

HOUSE BILL NO. 816

Introduced: 02/15/83

Referred to Committee on Judiciary: 02/15/83

Hearing: 2/21/83

Died in Committee

1 *House* BILL NO. *816*
2 INTRODUCED BY *Kommes Kelly*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE
5 APPLICATION OF THE SEARCH AND SEIZURE EXCLUSIONARY RULE;
6 PROVIDING A PERSON WHOSE RIGHTS ARE VIOLATED DURING A SEARCH
7 OR SEIZURE WITH A CIVIL CAUSE OF ACTION FOR DAMAGES;
8 PROVIDING FOR A DISCIPLINARY ACTION AGAINST THE LAW
9 ENFORCEMENT OFFICER INVOLVED; AMENDING SECTIONS 2-9-104,
10 2-9-105, AND 46-13-302, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Elimination of mandatory
14 search and seizure exclusionary rule. Except as provided in
15 46-13-302, evidence that is otherwise admissible may not be
16 excluded from any criminal proceeding on the ground that it
17 was obtained in violation of:

18 (1) the fourth amendment to the United States
19 constitution;

20 (2) section 10 or 11 of Article II of the Montana
21 constitution; or

22 (3) Montana statutory law relating to search and
23 seizure.

24 NEW SECTION. Section 2. Civil liability for illegal
25 searches and seizures. (1) If a law enforcement officer,

1 whether state, county, municipal, or otherwise, while acting
2 within the course and scope of his employment or under color
3 of law, makes a search or seizure in violation of the
4 person's rights under the fourth amendment to the United
5 States constitution, section 10 or 11 of Article II of the
6 Montana constitution, or the statutes of Montana, the
7 governmental entity employing the officer is liable to the
8 person for damages. If the officer was grossly negligent,
9 acted purposely or knowingly, or acted outside the course or
10 scope of his employment, he is jointly and severally liable
11 with the governmental entity.

12 (2) It is not a defense to an action under this
13 section that the search or seizure resulted from an illegal
14 act of the person whose rights were violated or that the
15 person has been convicted of an offense related, directly or
16 indirectly, to the search or seizure.

17 (3) (a) A person who prevails in an action under this
18 section may be granted damages, including but not limited
19 to:

20 (i) damages for injury to property;

21 (ii) damages for personal injury, including injury to
22 his reputation;

23 (iii) damages for mental or emotional distress, not
24 exceeding \$100,000;

25 (iv) damages for loss of wages, loss of earning

1 capacity, or loss of consortium;

2 (v) damages for violation of rights under the state or

3 federal constitution or state statutes;

4 (vi) punitive or exemplary damages, not exceeding

5 \$100,000; and

6 (vii) reasonable costs and attorney fees.

7 (b) No damages may be recovered for injuries

8 proximately caused by a plea of guilty to or a conviction of

9 an offense directly or indirectly related to the illegal

10 search or seizure.

11 (c) The limitations on damages contained in 2-9-104

12 and 2-9-105 do not apply to an action under this section.

13 (4) (a) The right of action granted by this section is

14 in addition to any other rights granted by this chapter,

15 other statutes of this state, or federal law.

16 (b) This section does not affect the criminal

17 liability of any person arising out of an illegal search or

18 seizure.

19 (5) An action may be brought under this section in

20 either the district court for the judicial district in which

21 the alleged violation of a person's rights occurred or in

22 the first judicial district. Any district court judge who

23 has passed upon the sufficiency of any process involved in

24 the search or seizure or who has been involved in criminal

25 proceedings against a person who brings a suit under this

1 section is disqualified to sit and act on a cause of action

2 under this section except to arrange the calendar, to

3 transfer the action to another court, or to call in another

4 judge to sit and act.

5 (6) An action under this section is barred unless

6 commenced within 2 years after the alleged violation of the

7 person's rights occurred or within 1 year after the

8 violation became known to the person.

9 (7) A final judgment against a governmental entity is

10 an obligation of that entity and must be paid in the same

11 manner as any other claim against that entity.

12 ~~NEW SECTION.~~ Section 3. Disciplinary action. (1) An

13 action may be commenced in either the district court for the

14 judicial district in which the alleged violation occurred or

15 in the first judicial district:

16 (a) to determine if a law enforcement officer or other

17 official has purposely, knowingly, or negligently committed

18 a violation of the fourth amendment to the United States

19 constitution, section 10 or 11 of Article II of the Montana

20 constitution, or the statutes of Montana in relation to a

21 search or seizure; and

22 (b) to seek personal disciplinary action or criminal

23 sanction against such officer or official for such violation

24 as provided in this section.

25 (2) The action may be brought by the county attorney

1 on his own determination and must be brought by the county
 2 attorney whenever a verified petition is filed with his
 3 office requesting that such an action be brought, if the
 4 petition establishes probable cause. An action against a
 5 nonelected officer or official is a civil action subject to
 6 the Montana Rules of Civil Procedure and punishable as
 7 provided in subsection (4). An action against an elected
 8 officer or official is a criminal action for official
 9 misconduct punishable as provided in 45-7-401. If the
 10 county attorney fails to act on a petition, the petitioner
 11 may file for a writ of mandamus to compel the county
 12 attorney to take action. If the writ is issued, the
 13 petitioner shall receive from the county costs and attorney
 14 fees incurred in securing the writ.

15 (3) It is a complete defense to the action that the
 16 law enforcement officer or other official acted in a
 17 reasonable good faith belief that the search or seizure was
 18 in compliance with the law.

19 (4) A nonelected law enforcement officer or other
 20 official determined by a court to have acted purposely,
 21 knowingly, or negligently in violation of the fourth
 22 amendment to the United States constitution, section 10 or
 23 11 of Article II of the Montana constitution, or the
 24 statutes of Montana in relation to a search or seizure must
 25 be disciplined as follows:

1 (a) Upon the first occurrence, he must be suspended
 2 without pay for 30 days.

3 (b) Upon the second occurrence, he must be dismissed
 4 and may not be rehired.

5 (5) If a county attorney is the subject of a petition,
 6 the attorney general shall bring an action under this
 7 section, subject to the provisions of subsection (2).

8 (6) A prior action under [section 2] or any other
 9 state or federal statute does not bar an action under this
 10 section.

11 Section 4. Section 2-9-104, MCA, is amended to read:

12 "2-9-104. Limitation on governmental liability for
 13 damages in tort -- petition for relief in excess of limits.

14 (1) ~~Neither Except as provided in [section 2], neither~~ the
 15 state, a county, municipality, taxing district, nor any
 16 other political subdivision of the state is liable in tort
 17 action for:

18 (a) noneconomic damages; or

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

23 (2) The legislature or the governing body of a county,
 24 municipality, taxing district, or other political
 25 subdivision of the state may, in its sole discretion,

1 authorize payments for noneconomic damages or economic
 2 damages in excess of the sum authorized in subsection (1)(b)
 3 of this section, or both, upon petition of plaintiff
 4 following a final judgment. No insurer is liable for such
 5 noneconomic damages or excess economic damages unless such
 6 insurer specifically agrees by written endorsement to
 7 provide coverage to the governmental agency involved in
 8 amounts in excess of the limitation stated in this section
 9 or specifically agrees to provide coverage for noneconomic
 10 damages, in which case the insurer may not claim the
 11 benefits of the limitation specifically waived."

12 Section 5. Section 2-9-105, MCA, is amended to read:

13 "2-9-105. State or other governmental entity immune
 14 from exemplary and punitive damages. The state and other
 15 governmental entities are immune from exemplary and punitive
 16 damages, except as provided in [section 2]."

17 Section 6. Section 46-13-302, MCA, is amended to read:

18 "46-13-302. Motion to suppress evidence illegally
 19 seized. (1) A defendant aggrieved by an unlawful search and
 20 seizure may move the court to suppress as evidence anything
 21 so obtained. The motion shall be in writing and state facts
 22 showing wherein the search and seizure were unlawful.

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

25 (3) The defendant shall give at least 10 days' notice

1 of such motion to the attorney prosecuting or such other
 2 time as the court may direct. The defendant shall serve a
 3 copy of the notice and motion upon the attorney prosecuting.

4 (4) If the allegations of the motion state facts which
 5 if true show that the search and seizure were unlawful, the
 6 court shall conduct a hearing into the merits of the motion.
 7 The burden of proving that the search and seizure were
 8 unlawful shall be on the defendant.

9 (5) The motion shall be granted only upon a finding by
 10 the court that:

11 (a) the search and seizure were unlawful; and

12 (b) the protection of rights guaranteed by the fourth
 13 amendment to the United States constitution, Article II,
 14 section 10 or 11, of the Montana constitution, or Montana
 15 statutory law relating to search and seizure requires
 16 exclusion of the evidence.

17 (6) In making a finding under subsection (5)(b), the
 18 court must weigh:

19 (a) the nature of the violation of rights, including:

20 (i) whether the violation of rights was technical or
 21 trivial in nature; or

22 (ii) whether it was of a serious nature the recurrence
 23 of which would endanger rights; and

24 (b) the nature of the offense charged, including:

25 (i) whether the offense was violent;

1 ~~(iii) whether there were any victims of the offense~~
2 ~~other than the defendant; and~~

3 ~~(iii) the potential danger to society of excluding the~~
4 ~~evidence.~~

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

8 NEW SECTION. Section 7. Codification instruction. (1)
9 Section 1 is intended to be codified as an integral part of
10 Title 46, chapter 5, part 1.

11 (2) Sections 2 and 3 are intended to be codified as an
12 integral part of Title 2, chapter 9.

13 NEW SECTION. Section 8. Nonseverability. It is the
14 intent of the legislature that each part of this act is
15 essentially dependent upon every other part and if one part
16 is held unconstitutional or invalid, all other parts are
17 invalid.

18 NEW SECTION. Section 9. Applicability. This act does
19 not apply to searches and seizures occurring prior to
20 October 1, 1983.

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