

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 22, 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:

Executive Action: HJR 27, HB 74, HB 186, HB 336
HB 366, HB 443, HB 482, HB 491

EXECUTIVE ACTION ON HB 443

Discussion: CHAIRMAN BRUCE CRIPPEN stated there were amendments requested by SPEAKER JOHN MERCER. Page 2, line 16, after the word "wages" insert "that are causally connected to the injured party's liability claim." Page 2, line 17, strike "AND THE EXTENT AND CAUSE OF DAMAGES".

Motion: SENATOR MIKE HALLIGAN MOVED TO AMEND HB 443 BY AMENDMENT NO. 1. The motion CARRIED UNANIMOUSLY on oral vote.

Motion: SENATOR AL BISHOP MOVED TO AMEND HB 443 BY AMENDMENT NO. 2.

Discussion: SENATOR BISHOP stated that the language which was added in the House tears the heart out of the bill.

CHAIRMAN CRIPPEN clarified that if liability had become reasonably clear within a reasonable time after submission of verified claims for losses, that would be one of the criteria. The amendment the House put in would be liability and the extent and cause of damages.

SENATOR RIC HOLDEN stated that the language the House put in gives people in the field some parameters. It gives them an idea of where to start and what to look for.

SENATOR SUE BARTLETT stated the same language also appeared on page 1, line 23 and page 2, line 10.

CHAIRMAN CRIPPEN stated that this was the only place SPEAKER MERCER wanted it removed. Section 1 defines an unfair claim settlement practice. (15) deals with medical expenses, property damage claims and claims for lost wages. If liability has become reasonably clear, that would be one standard. If the "extent and cause of damages" is added, that is broadening it as another criteria which needs to be satisfied.

Jackie Lenmark, American Insurance Association, stated that was added to address the problem of a situation wherein if the defendant had rear ended plaintiff and liability was absolutely clear. However, plaintiff was claiming damages which were not a result of the accident.

SENATOR LARRY BAER stated that the words "and the extent and cause of damages" which was added on page 1 refers to a fair and equitable settlement which has not taken place. It is hard to effect a fair and equitable settlement until there is a reasonable determination of the extent and cause of damages. On page 2, line 17, the phrase that the amendment intends to eliminate is different. This refers to a situation where the liability has been clearly establish, but the extent and the cause of damages has not been established and the damaged party is incurring immediate medical expenses that should be paid by the insurer. The insurer would not be held to make those payments, when necessary, if the words "and the extent and the cause of the damages" were included. The extent and cause may not be determinable for quite some time and the injured party needs help to pay for the current medical expenses.

CHAIRMAN CRIPPEN stated the problem would occur if the medical expenses were paid and later it was determined that the medical expenses were a direct result of a previous injury. The insurance company, acting as the insured's agent, would probably not be able to recover those costs. If the policyholder says

damages are only \$50,000 and the plaintiff says damages are \$100,000 and the insurance company is required to pay \$50,000, the negotiations then start from \$50,000 and go up.

SENATOR BAER stated that he has had no problem with insurance companies, upon the finding of their responsibility and liability under the policy, immediately reimbursing the insured for their incurred medical costs as they work on a determination of the extent and cause of damages. If this clause is left in, they would be encouraged not to be so cooperative in any given situation.

Substitute Motion: **SENATOR HOLDEN** MOVED TO FURTHER AMEND HB 443 BY STRIKING LINES 15 THROUGH 20, PAGE 2.

Discussion: **SENATOR HOLDEN** stated that insurance companies advance pay the medical expenses and lost wages when liability is clear. Page 1, (6) (7) (8) would determine that companies who do not advance pay are not acting in good faith.

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

Vote: The motion by **SENATOR BISHOP** CARRIED on oral vote.

Motion: **SENATOR BISHOP** MOVED HB 443 BE CONCURRED IN AS AMENDED.

Discussion: **SENATOR BARTLETT** asked if there would be a difference in circumstances when the insurance company is dealing with an individual they insure as opposed to a third party insured.

SENATOR BAER stated that in either case if liability is established the insurance company in good faith quite often will advance the cost of the medical treatment to the injured party. But not all insurance companies may be so cooperative. This bill would require that they act in good faith. If amendment two had not been adopted, they would be within their rights to withhold payment of medical expenses until the extent and cause of the damages were substantially determined. That could create a great hardship to the person who is receiving bills and threats of having the bills turned over to a collection agency.

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

Discussion: **SENATOR HALLIGAN** stated that he had discussed this legislation with plaintiff and defense lawyers and they stated that if a amendment was placed on the bill that this would apply unless a demand has been made for policy limits or where the plaintiff for the injured party has no insurance, then people would actually be covered.

CHAIRMAN CRIPPEN stated that **SPEAKER MERCER** stated that if the amendments were not passed, he would like to see the bill tabled.

Motion/Vote: SENATOR HALLIGAN MOVED HB 443 AS AMENDED BE TABLED. The motion CARRIED on roll call vote with SENATORS BAER, BISHOP, DOHERTY, ESTRADA, and GROSFIELD voting "NO".

EXECUTIVE ACTION ON HB 336

Discussion: SENATOR BARTLETT presented amendment hb033601.av1, EXHIBIT 1. If both of her amendments passed, the bill would be stripped down to no longer require the bail bonds people to attend the continuing education classes.

CHAIRMAN CRIPPEN stated they would take amendment 601 first which strikes section 2.

Motion: SENATOR BARTLETT MOVED TO AMEND HB 336.

Discussion: SENATOR BARTLETT stated that the section this amendment would strike is the one which would end the bail bond responsibility at the point that an individual is found guilty or pleads guilty. Frequently an individual is not sentenced immediately upon conviction for a variety of reason. They may want a presentencing investigation or it may have been a particularly emotional trial and the judge wants a little time between the conviction and the sentencing. The bill, with this section in it, states that at the point the person is found guilty the bond ends and the responsibility of the bail bond person to make sure that that defendant shows up for court appearances ends. One of the consequences then is they have no obligation to make sure the defendant shows up for sentencing. Either the judge has to order a new bond, in which case the bail bonds person is making double money, or the court has to take the chance that the defendant won't show for sentencing which would lead to an arrest warrant having to be issued. The comments she has received from the lower courts is that the current system works fine and this kind of a change simply gives a bail bonds person a double opportunity to make a fee from the same defendant.

SENATOR BISHOP stated that if the judge feels the defendant might flee, he could revoke the bond and put them in jail pending sentencing. If the defendant is found guilty and the sentencing is delayed, the bail bondsmen would have to tail that person. If the judge has a problem with that, he should handle it himself.

SENATOR HALLIGAN stated if the defendant had a condition on his release and he posted bond and it was violated, it is up to the judge's discretion on whether or not to revoke the bond.

SENATOR BARTLETT commented that the bail bonds person is in the business of tailing the defendant. They are asking for help to lessen their risk.

Vote: The motion CARRIED on oral vote with SENATORS BAER, BISHOP, ESTRADA, GROSFIELD and JABS voting "NO".

Motion: SENATOR BARTLETT MOVED TO FURTHER AMEND HB 336 BY AMENDMENT HBO33602.AVL, EXHIBIT 2.

Discussion: Section 3 proposes to extend the time period in which the bail bonds person can find defendant and bring him back without any forfeiture of the bond and no monetary penalty. This extension would be from 30 days to 90 days. The amendment would strike that because this section would allow the bail bonds person 30 days after the forfeiture in which to produce the defendant or satisfactorily excuse the defendant. Within the subsequent 90 days, if the defendant appears and satisfactorily excuses the failure to appear, the judge shall direct the forfeiture to be discharged. There is a 120 day period that the bail bonds people already have before their bond is completely forfeited. They are proposing to take that to a six month period. There was testimony from the magistrates that that will slow the work down in their courts. The other change in section 3 is (4) where the surety bond must be exonerated upon proof of the defendant's death, incarceration or subjection to court ordered treatment. The testimony pointed out that this kind of a change does not allow the judge to deduct any kind of a monetary penalty from the bond even if the court has incurred expenses, such as having a jury impaneled, only to discover that the defendant did not show up. In the case of a defendant's incarceration, death or subjection to court ordered treatment in another jurisdiction, the bail bonds person can show in the court and demonstrate that that is the situation and the judge then simply continues the bail. The bond is not automatically forfeited at that point. The current system works well and this bill was designed as a bail bondsman's relief bill where they are unwilling to shoulder the amount of risk which is inherent in their business.

SENATOR HOLDEN stated that the most important issue is to get the defendant back into court. If we are giving them 90 days, wouldn't it still accomplish the objective and still give the bail bonds people a break at the same time?

SENATOR BARTLETT stated the corollary to the 90 days, the other part of the sentence, is that they are specifying that the judge no longer has discretion in whether or not the forfeiture should be discharged. They are trying to require the judge to direct that the forfeiture would be discharged, not upon terms which may be just because they are being stricken from the bill, and the surety bond then returned with no monetary penalty. During that 30 or 90 day period, if this bill were to pass with the 90 days in it, the court may have incurred costs because of the defendant's failure to appear. It is not appropriate to then say that the county or the city simply has to absorb those costs. They were incurred because the defendant failed to appear. There

should be some liability on the bond to cover those costs which may or may not be the full amount of forfeiture.

SENATOR HOLDEN asked what costs the courts would be absorbing?

SENATOR BARTLETT stated that they may have impaneled a jury and have people in the courthouse ready to hear the trial. They are obligated to pay those jury expenses, but they cannot proceed with the trial if the defendant does not appear.

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

Motion: **SENATOR HOLDEN MOVED HB 336 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR BAER** asked what the problem was with continuing education.

CHAIRMAN CRIPPEN stated that the bail bonds people have to learn about life, health, and casualty insurance.

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

EXECUTIVE ACTION ON HB 491

Discussion: **CHAIRMAN CRIPPEN** commented the amendments had been agreed on conceptually. **Valencia Lane** stated the amendments were similar to the ones presented during the hearing in handwritten form. The title has been changed to clarify the law enforcement responsibilities of sheriffs and police officers. It would put §7-32-4105 into the bill, which is duties of chief of police, and clarify that the chief of police is the chief law enforcement officer within the city or town. Amendment 3 states that except in an incorporated city or town that maintains a municipal police force or as otherwise provided by local charter, ordinance or resolution, the sheriff is the chief law enforcement officer of the county. This will take care of the concerns raised at the hearing about incorporated cities or towns which do not have a police force and consolidated cities and counties. The amendments are intended to clarify that the sheriff is the chief law enforcement officer in the county, except within an incorporated city or town which maintains a police force and in that instance the chief of police is the chief law enforcement officer within the city or town.

Motion/Vote: **SENATOR ESTRADA MOVED TO AMEND HB 491. (EXHIBIT 3)**
The motion **CARRIED** on oral vote.

Motion/Vote: **SENATOR BAER MOVED HB 491 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** on oral vote.

EXECUTIVE ACTION ON HB 74

Discussion: CHAIRMAN CRIPPEN stated that this bill states that in civil actions the court shall notify the jurors that they may impose economic sanctions if they determine the case to be frivolous or brought for the purpose of harassment.

SENATOR STEVE DOHERTY presented his amendments. The amendment would remove this action from the jury and give it to the court. In terms of procedural problems, if the court makes those findings the court would handle this instead of the jury. The second thing would be to take out the imposed economic sanctions and clarify what the counties were concerned about which was to assess the reasonable public expenses of impaneling the jury instead of economic sanctions. Economic sanctions get into areas which he is sure the proponents and opponents did not want to reach. The reasonable expenses of impaneling a jury could be assessed against the party whose case was determined to have been frivolous or brought for purposes of harassment. This would also need to be the party which requested the jury.

Motion: SENATOR DOHERTY MOVED TO AMEND HB 74.

Discussion: CHAIRMAN CRIPPEN stated there is another amendment which was requested by MACO which is similar with exception that SENATOR DOHERTY's amendment would have the judge handle the action where the other amendment would have the jury handle the action.

SENATOR HALLIGAN stated that a judge would make sure that the costs are covered. The judges are aware of pretrial actions. The jury would need to be impaneled for a longer period of time in order to assess the costs. There would need to be a separate hearing.

SENATOR LORENTS GROSFIELD commented that there is a perception of too many lawsuits. Rule 11 does not appear to be addressing the problem.

SENATOR DOHERTY clarified that Rule 11 basically states that when an attorney signs a pleading, the attorney has an obligation to understand the argument being made is solidly on legal grounds or is a legitimate expansion of current legal theory. There is also an obligation that the facts which are being presented to the court have been thoroughly investigated to determine their validity. Rule 11 has been enforced infrequently in Montana. Judges and attorneys are well aware of the rule. In urban areas Rule 11 threats are overused.

SENATOR GROSFIELD commented he would like to see the jury take action instead of the judge. The judges have apparently not responded to a real or perceived need out there.

SENATOR BAER stated judges are very reluctant to enforce Rule 11. Rule 11 would not cover frivolous litigation which could be addressed by a reasonable jury. This bill would go a long way to help the situation.

SENATOR BARTLETT asked SENATOR DOHERTY if his amendments covered the situation wherein either party could be assessed sanctions.

SENATOR DOHERTY answered that his amendments would cover either party.

SENATOR BARTLETT asked if this would apply only if the party had requested a jury in the first instance.

SENATOR DOHERTY answered that that was correct.

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

Motion/Vote: SENATOR HALLIGAN MOVED HB 47 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote.

EXECUTIVE ACTION ON HB 482

Motion: SENATOR DOHERTY MOVED TO AMEND HB 482.

Discussion: SENATOR DOHERTY presented his amendments, EXHIBIT 4. The first amendment made the notice 24 hours instead of 48 hours. The second amendment page 3, line 19, in addressing coercion, it would insert the language that anyone may not coerce a minor to have an abortion or to carry a child to term. The third amendment would provide insertion of "and provider" after patient names and other identifying information may not be used on the forms. Identifying information about specific providers should not be a necessary requirement. The fourth amendment strikes "48" hours and inserts "24" hours. The fifth amendment deals with the judicial bypass. It strikes the language "by clear and convincing evidence". It is difficult for the court to determine that petitioner is sufficiently mature enough to make a decision on abortion. By requiring a higher evidentiary standard, it will be less likely that a minor would be able to convince the court. The sixth amendment page 4, line 26, strikes the words "a pattern". The current language states that there is evidence of a pattern of physical, sexual, or emotional abuse. He feels any evidence of physical, sexual, or emotional abuse should be considered. The seventh amendment inserts the word "knowingly" when referring to someone performing an abortion. The eighth amendment would strike (2) in its entirety. This subsection would significantly expand medical malpractice proof and allegations. The last amendment page 5, line 19, would address coercion.

SENATOR NELSON asked **SENATOR DOHERTY** if he would consider changing the language from carrying a child to term to carrying a pregnancy to term.

SENATOR DOHERTY stated he would consider that a friendly amendment.

SENATOR BARTLETT commented on amendment 7. This bill already authorizes a referring physician to give the notice to the parents. The city of Great Falls does not have abortion providers. If a minor goes to her family doctor or the family planning clinic, tests positive for a pregnancy, and elects the option of terminating the pregnancy, she will need to go outside of Great Falls for the abortion. The physician, as this bill stands without the amendment, in Great Falls can give the notice to the parents and then can add documentation to the physician who actually performs the abortion. If the referring physician did not actually give the notice but sent documentation along saying that he or she had, the physician performing the abortion carries out the procedure believing that the notice has been given by the referring physician. The person performing the abortion could still be convicted of a misdemeanor because the referring doctor did not actually give the notice although stating that he had.

SENATOR JABS stated that if (2) was stricken, would there be any other way to enforce this action?

SENATOR DOHERTY stated he would leave the criminal penalties in. By striking this section, any malpractice claim would fall back to the current state of malpractice law in Montana as opposed to creating the presumption of malpractice for these activities. If an individual had a claim that the standards of care were violated, they would still be able to bring that claim. There would not be the presumptions which (2) provides of malpractice.

REPRESENTATIVE DUANE GRIMES commented that the amendments do not substantially change the bill.

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

Motion: **SENATOR BARTLETT MOVED TO AMEND HB 482.**

Discussion: **SENATOR BARTLETT** presented her amendments, **EXHIBIT 5**. One amendment would include in the definition of coercion the use of verbal abuse as a type of coercion. Amendments 2 through 4 go to the same issue. They add that the physician's agent or the referring physician's agent could give the notice.

REPRESENTATIVE GRIMES commented on amendment 1 stating that coercion in section 7 is meant to address the circumstances where someone would have a vested interest in someone else getting an abortion. An example would be someone not wanting to pay child support so they would coerce someone to have an abortion. Adding

verbal abuse to coercion would actually strengthen that. He would not want this to affect the legality of the bill.

SENATOR HOLDEN disagreed with the physician's agent being involved in giving the notice.

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

Discussion: **CHAIRMAN CRIPPEN** presented his amendment, **EXHIBIT 6**.

REPRESENTATIVE GRIMES stated the reason Section 12 was removed by House amendment is because he couldn't properly explain it. They were concerned that a legislator would be allowed to intervene in individual circumstances.

Motion: **CHAIRMAN CRIPPEN** MOVED TO FURTHER AMEND HB 482.

Discussion: **SENATOR DOHERTY** stated he had a question regarding a legislator intervening in a case as a legislator. Will the legislator be paid for conducting their legislative activities?

CHAIRMAN CRIPPEN stated he would.

SENATOR HALLIGAN opposed the amendment. He has never seen this as part of any bill and sees it as a terrible precedent in terms of public policy. The courts are used to filing amicus curiae briefs for parties who have very important interest which will add an understanding to the case. Just because a legislator is a legislator does not add to his or her knowledge of the understanding of the constitutional aspects of the legislation. The amendment does not make sense.

SENATOR DOHERTY stated that if there is a constitutional issue and if someone can demonstrate a particular knowledge or expertise to the court, the court will grant them the right to file an amicus brief. Filing an amicus brief is entirely different from being allowed intervention in the case as a party.

CHAIRMAN CRIPPEN asked **Tim Whalen, Right to Life Association**, if other states, which have survived constitutional challenge, had these provisions?

Mr. Whalen stated it was a provision based upon a model provision which allowed a legislator to intervene. It is standard because these statues are challenged in court and they have had specific problems in Montana with being able to participate in the litigation. He was personally involved with a Medicaid funding case wherein both the National Right to Life Committee and another pro-life organization tried to file an amicus brief and the federal court refused to allow them to do that. The provision is important because in the physician's only

litigation, the only parties to that litigation were the Center for Reproductive Law and Policy and abortion providers.

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

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Motion: SENATOR ESTRADA MOVED TO RECONSIDER THE COMMITTEE'S ACTION IN ADOPTING THE MOTION OF SENATOR BARTLETT TO AMEND HB 482.

Discussion: SENATOR BARTLETT stated there may be an opinion expressed that those were minute aspects; however, she does not feel in the daily operation of doctor's offices that this would be minute. They are significant changes which in their own minor way will help to keep health care costs within reason because the physician is enabled to attend to his business and to assign notification of parents to an agent. In the case of verbal abuse, she believes that coercion occurs much more often through verbal abuse than through force or the threat of force.

SENATOR HOLDEN referred to the physician's only bill and commented that this amendment would deteriorate what is being clarified in that bill.

SENATOR HALLIGAN stated they are talking about two different things. The first bill address procedure and not administrative duties.

SENATOR BAER stated that if a doctor accepts the accountability of performing an abortion, he should also accept the same accountability and responsibility for giving the notice required in this bill.

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

Motion: SENATOR ESTRADA MOVED HB 482 BE CONCURRED IN AS AMENDED.

Discussion: SENATOR DOHERTY stated this bill in its current form would require a minor to prove to a court the most difficult legal standard required in civil procedure and that is by clear and convincing evidence. It would further require the minor to prove that there was a pattern of sexual abuse. If the idea is to help and protect the minor, we would then require that minor to prove that there was a pattern of abuse when there might have only been one instance of abuse by the parent. It further makes it easier to convict medical providers of information by turning down the "knowingly" amendment and it also makes it easier to bring medical malpractice claims including punitive damages claims for medical malpractice. This creates insurmountable obstacles to an exercise of constitutional rights.

SENATOR GROSFIELD stated he disagreed with **SENATOR DOHERTY** on all points. On dealing with a pattern of abuse, the key word on page 4, line 27, is "or". This leaves the court with discretion to deal with verbal abuse and any other abuse. Section 10 makes the physicians accountable but it is not insurmountable. According to the Supreme Court, the legislature cannot do anything which makes the access to this right unduly burdensome.

SENATOR HOLDEN commented that according to the testimony, these girls are just not prepared to make a decision about abortion and that is why parental notification is so important.

SENATOR NELSON believed the judicial bypass to be unduly burdensome. It is supposed to be broad and somewhat confidential; however no teen is going to be sophisticated enough to know how to go about getting a judicial bypass. She supports the part that parents ought to be notified but for those in dysfunctional families we need to come up with something which is workable for them.

Vote: The motion **CARRIED** on oral vote with **SENATORS BARTLETT, DOHERTY, HALLIGAN, and NELSON** voting "NO".

EXECUTIVE ACTION ON HB 366

Discussion: **SENATOR HALLIGAN** presented an amendment, **EXHIBIT 7**. He stated this would make sure that anyone requesting background information from the Department of Family Services make that request in writing.

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 366**. The motion **CARRIED** on oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED HB 366 BE CONCURRED IN AS AMENDED**. The motion **CARRIED** on oral vote.

EXECUTIVE ACTION ON HB 186

Discussion: **SENATOR HALLIGAN** presented an amendment, **EXHIBIT 8**. The first amendment was agreed to at the committee hearing.

Ann Gilkey, Department of Family Services, stated the concern by the House was that there would be simply an anonymous referral which wasn't substantiated. They believed that substantiated by the department and by independent corroboration would lead to a double standard.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 186**. The motion **CARRIED** on oral vote.

Discussion: **SENATOR HALLIGAN** commented the other amendment which was discussed at the hearing would be on page 9, line 30, the word "advocate" was struck. That was only because the advocacy program people did not want to be included but they want to make

sure that the bills already passed which allow for lay people who are appointed guardian ad litem to be a part of this process. After "A guardian ad litem" insert "or a court appointed advocate". They do not want only attorneys to be involved.

Motion/Vote: SENATOR HALLIGAN MOVED TO AMEND HB 186. The motion CARRIED on oral vote with SENATORS BAER and ESTRADA voting "NO".

Motion/Vote: SENATOR HALLIGAN MOVED HB 186 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote.

EXECUTIVE ACTION ON HJR 27

Motion: SENATOR BARTLETT MOVED TO AMEND HJR 27. (EXHIBIT 9)

Discussion: SENATOR BARTLETT explained that in the "BE IT RESOLVED" sections to strike the words "be congratulated for considering enhanced rescission legislation and". The concern is that the focus be on providing constitutional status to the item veto. The enhanced rescission authority in the first WHEREAS are apparently the buzz words which have become attached to the bill which the Congress is currently putting through to provide statutory authority for an item veto. That is very confusing.

CHAIRMAN CRIPPEN stated that enhanced rescission seems to apply only to appropriations bills whereas item veto would apply to any bill. The resolution is dealing with two subjects. One would be the item veto and the other enhanced rescission.

SENATOR BARTLETT stated that the information she received is that enhanced rescission is the language used in the federal statute to give statutory authority for an item veto. She finds that confusing and would like to see the focus where she believes it should be.

Vote: The motion FAILED on oral vote.

Discussion: Ms. Lane stated that the reason the language "enhanced rescission" is in this bill is because that is the language used in the federal legislation. Where the confusion arises is that the federal legislation, even though it is talked about in terms of granting the President line item veto authority, it is not the line item veto authority that we recognize in Montana which the Governor has. What the federal legislation does is allow the President to reduce a line item veto. That is where the rescission comes in. It allows him authority to reduce a line item veto but not to completely eliminate a line item or increase a line item but only reduce a line item.

Motion/Vote: SENATOR HOLDEN MOVED HB 186 AS AMENDED BE TABLED.

Discussion: SENATOR BARTLETT stated the resolution is an important concept.

Vote: The motion FAILED on oral vote.

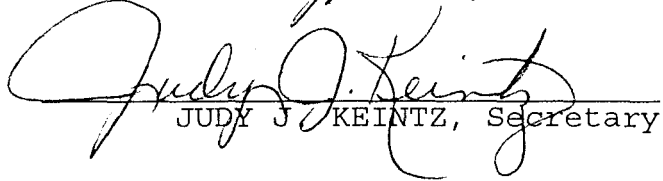
Motion/Vote: SENATOR BAER MOVED HB 186 AS AMENDED BE CONCURRED IN. The motion, CARRIED on oral vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.

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SENATOR BRUCE D. ZIPPEN, Chairman

A large, stylized handwritten signature in black ink, likely belonging to Judy J. Keintz, positioned above a horizontal line.

JUDY J. KEINTZ, Secretary

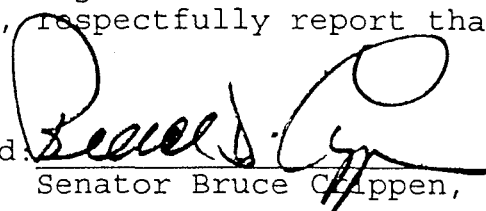
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SENATE STANDING COMMITTEE REPORT


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MR. PRESIDENT:

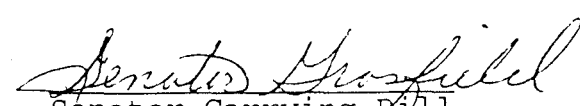
We, your committee on Judiciary having had under consideration HJR 27 (third reading copy -- blue), respectfully report that HJR 27 be concurred in.

Signed: 

Senator Bruce Chappen, Chair

 Amd. Coord.

Sec. of Senate


Senator Carrying Bill

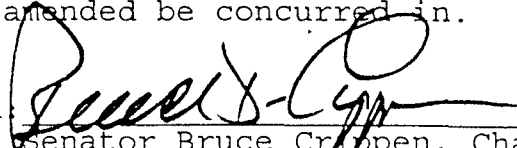
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SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 336 (third reading copy -- blue), respectfully report that HB 336 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 5 and 6.

Following: "REQUIREMENTS;" on line 5

Strike: remainder of line 5 through "BONDS;" on line 6

2. Title, line 8.


Strike: "46-9-401,"

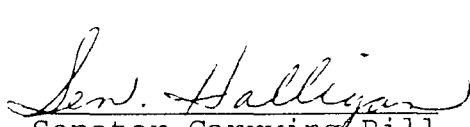
3. Page 2, line 16 through page 3, line 1.

Strike: section 2 in its entirety

Renumber: subsequent sections

-END-


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

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March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 491 (third reading copy -- blue), respectfully report that HB 491 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.

Following: "CLARIFYING"

Strike: "THAT THE SHERIFF IS"

Following: second "THE"

Strike: "CHIEF"

2. Title, line 5.

Following: "ENFORCEMENT"

Strike: "OFFICER OF A COUNTY"

Insert: "RESPONSIBILITIES OF SHERIFFS AND CHIEFS OF POLICE"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "7-32-2121"

Insert: "AND 7-32-4105"

3. Page 1, line 11.

Following: "sheriff."

Strike: "The"

Insert: "Except in an incorporated city or town that maintains a municipal police force or as otherwise provided by local charter, ordinance, or resolution, the"

4. Page 2, line 6.


Insert: "Section 2. Section 7-32-4105, MCA, is amended to read:


"7-32-4105. Duties of chief of police. (1) The chief of police is the chief law enforcement officer within the city or town. It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to ~~him~~ the chief of police by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to ~~such~~ rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

 Amd. Coord.
Sec. of Senate

 Senator Baer
Senator Carrying Bill

661250SC.SRF

(d) to perform ~~such~~ other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of ~~his~~ duties, but ~~he must~~ the chief of police may not serve a process in any civil action or proceeding except when a city or town is a party.""

Renumber: subsequent section

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 74 (third reading copy -- blue), respectfully report that HB 74 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Chippen, Chair

That such amendments read:

1. Title, lines 6 and 7.

Following: "COURT" on line 6

Strike: remainder of line 6 through first "THEY" on line 7

2. Title, line 7.

Following: "MAY"

Strike: "IMPOSE ECONOMIC SANCTIONS"

Insert: "ASSESS THE REASONABLE PUBLIC EXPENSES OF IMPANELING THE JURY"

Following: "IF"

Strike: "THEY DETERMINE"

Insert: "IT DETERMINES"

Following: "CASE"

Insert: "OF THE PARTY REQUESTING THE JURY"

3. Page 1, lines 22 and 23.

Following: "party" on line 22

Strike: remainder of line 22 through "DETERMINE" on line 23

Insert: "may assess against the party requesting a jury the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and other costs that may have been incurred by the court if the court determines that"

4. Page 1, line 23.

Following: "THE"


Insert: "party's"

Following: "CASE"

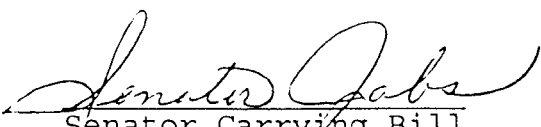
Strike: "TO BE"

Insert: "is"

-END-


SP

Amd. Coord.
Sec. of Senate


Senator Carrying Bill

661306SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 482 (third reading copy -- blue), respectfully report that HB 482 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 12.
Following: "force,"
Insert: "verbal abuse,"
2. Page 2, line 29.
Following: "physician"
Insert: "or the physician's agent"
3. Page 3, line 1.
Following: first "physician"
Insert: "or the referring physician's agent"
4. Page 3, line 3.
Following: "physician"
Insert: "or the referring physician's agent"

-END-


CIV

Amd. Coord.
Sec. of Senate


Senator Carrying Bill

661312SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 366 (third reading copy -- blue), respectfully report that HB 366 be amended as follows and as so amended be concurred in

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:


1. Page 7, line 21.

Following: "department"


Strike: "i"

Insert: ". A request for information under this subsection must be made in writing."

-END-



Amd. Coord.

 Sec. of Senate



Senator Carrying Bill

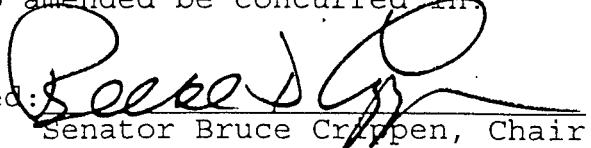
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 186 (third reading copy -- blue), respectfully report that HB 186 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Croppen, Chair

That such amendments read:

1. Page 9, line 30.

Following: "ad litem"

Insert: "or a court-appointed advocate"

2. Page 11, line 4.

Page 11, line 5.

Following: "DEPARTMENT"


Strike: "BY INDEPENDENT CORROBORATION"

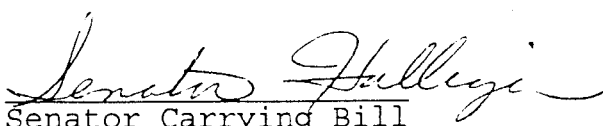
3. Page 12, line 24.

Following: "activities."

Insert: "A request for information under this subsection (o) must be made in writing."

-END-


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

661317SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. 443 NUMBER 1

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

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. 443 NUMBER 2
MOTION: Halligan Tabled A A

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	✓	

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. 336 NUMBER 3

MOTION: Bartlett move to amend
33601

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	✓	

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. 336 NUMBER 4
MOTION: Bartlett - 2nd Amend
33602

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	✓	

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. 482 NUMBER 5
MOTION: Motion Amend - Doherty

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[illegible]

SEN:1995
wp:rlclvote.man

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. HB 482 NUMBER 6
MOTION: Estrada - Reconsider
Bartlett 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		✓

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/22/95 BILL NO. HB 482 NUMBER 7
MOTION: Estrada BCFAA

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

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Amendments to House Bill No. 336
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, lines 5 and 6.

Following: "REQUIREMENTS;" on line 5

Strike: remainder of line 5 through "BONDS;" on line 6

2. Title, line 8.

Strike: "46-9-401,"

3. Page 2, line 16 through page 3, line 1.

Strike: section 2 in its entirety

Renumber: subsequent sections

Amendments to House Bill No. 336
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, lines 6 and 7.
Following: "BONDS;" on line 6
Strike: remainder of line 6 through "EXONERATED;" on line 7
2. Title, line 8.
Following: "33-17-1203"
Strike: ", "
Insert: "AND"
Following: "46-9-401,"
Strike: "AND 46-9-503,"
3. Page 3, lines 3 through 24.
Strike: section 3 in its entirety
Renumber: subsequent section

Amendments to House Bill No. 491
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, line 4.

Following: "CLARIFYING"

Strike: "THAT THE SHERIFF IS"

Following: second "THE"

Strike: "CHIEF"

2. Title, line 5.

Following: "ENFORCEMENT"

Strike: "OFFICER OF A COUNTY"

Insert: "RESPONSIBILITIES OF SHERIFFS AND CHIEFS OF POLICE"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "7-32-2121"

Insert: "AND 7-32-4105"

3. Page 1, line 11.

Following: "**sheriff.**"

Strike: "The"

Insert: "Except in an incorporated city or town that maintains a municipal police force or as otherwise provided by local charter, ordinance, or resolution, the"

4. Page 2, line 6.

Insert: "Section 2. Section 7-32-4105, MCA, is amended to read:

"7-32-4105. Duties of chief of police. (1) The chief of police is the chief law enforcement officer within the city or town. It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to ~~him~~ the chief of police by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to ~~such~~ rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform ~~such~~ other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of ~~his~~ duties, but ~~he must~~ the chief of police ~~may~~ not serve a process in any civil action or proceeding except when a city or town is a party."

{Internal References to 7-32-4105: None.}

Renumber: subsequent section

Amendments to House Bill No. 482
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 16, 1995

1. Page 2, line 29.
Strike: "48"
Insert: "24"
2. Page 3, line 19.
Following: "abortion"
Insert: "or to carry a ~~child~~ *pregnancy* to term"
3. Page 3, line 27.
Following: "Patient"
Insert: "and provider"
4. Page 4, lines 18 and 19.
Strike: "48"
Insert: "24"
5. Page 4, line 21.
Following: "finds"
Strike: "by clear and convincing evidence"
6. Page 4, line 26.
Following: first "of"
Strike: "a pattern of"
7. Page 5, line 10.
Following: "of"
Insert: "knowingly"
8. Page 5, lines 13 through 18.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
9. Page 5, line 19.
Following: "abortion"
Insert: "or to carry a ~~child~~ *pregnancy* to term"

Amendments to House Bill No. 482
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 16, 1995

Passed
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/22/95
BILL NO. HB 482

1. Page 2, line 12.
Following: "force,"
Insert: "verbal abuse,"
2. Page 2, line 29.
Following: "physician"
Insert: "or the physician's agent"
3. Page 3, line 1.
Following: first "physician"
Insert: "or the referring physician's agent"
4. Page 3, line 3.
Following: "physician"
Insert: "or the referring physician's agent"

Amendments to House Bill No. 482
Third Reading Copy. (blue)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
March 21, 1995

1. Page 6, line 16.

Insert: "NEW SECTION. Section 12. Right of intervention.

Pursuant to Rule 24 (a), Montana Rules of Civil Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50, chapter 20, is challenged."

Renumber: subsequent sections

Passed

Amendments to House Bill No. 366
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 3/22/95

FILE NO. HB 366

1. Page 7, line 21.

Following: "department"

Strike: "i"

Insert: ". A request for information under this subsection must
be made in writing."

Passed

Amendments to House Bill No. 186
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 3/22/95

FILE NO. HR 186

1. Page 11, line 4.

Page 11, line 5.

Following: "DEPARTMENT"

Strike: "BY INDEPENDENT CORROBORATION"

2. Page 12, line 24.

Following: "activities."

Insert: "A request for information under this subsection (o) must
be made in writing."

Amendments to House Joint Resolution No. 27
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 3/22/95
FILE NO. STR 27

1. Page 1, lines 18 and 19.
Following: "Congress" on line 18
Strike: remainder of line 18 through "and" on line 19