MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 30, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Robert Brown (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 24

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, provided a short history of House Bills 24, 25, and 26. She said former Senator Tom Rasmussen had a bill in 1989 to get the Department of Family Services (DFS) into the adoption business. Representative Cody told the committee the adoption issue was studied and it was found that DFS had quit doing them because of a September, 1988 ruling, Wheeler v Department of Family Services.

Representative Cody stated she went to the Committee, asking them to kill Senator Rasmussen's bill, and proposed to draft a study resolution to address the issue of adoption in the state of Montana. She explained that the resolution was second on the list, but during Special Session the funds were given to education. Representative Cody advised the Committee that Valencia Lane, Staff

Attorney, did the study and found the issue to be much bigger than was thought.

Representative Cody said HB 24 is a big bill, and establishes the best interests of the child as a standard. She said the point is to find the best home for a baby and not a baby for a home.

Representative Cody explained that natural birth mothers have no constitutional rights once they relinquished their baby to the state. She showed the Committee a copy of the study by Valencia Lane ("The Rights of Birth Parents and Adoptive Parents and the Best Interests of Children: A Look at Adoption Services in Montana - December 1990"), and suggested they all read it.

Representative Cody read from page 14 of the report, concerning the Wheeler case, and asked whether the mother does indeed lose all rights. She stated relinquishment is such a traumatic, emotional thing for young women, and that she believes those mothers should have some say in the transition of giving their babies up for adoptions. Representative Cody explained there are two phases in determining initial eligibility, and that age, marital status, and sex may be addressed in the beginning, but not in the final stages.

Proponents' Testimony:

Representative Dave Brown, District 72, told the Committee the House Judiciary committee took a while to understand the arbitrary applications of the bill. He explained that private agencies came in with a lot of amendments, particularly with regard to religion. Representative Brown said these amendments would set those agencies aside from the general provisions of the bill.

Representative Brown stated the House Judiciary Committee added language on page 3, line 25 to the top of page 4, allowing for discrimination based on religion. He said the Committee believed the Constitutional right of freedom of religion will cover the language, but no other form of discrimination was allowed.

Representative Brown said the House Judiciary Committee believed there was a clear need for state adoptions, as low income families can be served by DFS. He asked to be excused to return to the House Judiciary Committee meeting.

Bill Driscoll, Helena attorney representing Catholic Social Services, told the Committee he had also been in contact with LDS (Latter Day Saints) and Lutheran Social Services. He stated he believes it is a good idea to get DFS back in to adoption, and that the House Judiciary Committee amendment goes a long way toward addressing private agency adoption concerns.

Mr. Driscoll advised the Committee that marital status is a criteria for LDS Social Services, and is a matter of religious teaching and doctrine. He said he understood Lutheran Social

Services has a similar philosophy, but without the doctrine, and that it is not a great concern with Catholic Social Services. He added that the amendments proposed in House Judiciary would have more clearly separated church and private agencies from DFS.

Mr. Driscoll stated that in Valencia Lane's report, 80 percent of adoptions were non-agency placements. He said the problem private agencies face if they are bound by the same rules as DFS, is that, essentially, they must tell the birth mother they can't accommodate her wishes. He advised the Committee that in direct placement, birth mothers can discriminate.

Mr. Driscoll told the Committee he was concerned that if birth mothers can't be told the age, sex, and marital status of prospective parents, they will be encouraged to use direct adoption. He said he believes young women should not be discouraged from going to private placement agencies.

Mark Ricks, LDS Social Services, said he favored the bill. He told the Committee their primary client is an LDS birth mother who is active in requesting and expecting to participate in selection of adoptive parents. He said he believes birth mothers need to be selective, and that it is their right to look at the age, marital status, and sex of adoptive parents. He explained that the adoptive parents pay a fee for the services which are funded by the church.

Linda Fagengstrom, Lutheran Social Services, stated less than one in ten young women make the choice of adoption. She read from a prepared statement in support of the bill, and said Lutheran Social Services maintains a continual relationship with the adopted child.

Ms. Fagenstrom told the Committee that 80 percent of birth mothers who go on welfare are still on welfare ten years later. She stated that nine in ten of these mothers soon have a second pregnancy. She said she believes birth mothers should be able to choose a guardian, but as other parents do for their children in their wills.

Mr. Fagenstrom added that birth mothers don't choose single parent families, and said they need to be allowed to continue to be involved with adoptive families through anonymous pictures and letters.

Ann Gilkey, DFS, expressed her appreciation to Valencia Lane for the study, and to Representative Cody for her work on the bills. She said DFS supports the bills and the amendment allowing consideration of age, marital status, and religion. Ms. Gilkey stated DFS feels strongly the need to consider these factors.

Ms. Gilkey explained DFS had received a letter from the Human Rights Commission regarding a declaratory ruling on whether private agencies would be affected by Wheeler, since DFS licenses those

agencies. She stated DFS feels this legislation is very important to protect the private agencies and for the Department in beginning adoptions again. She added that she believes mothers will not use private agencies or DFS if the bill is not amended. Ms. Gilkey urged the Committee to support the bill.

Rebecca Jones, Director, Shodair (Montana Children's Home), told the Committee she had been with Shodair for 18 years. She stated that in reviewing files of mothers relinquishing some years ago, they asked about family and mentioned the type of family they would like for their child. Ms. Jones stated that 90 percent or more mothers are suggesting a family.

Linda Sargent, Montana Right to Life, said she believes these bills promote the best interest of the baby, birth parent(s) and adoptive parents. She encouraged the Committee to keep in mind the furthering of the adoption process.

Opponents' Testimony:

There were no opponents of HB 24.

Questions from the Committee:

Senator Svrcek said he was confused regarding the status of the bill in testimony given by Representative Dave Brown and Bill Driscoll. Representative Cody replied that, during the study the private agencies were involved, but their attorneys were not apprised and only became interested when the bill draft was requested. She said she understood the concerns of the private agencies, but House Judiciary chose to address private agencies, based only on religion. Representative Cody reported the study says the classification on marital status falls into the category of the rational basis test. She stated it is unclear whether private adoption is actually state adoption.

Senator Halligan asked what the best interest of the child are if a family of a different religion meets more eligibility requirements. Representative Cody replied there probably won't be this problem with DFS, as such issues will already have been discussed.

Senator Halligan said he has been terminating parental rights for the past five years, and that there is lots of opportunity for mischief if an abusive parent is given that much power. Representative Cody replied the bill only addresses birth mothers. Ann Gilkey responded that DFS will consider a mother's wishes, but the social worker will make the determination in the best interests of the child.

Senator Halligan stated he was concerned with conditional relinquishment. Ann Gilkey replied DFS won't take conditional relinquishments.

Senator Crippen, asked Anne MacIntyre, Human Rights Commission, Department of Labor, if HB 24 will solve the discrimination problem. Ms. MacIntyre replied the Commission has no position on the bill, but has concerns with the use of "non-arbitrary". She said the term was amended out of the title, but is still in the bill on pages 4 and 5. She stated that with respect to religious discrimination, she was "not certain she agreed it is rational basis and it might by strict scrutiny".

Ms. MacIntyre stated the bill specifically says that where a birth mother has a particular issue, she can have some say in. She said nothing particularly applies to private adoptions, but statute says licensed agencies are to carry out the intent of the law.

Senator Towe asked Bill Driscoll what proposals were not added by the House Judiciary Committee. Mr. Driscoll replied he believed private agencies could be subject to discrimination complaints if litigation were non-arbitrary. He said this would put private agencies out of business. Mr. Driscoll stated that when one looks at what private agencies do, there is misdirection as to whether that is a state action or not.

Senator Towe asked Mr. Driscoll if he agreed with Valencia Lane's statement that religion can be one factor to be considered. Bill Driscoll replied he believes that "without it LDS and Lutheran Social Services would be out on a limb". He said Catholic Social Services does not confine its list to just Catholics.

Senator Towe asked if the bill were saying that it would be in the best interests of the child to give it to the wealthiest parents. Representative Cody replied she did not believe that, and said the state should not be in the business of finding children for families.

Senator Doherty stated that race is strict scrutiny, sex is mid-scrutiny, and marital status is rational basis. He asked what the compelling reason is to promote involvement of these private agencies, of they were going to "blink" on any on factor. Linda Fagenstrom, Lutheran Social Services, replied the prospective parents are educated, and said she believes the compelling interest is to allow this education, non-biased information, and these values to best prepare families.

Senator Doherty asked if there were any data showing problems later on. Ms. Fagenstrom replied she has had hospitals call her to represent the birth mother concerning direct placements.

<u>Closing by Sponsor:</u>

Representative Cody waived closing until House Bills 25 and 26 were also heard.

HEARING ON HOUSE BILL 25

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, said HB 25 requires a 72-hour period after birth of relinquishing of parental rights to allow a birth mother to consider her action.

Proponents' Testimony:

Ann Gilkey, DFS, stated her support of the bill, and provided written testimony (Exhibit # /).

Marilyn McKibben, Director, Catholic Social Services, stated she was speaking on behalf of all private agencies in the state. She explained that private agencies often get to clean up the mess created in direct adoption. Ms. McKibben said she believes birth mothers need time after birth to make this life-long decision which can never be rescinded. She told the Committee some young women sign documents before the birth and are put in a situation of believing they have already relinquished, and the date is added after the baby is born. She urged the Committee to support the bill.

Opponents' Testimony:

There were no opponents of HB 25.

Questions From Committee Members:

Chairman Pinsoneault asked about birth mothers requesting to not see the child. Representative Cody said this issue is not addressed by HB 25.

Senator Towe commented that maybe language could be added to the documents mother sign that they can be revoked within 72 hours after birth. Representative Cody replied that mothers can already change their mind until the final decree of adoption is ordered.

Senator Towe stated he believes this should be part of the planning process. Representative Cody stated that these young women participate in on-going counseling.

Closing by Sponsor:

Representative Cody waived closing until HB 26 is heard.

HEARING ON HOUSE BILL 26

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, told the Committee HB 26 has to do with regulating direct adoptions between the

natural parent and a non-relative. She said that because Montana has a good reputation for healthy babies, out-of-state people are looking to Montana to adopt. Representative Cody said she was concerned with not being able to check the homes babies are going to, the lack of counseling for parties involved, and that Montana should not be in the business of selling babies.

Representative Cody stated many women who use direct adoption don't want to appear in court.

Proponents' Testimony:

Ann Gilkey, DFS, said the Department supports the bill before and after amending, particularly the increasing penalty (Exhibit # 1).

Opponents' Testimony:

Bill Driscoll, Helena attorney representing Catholic Social Services, said the bill, as amended, gets rid of the requirement for birth mothers to get counseling before making the decision to place their child. He stated DFS is not required to do an investigation until after the mother makes a decision, and that he believes the bill should be as it was originally drafted.

Questions From Committee Members:

Senator Svrcek asked what if it were the judgment of a private agency that it would be in the best interest of the child to have it be adopted. Representative Cody replied she believes that a mother has the right to change her mind after birth.

Senator Towe asked Bill Driscoll why he no longer supported HB 26. Mr. Driscoll repeated his statement that it gets rid of the requirement that birth mothers get counseling before making the decision to place their child.

Senator Towe asked Bill Driscoll why he would oppose the bill when it is better than anything enacted now. Mr. Driscoll replied that the issues of the mother may not be settled until the child is already in the hands of the adoptive parents. He again stated this counseling should be handled prior to birth.

Senator Towe asked about language on page 2, lines 14-16 of the bill. Larry Driscoll replied his concerns arise from language on page 3, beginning on line 8. He said that under the Montana Uniform Parentage Act (Title 40), "the mother has to petition to change her mind, so the 72-hour requirement differs in that respect".

Senator Halligan asked if the 80 percent using direct adoption get a private attorney. Larry Driscoll replied that most of these mothers do not have lawyers and the natural parents are not present for proceedings. He told the Committee Chapter 6 of Title 40

applies to direct adoptions, and Chapter 8 applies to private adoptions. Mr. Driscoll pointed out the requirement in the adoption code, that prospective parents must undergo a home study by DFS.

Closing by Sponsor:

Representative Cody closed on House Bills 24, 25, and 26. She repeated that this is a much bigger issue than anyone addressed in 1989. She told the Committee, "I am a mother and grandmother, and I believe this issue should be addressed this session". Representative Cody stated there needs to be more openness for birth mothers, and said she is looking at the issue with a more simplistic view than attorneys do.

Representative Cody commented that she knows there is work to be done, and she asked the Committee for their consideration of the bills. Chairman Pinsoneault assured Representative Cody that the Committee would work with her.

HEARING ON HOUSE BILL 69

Presentation and Opening Statement by Sponsor:

Representative Timothy Whalen, District 93, said HB 69 contains slight modifications to municipal courts, eliminating the population requirement of 10,000, and eliminating appeals to district court instead of retrying a case.

Proponents' Testimony:

Judge Larry Herman, Laurel City Judge, and prosecuting attorney, read from a prepared statement in support of the bill (Exhibit #3). Judge Herman also presented amendments to section 5 of the bill concerning clerk of court (Exhibit #). He stated it would be more feasible if the clerk of court be established by ordinance, as right now city clerks of court are city clerks.

Judge Herman also provided testimony from Judge Stewart in Billings (Exhibit #4).

Bruce McCandless, City of Billings, said he believes HB 69 would be workable with the proposed amendments, and if records prepared by the court can be electronically recorded.

Opponents' Testimony:

Patricia Bradley, Montana Magistrates, read from prepared testimony in opposition to HB 69 (Exhibit #5). She stated 3-6-101, MCA is adequate, and that no city has asked for the legislation. Ms. Bradley added, "This appears to be special-interest legislation.", and said Judge Neil Travis of Livingston, and judges from Red Lodge and Billings also oppose this bill.

Questions From Committee Members:

Senator Halligan stated he did not understand how anyone could oppose this bill.

Senator Towe commented that it is true there is a real concern among non-lawyer justices of the peace that lawyers will take over.

Senator Harp stated he had the same fear, and said he was surprised that Alec Hanson, Montana League of Cities and Towns, did not ask about cost. Representative Whalen replied there was no fiscal note when the bill was presented in the House. He said the cost is dependent upon each municipality adopting the process.

Senator Harp commented that Montana has so many small communities who can't afford to hire attorneys to run these courts. He said he didn't hear people from the public saying they had been mistreated by non-lawyer justices of the peace. Representative Whalen replied that a separate bill carried by Representative Russell Fagg would eliminate all trial de novos. He stated a great deal of latitude is given trial judges concerning evidence, and that it is impossible to have that changed on an appeal. He explained that judges are needed who understand the law and will use discretion. Representative Whalen said he believes the bill is not soliciting a great deal of testimony. He stated he does have an article on Judge Eschler in Billings, who has thrown people in jail when she did not have the right to do so. He said he liked Judge Eschler, but there is a need for balance in the rights of the people.

Closing by Sponsor:

Representative Whalen told the Committee the bill is optional. He said there is incentive to the bill and that it might employ more attorneys, but he is more interested in balance of rights. He reminded the Committee the bill applies only to city courts.

EXECUTIVE ACTION ON SENATE BILL 170

Motion:

Discussion:

Valencia Lane explained that the Department of Institutions asked for the amendments which also set up an account to pay certain kinds of court costs. She stated that if funds are not available from this account, the general fund then pays these court costs.

Amendments, Discussion, and Votes:

Senator Towe made a motion that the proposed amendments be approved (Exhibit #6). The motion carried unanimously.

Recommendation and Vote:

Senator Yellowtail made a motion that SB 170 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 132

Motion:

Senator Svrcek made a motion that HB 132 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Svrcek carried unanimously.

ADJOURNMENT

Adjournment At: 12:10 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 30 Jan. 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	E		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 30, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 170 (first reading copy -- white), respectfully report that Senate Bill No. 170 be amended and as so amended do pass:

1. Title, line 8.
Following: "COURT;"
Insert: "PROVIDING REIMBURSEMENT FROM THE STATE IF THE DISTRICT COURT PAYS;"

2. Page 1, lines 23 and 24.
Following: "the"
Strike: "Montana sex offender treatment association"
Insert: "department of institutions"

3. Page 2, line 2.
Following: "court"
Insert: ", which costs shall be reimbursed by the department of commerce under Title 3, chapter 5, part 9"

Signed: _____
Richard Pinsoneault, Chairman

LB 1/30/91
Amd. Coord.

SB 1/30 4:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 30, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 132 (third reading copy -- blue), respectfully report that House Bill No. 132 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

1-30-91
Asst. Coord.

SP 1/31 4:50
Sec. of Senate

EXHIBIT #1
30 Jan 91
HB 25

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 25
AN ACT REQUIRING 72 HOURS PRIOR TO SIGNING RELINQUISHMENT

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports HB 25 which requires a waiting period of 72 hours before a birth parent can sign a relinquishment of parental rights. The agency is of the philosophy that birth mothers must have a minimum of 72 hours following the birth of a child in order to make a sound decision regarding relinquishment. Current Montana law does not specify when a relinquishment can be signed. There have been instances of a mother signing a relinquishment prior to the birth of her child.

The Indian Child Welfare Act requires a 10 day waiting period following the birth of a Native American child before the child's birth mother may legally relinquishment her parental rights. In cases involving an Indian child, the more stringent federal standard of a 10 day waiting period will apply. In order to ensure that all relinquishments made by birth mothers are made thoughtfully and voluntarily, the Department of Family Services urges your support of HB 25.

Exhibit 1
30 Jan 91
HB 26

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 26
AN ACT RELATING TO PRIVATE NON-AGENCY ADOPTIONS

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports HB 26 which makes changes in the existing law concerning the placement of a child for adoption by the birth parents. Changes include some new requirements, and some to 'clean up' the law, but all are designed to improve the protection of children and birth parents involved in non-agency parental adoptive placements.

In particular, the department supports the requirement that birth parents file a report of all agreements and money exchanged in connection with the adoption with the court and that the maximum penalty for charging excessive fees be increased to $10,000 as a deterrent to black-marketing babies.

The Department of Family Services urges your support of HB 26.

HB69
30 Jan 91

City of Laurel

LAUREL, MONTANA 59044

P.O. BOX 10
PHONE: 628-8791

CITY COURT
DEPARTMENT

TESTIMONY HOUSE BILL 69

LARRY D. HERMAN

My name is Larry Herman. I am the incumbent city judge of the City of Laurel. I am a former mayor, alderman, and city attorney of the City of Laurel. I am a practicing attorney and the vice chairman of the commission on courts of limited jurisdiction. I am appearing in support of House Bill 69.

The municipal court is not a new court. It was first provided for by the legislature in 1935 as a court of record in cities. There is presently only one municipal court established in the state which is in Missoula. The cities have generally not adopted the municipal court because of the costs that were associated with maintaining a court reporter. Also with the passage of the 1972 constitution there was some concern whether or not the appeal from the municipal court was as trial anew. This bill addresses these problems. The passage of the bill will prove to be beneficial to the cities and their respective counties and district courts.

The problem associated with the cost of a court reporter for limited courts of record has been eliminated with the advent of the tape recorder and other electronic media. A record can now be maintained in the municipal court by means of a relatively inexpensive electronic recorder. This is the method that is now being used in the Missoula Municipal court.

The problem associated with the appeal from a limited court of record to the district court has been addressed in this bill. The record on appeal will be confined to the record and questions of law and not tried a second time in the district court. The bill provides the district court with sufficient latitude to provide justice and could if the appeal warranted it order a new trial. The district court would be able to hear appeals on orders of the municipal court. Under present law the only recourse is to seek a writ of supervisory control from the supreme court or a writ of mandamus.

By confining the appeal to the record, the municipal court will not be used as a discovery court and then appealed to the district court to be tried anew.

The saving to the cities will be in the elimination of the additional expenses incurred in a trial anew, that is excessive police hours to attend trial (usually overtime), city attorney or prosecutors time to try cases a second time, public defender hours to try a case a second time, witness fees, and jury costs. The district court's case load will be eased because the pressure to try misdemeanors within 6 months will not clog the dockets. The district court will be able to dispose of the appeals from the municipal court and devote more time to pressing felony and civil matters.

Under this bill the cities as they grow will be able to increase the number of judges needed to operate the municipal court. Presently the cities can have only one city or municipal judge. This allows for growth and a more efficient court in the large cities. The courts in some cities are under heavy pressure due to their case loads, this in turn places pressure upon the district courts. This bill will save time for city/municipal judges, district court judges, prosecutors, and public defenders.

This bill eliminates the provision that the clerk of the city must be the clerk

of court. This provision had applied to both city and municipal courts. It certainly was not a duty which most city clerks wanted in light of all of their other duties. However the bill does not prohibit a city clerk from being the clerk of the court.

This bill does not increase or decrease the jurisdiction of the municipal courts. It remains the same as city courts. The difference being that the municipal court being a court of record and is appealable on the record. Nor does this bill change the qualifications for a municipal court judge.

Local government, in particular in the more densely populated counties, need a means of operating their courts in a more economical manner and should not be required to wait 5 years or even 2 years when an immediate result can be had under this bill. The establishment of the municipal court under this bill will provide immediate relief to the cities with a high volume case load and to their respective counties and district courts through the saving of pure dollars and cents. This bill makes good sense.

This bill makes good dollars and cents for both the cities and their respective counties. I would urge this committee to give it a close review in light of the savings by the elimination of man hours of the police, prosecuting attorneys, and district court judges needed in handling two trials instead of one.

Keep in mind that this bill does not mandate a municipal court, but provides a means a city may use to reduce the costs of its courts and the appeals to the district court. This bill does make good sense, and I urge this committee to recommend its passage and approval.

EXHIBIT #4
HB69
30 Jan 91

CITY OF BILLINGS
M O N T A N A

CITY COURT
Second Floor — City Hall
Phone 657-8490

GAYLE A. STEWART
City Judge

To: Senate Judiciary Committee
From: Judge Gayle A. Stewart, Billings, MT 59101
Re: House Bill No. 69
Date: January 28, 1991

This memorandum is in support of House Bill No. 69; "AN ACT REVISING PROVISIONS REGARDING THE ESTABLISHMENT, NUMBER, SALARY AND ELECTION OF MUNICIPAL COURT JUDGES AND THE ADMINISTRATION OF AND APPEAL FROM MUNICIPAL COURTS: AMENDING SECTIONS 3-6-101, 3-6-102, 3-6-201, 3-6-203 AND 3-6-301 MCA.

As the City Court Judge of Billings, Montana, I would support House Bill # 69 for the following reasons:

First, Billings City Court has an enormous volume of cases filed and consequently we conduct a great number of trials. At present time, all defendants are entitled to a new trial in District Court upon appeal, on any misdemeanor charge.

Obviously, there is a great expense attached to the appeal process as it now stands. The City Court must type the appeal and transmit the appeal to the County District Court.

Witness fees and jury costs and the inherent cost of trials are expenses the City must bear on any misdemeanor trial. However, when a case is appealed to the County District Court, the District Court must bear the same expense again, and the City is rarely, if ever, reimbursed for its costs.

Presently, there appears to be a great deal of abuse in the appeal process. Defendants are not appearing for their trials, in which case, a trial is held in absentia and witnesses are called by the City or in other cases Defendants may appear and not present any case, but still may appeal, thereby using the trial in City Courts of Limited Jurisdiction as a discovery process.

Once the appeal has been transmitted, there is also a fair amount of delay before the misdemeanor cases are tried in District Court and sometimes they fall through the cracks and are lost in the process.

Ex. 4
HB 69
1-30-91

The District Court Judges are also unhappy with the appeal process as it is. Misdemeanors clog their calendars and instead of hearing the civil and felony trials they should be hearing, the District Court Judges are hearing DUI's and Careless Driving cases, and that does not encompass the amount of taxpayer's money it is costing to conduct these misdemeanor trials in District Court. Our present appeal process also encourages forum shopping - if a defendant doesn't like what one Judge does, then he'll get another.

Remember, we are speaking of misdemeanor cases, many are traffic cases which do not nor would they likely carry any jail time. If a Defendant's appeal has merit, then so be it, under House Bill No. 69, the Defendant would continue to have his right of appeal on record relating to questions of law. That is how it should be. It seems unjustified to spend the amounts of time and money we are spending on our current appeal process and House Bill No. 69 appears to be a solution to the problem.

House Bill No. 69 is elective to cities which would like to establish a Municipal Court, it is not mandatory, therefore, non lawyer Judges should not feel that their positions are at stake since under the proposed bill, cities choose whether or not they would become a Municipal Court.

Thank you for your time and attention to this matter.

pl

EXHIBIT #3
30 Jan 91
HB 69

Montana Magistrates Association

January 30, 1991 Senate Judiciary Committee

HB 69, A bill for an act to revise provisions regarding the establishment of municipal court.

Testimony by Pat Bradley, for the Montana Magistrates Association

Mr. Chairman and Committee members:

Sec. 3-6-101 MCA is adequate in its present form. It gives to cities of 10,000 population or more the option of establishing a municipal court if they wish to do so. Thus far, only MIssoula, of Montana's major cities has done so.

The reason that other major cities have not may be that the present court structure is working well, and at costs that are affordable.

No city that we know of has asked for this legislation. It appears to be only of special interest to the author of the bill.

The primary reason for this bill, say the sponsors, is to eliminate trial de novo on appeal to district court. New section 6(2) calls for an electronic recording or stenographic transcription of a case tried, and the appeal is confined to review of the record and questions of law subject to the supreme courts rulemaking and supervisory authority.

This also could be done with appeals from justice and city court by changing the law to allow these courts to use electronic recordings, such as justicecourts do now in small claims matters which are infrequently appealed to district court.

The MMA contends as nonsense the sponsors' statement that the defendant in a trial situation is not protected in matters of Rules of EVidence and civil procedure when presided over by a non-attorney judge. All judges of courts of limited jurisdiction have since 1973 been receiving continuing legal education in all areas of law, especially Rules of Evidence and civil procedure. Judges attend two schools each year of intensive training and are experienced a competent to hear all criminal and civil trials. Judges must be certified to sit on the bench, and receive their certification from the Supreme Court after having passed a rigid testing program. Every legislative session, the courts of limited jurisdiction are given more more jurisdiction, and judges rise to accept it.

The judges say that there are not many appeals considering their large case loads, but no statistics have been gathered, an oversight that they are working to correct. ONe judge told me that many appeals could be eliminated if it was required that the defendant actively participate in his trial rather than use it as a discovery proceeding. Another judge said many appeals are filed after sentencing.

We submit that this is unnecessary and special interest legislation. Our present court system works well and in a competent, solvent and

EXHIBIT 7
30 Jan 91

SB 170

Amendments to Senate Bill No. 170
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane
January 30, 1991

1. Title, line 8.
Following: "COURT;"
Insert: "PROVIDING REIMBURSEMENT FROM THE STATE IF THE DISTRICT COURT PAYS;"

2. Page 1, lines 23 and 24.
Following: "the"
Strike: "Montana sex offender treatment association"
Insert: "department of institutions"

3. Page 2, line 2.
Following: "court"
Insert: ", which costs shall be reimbursed by the department of commerce under Title 3, chapter 5, part 9"

DATE 30 January 91

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Ann Gilkey	Dept. Family Services	HB 1, 25, 26	X	
Larry Herman	Municipal City Court	69	X	
BETTY BAY	D.F.S	24 26 25	X	
Syd Bransfield	Self	24, 25, 26	X	
PAT BRADLEY	MT MAGISTRATES ASSN	HB 69		X
D. Mark Ricks	LDS Social Service	HB 24 25 26	X	
Bruce McCandless	City of Billings	HB69		
Linda Fagenstrom	Lutheran Social Services	HB 24 25 26	X	
Marilyn McKibben	Catholic Social Services	24, 25, 26	X	
Dave Brown	State Rep.	HB 24	X	
Bill Driscoll	Catholic Social Service	HB24	X	
Rebecca Jones	Shodair (Montana Children's Home	HB24	X	
Pat Chaffee	Montana Right to Life	HB24	X	
Bill Driscoll	Catholic Social Services	HB26		X
Harriet Tenenbaum	MT Intercountry Adoption	HB 24 25	X	
"	"	HB26	Kid like original HB	Y like new