

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By CHAIRMAN RUSSELL FAGG, on January 22, 1993, at 9:00 a.m.

**ROLL CALL**

**Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Dave Brown, Vice Chairman (D)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** No members excused.

**Members Absent:** No members absent.

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 187, SB 12, SB 64  
Executive Action: HB 128, HB 142, SB 12

**HEARING ON HB 187**

**Opening Statement by Sponsor:**

REP. SHEILA RICE, HD 36, Great Falls. HB 187 "AN ACT REVISING THE LAW RELATING TO THEFT TO INCLUDE PURPOSELY OR KNOWINGLY OBTAINING OR EXERTING UNAUTHORIZED CONTROL OVER ANY PART OF ANY

PUBLIC ASSISTANCE PROVIDED UNDER TITLE 52 OF THE MONTANA CODE ANNOTATED; AMENDING SECTION 45-6-301, MCA; AND PROVIDING IMMEDIATE EFFECTIVE DATE."

REP. RICE said HB 187 corrects an oversight that's currently in the law. Fraudulently obtaining assistance either from SRS or Workers' Comp is theft, but the Department of Family Services was inadvertently left out of the statute.

Proponents' Testimony:

John Melcher, Jr., Staff Attorney, Department of Family Services.  
EXHIBIT 1

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked what area in Title 52 did Mr. Melcher want to codify in the statute. Mr. Melcher said the first part includes general statutes on the Department of Family Services (DFS), part two is the children's program, and part three includes programs for the elderly, elderly abuse services, adoption and children statutes. CHAIRMAN FAGG is not familiar with "willfully" being defined in the criminal code on page 4, line 8 and suggested replacing willfully with knowingly or purposely.

REP. KARYL WINSLOW asked Mr. Melcher to explain, in a non-legal way, when the DFS would pursue this. Mr. Melcher said a day care provider who is submitting vouchers for the care of a child who is no longer in the home, for example. REP. WINSLOW remarked that the DFS is not addressing welfare payments and food stamp fraud. Mr. Melcher said they are already under investigation in Title 53, SRS.

REP. ANGELA RUSSELL asked Mr. Melcher how large a problem is this? Mr. Melcher said it hasn't been a major problem; there's a handful of cases each year, and there are ongoing investigations for prosecution.

REP. HOWARD TOOLE asked Mr. Melcher what benefits are covered in Title 52? Mr. Melcher said in Title 52, Chapter 2, Part 7, the fiscal year 1992 included \$3.8 million in daycare, \$14.9 foster care in homes; \$3 million in residential treatment facilities; and \$1.3 million in psychological/psychiatric services.

Closing by Sponsor:

REP. RICE would like to see the correction of the oversight regarding DFS. When the existing statute was amended, it did not include the category of theft in DFS.

Comments from CHAIR:

CHAIRMAN FAGG asked the committee to consider taking section 2, page 4 out of the bill. The top of page 3 indicates Title 52 is appropriate to take care of REP. RICE'S concerns. CHAIRMAN FAGG also noted the speaker mentioned it's not a good idea to have immediate effective dates, especially with criminal laws, because nobody knows they're out there until the statutes are published, which is generally around October. CHAIRMAN FAGG asked the committee to think about changing the immediate effective date.

HEARING ON SB 12

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 5, Cut Bank. SB 12: A BILL FOR AN ACT ENTITLED: "AN ACT MAKING SEXUALLY TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM; REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

SENATOR GAGE stated the supreme court cases have not been addressing just HIV, but addressing any and all sexually transmitted diseases. The victim should have the opportunity to ask the individual who transmitted the disease to the victim, to be tested. It will be mandatory for that person to be tested under this bill if it passes. Federal law said that if the state doesn't comply with this requirement, the state could lose \$2.2 million of funds in this area.

Proponents' Testimony:

Ed Hall, Montana Bureau of Crime Control. EXHIBIT 2

Bruce Desonia, AIDS Testing Manager, Montana Dept. of Health and Environmental Sciences (DHES), presented written testimony. Mr. Desonia also provided assistance to Mr. Hall responding to questions from the committee. EXHIBIT 3

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TIM WHALEN commented that sometimes it may take from six to nine months or longer between the charge of sexual assault and a conviction, and during that period of time, the individual may be released on bail. He asked Mr. Hall how much assurance does the

victim have to make sure that the individual who infected the victim with a sexually transmitted disease (STD) is properly tested. Mr. Hall said this is difficult because not only is there an incubation period for most STDs, but a potential delay in the length of time a disease can show up on a test. Even if a victim is tested immediately after the encounter, there is no way to find an STD until the incubation period is over.

REP. DAVE BROWN said this is another mandate by the federal government, and asked where the money is appropriated to, who loses the 10 percent, and is there any state match required if the federal government gives up their effort, and will the state be stuck with a barrage of bills. Mr. Hall said the state gets \$2.2 million for the Anti-Drug Use Act. By federal regulation the agency must provide 60 percent to local agencies, and 40 percent to state agencies and state programs. The monies must be matched 75 percent federal and 25 percent local. There is also a limit on the length of time the money is funded which is 48 months of federal funding.

REP. VIVIAN BROOKE is concerned the money goes to drug enforcement and not AIDS education. She wanted to know if there was going to be, in the future, any flexibility with the funds. Mr. Hall said the money that goes to his agency is specifically used for law enforcement purposes. The funds can be subcontracted to private, non-profit organizations. REP. BROOKE referred to page 2, line 7-11: "because testing will be required, the victims will know that they have not been exposed to the virus, or if they have been exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic." It is REP. BROOKE'S opinion that the language in this section is too bold, and asked SENATOR GAGE if it could be changed.

Closing by Sponsor:

SEN. GAGE believes the bill should give victims relief from trauma. He believes the criminal is always protected, and now it's time to protect the victim's rights. SENATOR GAGE requested the federal government to maintain funding. REP. MARY LOU PETERSON will carry the bill in the House.

HEARING ON SB 64

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 20, Great Falls. A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING EMPLOYEES OF ATTORNEYS FROM THE REGISTRATION REQUIREMENTS FOR PROCESS SERVERS WHEN SERVING PROCESS IN CASES IN WHICH THE EMPLOYING ATTORNEY IS THE ATTORNEY OF RECORD; AND AMENDING SECTION 25-1-1101, MCA."

SEN. DOHERTY explained a number of subpoenas must be delivered before a trial, and SB 64 is requesting that paralegals have the

authority to do so. It is a matter of convenience to attorneys to get them disbursed at one time by an employee of an attorney such as a paralegal.

Proponents' Testimony:

Robin DeBolt, President, and Vicky Soderberg, Montana Big Sky Paralegal Association. EXHIBIT 4

Opponents' Testimony:

Gary A. Dupuis, President, G.A.R.D., Inc. EXHIBIT 5

Pedro R. Hernandez, Judge, Justice Court, Yellowstone County. EXHIBIT 6

Charmaine R. Fisher, Clerk of District Court, Yellowstone County. EXHIBIT 7

Jim R. Nixon, Licensed Process Server and Levying Officer, Yellowstone County. EXHIBIT 8

George T. Radovich, Attorney at Law, Radovich Law Firm, Billings, Montana. EXHIBIT 9

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. HOWARD TOOLE expressed his concern about the quality of the industry if paralegals and/or other employees are handing out subpoenas, and if he employs someone to do levying, are they going to be registered? SEN. DOHERTY believes that paralegals are valuable employees to use for this purpose because they know their clients and how to track them down. Allowing employees of attorneys to serve papers is a matter of convenience, in some instances, and the attorney hiring that person to serve papers will be liable for any problems that may arise.

REP. BOB CLARK asked SEN. DOHERTY if there is a time limit under Montana law to serve and what is the cost. He thought it may be more advantageous to get a certificate at the beginning of the year. SEN. DOHERTY said there is no time limit, and if an attorney needs to subpoena someone, an attorney can get a rebuttal witness and serve the papers immediately. There is no cost to the certificate. Attorneys allow anybody to serve after nine times without licensing or bonding, and since attorneys are going to be responsible for that individual's actions, SEN. DOHERTY does not see the need to use certificates. He added it's also an extra expense to the attorney's office.

REP. BOB CLARK asked Ms. DeBolt how many paralegals are in the state and has this ever been proposed to the Legislature before? Ms. DeBolt said there are over 100 paralegals in the Association

and an overall number statewide of 250. This bill has never been brought to the legislature, but the Association realizes it should be pursued, and their intent is to do so.

REP. RANDY VOGEL remarked that process servers will lose money if the attorneys and paralegals serve subpoenas, and asked Mr. Rowe what the normal cost of serving a subpoena is and if most are served in the close proximity? Mr. Rowe said in his firm, it costs \$12.50 plus .30 a mile within city proximity.

REP. DUANE GRIMES said he is not familiar with the process of serving papers but feels the cost of \$12.50 is not that substantial, and asked SEN. DOHERTY what kind of savings would be realized for his firm? SEN. DOHERTY said although a process server can be cheaper, the savings comes from reduction of the stress level and time factors. The papers are served more efficiently and quicker if his staff takes over this task, hence, less costly in the long-term.

REP. TOOLE asked SEN. DOHERTY if in a law firm as large as his, would it not be more convenient to hire a licensed person who can serve more than ten subpoenas per year. SEN. DOHERTY said this is a question of convenience - which paralegal or investigator would he take to trial in Kalispell, which paralegal or investigator would he take to trial in Billings; if he had two trials at the same time, plus an investigator preparing for a trial in Great Falls. SEN. DOHERTY said he would rather not send individuals not affiliated with his firm to serve papers. His people are familiar with his clients and he trusts them to serve papers correctly. This is not to promote business, it's a matter of economics. REP. TOOLE asked SEN. DOHERTY if he would be willing to allow it to be limited to the services of subpoenas. SEN. DOHERTY recommends an attorney never send an employee to levy, and to hire someone on contract only who is not an employee to do this. He recommends that section be taken out of the bill.

REP. CLARK said he served a lot of papers for the federal courts while working for the U.S. Marshall's office and believes it is a rule to have a process served by the U.S. Marshall's office ten days prior to the trial. SEN. DOHERTY agreed that they must be served within ten days, but in the case of a federal court, a rebuttal witness would need to be served during trial.

Closing by Sponsor:

SEN. DOHERTY contends he believes the language on page 1, line 7 "attorney of record" should be changed to a "firm making an appearance in the lawsuit". Attorneys should recognize that this bill will make it easier, simpler, less expensive and less time-consuming to have full-time or part-time employees to serve papers. By allowing attorney's employees to do this, the attorney will be responsible. The intent of this bill is not to put anyone out of business as law firms will still have to use process servers, this is only an effort to reduce time and

problems for attorneys when they are trying to get their work done.

**SPECIAL:**

*This portion of the minutes is not information included with any hearings or executive action heard on 1/22/93. It was information given to the House Judiciary Committee between hearings and executive action.*

Former Rep. Gary Spathe, now a practicing attorney asked REP. DAVE BROWN to carry a bill on behalf of the State Bar Association. REP. BROWN asked Mr. Spathe to explain the bill to the committee, and requested the committee draft a bill on the subject. He indicated if the committee believes it to be a worthwhile bill, it would take twelve votes to pass.

On behalf of the State Bar Association, the administrator of the submitting court, and with the approval of the Chief Justice, Mr. Spathe requested the Judiciary Committee to approve a bill. There are several requirements for admission to the State Bar. One of those requirements is that the character and fitness of an individual be inspected after they are examined.

The State Bar of Montana is requesting this bill because it goes through too many departments before it reaches the State Bar. The bill would allow the State Bar to collect and retain funds. The State Bar would also like to avoid paying \$30 to any other organization other than the State Bar.

REP. BROWN pointed out that this bill request would allow the State Bar to collect \$30 for character and fitness tests instead of taking the circuitous route. It also requires authorization by the Supreme Court of those funds to be sure the State Bar is in good standing.

**Motion:** REP. BROWN moved that the Judiciary Committee authorize staff to draft a committee bill for that purpose.

**Discussion:**

REP. RICE asked Mr. Spathe if the House Appropriations Committee should handle this issue. Mr. Spathe said because of the way this bill is set up, he is not sure if it is in the supreme court budget.

Mr. MacMaster asked Mr. Spathe if the \$30 fee has to be appropriated to the State Bar, or does it have to be earmarked by the statutory appropriation in order for them to be able to legally keep that money, and does the State Bar need a statutory appropriation? Mr. Spathe said right now the money is appropriated from the General Fund. One reason why this bill has taken so long to reach committee is that the State Bar was looking at a statutory appropriation for a special revenue account, but it was concluded that it was easier, cheaper, and entailed less processing to leave it to the State Bar to collect



the fees. A statutory appropriation is not needed.

Motion: Question was called for REP. BROWN to draft a committee bill.

Vote: Those in favor of the motion are CHAIRMAN FAGG, REPS. BERGMAN, BIRD, BROOKE, BROWN, CLARK, GRIMES, MCCULLOCH, RUSSELL, SAYLES, SMITH, TASH, TOOLE, VOGEL, WHALEN, WINSLOW, and WYATT; and REP. RICE votes no.

CHAIRMAN FAGG asked Mr. Spathe to work with Mr. MacMaster in the drafting of this bill.

EXECUTIVE ACTION ON HB 128

Motion: REP. BROWN MOVED HB 128 DO PASS.

Discussion:

REP. BROWN offered amendments. EXHIBIT 10 HB 128 provides notice for public hearings and meetings as part of the development of the Drinking and Driving Prevention programs. During the course of the hearing, Mr. Ruppert, who is on the Helena DUI Task Force, wondered if the same public notice shouldn't apply to the (b) section of the statute. This section describes how \$50 is distributed for D.A.R.E. programs and teen institutes, i.e. anti-drug/alcohol abuse programs.

Motion/Vote: The question was called on REP. BROWN'S amendments.

Vote: The amendments carried unanimously 18-0.

Further discussion on the bill as amended.

Motion: REP. BROWN MOVED HB 128 DO PASS AS AMENDED.

Discussion:

REP. JODY BIRD asked when this bill will take effect. REP. BROWN said there is not an effective date, thus it would become effective October 1, 1993.

CHAIRMAN FAGG confirmed with REP. BROWN that a public service announcement in the newspaper would be fine. CHAIRMAN FAGG is concerned that when the public reads this language, the counties might think this must be a paid for publication in the legal notice section of the newspapers, which would cost them money. He would like to avoid that and put it in the newspapers in a public announcement section that doesn't cost them any money. CHAIRMAN FAGG proposed an amendment. Mr. MacMaster said the draft would read as follows starting on page 2, line 4 after the words publication in, insert: for public service announcements

section of. In REP. BROWN'S amendments, on the bottom of page 2, third line from the bottom, insert the same language.

Motion: REP. BROWN moved the amendment. The question was called on the amendment.

Vote: Amendment carried unanimously 18-0.

Further Discussion on the bill as amended.

REP. VOGEL asked REP. BROWN where all the fees are being appropriated. REP. BROWN answered that this bill doesn't deal with the distribution. However, the \$100 comes from drivers license reinstatement for DUI arrests, and \$50 of the \$100 goes to the DUI Task Forces in those 18 counties that have DUI Task Forces. That generates about \$300,000 a year of which \$210,000 goes to those 18 programs. The other \$90,000 is not used and is stored in the General Fund. There will be a bill from the Attorney General's office to use that to repair police department gas chromatographs across Montana. The second \$50 goes to the county of origin. It is currently unclear where the money will be distributed. REP. BROWN drafted a bill which indicates the county or city from which the fines come. Those funds can be used by the D.A.R.E. program, teen institutes at the Y.M.C.A. for drug/alcohol abuse, or for sheriff's equipment, and that's all in existing statute.

REP. TIM SAYLES asked if some of the money could be appropriated to the fire departments of the counties and cities. REP. BROWN said the fire departments must establish a clear relationship between drunk driving and it's abuse towards fire department equipment. REP. SAYLES said he would provide proof, i.e. testimony and video tapes displaying how alcohol and drunk driving affects the fire department and its equipment. REP. BROWN remarked that when it gets to the committee, he'll have an amendment prepared that REP. SAYLES could offer that does that as long as it's related to alcohol arrests.

Motion/Vote: The question was called on the bill as amended.

Vote: HB 128 AS AMENDED CARRIED UNANIMOUSLY 18-0.

#### EXECUTIVE ACTION ON HB 142

REP. BROWN offered amendments to raise the level of threshold to \$1,000 but not to change the fines at all. He said in the majority of these cases, the court has trouble collecting the fines. He thought reasonable restitution for defendants would be

public service. He added the courts did not want the fines raised because they aren't comfortable leaving that much authority in justice court either.

Motion: REP. BROWN moved to remove all amendments placed on HB 142 at the last hearing and return it to its original form with the exception of Amendment 4 which is the suggestion of the Attorney General's office to provide non-gendering in the bill.

Discussion:

REP. VIVIAN BROOKE concurred with REP. BROWN and supported the amendment.

CHAIRMAN FAGG asked Mr. Roberts, County Attorneys' Association, for his opinion on REP. BROWN'S amendment. Mr. Roberts said the CAA will fully support this amendment, and agreed that REP. BROWN is accurate in stating that the initial impetus for this legislation was simply to do what REP. BROWN is trying to do. The penalties were included to take care of some concerns, but they have further confused the bill.

Motion/Vote: Question was called to put the bill back into its original form except for Amendment No. 4.

Vote: Those in favor of the motion were CHAIRMAN FAGG, REPS. BERGMAN, BIRD, BROOKE, BROWN, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE, WHALEN, WINSLOW, and WYATT. REP. VOGEL voted no.

Further discussion on the bill as amended.

REP. VOGEL clarified that the threshold is back to \$1,000, the maximum allowable fine is \$500 on the first offense, and restitution can be collected. REP. VOGEL spoke to the Billings' city attorney, and her comments were "This is going to overwhelm my court." In 1992, there were 19,000 complaints made through city court. At present, in the Billings city court, which has only allowed one judge under statute, court dates are backed up to the point that if Billings backs up anymore, speedy trials are going to be a problem, and the judge is going to dismiss those cases because she will not be allowed to handle them during that time.

REP. BROWN said if REP. VOGEL were to offer an amendment for the threshold to go from \$1,000 to \$500 or \$600, REP. BROWN would vote for it.

REP. VOGEL offered an amendment that the threshold be reduced from \$1,000 to \$500.

REP. WHALEN opposed the amendment. He said the bill would change the difference between what a misdemeanor and what a felony is. He said the court has limited jurisdiction, including

city and municipal courts and justices of the peace, have jurisdiction to prosecute misdemeanors but not felonies; therefore, we are giving ourselves an increased number of cases that can be prosecuted in the justice courts and the city courts. He continued that's not to say that the district courts will then be prohibited from handling these cases, they can still do it. REP. WHALEN'S said it is his opinion that the courts in each county should distribute that caseload among the courts that are there, and he'd like to see the fine left at \$1,000 in the bill as originally proposed.

REP. VOGEL said the intent of this bill is to take that caseload out of the district courts and shift them into the city and justice courts since district courts are overloaded.

Motion/Vote: Question was been called to reduce the threshold from \$1,000 to \$500. Amendment carried 10-7. Those who voted to reduce the threshold from \$1,000 to \$500 are REPS. VOGEL, BROWN, BERGMAN, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, and TASH. Those voting not to reduce the threshold are CHAIRMAN FAGG, REPS. BIRD, BROOKE, TOOLE, WHALEN, WINSLOW, and WYATT.

Motion/Vote: HB 142 DO PASS AS AMENDED. Motion carried 12-5. Those in favor of the bill as amended are CHAIRMAN FAGG, REPS. BERGMAN, BROOKE, BROWN, CLARK, RICE, RUSSELL, SAYLES, TASH, TOOLE, VOGEL, and WHALEN. Those voting no are REPS. BIRD, GRIMES, MCCULLOCH, WINSLOW and WYATT.

#### EXECUTIVE ACTION ON SB 12

Motion: REP. BROWN MOVED SB 12 BE CONCURRED IN.

#### Discussion:

REP. BROOKE moved the amendment below. Page 2, line 4 says that an individual who is convicted must, at the request of the victim, be administered testing. REP. BROOKE believes the individual who is convicted of the sexual offense should be required to be tested. She emphasizes the test, at that particular time, may not show any results, and she hopes there would be a way to defer testing. She does not like only one test administered and encourages further testing.

1. Page 2, lines 7 through 9.

Strike: "Because" on line 7 through end of line 9

Insert: "Upon the request of the victim or the victim's representatives, testing and the test results must be made available for the victim's information. Testing information may or may not reveal exposure to the HIV virus. If exposed, the victim can"

Motion/Vote: Question was called on REP. BROOKE'S amendment.

Vote: Amendment carried unanimously 18-0.

No further discussion on the bill as amended.


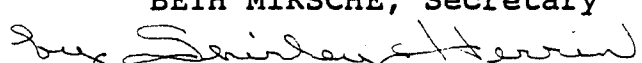
Motion/Vote: Question was called on the bill as amended.

Vote: SB 12 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY 18-0.

ADJOURNMENT

Adjournment: 11:30 a.m.

  
\_\_\_\_\_  
RUSSELL FAGG, Chairman

  
\_\_\_\_\_  
BETH MIKSCHKE, Secretary  


RF/bcm

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

1-22-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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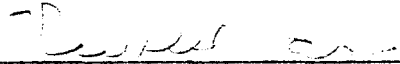
CS-09

HOUSE STANDING COMMITTEE REPORT

January 22, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 128 (first reading copy -- white) do pass as amended.

Signed:   
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 7.

Following: "PROGRAM;"

Insert: "PROVIDING FOR NOTICE AND A PUBLIC MEETING BEFORE A LOCAL GOVERNMENT ENTITY DISTRIBUTES DRIVER'S LICENSE REINSTATEMENT FEE MONEY TO GOVERNMENT AND PRIVATE ENTITIES TO BE USED FOR PROGRAMS RELATING TO SUBSTANCE ABUSE, MINORS' PROBLEMS, AND LAW ENFORCEMENT TRAINING AND EQUIPMENT;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "61-2-106"

Insert: "AND 61-2-107"

3. Page 2, line 4.

Following: "publication in"

Insert: "the public service announcements section of"

4. Page 2, line 25.

Following: line 24

Insert: "Section 2. Section 61-2-107, MCA, is amended to read:

"61-2-107. (Temporary) License reinstatement fee to fund county drinking and driving prevention programs -- balance transferred. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that

are not allocated under subsection (2)(a) must be deposited in the general fund. On or before June 30, 1993, the department shall transfer to the general fund the balance of money in the state special revenue account collected as license reinstatement fees. (Terminates July 1, 1993--sec. 7(1), Ch. 5, Sp. L. January 1992.)

61-2-107. (Effective July 1, 1993) License reinstatement fee to fund ~~county drinking and driving prevention programs relating to substance abuse, minors' problems, and law enforcement training and equipment.~~ (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction. Before a local government entity distributes money to a state or local government or private entity for the operation of programs referred to in this subsection (b), the distributing government entity shall, after at least 7 days' notice of the meeting by publication in the public service announcements section of a newspaper of general circulation in the county, hold a public meeting on the entities to and purposes for which the money should be distributed."

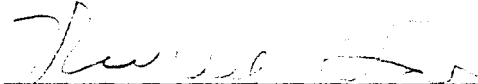


HOUSE STANDING COMMITTEE REPORT

January 28, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 12 (third reading copy -- blue) be concurred in as  
amended.

Signed: 

Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Peterson

1. Page 2, lines 7 through 9.

Strike: "Because" on line 7 through end of line 9

Insert: "Upon the request of the victim or the victim's  
representatives, testing and the test results must be made  
available for the victim's information. Testing information  
may or may not reveal exposure to the HIV virus. If  
exposed, the victim can"

Committee Vote:  
Yes 13, No 8.

221642SC.Hss

HOUSE STANDING COMMITTEE REPORT

January 22, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 142 (first reading copy -- white) do pass as amended .

Signed: Russ Fagg  
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "\$1,000"

Insert: "\$500"

2. Page 17, lines 16 and 18.

Page 19, line 12.

Page 21, line 25.

Page 22, line 9.

Page 23, lines 15 and 19.

Page 24, lines 13 and 17.

Page 25, line 12.

Page 26, line 12.

Page 27, line 24.

Page 29, line 9.

Page 30, line 2.

Strike: "\$1,000"

Insert: "\$500"

3. Page 27, lines 2 and 3.

Strike: "that" on line 2 through "person's" on line 3

Insert: "the"

Following: "condition" on line 3

Insert: "of the person making or directing another to make the statement".

*[Handwritten signature]*  
1-26-93  
11:20

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 1-22-93 BILL NO. HB 128 NUMBER 18

MOTION: DO Pass AS Amended

Carried Unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	✓	
	18	0

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 1-22-93 BILL NO. SB 12 NUMBER 18MOTION: DO Pass as amended - carries 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE 1-22-93 BILL NO. HB 142 NUMBER 17

MOTION: Reduce Threshold from \$1,000 to \$500

Passes 10-7; Rep. Smith abstained from voting

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	NO	VOTE
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓
	10	7

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

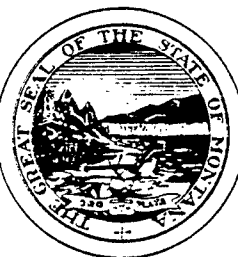
## ROLL CALL VOTE

DATE 1-22-93 BILL NO. HB 142 NUMBER 17

MOTION: DO Pass as amended carries 12-5; Rep.  
Smith abstained from voting.

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	NO	NOTE
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓
	12	5

DEPARTMENT OF FAMILY SERVICES



MARC RACICOT, GOVERNOR

(406) 444-5900  
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR  
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005  
HELENA, MONTANA 59604-8005

TESTIMONY IN SUPPORT OF HB 187  
"AN ACT REVISING THE LAW RELATING TO THEFT, . . ."

Submitted by John Melcher, Jr.  
Staff Attorney for the Department of Family Services

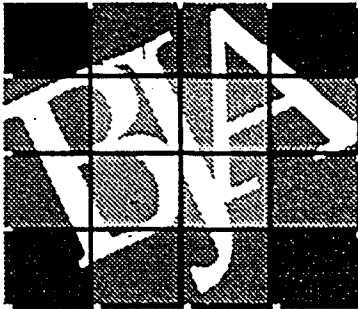
Section 45-6-301, MCA clearly sets out that obtaining public assistance paid under Title 53 through a false statement or a fraudulent scheme or device may be prosecuted as a theft. The statute makes no reference to be public assistance provided under Title 52.

Public assistance paid under Title 52 is defined under Section 52-2-101, MCA to mean "any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance." Specific examples of Title 52 public assistance payments are: payment for day care services of eligible families, (52-2-704, 52-2-731), payment for foster care placements, (52-2-112), adoption subsidies (52-2-507), and state supplementary payments for certain SSI recipients (52-1-104).

Prior to 1987, public assistance provided under programs currently paid under Title 52 was provided under Title 53. In 1987, 1989, and again in 1990, statutes authorizing payment of benefits for various programs were re-designated into Title 52, as part of the transfer of functions from the Department of Social and Rehabilitation Services to the Department of Family Services. However, the reference in the theft statute was not amended to include Title 52 public assistance. HB 187 corrects this oversight and makes it clear that wrongfully obtaining Title 52 public assistance may result in a prosecution for theft.

EXHIBIT # 2  
DATE 1-22-93  
SB 12

U.S. Department of Justice  
Office of Justice Programs  
*Bureau of Justice Assistance*



Bureau of Justice Assistance

# Testing Certain Offenders for Human Immunodeficiency Virus

Guidance for States on Section 1804 Requirements

April 1992



## **Testing Certain Offenders for Human Immunodeficiency Virus:**

### **Guidance for the States on Section 1804 Requirements**

#### **I. Introduction**

This information is compiled and distributed by the Bureau of Justice Assistance (BJA), Office of Justice Programs, in order to provide guidance to the States, Territories, and other jurisdictional units (all hereafter referred to as States) in meeting their obligations to require testing programs for detecting the human immunodeficiency virus (HIV) in certain sex offenders. Under a provision enacted by the 101st Congress, State statutes must be enacted and enforced providing for such testing if States are to continue to receive full Federal funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program in Fiscal Year 1994.

The Federal statute decreasing the amount of the formula grant for those States not observing a statutory HIV testing requirement is meant to set a minimum standard. Obviously, States may have broader requirements than set out in the Federal statute shown below, without jeopardizing their continued full funding. However, States will want to be certain that their statutes at least meet all the required elements of the Federal legislation, particularly those States whose testing acts antedate the Federal provision.

#### **II. Background**

With the frightening spread of acquired immune deficiency syndrome (AIDS) and its HIV precursor, transmitted as they are by sexual contact, another often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse or rape.

In an effort to eliminate at least part of the traumatic aftermath of such a crime upon its victims, a number of State legislatures in recent years have enacted statutes which generally require that persons convicted of sexual abuse offenses (as rape is now often denominated) must undergo HIV testing in order that their victims can at least know that they have not been exposed to the deadly virus, or if, tragically, they have been so exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

By the end of 1990, about one-third of the States had enacted such statutes. Individual provisions, however, varied in form and detail. For example in some cases, the testing process was mandatory for all persons convicted of sexual abuse. In others, it was triggered only at the request of a victim. In some States, only the person convicted and the victim were entitled to the test results, while in others spouses of the victim and the convicted defendant, if any, also received the findings.

In 1990, Congress decided that the States without this legislation should be persuaded to adopt mandatory HIV testing in instances of criminal sexual abuse. In the words of the House sponsor of the measure, Congresswoman Martin of Illinois, the provision was offered "because rape victims should not have to live in fear about exposure to the AIDS virus. . . . [A]ll States should make it possible for rape victims to find out if they have been placed at risk. They have the right to know. . . . We can. . . demonstrate our compassion by preventing further traumatization of these victims who also face the possibility of exposure to the AIDS virus."

### III. The Statute

Accordingly, in Sec. 1804 of the Crime Control Act of 1990 (hereafter referred to as Section 1804), Congress amended Sec. 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, hereafter referred to as the Act, by adding a subsection (f), as follows:

(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection-

(A) 90 percent of the funds allocated under subsection (a)<sup>1</sup>, taking into consideration subsection (e)<sup>2</sup> but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act-

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

<sup>1</sup>Sec 506(a) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3756(a), sets out the formula for determining the sums to be distributed to the States under the formula grant provisions of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

<sup>2</sup>Section 506(e) of Title I of the Act, 42 U.S.C. § 3756(e), refers to funds allocated to the States, but not distributed to them, which thus become available for the discretionary grant program as provided in Sec. 510-518 of the Act, 42 U.S.C. § 3760-3764.

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection-

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) [sic] of title 18, United States Code.

Section 1804 was codified as 42 U.S.C. § 3756(f).

#### IV. Effective Date

Section 1804 became effective on November 29, 1990, with the enactment of the Crime Control Act of 1990. Thus, in order for a State to receive its full formula amount for the fiscal year beginning two years after passage of the 1990 Act, its HIV testing statute incorporating the Section 1804 standards must be in place for Fiscal Year 1994<sup>4</sup>, which begins October 1, 1993.

#### V. The Financial Effect of Sec. 1804

Section 1804 thus requires that 10% of a State's formula grant be withheld and transferred elsewhere if that State by the Fiscal Year 1994 deadline has failed to place in effect, as well as actually enforce, the elements of the HIV testing standards created by Section 1804.

There is no waiver procedure incorporated within the statute. Consequently, BJA will be unable to waive or postpone to a later year the 10% reduction in funds for any State which should fail to comply.

Any Federal funds which must be withheld from the States because of noncompliance with the Section 1804 mandate must be allocated equally among States which have complied. Thus in addition to qualifying for continued full formula grant funding under the Act, States which enact and enforce their own statute meeting the Section 1804 standards, become eligible to share equally with other complying States in the accumulated monies withheld from States which have failed to comply.

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<sup>3</sup>See the comment in Paragraph 7 of Division VI, "Definition of the Term 'Sexual Act.' "

<sup>4</sup>Fiscal Year 1994 is the first full "fiscal year beginning more than two years after the effective date of" Section 1804. See §506(f)(1) of title I of the Act, 42 U.S.C. § 3756(f)(1).

## VI. The Section 1804 Standards

As set out above, the State statutes now in place or to be adopted must meet the minimum standards required by Section 1804. Of course, the States may enact and enforce broader requirements or standards.

However, States should regard each element of the Section 1804 standards as being required for inclusion in their State statute in order to maintain their full funding. These elements are:

### 1. Victim Request.

The State statute must require that the State make mandatory the testing process at the request of any victim of a sexual act (as defined below) for which the person to be tested was convicted in State court.

If the State statute requires all persons so convicted to be tested *without exception* (regardless of the absence of a victim request), then this element may be regarded as being met, since it is broader, or more inclusive in nature than Section 1804 requires. However, the requirement would not be met if the State statute would allow the person otherwise to be tested to avoid the testing process, even though the victim requested it.

### 2. Administration of the Test.

The State statute must provide for an agency of the State to direct the test to be administered, although the actual physical testing may be delegated to another, such as a physician, laboratory, etc. Typically, the State statute would provide for the sentencing judge to order the testing either before sentencing (perhaps as part of the order for a pre-sentence investigation) or as part of the sentencing order itself.

The State statute must direct that the procedure itself specifically test for the presence of the etiologic agent for AIDS, or HIV.

### 3. The Person to be Tested.

Congress required in Section 1804 that the State statute must provide that any person "convicted under State law" of a sexual act is obliged to be tested for AIDS or its HIV precursor at the victim's request. This includes persons entering pleas of guilty to a criminal sexual act (as hereafter defined), as well as those being found guilty following a jury trial or a trial to the court. It also includes juveniles thus adjudicated (see paragraph 6 below).

#### 4. *Disclosure of the Test Results.*

The State statute must provide for the disclosure, at the request of the victim, of the test results to both the victim and the person convicted. Some States have chosen to provide the test results to others as well, such as the spouses, if any, of the victim and the defendant.

#### 5. *Victim Services.*

Congress required in Section 1804 that the State statutes include a provision for making certain services available to the victims of these sexual acts at their request. These services are:

1. counseling regarding HIV disease;
2. HIV testing in accordance with applicable law; and
3. referral for appropriate health care and support services.

If the language of a State statute does not incorporate the specific language of Section 1804, it must at least be so broad as to make it clear that these victims are entitled as a matter of right to request and receive the counseling, testing, and referral services specified by Congress.

Section 1804 implies that these services are to be provided at the expense of State or local governments, rather than at the victim's expense. State offices administering the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program should be prepared to inform BJA as to the sources of the funds to pay for these services and the authority therefore.

#### 6. *Definition of the Term "Convicted" as Including Juveniles.*

In paragraph (3)(A) of Section 1804, Congress provided that "the term 'convicted' includes adjudicated under juvenile proceedings".

Thus, in order to be in compliance with Section 1804, State HIV testing statutes must provide that not only adult defendants convicted of defined sexual acts are required to be tested by the State at the request of the victim, but that juveniles similarly adjudicated are also required to be so tested.

#### 7. *Definition of the Term "Sexual Act."*

In paragraph (3)(B) of Section 1804, Congress defined the term "sexual act" as the meaning given such term in 18 U.S.C. § 2245(1)(A) or (B). Clearly Congress intended to define "sexual act" as that meaning given the term in 18 U.S.C. § 2245(2)(A) or (B), which provides:

(2) the term "sexual act" means-

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, [sic] slight;

(B) contact between the mouth and the penis, the mouth and the vulva; or the mouth and the anus; . . . .

The language of the State HIV testing statute should, where possible, incorporate these definitions. However, since Section 1804 requires that the person tested must be "convicted under State law", if State statutory criminal law defines the term "sexual act" in a less inclusive manner, we do not believe this fact would automatically mean that a State is in non-compliance, because it does not appear from the language of Section 1804 or its statutory history, that Congress intended to require States to change their definitions of substantive criminal acts in order to receive their full formula grant.

#### VII. State Determination of Compliance with Section 1804

All State Offices should promptly review their State's statutory provisions regarding required HIV testing for sex offenders together with any other pertinent State statutory and case law. These materials should be compared with Section 1804 as set out in Division III above and as explained in Division VI immediately above. BJA suggests that this review be conducted by those providing legal advice to the State Office.

It is the responsibility of each State Office to conduct this review and comparison and to make a determination that State statutory law either is now in compliance or is not yet in compliance with the Section 1804 standards.

For those States whose legislatures have not yet enacted a mandatory HIV testing statute for sex offenders, State Office legal advisors will no doubt wish to review any bills which may be pending, making the same comparisons. Should it appear that a proposed bill does not include all elements of the Section 1804 standards, the State Office will want to make that fact known to the appropriate State legislative committees or individual legislators.

Finally, for those States without any existing or proposed legislation complying with Section 1804, BJA suggests that the State Offices make the appropriate legislative committees and/or legislators aware of the Section 1804 requirements promptly.

To assist the States in assessing the degree of their Section 1804 compliance, a worksheet is included as an Appendix to these materials. BJA believes that the worksheet will serve as a useful tool in that endeavor and suggests that each State Office make use of it in arriving at its own determination as to Section 1804 compliance.

If, after conducting its own review, a State Office still has a question as to whether State law is in compliance with the Section 1804 standards, it may request BJA to review

its enacted statutory materials. However, a State should not request a BJA review until after conducting its own study based on the information contained in these materials. Nor should a State request a BJA review if it is apparent from a completed worksheet that it does not yet comply with all of the elements of the Section 1804 standards.

EXHIBIT 2  
DATE 1-22-93  
SB 12

## Appendix

# Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

### 1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV)?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*



EX-10311 2  
1-22-93  
SB 12

### 3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

☐ Yes, in all cases ☐ Yes, but only at the request of a victim ☐ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? *(Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

☐ Yes ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

☐ Yes ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

### 5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

☐ Yes ☐ No

2. HIV testing in accordance with applicable law?

☐ Yes ☐ No

3. Referral for appropriate health care and support services?

☐ Yes ☐ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

What are the sources of the funds to pay for these services?

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

**6. Definition of the term "convicted" as including Juveniles.**

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

**7. Definition of the term "Sexual Act."**

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?*

EXHIBIT #3  
DATE 1-22-93  
SB 12

## WHAT IS THE RISK OF CATCHING AN STD AS THE RESULT OF A SEXUAL ASSAULT?

While any sexual activity involves a risk of getting an STD, certain diseases are more easily acquired than others. Your risk of infection increases if more than one infected person has assaulted you and/or if the same infected person assaults you more than once. Preventive treatment and follow-up testing is important.

## IF I CAUGHT SOMETHING FROM THE ASSAULT, CAN I GIVE IT TO MY SEXUAL PARTNERS?

Yes. For this reason we recommend that you not have sexual contact where body fluids are exchanged until after you have completed all phases of the evaluation. If you do have sex, the use of condoms by a man will very much reduce the risk of an STD being passed on.

## WHAT DO I NEED TO KNOW ABOUT TESTING?

Follow-up testing is available through most physicians. There are also public health facilities in Montana which provide STD testing free of charge. Their locations are listed in this brochure. Some individuals choose to be tested through these clinics, where the information may not become a part of their general health care or insurance records. The most important thing to remember is that follow-up testing is critical.

## ARE THERE SYMPTOMS I SHOULD WATCH FOR?

Some STD's have no symptoms, so WITH OR WITHOUT SYMPTOMS, YOU SHOULD TALK TO A PHYSICIAN OR GO TO A TEST SITE WITHIN THREE WEEKS OF THE ASSAULT. Symptoms that may occur include unusual bleeding or discharge, redness, itching, soreness, blisters or sores, or burning with urination.

## WHAT ABOUT AIDS/HIV?

With all of the media coverage of AIDS, many sexual assault victims are fearful of catching HIV, the virus which leads to AIDS. It is important to know that AIDS is a difficult disease to catch and the risk resulting from a single sexual penetration is very small. Penetration and some exchange of bodily fluid, particularly blood or semen, are the only way for HIV to be transmitted during a sexual assault. If this did not happen to you, you probably do not need to be tested for HIV.

The most recent information available from the U.S. Centers of Disease Control recommends that sexual assault victims be tested approximately 12 weeks following the assault. This testing will be quite conclusive and most individuals will not need to be tested again. While AIDS is a frightening disease, it is important to remember that there are almost no cases of AIDS which can be traced to a single sexual assault, despite tens of thousands of assaults each year.

## CAN I FIND OUT IF THE OFFENDER HAS HIV OR OTHER DISEASES?

Montana law does allow victims of sexual assault to request testing of convicted offenders. Finding out information about the individual who sexually assaulted you is not the best way of predicting whether you may have contracted a disease. The nature of the assault, the stage of any disease, your own immunity and other factors make your own test result much more important than the results of any tests on an offender.

## HOW CAN I GET MORE INFORMATION?

If you have questions or concerns about STD's, ask your physician or your local health department. For more information about testing, contact one of the STD clinics listed on the back. Always seek expert medical advice if you believe that you may have contracted an STD.

## MONTANA STD CLINICS

City/County Health Departments

\* Billings 256-6821  
\* Great Falls 761-1190  
\* Helena 443-2584  
\* Kalispell 756-5684  
\* Missoula 523-4750

### Family Planning Clinics

Anaconda 563-7861  
\* Bozeman 597-0681  
Butte 725-6507  
Dillon 683-4771  
Havre 265-6744  
Helena 442-3830  
\* Lewistown 538-6291  
Missoula 232-3307

### Planned Parenthood

Billings 656-9980  
Billings 248-2373  
Great Falls 454-3431  
Missoula 728-5490

Montana AIDS Hotline 1-800-233-6668

National STD Hotline 1-800-227-8922

### HIV

\* the above are also counseling/testing sites supported by MDHES AIDS Program in addition to

Butte-Silverbow Health Dept. 723-6507

Dawson County Health Dept. 365-5213

Roosevelt County Health Dept. 653-1590 x23

Hill County Health Dept. 265-5481 x66

Following a sexual assault, you probably have concerns and questions about many subjects. This brochure is intended to provide you with the information you need about sexually transmitted diseases, or "STD's."

If you do not understand this information, or wish more complete information, ask your physician or another health care professional to assist you.

## WHAT ARE SEXUALLY TRANSMITTED DISEASES (STD'S)?

Sexually transmitted diseases are diseases you can catch by having sexual contact with someone who has the disease. You may have heard of some of them and some may be unfamiliar to you. The most well-known STD's include gonorrhea, syphilis, trichomoniasis ("trich"), genital herpes, genital ulcers, hepatitis B, chlamydia, non-gonococcal urethritis (NGU), and Human Immunodeficiency Virus (HIV). Each of these diseases may be transmitted by sexual contact. Left untreated, some of these STD's can cause serious complications.

## HOW DO I KNOW IF I HAVE BEEN INFECTED?

The victim should be initially evaluated for STD within 24 hours of the assault, if possible, and evaluation should include the following:

Cultures for *N. gonorrhoeae* and *C. trachomatis* from specimens from any sites of penetration or attempted penetration.  
Collection of a blood sample for a serologic test for syphilis and for storage of a serum sample for possible future testing. Serologic testing for HIV and hepatitis B infection should be considered.

For women, examination of vaginal specimens for *T. vaginalis* and for evidence of bacterial vaginosis (BV).

Pregnancy test for the evaluation and management of pregnancy risk.

Additional tests may be performed in 14-21 days, to repeat studies. A third visit may be scheduled at 8-12 weeks to repeat initial serologic studies, including tests for antibodies to syphilis and/or hepatitis B, and/or HIV.

TO: House Judiciary Committee  
FROM: Robin DeBolt, President - Montana Big Sky Paralegal Assn.  
Vicky Soderberg  
DATE: Jan. 22, 1993  
RE: SB 64

I am here to testify on behalf of MBSPA and as an employee of a law firm. We fully support the bill as it was originally introduced, however, the amended bill before you today contains language which creates potential ramifications to severely limit an attorney's ability to provide cost-effective and timely service to his or her clients.

In the original bill, any employee of a licensed attorney would be exempt from the registration requirements. This would potentially include paralegals, secretaries, law clerks and other support staff. The amended bill includes these same categories of employees, however it limits them to only those who are employees of the attorney of record.

The problems created by this limitation are many. The nature of the legal profession is one of putting out fires and responding quickly to a client's situation. Of necessity, time is often of the essence.

The sheer size of our state often creates time problems when witnesses and others involved in cases are spread throughout many counties. This is further compounded when individuals and companies are spread across the country or even the world.

Particularly in cases where co-counsel are involved, assistance from support staff in each office is crucial. These cases are often highly complex and the coordination of efforts between offices is imperative.

Registered process servers are a valuable asset to the legal system. They fill a need which has always existed for a professional quality service. Attorneys look to the registered process servers for the majority of their needs. It is only when faced with a time crunch or the inability of a process server to perform within the necessary time frame when an attorney looks to his or her support staff or the staff of another attorney for assistance.

We encourage you to support this bill in its original version, not the amended version before you today. It will allow attorneys to facilitate their client's journey through the judicial system in a cost-effective and efficient manner.

P. O. Box 900  
East Helena, MT 59635

Gary A. Dupuis



(406) 227-6566 Office  
(406) 227-7452 FAX

A. Rene Dupuis

January 22, 1993

EXHIBIT <sup>#</sup>5  
DATE 1-22-93  
SB 64 Doherty

Rep. Russell Fagg, Chairman  
House Judiciary Committee  
Room 312-A  
State Capital Building  
Helena, Montana 59620

RE: SB 64

Dear Rep. Fagg & Members

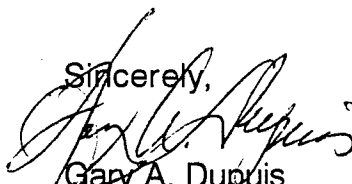
My name is Gary Dupuis and I am with G.A.R.D., Inc., a civil process service business that has been established in Montana since 1984. I am here today in opposition to SB 64, that was introduced by Senator Doherty. It is the opinion of my industry that this bill would be a conflict of interest with the employee's of an Attorney who is bringing an action into a court of law. Service of process is done by a disinterested party, either the Sheriff's office or by a registered process server and this is what the affirmation the process server makes when he/she returns the original document back to the court.

In 1987, the Montana Legislature enacted MCA 25-1-1101, the Registration of Process Servers/Levying Officers and that it required that certain persons be certified, registered and bonded to do business within the State of Montana. If SB 64 is allowed to be passed as it is presently written, the need for having a Registered Process Server will diminish.

Presently the legal profession has been able to use the services of Sheriff's offices statewide and the use of Registered Process Servers is expanding and more individuals are becoming registered in order to comply with the laws of the State of Montana. The services of the registered process servers and sheriff's departments are needed because we are totally disinterested and not a party to the action that is before the court.

I would respectfully request of you, a "Do Not Pass" on this Senate bill. Thank you.

Sincerely,



Gary A. Dupuis  
President

Registered Process Server and Levying Officer, Lewis & Clark County  
Service of Civil Process

# County of Yellowstone



JUSTICE COURT

P.O. Box 35032  
Billings, Montana 59107-5032

EXHIBIT #1  
DATE 1-22-93  
SB 64

January 21st, 1993

COMMITTEE MEMBERS  
SENATE BILL 64  
INTRODUCED BY: STEVE DOHERTY

Dear Members:

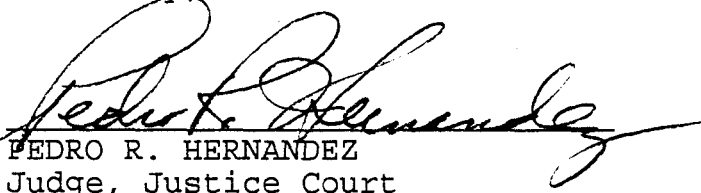
This letter is in opposition to Senate Bill 64.

I believe and feel that it is not necessary to enact such legislation, as the present law allows a person to make service 10 times in one year now.

We do not have the personnel or the capabilities to keep track of those licensed or registered to serve papers or executions. There is no way we could follow up to find whether service of process is valid or not. The present law requires those serving executions to be bonded and as that requirement must be met even with this bill, the cost to do so to make this a viable bill which could be utilized by those you are introducing it for would be prohibitive.

Please take this letter into consideration during your hearings and if you would like further opinions on this bill, feel free to contact me.

Sincerely,

  
PEDRO R. HERNANDEZ  
Judge, Justice Court

# County of Yellowstone

CHARMAINE R. FISHER  
CLERK OF THE DISTRICT COURT



(406) 256-2860  
BOX 35030  
BILLINGS, MT 59107

EXHIBIT # 7  
DATE 1-23-93  
SB 64

January 21, 1993

Committee Members  
Senate Bill No. 64  
Introduced by Steve Doherty

Gentlemen:

This letter is to oppose Senate Bill No. 64. I believe this Bill is redundant and do not feel that it necessary to take the time to pass this legislation.

My question is, who is going to know who is legal to serve papers. This office has never filed a certificate of registration unless the process server is licensed. We have no way of knowing whether service is good. Apparently this would have to be the responsibility of the opposing attorney or the Judge.

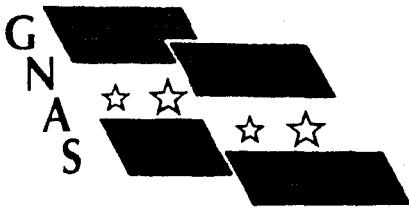
The present law allows a person to make service ten times in one year and I do not see the need for this change.

Thank you for your consideration.

Sincerely,

*Charmaine*

Charmaine R. Fisher  
Clerk of District Court



January 11, 1993

DATE 1-22-93  
SB 64

## GN ACCOUNT SERVICES

JIM R. NIXON

State Licensed Process Server &  
Levying Officer

P.O. Box 50099  
Billings, MT 59105  
(406) 256-5389 or  
855-1470 (Cellular Phone)

TO: LADIES & GENTLEMEN OF THE COMMITTEE FOR SENATE BILL 64:

Prior to 1987, some counties in Montana had Constables, and they, together with the Sheriff's Department Civil Servers, handled all service of process. Budget cuts in most counties caused a reduction in the Sheriff's staff and Constable's Offices.

In 1987, the Montana Legislature passed House Bill 639, which created the occupation of Registered Process Server and Levying Officer. The bill required all candidates for this occupation to be tested to determine their qualifications, and if they passed the test, to become licensed and to obtain bonding.

This statute, at the present time, also allows anyone over the age of eighteen (18) years to serve Summons and Complaints and up to 10 other services of process during one (1) calendar year without being registered or bonded.

To my knowledge, no one in the Court Clerk's offices keeps a record of how many services are made annually, or by whom they are made. Their only concern is that the original documents and the return of service is returned to the Court file.

Senate Bill 64 seeks, once again, to exempt employees of law firms and attorney's offices from the license and bonding requirements which are now required of the general public. In my mind, this proposal is prejudicial and discriminatory. It would allow a select few to circumvent a statutory requirement which the general public is obliged to adhere to.

This Bill was proposed before and was rejected. Why are they wasting this committee's valuable time?

There are other questions to be addressed before this Bill is passed. For instance - what sort of regulations would the law firm employees be bound by - or would they be free to serve, not only for their employer, but perhaps take it upon themselves to serve for other firms and individuals as well?

Would they be required to provide the Clerks of Court with proof of their affiliation with a particular law firm? Who would police any regulations in this regard?

If a select few are exempt from the statutory requirements, why should those of us who are presently in this occupation pay for licenses and bonding?



Finally, the question of liability arises. In certain instances, an untrained individual attempting to serve a party who is prone to violence would be taking a very great risk of bodily harm.

Most people have the mistaken impression that a process server merely "hands a document" to an individual. Let me assure you, there is a good deal more to this profession than the general public is aware of.

I strongly object to the passage of Senate Bill 64.

Jim R. Nixon  
Licensed Process Server &  
Levying Officer  
DPS 92-79-01  
Yellowstone County

If the "employing" attorney is the "attorney of record", is he not a party to the action?  
If so, the statute precludes his employee serving the process.

EXHIBIT 1  
DATE 1-22-93  
SB 64

**RADOVICH LAW FIRM**  
GEORGE T. RADOVICH  
ATTORNEY AT LAW  
926 MAIN STREET, SUITE 9  
BILLINGS, MONTANA 59105  
TELEPHONE: (406) 259-4000

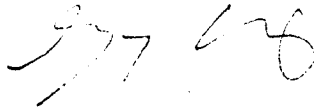
January 21, 1993

To Whom It May Concern:

I am an attorney licensed to practice law in the State of Montana and have been engaged in that occupation since June of 1978. Throughout that time I have utilized professional process servers and find that the service provided by them is both reliable and professional. I believe that senate bill 0064 would have a deleterious effect on the quality and reliability of service of process in this state and, since the provisions of that bill provide no significant benefit to anyone, I oppose that bill.

Thank you.

Sincerely,



George T. Radovich

Amendments to House Bill No. 128  
First Reading Copy

January 20, 1993

Requested by Rep. Brown

For the Committee on the Judiciary

Prepared by John MacMaster

1. Title, line 7.

Following: "PROGRAM;"

Insert: "PROVIDING FOR NOTICE AND A PUBLIC MEETING BEFORE A LOCAL GOVERNMENT ENTITY DISTRIBUTES DRIVER'S LICENSE REINSTATEMENT FEE MONEY TO GOVERNMENT AND PRIVATE ENTITIES TO BE USED FOR PROGRAMS RELATING TO SUBSTANCE ABUSE, MINORS' PROBLEMS, AND LAW ENFORCEMENT TRAINING AND EQUIPMENT;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "61-2-106"

Insert: "AND 61-2-107"

3. Page 2, line 4.

Following: "publication in"

Insert: "the public service announcements section of"

4. Page 2, line 25.

Following: line 24

Insert: "Section 2. Section 61-2-107, MCA, is amended to read:

"61-2-107. (Temporary) License reinstatement fee to fund county drinking and driving prevention programs -- balance transferred. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in the general fund. On or before June 30, 1993, the department shall transfer to the general fund the balance of money in the state special revenue account collected as license reinstatement fees. (Terminates July 1, 1993--sec. 7(1), Ch. 5, Sp. L. January 1992.)

61-2-107. (Effective July 1, 1993) License reinstatement fee to fund ~~county drinking and driving prevention programs~~ relating to substance abuse, minors' problems, and law

enforcement training and equipment. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction. Before a local government entity distributes money to a state or local government or private entity for the operation of programs referred to in this subsection (b), the distributing government entity shall, after at least 7 days' notice of the meeting by publication in the public service announcements section of a newspaper of general circulation in the county, hold a public meeting on the entities to and purposes for which the money should be distributed."

{ Internal References to 61-2-107:

61-2-108 (2) }

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 187  
DATE Jan. 22, 1993 SPONSOR(S) J. Rice

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Meleher, Jr.	Dept. of Family Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. SB 64  
DATE Jan 22/1993 SPONSOR(S) Roherty  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY Dupuis PO Box 900 E. Helena			X
Vicky Soderberg PO Box 1636 E. Helena	Montana Big Sky Paralegal Association	X	
Robin DeBolt 2605 Farragut Ave. Butte MT 59701	Montana Big Sky Paralegal Association President	X	
Kim Clark Capitol Center Suite 104 Helena, MT 59601	Montana Big Sky Paralegal Association	X	
Patrick Watt Box 2269 Great Falls Montana 59403	Jordine Stephensen Blewett & Weaver, P.C.	X	
Russell B Hill 101 East Helena Blvd Helena MT 59601	Mont Trial Lawyers	X	
Richard Rowe	ASAP Soc.		X

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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. SB 12  
DATE Jan. 22/1993 SPONSOR(S) Lage  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ed Hall	MB CC	✓	
Bruce Desonice	MT. Dept. Health	Alba	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.