

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 8, 1993,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: SB 264
SB 265
Executive Action: SB 252

HEARING ON SB 264

Opening Statement by Sponsor:

Senator Van Valkenburg, District 30, told the Committee the 1991 session of the legislature adopted provisions with respect to notification of victims in certain crimes upon the release of certain criminals from jail. Senator Van Valkenburg inquired of the sheriff and the local jail commander in Missoula about this issue and how the procedure was being utilized to provide notice to victims as required by law. The sheriff and jail commander were not familiar with the requirements, but upon learning of

them and of the consequences, said it was an administrative nightmare. The requirement to notify a victim is nearly impossible to perform, and if it was possible it would be costly and time consuming. Senator Van Valkenburg said it would take away from law enforcement's ability to do other things that would be equally as important as notification. Senator Van Valkenburg said the legislation adopted previously, was originated by Representative Menahan, to deal with releases from the state hospitals and prisons. Senator Van Valkenburg did not feel that legislation considered the effect on local government when requiring notification to a victim when a threat of violence had occurred. SB 264 was drafted to require notification of a release from a state hospital or prison, but that would not apply to releases in a local community. There are fewer releases at state level, and those releases are predictable as to when a prisoner would be released. At the local level, there are thousands of releases that occur, and are not predictable. It would be impossible for local law enforcement to provide notification to victims, as required in current law. Senator Van Valkenburg said liability may be imposed on local government when failure to notify a victim has occurred. Senator Van Valkenburg urges the support from the Committee for SB 264.

Proponents' Testimony:

Michael O'Hara, Jail Administrator in Missoula, said SB 265 is a matter of practicality and liability. Mr. O'Hara said it is often impossible to find a victim when a defendant is released. Mr. O'Hara said sometimes a victim moves to a safe house or leaves town. Mr. O'Hara told the Committee he met with a domestic violence group and advised them their clients can call the jail 24 hours a day and receive updates as to the status of an inmate. The jail also has computerized phones, so that if an inmate is harassing the victim, their number could be blocked out to prevent those calls. Mr. O'Hara said law enforcement are not able to notify all victims.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Towe asked Senator Van Valkenburg if Representative Menahan introduced the current law. Senator Van Valkenburg said yes.

Senator Towe asked Senator Van Valkenburg if he had consulted with Representative Menahan about SB 264. Senator Van Valkenburg said he had not.

Senator Towe asked Senator Van Valkenburg if there would be

public expectation to notify a victim if there had been extreme physical violence. Senator Van Valkenburg said another section in the law deals with the rights of victims, which directs a prosecutor to provide information to the victim regarding the offender. Senator Van Valkenburg said as a prosecutor, he maintains contact with victims involved in domestic abuse cases, to let them know the offender is being released from custody. Senator Van Valkenburg said the problem with the mandatory language in the present law is the potential creation of a duty on the part of local government, which if neglected, could result in substantial liability.

Senator Halligan asked Senator Van Valkenburg if SB 264 removes the escape and release language for the state institution personnel. Senator Van Valkenburg said no. The escape requirement remains for all entities. Senator Van Valkenburg said if someone escapes from a local jail, there is a requirement to notify the victim. The release requirement continues to apply to state hospitals and prisons. The state institutions are continued to require notification of victims if there is an escape or release. Senator Van Valkenburg said the only thing that changes as a result of SB 264, is the requirement for local law enforcement to notify a victim when an offender is released from a local jail.

Senator Bartlett asked Mr. O'Hara about notification to the victims from law enforcement personnel. Mr. O'Hara said the original law references several notifications. Mr. O'Hara said subsection B, subsection 2, has the problem language. Mr. O'Hara said law enforcement has to know where the suspect is going, the county where the escape was, and the county of the original offense. Mr. O'Hara said it is implied that there is a duty to notify, that is why SB 264 was introduced to modify current law.

Senator Bartlett asked Mr. O'Hara who the bill implied to notify. Mr. O'Hara said it implied the victim was to be notified.

Senator Towe asked Senator Van Valkenburg if notification was required when a person is released from a state hospital. Senator Van Valkenburg said the intent of SB 264 was to require state hospitals to notify victims upon release of an offender, but it was overlooked. Senator Van Valkenburg said there would not be an undue burden on state institutions if they have to notify victims with respect to releases. Senator Van Valkenburg suggested amending SB 264 to require notification by state hospitals. Senator Towe restated that hospitals know in advance when they are going to release an offender so they could provide notification, which was the original intent.

Senator Towe asked Senator Van Valkenburg if local hospitals would be exempt in having to notify victims. Senator Van Valkenburg said yes. Senator Van Valkenburg said there are no commitments to local hospitals under title 46.

Senator Towe told Senator Van Valkenburg that the law applies to people who are committed under title 46. Senator Van Valkenburg said he did not agree.

Closing by Sponsor:

Senator Van Valkenburg said SB 264 needs an amendment with respect to the application to state institutions. Senator Van Valkenburg said he would work with Valencia Lane on the amendment. Senator Van Valkenburg hopes the Committee understands the potential liability and the burden on local governments as a result of requiring notification. Senator Van Valkenburg said the law about notifying a victim, should not be implied, but spelled out clearly whether a victim should be notified or not.

HEARING ON SB 265

Opening Statement by Sponsor:

Senator Rye, District 47, read a statement from an article in the U.S. News and World report. "A burglar, while robbing a California High School falls through a skylight and wins \$260,000 in damages, plus a \$1,200 monthly stipend from a local school board." Senator Rye told the Committee that was outrageous. Senator Rye inquired from the legislative council if that could happen in Montana. Senator Rye said according to the legislative council, such a thing could happen in Montana. Senator Rye said the reason for SB 265, is to prevent a convicted felon from suing for damages sustained while a felony was being committed or attempted to be committed. Senator Towe told the Committee that similar legislation has been before the legislature and failed.

Proponents' Testimony:

NONE

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, said he wanted to express the Montana Trial Lawyers Associations conviction that both criminal and civil law punish and deter wrongful conduct. Mr. Hill said civil liability may deter and punish wrongful conduct more effectively than criminal law. SB 265 would be a simple bill if a felony in criminal law was always more serious than the felony described in civil law, but that is not the case. Mr. Hill said SB 265 was drafted in terms of a felony which encompasses many kinds of conduct that may be less serious than that which involves civil liability. Mr. Hill gave the Committee some examples of the kinds of conduct that could be a felony. Custodial interference, statutory rape, deviant sexual conduct (homosexuality), and aggravated nonsupport. Mr. Hill said the language of SB 265 would prevent a person from pursuing civil

recovery when the conduct described by civil liability could be worse than the conduct involved in a criminal felony.

Questions From Committee Members and Responses:

Senator Doherty asked Senator Rye if protection would be granted to police officers. Senator Rye said protecting police officers did not occur to him when drafting SB 265. Senator Rye said he was only looking at offenders who were collecting for injuries sustained while committing a felony.

Senator Doherty asked Senator Rye if he wanted to protect police officers. Senator Rye said he wanted to protect people from being sued for protecting themselves from the commission of the crime.

Senator Towe asked Senator Rye about people protecting themselves from trespassers. Senator Rye said trespassing is a misdemeanor.

Senator Towe asked Senator Rye if a person would be able to recover if they were leaving the state to avoid paying child support, a felony, and were involved in an accident. Senator Rye did not answer.

Senator Rye asked Senator Towe if he agreed with him about his statement in the opening about the burglar, and how he would draft a bill to deal with that. Senator Towe did not answer.

Senator Halligan told Senator Rye that many people who commit felonies are not convicted as a felon. Senator Halligan said the felons would then be allowed to sue. Senator Halligan said when a person gives testimony about a case, their felony would be reduced to a misdemeanor. Also, a plea of guilty is different than a conviction. A person who pleads guilty could sue for civil damages, but not the person who had jury trial and got convicted of it.

Senator Rye asked Senator Halligan if a guilty plea was an acknowledgement of ones guilt and therefore in agreement to be convicted. Senator Halligan said he was not sure. Senator Towe said there was a statutory definition.

Closing by Sponsor:

Senator Rye said SB 265 demonstrates the classic dichotomy between the legal profession and nonlawyer. SB 265 is simple justice, which is the desire of american people regarding the court system and tort reform. Senator Rye quoted from an editorial. "Plaintiff attorneys assert they are just protecting their rights of clients. The Rane Corporation studies show that plaintiffs wind up with 43% of the winnings from lawsuits, while lawyers and courts fees chew up the rest. No wonder our trial lawyers are the highest paid attorneys in the world." Senator

Rye said the justice system has serious flaws and problems. Senator Rye said SB 265 is a small attempt to rectify a problem, and urges a DO PASS recommendation.

EXECUTIVE ACTION ON SB 252

Motion:

Senator Grosfield moved to strike sub-section 9 on page 4.

Discussion:

Senator Grosfield said SB 252 is not a liability bill. Subsection 9 is the only place in the bill that refers to liability. Senator Grosfield said it would not hurt SB 252 to strike Subsection 9. Senator Grosfield said SB 252 allows land surveyors authority to gain access to land without being accused of trespassing. Subsection 9 complicates the SB 252, and eliminating subsection 9 does not hurt the bill.

Senator Towe told the Committee he had some proposed language to improve section 9. His concern was authorizing a person to trespass when there may be justification for a person to hold a land surveyor liable for damage that is caused. Senator Towe said if the word "actual" was taken out it would make SB 252 clear that the land surveyor would be liable for damages caused. Senator Towe said it would make more sense in taking out the language on page 5, line 2, "purposefully and knowingly" because it would have improved SB 252.

Senator Grosfield told the Committee land surveyors are liable even without subsection 9. Senator Grosfield said the intent of SB 252 is to give land surveyors the ability to gain access to go on the land, but they would still be liable if damage occurred.

Senator Towe proposed that instead of striking subsection 9, say "nothing contained herein or in this section prevents the liability of an individual who causes damages." Senator Towe said he was concerned if subsection 9 was stricken, SB 252 would imply that land surveyors could not be held responsible for damages.

Senator Halligan said if subsection 9 was taken out, SB 252 would not deal with damages, therefore damages would be covered under current law. Senator Halligan said SB 252 is giving land surveyors, with notice, the exemption of the trespass statute. SB 252 does not talk about civil damages if we take out subsection 9, which is what is desired.

Senator Towe asked Senator Halligan if taking out the trespass prohibition would affect damages. Senator Halligan said damages would not be affected.

Senator Crippen asked Valencia Lane what the land owners liability would be if, because of damages done by a land surveyor, someone else was injured. Ms. Lane said there would be a concern about the liability.

Senator Crippen asked Valencia Lane about the liability of the land surveyor in the same situation. Ms. Lane said it would depend on the facts of the situation. If the land owner had knowledge of the damage prior to the injury, the landowner could be held liable. If the landowner did not have knowledge of the damage he would avoid liability, but it would still be litigated.

Senator Crippen asked Valencia Lane if a land surveyor could be held liable for damage to a third party, even if permission was granted to go on the land. Ms. Lane said yes, because the land owner was not giving permission to go on the land to harm someone. Ms. Lane said the land owner and the land surveyor could both be sued.

Senator Towe asked Ms. Lane if she felt there would be a liability issue if subsection 9 was taken out of SB 252. Ms. Lane said her understanding was SB 252 was not intended to be a liability bill. Ms. Lane said it would be better to take out the provision on liability and make it clear that SB 252 creates a situation that would allow land surveyors to obtain access to property, when otherwise not allowed. Ms. Lane said liability should not be addressed in SB 252.

Senator Halligan told the Committee SB 252 could have a whereas clause that says, "allowing the criminal trespassing exemption simply does not affect the civil damages." Senator Halligan said that would give courts a whereas direction on the intent of SB 252.

Senator Towe concured with Senator Halligan.

Motion:

Senator Grosfield added to the motion to fix the title of SB 252.

Vote:

Motion carried to AMEND SB 252.

Motion:

Senator Towe moved that a sentence be added to the whereas clause, that in affect states, "it is not intended that any immunity to the surveyor be granted as a result of this act."

Vote:

Senator Towe's motion to AMEND SB 252 CARRIED.

Motion/Vote:

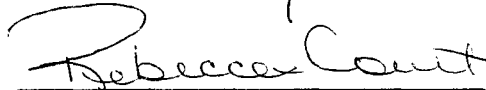
Senator Brown moved SB 252 DO PASS AS AMENDED. The motion
CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:00 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

2-8-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 252 (first reading copy -- white), respectfully report that Senate Bill No. 252 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 9 and 10.

Following: "LAND;" on line 9

Strike: remainder of line 9 through "SURVEY;" on line 10

2. Page 1, line 17.

Following: "trespass"

Strike: "."

Insert: "; and

WHEREAS, the Legislature does not intend to grant
or abrogate any civil liability or immunity to
professional land surveyors or landowners by [this
act]."

3. Page 2, line 9.

Strike: "-- liability"

4. Page 4, line 20 through page 5, line 3.

Strike: subsection (9) in its entirety

Renumber: subsequent subsection

-END-

SB 265 Ryan

Check One

Support Oppose

[illegible]