MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 6, 1995, at 9:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing: HB 41, HB 176, HB 231, HB 547
Executive Action: HB 176, HB 231, HB 234, HB 41, SB 387

HEARING ON HB 176

Opening Statement by Sponsor:

REPRESENTATIVE TONI HAGENER, House District 90, Havre, presented HB 176. This bill is brought at the request of the Judicial Unification and Finance Commission which was created in the 1993 Legislative Session in response to concerns raised by the State Bar of Montana and the Montana Association of Counties that Montana's courts were running out of money. Thirty six of Montana's counties were experiencing district court funding problems. To address these issues, the district court funding committee recommended that the legislature initiate a thorough examination of court unification and finance. HB 525 passed in

the 93 Session and established the Judicial Unification and Finance Commission and provided it be a broad-based committee composed of 13 members representative of several different agencies. This bill is one of the recommendations coming out of that study. Addressing the problems of court funding shortfall and inability to update and modernize court equipment, the study commission suggested that legislation be enacted to require that all courts of original jurisdiction impose a user surcharge in criminal, civil and probate cases providing that the surcharge be used for state funding of court information technology and also providing a statutory appropriation and an effective date. The surcharge would amount to five dollars which would be forwarded to the State Treasurer and deposited in the account as established in Section 2 for state funding of court information technology. There is a fiscal note attached. There is a user fee applied to those using the service. In 1990, the Supreme Court ordered the Office of Court Administrator to provide automation for the 224 courts in Montana. These courts consist of the Supreme Court, the district courts, and courts of limited jurisdiction. Under the direction of the Court Administrator's Office, much has been accomplished but much more needs to be done. As of this date, 71 or 72 of the 224 courts or roughly 31% have been automated. The office has assisted in the installation of the technological products or provided support services to over 250 court related personnel at fifteen sites in nineteen judicial districts. The Judiciary has been allocated, on an average basis, only $168,000 for the past several years. This sum is not adequate to manage a statewide automation program. Contemplated projects include computerized legal research, automation of district court records, statewide access to court records, automation of traffic citations, fine collections and others. Although progress has been made, there is no funding mechanism to continue. The proposed $5 user fee would provide the necessary funding to allow the continued development of court automation. It is extremely important that our courts keep up with technological advances that will allow them to manage the ever increasing number of cases with ever increasing complexity that are filed on a daily basis. The ability to collect accurate and timely statewide statistics, provide access to legal research, provide databases to interface with other systems and enhance communication is essential to approving our state court system. Each journal costs approximately $1200. They are easily defaced. It would take approximately eight journals to record two years' worth of records. A CD disc costs approximately $15. It is possible to duplicate a disc so it could be stored off-site.

Proponents' Testimony:

REPRESENTATIVE JOE QUILICI, House District 36, Butte, spoke in support of HB 176. He has been a member of the Appropriations Subcommittee on general government. They have been looking at court automation. This bill was not funded in HB 2. They concur

in the method of funding used in HB 176. Users of the system would be the persons paying for it.

Pat Chenovick, Administrator for the Supreme Court, stated the corrections system and the justice system are becoming automated; however, the courts which are not automated are becoming a bottleneck to a fast and effective justice system. This bill will fund automation in all courts of Montana. He referred to two journals from the district court system which he brought to the hearing. The entries in these journals were made by hand. Storage of the journals is a problem. Busy courts use approximately six journals per year. Information has been lost in fires. People have used razor blades to remove information from the journals. The Department of Family Services will be fully automated at the cost of $9 million over an 18 month period. This came from both federal and general funds. Workers' Compensation is about to finish an imaging project which has cost approximately $5 million. Automation is expensive. This bill will provide that the users of the system will pay for the improvements and all of Montana will see the benefit of that improvement. Automation will give judges the tools to properly sentence and the offenders to be charged with the proper offense.

Gordon Morris, Director of the Association of Counties, spoke in support of HB 176.

Bob Gilbert, Montana Magistrates Association and the Montana Association of Clerks of District Court, stated that both associations are in strong support of this bill. Court automation is needed in the state of Montana. There is a sunset provision on the funding which is designed to get the program up and running. The funding source is a user fee.

Gary Spaeth, State Bar of Montana, stated their strong support of HB 176.

Nancy Sweeney, Clerk of District Court for Lewis and Clark County, stated that Lewis and Clark County was fortunate to have assisted with the Court Administrator's Office in developing a court automation program. They strongly support this bill.

Opponents' Testimony:

Jeff Koch, Collection Bureau Services, stated concern about this bill. This bill will cost his business up to $13,000 a year. To a small business, that is very hard to absorb. If the money was spent on equipment which streamlined the court system, he would be in favor of it. The first area he would like clarified is "court information technology". He has heard testimony that the money would be spent on computers. Court information technology could be almost anything. He asked that before the surcharge be imposed, there needs to be clarification regarding what will be purchased. Another area of confusion is which courts would be

affected. "Original jurisdiction" could mean the district courts only. Section 3-5-302, MCA, is the only place he located "original jurisdiction". This states: "(1) Except as provided in subsection (6), the district court has original jurisdiction . . . (b) all civil and probate matters;". Also, "(2) The district court has concurrent original jurisdiction with the justice's court . . . (3) The district court has exclusive original jurisdiction in all civil actions. . ." This would imply to him that the surcharge would affect only the district court cases and not include justice court or city courts, **EXHIBIT 1.** Different judges he has spoken with have expressed the opinion that original jurisdiction would mean the court which a case is originally filed in. What is a surcharge? Subsection 3 of this bill states that the surcharge imposed by this section is not a fee or a fine and that it must be imposed in addition to other taxable court costs, fees or fines. Is this an allowable cost which would be one the winning party would be able to include in a judgment? He handed out **EXHIBIT 2.** The handout was §25-10-201, MCA, which is the definition of allowable costs. "25-10-201. Costs generally allowable. . . (4) the legal fees paid for filing and recording papers . . ." Subsection 3 states a surcharge imposed by this section is not a fee which would indicate it would not be an allowable cost and must be absorbed by the party. It goes on to state that it must be imposed in addition to other taxable court cost fees or fines. Subsection 9 states such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law. There needs to be clarification on whether that is an allowable cost. He questioned whether the users of the court should be paying for this system. This bill would have 3/4 of the users of the court paying for the system. In criminal cases, upon conviction the defendant pays, but not the state, city, or county. They are also users of the court. This bill is fashioned so the persons using the court on civil matters will be paying the bulk of the costs which the entire state will receive the benefit of and he finds this not to be a fair tax.

Informational Testimony:

Questions From Committee Members and Responses:

CHAIRMAN CRIPPEN asked **Mr. Chenovick** to respond to the question of original jurisdiction and allowable costs.

Mr. Chenovick stated the bill was drafted by the Judicial Unification and Funding Committee. The committee believed that original jurisdiction applied to any court where the case was first filed. The language for the fee was taken from the section which deals with the surcharge for county attorneys. They wanted to make sure the $5 surcharge did not change where the case was filed.

CHAIRMAN CRIPPEN asked **Mr. Koch** if he agreed with the explanation.

Mr. Koch stated he understood the answer relating to jurisdiction; however, he didn't understand about allowable costs.

CHAIRMAN CRIPPEN stated the surcharge is not an allowable cost. It is a specific charge and there is no question as to the allowability of it. It will be charge under all circumstances. Allowable costs would refer to the party to whom costs are awarded.

Mr. Koch stated that **Mr. Chenovick** stated the $5 would not be used as a cost which would cause a case to be filed in another court because of dollar limitations. A legal fee paid is an allowable cost for filing. The bill in Section 1, (3) states this cost is not a fee. He feels that it would be an allowable cost but the language is contradictory.

CHAIRMAN CRIPPEN asked who pays for filing fees?

Mr. Koch stated they would be paid by the person filing the case. Upon judgment, those fees can be entered into the judgment against the losing party.

CHAIRMAN CRIPPEN asked who would pay the surcharge?

Mr. Chenovick stated the language was taken from the county attorney surcharge. If that surcharge is included, this would also be an allowable cost.

SENATOR REINY JABS asked how long the 10 FTEs would be employed and if there would be a need for additional full time employees on this project?

REPRESENTATIVE HAGENER stated that the sunset clause would say that the ten FTEs would be reduced in number when the basic automation program was completed.

Mr. Chenovick stated the fiscal note stated 10 FTEs to install and train people on the judicial case management system. Under current budget, there are five individuals employed for the project. The bill is sunset after four years. He cannot say that the 10 FTEs will disappear at the end of four years. A certain amount of support will need to be given to courts at the level they are at in automation. Someone will have to do that either at the county or state level.

SENATOR LINDA NELSON stated that the fiscal note reflected 25% of the people cannot pay the surcharge. This seemed like a high number to her.

Mr. Chenovick commented they arrived at that number by asking district courts and courts of limited jurisdiction what percentage of individuals have their fees waived. These people

have a constitutional right to use the court. If they cannot afford to pay the fee, it can be waived by the judge.

SENATOR SUE BARTLETT, referring to the fiscal note, asked **Mr. Chenovick** if he currently had five FTEs on staff and this bill would be adding another five.

Mr. Chenovick stated that was correct. He has five staff members dedicated to installation, training and programming for computerization in the courts. They would add additional staff up to the 10 FTEs.

SENATOR BARTLETT asked the intent of the term "court information technology".

Mr. Chenovick stated the term "court information technology" is a term which has evolved over several years from data processing and computerization. The executive branch has a Information Technology Advisory Council. The term has evolved to include imaging technology and real time court reporting technology. Data processing may not be inclusive enough to include things which may come up in four years. Technology is developing which would not be classified as data processing.

SENATOR BARTLETT asked if the term could include microfilm.

Mr. Chenovick commented that as the technology of the program evolves and they have years of records stored on computers, they will move those records to microfilm or CDs so that access will go along with the computerization of the court.

SENATOR LORENTS GROSFIELD stated the bill as introduced is an earmarked account with statutory appropriation. He understands the earmarked account to make the case of a user fee. Why would it be necessary to have a statutory appropriation?

Mr. Chenovick commented the Judicial Unification and Funding Committee decided on the statutory appropriation. An earmark fund would do the same thing.

Closing by Sponsor:

REPRESENTATIVE HAGENER remarked that she appreciated any clarification which the bill might need. She stated that we are in the midst of the technological revolution. It is a rare business which absorbs costs. Costs are usually passed along to the client. The client would benefit for more rapid, efficient and concurrent service.

{Tape: 1; Side: B}

HEARING ON HB 547

Opening Statement by Sponsor:

REPRESENTATIVE BOB CLARK, House District 8, Ryegate, presented HB 547 which is a bill aimed at stopping the possession of firearms by convicted, violent felons. Currently our Constitution allows a person, regardless of what they have been convicted of, to possess a firearm once they have completed their sentence. When a person completes his sentence and parole, all of his rights are restored. If a person has been convicted of a violent felony, he should never be allowed to own or possess a firearm. He had intended to sponsor HB 70, which was a constitutional amendment to do the same thing. Rather than place another amendment on the ballot in 1996 which would not become effective until 1997, they decided to go ahead with HB 547. It puts the violent felon under state supervision for the rest of his life.

Proponents' Testimony:

Moria Murphy stated that currently, under Montana law, once a person is off of state supervision and has been convicted of a violent felony, they can legally possess a firearm. Montana is the only state which allows a convicted felon to possess a firearm automatically. Most people who have been convicted of a violent felony recidivate. Statistics show that 60% of violent offenders will be rearrested once they leave prison and about half will be reconvicted of a violent felony. Quite often firearms are used in the commission of those offenses. There is a good public policy reason for this bill. At first a constitutional amendment was proposed to achieve this; however, a convicted felon can be constitutionally limited to no longer possess a firearm. The Constitution states that once a person is off state supervision, they automatically have their rights returned to them. Under this bill, that person never has their rights returned to them for purposes of firearm control because state supervision never ceases for purposes of firearm control. This bill is constitutional because state supervision can be extended for a lifetime for a person who has been convicted of a violent felony. She consulted defense attorneys, other prosecutors, and law professors when drafting this bill. Everyone believed this bill to be constitutional. HB 547 not only limits the violent offender from possessing a firearm, it also makes it a new offense. They can be sentenced from two to ten years. The federal government cannot prosecute a person for possessing a firearm because Montana law does not prohibit such a person from possessing a firearm. If this bill is passed, the federal government would be able to prosecute under the Federal Gun Control Act. This would mean these felons could go to federal prisons. This bill does not prohibit people who have been convicted of non-violent felonies from possessing a firearm. If the person feels that they do have a specific reason for possessing a firearm, they can go through a petition procedure

before the state district court where they reside. If the prosecutor who convicted the person or the prosecutor's office or the law enforcement agency that investigated the person's crime opposes the person possessing a firearm, the petition will not be granted. She presented her written testimony, **EXHIBIT 3.**

Beth Baker, Department of Justice, commented that after the Congress passed the Brady law, Attorney General Mazurek appointed a working group to people to study and make recommendations on how to deal with that law in Montana. The working group included representatives of law enforcement agencies, gun owners and gun dealers. One of their recommendations, which passed unanimously, was to support legislation to restrict the possession of firearms by violent felony offenders. This bill applies only to violent offenders. It provides a process for petitioning for a waiver so that in specific circumstances, if the court finds it appropriate, the restriction can be waived. She proposed an amendment, **EXHIBIT 4.** This is in response to a decision issued by the Montana Supreme Court on February 24. The case was **United States v. Brooks,** which was a question certified by the Federal District Court to the Montana Supreme Court. The defendant had been charged with violation of the federal law which prohibits felons from possessing firearms. Because the federal law is dependent on the state law, the district court asked the Montana Supreme Court whether the defendant was prohibited, under Montana law, from possessing a firearm. The sentencing order had not specifically stated that the defendant was prohibited from possessing firearms, but had ordered the defendant to abide by all rules imposed in the conditions of probation. A standard condition of probation is that the defendant shall not possess firearms. The Montana Supreme Court said that because § 46-18-801, MCA, requires specific enumeration of the conditions, that was not good enough and the defendant could not be convicted of a federal firearms offense. The Court was divided on the issue. It was the opinion of three justices, concurred in by two other justices, and a dissent by the Chief Justice and one of the other members. The amendments would allow the sentencing judge to incorporate by reference the rules of the probation office or the board of pardons. If the judge orders the defendant to comply with the rules of probation, that will be considered a specific element of the sentence. She has discussed the amendments with **REPRESENTATIVE CLARK.** He has discussed the concept with the Chief Justice and has advised her that he would like some time to look it over.

Chuck O'Reilly, Sheriff of Lewis and Clark County, Montana Sheriffs and Peace Officers Association, urged support of the bill.

Dave Ohler, Legal Counsel for the Department of Corrections and Human Services, stated the Department supports HB 547 as well as the amendments proposed by **Ms. Baker.**

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR BAER asked **REPRESENTATIVE CLARK** if he approved of the amendments.

REPRESENTATIVE CLARK asked the committee to hold off on executive action until he could talk to Chief Justice Turnage.

Closing by Sponsor:

REPRESENTATIVE CLARK stated the three strikes and you are out bills will solve some of the problems associated with violent felons and firearms. These laws will keep felons where they belong. Section 3 (2) contains an appeal process. If someone believes they need a firearm, they can appeal to the sentencing court for relief to own a firearm.

HEARING ON HB 231

Opening Statement by Sponsor:

REPRESENTATIVE BOB PAVLOVICH, House District 37, Butte, presented HB 231. This corrects an oversight made in the 1993 Legislative Session. The amendment attempted to set identical fees for entry of judgment but overlooked the statute for the confession of judgment.

Proponents' Testimony:

Bob Gilbert, Montana Clerks of District Court, stated this is a housekeeping bill. The fee was completely overlooked. It brings it in line with the other fees.

Opponents' Testimony:

Nancy Sweeney, Clerk of District Court for Lewis and Clark County, appeared on behalf of the **Montana Association of Clerks of District Court.** This legislation will make collection of fees for entry of judgment uniform. This bill will not affect state revenues at all. Lewis and Clark is one of the larger counties and would have received an additional $80 during the calendar year 1994. The Association requests this change simply to make collection of judgment fees uniform. In 1993 the legislature attempted to standardize the fee collected for entry of judgment. The fee for a transcript of judgment was amended from a specific fee of $25 to "the fee for entry of judgment provided for in (1) (c), MCA." The provision made the fee for entry of judgment consistent in the general fee statute. It did not include a reference to §27-9-103, MCA, regarding confessions of judgment.

The variance of judgment fees are confusing for attorneys as well as staff. She presented her written testimony, **EXHIBIT 5.**

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE PAVLOVICH offered no further remarks on closing.

HEARING ON HB 41

Opening Statement by Sponsor:

REPRESENTATIVE LIZ SMITH, House District 56, Deer Lodge, presented HB 41 by the request of the Department of Corrections and Human Services. This provides for a procedure by which medication may be involuntarily administered to a patient at a mental health facility. It would also provide protections for the patient and an annual report to the governor. This would amend two areas of code. The Board of Visitors was not funded in subcommittee; therefore, she would like to work with the Department to prepare a contingency amendment which would keep in due process the oversight of use of medications by the review committee.

Proponents' Testimony:

Dan Anderson, Administrator of Mental Health Division of the Department of Corrections and Human Services, stated the purpose of HB 41 is to provide a reasonable mechanism for providing medication to seriously mentally ill persons in a mental health facility who refuse medication. It applies only to people who have been found seriously mentally ill. They would be people who a district court has determined are a danger to self or others and therefore must be hospitalized, almost always, at the state hospital. This bill would allow the district judge, in addition to ordering the person to be treated at the state hospital, to authorize the hospital to provide involuntary medication to the patient. There are a number of protections in the bill for the patient. The involuntary medication can only be ordered if it is approved by the medical director of the state hospital. A review committee, which is made of individuals that must include at least one person who is not an employee of the state hospital, would have to review the use of involuntary medication. The bill also requires that all use of involuntary medication be reported to the Mental Disabilities Board of Visitors. The Board of Visitors would issue a report annually to the governor on the use of involuntary medication and the appropriateness of the protections which are built in for the patient. The bill allows necessary treatment for a person who is a danger to self or other but refuses to cooperate with a physician. As a result,

stabilization of the illness often occurs much quicker and discharge can occur much quicker as well. While the person is in the state hospital, being on medication reduces the risk that patient has to himself, other patients and the staff. He presented written testimony, **EXHIBIT 6.**

Dr. Carl Keener, Medical Director at Montana State Hospital, stated that in the two and a half years he has been at Montana State Hospital it has been frustrating to have patients committed to the hospital for treatment and yet be in a position where they could not legally treat them. Currently, they get a guardianship on people who are committed there and refuse treatment. That may take days, weeks or months. One psychiatrist at Montana State Hospital with a personal computer tracked 35 petitions for guardianship and found the time averaged 132 days for each petition. This bill seems to take care of that problem while it still gives the individual a means of protection against any abuses of the right to give involuntary medications. Having individuals committed to the state hospital without the legal right for the hospital to treat the patient makes for an inefficient use of an expensive resource. We are constantly trying to provide better treatment and shorter lengths of stay. The ability to begin treatment immediately upon admission is necessary. This law also protects the staff from individuals who become assaultive or violent without treatment. The ability to treat immediately is also an advantage to the patient. There is increasing evidence of the value to the patient of early treatment in avoiding chronicity and permanent effects of some illnesses. He presented written testimony, **EXHIBIT 7.**

Kelly Morrison, Director of Medical Disabilities Board of Visitors, stated they review the quality of patient care and treatment at the state hospital, the center for the aged and community health centers. The Board of Visitors along with several other mental health groups worked with the Department and agreed upon the amended version of HB 41. The bill addresses the due process concerns. The current funding for the Board of Visitors is in question. She asked the committee to consider some alternative language in the event they are not funded. She presented written testimony, **EXHIBIT 8.**

David Henion, Mental Health Association of Montana, stated when this bill was heard in the House they had concerns regarding the due process which would protect patients rights. They appreciate the work of the Department and others who have come together to solve those problems. They also echo the concern regarding the funding for the Board of Visitors. If that agency is not funded, they would hope the Senate would look at it as an essential part of the process.

Gloria Hermann, Montana Psychological Association, stated they support the bill as amended.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN stated he worked at the county attorney's office for five years and handled involuntary commitments. He is now in private practice and represents the families. What he sees as a potential problem is when a judge has already determined that to protect the respondent's safety as well as the public's that perhaps involuntary medication is necessary and the chief medical officer at the hospital decides whether involuntary medication is appropriate. He has not seen a case where the advocate for an individual agrees with involuntary medication. There is always a problem with the people in Deer Lodge who represent the individual. This bill states that a written notice would be prepared and given to them. There would then be testimony and evidence. A judge has already determined involuntary medication is necessary; however, there would be testimony allowed in front of the review committee which would potentially veto a judge's decision which determined it to be appropriate. Mechanically, how would this work?

Mr. Anderson stated that the district court authorizes the hospital to give medication. That is not an order that medication must be taken. That would be up to the prescription of a physician. The treating physician would recommend the medication. The medical director would then review and approve that. The final step would be the review committee which would meet prior to, or shortly thereafter, the initiation of medication. If the patient is opposed to the medication, the chances are the advocate for that patient will support the patient in that decision. There are some cases where the advocate works with the patient and helps the patient understand his need for medication. The review committee is not in a position to veto what the judge or the physician has ordered. The purpose of the review committee is to make sure that patient has the right to talk about what they are doing, make sure that issue is looked at by other staff at the state hospital as well as someone from outside the state hospital and then give input into what ultimately is the medical director's decision.

SENATOR HALLIGAN commented that judges in the Deer Lodge area have sided with consumers. He believes there could be a potential conflict with the facility stating that involuntary medication is necessary and the judge disagreeing because the client does not want it.

Mr. Anderson stated that the review talks about the testimony of the patient, the advocate, and the patient's attorney. That is testimony only before the informal review committee. The judge in Warm Springs is not involved in this process at that point. It is the district judge in the community where the person was committed who has judicial authority.

SENATOR HALLIGAN stated that only one side would be presented. They have an opportunity to present testimony and evidence. The other hearing took place in some other county. Unless that is allowed to be in the record, only one side would be presenting testimony.

Mr. Anderson stated the other side would be the staff physicians. Regardless of what the medical or judicial opinion was in the county of the individual, their physicians must take a look themselves and determine whether the person needs the medication which they are refusing. That is the balance.

SENATOR BARTLETT commented the bill contained a temporary section and a permanent section. She asked for identification of the differences between the two.

Mr. Anderson stated the temporary section included the community commitment law. Under current law, until July 1, 1997, a district judge can order a person to submit to treatment in the community. HB 41 only applies to the person found seriously mentally ill.

SENATOR BARTLETT asked why (4) is not a part of the permanent provisions.

Mr. Anderson stated that only refers to people found mentally ill, not seriously mentally ill.

SENATOR BARTLETT asked what the principle would be upon which the permanent section excludes the mentally ill determination?

Mr. Anderson stated the community commitment was established in the 80s. Since there was a lot of controversy about it, it was sunsetted. In 1989 it was reestablished. Again there was controversy, and it was again sunsetted.

SENATOR JABS asked if the patient refused medication and the doctor believed he needed it, could a judge then rule on the patient's competency if the patient is mentally alert enough to refuse it himself.

Mr. Anderson stated that was correct. At the time of commitment, the judge can order that the hospital be authorized to give medication.

SENATOR HOLDEN asked **REPRESENTATIVE SMITH** if the ACLU testified against the bill in the hearing in the House.

REPRESENTATIVE SMITH stated that she didn't believe they did. Working with the mental health advocacy groups brought forth a good balance so there was not strong opposition to this bill.

CHAIRMAN CRIPPEN asked about the funding problems?

REPRESENTATIVE SMITH stated that Section 1 has to do with the powers and duties of the mental disabilities board of visitors. Lines 28 and 29, page 3 states that the board of visitors must be fully informed of the matter within five working days after the beginning of the involuntary administration. If the board of visitors was not in place, that sentence would become obsolete. Page 5, lines 17 and 18, uses the same language. She recommended a contingency amendment that set forth a continued review of the prescribing of medications. This bill has a large amount of consumer protection and still gives the courts the ability to assign the involuntary commitment. The oversight needs to be continued through a committee which has a consumer advocate and a report to be given back to the governor.

Closing by Sponsor:

REPRESENTATIVE SMITH stated this bill includes substantial protection to ensure that involuntary medication is not used improperly. These protections include: (1) court order required, (2) a medical director must approve the order not necessarily the psychiatrist who is treating, (3) a review committee including non-hospital staff and (4) and oversight by that committee or board of visitors who must report to the governor on an annual basis.

Addition exhibit, letter from Andree Larose, Staff Attorney, Montana Advocacy Program, **EXHIBIT 9.**

{Tape: 2; Side: A}

EXECUTIVE ACTION ON HB 231

Motion/Vote: **SENATOR BISHOP MOVED HB 231 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 387

Discussion: **SENATOR HOLDEN** stated the bill was accepted by the subcommittee with some changes. The main issue was whether they would change the termination date on late filing claims which the legislature established in 1993. That date would have been July 1, 1996. SB 387, pages 1, 2, 3, and 4, dealt with that issue. They felt it was imperative that the system would not be changed. Those pages were deleted. Mrs. Rehberg and the Department accepted the changes. The rationale was that many users of water in the state of Montana correctly filed their water rights. They would be jeopardizing their rights if this was reopened to another system of filing water rights.

SENATOR HALLIGAN stated that they left the existing date of 96 to wait until the adjudication process was completed. He stated the next part of the bill set up an advisory committee. They changed the person appointing the committee from the chief water judge to

the governor. They added a district court judge to the committee.

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 387.**

Discussion: **SENATOR BAER** asked how the amendments affect the fiscal note.

SENATOR HOLDEN commented that the fiscal note is irrelevant. The costs have been taken out of the bill.

SENATOR HALLIGAN stated that if in 1910 a judge had adjudicated the water rights of some of the parties in a stream and the issues in that decree and the parties were the same and later this is to be relitigated, the court would deny the relitigation. They tried to give some protection for those people whose rights had actually gone to court. A late filed claim is subordinate to the other claims. If they are continuously using their water, that will continue anyway if their neighbors haven't objected.

SENATOR GROSFIELD stated there were cases where the lack of a party to comply with the adjudication law created some problems. The other side to that is that over 206,000 claims were filed timely and they have to be careful not to jeopardize the people who complied with the law.

SENATOR HOLDEN continued explaining the amendments. On page 7, line 15, the word "shall" was changed to "may". On line 18, (a) (b) (c) and (d) were combined into a general statement.

SENATOR GROSFIELD stated "shall" was changed to "may" to give the court discretion in cases where there may be extenuating circumstances.

SENATOR BECK stated the purpose of the bill was to stop the litigation of cases which had already been to the Supreme Court on some of the adjudicated streams. The bill read that the court "shall" take a look at those situations so the same water right is not relitigated in the same case.

CHAIRMAN CRIPPEN stated if the water right had been adjudicated and was later taken as a successor-in-interest, the Bureau of Reclamation would not have a claim.

SENATOR HALLIGAN commented that is why they used the word "may".

CHAIRMAN CRIPPEN questioned whether he could openly and notoriously for an appropriate period of time with posting effect a claim preclusion.

SENATOR HALLIGAN stated the only way to deal with res judicata and collateral estoppel would be the issue and claim preclusion so that the identical issues, identical parties, similar claims, would preclude people. They did not want to complicate the

matter with new law when they could rely on the existing Supreme Court decisions in those areas.

SENATOR GROSFIELD requested a change in the amendments concerning the makeup of the advisory committee. They had the governor appoint the subcommittee which would consist of three attorneys who practice before the water court. He would like to insert three "non-governmental" attorneys. He would not like to see 2 or 3 attorneys from DNRC. DNRC is already on the committee ex officio in (3).

SENATOR BECK commented he did not want bureaucracy on this committee. He wants an unbiased committee.

Chris Tweeten, Attorney General's Office, commented that he visited with Judge Loble at the subcommittee meeting regarding having representation from the federal government. The federal government is the largest single claimant of water rights. Judge Loble believed having a federal representative on the committee would be helpful to him. He asked if the governor might invite a representative from the federal government to fill one of the attorney positions.

CHAIRMAN CRIPPEN commented "non-governmental" would exclude that.

SENATOR GROSFIELD suggested adding that an attorney representing the federal government might serve in an ex officio capacity.

Mr. Tweeten suggested in (3) insert a comma after conservation, and then add "a representative of the United States". The governor could communicate with the Department of Justice or the Department of Interior and make his selection in consultation with them as to who would be the most appropriate representative.

SENATOR NELSON asked if someone had water rights dating back to the early 1900s and went to a lawyer to have them filed prior to 1982 and the lawyer did not handle this correctly, is that person better or worse off with this bill as amended?

SENATOR HALLIGAN stated the deadline was extended a little further; however, they could have sued the lawyer if the statute of limitations had not run. This bill does not change that scenario.

Vote: The motion to amend **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR HOLDEN MOVED SB 387 DO PASS AS AMENDED.**

Discussion: **SENATOR DOHERTY** stated the subcommittee did a very good job going over this bill. If history serves as advice, when this bill comes back from the House there will be a conference committee and an enormous amount of gnashing of teeth. He asked the chair to ask the House that this bill not be handled in that manner.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON HB 176

Motion: **SENATOR GROSFIELD MOVED TO AMEND HB 176 BY STRIKING THE STATUTORY APPROPRIATION.**

Discussion: **SENATOR GROSFIELD** commented that very few statutory appropriations are put in as sunsetted. He believed that statutory appropriations do not get reviewed very well. With the sunset clause, there is an intent on the part of the sponsor that the program will be reviewed carefully. **SENATOR BECK** is the vice chairman of the subcommittee which has dealt with this. Apparently all the money has been taken from this program because it was funded from the general fund. If the statutory appropriation is eliminated, but the earmarking is left in the bill, he felt that the subcommittee would reinstate the funding.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Discussion: **SENATOR HOLDEN**, referring to page 1, line 26, stated that Mr. Koch had concerns about whether or not the surcharge would be called an allowable cost.

Motion: **SENATOR HOLDEN MOVED TO FURTHER AMEND HB 176, ON PAGE 1, LINE 26, AFTER THE WORD "COURT" HE WOULD INSERT "THE SURCHARGE IS AN ALLOWABLE COST."**

Discussion: **SENATOR HALLIGAN** commented if it is a user fee it should be paid by the individual using the system. They have never differentiated in the civil or criminal process before. He opposed the amendment in the sense of fairness. We are identifying a particular industry for favorable treatment.

CHAIRMAN CRIPPEN clarified if this amendment is adopted the fee will fall under the definition of allowable cost in §25-10-201, MCA, which states, "A party to whom costs are awarded in an action is entitled to include in his bill of costs his necessary disbursements, as follows:" The prevailing party is entitled to collect the fee from the losing cost.

SENATOR BARTLETT stated that this fee was modeled after the surcharge for county attorney salaries. She asked if that surcharge is a allowable cost.

SENATOR HALLIGAN stated that dealt with criminal costs and is paid up front. Allowable costs go more to civil cases. The surcharge for the county attorney salaries is paid by the client and is not passed on to anyone else.

SENATOR BARTLETT stated without the amendment the language of the bill is unclear and there could be a court decision that this in fact is an allowable cost whether the amendment is put in or not.

Vote: The motion **FAILED** on roll call vote.

Discussion: **SENATOR HALLIGAN** asked if the committee wished to clarify by amendment that this is excluded as a cost..

CHAIRMAN CRIPPEN stated there are no exclusions in the code about allowable costs. He didn't see a need to do so.

Motion/Vote: **SENATOR HALLIGAN MOVED HB 176 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** on roll call vote with **SENATORS BAER AND ESTRADA** voting **"NO".**

EXECUTIVE ACTION ON HB 41

Discussion: **REPRESENTATIVE SMITH** explained the amendments. On page 3, line 28, following visitors insert "and the director of the Department of Corrections and Human Services." They want to retain the statute of the powers and duties of the mental disability board of visitors. In case they are not able to work at their full maximum, they want to make sure that that due process is retained for the consumer. On page 5, line 17, they had the same amendment following the word "visitors" insert "and the director of the Department of Corrections and Human Services". The next amendment would follow that sentence after the words "of the involuntary administration." insert "the director shall report to the governor on an annual basis".

SENATOR HALLIGAN stated that in the past when boards have been eliminated, they simply put a codification instruction in the actual bill which eliminated the board. It then came back to any bill which passed that had that reference in it and was simply eliminated. He questioned the cleanest way to deal with the board of visitors issue.

Valencia Lane commented that since she did not know what was going on in HB 2, she was confused about advising the committee. If they are only eliminating the funding, they do not want to take out references in substantive law. References in substantive law could not be taken out of HB 2. It would be best not to take out the references in this bill.

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 41.**

Discussion: **SENATOR BARTLETT** commented that this amendment would mean that even if the funding is restored for the board of visitors, there will need to be reports not only to the board of visitors but also to the Director of the Department of Corrections and Human Services and the director as well as the

board will be required to report to the governor on specific schedules.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR HALLIGAN MOVED HB 41 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR HALLIGAN** suggested that they look at preventing the duplication of the reports.

CHAIRMAN CRIPPEN questioned whether this would be the same report.

Mr. Anderson stated that if the two entities have to report, the two entities would get together and there would be a single report.

SENATOR JABS questioned whether this bill would help prevent abuse to the patient.

REPRESENTATIVE SMITH commented her understanding is that at the Montana State Hospital if there is a court order for involuntary placement and treatment, there needs to be guardian to approve the involuntary medication administration and sometimes that gets hung up in the process. The quicker a patient can get treatment the quicker there is a potential for a level of safety. Under this bill, there would be immediate review and a medication prescribed which has been approved by the medical director and a review committee and a report made within 5 days of what that medication will be. The patient would then be receiving treatment immediately. That is a consumer safety issue. There should not be inappropriate medication with an oversight committee. This keeps the medical profession careful in the use of medication.

Vote: The motion **CARRIED** on oral vote with **SENATORS ESTRADA** and **BAER** voting **"NO".**

EXECUTIVE ACTION ON HB 234

Discussion: **CHAIRMAN CRIPPEN** explained the amendment proposed by **REPRESENTATIVE HIBBARD.** On page 2, line 22, following the first word "credit" insert "personal". It would read "an agreement or change in the terms of the agreement relating to a letter of credit, personal line of credit, or lender". This line refers to the exceptions to the rule where the put it in writing provision does not apply. They had no intention of making it apply to personal lines of credit. Page 3, line 5, remove the words "orally and".

Motion: **SENATOR NELSON MOVED TO AMEND HB 234.**

Discussion: **SENATOR GROSFIELD** stated when a person negotiates a line of credit with a financial institution a lot of things are

discussed in the process. If your business is a partnership, your partner is in the room with you. If you are a farmer or rancher, your wife may be in the room with you. A lot of things are said. The banker is in the position to explain everything in the contract to you. Over the years a personal relationship is developed with the banker. This is not just a small clean up amendment, it is a very major amendment inserting the word "personal". By doing so, we eliminate bringing in any oral representations regarding any of these lines of credits made in that room.

CHAIRMAN CRIPPEN asked to segregate the amendments. The motion the committee voted on was deleting the words "orally and".

Vote: The motion **CARRIED** on oral vote.

Discussion: The committee discussed the second amendment.

{Tape: 2; Side: B}

SENATOR ESTRADA stated she agreed with **SENATOR GROSFIELD** in that the amendment left the situation wide open. If there is a personal and business account and bankruptcy is filed on the business, that is one thing. Putting the word "personal" in there is dynamite. She believes this bill is protectionism for the bankers.

Vote: The motion **FAILED** on oral vote.

Discussion: The second amendment was requested by the Montana Trial Lawyers, **EXHIBIT 10.** **CHAIRMAN CRIPPEN** stated that the borrower was precluded from presenting oral testimony. This amendment would provide an exception whereby if the bank was suing the person, they would have the right to rely on that oral testimony. An example would be if a loan officer made oral representations and later on when the case came to trial, the person admitted he made the oral presentation it would be allowed. He could not see why anyone would make that admission.

SENATOR HALLIGAN stated that the person who wanted to sue would have to take depositions to try to come up with that information but it would be difficult to get someone to acknowledge making an oral representation. This makes the bill more palatable, however, it is still a bad bill.

CHAIRMAN CRIPPEN stated that an honest banker or loan officer who would say, notwithstanding what was written, he did make the oral representation. His concern is if the bank is suing, the bank is subject to the same rules. If the bank says the borrower made representations, this would be covered by this amendment.

Mr. Hill stated it would cut both ways.

SENATOR HALLIGAN stated this amendment would not deal with the situation wherein ten people in the same room who had heard the oral representation and the banker never acknowledges that oral representation. Testimony still cannot be submitted of those oral representations.

Motion: **SENATOR DOHERTY MOVED TO FURTHER AMEND HB 234.** The motion **CARRIED** on oral vote

Motion: **SENATOR BISHOP MOVED HB 234 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR HOLDEN** believed the bill outlines what the customer is to expect from the banking industry.

SENATOR BAER stated he had no problem with requiring a writing to be enforceable. Subsection 2 goes much to far eliminating equitable defenses. This is an overreaching bill.

SENATOR JABS stated the banker gives the customer a number of papers to sign explaining what each is and the customer takes a lot for granted based on what the banker tells him.

SENATOR NELSON stated she talked to a banker the other day who told her they did not need the bill. It would just create more paperwork.

CHAIRMAN CRIPPEN stated he couldn't understand why anyone would not have everything in writing.

SENATOR BISHOP stated that when he started practicing law a handshake worked okay. Times have changed. Everything should be in writing. This bill will save a lot of problems, lawsuits and hard feelings.

Vote: The motion **FAILED** on oral vote with **SENATORS CRIPPEN, BISHOP** and **HOLDEN** voting **"AYE".**

Motion: **SENATOR DOHERTY MOVED HB 234 BE NOT CONCURRED IN AS AMENDED.** The motion **CARRIED** on roll call vote with **SENATORS BISHOP, CRIPPEN** and **HOLDEN** voting **"NO".**

ADJOURNMENT

Adjournment: The meeting adjourned at 11:45 a.m.

SENATOR BRUCE D. CRIPPEN, Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-6-1995

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

March 6, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 231 (third reading copy -- blue), respectfully report that HB 231 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

521208SC.SRF

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 387 (first reading copy -- white), respectfully report that SB 387 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 4 through 6.
Following: ""AN ACT" on line 4
Strike: remainder of line 4 through "DISMISSED" on line 6
Insert: "CLARIFYING APPLICATION OF COMMON-LAW RULES OF ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS"

2. Title, line 7.
Following: "CLAIMS;"
Strike: "ESTABLISHING"
Insert: "AUTHORIZING THE GOVERNOR TO APPOINT"

3. Title, lines 8 and 9.
Following: "SECTIONS" on line 8
Strike: remainder of line 8 through "85-2-226," on line 9

4. Title, line 9.
Following: "85-2-233"
Strike: ","

5. Page 1, lines 11 through 19.
Strike: statement of intent in its entirety

6. Page 1, line 23 through page 5, line 24.
Strike: sections 1 through 5 in their entirety
Insert: "NEW SECTION. **Section 1. Water adjudication advisory committee -- appointment.** (1) The governor shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(2) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under Title 3, chapter 7.

PV Amd. Coord.
GP Sec. of Senate

(3) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The governor may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(4) The committee members shall serve at the pleasure of the governor and shall serve without compensation.

(5) The committee shall file a report with the governor by October 1, 1996, and as often thereafter as determined by the governor."

Renumber: subsequent sections

7. Page 6, lines 23 through 26.
Following: "must" on line 23
Strike: remainder of line 23 through "must" on line 26

8. Page 7, line 15.
Strike: "shall"
Insert: "may"

9. Page 7, line 17.
Strike: ":"
Insert: "if dismissal is consistent with common-law principles of issue and claim preclusion."

10. Page 7, lines 18 through 23.
Strike: subsections (a) through (e) in their entirety
Insert: "(8) The provisions of subsection (7) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence."

11. Page 8, line 2.
Following: "upon"
Strike: "a motion raising"

12. Page 8, line 3.
Following: "in the"
Strike: "proceedings on the motion"
Insert: "matter in which the ruling was issued"

13. Page 8, line 4.
Insert: "NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1]."

Renumber: subsequent section

-END-

SENATE STANDING COMMITTEE REPORT

March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 234 (third reading copy -- blue), respectfully report that HB 234 be amended as follows and as so amended be not concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 29.
Following: "3]"
Insert: "; or
(g) any case in which the person seeking to maintain the action or defense has acknowledged making oral representations inconsistent with the writing"

2. Page 3, line 5.
Strike: "ORALLY AND"

-END-

BT Amd. Coord.
SOA Sec. of Senate

Senator Estrada
Senator Carrying Bill

531113SC.SRF

SENATE STANDING COMMITTEE REPORT

March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 41 (third reading copy -- blue), respectfully report that HB 41 be amended as follows and as so amended be concurred in.

Signed: Bruce D. Crippen
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 28.
Following: "visitors"
Insert: "and the director of the department of corrections and human services"

2. Page 3, line 29.
Following: "administration."
Insert: "The director shall report to the governor on an annual basis."

3. Page 4, line 4.
Strike: "he"
Insert: "the respondent"

4. Page 5, line 17.
Following: "visitors"
Insert: "and the director of the department of corrections and human services"

5. Page 5, line 18.
Following: "administration."
Insert: "The director shall report to the governor on an annual basis."

-END-

Amd. Coord.
Sec. of Senate

Senator Halligan
Senator Carrying Bill

531106SC.SRF

SENATE STANDING COMMITTEE REPORT

March 6, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 176 (third reading copy -- blue), respectfully report that HB 176 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 9 and 10.
Following: "~~MCA;~~"on line 9
Strike: remainder of line 9 through "MCA;" on line 10

2. Page 2, line 2.
Strike: "-- STATUTORY APPROPRIATION"

3. Page 2, lines 5 and 6.
Strike: subsection (3) in its entirety

4. Page 2, line 8 through page 3, line 7.
Strike: section 3 in its entirety
Renumber: subsequent sections

-END-

Amd. Coord.
Sec. of Senate

Senator Harding
Senator Carrying Bill

521514SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/6/95 BILL NO. HB176 NUMBER 1

MOTION: Holden - Amendment

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER	✓	
SUE BARTLETT		✓
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS		✓
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/6/95 BILL NO. HB176 NUMBER 2

MOTION: Be Concurred On AA Motion

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON	✓	

SEN:1995
wp:rlclvote.man

9 2

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/6/95 BILL NO. HB 234 NUMBER 3

MOTION: Bishop - BCIAA

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT		✓
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		✓
SHARON ESTRADA		✓
LORENTS GROSFIELD		✓
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS		✓
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/6/95 BILL NO. HB234 NUMBER 4

MOTION: BNCIAA - Doherty

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN		✓
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON	✓	

SEN:1995
wp:rlclvote.man

Part 3
District Court Jurisdiction

Part Cross-References
District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

3-5-301. Kinds of jurisdiction. The jurisdiction of the district court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 40, C. Civ. Proc. 1895; re-en. Sec. 6274, Rev. C. 1907; re-en. Sec. 8828, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 75; re-en. Sec. 8828, R.C.M. 1935; R.C.M. 1947, 93-317.

Cross-References
City Attorney to prosecute appeals, 11-301.
Appeals to District Courts, Rule 81(b), M.R.Civ.P. (see Title 25, ch. 20); Rule 52(b), M.R.App.P. (see Title 25, ch. 21); Title 25, ch. 33.
Appeal from Justice's or City Court, 25-33-301.
Appeal from Small Claims Court, 25-34-403, 25-35-803.

3-5-302. Original jurisdiction. (1) Except as provided in subsection (6), the district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

(a) misdemeanors arising at the same time as and out of the same transaction as a felony or misdemeanor offense charged in district court;

(b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor case tried in district court.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

(6) (a) Except as provided in subsection (6)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

Sec. 9790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1026; re-en. Sec. 9790, R.C.M. 1935; R.C.M. 1947, 93-8605.

Cross-References

Multiple defendants jointly and severally liable, 27-1-703.

25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled and thereupon deposits in court for plaintiff the amount so tendered and the allegation be found to be true, the plaintiff cannot recover costs but must pay costs to the defendant.

History: En. Sec. 409, p. 127, Bannack Stat.; amd. Sec. 478, p. 229, L. 1867; re-en. Sec. 554, p. 148, Cod. Stat. 1871; re-en. Sec. 491, p. 170, L. 1877; re-en. Sec. 491, 1st Div. Rev. Stat. 1879; re-en. Sec. 504, 1st Div. Comp. Stat. 1887; re-en. Sec. 1858, C. Civ. Proc. 1895; re-en. Sec. 7161, Rev. C. 1907; re-en. Sec. 9794, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1030; re-en. Sec. 9794, R.C.M. 1935; R.C.M. 1947, 93-8609.

25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense.

History: En. Sec. 410, p. 127, Bannack Stat.; re-en. Sec. 479, p. 230, L. 1867; re-en. Sec. 555, p. 148, Cod. Stat. 1871; re-en. Sec. 492, p. 170, L. 1877; re-en. Sec. 492, 1st Div. Rev. Stat. 1879; re-en. Sec. 505, 1st Div. Comp. Stat. 1887; re-en. Sec. 1859, C. Civ. Proc. 1895; re-en. Sec. 7162, Rev. C. 1907; re-en. Sec. 9795, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1031; re-en. Sec. 9795, R.C.M. 1935; R.C.M. 1947, 93-8610.

Cross-References

Right to bring action or assert defenses, Title 27, ch. 1, part 5.

Powers, duties, and compensation of personal representatives, Title 72, ch. 3, part 6.

Personal representative, Title 72, ch. 3, part 6.

Part 2
Allowable Costs

25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in his bill of costs his necessary disbursements, as follows:

(1) the legal fees of witnesses, including mileage, or referees and other officers;

(2) the expenses of taking depositions;

(3) the legal fees for publication when publication is directed;

(4) the legal fees paid for filing and recording papers and certified copies thereof necessarily used in the action or on the trial;

(5) the legal fees paid stenographers for per diem or for copies;

(6) the reasonable expenses of printing papers for a hearing when required by a rule of court;

(7) the reasonable expenses of making transcript for the supreme court;

(8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and

(9) such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law.

History: En. Sec. 1866, C. Civ. Proc. 1895; re-en. Sec. 7169, Rev. C. 1907; re-en. Sec. 9802, R.C.M. 1921; re-en. Sec. 9802, R.C.M. 1935; R.C.M. 1947, 93-8618.

Cross-References

Salary and expenses of court reporters, 3-5-602.

Copies of proceedings, 3-5-604.

Cost of jury, 3-15-203, 3-15-205.

Fees of Clerk of District Court, 25-1-201.

Fee of court reporter, 25-1-202.

Alternative methods of service, Title 25, ch. 3, part 5.

Attorneys' fees, Title 25, ch. 10, part 3.

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

Expenses for failure to attend deposition, Rule 30(g), M.R.Civ.P. (see Title 25, ch. 20).

Costs as sanctions for failure to make discovery, Rule 37, M.R.Civ.P. (see Title 25, ch. 20).

Costs for interpreters, Rule 43(f), M.R.Civ.P. (see Title 25, ch. 20).

Compensation of masters, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

Costs of affidavits made in bad faith, Rule 56(g), M.R.Civ.P. (see Title 25, ch. 20).

Offer of judgment, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Witness fees, Title 26, ch. 2, part 5.

25-10-202. Costs of motion. Whenever a motion is sustained or overruled, the losing party must pay to the other $10 as costs. If a motion is withdrawn before the hearing, it must be considered overruled.

History: En. Sec. 1861, C. Civ. Proc. 1895; re-en. Sec. 7164, Rev. C. 1907; re-en. Sec. 9797, R.C.M. 1921; re-en. Sec. 9797, R.C.M. 1935; R.C.M. 1947, 93-8612; amd. Sec. 99, Ch. 575, L. 1981.

25-10-203. Costs of postponement. When an application is made to the court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

History: En. Sec. 408, p. 127, Bannack Stat.; re-en. Sec. 477, p. 229, L. 1867; re-en. Sec. 553, p. 148, Cod. Stat. 1871; re-en. Sec. 490, p. 170, L. 1877; re-en. Sec. 490, 1st Div. Rev. Stat. 1879; re-en. Sec. 503, 1st Div. Comp. Stat. 1887; re-en. Sec. 1857, C. Civ. Proc. 1895; re-en. Sec. 7160, Rev. C. 1907; re-en. Sec. 9793, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1029; re-en. Sec. 9793, R.C.M. 1935; R.C.M. 1947, 93-8608.

Cross-References

Motion to postpone trial, Title 25, ch. 4, part 5.

25-10-204. Costs of transferring papers — change of venue. The costs and fees of transmitting the pleading and papers when an order is made transferring an action or proceeding for trial and of filing the papers anew must be paid by the party at whose instance the order was made; except that the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorneys' fees to be fixed by the court, incurred by the defendant by reason of the change of venue motion and hearing when:

(1) the action is an action upon a contract, express or implied, for the direct payment of money and no claim contained in the complaint exceeds $1,000;

(2) the county designated in the complaint is not the proper county; and

TESTIMONY OF MOIRA MURPHY IN SUPPORT OF HB 547

1. **MONTANA LAW DOES NOT PROHIBIT A CONVICTED FELON FROM POSSESSING A FIREARM AFTER STATE SUPERVISION CEASES.** Presently in Montana, a person convicted of a violent felony can legally possess a firearm as soon as state supervision ends. So when he gets out of prison and is released from parole, he can possess firearms. Montana law does nothing to prohibit a violent convicted felon from possessing firearms.

2. **CANNOT PROSECUTE UNDER FEDERAL LAW EITHER** . Since Montana law does not prohibit a convicted felon from possessing firearms, the feds cannot prosecute under the Federal Gun Control Act either.

3. **OTHER STATES LIMIT A VIOLENT CONVICTED FELON FROM POSSESSING FIREARMS.** Every other state besides Montana limits a convicted rights to possess firearms to a certain extent following state supervision. In Montana, the felon automatically and immediately has the right to possess firearms following state supervision.

4. **OTHER STATES LIMIT VIOLENT CONVICTED FELONS FROM POSSESSING FIREARMS BECAUSE MOST FELONS RECIDIVATE.** The Bureau of Justice Statistics reports that 60% of violent offenders will be rearrested. About half of those people will be convicted of violent offenses, such as murder, rape, robbery, or assault. Guns are often used in the commission of these offenses, according an Alcohol, Tobacco, and Firearms study on Armed Career Criminals.

5. **WE CAN CONSTITUTIONALLY LIMIT A CONVICTED FELON'S RIGHT TO POSSESS A FIREARM.** The right to bear arms is not absolute and can be limited. This has been upheld by numerous courts. In addition, under HB 547 a convicted felon would always be under state supervision for purposes of gun control. Therefore, HB 547 is not violative of the Article II, Section 28 of the Montana Constitution, which provides that full political and civil rights will be restored to offender when state supervision ceases. State supervision never ceases for gun control for violent convicted felons, therefore, HB 547 is not unconstitutional.

6. **WHAT HB 547 PROVIDES.**

A person convicted of a "violent felony" in any jurisdiction will be prohibited from possessing a firearm in Montana. The violent felonies are listed: for example, deliberate homicide, aggravated assault, sexual intercourse without consent. Non violent felonies, such as bad checks, and forgery are included as violent felonies.

Both the state and federal system may prosecuted a convicted felon for possessing a firearm.

The time period of prohibition is unlimited.

A petition procedure for a special permit to possess a firearm is provided. A convicted felon may apply for a special permit through a state district court as soon as he is off state supervision. The convicting law enforcement agency and prosecutor's officer will be able to protest the granting of the petition.

HB 547

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/6/95
BILL NO. HB547

Amendment to House Bill 547
Third Reading Copy (Blue)

Requested by Department of Justice
Prepared by
Beth Baker, Department of Justice

1. Title, line 5.
Following: "CRIMINALS;"
Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.
Following: "society."
Insert: "The sentencing order may incorporate by reference the rules setting conditions of probation, parole, or supervised release promulgated by the department of corrections and human services or the Montana board of pardons without specifically enumerating the conditions."

HB 231

NANCY SWEENEY
CLERK OF DISTRICT COURT
Lewis and Clark County Courthouse
P. O. Box 158
Helena, MT 59624-0158
447-8216

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/6/95
BILL NO. HB231

March 6, 1995

Senator Bruce Crippen, Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Chairman Crippen and Members of the Committee,

House Bill 231 would amend 27-9-103, MCA to set the fee for a confession of judgment at $45.00. Although this amendment would increase fees, the fiscal impact of this proposed legislation is negligible, as reflected in the fiscal note. Lewis and Clark County would have received an additional $80.00 during the entire calendar year 1994. The Montana Association of Clerks of District Court did not request Representative Pavolvich to submit this bill to significantly increase a revenue source. This legislation will make the collection of a fee for entry of judgment uniform by correcting an oversight of the 1993 legislative session.

In an effort to standardize the fees collected on judgments, the 1993 legislature increased the fee for transcripts of judgment from $25.00 to $45.00 but overlooked the fee for confessions of judgment. This omission is easily explained since the statute regarding the fee for confession of judgment, 27-9-103, MCA, is not contained in the general fee statute, 25-1-201, MCA.

In 1989 the fee for entry of all judgments was a standard amount of $25.00. A search the legislative history indicates that there were varying amounts charged for entry of judgment after 1989. In their attempt to standardize the fee collected for entry of judgment, the 1993 legislature modified the fee for a transcript of judgment, contained in 25-1-205(1)(h), MCA. The fee for a transcript of judgment was amended from a fee of $25.00 to specifically refer to "the fee for entry of judgment provided for in subsection (1)(c)". This provision made the fee for entry of judgment consistent in the general fee statute (Ch. 570, L. 1993) but it did not include a reference to 25-9-103, MCA, regarding confessions of judgment. Although it appears only to be an oversight that the fee for confession of judgment was not increased to $45.00, the fees for entry of judgment were once again inconsistent.

Past legislation recognized that the procedures for filing, recording and post-judgment action are identical for any judgment, regardless of its origination. The 1993 amendment attempted to set identical fees for entry of judgment but overlooked the statute for confession of judgment which was not contained in the general fee statute. I would ask this committee to correct this oversight and give a Do Pass recommendation to House Bill 231.

Sincerely,

Nancy Sweeney

Nancy Sweeney
Clerk of District Court

HB 41 Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services. 3/6/95

The purpose of House Bill 41 is to provide a reasonable mechanism for providing medication to a seriously mentally ill person in a mental health facility who refuses medication.

It applies only to persons who have been found by a district court to be seriously mentally ill ---- a danger to self or others. The bill will allow the court to authorize, as part of the commitment order, the mental health facility (usually Montana State Hospital) to involuntarily medicate a patient who refuses necessary medications. In addition to requiring a District Court order, involuntary medication would require the approval of the Medical Director and would be subject to review by a Committee which includes at least one person from outside the Hospital.

HB 41 also requires that all use of involuntary medication be reported to the Mental Disabilities Board of Visitors and that the Board of Visitors report annually to the Governor on the use of involuntary medications.

The original version of the bill would have required a guardianship process in order to involuntarily medicate. A number of people testified that that process could be cumbersome, could delay the commitment process and result in additional costs to counties. It was also not clear that the

guardianship option would provide all of the necessary oversight of this process.

HB 41, as presented today, incorporates compromise language from the Department of Corrections and Human Services and several mental health advocacy groups that met with a sub-committee of the House Judiciary Committee.

HB 41:

Allows necessary treatment to be provided to a person who is a danger to self or others but who refuses to cooperate with the physician. As a result, stabilization of the illness and discharge from the hospital can often occur sooner. While in the Hospital, the patient receives treatment which helps the person be less of a threat to himself, to other patients, and to hospital staff.

The Bill includes substantial protection to assure that involuntary medication is not used improperly. These protections include:

1. Court order required
2. Medical Director must approve order
3. Review Committee including non-hospital staff
4. Oversight by Board of Visitors who must report to Governor

HB 41 effectively balances the patient's need for treatment, the right that the patient and others have to safety, and the patient's right to b protected from unwarranted intrusion into medical decisions.

EXHIBIT NO. 7
DATE 3/6/95
BILL NO. HR 41

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE ON HOUSE BILL 41

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

In the two and one-half years I have been at Montana State Hospital, first as a staff psychiatrist and, more recently as Medical Director, it has been frustrating to have patients committed to the hospital for treatment and yet be in a position where we could not legally treat. (1) This bill as currently written seems to take care of that problem, at the same time giving the individual a means of protection against any abuses of the right to give involuntary medications. Having individuals committed to the State Hospital without the legal right for the hospital to treat the patient, makes for an inefficient use of an expensive resource. We are constantly trying to provide better treatment and shorter lengths of stay. The ability to begin treatment immediately upon admission is necessary in order for us to do this. This law also, by allowing medication at the time of admission, protects our staff from those individuals who become assaultive or violent without treatment. (2) I think it is essential to have such a law.

(1) Currently we get a guardianship which may take 1 or 2 days, weeks or months. One psychiatrist at MSH with a personal computer tracked 35 petitions for guardianship and found the time averaged 132 days for each petition, a very costly delay.

(2) The ability to treat immediately is also an advantage to the patient. There is increasing evidence of the value to the patient of early treatment in avoiding chronicity and permanent effects of some illnesses.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3/6/95
BILL NO. HB 41

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

MARC RACICOT, GOVERNOR

PO BOX 200804

STATE OF MONTANA

(406) 444-3955
TOLL FREE 1-(800) 332-2272

HELENA, MONTANA 59620-0804
FAX 406-444-3543

March 6, 1995

Senator Bruce Crippen, Chairman
Senate Judiciary Committee
State Capitol
Helena, MT 59620

RE: HB 41

Senator Crippen and Members of the Committee:

For the record, my name is Kelly Moorse and I am the Executive Director of the Board of Visitors. The Board reviews the quality of patient care and treatment at Montana State Hospital, the Center for the Aged and the community mental health centers. I am here to testify in support of HB 41, as amended by the House.

The Board of Visitors, along with the several volunteer mental health groups, (Meriwether Lewis Institute, Mental Health Association of Montana, Montana Alliance for the Mentally Ill) worked with the Department of Corrections and Human Services and agreed upon the amended version of HB 41. The amendments address many of the due process concerns. Basically the amended version of HB 41 sets up an internal review procedure that was upheld in the U.S. Supreme Court case, Washington v. Harper 110 S. Ct. 1028 (1990).

I must advise the committee of one potential complication to this bill. This week the House Appropriations Committee is addressing House Bill 2. The General Government subcommittee deleted 5.5 FTE from the Governor's Office budget (four of those positions are with the Board of Visitors). While there is an amendment to restore our funding, I cannot predict the results of the full appropriations committee. The Senate Judiciary Committee may wish to consider alternate language in the event the Board of Visitors is not funded.

Thank you.

Sincerely,

Kelly Moorse

Kelly Moorse
Executive Director

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 3/6/95
BILL NO. HB41

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
1-800-245-4743
(VOICE - TDD)
Fax #: (406)444-0261

March 3, 1995

Senator Bruce Crippen, Chairperson
Senate Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 41

Senator Crippen and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in support of HB 41, as amended by the House.

1. We worked with the Department of Corrections and Human Services and agreed upon revisions to this bill which addressed many of our constitutional concerns. The current bill before you includes those agreed upon revisions.

2. We continue to be of the opinion that a person has constitutional protection from being involuntarily medicated absent notice and hearing on the specific issue of the person's capacity, rather than just at a hearing on the commitment.

However, the bill as amended does address many of our due process concerns. Thank you for your time.

Sincerely,

Andree Larose

Andree Larose
Staff Attorney

EXHIBIT NO. 10
DATE 3/6/95
BILL NO. HB234

HB 234

M+LA

P 2, l 30

F: l 29

I: " (g) any case in which the person seeking to maintain the action or defense has acknowledged making oral representations inconsistent with the writing. "

DATE 3/6/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 41 HB 231
HB 176 HB 547

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Nancy Sweeney	Montana Association of Clerks of District Court	HB 176 HB 231	X	
Chuck O'Reilly	MT Sheriffs & Peace Officers Assn	HB547	X	
Moira Murphy	Missoula City Attorney	HB547		
Beth Baker	Dept. of Justice	H547	✓	
Jesse Koch	Collection Bureau Services	HB176		X
Gary Spaeth	ST Bar	HB 176	X	
Gordon Morris	MACo	176	X	
[illegible]	[illegible]	[illegible]	X	
David Hunter	MT [illegible] Assoc. Mental Health Assoc.	41	✓	
Gloria Hergenrother	MT Psych. Assn	41	✓	
Carl F. Keener MD	MSH	41	✓	
Bob Ashbraker	State Farm Ins.	HB176		✓
Patrick Chenovick	MT Supreme Ct	HB176	✓	
Dave Ohler	Corrections	HB547	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3-6-95

SENATE COMMITTEE ON Jud.

BILLS BEING HEARD TODAY: HB 41 - HB 231
HB 176 HB 547

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bob Gilbert	MT. MAGISTRATES MT Ass'n Clerks of Dist. Court	HB231 HB176	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10