights and weekends, knowing that the speed with which we do our work is an integral part of the speed with which justice can and should be delivered.

We haven't had a raise in six years.

The price of living has gone up. Like all of you, we're paying increased costs of goods, utilities, services and interest rates. Unlike many of you, we purchase our own expensive and specialized computer systems designed to handle our type of legal work.

As with so many Montanans, we would like to see growth in our profession and not be compelled to leave it for more lucrative work elsewhere. Like all of you, we would like Montana salaries to be at least competitive with neighboring states in order to attract continued high quality people to our profession.

Right now, we are allowed a minimum salary of \$16,000 per year and a maximum salary of \$23,000 per year.

If you think about it, that's a range of just \$8.33 per hour to \$12 per hour. That isn't take-home pay, either.

We're asking for a base salary of \$25,000 per year up to a maximum of \$35,000. The judge, through budget conferences with county commissioners, would set the salaries of individual reporters. Criteria would include experience, education, training, certification and the use of technology.

**The National Shorthand Reporters' Association Code of Professional Conduct**

## The Shorthand Reporter Shall:

1. Be fair and impartial toward each participant in all aspects of reported proceedings.
2. Be alert to situations that are conflicts of interest or that may give the appearance of conflict of interest. If a conflict or a potential conflict arises, the reporter shall disclose that conflict or potential conflict.
3. Guard against not only the fact but the appearance of impropriety.
4. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter by any of the parties in a proceeding.
5. Be truthful and accurate when making public statements or when advertising the reporter's qualifications or the services provided.
6. Refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations.
7. Determine fees independently, except when established by statute or court order, entering into no agreements with other reporters on the fees to any user.
8. Maintain the integrity of the reporting profession.

EXHIBIT NO. 2

DATE 1-27-89

NAME: Robert NIEBOER

DATE: 1-27-89

ADDRESS: P.O. Box 839, KALISPELL, MT. 59903

PHONE: 756-5613

REPRESENTING WHOM? MONTANA COURT REPORTERS

APPEARING ON WHICH PROPOSAL: SB 209

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mr. Chairman and members of the committee:

I am Bob Nieboer, a registered professional reporter, an official court reporter for the 11th judicial district court in Kalispell. I am here speaking in favor of Senate Bill 209.

*with me TODAY ARE: Our Association has prepared, and have distributed a 4-page handout.*

*NOTE NAME CHANGE* →

It has been six years since the official court reporters have come to you for a pay increase. Needless to say, the cost of living has increased over this period of time, and, although most other county officials and employees have had approximately a three per cent <sup>or larger</sup> increase each year, we have had no increase for this six year period.

I will explain briefly what a court reporter does and the training required for the job, for those of you who have not had the privilege (or misfortune) of being involved in some litigation and needing the services of a court reporter.

Court reporters make a verbatim record of everything that is said during court proceedings. It is a great responsibility and is a very stressful job. A person other than a court reporter will listen to someone speaking, and even though you may not hear every word, by context you understand what that person is saying. The reporter must hear every word and record every word spoken; and when someone is speaking relatively fast, talking at the same time as another person, or mumbles or speaks with an accent, or speaks in technical terms, the reporter must accurately record every word spoken.

We must be knowledgeable in almost every field and every profession there is, because sooner or later a witness will show up in court from that profession.

The reason a reporter is necessary is to be sure there is a complete and accurate record for the protection of litigants, so if the attorney makes a ~~mistake~~<sup>an error</sup> or the judge, it can be reviewed by others, particularly the Supreme Court.

The training required to become a reporter is generally a special school that teaches writing on the stenograph machine, along with courses in English, spelling, accounting, business, legal and medical terminology and a variety of other courses to prepare the reporter for almost anything that may come up in the courtroom or hearings. These courses normally take ~~more than two~~<sup>to three</sup> years, with no vacation time, unlike most college courses, ~~(and generally speaking gives the reporter an education comparable in time to three years of college.)~~

Some of the costs the reporter has, beyond his education costs, ~~(which are very large)~~ are the costs of computers, which with software initially run over \$20,000, ~~costs of scopers,~~<sup>other costs are</sup> paper, ribbons, typists if the reporter is not using a computer, and all other costs of running a business. The counties in most areas only pay the salary of the reporter.

In addition, the reporters must take seminars and training to keep up with today's ever-changing technology. This is also necessary for the registered professional reporters to maintain that designation.

main  
puters  
+  
things

We have endeavored to bring to you a proposal for a reasonable increase in pay for the official court reporters, and at the same time do this at little or no cost to the counties.

In our bill we propose a minimum base salary for court reporters in the district courts to be increased to \$25,000 and the maximum to be increased to \$35,000. We realize this is a sizable increase, but we have not come to you for an increase since 1983. The judge for whom the reporter works then sets the salary between those two figures. This, each judge will do when working on their annual budget, with the overview by the County Commissioners. I know from experience that all reporters do not get the maximum amount, and if this bill is passed I am sure most of the judges in the state are going to pay the reporters ~~closer to the minimum~~ closer to the minimum than the maximum.

I am sure the judges, working on the budgets with the County Commissioners, will take into consideration things such as length of service, certification such as holding a registered professional reporter certificate, and use of modern technology, such as computer aided transcription, and also the workload in their district, and set the salary accordingly

I will give you the salaries of a few states in our area. These are entry level salaries as of 1987, and some states give cost of living increases or various time and qualification increases beyond that.



EXHIBIT NO. 214 P. 4  
DATE 1-27-89  
BILL NO. SB 209

*Mr. Auditor gave you*

*Salaries of government  
state - some other  
Salary levels are in  
the Rocky Mt and  
the Coast areas:  
PACIFIC COAST*

|                          |                     |  |
|--------------------------|---------------------|--|
| <del>Idaho:</del>        | <del>\$27,000</del> |  |
| <del>North Dakota:</del> | <del>23,700</del>   |  |
| <del>South Dakota:</del> | <del>19,406</del>   |  |
| Washington:              | 22,000 <sup>+</sup> | <del>35,316</del> - Counties vary        |
| Oregon:                  | 18,000 <sup>+</sup> | 28,000 - Lower courts to District courts |
| Colorado:                | 26,200 <sup>+</sup> | <del>35,124</del>                        |
| Arizona:                 | 26,000              |  |
| <del>Wyoming:</del>      | <del>30,086</del>   |  |
| <del>Montana:</del>      | <del>16,000</del>   |  |

*Different  
pay for  
Judges  
or Courts  
in District*

These, as I say, are entry level salaries.

*Other Counties employees receive SALARIES LARGER  
than ours AS A RESULT OF THE ANNUAL % INCREASES*

As a means of offsetting the cost of a pay increase we propose to amend Section 25-1-202. The old section, which hasn't changed since ~~1887~~ - repeat, ~~1887~~ - called for a \$3 steno fee to be paid at the time the case was to be tried in court. In most areas of the state these fees, because they were so minimal, were not collected or infrequently collected by the Clerk of Court's office. Under our new proposed bill ~~\_\_\_\_\_~~ a fee of \$10 would be charged on civil matters when the case is filed, and therefore would be certain to be paid into the county general fund.

I received information from the Montana State Judicial Information System as to the number of cases filed in any particular county, judicial district and the entire state.

*1988  
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*Michigan  
23,000 low to 45,000 High*

I can give you information on any particular county; <sup>an average of 20,000</sup> but on the basis of the last three years filing ~~\$23,000~~ civil cases were filed in all the counties of Montana, which means if this bill were passed it would bring in to the counties' general funds <sup>200,000</sup> ~~\$230,000~~ to be used to offset any increase given to the reporters.

~~On the assumption that the average pay for all reporters in Montana would be midway between the minimum and maximum, we can predict that 35 reporters earning \$30,000 per year would receive an increase from \$23,000 a year <sup>to 30,000</sup> for a total of \$7,000 <sup>increase</sup>, which would make a total cost to the state of \$245,000.~~

~~If you assumed that the three dollar fee has been collected on all cases, which I can assure you has not, we would have an increase of \$7 for a total of \$161,000. I am sure it would actually be more than \$200,000 because of lack of collection at this time. Therefore you would have an increase of only \$45,000 statewide.~~

~~If you were to consider lowering the maximum to \$33,000 and leaving the \$23,000 as a minimum, and assuming that again the midway point would be the average pay, \$28,000; the cost increase would be \$175,000 per year. This would be entirely paid for by increasing the fee to \$10. <sup>4 even part</sup>~~

*additional funds into the court fund.*

*20 pages  
1350  
New Bill  
657*

SENATE JUDICIARY

EXHIBIT NO. 2, p. 6

DATE 1-27-89

BILL NO. SB 209

increased  
Considering no/cost to the counties for the last six  
years for reporters salaries, and a method of financing by  
the litigants rather than taxpayers, we ~~seek~~<sup>ask</sup> this bill as  
written ~~should~~ be given your approval.

Thank you for your attention and consideration.

If you have any questions I will be glad to answer  
them, and if I don't have the answer maybe some of the  
other reporters here can be of assistance.

Thank you again for the opportunity to make this presentation.

*Harrington*

SENATE JUDICIARY  
ENACTED 10 3  
DATE *January 27, 1919*  
BILL NO. *HR 91*

the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.

**Cross-References**

Fees to be charged by registrars for copies, 7-4-2631.

**50-15-108. Duty to furnish information.** (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

**50-15-109. Certificates.** (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

**Cross-References**

Uniform Parentage Act, Title 40, ch. 6, part 1.

**50-15-110. Certified copy of certificate.** Subject to the limitations of 50-15-112, 50-15-113, 50-15-114, subsections (3) and (4) of 50-15-204, and 50-15-206, the department shall furnish to any applicant a certified copy of a certificate or part of it upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

**50-15-111. Certified copy fee.** (1) The department shall prescribe a fee of not less than \$5 for a certified copy of certificates or search of files.

Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5; amd. Sec. 5, Ch. 476, L. 1985.

**2-6-102. Citizens entitled to inspect and copy public writings. (1)** Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5; amd. Sec. 5, Ch. 476, L. 1985.

#### Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

Minutes of meetings — available subject to right of individual privacy, 2-3-212.

Records of officers open to public inspection, 2-6-104.

Election materials not public until canvassed, 13-15-301.

Ownership of public obligations — no inspection, 17-5-1106.

Certification of documents, Rules 902, 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Records of medical legal panel confidential, 27-6-703.

Attachment — filing not public until writ returned, 27-18-111.

Adoption records confidential, 40-8-126.

**2-6-103. Filing and copying fees. (1)** The secretary of state, for services performed in his office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal, \$2;

(c) for receiving and recording each official bond, \$10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), \$5;

(e) for issuing each certificate of record, \$5;

(f) for filing and recording miscellaneous papers, records, or other documents, \$5;

(g) for filing and recording any other paper not otherwise herein provided for, \$5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, \$5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

NAME: CHIP EDDY DATE: 1/27/89

ADDRESS: Helena

PHONE: 442-8113

REPRESENTING WHOM? MT League of Stamp Collectors

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: provides continuity - cuts down on litigation

good in both orders & harmonizes

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Nineteenth Judicial District**Lincoln County*ROBERT S. KELLER  
DISTRICT JUDGEBERNIE COPELAND  
Court Reporter  
PAMELA K. STARKE  
Court Secretary

January 25, 1989

RECEIVED

Senator Joseph P. Mazurek  
Senate Judiciary Committee  
Capitol Station  
Helena, MT 59620

Re: Senate Bill to Amend Section 25-2-122, M.C.A.

Dear Joe,

Zander Blewett called me from Great Falls with respect to the above entitled bill. I am in the middle of a jury trial, so this is on the fly.

I have been a member of the Supreme Court Commission on Rules of Evidence since its creation in April, 1974, as has been Professor William F. "Duke" Crowley. The bulk of our work concerned the preparation of the proposed Montana Rules of Evidence, patterned after the Federal Rules of Evidence, and was completed in 1976. We have met as the situation demands thereafter, on the call of the chairman, as motivated by some request or other of the Supreme Court.

Prior to the 1985 session of the Legislature, there was a specific request made to the Commission by what I recall to be a legislative committee, to prepare proposed legislation with respect to "venue". The proposal was to simplify the law with respect to the place of trial. Duke Crowley undertook the initial drafting, and, frankly, pulled the laboring oar by himself. The Commission met to discuss his efforts in depth, make proposed changes, etc.

Senator Joseph P. Mazurek  
January 25, 1989  
Page Two

I know that at that meeting that we all felt that actions on contracts and torts against a non-resident defendant could be brought in any county the plaintiff chose, and felt that Section 25-2-118, M.C.A., covered this point. I am not familiar with the recent case of the Supreme Court that finds that Section 25-2-122, M.C.A., holds otherwise, but I do know what the intent of the Commission was, and it would be in accordance with the pending Senate Bill to amend Section 25-2-122, M.C.A. I don't have that bill, nor the number, but I understand it to be in accordance with Section 25-2-118(2), M.C.A.

Duke Crowley is totally immersed at the moment or he would write to you himself. He suggested my name to Zander, hence this letter.

With best regards.

Sincerely,



Robert S. Keller  
District Judge

RSK:ps

cc: Zander Blewett, Esq.  
Prof. William F. Crowley, Esq.



LAW OFFICES OF  
PAULY & HOPGOOD, P.C.  
833 NORTH LAST CHANCE GULCH  
P.O. BOX 176  
HELENA, MONTANA 59624

SENATE JUDICIARY  
EXHIBIT NO. 4 p. 3  
DATE 1-27-89  
BILL NO. SB 208

PETER C. PAULY  
TOM K. HOPGOOD

TELEPHONE (406) 442-0070  
TELECOPIER (406) 443-3727

January 27, 1989

The Honorable Bruce D. Crippen  
Chairman, Senate Judiciary Committee  
State Capitol Building  
Helena, MT 59620

Re: Senate Bill 208

Dear Senator Crippen:

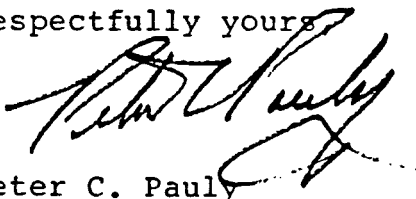
I am writing this letter to you in support of Senate Bill 208. I have been a member of the Montana Supreme Court Commission on Rules of Evidence since its creation in 1974.

In 1985, the Montana Supreme Court asked this Commission to review the laws of the State of Montana relating to venue and to make recommendations to the end of updating them. This Commission did so. The Montana Supreme Court reviewed this Commission's recommendations and approved them. They were then put in the form of legislation and submitted to the legislature of the State of Montana for approval. They were enacted into law in 1985.

I have read the written statements in support of Senate Bill 208 of Judge Robert S. Keller and Dennis P. Clarke, an attorney at law, who are also members of the Commission and participated in the review of the venue statutes and formulation of the Commission's recommendations to the Montana Supreme Court.

I concur in those statements and for the reasons set forth therein, I strongly urge that the Senate Judiciary Committee give Senate Bill 208 a DO PASS.

Respectfully yours



Peter C. Pauly

PCP/kb

MONTANA SUPREME COURT  
COMMISSION ON RULES OF EVIDENCE

JUSTICE BUILDING  
215 NORTH SANDERS  
HELENA, MONTANA 59601

SENATE JUDICIARY  
EXHIBIT NO. 5, P. 1  
DATE 1-27-89  
BILL NO. SB 208

Commission Members:

SAM E. HADDON, Esq., Chairman  
Honorable DOUGLAS G. HARKIN  
Honorable LEONARD H. LANGEN  
Honorable THOMAS A. OLSON  
Professor WILLIAM F. CROWLEY  
DOUGLAS C. ALLEN, Esq.  
ARTHUR W. AYERS, JR., Esq.  
JOHN F. BLACKWOOD, Esq.  
DENNIS P. CLARKE, Esq.  
A. CLIFFORDE EDWARDS, Esq.  
STEPHEN H. FOSTER, Esq.  
ROBERT S. KELLER, Esq.  
H. L. McCHESNEY, Esq.  
PETER C. PAULY, Esq.

REPLY TO:

Dennis Clarke, Esq.  
Smith, Walsh, Clarke & Gregoire  
121 Fourth Street North  
PO Box 2227  
Great Falls, Montana 59403-2227

January 24, 1989

Senator Joseph Mazurek  
Chairman  
Senate Judiciary Committee  
Capitol Building  
Helena, Montana 59601

RE: Revision of Section 25-2-122(1), M.C.A.

Dear Senator Mazurek:

As you know, I worked for the Commission on Rules of Evidence from 1974 through 1976. I then became a member of the Commission on Evidence and worked on the revision to the venue statutes which were submitted to the 1985 legislature. I have been asked to write you concerning the proposed amendment to Section 25-2-122(1) M.C.A.

The intent of the Commission in revising the venue statutes was to retain existing Montana law. Montana venue law concerning the proper place to file an action where none of the defendants reside in the state, at the time of the 1985 revision, was stated in the Commission's explanatory note to Section 25-2-118 as follows:

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 non-resident 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 (citations omitted).  
Annotations to Title 25, section 25-2-118 at pages 14-15.

Senator Joseph Mazurek  
January 24, 1989  
Page Two

SENATE JUDICIARY

EXHIBIT NO. 5, p. 2  
DATE 1-27-89  
BILL NO. SB 208

Subsection 2 of Section 25-2-118, as revised in 1985, makes it quite clear that the proper place of trial is any place the plaintiff designates where none of the defendants reside in the state. This revision adopted existing Montana law.

The proposed amendment to Section 25-2-122 is a correct statement of the law existing at the time of the 1985 revisions by the Commission on Evidence.

Thank you for your consideration in this matter.

Sincerely,

SMITH, WALSH, CLARKE & GREGOIRE

  
BY: Dennis P. Clarke

DPC/tcs

Robinson

SENATE JUDICIARY  
EXHIBIT NO. 6  
DATE January 27, 1989  
BILL NO. SB 208

OPINION  
Creighton  
Identity MLC

Merely anyone supporting this Bill has discussed the practice of "Forum Shopping" and how this Bill relates to "Forum Shopping" in tort cases.

(A) Forum Shopping is a litigation / litigator practice of selecting the "most favorable" forum for the trial of a case.

(B) FS Demands the process, both Judge and Jury, in that it seeks "the edge" based upon a preconception of how a Judge or Jury will react to a case; usually based upon empiriclike data or attorney experience.

(C) Needless to say legislative approval of FS sends wrong signal

(I) Among The ~~Cases~~ Types  
06 Cases In Which Forum  
Shopping Is Prevented By  
Specific Statute in Title 25,  
Chapter 2, Part 1, MCA, Are  
Those Tort Cases Involving  
Torts Committed In Montana

(A) Section 25-2-102 provides  
that the proper place for such  
an action is either (1) the  
county in which any defendant  
resides at the commencement  
of the action OR (2) the county  
where the tort was committed.

Under this statute a specific  
limitation is placed upon a  
plaintiff's ability to select  
"the most favorable forum" based  
upon either the defendant's right  
to trial by jury <sup>in the county of his residence</sup> or the place  
where the tort occurred.

(II.) Similar limitations and restrictions upon plaintiff's forum shopping are provided in cases involving:

- (A) Contracts (25-2-101)
- (B) Real property (25-2-103)
- (C) Actions against public officers (their agents); counties; state and political subdivisions for recovery of statutory penalty or forfeiture etc.

(III.) These limitations and restrictions upon plaintiff's right to select the forum for his case existed prior to enactment of SB-91 (1985) (Chapter 432) AND WERE NOT CHANGED BY SB-91.

- (A) The limitations were more clearly and unequivocally expressed by that legislation

IV.

SB 208 Seeks To Remove Any Limitation Upon Plaintiff's Selection Of A Forum For His Tort Case If None Of The Defendants Reside In The State.

making  
his  
sing  
contract case

(A) SB208 provides a plaintiff with the right and opportunity to "Shop Around" for the most favorable forum (from his point of view) in which to try his case against the non-residents.

(B) But this is only as to a tort case; the existing restrictions remain intact as to the other cases mentioned.

(C)

(V) Who Are These Non Residents Who Would Receive Such Disparate <sup>and unfair</sup> Treatment Under Montana Law. If SB208 Is Passed Into Law

(A) Every non resident tourist or other visitor to our state whose residence at the time Plaintiff files his complaint, is outside of Montana.

(B) Every private, or non profit corporation that is domiciled <sup>religious</sup> in another state but operates in Montana.

(C) Every <sup>existing</sup> business corporation doing business in Montana that is domiciled in another state.

(D) Every new <sup>NON RESIDENT</sup> business corporation that decides to do business in Montana.



VI The limitations and restrictions upon forum shopping have served the judicial process well since territorial days,

(A) There is no reason to remove them now.

VI McCleary v. Kaska (January 1987) <sup>Rejecting</sup> ~~was~~ a unanimous court in ~~affirming~~ a contention made by the plaintiff that because defendant was a non-resident of Montana he (the plaintiff) may select any county as the forum for the action, ~~not defendant~~ under 25-2-118 (current law (SB91)),

(A) ... We have never held that a plaintiff has an absolute choice of forum. A tort action may be brought in either county of defendant's residence, or the county where the tort occurred.

REVISOR  
MONTANA SUPREME  
COURT

(B) If on OTHER were in need of a LEGAL OPINION to support his position, it is hard to imagine a better opinion than one rendered only two years ago; by an UNANIMOUS Montana Supreme Court Panel; authored by Justice Hunt & concurred in by Justices Harrison, Morrison, Webster & Gulbranson.

(VII) SB208 proposes to change this opinion by ~~changing~~ ~~enact~~ specific legislation directed to the elimination of the historic statutory restriction on Foreign Shipping - in fort nations.

NAME: Mike SherwoodADDRESS: MTLA

PHONE: \_\_\_\_\_

REPRESENTING WHOM? MTLAAPPEARING ON WHICH PROPOSAL: SB 208DO YOU: SUPPORT?  AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Since Montana first became a state,  
a plaintiff could elect the county of suit when the  
defendant resides out of state. The legislation proposed  
by this bill clarifies that the 1985 legislature ~~did~~ did  
not intend to change that rule. Supporting letters  
show this intent.

This rule is based not only on history, but  
logic. The defendant resides out of state and is  
inconvenienced by an action in any county. The plaintiff  
may wish to sue in the county where the tort occurred,  
but may also wish to file in the county where he or  
she resides, or where experts and medical witnesses are  
most convenient.

We concur with the comments made by Mr. Blewett.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mike Sherwood

**Hoyt & Blewett**

Attorneys at Law

John C. Hoyt  
 Alexander (Zander) Blewett, III  
 Kurt M. Jackson  
 Michael J. George

DATE 1-27-89  
 BILL NO. SB 208  
 501 Second Avenue North  
 Post Office Box 2807  
 Great Falls, Montana 59403-2807  
 Telephone (406) 761-1960

January 31, 1989

Honorable John G. Harp  
 134 Park Avenue  
 Kalispell, MT 59901

Re: 1989 Legislature

Dear Senator Harp:

In the hearing on Friday, you asked me if the prior five decisions from the Montana Supreme Court holding that a plaintiff may sue an out-of-state resident in any county the plaintiff designates in his complaint were unanimous. I told you that I did not have that information available, but I would provide it to you. In this regard, I have found as follows:

The Supreme Court decision in Morgan & Oswood Construction Co. v. United States Fidelity & Guaranty Co., 536 P.2d 170 (Mont. 1975), was a unanimous decision. In that unanimous decision, the Court stated:

Here, USF&G is the sole defendant and a non-resident and under section 93-2904, R.C.M. 1947, may be sued in any county the plaintiff designates. Foley v. General Motors Corp., 159 Mont. 469, 499 P.2d 774.

Id. at 173.

In Foley v. General Motors Corp., 499 P.2d 774 (Mont. 1972), the Supreme Court, again through a unanimous decision, stated:

As far back as 1926, this Court held that unless a foreign corporation was given a domestic residence by statute, it remains a nonresident of the state under the venue statutes and may be sued in any county of the state. Pue v. Northern Pacific Ry. Co., 78 Mont. 40, 252 P. 313. Again in 1928, this Court held that a foreign corporation does not reside in any county of the state within the meaning of the venue statutes and may be sued in any county. Hanlon v. Great Northern Ry. Co., 83 Mont. 15, 268 P. 547.

Id. at 776.

*Letter of  
 response following  
 Jan. 27 mtg.*

DATE 1-27-89BILL NO. SB 208

Honorable John G. Harp  
January 31, 1989  
Page Two

In the case of Truck Insurance Exchange v. National Farmers Union, 427 P.2d 50 (Mont. 1967), again the decision of the Supreme Court was unanimous in holding that a resident defendant can be sued in the county of his residence, but a non-resident defendant can be sued in any county designated by the plaintiff in his complaint. There is no specific quote from this decision which is helpful, so I have not included any such quote as I did above.

In the case of Yeager v. Foster, 406 P.2d 370 (Mont. 1965), the Supreme Court again acted unanimously in setting forth the law in Montana as determined by the legislature for 100 years. In this case, the defendant was a resident of the State of Kansas and injured the plaintiffs by negligently operating a motor vehicle in the State of Montana. The accident occurred in Sweet Grass County, and the plaintiffs filed the suit in Silver Bow County. Defendant attempted to change the place of venue from Silver Bow County and the Supreme Court, again unanimously, stated:

Our statute (Revised Codes, sec. 6504 [now section 93-2904, R.C.M. 1947]) expressly provides that, if none of the defendants reside in this state, an action may be tried in any county which the plaintiff may designate in his complaint.

Id. at 371.

As further authority, Fraser v. Clark, 128 Mont. 160, at page 179, 273 P.2d 105, at page 116, this court stated, "The third clause supplies a second alternative for the general rule by providing 'or, if none of the defendants reside in the state \* \* \* the same (action) may be tried in any county which the plaintiff may designate in his complaint.' [This alternative is available when none of the defendants reside in Montana and the plaintiff designates in his complaint a county for the trial of the action.]"

It is patently clear that the trial judge was correct in his denial of the first paragraph of appellant's motion. Under the present law of this state, where all parties are non-residents a tort action can be tried in any county of the state, unless and until section 93-2904 is changed by legislative mandate.

Honorable John G. Harp  
January 31, 1989  
Page Three

Id. at 372.

Interestingly enough, James Robischon, who testified at the hearing against the bill and for the Montana Liability Coalition, stated that it has never been the law in the State of Montana that a plaintiff can sue an out-of-state corporation in any county designated in this complaint. It is strange, indeed, that Mr. Robischon could give such testimony to your Committee in light of the absolutely clear decisions of the Montana State Supreme Court and the obvious intention of the legislature from 1877 on. It absolutely amazed me that he could so testify, in spite of the work prepared by Professor Crowley and the letters from Judge Keller, Dennis Clarke and Peter Pauley.

However, it is even more amazing that he could so testify in light of the fact that he was a lawyer in the law firm of Poore, Poore, McKenzie & Roth for many years. Interestingly, the law firm of Poore, Poore, McKenzie & Roth represented the out of state defendant in Yeager v. Foster and I have enclosed a copy of the page so stating. Quite frankly, it is incredible to me that Mr. Robischon would testify as he did under these circumstances.

In addition, the Supreme Court decision in Hanlon v. Great Northern Railway Co., 268 P. 547 was unanimous, as was the decision in Pue v. Northern Pacific Railway Co., 252 P. 313.

I hope this letter has answered the question you asked me in the hearing on Friday. If not, I would be most happy to provide you with whatever further information you desire.

Again, there is virtually no doubt but that the law in Montana for over 100 years has been that a plaintiff can sue an out-of-state resident in any county he desires. If there is any unfairness resulting to the defendant because of the manner in which the plaintiff chooses a county for the filing of the complaint, the Court has the absolute discretion to change the place of trial to promote the ends of justice or the convenience of witnesses. In this regard, I direct your attention to 25-2-201, MCA, which states as follows:

25-2-201. When change of venue required. The court or judge must, on motion, change the place of trial in the following cases:

addendumDATE 1-27-89BILL NO. SB 208

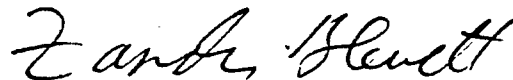
Honorable John G. Harp  
January 31, 1989  
Page Four

- (1) when the county designated in the complaint is not the proper county;
- (2) when there is reason to believe that an impartial trial cannot be had therein;
- (3) when the convenience of witnesses and the ends of justice would be promoted by the change.

This statute has been in effect since 1867, just as the statute allowing the plaintiff to sue an out-of-state resident in any county he desires has been in effect. As I mentioned at the hearing, if there is any unfairness or inconvenience caused to a defendant because of the age-honored rule allowing plaintiff to file his complaint against a non-resident defendant in any county, such defendant can bring the matter before the judge, who can decide, in his discretion, if the venue should be changed.

Thank you.

Sincerely yours,



Alexander (Zander) Blewett, III

AB:crb

Enclosure

cc: Honorable William P. Yellowtail, Jr.  
Honorable Joseph P. Mazurek  
Honorable Bob Brown  
Honorable R.J. Pinsoneault  
Honorable Al Bishop  
Honorable Tom Beck  
Honorable Bruce D. Crippen ✓  
Honorable Loren Jenkins  
Honorable Mike Halligan

A. A. WERNER, Relator,

v.

The DEPARTMENT OF STATE LANDS & INVESTMENTS of the State of Montana, a department of the government of the State of Montana, et al., Respondents.

No. 11023.

Supreme Court of Montana.

Oct. 15, 1965.

PER CURIAM:

Original proceeding.

Application for an alternative writ of prohibition.

The application is denied and the proceeding is dismissed.



Donovan Alvis YEAGER and Dolly Mebellne Yeager, Husband and Wife, Plaintiffs and Respondents,

v.

Tom FOSTER, Defendant and Appellant.

No. 10939.

Supreme Court of Montana.

Submitted Sept. 14, 1965.

Decided Oct. 5, 1965.

Automobile accident case. The Second Judicial District Court, Silver Bow County, James D. Freebourn, J., denied a motion for a change of place of trial, and defendant appealed. The Supreme Court, Doyle, J., held that automobile accident case brought by nonresident against another nonresident who was subject to jurisdiction by reason of Motor Vehicle Code could be maintained in any county, at plaintiff's choice.

Affirmed.

1. Automobiles ⇨232

Automobile accident case brought by nonresident against another nonresident who was subject to jurisdiction by reason of Motor Vehicle Code could be maintained in any county, at plaintiff's choice. R.C.M. 1947, § 93-2904.

2. Venue ⇨61

Motion for change of venue to serve convenience of witnesses was premature where defendant had not yet filed answer. R.C.M. 1947, § 93-2906; M.R.Civ.P. rule 12(b).

Poore, Poore, McKenzie & Roth, Butte, Anderson, Symmes, Forbes, Peete & Brown, Billings, Allen R. McKenzie (argued), Butte, for appellant.

Shone & Sullivan, A. G. Shone (argued), Butte, for respondents.

DOYLE, Justice.

This is an appeal from a denial of a motion for a change in the place of trial, in the District Court of Silver Bow County, before the Honorable James D. Freebourn as presiding judge.

The facts are as follows: On July 7, 1964, at about 6:30 p. m. on U. S. Highway # 10, near Reed Point, in Sweet Grass County, Montana, plaintiffs-respondents, hereinafter called respondents were passengers for hire in a motor vehicle owned and operated by one Tom Foster, defendant-appellant, hereinafter called appellant.

The vehicle struck a bridge abutment causing multiple injuries to the respondents. This litigation then ensued.

It is admitted that both parties litigant were and are citizens and residents of our sister State of Kansas.

The complaint was filed in Silver Bow County and personal service of summons and complaint was had on the appellant in Shawnee County, Kansas, on November 27, 1964.

On December 15, 1964, appellant appeared by counsel in Silver Bow County and filed

his affidavit place of trial and notice of venue, that the proper venue occurred in Sweet Grass County because he was there for the convenience of witnesses both respondents and plaintiff following the trial.

Appellant's motion for a change of venue is denied. R.C.M. 1947, § 93-2906, R.C.P. 12(b) of M.R.C.P.

Section 3

"Other acts of the parties shall be the responsibility of the defendants, commencing the plaintiff if any of them, the defendant residing in the county they so reside in the same manner as the plaintiff and if a change of venue may be about to occur either of the parties may be had. A motion for a change of venue was to be permitted in the county subject, however, to change of venue in this code."

Section 9

"Place of trial cases. The change of venue cases:

"1. Where a complaint is filed in a county other than the county of residence of the plaintiff or the defendant, the court shall have jurisdiction to try the case if the defendant has appeared and answered the complaint."

"2. Where a complaint is filed in a county other than the county of residence of the plaintiff or the defendant, the court shall have jurisdiction to try the case if the defendant has appeared and answered the complaint."



NAME: [Handwritten Name] DATE: 11/27/99

ADDRESS: 400 F...

PHONE: 402-709...

REPRESENTING WHOM? M...

APPEARING ON WHICH PROPOSAL: SB 208

DO YOU: SUPPORT?            AMEND?            OPPOSE?

COMMENTS:             
            
            
            
            
            
            
            
            
            
            
            
            
            
            
            
          

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to Senate Bill No. 164  
First Reading Copy (WHITE)

Requested by Senators Mazurek, Brown, Yellowtail,  
Halligan, and Bishop  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 25, 1989

1. Title, line 6.

Following: "FOR"

Strike: "CONSENT AND"

Insert: "A"

Following: "JUDICIAL"

Strike: "BYPASS"

Insert: "EXEMPTION FROM THE NOTIFICATION REQUIREMENT"

2. Title, line 8.

Strike: "FELONY"

Insert: "MISDEMEANOR"

3. Page 1, line 17.

Following: "abortion to"

Strike: "each"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor"

4. Page 1, line 24 through page 2, line 2.

Following: "emancipated" on line 24

Strike: remainder of line 24 through "(1)(b)." on page 2,  
line 2

Insert: "; or"

5. Page 2, lines 3 and 4.

Following: "granted" on line 3

Strike: remainder of line 3 through "abortion" on line 4

Insert: "an exemption from the notification requirement of  
subsection (1)"

6. Page 2, lines 5 through 10.

Following: "[section 5]" on line 5

Strike: remainder of line 5 through "[section 8]" on line 10

7. Page 2, lines 11 through 14.

Following: "Procedure." on line 11

Strike: remainder of line 11 through "by a" on line 14

Insert: "The minor may be granted an exemption from the notification requirement of [section 1] by the youth"

8. Page 2, line 15.

Strike: "7"

Insert: "6"

9. Page 2, line 16.

Strike: "majority rights"

Insert: "exemption from parental notification requirement"

10. Page 2, line 17.

Following: "minor"

Strike: "or her guardian"

11. Page 2, line 18.

Following: "minor"

Strike: "or guardian"

12. Page 2, line 21.

Following: "minor"

Strike: "or the guardian of the minor"

13. Page 2, line 25.

Strike: "each"

14. Page 3, line 1.

Following: "(i)"

Insert: "a"

Following: "parent"

Insert: "having actual care, custody, or control of the minor or the guardian of the minor"

Following: ";

Insert: "or"

15. Page 3, line 2.

Following: line 1

Strike: subsection (ii) in its entirety

Renumber: subsequent subsection

16. Page 3, line 10.

Following: "abortion;"

Insert: "and"

17. Page 3, lines 11 through 19.

Strike: subsections (f), (g), and (h) in their entirety

Insert: "(f) a statement that the minor requests appointment of counsel or a guardian ad litem."

18. Page 3, lines 20 and 21.

Following: "minor" on line 20

Strike: remainder of line 20 through "guardian" on line 21

19. Page 3, line 23.

Following: "on"

Strike: "the merits of"

20. Page 3, lines 23 and 24.

Following: "petition" on line 23

Strike: remainder of line 23 through "[section 3]" on line 24

21. Page 4, line 1.

Following: "fee"

Strike: "for the hearing"

22. Page 4, lines 1 and 2.

Following: "If" on line 1

Strike: remainder of line 1 through "party" on line 2

Insert: "the minor"

23. Page 4, line 3.

Following: "counsel"

Strike: "at least 24 hours before the time of the hearing"

Insert: "for the minor"

24. Page 4, lines 7 and 8.

Following: "(2) the" on line 7

Strike: remainder of line 7 through "abortion" on line 8

Insert: "circumstances of the relationship between the minor and the parent, guardian, or person standing in loco parentis to be notified under [section 1]"

25. Page 4, lines 9 through 12.

Following: "find" on line 9

Strike: remainder of line 9 through "minor" on line 12

Insert: "relevant in determining whether the minor shall be granted an exemption from the notification requirement of [section 1]"

26. Page 4, lines 17 through 21.

Following: "petition for" on line 17

Strike: remainder of line 17 through "finding" on line 21

Insert: "an exemption from the notification requirement of [section 1]"

Renumber: subsequent subsection

27. Page 5, line 2.

Following: line 1

Strike: "or by a parent or guardian of the minor"

28. Page 5, lines 3 through 5.

Following: "appeal." on line 3

Strike: remainder of line 3 through "order." on line 5

29. Page 5, line 9.

Following: "shall"

Strike: ", by court rule,"

30. Page 5, line 11 through page 6, line 5.

Strike: sections 7 and 8 in their entirety

Renumber: subsequent sections

31. Page 6, line 6.

Following: "Violation."

Strike: "Performance of"

Insert: "A person convicted of performing"

32. Page 6, line 7.

Following: "of"

Strike: "[sections 1 through 8] is a felony"

Insert: "[section 1] shall be fined an amount not to exceed \$500  
or be imprisoned in the county jail for a term not to exceed  
6 months, or both"

33. Page 7, line 4.

Strike: "8"

Insert: "6"

34. Page 9, line 21.

Strike: "9"

Insert: "7"

SENATE JUDICIARY

EXHIBIT NO. 7, p. 5

DATE 1-27-89

BILL NO. SB 164

35. Page 9, lines 22 and 23.

Strike: "Title 50, chapter 20, part 1"

Insert: "Title 41, chapter 5"

36. Page 9, line 24.

Strike: "9"

Insert: "7"

B

Amendments to Senate Bill No. 164  
First Reading Copy

Requested by Senator Rasmussen  
For the Committee on Judiciary  
Prepared by Greg Petesch  
January 23, 1989

1. Title, line 8.  
Following: " ; "  
Strike: remainder of line 8 through " ; " on line 9  
Insert: "AND"  
Following: "41-1-405,"  
Strike: "50-20-108"  
Insert: "50-20-107"

2. Title, line 10.  
Following: "50-20-109, MCA"  
Strike: remainder of line 10 through " MCA"

3. Page 1, line 16.  
Following: "physician"  
Insert: "or his agent"  
Following: "gives"  
Insert: "at least"

*un*  
*ued* → 4. Page 1, line 23.  
Following: "."  
Insert: "The time of delivery of constructive notice is considered to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing."

*pped*  
*R.* 5. Page 2, line 21.  
Following: "shall"  
Insert: "thereafter"

*ced*  
*NAN* 6. Page 3, line 25.  
Following: line 24  
Strike: "or"

*clarifies inserts in a statement 30 spousal notif.?*

7. Page 7, line 6 through page 8, line 5.  
Strike: section 11 in its entirety  
Insert: "Section 11. Section 50-20-107, MCA, is amended to read:  
"50-20-107. Written notice to spouse ~~or parent~~ required.  
(1) No abortion may be performed upon any woman in the absence of—  
(a) ~~the~~ written notice to her husband, unless her husband is voluntarily separated from her—  
(b) ~~the~~ written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.  
(2) ~~Violation of this section is a misdemeanor.~~ "

8. Page 9, lines 18 and 19.  
Strike: section 13 in its entirety  
Renumber: subsequent sections



SENATE JUDICIARY

EXHIBIT NO. 9

DATE 1-27-89

BILL NO. 513 109

C  
Amendments to Senate Bill No. 164  
First Reading Copy (WHITE)

Requested by Montana Trial Lawyers' Association  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 25, 1989

1. Page 5, line 16.

Following: "assault or"

Strike: "personal injury of"

Insert: "battery upon"

2. Page 5, line 19.

Following: "through 8]"

Insert: "and within the scope of any consent granted pursuant to  
[section 5]"

8. Page 9, lines 18 and 19.

Strike: section 13 in its entirety

Renumber: subsequent sections

SENATE JUDICIARY

EXHIBIT NO. 10

DATE 1-27-89

BILL NO. SB 164

Amendments to Senate Bill No. 164  
First Reading Copy (WHITE)

Requested by Senator Jenkins  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 24, 1989

1. Page 1, line 17.  
Following: "abortion to"  
Strike: "each"  
Insert: "a"

2. Page 5, line 2.  
Following: "by a"  
Strike: "parent or"  
Insert: "court-appointed"

To: Valencia Lane

From: Bill Yellowtail

Subject: Amend SB 164

Here is an additional amendment to SB 164:

PAGE 3, line 7 following "abortion" insert

"and the risks and consequences of carrying the pregnancy to term"

To insert into Mazurek & Co. amendments:

16. Page 3, line 7.

Following: "abortion"

INSERT: "and the risks and

consequences of carrying  
the pregnancy to term"

J

SENATE JUDICIARY

EXHIBIT NO. 12

DATE 1-27-89

BILL NO. SB 164

To:

From: Sen. Rasmussen

Subject: SB 164

Page 4, lines 18 to 21

Section 5. Following "[section 1]" of Mazurek's amendments

Insert: "by finding that the minor is sufficiently mature or that the exemption from the notification requirement of [section 1] is in the best interests of the minor; or"

① ~~judicial decision w/in 24 hrs.~~

②

Mazurek  
1st amend. of 1-27-89

SENATE JUDICIARY

EXHIBIT NO. 13

DATE 1-27-89

BILL NO. SB164

P4, line 24.

Following: line 23

INSERT: "NEW SECTION. Section 6. Confidential  
of proceedings. (1) ~~\_\_\_\_\_~~

~~\_\_\_\_\_~~ All hearings  
held on a petition under [sections  
3 through 7] shall be confidential  
and shall be held in closed court  
without admittance of any person  
other than the minor, her counsel,  
or guardian ad litem.

(2) all papers and records pertaining  
to the petition shall be kept as a  
permanent record of the court and  
withheld from inspection. No person  
shall have access to such records

Renumber: subsequent sections

Mazurek's  
2nd amend  
of 1-27-89

SENATE JUDICIARY

EXHIBIT NO. 14

DATE 1-27-89

BILL NO. SB 164

Page 4, line 15.

Following: "its decree"

Insert: "within 24 hours"

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time 11:40 a.m. #1

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      | ✓   |    |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    | ✓   |    |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  | ✓   |    |
| SEN. CRIPPEN     |     | ✓  |
|                  |     |    |
|                  |     |    |

9. 1

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Braun moved Amend A & added 1-27  
amend



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time #2

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      | ✓   |    |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    | ✓   |    |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  | ✓   |    |
| SEN. CRIPPEN     | ✓   |    |
|                  |     |    |
|                  |     |    |
|                  |     |    |

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: <sup>#3</sup> Brown - or his agent from the Rasmussen  
Amendment - unanimous

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time #3

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      | ✓   |    |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    | ✓   |    |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  |     | ✓  |
| SEN. CRIPPEN     | ✓   |    |
|                  |     |    |
|                  |     |    |

*passed 9. 1*

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Brown moved #4 on R's Amend

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\_\_\_\_\_

\_\_\_\_\_

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

# 4

Date 1-27-89 Senate Bill No. 164 Time \_\_\_\_\_

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      | ✓   |    |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    | ✓   |    |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  | ✓   |    |
| SEN. CRIPPEN     | ✓   |    |
|                  |     |    |
|                  |     |    |
|                  |     |    |

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Mazurek - #6 of Rasmussen Amend. -  
Unanimous

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time #5

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      |     | ✓  |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       |     | ✓  |
| SEN. HALLIGAN    |     | ✓  |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     |     | ✓  |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  |     | ✓  |
| SEN. CRIPPEN     | ✓   |    |

5 . . 5

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Harp-Rasmussen's #7 & 8 - Motion fair  
5-5

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time #6

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      |     |    |
| SEN. BECK        |     |    |
| SEN. BROWN       |     |    |
| SEN. HALLIGAN    |     |    |
| SEN. HARP        |     |    |
| SEN. JENKINS     |     |    |
| SEN. MAZUREK     |     |    |
| SEN. PINSONEAULT |     |    |
| SEN. YELLOWTAIL  |     |    |
| SEN. CRIPPEN     |     |    |
|                  |     |    |
|                  |     |    |

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Amend 5 - R's. (dropped)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time #7

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      |     |    |
| SEN. BECK        |     |    |
| SEN. BROWN       |     |    |
| SEN. HALLIGAN    |     |    |
| SEN. HARP        |     |    |
| SEN. JENKINS     |     |    |
| SEN. MAZUREK     |     |    |
| SEN. PINSONEAULT |     |    |
| SEN. YELLOWTAIL  |     |    |
| SEN. CRIPPEN     |     |    |
|                  |     |    |
|                  |     |    |

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Harp moved Rasmussen's handwritten  
amendments. After discussion,  
he withdrew his motion.  
No vote was taken

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

# 8

Date 1-27-89 Senate Bill No. 164 Time 12:00

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      | ✓   |    |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    | ✓   |    |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  | ✓   |    |
| SEN. CRIPPEN     | ✓   |    |
|                  |     |    |
|                  |     |    |

*Mazurek motion*

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Jenkins - Moved MTA amend. - Withdrawn  
Yellowtail's Amend - No action  
Pinsonault substitute motion to delete lines 64<sup>on</sup> p. 3  
Mazurek - substitute motion: delete "abortion", insert  
"her decision"

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-27-89 Senate Bill No. 164 Time 12:33 # 9

| NAME             | YES | NO |
|------------------|-----|----|
| SEN. BISHOP      |     | ✓  |
| SEN. BECK        | ✓   |    |
| SEN. BROWN       | ✓   |    |
| SEN. HALLIGAN    |     | ✓  |
| SEN. HARP        | ✓   |    |
| SEN. JENKINS     | ✓   |    |
| SEN. MAZUREK     | ✓   |    |
| SEN. PINSONEAULT | ✓   |    |
| SEN. YELLOWTAIL  |     | ✓  |
| SEN. CRIPPEN     | ✓   |    |

7 . 3

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Harp moved Do Pass as Amended  
Passed 7-3