

SENATE BILL NO. 217

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Judiciary.
February 10, 1979	Committee recommend bill do not pass. Minority members of the committee recommend that bill do pass. Minority report adopted.
February 12, 1979	Printed and placed on members' desks.
February 13, 1979	Motion pass consideration.
February 14, 1979	Second reading, do pass.
February 15, 1979	Considered correctly engrossed.
February 16, 1979	Third reading passed.

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Judiciary.
March 20, 1979	Committee recommend bill as amended.
March 21, 1979	Second reading concurred.
March 24, 1979	Third reading as amended

IN THE SENATE

March 24, 1979	Returned from the House concurred as amended.
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March 26, 1980	Second reading pass consideration.
March 28, 1980	Second reading amendments rejected.

CONFERENCE COMMITTEE ACTION

March 29, 1979	On motion Joint Conference Committee requested and appointed.
March 30, 1979	Conference Committee dissolved. On motion Free Conference Committee requested and appointed.
April 12, 1979	House rejects Free Conference Committee report.
April 13, 1979	Free Conference Committee dissolved.
April 13, 1979	On motion new Free Conference Committee requested and appointed.
April 16, 1979	New Free Conference Committee reported.
April 17, 1979	New Free Conference Committee report adopted in Senate.
April 18, 1979	New Free Conference Committee report rejected in the House. On motion New Free Conference Committee requested and appointed.
April 20, 1979	Free Conference Committee report adopted in each House.
April 20, 1979	Sent to enrolling.
April 25, 1979	Signed by President.
April 25, 1979	Delivered to Governor.
	Vetoed.

1 *Senate* BILL NO. *217*
 2 INTRODUCED BY *Bob Brown Turnage Roommisen*
 3 *Stinson Ryan*
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 5 REMEDY UNDER STATE LAW IN THE FORM OF A CAUSE OF ACTION FOR
 6 DAMAGES WHEN THERE HAS BEEN A VIOLATION OF RIGHTS PROTECTED
 7 BY THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED
 8 STATES AND ARTICLE II, SECTION 11, OF THE MONTANA
 9 CONSTITUTION, IN LIEU OF EXCLUSION FROM CRIMINAL PROSECUTION
 10 OF OTHERWISE ADMISSIBLE EVIDENCE; TO PROVIDE FOR THE
 11 DISCIPLINE OF OFFICIALS CAUSING VIOLATIONS OF RIGHTS; TO
 12 CLARIFY THAT CRIMINAL LIABILITY IS NOT AFFECTED; TO AMEND
 13 SECTION 46-5-104, MCA; AND TO REPEAL SECTION 46-13-302,
 14 MCA."

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 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Short title. [Sections 1
 18 through 14] may be cited as the "Montana Civil Rights Claims
 19 Act".

20 NEW SECTION. Section 2. Cause of action for damages
 21 -- admissibility of evidence. (1) Any person subject to
 22 search and seizure has a cause of action for damages if the
 23 search and seizure is in violation of the fourth amendment
 24 of the United States constitution or Article II, section 11,
 25 of the Montana constitution or the laws of Montana relating

1 to search and seizure.

2 (2) Evidence secured for use in a criminal prosecution
 3 in violation of the fourth amendment of the United States
 4 constitution or Article II, section 11, of the Montana
 5 constitution or the laws of Montana relating to search and
 6 seizure, if otherwise admissible, may not be excluded from
 7 any criminal prosecution because of such violation.

8 NEW SECTION. Section 3. Exclusive remedy. [Sections 1
 9 through 14] provides the exclusive remedy under state law
 10 for the violation of the rights of a person that are
 11 protected by the fourth amendment of the United States
 12 constitution or Article II, section 11, of the Montana
 13 constitution caused by an employee or agent of the state or
 14 any of its political subdivisions.

15 NEW SECTION. Section 4. Civil liability. (1) Civil
 16 liability under [sections 1 through 14] is based upon an
 17 affirmative finding by a preponderance of the evidence that
 18 there was a violation of the constitutional or legal rights
 19 of a person that are protected by the fourth amendment of
 20 the United States constitution or the Montana constitution
 21 caused by an employee or agent of the state or any of its
 22 political subdivisions while the employee or agent was
 23 acting in the scope of his employment or under color of law.

24 (2) No law enforcement officer or other official
 25 acting in the scope of his employment or under color of law

1 is personally liable unless his actions were committed
2 knowingly with the intent to violate the constitutional or
3 other legal rights of any person.

4 (3) Civil liability under [sections 1 through 14] is
5 exclusively against the state or governmental agency and not
6 against the individual law enforcement officer or official
7 if the alleged violation of constitutional rights is based
8 upon the inadequacy or unconstitutionality of an arrest
9 warrant or search warrant.

10 (4) The governmental agency employing or controlling a
11 law enforcement officer or other official is liable for
12 violations under [sections 1 through 14] whenever such
13 violations are caused by the official while acting in the
14 scope of his employment or under color of law. It is not a
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16 NEW SECTION. Section 5. Damages. (1) A successful
17 claimant shall be awarded reasonable compensation for:

- 18 (a) property damage;
- 19 (b) personal damage;
- 20 (c) attorney fees; and
- 21 (d) costs.

22 (2) Whenever it is determined that there was a
23 substantial violation of a constitutional or legal right,
24 damages of not less than \$500 shall be conclusively
25 presumed, plus reasonable attorney fees and costs.

1 (3) The court may, on a preliminary motion, rule as a
2 matter of law on the question of substantial violation. This
3 determination is binding on the government. If the court
4 makes a finding that the violation was not substantial, the
5 plaintiff is entitled to have the matter submitted as a jury
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8 court has jurisdiction over any civil action brought under
9 [sections 1 through 14], and such actions are governed by
10 the Montana Rules of Civil Procedure insofar as they are
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12 NEW SECTION. Section 7. Venue. (1) Actions brought
13 against the state shall be brought in the county in which
14 the cause of action arose or in Lewis and Clark County.

15 (2) Actions against a political subdivision shall be
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21 years after the cause of action arises.

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24 obligation of the state or the political subdivision and
25 shall be paid in the same manner as any other claim against

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6 private persons, except that the state or political
7 subdivision is not required to post a bond either on appeal
8 or at any other time during the litigation.

9 NEW SECTION. Section 11. Compromise or settlement.
10 The attorney general, with the consent of the board of
11 examiners, when the claim is against the state; the county
12 attorney, with the consent of the governing body, when the
13 claim is against a county; and the city attorney, with the
14 consent of the governing body, when the claim is against a
15 city, have full charge of the litigation and are authorized
16 to arbitrate, compromise, or settle any claim allowed under
17 [sections 1 through 14], subject to the terms of insurance,
18 if any.

19 NEW SECTION. Section 12. Administrative action. (1) A
20 law enforcement officer or other official who is determined
21 by a court or, in the absence of a court determination on
22 the issue, by the appropriate disciplinary authority to have
23 violated the constitutional or other legal rights of a
24 person by acting knowingly with the intent to violate such
25 rights, by acting in a grossly negligent manner, or by

1 acting with a reckless disregard for such rights shall be
2 suspended or dismissed, without pay, as follows:

3 (a) Upon the first occurrence, he shall be suspended
4 for 30 days.

5 (b) Upon the second occurrence, he shall be suspended
6 for 90 days.

7 (c) Upon the third occurrence, he shall be suspended
8 for 6 months.

9 (d) Upon the fourth occurrence, he shall be
10 permanently dismissed and is thereafter ineligible to serve
11 as a law enforcement officer with the state or any political
12 subdivision thereof.

13 (2) If the violation is unusually serious, the
14 appropriate disciplinary authority may impose more severe
15 penalties than those listed in subsection (1).

16 (3) A second or subsequent violation under
17 circumstances similar to those surrounding a previous
18 violation shall be presumed to have resulted from gross
19 negligence or a reckless disregard for the person's rights.

20 NEW SECTION. Section 13. No effect on causes of
21 action arising under Montana Comprehensive State Insurance
22 Plan and Tort Claims Act. Nothing in [sections 1 through 14]
23 affects any cause of action arising under Title 2, chapter
24 7, parts 1 through 3, popularly known as the Montana
25 Comprehensive State Insurance Plan and Tort Claims Act.

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1 NEW SECTION. Section 14. Criminal liability. Nothing
2 in [sections 1 through 13] affects the criminal liability of
3 a law enforcement officer or other official who violates a
4 person's rights in the manner described in [section 4(1)],
5 and such officer or official is subject to prosecution for
6 criminal trespass or any other applicable offense.

7 Section 15. Section 46-5-104, MCA, is amended to read:

8 "46-5-104. Admissibility in other proceedings.
9 Instruments, articles, or things lawfully--seized are
10 admissible as evidence upon any prosecution or proceeding
11 whether or not the prosecution or proceeding is for the
12 offense in connection with which the search was originally
13 made."

14 Section 16. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
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20 Section 17. Repealer. Section 46-13-302, MCA, is
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Judiciary
Minority Report

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3 *Bob Brown Turnage Rasmussen*
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2 INTRODUCED BY B. BROWN, TURNAGE, RASMUSSEN, STIMATZ, RYAN

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16 ~~constitution or Article II, section 11 of the Montana~~
17 ~~constitution caused by an employee or agent of the state or~~
18 ~~any of its political subdivisions.~~19 SECTION 3. THERE IS A NEW MCA SECTION THAT READS:20 Determination of substantial violation. (1) A violation
21 of the fourth amendment of the United States constitution;
22 Article II, sections 10 or 11, of the Montana constitution;
23 or the laws of Montana relating to search and seizure is
24 considered to be substantial if the violation meets the
25 criteria of subsections (2) or (3).

1 (2) A violation is considered substantial if it was
2 gross and willful.

3 (3) A violation that is not classified as substantial
4 under subsection (2) may be considered substantial by
5 considering the following criteria:

- 6 (a) the extent of deviation from lawful conduct;
7 (b) the extent to which the violation was willful;
8 (c) the extent to which privacy was violated;
9 (d) whether, but for the violation, the things seized
10 would have been discovered;
11 (e) the extent to which exclusion will tend to prevent
12 violation of the search and seizure constitutional and
13 statutory provisions; and
14 (f) the extent to which the violation prejudiced the
15 rights of affected individuals to defend themselves in
16 criminal prosecutions.

17 NEW SECTION. Section 4. Civil liability. (1) Civil
18 liability under [sections 1 through 14 13] is based upon an
19 affirmative finding PROVE by a preponderance of the evidence
20 that there was a SUBSTANTIAL violation of the constitutional
21 or legal rights of a person that are protected by the fourth
22 amendment of the United States constitution or ARTICLE II,
23 SECTIONS 10 OR 11 OF the Montana constitution, OR THE LAWS
24 OF MONTANA RELATING TO SEARCH AND SEIZURE caused by an
25 employee or agent of the state or any of its political

1 subdivisions, ~~while the employee or agent was acting in the~~
2 ~~scope of his employment or under color of law~~

3 ~~(2) No law enforcement officer or other official~~
4 ~~acting in the scope of his employment or under color of law~~
5 ~~is personally liable unless his actions were committed~~
6 ~~knowingly with the intent to violate the constitutional or~~
7 ~~other legal rights of any person~~

8 ~~(3) Civil liability under [sections 1 through 14~~
9 ~~13] is exclusively against the state or governmental agency~~
10 ~~and not against the individual law enforcement officer or~~
11 ~~official if the alleged violation of constitutional OR~~
12 ~~STATUTORY rights WAS NOT CAUSED BY THE OFFICER OR OFFICIAL~~
13 ~~AND is based EXCLUSIVELY upon the inadequacy or~~
14 ~~unconstitutionality of an arrest warrant or search warrant.~~

15 ~~(4) The governmental agency employing or~~
16 ~~controlling a law enforcement officer or other official is~~
17 ~~liable, JOINTLY AND SEVERALLY WITH THE OFFICER OR OTHER~~
18 ~~OFFICIAL, for violations under [sections 1 through 14 13]~~
19 ~~whenever such violations are caused by the OFFICER OR~~
20 ~~official while acting in the scope of his employment or~~
21 ~~under color of law. It is not a defense that the act~~
22 ~~causing the violation was illegal.~~

23 ~~(4) WHENEVER A LAW ENFORCEMENT OFFICIAL OR ANY OTHER~~
24 ~~PERSON IS RESPONSIBLE FOR A VIOLATION UNDER [SECTIONS 1~~
25 ~~THROUGH 13] WHILE ACTING OUTSIDE THE SCOPE OF HIS EMPLOYMENT~~

1 ~~AND NOT UNDER COLOR OF LAW, HE IS PERSONALLY LIABLE TO THE~~
2 ~~PERSON WHOSE RIGHTS WERE VIOLATED.~~

3 ~~NEW SECTION. Section 5. Damages. (1) A WHENEVER IT IS~~
4 ~~DETERMINED THAT THERE WAS A SUBSTANTIAL VIOLATION OF A~~
5 ~~CONSTITUTIONAL OR LEGAL RIGHT, A successful claimant shall~~
6 ~~be awarded reasonable compensation for:~~

- 7 ~~(a)(1) property damage;~~
8 ~~(b)(2) personal damage;~~
9 ~~(c)(3) attorney fees; and~~
10 ~~(d)(4) costs.~~

11 ~~(2) Whenever it is determined that there was a~~
12 ~~substantial violation of a constitutional or legal right,~~
13 ~~damages of not less than \$500 shall be conclusively~~
14 ~~presumed, plus reasonable attorney fees and costs.~~

15 ~~(3) The court may, on a preliminary motion, rule as a~~
16 ~~matter of law on the question of substantial violation. This~~
17 ~~determination is binding on the government. If the court~~
18 ~~makes a finding that the violation was not substantial, the~~
19 ~~plaintiff is entitled to have the matter submitted as a jury~~
20 ~~question.~~

21 ~~NEW SECTION. Section 6. Jurisdiction. The district~~
22 ~~court has jurisdiction over any civil action brought under~~
23 ~~[sections 1 through 13], and such actions are governed by~~
24 ~~the Montana Rules of Civil Procedure insofar as they are~~
25 ~~consistent with [sections 1 through 13].~~

1 ~~NEW SECTION. Section 7. Venue. (1) Actions brought~~
2 ~~against the state shall be brought in the county in which~~
3 ~~the cause of action arose or in Lewis and Clark County.~~

4 ~~(2) Actions against a political subdivision shall be~~
5 ~~brought in the county in which the cause of action arose or~~
6 ~~in any county where the political subdivision is located.~~

7 ~~NEW SECTION. Section 8. Statute of limitation. Each~~
8 ~~civil cause of action permitted under [sections 1 through 14~~
9 ~~13] is forever barred unless an action is begun within 2~~
10 ~~years after the cause of action arises.~~

11 ~~NEW SECTION. Section 9. Judgment as obligation of~~
12 ~~state or political subdivision. A final judgment AGAINST THE~~
13 ~~STATE OR A POLITICAL SUBDIVISION is an obligation of the~~
14 ~~state or the political subdivision and shall be paid in the~~
15 ~~same manner as any other claim against the state or~~
16 ~~political subdivision.~~

17 ~~NEW SECTION. Section 10. Right of appeal -- bond not~~
18 ~~required of state or political subdivision. The right of~~
19 ~~appeal from final judgment in the district court is governed~~
20 ~~by the same rules of practice and procedure that exist for~~
21 ~~private persons, except that the state or political~~
22 ~~subdivision is not required to post a bond either on appeal~~
23 ~~or at any other time during the litigation.~~

24 ~~NEW SECTION. Section 11. Compromise or settlements.~~
25 ~~The attorney general, with the consent of the board of~~

1 ~~examiners, when the claim is against the state; the county~~
 2 ~~attorneys, with the consent of the governing body, when the~~
 3 ~~claim is against a county; and the city attorney, with the~~
 4 ~~consent of the governing body, when the claim is against a~~
 5 ~~city, have full charge of the litigation and are authorized~~
 6 ~~to arbitrate, compromise or settle any claim allowed under~~
 7 ~~[sections 2 through 14], subject to the terms of insurance,~~
 8 ~~if any.~~

9 NEW SECTION. Section 11. Administrative actions
 10 DISCIPLINARY ACTION. (1) AN ACTION MAY BE COMMENCED IN THE
 11 DISTRICT COURT TO DETERMINE IF A LAW ENFORCEMENT OFFICER OR
 12 OTHER OFFICIAL HAS KNOWINGLY OR IN A GROSSLY NEGLIGENT
 13 MANNER COMMITTED A SUBSTANTIAL VIOLATION OF THE FOURTH
 14 AMENDMENT OF THE UNITED STATES CONSTITUTION; ARTICLE II,
 15 SECTIONS 10 OR 11 OF THE MONTANA CONSTITUTION; OR THE LAWS
 16 OF MONTANA RELATING TO SEARCH AND SEIZURE. THIS ACTION MAY
 17 BE BROUGHT BY THE COUNTY ATTORNEY ON HIS OWN DETERMINATION
 18 AND SHALL BE BROUGHT BY THE COUNTY ATTORNEY WHENEVER A
 19 PETITION IS FILED WITH HIS OFFICE REQUESTING SUCH AN ACTION
 20 TO BE BROUGHT; PROVIDED THAT THE PETITION IS NOT MADE IN BAD
 21 FAITH. AN ACTION AGAINST A NONELECTED OFFICER OR OFFICIAL
 22 SHALL BE A CIVIL ACTION SUBJECT TO THE RULES OF CIVIL
 23 PROCEDURE, AND AN ACTION AGAINST AN ELECTED OFFICER OR
 24 OFFICIAL SHALL BE A CRIMINAL ACTION FOR OFFICIAL MISCONDUCT,
 25 AS PROVIDED FOR IN 45-7-401. IF THE COUNTY ATTORNEY FAILS TO

1 ACT ON THE PETITION, THE PETITIONER MAY FILE FOR A WRIT OF
 2 MANDAMUS TO COMPEL THE COUNTY ATTORNEY TO TAKE ACTION. IF
 3 THE WRIT IS ISSUED, THE PETITIONER SHALL RECEIVE COSTS AND
 4 ATTORNEY'S FEES FROM THE COUNTY INCURRED IN SECURING THE
 5 WRIT.

6 ~~(1)(2) A NONELECTED law enforcement officer or other~~
 7 ~~official who is determined by a court or, in the absence of~~
 8 ~~a court determination on the issue, by the appropriate~~
 9 ~~disciplinary authority to have violated the constitutional~~
 10 ~~or other legal rights of a person by acting knowingly with~~
 11 ~~the intent to violate such rights, by acting in a grossly~~
 12 ~~negligent manner or by acting with a reckless disregard for~~
 13 ~~such rights TO HAVE ACTED KNOWINGLY OR IN A GROSSLY~~
 14 ~~NEGLIGENT MANNER IN SUBSTANTIAL VIOLATION OF THE FOURTH~~
 15 ~~AMENDMENT OF THE UNITED STATES CONSTITUTION; ARTICLE II,~~
 16 ~~SECTIONS 10 OR 11, OF THE MONTANA CONSTITUTION; OR THE LAWS~~
 17 ~~OF MONTANA RELATING TO SEARCH AND SEIZURE shall be suspended~~
 18 ~~or dismissed without pay as follows:~~

19 (a) Upon the first occurrence, he shall be suspended
 20 for 30 days WITHOUT PAY FOR A PERIOD OF TIME TO BE
 21 DETERMINED BY THE COURT.

22 (b) Upon the second occurrence, he shall be suspended
 23 for 90 days.

24 (c) ~~Upon the third occurrence, he shall be suspended~~
 25 ~~for 6 months.~~

1 ~~{d}~~ Upon the fourth occurrence, he shall be
 2 permanently dismissed and is thereafter ineligible to serve
 3 as a law enforcement officer with the state or any political
 4 subdivision thereof.

5 ~~{2}~~ If the violation is unusually serious, the
 6 appropriate disciplinary authority may impose more severe
 7 penalties than those listed in subsection {1}.

8 ~~{3}~~ A second or subsequent violation under
 9 circumstances similar to those surrounding a previous
 10 violation shall be presumed to have resulted from gross
 11 negligence or a reckless disregard for the person's rights.

12 {3} IF THE COUNTY ATTORNEY IS THE SUBJECT OF A
 13 PETITION, THE ATTORNEY GENERAL HAS THE DUTY TO BRING AN
 14 ACTION UNDER THIS SECTION SUBJECT TO THE PROVISIONS OF
 15 SUBSECTION (1).

16 NEW SECTION. Section 12. No effect on causes of
 17 action arising under Montana Comprehensive State Insurance
 18 Plan and Tort Claims Act. Nothing in [sections 1 through 14
 19 13] affects any cause of action arising under Title 2,
 20 chapter 9, parts 1 through 3, popularly known as the Montana
 21 Comprehensive State Insurance Plan and Tort Claims Act.

22 NEW SECTION. Section 13. Criminal liability. Nothing
 23 in [sections 1 through 12] affects the criminal liability
 24 of a law enforcement officer or other official who violates
 25 a person's rights in the manner described in [section 4].

1 {4}, and such officer or official is subject to
 2 prosecution for criminal trespass or any other applicable
 3 offense.

4 Section 14. Section 46-5-104, MCA, is amended to read:
 5 "46-5-104. Admissibility in other proceedings.
 6 Instruments (1) UNLESS THE SEARCH OR SEIZURE WAS MADE IN
 7 SUBSTANTIAL VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED
 8 STATES CONSTITUTION; ARTICLE II, SECTIONS 10 OR 11, OF THE
 9 MONTANA CONSTITUTION; OR THE LAWS OF MONTANA RELATING TO
 10 SEARCH AND SEIZURE, INSTRUMENTS, articles, or things
 11 lawfully seized SEIZED are admissible as evidence upon any
 12 prosecution or proceeding whether or not the prosecution or
 13 proceeding is for the offense in connection with which the
 14 search was originally made.

15 (2) THE DETERMINATION OF WHETHER A VIOLATION IS
 16 SUBSTANTIAL OR NOT IS TO BE MADE USING THE CRITERIA IN
 17 [SECTION 3]."

18 SECTION 15. SECTION 46-13-302, MCA, IS AMENDED TO
 19 READ:

20 "46-13-302. Motion to suppress evidence illegally
 21 seized. (1) A defendant aggrieved by an unlawful search and
 22 seizure a search or seizure made in substantial violation of
 23 the fourth amendment of the constitution of the United
 24 States; Article II, sections 10 or 11, of the Montana
 25 constitution; or the laws of Montana relating to search and

1 ~~seizure~~ may move the court to suppress as evidence anything
 2 so obtained. The motion shall be in writing and state facts
 3 showing wherein the search and ~~or~~ seizure were ~~unlawful~~ was
 4 a substantial violation.

5 (2) The motion shall be made before trial unless for
 6 good cause shown the court shall otherwise direct.

7 (3) The defendant shall give at least 10 days' notice
 8 of such motion to the attorney prosecuting or such other
 9 time as the court may direct. The defendant shall serve a
 10 copy of the notice and motion upon the attorney prosecuting.

11 (4) If the allegations of the motion state facts which
 12 if true show that the search and ~~or~~ seizure were ~~unlawful~~
 13 was a substantial violation, the court shall conduct a
 14 hearing into the merits of the motion. The burden of proving
 15 that the search and ~~or~~ seizure were ~~unlawful~~ was a
 16 substantial violation shall be on the defendant. The
 17 determination of whether a violation is substantial or
 18 nonsubstantial is to be made using the criteria in [section
 19 3].

20 (5) If the motion is granted, the evidence shall not
 21 be admissible against the movant at any trial of the case."

22 Section 16. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
 2 invalid applications.

3 ~~Section 17. Repeater. Section 46-13-302v, MCA, is~~
 4 ~~repeated.~~

SENATE BILL NO. 217

INTRODUCED BY B. BROWN, TURNAGE, RASMUSSEN, STIMATZ, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN EXCLUSIVE
 A REMEDY UNDER STATE LAW IN THE FORM OF A CAUSE OF ACTION
 FOR DAMAGES WHEN THERE HAS BEEN A SUBSTANTIAL VIOLATION OF
 RIGHTS PROTECTED BY THE FOURTH AMENDMENT OF THE CONSTITUTION
 OF THE UNITED STATES; AND ARTICLE II, SECTION SECTIONS 10 OR
 11, OF THE MONTANA CONSTITUTION, IN LIEU OF: OR THE LAWS OF
 MONTANA RELATING TO SEARCH AND SEIZURE AND TO REVISE THE
 EXCLUSIONARY RULE RELATING TO THE EXCLUSION FROM CRIMINAL
 PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE; TO PROVIDE FOR
 THE DISCIPLINE OF OFFICIALS CAUSING VIOLATIONS OF RIGHTS; TO
 CLARIFY THAT CRIMINAL LIABILITY IS NOT AFFECTED; TO AMEND
 SECTION SECTIONS 46-5-104 AND 46-13-302, MCA; AND TO REPEAT
 SECTION 46-13-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1
 through 14 13] may be cited as the "Montana Civil Rights
 Claims Act".

NEW SECTION. Section 2. Cause of action for damages
 -- admissibility of evidence. (1) Any person subject to
 search and OR seizure has a cause of action for damages
 UNDER [SECTIONS 1 THROUGH 13] if the search and OR seizure

is in SUBSTANTIAL violation of the fourth amendment of the
 United States constitution; or Article II, section SECTIONS
 10 OR 11, of the Montana constitution; or the laws of
 Montana relating to search and seizure.

(2) Evidence secured for use in a criminal prosecution
 in NONSUBSTANTIAL violation of the fourth amendment of the
 United States constitution; or Article II, section SECTIONS
 10 OR 11, of the Montana constitution; or the laws of
 Montana relating to search and seizure, if otherwise
 admissible, may not be excluded from any criminal
 prosecution because of such NONSUBSTANTIAL violation.

~~NEW SECTION. Section 3. Exclusive remedy. [Sections
 1 through 14] provides the exclusive remedy under state law
 for the violation of the rights of a person that are
 protected by the fourth amendment of the United States
 constitution or Article II, section 11 of the Montana
 constitution caused by an employee or agent of the state or
 any of its political subdivisions.~~

SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

Determination of substantial violation. (1) A violation
 of the fourth amendment of the United States constitution;
 Article II, sections 10 or 11, of the Montana constitution;
 or the laws of Montana relating to search and seizure is
 considered to be substantial if the violation meets the
 criteria of subsections (2) or (3).

1 (2) A violation is considered substantial if it was
2 gross and willful.

3 (3) A violation that is not classified as substantial
4 under subsection (2) may be considered substantial by
5 considering the following criteria:

6 (a) the extent of deviation from lawful conduct;

7 (b) the extent to which the violation was willful;

8 (c) the extent to which privacy was violated; AND

9 (d) whether, but for the violation, the things seized
10 would have been discovered.

11 ~~(e) the extent to which exclusion will tend to prevent~~
12 ~~violation of the search and seizure constitutional and~~
13 ~~statutory provisions and~~

14 ~~(f) the extent to which the violation prejudiced the~~
15 ~~rights of affected individuals to defend themselves in~~
16 ~~criminal prosecutions.~~

17 NEW SECTION. Section 4. Civil liability. (1) Civil
18 liability under [sections 1 through 13] is based upon an
19 affirmative finding PROVE by a preponderance of the evidence
20 that there was a SUBSTANTIAL violation of the constitutional
21 or legal rights of a person that are protected by the fourth
22 amendment of the United States constitution or ARTICLE II,
23 SECTIONS 10 OR 11 of the Montana constitution; OR THE LAWS
24 OF MONTANA RELATING TO SEARCH AND SEIZURE caused by an
25 employee or agent of the state or any of its political

1 subdivisions, while the employee or agent was acting in the
2 scope of his employment or under color of law.

3 ~~(2) No law enforcement officer or other official~~
4 ~~acting in the scope of his employment or under color of law~~
5 ~~is personally liable unless his actions were committed~~
6 ~~knowingly with the intent to violate the constitutional or~~
7 ~~other legal rights of any person.~~

8 ~~(3) Civil liability under [sections 1 through 13]~~
9 ~~is exclusively against the state or governmental agency~~
10 ~~and not against the individual law enforcement officer or~~
11 ~~official if the alleged violation of constitutional OR~~
12 ~~STATUTORY rights WAS NOT CAUSED BY THE OFFICER OR OFFICIAL~~
13 ~~AND is based EXCLUSIVELY upon the inadequacy or~~
14 ~~unconstitutionality of an arrest warrant or search warrant.~~
15 A KNOWING OR GROSSLY NEGLIGENT ACT OF THE OFFICER OR
16 OFFICIAL.

17 ~~(4) The governmental agency employing or~~
18 ~~controlling a law enforcement officer or other official is~~
19 ~~liable, JOINTLY AND SEVERALLY WITH THE OFFICER OR OTHER~~
20 ~~OFFICIAL, for violations under [sections 1 through 13]~~
21 ~~whenever such violations are caused by the OFFICER OR~~
22 ~~official while acting in the scope of his employment or~~
23 ~~under color of law; it is not a defense that the act causing~~
24 ~~the violation was illegal AND ARE DETERMINED TO BE KNOWING~~
25 OR GROSSLY NEGLIGENT.

1 (4) WHENEVER A LAW ENFORCEMENT OFFICIAL OR ANY OTHER
 2 PERSON IS RESPONSIBLE FOR A VIOLATION UNDER [SECTIONS 1
 3 THROUGH 13] WHILE ACTING OUTSIDE THE SCOPE OF HIS EMPLOYMENT
 4 AND NOT UNDER COLOR OF LAW, HE IS PERSONALLY LIABLE TO THE
 5 PERSON WHOSE RIGHTS WERE VIOLATED.

6 NEW SECTION. Section 5. Damages. (1) A WHENEVER IT
 7 IS DETERMINED THAT THERE WAS A SUBSTANTIAL VIOLATION OF A
 8 CONSTITUTIONAL OR LEGAL RIGHT, A DAMAGES OF NOT LESS THAN
 9 \$500 SHALL BE CONCLUSIVELY PRESUMED. IN ADDITION, A
 10 successful claimant shall be awarded reasonable compensation
 11 for:

- 12 (a) property damage;
- 13 (b) personal damage;
- 14 (c) attorney fees; and
- 15 (d) costs.

16 (2) ~~Whenever it is determined that there was a~~
 17 ~~substantial violation of a constitutional or legal right,~~
 18 ~~damages of not less than \$500 shall be conclusively~~
 19 ~~presumed, plus reasonable attorney fees and costs.~~

20 (3) ~~The court may, on a preliminary motion, rule as a~~
 21 ~~matter of law on the question of substantial violation. This~~
 22 ~~determination is binding on the government, if the court~~
 23 ~~makes a finding that the violation was not substantial, the~~
 24 ~~plaintiff is entitled to have the matter submitted as a jury~~
 25 ~~question.~~

1 (2) THE LIMITATIONS ON DAMAGES CONTAINED IN SECTIONS
 2 2-9-104 AND 2-9-105, MCA, CONCERNING SUITS AGAINST THE STATE
 3 OR ANY POLITICAL SUBDIVISION SHALL NOT APPLY.

4 SECTION 6. THERE IS A NEW MCA SECTION THAT READS:

5 Waiver of sovereign immunity. The state, counties,
 6 cities, towns, and all other local governmental entities
 7 shall have no immunity from suit for a cause of action under
 8 [sections 1 through 17].

9 NEW SECTION. Section 7. Jurisdiction. The district
 10 court has jurisdiction over any civil action brought under
 11 [sections 1 through 14 13], and such actions are governed by
 12 the Montana Rules of Civil Procedure insofar as they are
 13 consistent with [sections 1 through 14 13].

14 NEW SECTION. Section 8. Venue. (1) Actions brought
 15 against the state shall be brought in the county in which
 16 the cause of action arose or in Lewis and Clark County.

17 (2) Actions against a political subdivision shall be
 18 brought in the county in which the cause of action arose or
 19 in any county where the political subdivision is located.

20 NEW SECTION. Section 9. Statute of limitation. Each
 21 civil cause of action permitted under [sections 1 through 14
 22 13] is forever barred unless an action is begun within 2
 23 years after the cause of action arises.

24 NEW SECTION. Section 10. Judgment as obligation of
 25 state or political subdivision. A final judgment AGAINST THE

1 STATE OR A POLITICAL SUBDIVISION is an obligation of the
 2 state or the political subdivision and shall be paid in the
 3 same manner as any other claim against the state or
 4 political subdivision.

5 NEW SECTION. Section 11. Right of appeal -- bond not
 6 required of state or political subdivision. The right of
 7 appeal from final judgment in the district court is governed
 8 by the same rules of practice and procedure that exist for
 9 private persons, except that the state or political
 10 subdivision is not required to post a bond either on appeal
 11 or at any other time during the litigation.

12 ~~NEW SECTION. Section 11. Compromise or settlement.~~
 13 ~~The attorney general, with the consent of the board of~~
 14 ~~examiners when the claim is against the state; the county~~
 15 ~~attorney with the consent of the governing body when the~~
 16 ~~claim is against a county; and the city attorney with the~~
 17 ~~consent of the governing body when the claim is against a~~
 18 ~~city, have full charge of the litigation and are authorized~~
 19 ~~to arbitrate, compromise or settle any claim allowed under~~
 20 ~~sections 1 through 14, subject to the terms of insurance~~
 21 ~~if any.~~

22 NEW SECTION. Section 12. Administrative ~~actions~~
 23 DISCIPLINARY ACTION. (1) AN ACTION MAY BE COMMENCED IN THE
 24 DISTRICT COURT TO DETERMINE IF A LAW ENFORCEMENT OFFICER OR
 25 OTHER OFFICIAL HAS KNOWINGLY OR IN A GROSSLY NEGLIGENT

1 MANNER NEGLIGENTLY COMMITTED A SUBSTANTIAL VIOLATION OF THE
 2 FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION; ARTICLE
 3 II, SECTIONS 10 OR 11 OF THE MONTANA CONSTITUTION; OR THE
 4 LAWS OF MONTANA RELATING TO SEARCH AND SEIZURE. THIS ACTION
 5 MAY BE BROUGHT BY THE COUNTY ATTORNEY ON HIS OWN
 6 DETERMINATION AND SHALL BE BROUGHT BY THE COUNTY ATTORNEY
 7 WHENEVER A PETITION IS FILED WITH HIS OFFICE REQUESTING SUCH
 8 AN ACTION TO BE BROUGHT; PROVIDED THAT THE PETITION IS NOT
 9 MADE IN BAD FAITH. AN ACTION AGAINST A NONELECTED OFFICER OR
 10 OFFICIAL SHALL BE A CIVIL ACTION SUBJECT TO THE RULES OF
 11 CIVIL PROCEDURE, AND AN ACTION AGAINST AN ELECTED OFFICER OR
 12 OFFICIAL SHALL BE A CRIMINAL ACTION FOR OFFICIAL MISCONDUCT,
 13 AS PROVIDED FOR IN 45-7-401. IF THE COUNTY ATTORNEY FAILS TO
 14 ACT ON THE PETITION, THE PETITIONER MAY FILE FOR A WRIT OF
 15 MANDAMUS TO COMPEL THE COUNTY ATTORNEY TO TAKE ACTION. IF
 16 THE WRIT IS ISSUED, THE PETITIONER SHALL RECEIVE COSTS AND
 17 ATTORNEY'S FEES FROM THE COUNTY INCURRED IN SECURING THE
 18 WRIT.

19 (1)(2) A NONELECTED law enforcement officer or other
 20 official who is determined by a court or, in the absence of
 21 a court determination on the issue, by the appropriate
 22 disciplinary authority to have violated the constitutional
 23 or other legal rights of a person by acting knowingly with
 24 the intent to violate such rights, by acting in a grossly
 25 negligent manner or by acting with a reckless disregard for

1 such--rights TO HAVE ACTED KNOWINGLY OR IN--A--GROSSLY
 2 NEGLIGENT-MANNER NEGLIGENTLY IN SUBSTANTIAL VIOLATION OF THE
 3 FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION; ARTICLE
 4 II, SECTIONS 10 OR 11, OF THE MONTANA CONSTITUTION; OR THE
 5 LAWS OF MONTANA RELATING TO SEARCH AND SEIZURE shall be
 6 suspended or dismissed, ~~without pay~~, as follows:

7 (a) Upon the first occurrence, he shall be suspended
 8 ~~for 30 days~~ WITHOUT PAY FOR A--PERIOD--OF--TIME--TO--BE
 9 DETERMINED BY THE COURT 30 DAYS.

10 (b) Upon the second occurrence, he shall be suspended
 11 ~~for 90 days~~

12 ~~(c) Upon the third occurrence, he shall be suspended~~
 13 ~~for 6 months~~

14 ~~(d) Upon the fourth occurrence, he shall be~~
 15 ~~permanently dismissed and is thereafter ineligible to serve~~
 16 ~~as a law enforcement officer with the state or any political~~
 17 ~~subdivision thereof~~ SUSPENDED WITHOUT PAY FOR 60 DAYS.

18 (C) UPON THE THIRD OCCURRENCE, HE SHALL BE PERMANENTLY
 19 DISMISSED.

20 ~~(2) If the violation is unusually serious, the~~
 21 ~~appropriate disciplinary authority may impose more severe~~
 22 ~~penalties than those listed in subsection (1)~~

23 ~~(3) A second or subsequent violation under~~
 24 ~~circumstances similar to those surrounding a previous~~
 25 ~~violation shall be presumed to have resulted from gross~~

1 ~~negligence or a reckless disregard for the person's rights~~
 2 (3) IF THE COUNTY ATTORNEY IS THE SUBJECT OF A
 3 PETITION, THE ATTORNEY GENERAL HAS THE DUTY TO BRING AN
 4 ACTION UNDER THIS SECTION SUBJECT TO THE PROVISIONS OF
 5 SUBSECTION (1).

6 NEW SECTION. Section 13. No effect on causes of
 7 action arising under Montana Comprehensive State Insurance
 8 Plan and Tort Claims Act. Nothing in [sections 1 through 14
 9 12] affects any cause of action arising under Title 2,
 10 chapter 9, parts 1 through 3, popularly known as the Montana
 11 Comprehensive State Insurance Plan and Tort Claims Act.

12 NEW SECTION. Section 14. Criminal liability. Nothing
 13 in [sections 1 through 12] affects the criminal liability
 14 of a law enforcement officer or other official who violates
 15 a person's rights in the manner described in [section 4(1)
 16 4(1)], and such officer or official is subject to
 17 prosecution for criminal trespass or any other applicable
 18 offense.

19 Section 15. Section 46-5-104, MCA, is amended to read:
 20 *46-5-104. Admissibility in other proceedings.
 21 INSTRUMENTS (1) UNLESS THE SEARCH OR SEIZURE WAS MADE IN
 22 SUBSTANTIAL VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED
 23 STATES CONSTITUTION; ARTICLE II, SECTIONS 10 OR 11, OF THE
 24 MONTANA CONSTITUTION; OR THE LAWS OF MONTANA RELATING TO
 25 SEARCH AND SEIZURE, INSTRUMENTS, articles, or things

1 ~~lawfully--seized~~ SEIZED are admissible as evidence upon any
 2 prosecution or proceeding whether or not the prosecution or
 3 proceeding is for the offense in connection with which the
 4 search was originally made.

5 (2) THE DETERMINATION OF WHETHER A VIOLATION IS
 6 SUBSTANTIAL OR NOT IS TO BE MADE USING THE CRITERIA IN
 7 [SECTION 3]."

8 SECTION 16. SECTION 46-13-302, MCA, IS AMENDED TO
 9 READ:

10 "46-13-302. Motion to suppress evidence illegally
 11 seized. (1) A defendant aggrieved by ~~an unlawful search and~~
 12 ~~seizure~~ a search or seizure made in substantial violation of
 13 the fourth amendment of the constitution of the United
 14 States; Article II, sections 10 or 11, of the Montana
 15 constitution; or the laws of Montana relating to search and
 16 seizure may move the court to suppress as evidence anything
 17 so obtained. The motion shall be in writing and state facts
 18 showing wherein the search and ~~or~~ seizure were ~~unlawful~~ was
 19 a substantial violation.

20 (2) The motion shall be made before trial unless for
 21 good cause shown the court shall otherwise direct.

22 (3) The defendant shall give at least 10 days' notice
 23 of such motion to the attorney prosecuting or such other
 24 time as the court may direct. The defendant shall serve a
 25 copy of the notice and motion upon the attorney prosecuting.

1 (4) If the allegations of the motion state facts which
 2 if true show that the search and ~~or~~ seizure were ~~unlawful~~
 3 ~~was a substantial violation~~, the court shall conduct a
 4 hearing into the merits of the motion. The burden of proving
 5 that the search and ~~or~~ seizure were ~~unlawful~~ was a
 6 substantial violation shall be on the defendant. The
 7 determination of whether a violation is substantial or
 8 nonsubstantial is to be made using the criteria in [section
 9 3].

10 (5) If the motion is granted, the evidence shall not
 11 be admissible against the movant at any trial of the case."

12 Section 17. Severability. If a part of this act is
 13 invalid, all valid parts that are severable from the invalid
 14 part remain in effect. If a part of this act is invalid in
 15 one or more of its applications, the part remains in effect
 16 in all valid applications that are severable from the
 17 invalid applications.

18 ~~Section 17. Repeater. Section 46-13-302, MCA, is~~
 19 ~~repeated.~~

-End-

HOUSE OF REPRESENTATIVES
March 19, 1979

Judiciary Committee amendments to Senate Bill 217, third reading
copy, as follows:

1. Title, line 4.
Following: "PROVIDE"
Strike: "AN EXCLUSIVE"
Insert: "A"
2. Title, line 6.
Following: "A"
Insert: "SUBSTANTIAL"
3. Title, line 8.
Following: "STATES"
Strike: "AND"
Insert: ";"
Following: "ARTICLE II,"
Strike: "SECTION"
Insert: "SECTIONS 10 OR"

(Continued)

SENATE BILL NO. 217

Page 2

4. Title, line 9.
Following: "CONSTITUTION"
Strike: ", IN LIEU OF"
Insert: "; OR THE LAWS OF MONTANA RELATING TO SEARCH AND SEIZURE
AND TO REVISE THE EXCLUSIONARY RULE, RELATING TO THE"
5. Title, line 13.
Following: line 12
Strike: "SECTION"
Insert: "SECTIONS"
Following: "46-5-104"
Insert: "AND 46-13-302"
6. Title, Lines 13 and 14.
Strike: "; AND TO REPEAL SECTION 46-13-302, MCA"
7. Page 1, line 18.
Following: "through"
Strike: "14"
Insert: "13"
8. Page 1, line 22.
Following: "search"
Strike: "and"
Insert: "or"
Following: "damages"
Insert: "under [sections 1 through 13]"
9. Page 1, line 23.
Following: "search"
Strike: "and"
Insert: "or"
Following: "in"
Insert: "substantial"
10. Page 1, line 24.
Following: "constitution"
Strike: "or"
Insert: ";"
Following: "Article II,"
Strike: "section"
Insert: "sections 10 or"
11. Page 1, line 25.
Following: "constitution"
Insert: ";"

(Continued)

SENATE BILL NO. 217

Page 3

12. Page 2, line 2.
Strike: "for use in a criminal prosecution"

13. Page 2, line 3.
Following: "in"
Insert: "nonsubstantial"

14. Page 2, line 4.
Following: "constitution"
Strike: "or"
Insert: " ; "
Following: "Article II,"
Strike: "section"
Insert: "sections 10 or"

15. Page 2, line 5.
Following: "constitution"
Insert: " ; "

16. Page 2, line 7.
Following: "such"
Insert: "nonsubstantial"

17. Page 2, lines 8 through 14.
Following: line 1
Strike: line 8 through line 14 in their entirety
Insert: "SECTION 3. THERE IS A NEW MCA SECTION THAT READS:
"Determination of substantial violation. (1) A violation of the fourth amendment of the United States constitution; Article II, sections 10 or 11, of the Montana constitution; or the laws of Montana relating to search and seizure is considered to be substantial if the violation meets the criteria of subsections (2) or (3).
(2) A violation is considered substantial if it was gross and willful.
(3) A violation that is not classified as substantial under subsection (2) may be considered substantial by considering the following criteria:
(a) the extent of deviation from lawful conduct;
(b) the extent to which the violation was willful;
(c) the extent to which privacy was violated;
(d) whether, but for the violation, the things seized would have been discovered;
(e) the extent to which exclusion will tend to prevent violation of the search and seizure constitutional and statutory provisions; and
(f) the extent to which the violation prejudiced the rights of affected individuals to defend themselves in criminal prosecutions."

SENATE BILL NO. 217

Page 4

18. Page 2, line 16.
Following: "through"
Strike: "14"
Insert: "13"

19. Page 2, lines 16 and 17.
Following: "upon"
Strike: "an affirmative finding"
Insert: "proof"

20. Page 2, line 18.
Following: "a"
Insert: "substantial"
Following: "the"
Strike: "constitutional or legal"

21. Page 2, line 20.
Following: "States constitution"
Strike: "or"
Insert: " ; Article II, sections 10 or 11 of"
Following: "Montana constitution"
Insert: " ; or the laws of Montana relating to search and seizure"

22. Page 2, line 22 through line 3, page 3.
Following: "subdivisions"
Strike: line 22 through line 3, page 3 in their entirety
Insert: " . "

23. Page 3, line 4.
Following: line 3
Strike: "(3)"
Insert: "(2)"
Following: "through"
Strike: "14"
Insert: "13"

24. Page 3, line 7.
Following: "constitutional"
Insert: "or statutory"
Following: "rights"
Insert: "was not caused by the officer or official and"

25. Page 3, line 8.
Following: line 7
Insert: "exclusively"

26. Page 3, line 10.
Following: line 9
Strike: "(4)"
Insert: "(3)"

27. Page 3, line 11.
Following: "liable"
Insert: ", jointly and severally with the officer or other official,"
28. Page 3, line 12.
Following: "through"
Strike: "14"
Insert: "13"
29. Page 3, line 13.
Following: "by the"
Insert: "officer or"
30. Page 3.
Following: line 15
Insert: "(4) Whenever a law enforcement official or any other person is responsible for a violation under [sections 1 through 13] while acting outside the scope of his employment and not under color of law, he is personally liable to the person whose rights were violated."
31. Page 3, line 16.
Strike: "(1) A"
Insert: "Whenever it is determined that there was a substantial violation of a constitutional or legal right, a"
32. Page 3, line 18.
Strike: "(a)"
Insert: "(1)"
33. Page 3, line 19.
Strike: "(b)"
Insert: "(2)"
34. Page 3, line 20.
Strike: "(c)"
Insert: "(3)"
35. Page 3, line 21.
Strike: "(d)"
Insert: "(4)"
36. Page 3, line 22 through line 6, page 4.
Strike: line 22, page 3 through line 6, page 4 in their entirety
37. Page 4, line 9.
Following: "through"
Strike: "14"
Insert: "13"

(continued)

38. Page 4, line 11.
Following: "through"
Strike: "14"
Insert: "13"
39. Page 4, line 14.
Strike: "or in Lewis and Clark County"
40. Page 4, line 20.
Following: line 19
Strike: "14"
Insert: "13"
41. Page 4, line 23.
Following: "judgment"
Insert: "against the state or a political subdivision"
42. Page 5, line 9 through 18.
Strike: section 11 in its entirety
Renumber: subsequent sections
43. Page 5, line 19.
Following: "Section 12."
Strike: "Administrative action."
Insert: "Disciplinary action. (1) An action may be commenced in the district court to determine if a law enforcement officer or other official has knowingly or in a grossly negligent manner committed a substantial violation of the fourth amendment of the United States constitution; Article II, sections 10 or 11 of the Montana constitution; or the laws of Montana relating to search and seizure. This action may be brought by the county attorney on his own determination and shall be brought by the county attorney whenever a petition is filed with his office requesting such an action to be brought; provided that the petition is not made in bad faith. An action against a nonelected officer or official shall be a civil action subject to the rules of civil procedure, and an action against an elected officer or official shall be a criminal action for official misconduct, as provided for in 45-7-401. If the county attorney fails to act on the petition, the petitioner may file for a writ of mandamus to compel the county attorney to take action. If the writ is issued, the petitioner shall receive costs and attorney's fees from the county incurred in securing the writ."
Renumber: subsequent subsections
44. Page 5, line 20.
Following: line 19
Insert: "nonelected"

(continued)

45. Page 5, line 21 through line 1, page 6.
Following: "by a court"
Strike: remainder of line 21 through "rights" on line 1, page 6.
Insert: "to have acted knowingly or in a grossly negligent manner in substantial violation of the fourth amendment of the United States constitution; Article II, sections 10 or 11, of the Montana constitution; or the laws of Montana relating to search and seizure"

46. Page 6, line 2.
Strike: ", without pay,"

47. Page 6, line 4.
Following: line 3
Strike: "for 30 days"
Insert: "without pay for a period of time to be determined by the court"

48. Page 6, lines 5 through 9.
Following: "be"
Strike: remainder of line 5 through line 9 in their entirety.

49. Page 6, lines 13 through 19.
Strike: lines 13 through 19 in their entirety

50. Page 6.
Following: line 19
Insert: "(3) If the county attorney is the subject of a petition, the attorney general has the duty to bring an action under this section subject to the provisions of subsection (1)."

51. Page 6, line 22.
Following: "through"
Strike: "14"
Insert: "13"

52. Page 7, line 2.
Following: "through"
Strike: "13"
Insert: "12".

(continued)

53. Page 7, line 4.
Following: "section"
Strike: "4(1)"
Insert: "4(4)"

54. Page 7, line 9.
Following: line 8
Strike: "Instruments"
Insert: "(1) Unless the search or seizure was made in substantial violation of the fourth amendment of the United States constitution; Article II, sections 10 or 11, of the Montana constitution; or the laws of Montana relating to search and seizure, instruments"
Following: "seized"
Insert: "seized"

55. Page 7.
Following: line 13
Insert: "(2) The determination of whether a violation is substantial or not is to be made using the criteria in [section 3]."

SECTION 15. SECTION 46-13-302, MCA, IS AMENDED TO READ:
"46-13-302. Motion to suppress evidence illegally seized. (1) A defendant aggrieved by an-unlawful-search-and-seizure a search or seizure made in substantial violation of the fourth amendment of the constitution of the United States; Article II, sections 10 or 11, of the Montana constitution; or the laws of Montana relating to search and seizure may move the court to suppress as evidence anything so obtained. The motion shall be writing and state facts showing wherein the search and or seizure were-unlawful was a substantial violation.

(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which if true show that the search and or seizure were-unlawful was a substantial violation, the court shall conduct a hearing into the merits of the motion. The burden of proving that the search and or seizure were-unlawful was a substantial violation shall be on the defendant. The determination of whether a violation is substantial or non-substantial is to be made using the criteria in [section 3].

(5) If the motion is granted, the evidence shall not be admissible against the movant at any trial of the case."

56. Page 7, lines 20 and 21.
Strike: section 17 in its entirety.

AND AS AMENDED BE CONCURRED IN

8

State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

May 14, 1979

The Honorable William Mathers
President of the Senate
State Capitol
Helena, Montana 59601

The Honorable Harold Gerke
Speaker of the House of Representatives
State Capitol
Helena, Montana 59601

Dear President Mathers and Speaker Gerke:

In accordance with the power vested in me as Governor by the constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 217, "AN ACT TO PROVIDE A REMEDY UNDER STATE LAW IN THE FORM OF A CAUSE OF ACTION FOR DAMAGES WHEN THERE HAS BEEN A SUBSTANTIAL VIOLATION OF RIGHTS PROTECTED BY THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES; ARTICLE II, SECTIONS 10 OR 11, OF THE MONTANA CONSTITUTION; OR THE LAWS OF MONTANA RELATING TO SEARCH AND SEIZURE AND TO REVISE THE EXCLUSIONARY RULE, RELATING TO THE EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE; TO PROVIDE FOR THE DISCIPLINE OF OFFICIALS CAUSING VIOLATIONS OF RIGHTS; TO CLARIFY THAT CRIMINAL LIABILITY IS NOT AFFECTED; TO AMEND SECTIONS 46-5-104 AND 46-13-302, MCA."

When Senate Bill No. 217 was introduced it was supported by virtually all segments of law enforcement. They were quite rightly concerned about the situation where the criminal goes free because the policeman made a mistake. Since passage of the bill, because of the way it was changed, the Montana Peace Officers' Association, the Montana County Attorney's Association, and many individual law enforcement officers have asked me to veto the bill.

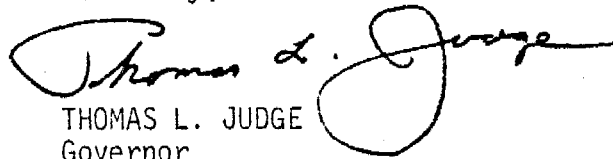
As passed by the Legislature, only evidence secured from a search which was determined to be a "non-substantial" violation of the Fourth Amendment would be admissible in court proceedings. Courts would have to determine what is "substantial" and what is "non-substantial". Law enforcement personnel would be subject to civil damages and suspension from employment if it was later determined they acted "knowingly" to cause a "substantial" fourth amendment violation. Many law enforcement officials who have discussed this bill with me say that the lack of clear standards would discourage them from conducting many of the searches which they do now.

The Honorable William Mathers
The Honorable Harold Gerke
May 11, 1979
Page Two

Senate Bill No. 217 was extensively amended in its course through the legislature and was the subject of three separate conference committees. In its final, compromised form, the bill is confusing and contradictory; is now opposed by many of the people who originally supported it; stands little chance of being approved in the courts; and may well leave a number of cases in suspension while it is being tested in the United States Supreme Court.

For these reasons, I veto Senate Bill No. 217.

Sincerely,


THOMAS L. JUDGE
Governor

cc: The Honorable Frank Murray