

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 9, 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. 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: Rep. William Boharski

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:	SB 175, SB 372
Executive Action:	SB 286 BE CONCURRED IN
	SB 211 BE CONCURRED IN AS AMENDED
	SB 278 BE CONCURRED IN
	HB 517 DO PASS AS AMENDED
	SB 175 TABLE
	SB 372 POSTPONE ACTION

{Tape: 1; Side: A}

HEARING ON SB 372

Opening Statement by Sponsor:

SEN. BARRY "SPOOK" STANG, SD 36, said SB 372 was brought to him by students who participate in a Capitol High School honors class. The bill would require payment of compensation to state employees for time spent in answering subpoenas.

Proponents' Testimony:

Kelsi MacIntyre spoke as a proponent of SB 372 and gave written testimony to the committee. EXHIBIT 1

Sarah McDonough testified in support of SB 372. EXHIBIT 2

Informational Testimony:

A follow-up letter showing the calculation for the base pay plus benefits for the average state employee is EXHIBIT 3.

Opponents' Testimony:

None

{Tape: 1; Side: A; Approx. Counter: 10.2}

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON said there was nothing in the bill to indicate that the provision was limited to those cases in which the state is not a party and asked the sponsor to address that.

SEN. STANG said it was implied. He said that if the employee were to testify in a case in which the state was a party, they would be doing so as part of their daily job and their compensation would be their regular pay. He said this bill was patterned after 2-18-626, MCA, which deals with compensation for the highway patrol to answer subpoenas.

REP. ANDERSON asked about the cases where a person had been allegedly wronged by an agency and wanted to subpoena some witnesses who the agency did not have in the action. They paid to have the witnesses brought forth and the person wanted to also get evidence from them. He said it seemed unfair that they would have to pay the costs to bring in the adverse witnesses.

SEN. STANG answered that if the person was wronged by that state agency, he assumed the state agency was then part of the suit. Therefore, the witnesses would be testifying in their course of business and would be paid their normal wages.

REP. ANDERSON asked if there would be an objection to including some clarifying language that this would apply only in those cases in which the state is not a party to the suit.

REP. DANIEL MC GEE asked if it was limited to pay or if it included benefits also.

Miss MacIntyre said it did include benefits.

REP. MC GEE referred to her testimony that it would be \$15 per hour which is about the base salary for a state employee.

SEN. STANG replied that the approximate \$12 which was included in the testimony was calculated as being the base salary and benefits of the average grade 13 state employee.

REP. LINDA MC CULLOCH asked if other states had a similar provision.

Miss MacIntyre said that virtually every other state has the provision.

REP. MC CULLOCH commended the students who initiated the bill for their professional presentation.

Closing by Sponsor:

SEN. STANG said his information from the Conference of State Legislatures dealt with the subpoena to law enforcement officers and virtually every state does that and that there are some which provide for the same as proposed in this bill. He noted that the fiscal note lacked the information which the students had gathered.

HEARING ON SB 175

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, told the committee that SB 175 was brought on behalf of the Montana County Attorneys' Association. It was intended to solve a problem with respect to the supervision of people who had been convicted of sex offenses. In a Montana Supreme Court case, State v. Imlay, an individual had his probationary sentence revoked by a district court because he refused to undergo sex offender treatment as a condition of probation which the court had ordered. He refused it because he would not admit the underlying offense for which he had been convicted. The court said it was unlawful to revoke his probation because doing so was a violation of his Fifth Amendment rights to remain silent under the U. S. Constitution. He gave the history of the case from that point which led the County Attorneys' Association to the conclusion that in order to try to find some way to ensure that people would participate in

treatment programs which might prevent future similar crimes and to protect the public upon their failure to do so by placing the offenders back in prison, a solution needed to be found. This bill intended to solve that problem by granting immunity from prosecution for any crimes which were committed by an individual which were admitted in the course of sex offender treatment.

Amendments which had been agreed upon by all interested prosecuting attorneys statewide were distributed and explained to provide for prosecutorial discretionary grant of immunity.

EXHIBIT 4

The sponsor said that a professional in the field of treatment of sex offenders, **Ron Silvers**, had testified in the Senate that admission of offenses was essential in the treatment of offenders and that process is often precluded by the fear of prosecution. He also said that a simple grant of immunity as proposed in the bill and the amendments would not preclude a prosecutor from prosecuting someone for other offenses. The prosecutor could not use the statement which was given but if the case could be proven by other means, the prosecution could still go forward.

Proponents' Testimony:

Joe Roberts, Montana County Attorneys' Association, rose in support of SB 175. He said the bulk of his testimony would refer to a letter from **Dennis Paxinos, Yellowstone County Attorney**, which indicated his support of the bill with the amendments. He said that **John Connor**, who supported the bill, would be available for executive action on this bill to answer questions. He underscored the previous testimony of **Mr. Silvers** in the need for the bill.

{Tape: 1; Side: A; Approx. Counter: 29.6; Comments: Copies of the letter referred to in previous testimony were not supplied to the secretary.}

Opponents' Testimony:

Laurie Koutnik, Christian Coalition of Montana, opposed SB 175 as a solution to the problem. She said that people were outraged and several Senators were also outraged at the proposed legislation. She refuted **Mr. Silvers'** testimony alluded to by previous testimony since he had testified on a previous bill that he did not see the correlation between obscenity and sexual deviancy crime rate. She shared a testimony by **Richard Syverson** which is **EXHIBIT 5**.

Arlette Randash, Eagle Forum, submitted written testimony in opposition to SB 175. **EXHIBIT 6** Additionally, she shared personal testimony which emphasized her opinion that this was a "feel-good" bill but that it failed to communicate the agony of the victim.

Questions From Committee Members and Responses:

REP. DEB KOTTEL asked the sponsor to affirm that derivative use immunity did not mean that people are totally free from prosecution but that the information which was disclosed in therapy could not be used.

SEN. VAN VALKENBURG did affirm that and said it was a distinction from transaction immunity which would provide immunity from any prosecution regardless of the source of the evidence.

REP. KOTTEL understood that the county attorneys are empowered to use either transaction or derivative use immunity for a variety of reasons and asked for affirmation.

SEN. VAN VALKENBURG replied that currently a county attorney can grant transaction immunity without any limitation. Granting of derivative use immunity, can be done upon a petition to the district judge and the district judge concurring with the grant of derivative use immunity.

REP. KOTTEL asked if derivative use was more limited than transaction and the sponsor said it was.

REP. KOTTEL asked if granting immunity for something it wants was not outside of the pattern of law in the state.

SEN. VAN VALKENBURG thought it was an extremely rare instance where a county attorney would grant transaction immunity. He gave some possible examples. He said that dealing with sex offenders is different in that the immunity would have to be sought in virtually every case.

REP. KOTTEL asked if in granting derivative use immunity certain crimes can be excluded such as murder.

SEN. VAN VALKENBURG did not believe that they could. He believed that once derivative use immunity was granted, there was a preclusion of using that statement for any purpose.

REP. KOTTEL referred to the Imlay case and the issues of double jeopardy in terms of perjury charges as well as the Fifth Amendment protection in that case and asked if the amendments cleared up both of those constitutional arguments.

SEN. VAN VALKENBURG thought they did, but had not read the briefs in Imlay to be sure of what they addressed.

REP. KOTTEL asked if the granting of derivative use immunity took place prior to the person entering therapy or agreeing to that part of their sentence.

SEN. VAN VALKENBURG answered that it took place prior to their making any statement whether in or out of therapy. It is not a

case of being automatically granted the immunity after they have made a statement. The therapist may approach the county attorney to request the immunity in order to facilitate the treatment of the offender.

REP. KOTTEL clarified the situation where a victim would come forward with an allegation and had proof of the sexual assault by saying that that would not stop the county attorney from prosecuting even if derivative immunity had been granted.

SEN. VAN VALKENBURG replied that was correct. He said that if the defendant denied having committed the offense, the statement could be used to impeach the individual so there would be additional evidence.

REP. MC CULLOCH asked about the proceedings in asking for this immunity.

{Tape: 1; Side: B}

SEN. VAN VALKENBURG described the procedure.

REP. JOAN HURDLE wanted to know if it was accurate that there was very little hope of rehabilitation for a sex offender and also if this process would increase the rate of rehabilitation.

SEN. VAN VALKENBURG thought it increased the prospect of rehabilitation if it promoted confession of their previous wrongdoing. In terms of the likelihood of it actually rehabilitating someone, he said it was one of the most difficult areas to try to turn around. It is hard to turn around anti-social behavior but that did not mean that they should give up hope.

REP. DEBBIE SHEA asked for the percentage of sex offenders who do not go into any treatment program.

SEN. VAN VALKENBURG said that 25% of the population at the prison were sex offenders. Based on his discussion with persons involved in the program, there is a very high number who will not go into sex offender treatment at the prison and as a result are not considered to be eligible for parole. They then serve their sentences to discharge without treatment or supervision following release.

Closing by Sponsor:

SEN. VAN VALKENBURG said the county attorneys were not proposing the bill because they want to treat sex offenders lightly, but that they want the ability to enforce treatment without violating the Fifth Amendment to the Constitution which provides that a person has the right to remain silent. That stands in the way of potentially successful treatment; or in the alternative, if they

don't want treatment, they then face incarceration and he said that is what the bill is about.

EXECUTIVE ACTION ON SB 278

Motion: REP. DIANA WYATT MOVED SB 278 BE CONCURRED IN.

Motion: REP. KOTTEL MOVED TO AMEND SB 278. EXHIBIT 7

Discussion: REP. KOTTEL discussed and explained the amendments which addressed the question of removal of all firearms from the premises in a domestic disturbance situation. The intent of the amendment was to allow the law enforcement officers discretion in taking the weapons if they deem necessary for the protection of the persons involved.

REP. DUANE GRIMES said he spoke to the sponsor of the bill about the amendments. Though he thought the bill could be better written, he believed the committee should act upon the bill as proposed. He remembered from testimony at the hearing that this issue was not a strong problem.

REP. BRAD MOLNAR asked if a law enforcement officer operated under the bill as written and felt it was necessary to remove more than one weapon from the scene, would that officer have the discretion to do so.

CHAIRMAN CLARK answered that they would not under statute. He said there was a problem in responding to a domestic disturbance in that the firearm or weapon used would be taken as evidence. The others would be taken if the officer felt it would be safer for the victim not to have them around especially if the perpetrator were turned loose. However, if there is an intent to kill someone, many things can be used as a weapon such as a front bumper of a vehicle, kitchen utilities or even panty hose. Most law enforcement officers would feel that taking the weapon used in the assault would be satisfactory.

REP. MOLNAR asked if the other firearms were taken, where they would be held and when they would be returned.

CHAIRMAN CLARK said that would be up to the judge. Usually when the case is settled satisfactorily and the person not convicted of a felony, the guns would be returned.

REP. KOTTEL felt the person would have to maintain their anger longer in the use of other weapons. Though she partially agreed with REP. GRIMES, she felt that if there were going to be other amendments proposed and agreed to, she wanted the amendment she proposed to be considered as well. Therefore, she withdrew the motion to amend.

REP. MOLNAR discussed a conceptual amendment based on a concern that the request for a restraining order could be honored without a charge filed.

Motion: REP. MOLNAR MOVED TO AMEND BY STRIKING THE PORTION ABOUT THE CHARGES FILED AND THE PARTICIPATION IN A CRIMINAL PROSECUTION, ON LINES 13 - 15, PAGE 20.

Discussion: REP. WYATT reminded the committee that this bill dealt with domestic abuse and not just someone off the street committing the offenses. For that reason she did not think they would want to force people to make criminal charges against members of their family before they could get a restraining order.

REP. KOTTEL spoke as a strong proponent of the bill and having experience working with victims of domestic abuse. She said it was a struggle to get the victims to use even the civil remedies available to them to protect themselves. She strongly opposed the amendment.

REP. MOLNAR asked if it was true that people currently get restraining orders on spouses. The answer being in the affirmative, he stated that in those cases, it did not always end in a criminal charge.

REP. KOTTEL said it was true but clarified the difference between a temporary restraining order (TRO) issued at the justice of the peace (JP) level and one issued as the district court level and the difference between the ex parte TRO with a later hearing.

REP. MOLNAR asked if it was not true that it is not necessarily family members but whoever the petitioner would consider as their partner.

REP. WYATT said that was true, but that it was hard for those who had not had relationships with others which involved repetitive abusive elements to understand that they believe they deserve to be abused. Emotionally they do not have the capacity to leave the situation. She said this would impose upon them the demand to do something they are not capable of doing since they are not even capable of defending themselves or their children.

REP. MOLNAR believed that the TRO needed to include the criminal charges in order to prevent repetition of the crime.

REP. WYATT said that if this law were to make it more criminal and threatening to do the thing they currently seldom do, the opportunity would be to make things worse for the victim.

REP. MOLNAR asserted that it would not change since it is the law now that they must press the charge.

CHAIRMAN CLARK disagreed and pointed out that they were dealing with TRO's in this section and that would not change what he was trying to do. It would not force anyone to file charges. The county attorney makes the final decision on that anyway. He did not believe the amendment would clear up anything with this bill. What he was talking about was already covered under other existing statutes.

REP. MOLNAR withdrew his amendment. He questioned the testimony in the hearing which was that TRO's would be restricted to the first party to appear to request one.

REP. KOTTEL read portions of 40-4-101, MCA, and could find no such restriction in current law dealing with TRO's.

Without objection from the committee, **Diane Tripp** responded to the question. She said that it was not saying that the party could not get a TRO or an order of protection, but it was saying that the other person has to go through the same sort of procedure. Currently the victim would have to request a TRO and go to court and the judge would grant both parties TROs. She was protesting that if in fact the other person was a victim, they needed to request the TRO in the same manner the first person did.

REP. MC GEE expressed concern about the title calling it family member assault or partner assault. He wanted to strike that wording and insert that it was domestic assault and he explained that his logic included the common usage of the terms.

REP. MC GEE said he really did not see the need for the legislation. He asserted that there were existing laws to cover assault whether it was committed against a stranger or a family member. He was concerned that it was a "feel-good" measure. He continued by giving his personal perspective of this issue. He objected to the perspective of the bill being slanted toward the feminine gender.

REP. GRIMES said that he was concerned about being clear about what they would be doing with this bill. Testimony was that 70% of the people on welfare are women who had come from domestic abuse situations. He sensed that this is a big problem in society and he observed that on first and second offenses very little is done while at the third offense they go before the judge and are surprised at his treating them as if they had done something wrong. He felt the bill would communicate on the first offense that they had committed a crime and that correction of the behavior was needed. He felt that domestic assault was more appropriate and stronger wording, but he did not feel that changing the words was sufficiently important to send the bill back to the Senate.

REP. MC GEE suggested that if **REP. KOTTEL** chose to move her amendments again, she incorporate the change in the wording.

REP. KOTTEL said that the numbers of women committing this type of crime is on the rise and as well, children abusing elderly parents was increasing. She said the reason the title was changed was that domestic abuse irrevocably is aligned in people's minds as men abusing women. To change it to family and partner was to move it away from the idea of women being the victims and would more clearly protect family members from each other.

REP. LIZ SMITH commented on addressing it as domestic assault. She urged the passage of the bill as proposed to communicate a strong message to society that it is unacceptable behavior.

CHAIRMAN CLARK clarified that REPS. KOTTEL and MOLNAR had withdrawn their amendments and that REP. MC GEE had not moved his amendment.

Motion: REP. KOTTEL MOVED THE ORIGINAL AMENDMENTS.
(EXHIBIT 7)

Discussion: REP. KOTTEL mentioned the objection of law enforcement officers to leaving the wording in the bill relating to removal of the weapon used in the assault.

CHAIRMAN CLARK asked if the law enforcement officer she had spoken to felt the bill would be dangerous without the amendments.

REP. KOTTEL said the bill as originally submitted was supported, but the bill as amended by the Senate which would only allow the police officer to take the weapon would put them in a dangerous position and, therefore, they supported these proposed amendments to allow the officer discretion at the scene.

The committee objected to testimony from outside the committee.

{Tape: 2; Side: A}

REP. WYATT opposed the amendments believing it was best to keep the bill as clean as possible and that weapons were not confined to firearms.

REP. MC GEE approved of the amendments because he believed the officer should be given the discretion to remove any weapons.

REP. GRIMES understood that if the amendments were added they could be used politically in the Senate. He said that if corrections need to be made, they should be done during the next session rather than risk losing the legislation.

REP. KOTTEL discussed her understanding about the opposition to the bill being only in this wording. Originally it mandated that officers remove all weapons. With the amendment limiting seizure to the weapon it passed the Senate. In hindsight, the county

attorneys said that put them in a dangerous position of not being able to protect the victim. She did not believe that the bill would be risked with this amendment, but simply be reverted to the language as it came out of the Senate. She gave her opinion about the political ramifications with the gun language in it.

CHAIRMAN CLARK opposed the amendments and agreed with **REP. GRIMES** and gave his reasons believing the law enforcement officers were not concerned with the language of the bill limiting it to the weapon.

Vote: The motion failed by voice vote, 2 - 16 REPS. **KOTTEL** and **MC GEE** voted aye.

Motion: **REP. MC GEE** MOVED TO AMEND THE TITLE AND THE BODY OF THE BILL TO DOMESTIC ASSAULT FROM PARTNER AND FAMILY MEMBER ASSAULT.

Discussion: **REP. CLIFF TREXLER** opposed the amendment for the same reasons which **REP. GRIMES** had given twice.

REP. AUBYN CURTISS asked if the sponsor of the amendment thought it was important enough to put it in conference committee.

REP. MC GEE withdrew his motion.

Vote: The motion to concur in SB 278 passed unanimously.

EXECUTIVE ACTION ON HB 517

Motion: **REP. WYATT** MOVED HB 517 DO PASS.

Discussion: **REP. TREXLER** questioned how attorney fees are handled under this bill.

REP. KOTTEL said usually the plaintiff enters into a contingent fee agreement with their counsel and they will pay the attorney a percentage out of the judgment. The attorney would not have any right to any percentage of the interest because the interest would not go to their client but rather to the state.

REP. TREXLER asked if in this case the loser "may" pay 10% to the plaintiff and 10% to the state.

REP. KOTTEL explained why that was not true.

REP. MC GEE asked how this would streamline the judiciary.

REP. KOTTEL explained.

{Tape: 2; Side: A; Approx. Counter: 16.4}

REP. MC GEE asked if she was satisfied with the word, "verdict," as opposed to either "final judgment" or "verdict for settlement" or did that need to be expanded for clarification.

REP. KOTTEL said it was drafted so that should the case be settled without using the court system, the state would not receive the 10%.

Motion: REP. GRIMES MOVED TO AMEND LINE 30, PAGE 1 BY STRIKING "AWARDED BY A VERDICT" AND INSERT "RECEIVED BY A PLAINTIFF."

Discussion: REP. GRIMES said his intent in the amendment was to assure that if the medical malpractice bill passed, the \$250,000 cap would be the amount for the calculation. He asked if this amendment would accomplish his aim.

John MacMaster said it would help clarify it.

REP. KOTTEL accepted the amendment.

REP. WYATT asked when awarded an annuity of \$50,000, which would amount to the \$250,000 over the lifetime of the annuity, what the result would be.

REP. KOTTEL said the interest would be calculated from the date of filing of the complaint until the date of the award. The interest would be on that time period for the total value of the award.

REP. WYATT asked if that meant the state would get more on that particular situation.

REP. KOTTEL answered that the state would only get 10% on the amount of damages and it was true that the person under a medical malpractice situation would only get the \$250,000 over the period of time.

Mr. MacMaster suggested adding to the amendment, "received by a claimant" and explained why that clarification was needed.

Motion/Vote: REP. GRIMES MOVED A SUBSTITUTE AMENDMENT TO REFLECT THAT CHANGE IN WORDING. The motion carried 12 - 0.

Discussion: REP. CURTISS raised some of the concerns of those who testified that this could result in justice being delayed longer. She also felt there could be a conflict of interest for the judges making the determination and therefore opposed the bill.

REP. MOLNAR also opposed the bill because he could not see how the state would be served by it and it could hinder people who were trying to settle.

REP. MC GEE supported the bill because he could see the potential of the state being funded by the courts which were used to settle disputes. He said the judge would not benefit and the plaintiff would not receive from it nor would the defendant. He said it was a user tax or fee and appropriate that it go to the general fund.

REP. KOTTEL responded to those who opposed the bill.

{Tape: 2; Side: A; Approx. Counter: 30.5}

REP. CURTISS referred to lines 26 and 27 on page 1 and asked the sponsor to explain it.

REP. KOTTEL said that was current law which provides the jury instruction that the judge will determine if any interest is due and is intended to stop the jury from adding interest into the judgement.

REP. GRIMES complimented the sponsor for bringing a unique bill to the committee. He reviewed what the bill would accomplish from his perspective. He said he viewed the whole process of awarding noneconomic damages from a different light. At the time the jury would decide the noneconomic damages. He was not sure they could apply retroactivity back to the point the complaint was filed. It seemed to him that the jury would take that into account and it would influence their decision. He also was concerned about it being a fee to be taken out of the award rather than being paid up front. He said the fact that it would potentially reduce delays was important, but he was not sure how many delays there were or that this was a rampant problem in the court system. Therefore, he was not convinced the bill was needed.

REP. TREXLER asked for further clarification of the bill which was provided by the sponsor. His question was if it was possible for the claimant in section 1 to receive 10% and also the state to receive 10% and the losing party to pay them both.

REP. KOTTEL answered, "Absolutely not." She explained that interest would accrue on damages that are not subject to interest under subsection 1; therefore, it was mutually exclusive. Any interest paid to the claimant in subsection 1 would be subtracted out.

REP. WYATT reviewed the effective date and asked what impact this would have on pieces of legislation and lawsuits filed previous to July 1, 1995.

Mr. MacMaster said that brought up a good point and that they should put in an applicability provision. He felt the courts would either say the bill applied to causes of action that would arise after the bill's effective date or at the very least to actions filed after the bill's effective date. REP. KOTTEL and

Mr. MacMaster continued to discuss the wording of the bill regarding the provision.

Motion/Vote: REP. WYATT MOVED TO AMEND BY INCLUDING THE WORDING, "PROCEEDINGS FILED AFTER JULY 1, 1995" ON LINE 9, PAGE 2. The motion carried unanimously.

Discussion: REP. BILL TASH rose in opposition to the bill because he felt it added one more level of confusion for the jury.

REP. WYATT said it was her understanding that the jury does not know that the 10% is to be awarded and therefore it would not have the impact on the jury which was suggested.

REP. KOTTEL said subsection 3 addressed the concern that juries add in interest automatically and that section is current law. She said the jury is not told what the interest rate is or who will receive the interest. She said the proposed legislation does not change what the jury hears therefore it is not more confusing for them.

REP. TASH appreciated what she was saying as far as instructions to the jury, but the fact was that it did create some precedent-setting confusion based on the jury's understanding and the judge's understanding particularly on how difficult it is to recruit juries based on some of the complexities in the judicial system. Therefore, he would continue to oppose the bill.

Vote: The motion on HB 517 as amended carried by roll call vote, 10 - 7.

[NOTE; The standing committee report was held by request of Vice Chair Anderson and Chairman Clark. The committee voted to reconsider on March 13 and action was postponed until March 15 when it was passed out of committee as previously amended.]

CHAIRMAN CLARK relinquished the chair to VICE CHAIR WYATT.

{Tape: 2; Side: A; Approx. Counter: 52.1}

EXECUTIVE ACTION ON SB 286

Motion: REP. TREXLER MOVED SB 286 BE CONCURRED IN.

Discussion: REP. MC GEE asked who is currently paying the fees in the actions.

REP. HURDLE said there is no present recovery of attorney fees and court costs. This would comply with the U. S. Parenting Act by making both parents responsible.

REP. MC GEE asked if REP. GRIMES had any information on the bill.

REP. GRIMES said at first glance they were taking it from being paid by the state to being paid by the users.

Vote: The motion carried unanimously, 18 - 0.

EXECUTIVE ACTION ON SB 175

Motion: REP. SMITH MOVED SB 175 BE NOT CONCURRED IN.

Discussion: Mr. MacMaster discussed some of the effect of the amendments and the problems they would create. He thought an enterprising attorney would claim that it would not just grant immunity from prosecution in a criminal action, but also would grant civil immunity. He thought the amendments should say, "may grant a use derivative immunity by the states from prosecution."

REP. KOTTEL asked if it was not true that they could not grant a civil immunity without a two-thirds vote.

Mr. MacMaster said a two-thirds vote is needed on an immunity bill only in dealing with a governmental entity.

REP. SOFT said he could not support the bill. He submitted that if an offender admitted to a sexual offense only because they knew they would not be prosecuted, that would not be a heart-felt, soul-felt admission which would lead to recovery, but only done to avoid prosecution. In working with youthful offenders, the success is based on admission of guilt with the provision of making amends or restitution to the victims including asking forgiveness. That cannot be accomplished if the admission is only given when it is known that prosecution would be avoided. He said another problem was that the decisions are placed in the hands of county attorneys who are not the treatment officials.

REP. KOTTEL explained her dilemma in deciding to oppose the bill. She said the first issue was with charging someone with perjury as a new crime because of admission in treatment subsequent to denial made during their defense at trial. She said the part of the bill she did not like was that it also would protect them from admissions made in therapy regarding other crimes. She did not know how to protect them just from the perjury side while knowing that a no vote would bring sex offender treatment programs to a halt in the state.

Motion/Vote: REP. TREXLER MOVED TO TABLE SB 175. The motion carried 15 - 1, REP. BILL CAREY voted no. (REPS. ANDERSON, AHNER, BERGMAN, CLARK and BOHARSKI were absent, REPS. AHNER and BERGMAN voted by proxy.)

EXECUTIVE ACTION ON SB 372

Motion: REP. SHEA MOVED SB 372 BE CONCURRED IN.

Discussion: REP. MC GEE asked REP. GRIMES to confirm that the pay and benefits would exceed those figures presented in testimony.

{Tape: 2; Side: B}

They continued to discuss the applicability and reasonable fiscal impact from the proposed provision. REP. CAREY also referred to testimony and written documents to substantiate the figures proposed in testimony.

Motion: REP. KOTTEL MOVED TO AMEND LINE 13 FOLLOWING "IN A CIVIL ACTION" INSERT "IN WHICH THE STATE OR ONE OF ITS AGENCIES IS NOT A PARTY."

Discussion: REP. TREXLER asked if this meant that if the suit involved one party but they wanted information from a different department from the one being sued that those expenses would not be paid either.

REP. KOTTEL said that was how the amendment was written.

VICE CHAIR WYATT read a request from REP. CHRIS AHNER that the committee not take action on the bill until she had time to obtain information. REP. GRIMES suggested moving the amendment and then to suspend further action.

Vote: The amendment motion carried unanimously.

Motion/Vote: REP. GRIMES MOVED TO POSTPONE FURTHER ACTION ON SB 372. The motion carried unanimously.

Motion: REP. SOFT MOVED TO ADJOURN. The motion was set aside as CHAIRMAN CLARK returned and resumed the chair.

EXECUTIVE ACTION ON SB 211

Motion: REP. SMITH MOVED SB 211 NOT BE CONCURRED IN.

Discussion: REP. SMITH said her reasons for the motion was that the bill was ambiguous. She felt the amendments added to the confusion in the language relating to recreational purposes on page 1, line 19.

REP. KOTTEL attempted to clear up the confusion relating to the issue of allowing the state to immunize itself from pleasure drives on public streets and said that proposed amendment 2 submitted by Mr. Hill would clarify that pleasure drives on public streets were excluded. The other issue related to the third proposed amendment which responded to the testimony that without the word, "directly," it would have the effect that if the child was not the one paying the entry fee but was the one subsequently injured in a for-profit area, the business could

claim immunity. Therefore, the amendment proposed to strike "directly" to clarify that immunity would apply where no compensation was forthcoming.

Motion: REP. KOTTEL MOVED THE ABOVE-MENTIONED AMENDMENTS.

CHAIRMAN CLARK told the committee that in order to entertain amendments, there would have to be a substitute motion to concur.

Motion: REP. SMITH MOVED A SUBSTITUTE MOTION THAT SB 211 BE CONCURRED IN.

Discussion: REP. HURDLE said she supported the amendments.

REP. GRIMES asked what any similar activity in the second amendment could refer to and if pleasure drives on public streets could actually be recreational. He wondered if it would include back trails or casual shopping. He was worried about the full implication of those words in court.

REP. KOTTEL clarified where those words were inserted. She said the result was that immunity would be offered to a landowner upon whose property someone took their four-wheeler for a pleasure drive.

REP. TASH opposed the amendment because there were already too many things which happen between the public and private landowners to invoke more restrictions and not to offer more immunization from liability in those cases would deny more access to public and private lands.

REP. KOTTEL agreed with him and that was why she supported the bill because the fear of lawsuit had stopped many from promoting recreational events. She explained her support of the amendments.

{Tape: 2; Side: B; Approx. Counter: 23.2}

REP. TASH responded and continued to describe his opposition to the amendments.

REP. MOLNAR suggested segregation of the amendments.

CHAIRMAN CLARK informed the committee that they were dealing with amendment 2 as segregated from amendment 3.

REP. KOTTEL felt that when people voluntarily give up private lands for recreational use they should be protected. But she felt that when they engaged in a for-profit venue, their way of risk management was to operate that operation appropriately. She felt that persons entering the for-profit entity were due the responsibility of the owner to provide safety. She felt the amendment clarified that.

REP. ANDERSON said this amendment was unnecessary in his opinion because not everyone is on the public streets and highways for pleasure purposes and there are standards which must be maintained to keep them for the activities. He said that the buildings and businesses were already being kept safe because they would already be held liable for those who would be paying to use them.

Vote: The motion (on amendment 2) failed on voice vote.

Discussion: REP. KOTTEL discussed the reason for amendment 3 and said it did affect the intent of the bill which was to protect those who granted genuine gratuitous access. In striking the word, "directly," she said they would see defense tactics where they would have a position of artificially excluding situations because game is left on a door step or someone else paying an entrance fee for a child, for example. She felt the amendment was a clean-up measure and would allow the bill to accomplish its intent.

REP. ANDERSON again thought they were knit-picking the bill and thought it should be left as proposed.

REP. MC CULLOCH said if it was not a big deal, it wouldn't hurt to include the amendment.

REP. MC GEE said he would vote for the amendment.

Vote: The motion carried 9 - 7 by roll call vote.

Motion: REP. SMITH MOVED SB 211 BE CONCURRED IN AS AMENDED.

Discussion: REP. SMITH asked what other valuable consideration to the landowner applied.

REP. ANDERSON said there had to be a separation between gift and consideration. Consideration given was for the purpose of accessing the property without which they would not be able to access it. It could be something given in exchange for the services and it most likely would be money.

REP. TASH encouraged the committee to vote for the bill with the amendment. He said they were trying to encourage some of the partnerships and they weren't just talking about outdoor recreation. Some of those bike paths, etc. were on state-owned land and that was all the more reason for providing some immunization from liability for someone who might step in a badger hole and sue the state for it. He said there was some payment by reciprocation for community interests.

REP. MC GEE made the point that the text beginning on line 22 on page 1, made the state a unique landowner by finding it immune from liability while having to pay the state for use of the land.

REP. CAREY asked if current Montana law extended recreational use immunity to governmental landowners.

Mr. MacMaster thought it did. He said whether or not the bill passed, they were immune.

REP. MC CULLOCH said that her notes indicated that charging a fee waived the right to sue unless there was willful and wanton misconduct.

REP. TASH affirmed what REP. MC CULLOCH had said and he felt the language was pretty specific. In regard to the fees, he discussed examples of the application of 77-1-802, MCA.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 1, LINE 18 TO INSERT "OUTDOOR" AFTER "OTHER."

Discussion: CHAIRMAN CLARK resisted the amendment because it was not always clear who was liable on some indoor activities.

REP. ANDERSON agreed to the opposition of the amendment and he talked about recreation on private lands which included old buildings where limiting it to outdoor situations would preclude immunity from liability where it should not be.

REP. KOTTEL said she had no problem immunizing property owners from naturally occurring conditions but did have a problem when a landowner created an artificial condition and the structure would be subject to extensive maintenance to make it worthy of having people inside it. She did not think people who provided those structures should be kept immune from maintaining a standard of safety.

CHAIRMAN CLARK and REP. KOTTEL continued to debate the point.

{Tape: 2; Side: B; Approx. Counter: 58.6}

REP. ANDERSON described why he disagreed with REP. KOTTEL'S philosophy on this point.

Vote: The motion failed by voice vote. (Five members voted aye.)

Vote: The motion on the bill as amended carried 15 - 1, REP. WYATT voted no.

Motion: REP. CAREY MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:10 PM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

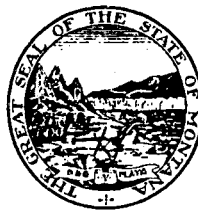
HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/9/95

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	✓ 9:15	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:15	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 278 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Grimes

Committee Vote:
Yes 18, No 0.

581319SC.Hbk

3/13 mm



HOUSE STANDING COMMITTEE REPORT

March 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 286 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Bohlinger

Committee Vote:
Yes 18, No 0.

551410SC.Hbk



HOUSE STANDING COMMITTEE REPORT

March 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 211 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Mills

And, that such amendments read:

1. Page 1, line 27.
Strike: "directly"

-END-

Committee Vote:
Yes 15, No 1.

551411SC.Hbk

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Chairman Calk.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
<u>SB 278</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>AMENDMENTS</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SENATE BILL/AMENDMENT	AYE	NO

Rep. Shirley W. Anderson
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-85

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Chris Hiven.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
SB 143		X
SB 278	X	
Amendments	1	X

Rep. Cliff Truitt
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Chairman Clark.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
<u>211</u>	<u>X</u>	
<u>Amendment "Gulbani"</u>		<u>X</u>

Rep. [Signature]
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary Committee
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Deb Kottel.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 117	✓	
HB 211	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Debbie Shea

(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Bob Clark.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

Senate Bill

HOUSE BILL/AMENDMENT	AYE	NO
13	X	
64	X	
66	X	
77	.	X
90	X	
109	X	
113	X	
143	X	
165	X	
175		X
185	X	

SENATE BILL/AMENDMENT	AYE	NO
189	X	
192	X	
211	X	
212	X	
218		
272	X	
278 as is	X	
286	X	
297	X	
340	X	
402	X	
517		X

Please hold
off on 372 until
I get some
Questions answered
Thanks.

Rep. Chris Ahner
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE March 9

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Bob Clark.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
DB 133	X	
SB 212	X	
" 66	X	
" 174		X
" 272	X	
" 297	X	
" 206		X

SENATE BILL/AMENDMENT	AYE	NO
SB 278	X	
No to any new amendments		
SB 175		X
" 372 ?		
" 340	X	
amendments ?		
SB 77		X
" 64	X	
" 113	X	
109	X	

Rep. Ellen Bergman

(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3/9/95

I request to be excused from the

Judiciary

Committee meeting this date because of other commitments. I desire

to leave my proxy vote with

Shuell Anderson

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO

With
Shuell on
all votes
everything
~~until signed~~

Rep.

(Grimes)
(Signature)

By Shuell

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Quidary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Ellen Bergman.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

Please hold off on 372 - until I get a question I have answered.

HOUSE SENATE BILL/AMENDMENT	AYE	NO
SB 278	X	
without ^{MORE} amendments.		
13	X	
64 Concurred.	X	
66	X	
77		X
90	X	
109 Passed -	X	
113 Concurred ^{AS AMEND.}	X	
143	X	
165	X	
229 Passed -	X	

SENATE BILL/AMENDMENT	AYE	NO
175	X	X
185 passed	X	
189	X	
192	X	
211	X	
212 Passed.	X	
218 Concurred -		
272 Passed.	X	
286	X	
297 Concurred -	X	
340 as amended.	X	

402 Passed as amended
517 Voted yes
to send to floor

133 - Tabled -

174 -

206 - aye - passed -

353 HR:1993
WP/PROXY

372 - aye - passed.

SB 63 aye passed 12/6

Rep.

(Signature)

Chris Ahner

SB DUE
237 Aye

316 Aye

333 Aye.

SB 311 - Tabled

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/9/95 BILL NO. HB577 NUMBER

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, 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		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/9/95 BILL NO. SB 211 NUMBER _____

MOTION: Amendment #3 suggested by Russell Hill, MTLA

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, 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 3/9/95
SB 372

TESTIMONY
SENATE BILL NO. 372

BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 9, 1995

KELSI MacINTYRE

My name is Kelsi MacIntyre. I am a student at Helena Capital High School. I am a student in an Honors Government class. I appear here today with Sarah McDonough, who is also a member of the Honors Government Class.

This bill, sponsored by Senator Stang, is the result of one of our government class projects. The goal of this particular project was to identify the potential to make government more cost effective by placing the cost of government services on the person directly benefiting from the service.

I am aware, and the National Conference of State Legislatures has confirmed, that virtually every state in the United States provides that when a person issues a subpoena to a law enforcement official to require the official to testify in connection with the law enforcement official's duties in a private civil dispute, the person issuing the subpoena must compensate the state for the regular pay and benefits for the law enforcement official's time spent in complying with the subpoena.

In visiting with a few Montana government officials, like Judy Browning, Chief of Staff for Governor Racicot, I learned that Montana has a similar statute, but it only applies to the Department of Justice. There is not currently a similar provision in Montana law that would allow any other executive, legislative or

testimony provided by the state employee. When you consider that an attorney may be charging anywhere from \$75.00 to \$100.00 per ;hour to litigate a case, the \$15.00 per hour charge for state employee time can only be seen as a very minor part of the total cost of litigation.

If the experience of other state agencies is similar to the Department of Natural Resources and Conservation, then you can see there will be even greater benefit to the State of Montana. And even in the short-term, say 10 years, the savings to the State of Montana becomes more and more clear. Ms. McDonough will give you the comments that have been received from other state agencies.

I hope you will see this bill as a "good government bill" which should cost the State \$0 to implement and yet net the State a substantial saving over the short-term. Thank you.

TESTIMONY
SENATE BILL NO. 372

BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 9, 1995

SARAH McDONOUGH

My name is Sarah McDonough. I am a student at Helena Capital High School. I am a student in an Honors Government class. I appear here in support of Senate Bill No. 372.

As Ms. MacIntyre testified, various state agencies were contacted to determine whether the passage of this bill would have a positive impact on their agency. In addition to the Department of Natural Resources and Conservation and the Department of Administration, response were also received from the Department of Agriculture, Department of Fish, Wildlife and Parks, Department of Labor and Industry, Department of Family Services, and the Department of Revenue.

The following is a listing of the comments received from these agencies:

Department of Agriculture: "The department has always fulfilled what it believed to be its obligation to provide necessary information and to honor the subpoenas. It has also viewed this as unanticipated expenditures of time and money which might otherwise be devoted to other programs."

Department of Fish, Wildlife and Parks: The Department's fish and wildlife biologists occasionally receive subpoenas. This bill would allow the agency to recover the costs for their service that are otherwise lost to the programs. As indicated by the chief

COPY

March 15, 1995

Representative Bob Clark
Chair
House Judiciary Committee
State Capitol
Helena, MT 59601

Re: Senate Bill # 372

Dear Representative Clark:

On March 9, 1995, Ms. Sarah McDonough and I presented testimony in support of Senate Bill No. 372, an act requiring payment of compensation to state employees for time spent in answering a subpoena in civil actions. I thank the committee for your courteous handling of the bill.

During the hearing a couple of questions were asked concerning whether the testimony on the cost associated with the answering of a subpoena included both salary and benefits, and whether other states had similar legislation. I am writing this letter to provide you with a more comprehensive answer to those issues.

As concerns the issue of cost, Ms. McDonough testified that the average wage, i.e. base salary without benefits, of a state employee who receives a subpoena is between \$12.00 and \$12.65 per hour. In my testimony I quoted a figure for an average salary at \$15.00 per hour. The \$15.00 per hour was meant to include benefits. After the hearing we visited with the Administrator of the Centralized Services Division of the Department of Natural Resources and Conservation who verified the following: a state employee who earns wages of \$12.00 per hour receives approximately 16% in benefits plus insurance. The insurance benefit for fiscal year 1995 is approximately \$1.33 per hour. The total salary and benefit package would be calculated as follows: \$12.00 (base wage) + \$1.33 (insurance) + \$1.92 (16% benefits: $\$12.00 \times 16\% = \1.92) = \$15.25.

Cross References

Agreement to appear at time other than specified in subpoena, see § 68097.9.

Offer or acceptance of consideration for services not provided for by statute, see § 68097.7.

Library References

Words and Phrases (Perm.Ed.)

California Practice Guide: Civil Trials and Evidence, Wegner, Fairbank, Epstein & Chernow, see Guide's

Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

Notes of Decisions

1. In general

A party who subpoenas a department of California highway patrol member as a witness in a civil action or proceeding in connection with a matter regarding an event or transaction which he has perceived or investigated in the course of his duties is required to pay the monies

specified in § 68097.2 where the state or a state agency other than the department of California highway patrol is also a party to such litigation, unless the subject matter of the litigation arises out of the activities of the department of California highway patrol. 58 Ops.Atty.Gen. 543, 7-29-75.

§ 68097.2. Compensation; expenses; reimbursement of public entity

(a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, any firefighter, or any state employee, or county employee, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to which he or she is normally entitled from the public entity by which he or she is employed during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from the public entity by which he or she is employed the actual necessary and reasonable traveling expenses incurred by him or her in complying with the subpoena.

(b) The party at whose request the subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the peace officer, firefighter, state employee, or specified county employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the peace officer, firefighter, state employee, or specified county employee is required to remain in attendance pursuant to the subpoena. The amount of one hundred fifty dollars (\$150), together with the subpoena, shall be tendered to the person accepting the subpoena for each day that the peace officer, firefighter, state employee, or specified county employee is required to remain in attendance pursuant to the subpoena.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the peace officer, firefighter, or state employee to appear on the date to which the proceeding is continued.

(f) For the purposes of the payment of the salary or other compensation of a volunteer firefighter pursuant to subdivision (a), a volunteer firefighter who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties as a volunteer firefighter, shall be deemed to be entitled to reasonable compensation evidenced by the compensation paid to firefighters in jurisdictions with similar geographic and economic characteristics. However, the requirements of subdivision (a) and of this subdivision are not applicable if a volunteer firefighter will receive his or her regular salary or other compensation pursuant to the policy of his or her regular employer, for the periods during which compensation is required under subdivision (a).

(Amended by Stats.1977, c. 471, p. 1534, § 3; Stats.1977, c. 593, p. 1965, § 3.5; Stats.1980, c. 472, p. 984, § 1; Stats.1986, c. 747, § 1; Stats.1988, c. 588, § 1; Stats.1989, c. 1416, § 35; Stats.1990, c. 511 (S.B.163), § 2, eff. Aug. 13, 1990; Stats.1992, c. 427 (A.B.3355), § 73; Stats.1992, c. 381 (S.B.1546), § 3, eff. July 30, 1992; Stats.1992, c. 876 (A.B.3296), § 13; Stats.1993, c. 158 (A.B.392), § 13, eff. July 21, 1993; Stats.1993, c. 727 (A.B.1522), § 3.)

Additions or changes indicated by underline; deletions by asterisks * * *

Senate Bill 175
Sponsor's Proposed Amendments

1. Title, line 4.
Following: "AN ACT"
Strike: "PROVIDING IMMUNITY FROM PROSECUTION"
Insert: "ALLOWING THE STATE TO GRANT IMMUNITY"
2. Page 1, line 11.
Following: "participates in a"
Strike: "sexual offender"
3. Page 1, line 12.
Following: "46-23-502"
Strike: "is"
Insert: "may be"
4. Page 1, line 12.
Following: "immunity"
Strike: "from prosecution"
Insert: "by the state"
5. Page 1, line 13.
Following: "treatment."
Strike: "A"
Insert: "If a grant of immunity is given, then any"

Richard F. Syverson

CORRECTIONAL TREATMENT SPECIALIST
1507 1st Ave. W., Suite C
Kalispell, MT 59901
(406) 257-6145

EXHIBIT 5
DATE 3/9/95
SB 175

Why Say No to SB 175

We Believe this to be Irresponsible and Enabling Legislation for the Following Reasons:

1. Giving immunity from prosecution to those who "confess" crimes during sex offender treatment sends this message to the victims of those crimes, "YOU DON'T COUNT!"
2. The bill's sponsor's argue that sex offenders will not enter treatment programs because of the disclosure requirement. We say, *what's the point?* Let's not make the criminal's problem our problem. If sex offenders and other criminals will not enter treatment because they must disclose they have made their choice. The problem for the rest of us then becomes a housing construction problem at Montana State Prison.
3. Finally, this bill would promote the opposite of good treatment for criminals. We would again be telling them you do not have to be responsible for what you do.
We will give you another excuse and not require accountability.

As a treatment professional I must tell you that rescuing people who don't want help is a form of co-dependency and enables the criminal to continue victimizing others. Working with criminals has been my career and study for 20 years. This kind of experience cannot be acquired in universities and colleges. In my experience I have had a number of criminals confess, without benefit of immunity, crimes ranging from burglary to murder because they wanted to do the right thing.

I have enclosed an outline of "The Buck Stops Here" Corrections Program I direct in Kalispell. I consider this a good example of responsible corrections treatment. This is a private program and is paid for by the client himself. You will find no suggestion of "immunity" from prosecution in this program. This is a program that addresses the criminal with responsibility for his actions and responsibility for his own rehabilitation.

Dick Syverson BS, CTS
Correctional Treatment Specialist

"The Price of Freedom is Responsibility"

Richard F. Syverson

CORRECTIONAL TREATMENT SPECIALIST
1507 1st Ave. W., Suite C
Kalispell, MT 59901
(406) 257-6145

**"THE BUCK STOPS HERE" CORRECTIONS PROGRAM
DIRECTOR - DICK SYVERSON BS,CTS**

I. "The Buck Stops Here"

Our program has been granted permission by the Harry S. Truman Presidential Library to use the President's famous expression as our program's title. It is especially appropriate because the saying derives from the slang expression "pass the buck" which means passing the responsibility on to someone else. Criminals are notorious buck passers.

To satisfactorily complete our program a criminal must face himself and his criminal actions squarely and conclude, "It is *my fault* and I will take care of it". No more passing the buck. The program's creed is: The Price of Freedom is Responsibility.

II. Crime and Corrections in Montana (Why are we in such a mess?)

Because Montanans are good people and want to believe in the basic goodness of all people. But rescuing people who don't want help is a form of co-dependency and it enables the criminal to continue victimizing others.

The criminal knows the difference between good and evil and he prefers evil.

Crime resides within the person and is caused by the way he thinks and not by his environment. We must understand that criminals are *different*. They do not think like responsible people and they do not want the same things out of life. Unless we help criminals to think differently, they will continue to prey on us all. If people don't learn from the past and make some decisions about the future, nothing will change.

III. A Matter of Choice

Until the criminal *decides to change*, all efforts to rehabilitate him will be in vain. Money spent on education, job training, drug and alcohol treatment, sex offender treatment, etc, on unmotivated criminal clients is money thrown away. Therefore, we must expend our efforts, time and money on those criminals who want to change and lock the others up for as long as we can.

We are as we think. As long as the criminal remains in his criminal thinking mode he will

"The Price of Freedom is Responsibility"

not be reached by any method. As it is about an alcoholic who cannot be helped until he decides to stop drinking - once an alcoholic always an alcoholic, so it is with the criminal, *once a criminal always a criminal.*

So we need to separate the sheep from the goats. We have to make our best judgement about who is sincere and serious about changing and work with him in "The Buck Stops Here" program. We will soon know whether he is sincere and serious about change and in a better position to make informed decisions about him. It is not an exact science and we will make some mistakes, but not as many as we are making now.

IV. Program, Philosophy and Costs

Our program has two goals, in this order: First, protect the community from the criminal and second, assist those criminals who sincerely want to change.

Our philosophy is that we must stop searching for outside causes of crime - *the criminal is to blame.*

Prisons are cost effective. Crime costs about twice as much as incarceration.

Satisfactory completion of "The Buck Stops Here" Correctional Program requires a two year commitment by the client. He must attend 80 groups in the first year and 40 groups in the second year. Group cost is \$20.00 at this time. He must also pay for all materials used in group guaranteed to be less than \$100.00 for the entire program. In addition, he must sign a contract giving permission to program staff to contact friends, family, employers and others on a weekly basis to establish and maintain his honesty in group.

His signature on the program contract also authorizes program staff to submit all reports to persons and agencies required to maintain individual and public safety. We will submit an initial 45 day and 90 day reports to the sentencing court throughout the client's program participation.

To complete this program the criminal must reach a position of *no choice but to change.* This is his last chance to break the criminal cycle. He must see the program as his lifeline to freedom. As Albert Einstein said: "The problems of today cannot be solved by the same thinking which created those problems in the first place".

March 9, 1995

House Judiciary/SB 175
Arlette Randash / Eagle Forum

Some of the most heart rendering testimony has been given during this legislative session concerning sexual offenders. I didn't testify against this bill on the Senate side because I wanted to hear what it was all about. I came away from the hearing with serious reservations which are still not resolved. While we all want sex offenders helped, we must not forget their victims, nor the safety of potential victims.

In June of 1994 there was a symposium made up of the attorney general, of state law enforcement officials, and juvenile sex offender experts in Great Falls. All involved cited over and over again three primary concerns, concerns just as relevant for adult sex offenders I'm sure. 1) protection of the community and the victim, 2) holding the offender accountable, 3) developing competency in the offender. This symposium cited a 1984 Abel, Mittelman, and Becker study which revealed that 232 child molesters "had an astounding capacity for victimization. Those offenders whose victims were less than 14 years old had attempted 55,250 molestations and had completed 38,727. Their combined victims numbered 17,585 children, for an average of nearly 76 victims each." In an earlier study the same group had said "that the average male sex offender affects 380 victims in his lifetime." [page 3 "Youth We Fear" Adolescent Sex Offender Treatment: What Works?] Granting immunity to people with such a capacity for inflicting horrifying devastation in a victims life, *on the hope they will be rehabilitated*, doesn't make sense if one of the state's primary objectives is to protect the community. And especially after we have seen the anger families have had this year when they see murderers out to dinner, the state wouldn't be providing protection for the victim *or the released offender from enraged family members*.

But even more than that this bill flies in the face of conventional wisdom. This past week I asked a county attorney from a major metropolitan area to share with me what he perceived to be the best sex offender treatment plan. He asked me if I wanted him to speak from his heart and I assured him I did. He smiled, and said one word..... "aging." *Aging* is hardly use-derivative immunity and turn 'em back on the street.

Furthermore, the only program that has ever worked to any degree of satisfaction with the rehabilitation of alcoholics is the simple, but life altering program, the 12 step program. It works precisely because in step 5 a person "admits to God, to ourselves and to another human being the exact nature of our wrongs. Step 8, "made a list of all persons we had harmed, and became willing to make amends to them all," and, Step 9 "made direct amends to such people wherever possible, except when to do so would injure them or others." There are no shortcuts to rehabilitation for the alcoholic, unless one is willing to make the direct amends, no matter the cost, it is too easy to remain in denial..... the same denial that keeps a sex offender from examining the horror of the offense. Don't grant immunity to SB 175. Put it away by giving it a 'do not pass.'

Amendments to Senate Bill 278
Third Reading Copy (Blue)

Requested by Sen. Vivian Brooke
for the House Judiciary Committee

Prepared by
Beth Baker, Department of Justice

1. Title, line 10.
Following: "AUTHORIZING"
Strike: remainder of line 10 through "SITUATION" on line 11.
Insert: "POLICE OFFICERS TO TAKE REASONABLE ACTIONS FOR THE PROTECTION OF VICTIMS OF PARTNER OR FAMILY MEMBER ASSAULT"
2. Page 12, line 6.
Following: "offender"
Strike: "~~charged or~~"
Insert: "charged or"
3. Page 12, line 7.
Strike: "THE"
Insert: "a"
Strike: "USED IN THE ASSAULT"
4. Page 15, line 15.
Following: "(6)"
Strike: the remainder of line 15 and line 16 in its entirety.
Insert: "any other order of protection reasonably necessary to protect you or other family members"
5. Page 17, line 22.
Strike: "~~seizure of weapon~~"
Insert: "~~peace officer response~~"
6. Page 17, line 23.
Following: "assault"
Strike: remainder of line 23, all of line 24 and line 25 through "officer".
7. Page 18, line 1.
Strike: "(3)"
Insert: "(2)"
8. Page 18, lines 23 and 24.
Following: "(6)"
Strike: remainder of line 23 and line 24 in its entirety.
Insert: "any other order of protection reasonably necessary to protect you or other family members."

HOUSE OF REPRESENTATIVES
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JUDICIARY

COMMITTEE

DATE 3/8/95

BILL NO. SB 372 SPONSOR(S) Sen. Stang

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NAME AND ADDRESS	REPRESENTING	Support	Oppo
Kelsi M ^{re} Tintyre -151 Briarwood	372	✓	
Sarah McDonough 5515 Eldorado Ct.	372	✓	

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SPONSOR(S) Sen. Van Valkenburg

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Arlette Randsak	Eagle Forum		✓
Laure Kentrik	Christian Coalition MT		✓
JOE ROBERTS	Mt. Cty. Attys Assoc	✓	
Brock DiSanti	Lavina, MT		✓

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