

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice Chairman Al Bishop for Chairman Crippen who was temporarily delayed by another hearing, on March 6, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: Senator Bob Brown

Members Absent: None

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

Announcements/Discussion: There were none.

HEARING ON HOUSE BILL 116

Presentation and Opening Statement by Sponsor:

Representative Mary McDonough of Billings, District 89, opened the hearing saying the bill was to amend the elder abuse prevention act to include developmentally disabled (DD) persons. That act was passed in 1985, she said. HB 116 will expand on that act and will provide for the reporting of neglect and abuse of developmentally disabled persons and will provide that the Department of Family Services shall investigate the reports. She said the bill had been requested by the department. Currently, they offer social services to DD homes, but don't have the authority to investigate suspicious cases.

List of Testifying Proponents and What Group they Represent:

Charles McCarthy, Bureau Chief, Department of Family Services

Owen Warren, American Association of Retired Persons

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charles McCarthy said that in 1987, there were 27 cases where social workers were refused admission. Had they been able to get in the home sooner, they would have been able to prevent deterioration of the DD person. In 1988, there were 33 cases where they were refused admission. Neighbors who made the referrals would call and ask why the department were not doing anything to stop the neglect or abuse. This bill would give the authority. One provision in the bill would give the department the power to seek a court order to enter into the home to investigate and the other provision would add the developmentally disabled to the statute, he told the committee. He presented written testimony to the committee for the record (Exhibit 1).

Owen Warren presented written testimony to the committee (Exhibit 2).

Questions From Committee Members: Senator Pineseault asked if developmentally disabled persons were defined or identified by the department. Mr. McCarthy said that there were definitions in other part of the statute. He said that there are approximately 15,000 DD persons in the state, of whom 1314 were receiving services. The department knows about the ones receiving services, but there are others about whom the department is concerned, he added.

Senator Pineseault asked if some cases required rough treatment. Mr. McCarthy said yes, that some cases require procedures where painful restraint is approved. The department is aware of which clients fall into that category, he said. Approval must be given for that kind of treatment.

Senator Halligan said that sometimes criminal laws have had to be used to allow social workers to get into the homes for investigating possible abuse. Senator Pineseault said that, if he had a DD individual in his home, he would be highly offended if a department staff member came to his home with a court order. Rep. McDonough said there would have to be probable cause to obtain a court order.

Senators Beck and Harp voiced concern about getting into a "witch hunt". Senator Beck asked about restraining DD persons. Mr. McCarthy said that when a case is determined, the department educates the family on the approved ways of dealing with difficult situations, at times with 200 lb. individuals. This bill would also address dealing with persons who mistreat and/or take money from these individuals.

Senator Jenkins if a report by a neighbor instigated the investigative provision being put into use. Mr. McCarthy said yes.

Closing by Sponsor: Rep. McDonough closed the hearing.

DISPOSITION OF HOUSE BILL 116

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that HOUSE BILL 116 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

At this point in the meeting, Chairman Crippen resumed the chair.

HEARING ON HOUSE BILL 97

Presentation and Opening Statement by Sponsor:

Representative Tom Kilpatrick of Laurel, District 85, opened the hearing. He said that House Bill 97 to grant city courts power to issue a temporary restraining order was a housekeeping bill. City judges and county judges have the same education, he said. He urged that they be allowed to issue temporary restraining orders. He said that if a restraining order is needed in Laurel, presently it must be obtained in Billings. The bill would save time and possibly lives, he told the committee.

List of Testifying Proponents and What Group they Represent:

Brenda Nordlund, Montana Women's Lobbyist Fund
Wally Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Brenda Nordlund presented written testimony to the committee. (Exhibit 3)

Wallace Jewell presented written testimony (Exhibit 4).

Maggie Hill entered written testimony into the record. (See Exhibit 5.)

Questions From Committee Members: Senator Jenkins asked if a person in Laurel would really have to go to Billings to get a restraining order. Rep. Kilpatrick said yes.

Senator Mazurek asked if there wasn't a discussion of this during the last session. Brenda Nordlund felt there was, but she thought there was a misunderstanding. Rep. Kilpatrick said it was thought that "municipal" included local courts. Wally Jewell agreed

Closing by Sponsor: Rep. Kilpatrick closed.

DISPOSITION OF HOUSE BILL 97

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 97 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 189

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, opened the hearing. He said the bill had been requested by one of his district court judges to cover a discrepancy in statute regarding incest penalties. He said that the bill focuses on situations in which the victim is less than 16 years of age and the offender is 3 years older, or if the victim is bodily injured. The penalty is "not to exceed 10 years and may be fined not more than \$50,000", he said, referring to page 2 of the bill. He said that the incest penalty is not as high as the sexual assault penalty. This bill proposes use of the sexual assault language in the incest statute, he said.

List of Testifying Proponents and What Group they Represent:

John Connor, Montana County Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor supported the bill. He agreed with Rep. Rice's opening statement. In addition, he said that one reason few people were prosecuted under the incest statute was the relatively light penalty, which does not afford opportunity for appropriate treatment. He said his understanding of the sexual assault treatment program in the prison is that the offender has to be present in the prison for at least 2 years to assure his presence in the program. He said it was a very good program. Normally, a prosecutor is discouraged from prosecution by the lighter penalty. He agreed with the bill.

Questions From Committee Members: Senator Jenkins wondered why these offenders wouldn't be convicted under the child molestation statutes. John Connor said there were 3 options: Sexual intercourse without consent, sexual assault and incest. Normally, he said, with a young child involved, it would be difficult to prove penetration, but may be easier to prove sexual assault. Most sexual crimes occurring in a home are incest offenses.

Senator Jenkins said the child molestation bills were for "under 18" and he wondered why this bill said "under 16". John thought the (molestation) statutes did provide for "under 16," rather than 18. The reason for the different language was for a case where the victim was 15 and the offender was 17, which would not result in a felony sexual assault charge.

Senator Crippen asked if Senator Jenkins was referring to the statute of limitations bills on incest. He said yes.

Senator Jenkins asked about the "age of consent." John said it was 14 for some offenses and 16 for others.

Senator Yellowtail said he understood that, with the provisions of the bill, the treatment would be given. John said that there has to be a sentencing that would afford the opportunity of receiving the 2 or 3 years of treatment necessary for the containment of the problem. He said that sex offenders are never cured, but can be "contained." They need to be seen periodically after treatment for reinforcement. Senator Beck agreed that his understanding of the program at the prison was a minimum of 2 years.

Valencia said she wanted to clarify that, currently, the sexual assault statute is 16 years of age. The bill would be consistent with that, she said.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 189

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that HB 189 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, Great Falls, District 41, opened the hearing. He said the bill's purpose was to revise and reorganize options for disposition of

troubled youths. The bill was requested by the Department of Family Services, he said. It responds to confusion of amendments to the youth court act that were enacted during the last session. The bill is to clean up the verbosity and better clarify the statute.

List of Testifying Proponents and What Group they Represent:

Leslie Taylor, Department of Family Services
Mona Jamison, Montana Juvenile Probation Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Leslie Taylor presented written testimony (Exhibit 6).

Mona Jamison supported the bill.

Questions From Committee Members: Senator Mazurek asked if any of the youth court judges had reviewed the bill. Leslie said she had not sent it to any youth court judges, but had sent it to county attorneys and to probation officers. They had no problems with it.

Senator Mazurek asked why passage on approval. She thought because it wasn't an excessive amount of change, it might as well be that way.

Closing by Sponsor: Representative Strizich closed.

DISPOSITION OF HOUSE BILL 265

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that HB 265 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

HOUSE BILL 177

Discussion: Valencia presented amendments for the bill she had prepared at the request of Senator Beck (Exhibit 7). They remove hospital references from the bill and take out the definition of hospital on p. 3. She explained the amendments, saying they were mostly changing "health care providers" to "chiropractic physicians." She said these were the amendments requested by the Montana Hospital Association.

Senator Crippen asked Mike Sherwood if the Montana Trial Lawyers would have any problem with the bill as amended. He said no.

Amendments and Votes: Senator Beck MOVED the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendations and Votes: Senator Beck MOVED that HB 177 BE CONCURRED IN AS AMENDED. The MOTION CARRIED by a vote of 6 to 3 with Senators Bishop, Pinsoneault and Yellowtail voting NO.

HOUSE BILL 454

Discussion: Valencia presented amendments that had been prepared in conjunction with Wally Jewell and John Connor (Exhibit 8). She said that on page 2, lines 12 and 13 the main amendment took place. It provided for appeal, she said.

Senator Mazurek said the lower courts were not courts of record. Senator Halligan disagreed, saying notes were made and kept on file.

Senator Jenkins commented he felt the amendments improved the bill.

Amendments and Votes: Senator Pinsoneault MOVED adoption of the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendations and Votes: Senator Pinsoneault MOVED that House Bill 454 BE CONCURRED WITH AS AMENDED. The MOTION CARRIED by a vote of 7 to 2, with Senators Yellowtail and Crippen voting NO.

HOUSE BILL 409

Discussion: Valencia Lane explained that she had prepared an amendment in a Preamble form, rather than using a statement of intent or putting the explanation in the minutes. She distributed the amendment to the committee. (See Exhibit 9.)

Mike Sherwood said the MTLA approved of her amendment.

Senator Halligan said he wanted it on the record that the amendments reflected common law.

Valencia said the amendment would appear in the bill, in the session laws and would be published in the annotations -- the blue binder that goes with the codes. It will not appear in the codes, she said.

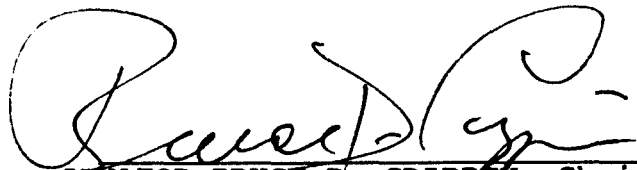
Amendments and Votes: Senator Halligan MOVED adoption of the amendments in Ex. 9. Senator Harp MOVED a SUBSTITUTE MOTION to include it in the minutes. Senator Halligan's MOTION CARRIED by a vote of 5 to 4 with Senators Harp, Mazurek and Pinsoneault voting NO.

Recommendations and Votes: Senator Halligan MOVED that House Bill 409 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENTS: Chairman Crippen thanked Mike Sherwood and the Montana Trial Lawyers Association for hosting the luncheon following the Confirmation Hearings.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT


March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 116 (third reading copy -- blue), respectfully report that HB 116 be concurred in.

Sponsor: McDonough (Pinsonneault)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 97 (third reading copy -- blue), respectfully report that HB 97 be concurred in.

Sponsor: Kilpatrick (Balligan)

BE CONCURRED IN

Signed: *Bruce D. Crippen*
Bruce D. Crippen, Chairman

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SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 189 (third reading copy -- blue), respectfully report that HB 189 be concurred in.

Sponsor: Rice (Mazurek)

BE CONCURRED IN

Signed: Bruce D. Crippen
Bruce D. Crippen, Chairman

scrhb189.306

J.C.
Bill

SENATE STANDING COMMITTEE REPORT


March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 265 (third reading copy -- blue), respectfully report that HB 265 be concurred in.

Sponsor: Strizich (Halligan)

BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 177 (third reading copy -- blue), respectfully report that HB 177 be amended and as so amended be concurred in:

Sponsor: Brown, J. (Beck)

1. Page 1, lines 18 and 23.

Strike: "health care providers"

Insert: "physicians"

2. Page 3, lines 3 through 7.

Strike: subsections (3) and (4) in their entirety

Renumber: subsequent subsections

3. Page 3, line 9.

Strike: "health care provider"

Insert: "chiropractic physician"

4. Page 3, line 24.

Strike: "health care providers"

Insert: "chiropractic physicians"

5. Page 7, lines 16 and 17.

Following: "elements of the" on line 16

Strike: remainder of line 16 through "provider's" on line 17

Insert: "chiropractic physician's"

6. Page 8, lines 13 and 20.

Strike: "health care provider"

Insert: "chiropractic physician"

7. Page 8, lines 14 and 15.

Following: "and the" on line 14

Strike: remainder of line 14 through "provider" on line 15

Insert: "chiropractic physician"

8. Page 8, lines 22 and 23.

Following: "to the" on line 22

Strike: remainder of line 22 through "provider" on line 23

Insert: "chiropractic physician"

9. Page 8, line 25.

Strike: "Health care provider's"

Insert: "Chiropractic physician's"

10. Page 9, lines 2 and 6.

Strike: "health care provider"

Insert: "chiropractic physician"

11. Page 9, line 24.

Strike: "health care providers"

Insert: "chiropractic physicians"

12. Page 10, lines 1 through 4.

Following: "Montana." on line 1

Strike: remainder of line 1 through "three" on line 4

Insert: "Three"

13. Page 10, lines 7 through 12.

Strike: subsection (2) in its entirety

14. Page 10, lines 15 and 16.

Following: "of the" on line 15

Strike: remainder of line 15 through "provider's" on line 16

Insert: "chiropractic physician's"

15. Page 10, line 25.

Strike: "health care provider"

Insert: "chiropractic physician"

16. Page 11, lines 2 and 4.

Strike: "health care provider's"

Insert: "chiropractic physician's"

17. Page 11, line 6.

Page 12, line 21.

Strike: "health care provider"

Insert: "chiropractic physician"

18. Page 13, line 3.

Strike: "health care providers"

Insert: "chiropractic physicians"

19. Page 14, line 25.

Strike: "health care provider's"

Insert: "chiropractic physician's"

20. Page 15, lines 11 and 12.

Following: "each" on line 11

Strike: remainder of line 11 through "provider" on line 12

Insert: "chiropractic physician"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

March 6, 1989

HR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 454 (third reading copy -- blue), respectfully report that HB 454 be amended and as so amended be concurred in:

Sponsor: Connelly (Pineoneault)

1. Title, lines 6 and 7.

Following: "PROHIBIT" on line 6

Strike: remainder of line 6 through "ENTERS" on line 7

Insert: "TRIAL DE NOVO IN DISTRICT COURT AFTER ENTRY OF"

2. Title, lines 7 and 8.

Following: "COURT" on line 7

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

3. Title, line 9.

Strike: "AND"

Following: "46-17-203,"

Insert: "AND 46-17-311,"

4. Page 2, line 12.

Following: line 11

Strike: "appeal to the"

Insert: "trial de novo in"

5. Page 2, line 13.

Following: "waiver"

Strike: "of appeal"

6. Page 2.

Following: line 15

Insert: " Section 4. Section 46-17-311, HCA, is amended to read:

"46-17-311. Appeal. (1) Except as provided in 46-17-203, all cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

scrhb454.300

41. C
2/16/89

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 409 (third reading copy -- blue), respectfully report that HB 409 be amended and as so amended be concurred in:

Sponsor: Good (Halligan)

1. Page 1, line 9.

Insert: "WHEREAS, a majority of courts in the United States have broadly construed the attorney-client privilege as protecting the client as well as his attorney from being compelled to disclose their confidential communications; and

WHEREAS, the United States District Court for the District of Montana, in the recent case of Lane v. All Nation Insurance Company, CV-86-054-GP (June 17, 1987), strictly construed Montana's statute regarding attorney-client privilege to allow the client to be examined concerning his confidential communications with his attorney; and

WHEREAS, the Legislature intends to amend and clarify the Montana statute to make it clear that, contrary to the Lane decision, the attorney-client privilege extends to protect the client from being required to disclose confidential communications between him and his attorney; and

WHEREAS, the courts through the common law have developed several exceptions to the attorney-client privilege; and

WHEREAS, the Legislature does not intend by this act to abolish, amend, or otherwise affect any other exceptions to the attorney-client privilege.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the statute regarding attorney-client privilege."

AND AS AMENDED BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

TESTIMONY IN SUPPORT OF HB 116

AMENDMENTS TO THE MONTANA ELDER ABUSE PREVENTION ACT

DEPARTMENT OF FAMILY SERVICES

This bill has been submitted to amend the Montana Elder Abuse Prevention Act to include developmentally disabled adults in the mandatory reporting requirements of the Act and to give the department's social workers explicit authority to investigate incidents of abuse, neglect, and or exploitation. In addition, these amendments to the act will give law enforcement or department social workers the authority to request a court order to investigate those cases where the alleged victim is in serious danger.

As a result of mandatory reporting of elder abuse, there has been an increase in the last five years in the number of reported incidents of alleged abuse, neglect, and/or exploitation of the elderly.

There are approximately 15,000 developmentally disabled adults living in Montana. Currently 1,314 of this number are receiving services. We have concern for the remaining developmentally disabled adults that are not receiving services. These unprotected persons are very vulnerable to the mental and physical harm associated with abuse, neglect and/or exploitation. In the majority of these cases when abuse has occurred, it is not brought to the Department's attention until a great deal of harm has been done. The department has a need to know about these cases earlier, so the physical and mental harm can be minimized, and so the services required will be less extensive and less costly. Mandatory reporting for the developmentally disabled will assure this in most cases.

This bill gives the Department of Family Services explicit authority to investigate cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. The current act provides implied authority, but many times this authority has been questioned by alleged perpetrators and by attorneys. Department social workers have been prevented from doing a complete investigation in approximately 15 cases a year because of this issue. In four of those cases DFS received referrals later on that indicated more harm was done and more extensive services were needed. There is no way of knowing what happened in the other 10 cases not referred back, but statistically

we expect that at least half continue to be abused. BILL NO. AB 116

The last amendment included in this bill will give law enforcement or Department social workers the authority to petition the local district court for an order to investigate alleged cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. This authority would only be used in those cases where the alleged victim or caretaker refuses to allow the worker to do an investigation and it is believed that serious abuse, neglect, and/or exploitation is occurring that is physically and/or mentally harming the alleged victim.

In 1987 DFS had 27 cases where department social workers were refused to do investigations. Of these we received 4 referrals later on that indicated more harm was done and the services needed were more extensive. In 1988 we had 23 similar cases where department workers were not allowed to investigate. Five of these were referred back in worse shape and requiring more extensive services. In many of these cases there has been a lot of pressure on the department's social workers to do something. The pressure comes from community persons knowledgeable about the case and from those reporting the abuse. The social workers hands have been tied by the refusal to allow them to investigate or even to see the alleged victim. To prevent serious and extensive physical and/or mental harm or death the department needs to be allowed to investigate these cases as soon as possible.

Thank you for your consideration of these amendments to the Montana Elder Abuse Prevention Act. These amendments will assure that the department can better serve those elderly and developmentally disabled who are victims of abuse, neglect, and/or exploitation.

2.



SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3/6/89

BILL NO. HB 116

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Molly L. Munro
4022 6th Avenue South
Great Falls, MT 59405
(406) 727-5604

VICE CHAIRMAN
Mr. Fred Patten
1730 Knight
Helena, MT 59501
(406) 443-3696

SECRETARY
Mr. John C. Bower
1405 West Story Street
Bozeman, MT 59715
(406) 587-7535

March 6, 1989

TO: SENATE JUDICIARY COMMITTEE

FROM: Owen Warren, American Association of Retired Persons

RE: In support of HB 116 - "An Act to amend the Elder Abuse Prevention Act to include developmentally disabled persons.

The amendments will provide for the identification and reporting of acts of abuse, neglect and exploitation of the developmentally disabled and provide legal authority for law enforcement officials to levy penalties for these abuses.

The Montana State Legislative Committee of AARP supports these amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation.

3.

MONTANA WOMEN'S LOBBYIST FUND

P.O. Box 1099

Helena, MT 59624

406/449-7917

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 3/6/89

BILL NO. HB 97

Testimony in Support of HB 97
Senate Judiciary Committee
March 6, 1989

My name is Brenda Nordlund and I appear on behalf of Montana Women's Lobby. We support HB 97 which will extend the jurisdiction of courts of limited jurisdiction to issuance of self-help TROs.

When domestic violence strikes a family, the paramount concern of the victims is for their immediate safety and the safety of their loved ones. The self-help TRO was designed to help ensure their safety, without the necessity of waiting hours or days for assistance from attorneys or others to obtain judicial relief and protection.

Unfortunately, for women and children who did not live in the immediate vicinity of a district court or justice court and who had to drive to neighboring towns to seek relief, the process became more involved and time delays more likely. Because isolation of family members and the control oftentimes exercised by batterers in the family context, a sojourn to a neighboring community may be difficult to arrange. The more access victims of domestic violence have to courts, including city courts perhaps within their own communities, the better.

We urge a do pass recommendation from this committee.

Montana Magistrates Association

6 March 1989

Testimony offered in support of HB97, a bill for an act entitled: "An act to grant City Courts jurisdiction to issue temporary restraining orders when a petitioner alleges physical abuse, harm, or bodily injury by a family member or household member."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

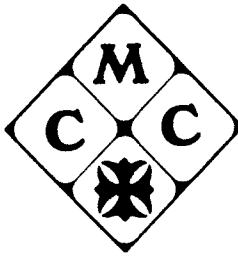
The Montana Magistrates Association is in support of HB97 because not only would it decrease the current flow of paperwork through the Justice Courts, it would also facilitate the filing of temporary restraining orders by alleged victims of domestic abuse.

Under current law the only limited jurisdiction judges with the authority to issue a temporary restraining order are justices of the peace and municipal court judges. If an alleged victim of domestic abuse then lives in a city with a City Court but not a Justice Court or Municipal Court, that victim must drive to the nearest town with such a court.

This does not make any sense when City Court judges have basically the same jurisdictional authority except for the issuance of temporary restraining orders (see 3-11-102, 3-11-103, 3-10-301, and 3-10-303, MCA). City Court judges also must undergo the same training and education and every four years pass the same certification test (see 3-11-202 and 3-11-204, MCA).

We urge you to support this legislation not only to reduce the amount of paperwork in Justice Courts but also to make it easier for alleged victims of domestic abuse to obtain relief under the law.

Wallace A. Jewell



Montana Catholic Conference

5 SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3/6/89

HB 97

March 6, 1989

CHAIRMAN CRIPPEN AND THE SENATE JUDICIARY COMMITTEE

I am Megan Hill, representing the Montana Catholic Conference.

Because of the church's role in counseling abused spouses and their families, the Montana Catholic Conference would like to urge your support for HB 97.

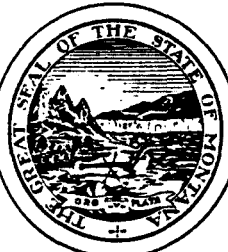
The State of Montana is currently involved in domestic abuse cases through medicaid costs, court system hours, prisons, and group homes, etc. While many mental health care facilities provide shelters or safe houses to battered spouses, it is often necessary to legally restrain the abuser from the rest of the family. This bill would provide the city court a way to do just that, and help to stop the abuse before it happens.

We urge you to support HB 97.



6 SENATE JUDICIARY
EXH BIT NO. 6
DATE 3/6/89
BILL NO. HB 265

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 265
REVISION AND REORGANIZATION OF DISPOSITIONAL OPTIONS
UNDER THE YOUTH COURT ACT

Submitted by Leslie Taylor
Legal Counsel for the Department of Family Services

The Department requested this bill to revise and reorganize the dispositional alternatives under the Youth Court Act because of the confusion which has arisen regarding this section of the law. In the last legislative session, Section 41-5-523, MCA, was amended by three different bills. As a result, the dispositional alternatives available to the court were not clear. In an effort to clarify what the alternatives are and to provide further explanation of some of the sections, the Department has proposed HB 265. The bill is not intended to produce any major changes. It is intended solely to provide clarification and reorganization of the existing sections.

On page 1, the bill clarifies that the court can commit the youth to the Department if the youth is in need of placement outside of his home. This is consistent with existing practice and the intent of the amendments made in the last legislative session.

On page 2, the term "youth correctional facility" is substituted for "physical confinement in an appropriate facility." The Youth Court judge may specify placement in a youth correctional facility as part of his order. Since the Department has interpreted this section to mean the youth correctional facilities, the bill changes the wording to be more specific and to avoid confusion.

On page 3, duplicative language under subsection (c) is removed and combined with subsection (i). A new paragraph (2) is inserted which incorporates all the restrictions on the Department in determining placement. Rather than having these restrictions sprinkled throughout the section, they are combined together in the new subsection (2).

Pages 5 and 6 contain minor changes, including removal of the Order of Commitment. The Order of Commitment in the code is not consistent with the existing law because it fails to specify whether the youth is a youth in need of supervision or a delinquent youth and contains only the finding that the youth "is a suitable

person to be committed to the Department of Family ~~Services~~ Services." HB265
Since most judges fashion their own orders in such cases anyway,
the Order need not be contained in the statute.

The bill will better clarify the options available to the Youth Court and the Department in determining the appropriate disposition of troubled youths. By removing duplicative material, reorganizing the sections and clarifying the existing ambiguities, it is hoped the bill will result in a law that is more understandable to the people who work with it on a daily basis.

EX7

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 3/6/89
BILL NO. HB177

Amendments to House Bill No. 177
Third Reading Copy (BLUE)

Requested by Senator Beck
For the Committee on Judiciary

Prepared by Valencia Lane
March 3, 1989

1. Page 1, lines 18 and 23.
Strike: "health care providers"
Insert: "physicians"

2. Page 3, lines 3 through 7.
Strike: subsections (3) and (4) in their entirety
Renumber: subsequent subsections

3. Page 3, line 9.
Strike: "health care provider"
Insert: "chiropractic physician"

4. Page 3, line 24.
Strike: "health care providers"
Insert: "chiropractic physicians"

5. Page 7, lines 16 and 17.
Following: "elements of the" on line 16
Strike: remainder of line 16 through "provider's" on line 17
Insert: "chiropractic physician's"

6. Page 8, lines 13 and 20.
Strike: "health care provider"
Insert: "chiropractic physician"

7. Page 8, lines 14 and 15.
Following: "and the" on line 14
Strike: remainder of line 14 through "provider" on line 15
Insert: "chiropractic physician"

8. Page 8, lines 22 and 23.
Following: "to the" on line 22
Strike: remainder of line 22 through "provider" on line 23
Insert: "chiropractic physician"

9. Page 8, line 25.
Strike: "Health care provider's"

Insert: "Chiropractic physician's"

10. Page 9, lines 2 and 6.

Strike: "health care provider"

Insert: "chiropractic physician"

11. Page 9, line 24.

Strike: "health care providers"

Insert: "chiropractic physicians"

12. Page 10, lines 1 through 4.

Following: "Montana." on line 1

Strike: remainder of line 1 through "three" on line 4

Insert: "Three"

13. Page 10, lines 7 through 12.

Strike: subsection (2) in its entirety

14. Page 10, lines 15 and 16.

Following: "of the" on line 15

Strike: remainder of line 15 through "provider's" on line 16

Insert: "chiropractic physician's"

15. Page 10, line 25.

Strike: "health care provider"

Insert: "chiropractic physician"

16. Page 11, lines 2 and 4.

Strike: "health care provider's"

Insert: "chiropractic physician's"

17. Page 11, line 6.

Page 12, line 21.

Strike: "health care provider"

Insert: "chiropractic physician"

18. Page 13, line 3.

Strike: "health care providers"

Insert: "chiropractic physicians"

19. Page 14, line 25.

Strike: "health care provider's"

Insert: "chiropractic physician's"

20. Page 15, lines 11 and 12.

ex #7 pg3

3/6/89

HB 177

Following: "each" on line 11

Strike: remainder of line 11 through "provider" on line 12

Insert: "chiropractic physician"

Amendments to House Bill No. 454
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 3, 1989

1. Title, lines 6 and 7.

Following: "PROHIBIT" on line 6

Strike: remainder of line 6 through "ENTERS" on line 7

Insert: "TRIAL DE NOVO IN DISTRICT COURT AFTER ENTRY OF"

2. Title, lines 7 and 8.

Following: "COURT" on line 7

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

3. Title, line 9.

Strike: "AND"

Following: "46-17-203,"

Insert: "AND 46-17-311,"

4. Page 2, line 12.

Following: line 11

Strike: "appeal to the"

Insert: "trial de novo in"

5. Page 2, line 13.

Following: "waiver"

Strike: "of appeal"

6. Page 2, line 16.

Following: line 15

Insert: " Section 4. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal. (1) All Except as provided in 46-17-203, all cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal."

OVER

1 HOUSE BILL NO. 454

2 INTRODUCED BY CONNELLY, SPAETH, ADDY, HARPER, WALKER,

3 PINSONEAULT, B. BROWN, HARP, KOEHNKE, VINCENT,

4 LEE, J. BROWN, REAM, PECK, BACHINI

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT ~~A DEFENDANT'S~~
7 ~~Trial DE NOVO IN DISTRICT COURT AFTER ENTRY OF~~
8 ~~WHO VOLUNTARILY ENTERS A GUILTY PLEA IN A LOWER COURT FROM~~
9 ~~APPEALING TO A DISTRICT COURT; AND AMENDING SECTIONS~~
10 ~~3-5-303, 3-11-301, AND 46-17-203, MCA."~~
11 ~~AND 46-17-311,~~

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

13 Section 1. Section 3-5-303, MCA, is amended to read:

14 "3-5-303. Appellate jurisdiction. The Except as
15 provided in 46-17-203, the district court has appellate
16 jurisdiction in such cases arising in justices' courts and
17 other courts of limited jurisdiction in their respective
18 districts as may be prescribed by law and consistent with
19 the constitution."

20 Section 2. Section 3-11-301, MCA, is amended to read:

21 "3-11-301. City attorney to prosecute. The Except as
22 provided in 46-17-203, the city attorney must prosecute all
23 cases for the violation of any ordinance and prosecute,
24 conduct, and control all proceedings in cases mentioned in
25 3-11-103, both in the city court and on appeal therefrom
from the city court to the district court."

1 Section 3. Section 46-17-203, MCA, is amended to read:
2 "46-17-203. Plea of guilty. (1) Before or during
3 trial, a plea of guilty may be accepted when:

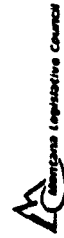
4 (a) the defendant enters a plea of guilty in open
5 court; and

6 (b) the court has informed the defendant of the
7 consequences of his plea and of the maximum penalty provided
8 by law which may be imposed upon acceptance of such the
9 plea.

10 (2) A plea of guilty in a justices' court, city court,
11 or other court of limited jurisdiction waives the right of
12 ~~appeal to the district court. A defendant must be informed~~
13 ~~of the waiver of appeal before the plea is accepted, and the~~
14 ~~justice or judge shall question the defendant to ensure that~~
15 ~~the plea and waiver are entered voluntarily."~~

-End-

SECTION 4. amend 46-17-311, MCA.
(See instructions)



Amendments to House Bill No. 409
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 2, 1989

1. Page 1, line 8.

Insert: "WHEREAS, a majority of courts in the United States have broadly construed the attorney-client privilege as protecting the client as well as his attorney from being compelled to disclose their confidential communications; and

WHEREAS, the United States District Court for the District of Montana, in the recent case of Lane v. All Nation Insurance Company, CV-86-054-GF (June 17, 1987), strictly construed Montana's statute regarding attorney-client privilege to allow the client to be examined concerning his confidential communications with his attorney; and

WHEREAS, the Legislature intends to amend and clarify the Montana statute to make it clear that, contrary to the Lane decision, the attorney-client privilege extends to protect the client from being required to disclose confidential communications between him and his attorney; and

WHEREAS, the courts through the common law have developed several exceptions to the attorney-client privilege; and

WHEREAS, the Legislature does not intend by this act to abolish, amend, or otherwise affect any other exceptions to the attorney-client privilege.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the statute regarding attorney-client privilege."

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-6-89 Senate Bill No. 177 Time _____

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

6. 3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Beck BCIAA (Van Vakerburg will carry)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-6-89 House Bill No. 454 Time _____

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

7 2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Pinsonneault BCIAA

Passed 7-2

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-6-89 House Bill No. 409 Time _____

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

45 to 48

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Amend - Halligan