MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 16, 1995, at 8:00 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 117, HB 131
Executive Action: HB 117, POSTPONE ACTION

{Tape: 1; Side: A; Comments: This tape is recorded at 4.8 speed.}

HEARING ON HB 117

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, introduced HB 117 by describing the process when probable cause has been found to bring a person to trial but that person lacks the ability to comprehend the trial proceedings and is deemed unfit by a health care professional. At that point, he is sent to the Department of Corrections and Human Services (DCHS) where he should undergo treatment. As a result, he doesn't stand trial. The intent of this bill in such a case is to allow DCHS to not only develop a treatment plan for that person, but also to petition the court to enforce that treatment plan. Therefore, medication necessary for the restoration of the person can be administered so that the person may be brought to the point where the trial can proceed. It is important to understand that once that person is brought to trial after having undergone the required treatment which brings the person to the place where understanding of the proceedings can occur, the person may still avoid prosecution for the crime if it is found that at the time the crime was committed the person lacked the requisite mental capacity to appreciate the criminality of the conduct. This bill will help to make a person account for a crime that they have committed. Currently, he may avoid prosecution because when the person is sent to DCHS the medication that would bring the person into a fit state to stand trial can be refused. It also may address the problem of an unruly person who is sent to DCHS who causes problems for other patients and the staff and that person also may be very dangerous to the staff since a charge of committing a crime exists. The committee may hear from opponents that this violates a person's rights concerning involuntary medication; but one must not forget that there are other people's rights to be considered, namely, that of the victims.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, DCHS, presented his testimony in favor of HB 117. He said that passage of this bill would assist both the criminal justice system and the public mental health system in carrying out their responsibilities. **EXHIBIT 1**

Dr. Carl Keener, Montana State Hospital, spoke in support of HB 117 which included examples of handling patients who become unruly and refuse treatment through medication. **EXHIBIT 2**

Keith Colbo, Montana Psychiatric Association, stood in support of this legislation. He presented a written statement from **Virginia Hill, President, Montana Psychiatric Association,** and **Dr. Joe Rich, President-Elect of the Association. EXHIBIT 3**

Joe Roberts, Montana County Attorney's Association, rose in full agreement with HB 117 and the previous testimony.

REP. LIZ SMITH, HD 56, stated her support of the bill and said that it would eliminate the barriers and streamline the treatment.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. LOREN SOFT asked what primary diagnosis would be involved in patients who most often fall into this category.

Dr. Keener replied the major ones would be patients with a psychotic disorder such as schizophrenia or bipolar disease.

REP. SOFT asked what primary types of medications would be used to treat these patients prior to standing trial.

Dr. Keener said that the best medications for these disorders in an acute situation are drugs called, neuroleptics which are major tranquilizers.

REP. SOFT asked if most of these patients would be termed chronically mentally ill.

Dr. Keener said that he could not say that they would be chronically mentally ill, some of them come to their attention who appear to have a recent onset of their illness.

REP. SOFT wanted to know what percentages of success they had experienced by being able to treat the patient with appropriate medication and thus prepare them to stand trial.

Dr. Keener answered that he could only give impressions and not statistical facts. He said that a very high percentage of these people are treatable, probably over 90% would have some improvement and most would have "a lot" of improvement.

REP. BILL CAREY asked **REP. ANDERSON** to outline the safeguards that exist in the legal system to avoid abuse of this proposal.

REP. ANDERSON replied that the safeguard is in development of the treatment plan which must conform precisely with the defendant's particular needs and judicial approval of that plan also must be obtained prior to administering the plan.

REP. CAREY asked what the judge looks at in these cases.

{Tape: 1; Side: A; Approx. Counter: 17.9}

Dr. Keener explained that the judge usually listens to the expert testimony as to diagnosis and recommendations for medication. The applicants usually have an attorney present to cross examine them to be sure that the information is accurate and fairly presented. It has never been a foregone conclusion that the court will grant the right to administer the treatment.

REP. SOFT asked how many people a year would fall into this category.

Dr. Keener estimated that a dozen per year fit this category.

REP. JOAN HURDLE asked the sponsor how this legislation would fit with other legislation which would allow patients to refuse treatment.

REP. ANDERSON wanted the specific legislation being referred to.

REP. HURDLE said that she knew there is other legislation which gives patients the right to refuse treatment.

CHAIRMAN CLARK asked **REP. HURDLE** if she was referring to one heard previously, the guardianship bill.

REP. HURDLE said, "No." But she understood that there was already legislation on the books which allows patients to refuse treatment, otherwise she wondered why these patient would not be treated already.

REP. ANDERSON said that as the law stands without this bill, he believed that it is the case that a person can refuse treatment. This would allow DCHS to administer treatment provided the judge approved the treatment plan.

REP. HURDLE asked if she could assume that patients who had not been accused of a crime might refuse treatment.

Dr. Keener replied that for a patient entering the hospital who had not been charged with a crime, but had been found to be incompetent, a guardian would be appointed and the decisions about treatment are then discussed with that guardian. He said that he has been told by the DCHS attorney that they cannot get a guardianship for a patient who is accused of a crime in the status of "unfit to proceed."

REP. AUBYN CURTISS asked how long a person has to be institutionalized if they have been accused of the crime and have refused treatment.

Dr. Keenar answered that the initial treatment period is 90 days and sometimes that is extended. At other times, if it appears the defendant is not likely to recover, it is typical that the charges are dropped and the patient comes in under a civil commitment for treatment.

REP. DEB KOTTEL asked if it were true that there are four categories under which a person might be found unfit to assist in their defense at a trial such as mental illness, developmental disability, handicapped status or a medical reason.

Dr. Keener said that he thought that was correct. His focus was on the mentally ill because that is the group he believes they can treat.

REP. KOTTEL said that subsection (b) does not address mental illness specifically. Therefore, she wanted to know if **Dr. Keener** would agree that subsection (b) could be used to force medical treatment on someone who might be unconscious or have another disability which would make them unfit to assist in their defense.

Dr. Keenar said that he did not know the answer to that question. He said the people she described would be the exception and would not very likely be admitted to the Montana State Hospital.

REP. KOTTEL pointed out that because this bill did not specifically refer to Montana State Hospital but to institutions in general, she had concerns. She asked if the treatment guardian bill passed both the House and Senate, would it allow for the appointment of a treatment guardian for those individuals so that they could be treated and thus making this bill unnecessary.

Dr. Keener said he would have to defer to attorneys on that issue, but it is his understanding that they cannot get a guardianship on an individual where charges are pending.

{Tape: 1; Side: A; Approx. Counter: 26.0}

REP. KOTTEL questioned subsection 2, the last line, "for so long as the unfitness endures." She cited a 1968 case, U. S. vs Sullivan, which said that it is unconstitutional to hold someone indefinitely if they were not likely to regain fitness within a reasonable period of time, which gave rise to the question of the constitutionality of subsection (2). She wanted to know if the sponsor felt that is unconstitutional and needs to be amended.

REP. ANDERSON said that is current law and as to its constitutionality, he was not aware of any challenge to it.

REP. ELLEN BERGMAN asked how this bill is different from current law.

REP. ANDERSON said that as the law currently stands, through the 90-day evaluation period, if the person does not regain mental faculties, the person may not stand trial. At that point, the person would undergo civil commitment procedures.

The intent of this bill is to allow a judge-approved treatment plan to be administered to bring the person into a realm of reality and understanding of what is going on.

REP. BERGMAN asked what was being done before to prepare such a person for trial and why they were not administering medications.

REP. ANDERSON replied that he could not speak to all cases, but as the law currently stands, he does not have to accept treatment and can remain in a condition unfit to stand trial.

REP. BERGMAN stated that "this is just like bill that **REP. HURDLE** mentioned" except that the other bill requires a guardian. She asked why someone accused of a crime couldn't be assigned a guardian. She did not understand the difference.

REP. ANDERSON said he did not understand the difference either, but that there needs to be a provision in the law to allow for a treatment guardian for a defendant.

Closing by Sponsor:

REP. ANDERSON briefly stated that through the hearing process he had learned more about this which made him more supportive of this bill. He believed that this bill would close the loophole whereby someone can use the resistance to treatment as a way to avoid standing trial for a crime.

{Tape: 1; Side: A; Approx. Counter: 31.1}

HEARING ON HB 131

Opening Statement by Sponsor:

REP. DANIEL FUCHS, HD 15, opened the hearing with a description of this proposed legislation as a judicial reform bill. It is designed to level the playing field for those private citizens bringing litigation against the state. He felt this bill would restore accountability and will help relieve pressure on the heavily stressed courtrooms. He believed that most importantly it would prove to constituents that the members of the legislature are serious about the demands for accountability. He said that arbitrary and arrogant administration of Montana law is intolerable as in the policy of delaying cases thereby bankrupting the people of the state. He said that this was the case with a situation involving his father who was doing some developing in Yellowstone County and was caught between the department of health, the department of natural resources and Yellowstone County local reviewing board which has extended nine years. The case has fallen into his father's estate and as a result, the estate remains open. He said that attorneys are not being required by judges to argue facts, but are being allowed to delay cases on technicalities and argue law rather than the facts of the case.

If a case gets to jury, the bill includes a provision for action if there was bad faith, malicious conduct or intentional infliction of emotional distress, they can require the state to pay punitive damages.

Proponents' Testimony:

None

{Tape: 1; Side: A; Approx. Counter: 36.5}

Opponents' Testimony:

William Gianoulias, Chief Defense Counsel, Risk Management, Tort Defense Division, Department of Administration, said that his division would probably be responsible for the largest share of cases under which punitive damages against the state would be sought if this bill is passed. This bill will provide for punitive damages against state government. He felt that public policy reasons mitigate against passing this bill. He explained that compensatory damages provide for making a plaintiff whole, where punitive damages are designed differently and result in a windfall to the winning party. The reason is not compensation for damages, but rather to punish and deter the wrongdoer. He said that innocent taxpayers are punished when punitive damages are awarded against governmental agencies. Further, he said that the deterrent factor in awarding punitive damages against governmental entities is remote.

Under the Tort Claims Act as it exists right now, section 2-9-305 (6), MCA, provides that the state or other governmental entities cannot defend and indemnify the wrongdoer for the kind of acts that this bill addresses. There are other ways to achieve the deterrent effect such as termination and discipline for the activities this bill seeks to address. Intentional infliction of emotional distress is not a recognized cause of action for lawsuit in Montana. For public officials, a statute which provides for criminal prosecution exists under current law, as well as removal from office. Taxes will be increased or services will be reduced. He cited a 1983 decision written by Justice Morrison which a quote from a 1981, U. S. Supreme Court decision to support his testimony that this bill would be bad public policy. **EXHIBIT 4**

{Tape: 1; Side: B; Comments: This tape is recorded at 4.8 speed.}

Stan Kaleczyc, Montana Municipal Insurance Authority (MMIA), said he represents the group self-insurance program that operates in Montana which insures for liability insurance purposes virtually every city and town in the state. MMIA was started under the sponsorship of the Montana League of Cities and Towns in 1986. He said that the bill makes no more sense for cities and towns than for the state of Montana. He said this is particularly true because there is redress against individuals, elected, appointed

and volunteer employees of cities and towns who act beyond the scope of their employment in the discharge of their duties. He stated that there are several cases pending today against employees of cities and towns for those types of allegations. He cited 2-9-305, MCA, to substantiate his testimony. The MMIA does not insure against punitive damages today for the reason that MMIA would not want to give comfort to an employee who might act in a malicious or arbitrary manner knowing that an insurance pool of money would protect them. He felt, therefore, that the bill is unnecessary and would have serious implications if enacted.

Russell Hill, Montana Trial Lawyers Association (MTLA), said MTLA would like to stand as neither proponent or opponent of this bill, but determined that they needed to stand as opponents though it addresses a real problem; i.e., the non-responsiveness of government at all levels largely due to bureaucratic insulation and insulation from civil liability. He said MTLA believes that the real problem is probably created by the fact that governmental damages are capped rather than by the lack of punitive damages. Empirical evidence is that an imposed cap artificially shields somebody from damages and incidences of negligence and damages go up, but the effect is that "the ceiling becomes the floor." MTLA, he said, believes that this bill would deter bad or malicious conduct and that there is justification for punitive damages. It would send a clear signal to voters that something is wrong and make them demand a change. However, MTLA has serious reservations about the bill. With individuals or corporations it is possible to determine what size award will get their attention, he said; but with government, this is not easily determined.

{Tape: 1; Side: B; Approx. Counter: 9.8}

Nancy Butler, State Fund, said that state agency is subject to bad faith statutes but is not currently subject to punitive damages as written in the law. This bill would subject the State Fund to punitive damages ultimately to be borne by taxpayers. She reiterated previous testimony that there are other avenues to punish employers in the state who are engaged in wrongdoing.

<u>Questions From Committee Members and Responses</u>:

REP. KOTTEL recalled the other remedies available including civil liabilities toward the individual.

Mr. Kaleczyc responded by saying that in the case of state or local governmental officials, the ultimate sanction would be to vote the person out of office, and other sanctions mentioned are disciplinary actions including termination of employment.

REP. KOTTEL asked if criminal sanctions were included.

Mr. Gianoulias replied that he had suggested currently there are criminal laws such as 45-7-401, MCA, which is entitled, "Official Misconduct."

REP. KOTTEL referred to 42 USC section 1983 in terms of civil rights violations of governmental officials who act under color of state law and violate civil rights and thereby bring federal remedies against state employees.

Mr. Gianoulias said that was true. The state is liable under section 1983 of civil rights damages. The case he quoted from, **EXHIBIT 4**, was a civil rights case in which the Supreme Court found that no punitive damages were available against the municipality.

REP. SOFT asked what type of retribution is available to a client against the state. He further asked how many years **Mr. Gianoulias** had been in his position with the state.

Mr. Gianoulias replied that he had been with the state for five years.

REP. SOFT asked in that time now many cases similar to what **REP. FUCHS** described he had had to deal with.

Mr. Gianoulias said he hesitated to comment since the case is ongoing. He gave some history of the case and his personal slant on the case. He disagreed with **REP. FUCHS'** characterization that there was any bad faith, malice, foot-dragging or evil intent in that case.

REP. SOFT said he wanted to know what other ways cases like that can be resolved and hold state government accountable. He asked how many cases of termination or discipline had **Mr. Gianoulias** witnessed resulting from bad faith, malicious conduct or intentional infliction of emotional distress.

Mr. Gianoulias said because of the prohibition on punitive damages, they don't see those kinds of claims and when they do see them, they are frivolous and done by people who are not aware of statutory instruction of the Tort Claims Act. Therefore, he said it was difficult to answer the question. To answer would require rank speculation. It does have an effect when the state loses and it is reported in the news media.

{Tape: 1; Side: B; Approx. Counter: 18.0}

REP. HURDLE asked the sponsor if he had a personal involvement in a case inherited with his father's estate.

REP. FUCHS answered, "Yes."

REP. HURDLE asked for clarification of **Mr. Fagg's** role in this case.

REP. FUCHS said that **Mr. Fagg** is a supporter who drafted the exception for him and is a friend who has been involved in the case throughout and thus knows the case in detail.

REP. DANIEL MC GEE said that he had understood that **Mr. Gianoulias** had said that innocent taxpayers would be the ones paying in the case of punitives.

Mr. Gianoulias answered, "Yes."

REP. MC GEE asked who is currently paying for all government employees.

Mr. Gianoulias asked, "For compensatory damages?"

REP. MC GEE said, "No." He asked who is paying them wages today.

Mr. Gianoulias answered, "Taxpayers."

REP. MC GEE asked if there is a wrongdoing on the part of a person hired (not elected officials) in government, who would be currently condoning those by payment of wages.

Mr. Gianoulias said it is ultimately elected officials who would be responsible, for instance, the Governor would be responsible for his (**Mr. Gianoulias'**) behavior

REP. MC GEE asked, "Who pays the Governor?"

Mr. Gianoulias responded, "The taxpayers."

REP. MC GEE said his point was that taxpayers are the government and, as such, the employer. He cited a personal example to support his conclusion that there is an attitude on the part of all levels of government that has evolved that people who work for government don't work for the taxpayers. He asked if **Mr. Gianoulias** would agree.

Mr. Gianoulias said he didn't disagree with that.

REP. MC GEE said that he believed that **REP. FUCHS'** bill is trying to address a situation that has evolved over time, where government has gotten so large and disengaged from the people it serves, that they can't recognize the relationship. Based on that, he asked **Mr. Gianoulias** to elaborate on the recourse that he sees in current law for a person against an individual who is an "entrenched employee" in government who will not respond to the taxpayer.

Mr. Gianoulias said he would focus on a lawsuit in which punitive damages may be allowed. But in terms of other kinds of wrongdoing such as simply ignoring the taxpayers, that except in

a very few cases, this bill would not do anything about that because there would first need to be a tort or a civil rights violation.

REP. MC GEE asked if a jury was empaneled to hear a case, and they were angered such that they desired to award punitives, who they would be awarding the punitives against.

Mr. Gianoulias answered, "In fact, against themselves."

{Tape: 1; Side: B; Approx. Counter: 25.7}

REP. HURDLE said she was not familiar with laws regarding conflict of interest and asked if **Mr. Hill** saw "any problem with an elected official seeking a fundamental change in government that would, if passed, result in a potential windfall to that legislator in a lawsuit in which he is currently involved."

Mr. Hill answered that phrased that way, there was a potential conflict of interest.

REP. DIANA WYATT asked about the application of this bill to an institution such as Montana State Prison, Pine Hills or Mountain View. She wondered if there were habitual and high frequency of workmen's compensation claims because of an administrative decision where they say the legislature had not appropriated a sufficient amount of money to redress the problem, what would be said to the people who work in that facility who suffer the repetitive damage.

Mr. Gianoulias said that if he understood the question, it would be a legislative problem because it had failed to appropriate enough money to deal with it. There is also a statute which provides for legislative immunity. Instead of punitive damages, what **REP. WYATT** was bringing up would fall under compensatory damages but would be prohibited under legislative immunity.

REP. WYATT said that is the question the committee is arriving at in that the citizens of Montana, including those who may be employees, see this as a bureaucratic "mishmash." They are mistreated, have a work compensation claim and if they go to court against the state, they would be hiring their own attorney, and defending against the Attorney General's office. "How do you deal with this?"

Mr. Gianoulias said that he believed there are other ways to make government officials accountable.

REP. SMITH asked how the State Fund is pooled and how it claims its nonprofit status.

Ms. Butler said the State Fund is a statutory-created entity which was created as a nonprofit agency by the legislature. There is both a new and an old fund. This new fund, since 1990, has been funded by employers' premium payments.

REP. SMITH asked if it is limited to state employees' funding, who are paying into both the old and new.

Ms. Butler said that they insure any employer in the state who wants to buy coverage from the State Fund.

REP. SMITH asked about the limit of liability for state entities.

Mr. Gianoulias replied that there is a cap on compensatory damages of $750,000 per claimant and $1.5 million per occurrence.

REP. KOTTEL asked the sponsor if he felt very strongly about this bill.

REP. FUCHS answered that he did.

REP. KOTTEL asked if in his father's case he felt there was bad faith by the government.

REP. FUCHS said he did.

REP. KOTTEL asked if he believed there would be what is equivalent to malicious misconduct in his father's case.

REP. FUCHS answered that he did.

REP. KOTTEL asked if there was what would amount to intentional infliction of emotional distress.

REP. FUCHS answered, "Yes."

REP. KOTTEL asked if this bill should pass the legislature if he would be able to amend his father's case to include punitive damages.

REP. FUCHS said that he didn't know what the consequences of all that would be, the effective date or how that would play out in respect to his father's case. Without objection, he asked to answer in regard to the conflict of interest question. He said that he has no position in it where he would reap some type of financial windfall. He said that the case is an estate of which his mother would be the benefactor and his interests were personal relating to what he saw happen to his father as far as the government's involvement. Basically he said he would not like to see another family go through it.

REP. KOTTEL, in regards to the $750,000 cap and the $1.5 million cap, asked if there is a system of indexing those caps so that they change with the inflation rate. She also asked if it is the

sponsor's feeling that the caps are no longer sufficient in order to award people compensatory damages because of inflation.

REP. FUCHS said he did not know how that works. In relation to this bill, he said that compensatory damages in relation to punitive damages with a case that goes on for nine years, would not leave enough money in that case to pay for the costs when it is completed.

REP. BRAD MOLNAR said the bill refers to any other political subdivision of the state and asked if a judicial district is considered a subdivision of the state.

Mr. Gianoulias said that his office defends the district judges.

REP. MOLNAR asked if the judges currently enjoy almost total immunity from their decisions.

Mr. Gianoulias said that judicial immunity is very strong in Montana.

REP. MOLNAR said, "So this bill would not address **REP. FUCHS'** concern about judges dragging things out....."

Mr. Gianoulias said there would be no damages against the district judges for those types of acts.

REP. MOLNAR queried **Mr. Gianoulias** about his reasons for opposing this bill regarding the employees and taxpayers of the state being the "little" people who would have no say, but would pick up the tab.

Mr. Gianoulias replied that he did not believe he had said anything about the employees being the "little people who pick up the tab." If he did, he said he would retract it. His philosophy or public policy reasons to oppose this legislation are the taxpayers who don't have any control over the wrongdoing. He also said that the individual employee who does the bad act is now and will continue to be liable for punitive damages.

REP. MOLNAR asked if, in the case of punitives in civil actions, the shareholders and consumers of that product or service are the ones who pay the compensatory and punitive damages and they also have no say. Further, he wanted to know if it wouldn't be true if this bill were passed, that they would be providing a leveling of the playing field.

Mr. Gianoulias agreed that shareholders are in a similar position but the difference would be that they are in it for profit and there are different controls.

REP. MOLNAR corrected **Mr. Gianoulias** by reminding him that he had also said, "consumers." He gave the example of an oil company which raises its prices to compensate for the costs of a lawsuit.

{Tape: 2; Side: A; Comments: This tape is recorded at 2.4 speed. In addition, the tape will not rewind to the beginning and must be partially rewound by hand.}

REP. MC GEE asked **Mr. Gianoulias** if he said that individual employees are subject to punitives.

Mr. Gianoulias said, "Yes."

REP. MC GEE asked him to cite the statute.

Mr. Gianoulias cited 2-9-503(6), MCA, the statue he had referred to earlier, and said that the legislature has recognized that and specifically that the state can't defend and indemnify for those kinds of activities.

REP. WILLIAM BOHARSKI asked **Mr. MacMaster** if, since there is no effective date on this bill, the effective date would be October 1, 1995; and since there is no retroactive applicability clause, what that meant to the case that **REP. FUCHS** mentioned which involves someone in his family or the estate. He wanted to know if this law were to change by passage of this bill if he was correct in believing that this would not have an impact on that particular case since that cause arose before this bill was enacted. Therefore, he wondered if none of these provisions would be applicable to that case.

Mr. MacMaster said that was his opinion. There is a provision in the statute that says no statute is retroactive unless it is specifically so stated to be retroactive in the bill that passes, either the statute or the amendment.

REP. BOHARSKI asked the sponsor if, just in case the foregoing opinion were wrong, he would have any objection whatsoever to amending this bill with a clause that would specifically say that its provisions do not apply to any cases whose cause existed before the effective date of this act or any actions pertaining to it to be absolutely clear that he or anyone who is in his family or the estate could be affected by this act.

{Tape: 2; Side: A; Approx. Counter: 3.9}

REP. FUCHS said, "No, I would not."

REP. ANDERSON asked about the case of punitives being awarded in a case against an individual employee if that individual is liable for it and not his department.

Mr. Gianoulias said that is the law now. This bill would change that and the governmental entity would then be responsible for paying for that award.

REP. KOTTEL asked if the lawsuit **REP. FUCHS** referred to was brought against the estate by the state.

REP. FUCHS said it was not, that it was brought by his father as a developer against the state department of health and environmental sciences.

Closing by Sponsor:

REP. FUCHS said it was his opinion that the responses by the department have no merit. He said that the people are angry for a reason and that this is a good opportunity for all of the legislators to follow the leadership role of Governor Racicot and show the people at home that they are responsive for accountability and more compassion for the taxpayers. He urged the committee to consider this bill seriously.

CHAIRMAN CLARK announced that the committee would withhold action on HB 55 until further information is gathered. He said that action on HB 93 would be delayed because it contains ruling authority which needs to be worked out with the sponsor.

{Tape: 2; Side: A; Approx. Counter: 11.1.}

EXECUTIVE ACTION ON HB 117

Motion: REP. ANDERSON MOVED DO PASS HB 117.

Discussion: REP. BOHARSKI asked about the possibility of granting the judge the authority to order treatment for a criminally charged person at the beginning of the process rather than have the Montana State Hospital staff return to the judge with the treatment plan.

REP. ANDERSON said that once defendants are charged with a crime, it is the state which is trying to administer the medications which would make them fit to stand trial. The judge has nothing to decide on until a treatment plan is prepared and presented to the court.

REP. BOHARSKI presented the argument that if a person is charged in one county, transported to Warm Springs, and then there needs to be a ruling on the treatment plan, it would create the need for two different court hearings. He felt it would be a savings if the sentencing judge were told that he could tell the department to treat the defendant and then return him when he is fit to stand trial. That would save a court hearing in the Warm Springs judicial district to get the treatment plan authorized. He asked why the extra step of authorization is included in the bill.

REP. ANDERSON said he imagined that there are cases where judicial authorization isn't necessary because of voluntary consent by the defendant.

REP. BOHARSKI asked to redirect the question to **Beda Lovitt** without objection from the committee.

Beda Lovitt, Attorney on contract with DCHS, said that since this bill addresses the criminal defendant, several statutory elements have to be considered. Realizing that the jurisdiction over this individual who has refused treatment is with the criminally sentencing court and not necessarily with the court in Deer Lodge, language regarding noncompliance was included in the bill to address the concerns that various advocacy groups have to ensure that the individual truly has due process.

REP. BOHARSKI asked, "Which judge?"

Ms. Lovitt said the individual is under the jurisdiction of the sentencing court. The person doesn't come under the jurisdiction of another county just because they are in residence at Warm Springs.

REP. BOHARSKI asked which court would be petitioned when an individual refuses treatment.

Ms. Lovitt asked if he was referring to language proposed in this legislation wherein a defendant refuses to comply and a petition goes to "the" court and, if so, that would be the sentencing court.

REP. BOHARSKI answered, "Yes."

Mr. Lovitt said it would be the sentencing court because that court would have jurisdiction over the individual, keeping in mind that the individuals addressed in this bill are criminally charged rather than with a civil suit.

REP. BOHARSKI asked if it would be possible to make the court in the county where the person is being treated able to review the treatment plan instead of transporting them back to the sentencing court.

Ms. Lovitt said that she did not know, but that they would look at it.

CHAIRMAN CLARK said that line 24 on the bill says "appropriate institution." He asked **Ms. Lovitt** to clarify what an appropriate institution would be and if it could be a local mental health center where they defendant could be kept until the judge acts.

Ms. Lovitt asked if he was referring to the language of the existing statute under (2)(a). Upon his affirmative response, she answered that at this time the institution which would apply would be Montana State Hospital.

CHAIRMAN CLARK suggested that "Montana State Hospital" should be the wording in place of "appropriate institution."

Ms. Lovitt responded that it is old language and they did not look at changing it.

REP. BOHARSKI said that it is a concern that by this bill expense is being added by transporting these individuals back and forth between the sentencing court and the institution.

REP. SMITH told the committee that a bill has been drafted for concurrence in criminal issues in regards to those who have broken their parole and that would offer the retrial to be in concurrence of county jurisdictions. If that bill should pass, it would have to do with criminals and not with the mentally ill criminal.

REP. BERGMAN asked for clarification whereby the defendant is evaluated.

Ms. Lovitt said the individual is charged with a crime and in the process they are found to be unfit to proceed. The law then provides that they can be placed in an appropriate institution (Montana State Hospital) for a 90-day period where evaluation and, hopefully, treatment takes place. At the end of the 90 days, the sentencing court has to determine whether that unfitness will endure or not. If the unfitness will endure, they dismiss the criminal charges and proceed with a civil commitment. If they should recover their fitness to proceed, the charges can be reinstituted. It is the 90-day period with which the hospital is concerned because as the law stands now, a defendant who has been found unfit to proceed can refuse treatment and in effect be warehoused with no treatment, often with their condition having deteriorated. They would go back to the sentencing court still unfit to be tried.

REP. BERGMAN asked if this involves a psychiatrist at the local level.

Ms. Lovitt said, "Usually, yes."

{Tape: 2; Side: A; Approx. Counter: 34.6}

REP. BERGMAN said that it would still mean that the defendant would have to be transported to a location where a psychiatrist would be available since there are none in eastern Montana except in Billings.

REP. KOTTEL made the point that the civil commitment laws of Montana were changed to "professional person" which would include a person with a Masters in Social Work degree (MSW) or a psychiatric nurse to testify in civil cases.

Ms. Lovitt said that civil statutes require what is called a "certified professional person." She was not sure who is used in criminal proceedings to testify in that capacity.

REP. BERGMAN asked if psychologists as well as psychiatric nurses would qualify.

Ms. Lovitt answered, "Certified professional person, under the civil statutes."

REP. WYATT said she would be interested in leaving the wording, "appropriate institution," because of the possibilities of beginning regional contracts and joint efforts between counties. She wondered if the evaluations could be done through the joint effort by utilizing the professional persons within the communities perhaps resulting in the defendant staying within that county for treatment.

Ms. Lovitt said that this was a very good point and that is a reason to leave the wording as it is.

REP. SOFT asked if it is possible under current law that after the client is committed to the state hospital and the treatment plan has been developed, to send (via mail or fax) this treatment plan to the judge for his approval and decision.

Ms. Lovitt answered, "Very likely." She said that hearings are done now by conference call as long as everyone's rights are safeguarded. She pointed out that there might be times when there would be an objection to a hearing without a face-to-face meeting with the judge.

REP. KOTTEL recommended strongly that the language not be changed from the general word, "institution," into a specific institution such as Warm Springs. She reminded the committee that there are four categories in which someone could be unfit to stand trial. The definition of developmental disability as defined in the statute includes some disabilities for which Warm Springs would not be the appropriate place for treatment. In addition, the handicapped category can be used to determine unfitness to stand trial. In this case, a medical institution might be a more appropriate facility for treatment to reach a state of fitness to stand trial. She also addressed her concern about the constitutional issues which she said are taken care of in another section and cited 46-14-222, MCA.

{Tape: 2; Side: A; Approx. Counter: 43.4}

REP. MC GEE said that he had a concern about the phrase, "so long as the unfitness endures."

REP. ANDERSON said that he believed that this was addressed during testimony and that there is a slight inconsistency within the statute.

CHAIRMAN CLARK said that it is current language.

REP. MC GEE said he understood that and thought it was part of the committee's job to straighten up these inconsistencies as they are found.

CHAIRMAN CLARK agreed that action on this bill should be postponed and it be referred to the subcommittee.

REP. CURTISS asked whether, within the scope of the facilities offered within DCHS and the four categories for determining unfitness, the entire gamut of facilities necessary to meet these various treatment needs.

Ms. Lovitt said, "Currently, yes, anyone they would deal with who is seriously mentally ill, the department would have the facility." But she disagreed that the department couldn't place a defendant outside one of their own institutions under this language while the department looks at regionalization.

REP. CURTISS asked **Mr. MacMaster** clarify.

Mr. MacMaster said that his understanding of the question related to whether the department would have enough institutions when the defendant would be committed to the custody of DCHS to be placed in the appropriate institution for the four types of persons **REP. KOTTEL** had talked about. His opinion was that if they don't, there would be a problem because of the wording on lines 23 and 24 which he interprets to mean that the department can only place the defendant in one of their own institutions.

CHAIRMAN CLARK referred this bill to the subcommittee along with the other mental health bills which closed the discussion on HB 117. He discussed plans for changes in the committee's schedule. In order to accommodate the changes, he requested that the committee cooperate in avoiding redundant comments and questions and unnecessary discussion.

Motion: **REP. SOFT MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 90-minute tapes.}

ADJOURNMENT

Adjournment: The time for the adjournment was not recorded and is approximated at 10:30 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 1/16/95
HB 117

Testimony on HB 117 by Dan Anderson, Administrator, Mental health Division, Department of Corrections nd Human Services

The Department requested HB 117 in order to address a problem in providing services to persons who are patients at Montana State Hospital because they have been found to be "unfit to proceed" : too mentally ill to assist in their own defense against a criminal charge. These individuals are often placed in Montana State Hospital to be treated in order to regain fitness to aid in their defense.

In at least two recent cases patients in this category have refused medications and the courts have ruled that current law does not allow us to force treatment.

This bill would require our staff to develop a treatment plan to assist the patient in regaining his/her fitness to proceed and, if the patient refuses to follow the plan, allow us to request an order for involuntary treatment.

Without the ability to treat these patients there are at least four potential negative results which can occur:

1. It is possible for the individual to avoid prosecution by maintaining unfitness until charges must be dropped.

2. Some persons who have untreated mental illness can disrupt treatment of other patients or be dangerous to staff or patients.

3. It is an inappropriate and wasteful use of Montana State Hospital to confine people there but not be able to treat them.

4. The longer an individual goes without treatment of a serious mental illness, the more difficult is to successfully treat and the more likely it is to cause a permanent disability.

Your support of HB 117 will assist both the criminal justice system and the public mental health system in carrying out our responsibilities.

EXHIBIT 2
DATE 1/16/95
HB 117

ZIP!Office Release 1.25

Printed by: Anderson, Dan at 1/17/95 10:22a

To: Anderson, Dan

From: Peltier, Shirley

Date: January 17, 1995 10:19a

Subject: (Attachment 1)House Bill 117

— Attachment: HB117 (WordPerfect 5.1) ————————

TESTIMONY IN SUPPORT OF HOUSE BILL 117

Carl L. Keener, M.D.
Medical Director
Montana State Hospital

I am in support of House Bill 117 because it will provide for treating mentally ill defendants found unfit to proceed. Currently, such individuals may refuse treatment after being sent by the courts to the hospital. The hospital, whose mission is to treat, then becomes a holding facility forced to keep the individual in a treatment facility but not permitted to treat and use appropriate medication. It is difficult for staff who have observed the beneficial effect of medication to contain a psychotic patient without being able to administer the one thing most likely to help. Should the individual be dangerous, staff and other patients are also at increased risk. Medication is necessary if the unfit to proceed defendant is ever going to be fit for trial. It will, of course, not change the fact the individual was mentally ill or psychotic at the time of the alleged offense and thus not eliminate that aspect of his defense.

Such containment is very expensive for the state ($250.00/day) and accomplishes nothing beneficial to anyone. It is destructive to the defendant who continues to suffer from his illness which in this untreated state may become chronic and more resistant to treatment.

The following is a recent clinical description of one such individual:

At Montana State Hospital the defendant has been overtly psychotic, with rambling, disconnected, and nonsensical speech and disorganized behavior. His hygiene is poor, resulting in an offensive odor to both his person and his living area. He hoards food and garbage on his person and in his room.

If not carefully supervised, he will shower wearing four pairs of underwear and then put fresh clothes over the dirty wet clothes. He often wears multiple pairs of pants and shirts. In the week prior to this writing he took a new shirt, ripped off the sleeves, put ice cubes in the shirt, and tied it around his neck. He stated, "this keeps the waves from getting to me." He frequently sleeps under his bed, putting blankets around the bed frame to make it into a tent. At other times, he has folded up his mattress and slept on the iron part of the bed frame in a fetal position, as be believes oxides in the mattress will grab him. He complained of "microphones frying my brain" and has challenged staff members to "do something about it." It requires constant supervision to make sure patients' hygiene and comfort are maintained.

EXHIBIT 3
DATE 1/16/95
HB 117

January 13, 1995

House Judiciary Committee
Capitol Station
Helena, MT 59620

Re: House Bill No. 117

Dear Members,

The Montana Psychiatric Association is supportive of House Bill No. 117. This bill would facilitate necessary psychiatric treatment for Defendants found Unfit to Proceed with their criminal charges.

Under our current statutes, a Defendant adjudicated Unfit to Proceed can spend months in a state institution refusing the very treatment which, more than likely, would result in his/her fitness to proceed with criminal charges. These Defendant's generally suffer from serious mental illnesses and in their grossly decompensated states are at risk for harming peers as well as the staff providing for their care. In addition, the Defendant's themselves are at higher risk of never returning to a safe and rational level of functioning the longer their illness goes untreated.

One would wonder what the purpose of an Unfit to Proceed status is if not to provide treatment promoting competency to stand trial. Members of the Montana Psychiatric Association are particularly opposed to mentally ill individuals being committed to an institution which is able to provide nothing more than preventive detention.

In closing, we respectfully request this committee support House Bill No. 117 to assure that persons sent to state institutions on an Unfit to Proceed status are afforded humane treatment which will restore them to competent functioning.

Sincerely,

Montana Psychiatric Association

Virginia Hill, M.D., President
Joe Rich, M.D., President-Elect

ıed 10,000.
decision of the District Court is affirmed.

. CHIEF JUSTICE HASWELL and JUSTICES HAR-
)N, WEBER and GULBRANDSON concur.

KARLA WHITE, PLAINTIFF AND RESPONDENT, v. STATE OF MONTANA, DEFENDANT AND APPELLANT.

No. 82-170.
Submitted Feb. 3, 1983.
Decided April 8, 1983.
Rehearing Denied May 5, 1983.
661 P.2d 1272.

CONSTITUTIONAL LAW — MUNICIPAL CORPORATIONS — STATES

1. **Constitutional Law**
Constitutional guarantee of equal protection requires all persons to be treated alike under like circumstances. U.S.C.A. Const.Amend. 14, § 1; Const. Art. 2 § § 4, 16.

2. **Constitutional Law**
If statute affects a "fundamental right," it must be measured by strict-scrutiny test. U.S.C.A. Const.Amend. 14, § 1; Const. Art. 2, § § 4, 16.

3. **Constitutional Law**
Application of strict-scrutiny test to statute requires that statutory scheme be found unconstitutional, unless the state can demonstrate that such law is necessary to promote compelling government interest. U.S.C.A. Const.Amend. 14, § 1; Const. Art. 2, § § 4, 16.

4. **Constitutional Law**
Right to bring civil action for personal injuries is "fundamental right," and statutory scheme affecting right is subject to strict-scrutiny analysis. U.S.C.A. Const.Amend. 14, § 1; Const. Art. 2, § § 4, 16.
See publication Words and Phrases for other judicial constructions and definitions.

5. **Constitutional Law**
Montana Constitution guarantees that all persons have speedy remedy for every injury. Const. Art., 2 § § 4, 16.

6. **Constitutional Law**
With regard to constitutional guarantee that all persons have speedy remedy for every injury, term "every injury" embraces all recognized compensable components of injury, including right to be compensated for physical pain and mental anguish and loss of enjoyment of living. Const. Art. 2, § § 4, 16.
See publication Words and Phrases for other judicial constructions and definitions.

EXHIBIT
DATE 1/16/93
HB 117

7. Constitutional Law
Municipal Corporations
States
Statute prohibiting recovery for noneconomic damages sustained as result of negligence of the state or political subdivisions thereof is unconstitutional, no compelling state interest having been shown to justify discrimination between those who suffer pain and loss of life quality and those who primarily suffer economically. MCA 2-9-104.

8. Constitutional Law
States
Statutory limitation on economic damages for which the state and political subdivisions thereof may be held liable impermissibly discriminates between recovery for pain and suffering and recovery for economic damages, and such statute is, therefore, unconstitutional, in light of failure of the state to demonstrate compelling state interest to justify any limitation. MCA 2-9-104.

9. Constitutional Law
No constitutional right to recover punitive damages exists; hence, in reviewing constitutionality of statute immunizing the state from punitive damage assessments, "rational basis" test, rather than "strict scrutiny" test, would apply. U.S.C.A. Const.Amend. 14 § 1; Const. Art. 2 § § 4, 16.

10. Constitutional Law
States
Rational basis exists for statutorily created immunity from punitive damage assessments for governmental entities, and, hence, statute is constitutional. MCA 2-9-105.

Appeal from the District Court of Cascade County.
Eighth Judicial District.
Hon. John McCarvel, Judge Presiding.
See **C.J.S.**, States § 325.

Action was brought against the State for injuries sustained when mental hospital inmate, who allegedly escaped from hospital due to negligence of the State, attacked plaintiff. The State alleged that government was immune from liability for noneconomic damages and for punitive damages. The District Court granted summary judgment in favor of plaintiff, holding that statutory limitations on governmental liability for damages in tort and for exemplary and punitive damages were unconstitutional. The State appealed. The Supreme Court, Mr. Justice Morrison, held that: (1)

statute prohibiting recovery from the State and its political subdivisions for noneconomic damage, and limiting amount of economic damages recoverable, is unconstitutional in its entirety, and (2) rational basis exists for statutorily created immunity from punitive damage assessments for governmental entities, and such statutory provision is constitutional.

Affirmed in part; vacated in part; and remanded.

MR. JUSTICE GULBRANDSON concurred in part and dissented in part and filed opinion.

MR. JUSTICE WEBER concurred in part and dissented in part and filed opinion in which MR. CHIEF JUSTICE HASWELL joined.

John Bobinski and Michael Young argued, Dept. of Admin., Helena, for defendant and appellant.
Hoyt & Trieweiler, Great Falls, Erik B. Tueson argued, Great Falls, for plaintiff and respondent.
Anderson, Edwards & Molloy, Billings, Richard W. Anderson argued, Billings, Anderson, Brown, Gerbase, Cebull & Jones, Billings, James L. Jones and Ann E. Wilcox, Billings, Michael J. McKeon (Donna Bartel) Anaconda, Harold F. Hanser, County Atty., Billings, Jim Nugent, City Atty., Missoula, Peterson, Schofield & Leckie, Billings, Kenneth D. Peterson, Billings, French, Grainey & Duckworth, Ronan, Edward K. Duckworth (Donna Bartel) Ronan, J. Daniel Hoven, Legal Services Division, Helena, David Gliko, City Atty., Great Falls, J. Fred Bourdeau, County Atty., Great Falls, Milodragovich, Dale & Dye, Missoula, Harold V. Dye, Missoula, Alexander & Baucus, Great Falls, Neil Ugrin, Co. of Cascade & City of Great Falls, Great Falls, Montana, for amicus curiae.
Burgess, Joyce & Whelan, Thomas F. Joyce, Butte, for Amy Foran.

MR. JUSTICE MORRISON delivered the opinion of the Court.

The State of Montana appeals from a summary judgment entered by the District Court of the Eighth Judicial District, Cascade County, which found section 2-9-104, MCA, limitation on governmental liability for damages in tort, and section 2-9-105, MCA, providing for state immunity from exemplary and punitive damages, both to be unconstitutional.

Plaintiff filed an action seeking damages for personal injury alleging negligence on the part of defendant State of Montana. The State filed an answer alleging that the government was immune from liability for noneconomic damages and for punitive damages. Plaintiff moved the court for summary judgment on these defenses, claiming the limitations found in the State Tort Claims Act are unconstitutional and void.

Plaintiff Karla White intends to prove that as a result of the reckless conduct of the State of Montana, she was attacked by a violent and dangerous criminal, and that as a result, she has sustained severe emotional injuries which will significantly affect her ability to live a happy and fulfilling life, although her demonstrable economic losses will be relatively insignificant. The allegation of gross negligence against the State of Montana is premised upon the State permitting the allegedly violent and dangerous person to escape from the mental hospital at Warm Springs and remain free for a period of five years without serious attempts to locate and reincarcerate this individual. Plaintiff was attacked in Great Falls, Montana, approximately five years after the inmate escaped from Warm Springs.

We find the following issues to be dispositive:

1. Do the limitations on recovery against the State of Montana as provided for in section 2-9-104, MCA, violate constitutional guarantees of equal protection?

2. Does the prohibition against exemplary and punitive damage assessments as provided for in section 2-9-105, MCA, violate constitutional guarantees of equal protection and due process?

DOES SECTION 2-9-104, VIOLATE CONSTITUTIONAL GUARANTEES OF EQUAL PROTECTION?

Section 2-9-104, MCA, provides as follows:

"(1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

"(a) noneconomic damages; or

"(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000, for each claimant and $1 million dollars for each occurrence.

"(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1) (b) of this section, or both, upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitation stated in this section or specifically agrees to provide coverage for noneconomic damages, in which case the insurer may not claim the benefits of the limitation specifically waived."

Plaintiff attacks section 2-9-104(1), MCA, by arguing it violates equal protection by classifying people in three different ways:

1. It classifies victims of negligence who have sustained noneconomic damage by whether they have been injured by a nongovernment tort-feasor or a government tort-feasor. It totally denies any recovery to the latter class.

2. It classifies victims of government tort-feasors by whether they have suffered economic damages or

noneconomic damages. It allows recovery to the former group up to $300,000 while it totally denies recovery to the latter group.

3. It classifies victims of government tort-feasors by the severity of the victims' injuries. It grants recovery to those victims who have not sustained significant injury by allowing them to recover up to $300,000 in economic damages. It discriminates against the seriously injured victims by denying recovery for any injuries over $300,000.

[1-3] The constitutional guarantee of equal protection requires all persons to be treated alike under like circumstances. U.S. Const., Amend. XIV, Section 1; 1972 Mont.Const., Art. II, Section 4. If a statute affects a "fundamental right," it must be measured by a strict scrutiny test. *Dunn v. Blumstein* (1972), 405 U.S. 330, 92 S.Ct. 995, 1002, 31 L.Ed.2d 274, 284; *Shapiro v. Thompson* (1969), 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600; *Matter of Estate of Merkel* (1980), Mont., 618 P.2d 872, 37 St.Rep. 1782. Application of this test requires that the statutory scheme be found unconstitutional unless the State can demonstrate that such law is necessary "to promote a compelling government interest." *Dunn v. Blumstein,* supra.

[4] The State argues that the right to bring a civil action for personal injuries is not a fundamental right and that the statutory scheme must be judged by the less burdensome rational basis test. We reject the State's argument and adopt that of the plaintiff.

[5,6] Article II, section 16 of the Montana Constitution guarantees that all persons shall have a "speedy remedy . . . for every injury of person, property, or character." In *Corrigan v. Janney,* (1981), Mont., 626 P.2d 838, 38 St.Rep. 545, this Court held that it is "patently unconstitutional" for the legislature to pass a statute which denies a certain class of Montana citizens their causes of action for personal injury and wrongful death. We affirm and refine our holding in *Corrigan v. Janney,* supra; we hold that the Montana Constitution guarantees that all persons have a speedy remedy

for every injury. The language "every injury" embraces all recognized compensable components of injury, including the right to be compensated for physical pain and mental anguish and the loss of enjoyment of living. Therefore, strict scrutiny attaches.

[7] The State argues that it has shown a compelling state interest in "insuring that sufficient public funds will be available to enable the State and local governments to provide those services which they believe benefit their citizens and which their citizens demand." The State further argues that the government has to engage in a wide variety of activities, some of which are extremely dangerous and not confronted by private industry. The District Court found that, "this 'bare assertion,' however, 'falls far short of justifying' a discrimination which infringes upon fundamental rights." We agree.

The government has a valid interest in protecting its treasury. However, payment of tort judgments is simply a cost of doing business. There is no evidence in the record that the payment of such claims would impair the State's ability to function as a governmental entity or create a financial crisis. In fact, the State of Montana does have an interest in affording fair and reasonable compensation to citizens victimized by the negligence of the State. Therefore, the strict scrutiny test mandated by the implication of a fundamental right has not been satisfied and the statute prohibiting recovery for noneconomic damage is unconstitutional under the Montana State Constitution.

We recognize that some limit on the State's liability may comport with the constitutional guarantees of equal protection. However, such a limitation cannot discriminate between those who suffer pain and loss of life quality and those who primarily suffer economically.

[8] We are left, in reviewing the constitutionality of section 2-9-104, MCA, with the question of whether the limitation on economic damages of $300,000 for each claimant and $1,000,000 for each occurrence is constitutional. If we

were to leave intact that portion of section 2-9-104, MCA, which limits economic damages to the sum of $300,000 for each claimant and one million dollars for each occurrence, we would then be left with a situation where recovery for pain and suffering was unlimited and recovery for economic damages was limited as prescribed by the statute. New discrimination problems would then exist; those whose primary loss was intangible could recover without limit but those who suffer tangible losses would be limited. Furthermore, at this point the state has failed to demonstrate a compelling state interest which would justify any limitation. We therefore declare section 2-9-104, MCA, in its entirety, to be unconstitutional.

DOES THE PROHIBITION AGAINST EXEMPLARY AND PUNITIVE DAMAGES FOUND IN SECTION 2-9-105, MCA, VIOLATE EQUAL PROTECTION?

[9] The punitive damage question is different from the issue of limiting compensatory damages. Plaintiff has a constitutional right to redress for all of her injuries but she does not have a constitutional right to recover punitive damages. In reviewing the constitutionality of a statute immunizing the State from punitive damage assessments, we apply the "rational basis" test rather than the "strict scrutiny" test.

[10] There exists a rational basis for distinguishing governmental entities from others in the application of punitive or exemplary damage law. The primary purpose of assessing punitives is to punish the wrongdoer and through that punishment, deter future unlawful conduct of the tortfeasor and others who might be inclined to engage in like conduct. The problem with assessing punitive damages against the government is that the deterrent effect is extremely remote and innocent taxpayers are, in fact, the ones punished. Those taxpayers have little or no control over the actions of the guilty tort-feasor.

This problem was addressed by the United States Supreme Court in *City of Newport v. Fact Concerts, Inc.* (1981), 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616, wherein the Court stated:

"Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct. See Restatement (Second) of Torts, § 908 (1979); W. Prosser, Handbook of the Law of Torts 9-10 (4th ed. 1971). Regarding retribution, it remains true that an award of punitive damages against a municipality 'punishes' only the taxpayers, who took no part in the commission of the tort. These damages are assessed over and above the amount necessary to compensate the injured party. Thus, there is no question here of equitably distributing the losses resulting from official misconduct. Cf. *Owen v. City of Independence*, 445 U.S., [622] at 657, 100 S.Ct., [1398] at 1418 [63 L.Ed.2d 673]. Indeed, punitive damages imposed on a municipality are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice suggest that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers." 453 U.S. at 266-67, 101 S.Ct. at 2759-60, 69 L.Ed.2d at 632.

We find that section 2-9-105, MCA, constitutionally creates immunity from punitive damage assessments for governmental entities.

Amicus curiae has presented the issue of whether the limitations set forth in section 2-9-104, MCA, are unconstitutional in that the limitations were not voted upon by the people but were adopted by the legislature. Amicus argues that, by adopting the limitations the legislature amended the constitution. We find this argument interesting but not dispositive in light of our holding that the questioned section violates equal protection of law.

The judgment of the District Court finding section 2-9-

104, MCA, unconstitutional is affirmed. The judgment of the District Court finding section 2-9-105, MCA, unconstitutional is vacated.

We remand this case for trial to be conducted in conformity with the views herein expressed.

MR. JUSTICES HARRISON, SHEA and SHEEHY concur.

MR. JUSTICE GULBRANDSON, concurring in part and dissenting in part:

I concur with the holding of the majority opinion that the state and other governmental entities are immune from exemplary and punitive damages and that noneconomic damages are recoverable, but I respectfully dissent from the holding that section 2-9-104, MCA, is, in its entirety, unconstitutional.

That holding, in my opinion, is somewhat gratuitous inasmuch as section 2-9-104(1)(b), MCA, was not raised or argued before the District Judge. Counsel for plaintiff, in his reply brief below, filed February 25, 1982, stated: "Plaintiffs damages are, for all intents and purposes, noneconomic." Section 2-9-104(1)(b), setting a limit on the recovery for economic damages at $300,000 for each claimant and $1 million for each occurrence, was not, therefore, properly before the District Court.

By constitutional amendment, the legislature was clearly given authority to structure governmental immunity by two-thirds vote of each house. The legislature, in setting the limits at $300,000 and $1 million and in devising the post-judgment procedures (2-9-104(2)), apparently was balancing the concept of ideal justice and the need for fiscal security, necessary for governmental entities to, in fact, provide obligatory services to the public. The Wisconsin Supreme Court, in *Sambs v. City of Brookfield* (1980), 97 Wis.2d 356, 293 N.W.2d 504, used the following language to describe the problem.

"It is the legislature's function to evaluate the risk, the extent of exposure to liability, the need to compensate citizens for injury, the availability of and cost of insurance, and the financial condition of the governmental units. It is the legislature's function to structure the statutory provisions, which will protect the public interest in reimbursing the victim and in maintaining government services and which will be fair and reasonable to the victim and at the same time will be realistic regarding the financial burden to be placed on the taxpayers."

The obligations imposed upon governmental entities must be performed, even though the risks inherent in performing absolute obligations are great. The responsibility for confining, housing, and rehabilitation of persons convicted of criminal activity; the treatment and supervision of mental patients at government institutions or under government programs; the planning, construction, and maintenance of thousands of miles of highways; the operation of municipal transportation systems and airport terminals; and the operation and maintenance of schools, playgrounds, and athletic facilities are only a few of those obligations.

Section 2-9-104(2), now declared unconstitutional by the majority, contains language limiting the exposure of insurers. Undoubtedly, there are insurance contracts in existence, which now should be rewritten to provide coverage for the unlimited liability facing governmental entities.

In my view, this Court could, and should, find that the $300,000 and $1 million limits apply to economic and noneconomic losses, and that the post-judgment procedures for excess judgments should be retained, because those procedures include entities other than the legislature.

MR. JUSTICE WEBER concurs and dissents as follows:

I concur in the holding of the majority that section 2-9-105, MCA, creates immunity from punitive damages assessments for governmental entities. I dissent from the remainder of the majority holding.

The majority concludes that Article II, Section 16 of the

Montana Constitution guarantees that all persons have a speedy remedy for every injury. A review of the history of this constitutional provision, along with the interpretations of this Court, raises serious challenges to that conclusion.

Article III, Section 6 of the 1889 Montana Constitution stated:

"Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and that right and justice shall be administered without sale, denial, or delay."

Article II, Section 16 of the 1972 Montana Constitution ("Section 16") used the same wording regarding courts of justice and speedy remedy, placing a period following the word "character." The 1972 Constitution then inserted a new sentence providing that no person should be deprived of full legal redress for injury incurred in employment with certain exceptions in connection with Workmen's Compensation, which is not applicable. The last sentence of the provision is identical to the final clause in the 1889 paragraph regarding the administration of justice.

A review of the 1972 Constitutional Convention proceedings shows that the only stated intent to broaden or change the 1889 Constitutional provision concerned the question on Workmen's Compensation. We must conclude that the 1972 Convention did not intend to change the existing constitutional provision with regard to courts of justice and speedy remedy.

Initially the decisions of this Court were consistent in the analysis of "Section 16" and its constitutional predecessor. In *Shea v. North-Butte Mining Co.* (1919), 55 Mont. 522, 179 P. 499, the plaintiff miner sought recovery for personal injury alleged to have been suffered through the negligence of the defendants in the course of plaintiff's employment as a miner. The claim of plaintiff in *Shea* is directly comparable to the present case. Plaintiff contended that the limited right of recovery through the Industrial Accident Board deprived him of access to the courts as guaranteed under the

Constitution. This Court stated the contention of the plaintiff as follows:

"[W]e gather from the brief of counsel that their objection is that, though the Act is elective, it in effect closes access to the courts by the injured employee and compels him to seek relief, if he can obtain any at all, through the Industrial Accident Board. In other words, since the section declares in expressed terms that there shall be a judicial remedy for every wrong suffered by one person at the hands of another, it is beyond the power of the legislature to provide any other remedy, though such other remedy is entirely optional." *Shea*, 55 Mont. at 530, 179 P. at 501.

In response to this contention, the Court then reached a conclusion directly contrary to the holding of the majority in the present case. This Court stated:

"But counsel are in error in supposing that for this reason the Compensation Act is repugnant to the section of the Constitution quoted. Their contention is based upon a misconception of the scope of the guaranty therein contained. A reading of the section discloses that it is *addressed exclusively to the courts.* The courts are its sole subject matter, and it relates directly to the duties of the judicial department of the government. It means no more nor less than that under the provisions of the Constitution and laws constituting them, the courts must be accessible to all persons alike, without discrimination, at the time or times and the place or places appointed for their sitting, and afford a speedy remedy for every wrong recognized by law as being remediable in a court. The term 'injury' as therein used, means such an injury as the law recognizes or declares to be actionable. Many of the state Constitutions contain similar provisions, and the courts, including our own, have held either expressly or impliedly that their meaning is that above stated. (cases cited) . . . [A]t this late day *it cannot be controverted that the remedies recognized by the common law* in this class of cases, together with all rights of action to arise in future *may be altered or abolished to the extent of*

destroying actions for injuries or death arising from negligent accident, so long as there is no impairment of rights already accrued. This necessarily follows from the proposition, well established by the courts everywhere, that no one has a vested right in any rule of the common-law." *Shea*, 55 Mont. at 532-34, 179 P. at 502-03. (emphasis added).

The holding in *Shea* was restated in *Reeves v. Ille Electric Company* (1976), 170 Mont. 104, 551 P.2d 647. Plaintiff sought damages for the death of a student electrocuted in a whirlpool bath in the Montana State University Fieldhouse at Bozeman. The architect and the builder contended that plaintiff was barred from suit under an architects and builders statute, which limited actions for damages to commencement within ten years after completion of the improvement. Plaintiff contended that the statute was unconstitutional under "Section 16" because it denied the plaintiff access to the courts and a speedy remedy for injuries and damages. This Court quoted the above portions of the *Shea* opinion, as well as other provisions, then concluded:

"Assuming arguendo, that plaintiff would have a claim under common law, *the legislature is not constitutionally prohibited from eliminating a common law right* as it did in *Shea* and *Stewart* [*Stewart v. Standard Publishing Co.* (1936), 102 Mont. 43, 55 P.2d 694.] In Section 93-2619, the legislature did not interfere with any vested right of plaintiff, but simply cut off accrual of the right to sue after ten years." 170 Mont. at 110-111, 551 P.2d at 651. (emphasis added).

In *Reeves*, this Court affirmed the judgment of dismissal in favor of the architect and the summary judgment in favor of the electrical contractor, thereby affirming the statement in *Shea* that the legislature may eliminate a remedy recognized by the common law, together with all rights of action for an injury or death, notwithstanding the constitutional provisions of "Section 16."

This Court again considered the question in *Linder v. Smith* (1981), Mont., 629 P.2d 1187, 38 St.Rep. 912, in which the plaintiff sought a determination of the constitutionality of the Montana Medical Malpractice Panel Act. The plaintiff contended that the effect of the Act was to deny him right of access to the courts in violation of "Section 16" of the Constitution. In holding against the plaintiff on this issue, this Court stated:

"The courts addressing this issue have noted that *access to the courts is not an independent fundamental right*; access is only given such a status when another fundamental right - such as the right to dissolve the marital relationship - is at issue, and no alternative forum exists in which to enforce that right. *Boddie v. Connecticut* (1971), 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113. In cases not involving a fundamental right, access may be hindered if there exists a rational basis for doing so. *Woods [v. Holy Cross Hospital* (5th Cir.1979), 571 F.2d 1164]; *Paro [v. Longwood Hospital* (Mass.1977), 373 Mass. 645, 369 N.E.2d 985]; *Ortwein v. Schwab* (1973), 410 U.S. 656, 93 St.Ct. 1172, 35 L.Ed.2d 572." *Linder*, 629 P.2d at 1190, 38 St.Rep. at 915. (emphasis added).

Up to 1981, the holdings of this Court were consistent in the interpretation of the 1889 constitutional Article III, Section 6 and the 1972 constitutional Article II, Section 16. We would also note that by enactment of the original provisions of the 1889 Constitution in 1972, the Constitutional Convention is considered to have adopted the interpretations of those constitutional provisions by the Montana Supreme Court. A general rule is stated in 16 C.J.S. *Constitutional Law* § 35 (1956):

"Where a constitutional provision similar or identical to that contained in a prior constitution or statute, or in the constitution of another state, is adopted, it is presumed that such provision was adopted with the construction previously placed on it."

No Montana case has addressed the question of a prior constitutional provision. With regard to the theory of statu-

tory interpretation and approval of prior interpretations, 2A C. Sands, *Sutherland Statutory Construction* § 45.12 (4th ed. 1973), p. 37:

"Judicial interpretation of statutes is conditioned by various additional presumptions which the courts indulge on the basis of a belief in their essential reasonableness. Thus, legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and judicial decisions that if a change occurs in legislative language a change was intended in legislative result, and *that reenactment of a statute without change in its language indicates approval of interpretations rendered prior to the reenactment.* On similar grounds, it is not presumed that the common law is changed by statutory enactment; and statutes in derogation of the common law are strictly construed." (emphasis added).

This rule of statutory construction is applicable to the interpretation of the constitutional provisions of Montana. See *State v. Cardwell* (1980), Mont., 609 P.2d 1230, 1232, 37 St.Rep. 750, 751-752; *Keller v. Smith* (1976), 170 Mont. 399, 404, 553 P.2d 1002, 1006; *School Dist. No. 12, Phillips County v. Hughes* (1976), 170 Mont. 267, 552 P.2d 328, 332.

In *Corrigan v. Janey* (1981), Mont., 626 P.2d 838, 38 St.Rep. 545, which was decided two months prior to *Linder v. Smith*, we find a contradictory position to have been taken by this Court. In *Corrigan*, pertaining to the electrocution of a man in a bathtub, we reached the decision which is relied upon by the majority. After quoting "Section 16" with regard to speedy remedy, we (including the undersigned) stated:

"It would be patently unconstitutional to deny a tenant all causes of action for personal injuries or wrongful death arising out of the alleged negligent management of rental premises by a landlord. If this action were to be taken away, a substitute remedy would have to be provided. Arguably, the repair and deduct statute provides an alternative remedy for damage to the leasehold interest. However, in no way can it be considered an alternative remedy for damages caused by personal injury or wrongful death.

". . .

"In summary, we overrule *Dier v. Mueller*, [53 Mont. 288, 163 P. 466], supra, and hold that our Constitution requires that plaintiff have a form of redress for wrongful death and survival damages." *Corrigan*, 626 P.2d at 840-841, 38 St.Rep. at 548-549.

Unfortunately, in *Corrigan* we failed to analyze any of the above-cited cases, and also failed to distinguish or overrule the same. In addition, we did not consider the effect of reenactment of "Section 16" in the 1972 Constitution. Unfortunately our constitutional statements in *Corrigan* were not supported, and we could have overruled *Dier v. Mueller* without a constitutional foundation. It now becomes particularly unfortunate when the unsupported holding of *Corrigan* is expanded to form the foundation for the present majority opinion.

Section 2-9-104, MCA, adopted in 1977, with a modification by amendment in 1979, has been found unconstitutional by the majority opinion. It is important to analyze the history and background of this section. It was enacted as a result of power given to the Legislature under Article II, Section 18 of the Montana Constitution. As originally adopted in 1972, Section 18 said only the following:

"The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property."

The proceedings of the Constitutional Convention show an almost universal approval of total elimination of sovereign immunity. However, that viewpoint was expressly rejected by the vote of the people. An amendment was proposed by Senate Joint Resolution No. 64, laws of 1974, which was adopted by the people at the general election of November 5, 1974. The amendment added the following exception to Section 18:

". . . except as may be specifically provided by law by a ⅔ vote of each house of the legislature."

The grant of power to the Legislature contained in that exception was made two years after the Constitutional Convention, and is the most recent expression contained in the Constitution of the will of the majority of the voters of Montana regarding sovereign immunity. Following this referendum vote, in 1977 the Legislature by a ⅔ vote of both houses adopted Section 2-9-104, MCA. In a similar manner, it amended that section in 1979. There must be a balancing of Sections 16 and 18, Article II of the Montana Constitution. "All constitutional provisions have equal dignity." 16 C.J.S. *Constitutional Law* § 23. Unless Section 2-9-104, MCA violates federal constitutional provisions, I do not see how the majority can disregard Section 18 and conclude that "Section 16" grants remedies which unquestionably override the specific grant of legislative authority in Section 18.

The test to be applied to determine if equal protection has been given was recently enunciated in *Matter of Estate of Merkel* (1980), Mont., 618 P.2d 872, 874, 37 St.Rep. 1782, 1784:

"The legislature is empowered to classify persons for purposes of legislation, *State v. Craig* (1976), 169 Mont. 150, 156, 545 P.2d 649, 653, and in reviewing a statute, this Court presumes that the statute is constitutional. *Great Falls Nat. Bk. v. McCormick* (1968) 152 Mont. 319, 323, 448 P.2d 991, 993. Appellant admits that this classification does not involve a 'fundamental right' or a 'suspect class,' which would require a finding by this Court of a compelling state interest in order to uphold the class. *State v. Jack* (1975), 167 Mont. 456, 461, 539 P.2d 726, 729. Rather, this Court need only determine that the 'classification [is] reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . .' *State v. Craig*, supra, 169 Mont. at 156, 545 P.2d at 653.

"The appellant has the burden of proving that the classification is arbitrary, *State v. Jack*, supra, 167 Mont. at 461, 539 P.2d at 729, a burden which appellant has not sustained here."

In accordance with the constitutional provisions and interpretations of this Court as previously cited, I would hold that "Section 16" does not contain a grant of a fundamental right. As a result the plaintiff has the burden of proving that the classification is arbitrary. Plaintiff has not met that burden. In view of the provisions of Article II, Section 18 of the Montana Constitution, under which the Legislature was specifically granted the right to provide for sovereign immunity by a ⅔ vote of each house, I would reverse the District Court's holding that Section 2-9-104, MCA, is unconstitutional. Examples of statutory limitations on damage awards which have withstood equal protection challenges are contained in the following: *Sambs v. City of Brookfield* (1980), 97 Wis.2d 356, 293 N.W.2d 504, cert. denied, 449 U.S. 1035, 101 S.Ct. 611, 66 L.Ed.2d 497; *Estate of Cargill v. City of Rochester* (1979), 119 N.H. 661, 406 A.2d 704, appeal dism'd. 445 U.S. 921, 100 S.Ct. 1304, 63 L.Ed.2d 754; *State v. Silva,* (1971) 86 Nev. 911, 478 P.2d 591; *Siefert v. Standard Paving Co.* (1976) 64 Ill.2d 109, 355 N.E.2d 537; and *Johnson v. St. Vincent Hospital, Inc.* (1980) Ind., 404 N.E.2d 585. Based upon the rules described in the majority opinion, I conclude that the right to bring the present civil action for personal injuries is not a fundamental right and that the rational basis test therefore should be applied. I would find that there is a rational basis for the distinction between non-economic damages and economic damages as contained in section 2-9-104, MCA.

Further, even if we accept the majority conclusion that there has been a denial of equal protection under the United States Constitution, a different conclusion should be reached. The strongest argument under the majority theory is the claim of discrimination between those who suffer eco-

nomic damages and those who suffer non-economic damages. Having reached the conclusion that the classification between those two types of damages justifies a declaration of unconstitutionality under the equal protection clause, the majority could still give effect to the intent of the Legislature. This could be done without a declaration that the entire section is unconstitutional. This Court has previously held that if a part of a statute is invalid but severable, the portion which is constitutional may stand while the unconstitutional part is stricken. In *Montana Auto. Ass'n v. Greely* (1981), Mont., 632 P.2d 300, 311, 38 St.Rep. 1174, 1187, this Court stated:

"If an invalid part of a statute is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected. *State v. Fire Department Relief Association, Etc.* (1960), 138 Mont. 172, 178, 355 P.2d 670, 673. A statute 'is not destroyed in toto because of an improper provision, unless such provision is necessary to the integrity of the statute or was the inducement to its enactment.' *Hill v. Rae* (1916), 52 Mont. 378, 389-90, 158 P. 826, 831. If, when an unconstitutional portion of an act is eliminated, the remainder is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained. *Gullickson v. Mitchell* (1942), 113 Mont. 359, 375, 126 P.2d 1106, 1114."

Applying this principle to section 2-9-104, MCA, we find that it is possible to eliminate from section 2-9-104, MCA, those portions which are lined through, leaving the balance of the section capable of execution in accordance with the apparent legislative intent. The following sets out such changes which could be made in section 2-9-104, MCA:

"(1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:~~(a) Non-economic damages; or(b) Economic~~ damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of

$300,000 for each claimant and $1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for ~~non-economic damages or economic~~ damages in excess of the sum authorized in ~~subsection (1)(b) of~~ this section, ~~or both~~, upon petition of plaintiff following a final judgment. No insurer is liable for such ~~non-economic damages or excess economic~~ damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitations stated in this section, ~~or specifically agrees to provide coverage for non-economic damages;~~ in which case the insurer may not claim the benefits of the limitations specifically waived."

If we were to eliminate the portions of the section which are lined through, the remaining portion contains the essential elements of the section, that being that the State or other political subdivision is not liable in tort action for damages in excess of $300,000 for each claimant and one million dollars for each occurrence, with the further provisions as to legislative authorization of payments or payments under insurance coverage which may exceed the previous limits. It seems to me that we can properly conclude that this is the action which the Legislature would have taken had it been aware of a constitutional limitation on its right to exclude non-economic damages. Certainly such an interpretation recognizes legislative intent as contrasted to a declaration of unconstitutionality for the entire section. In addition such an interpretation recognizes the right on the part of the people of Montana to allow some degree of sovereign immunity as contrasted to the reinstatement of a ban on sovereign immunity.

MR. CHIEF JUSTICE HASWELL concurs.

EXHIBIT 4
DATE 1-16-95
HB 117

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/16/95

BILL NO. HB117 SPONSOR(S) Rep. Anderson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dan Anderson	DCHS	✓	
Carl L. Keener MD	Montana State Hosp	✓	
Keith L. Colbo	MPA	✓	
~~Arlyn Myhre~~	~~State Fund~~		✓
Joe Roberts	Mt City Attys	✓	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/16/95

BILL NO. HB131 SPONSOR(S) Rep. FUCHS

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Gianetti Dept of Admin	RMTD - POLF		~
Russell B Hill	MTLA		
Jacqueline Lennark	Am. Mt. Assoc.		✓
Pam Fuchs			
Nancy Butler	State Fund		~
Stan Kaleczyc Kaleczyc	MONTANA MUNICIPAL INSURANCE AUTHORITY		✓
Gloria Dalakeland			~

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

HR:1993
wp:vissbcom.man
CS-14