

HOUSE BILL NO. 68

INTRODUCED BY FAGG

IN THE HOUSE

DECEMBER 23, 1992

INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 4, 1993

FIRST READING.

JANUARY 6, 1993

COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

JANUARY 8, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

JANUARY 11, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 13, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

MARCH 5, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 6, 1993

SECOND READING, CONCURRED IN.

MARCH 8, 1993

THIRD READING, CONCURRED IN.  
AYES, 47; NOES, 1.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1993

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 68  
INTRODUCED BY FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING FROM WITHIN 10 DAYS AFTER THE OMNIBUS HEARING TO WITHIN 30 DAYS AFTER THE ARRAIGNMENT THE TIME WITHIN WHICH A DEFENDANT IN A CRIMINAL CASE MUST DISCLOSE CERTAIN MATTERS TO THE PROSECUTOR; AND AMENDING SECTION 46-15-323, MCA."

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

**Section 1.** Section 46-15-323, MCA, is amended to read:

"46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

- (a) appear in a lineup;
- (b) speak for identification by witnesses;
- (c) be fingerprinted, palm printed, footprinted, or voiceprinted;
- (d) pose for photographs not involving reenactment of an event;
- (e) try on clothing;
- (f) permit the taking of samples of his the defendant's hair, blood, saliva, urine, or other specified materials

that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within ~~10~~ 30 days after the omnibus--hearing--in district--court arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements

1 made by them concerning the results of physical  
2 examinations, scientific tests, experiments, or comparisons,  
3 except that the defendant need not include a privileged  
4 report or statement unless he the defendant intends to use  
5 the privileged report or statement, or the witness who made  
6 it, at trial.

7 (5) Prior to trial the defendant may, upon motion and  
8 showing of good cause, add to the list of witnesses the  
9 names of any additional witnesses and disclose their reports  
10 or statements as required by this section. After the trial  
11 commences, no witnesses may be called by the defendant in  
12 support of these defenses unless the name of the witness is  
13 included on the list and the witness's report or statement  
14 has been disclosed as required by this section, except for  
15 good cause shown.

16 (6) Within ~~10~~ 30 days after the omnibus-hearing-in  
17 district-court arraignment or at a later time as the court  
18 may for good cause permit, the defendant shall make  
19 available to the prosecutor for testing, examination, or  
20 reproduction:

21 (a) the names, addresses, and statements of all  
22 persons, other than the defendant, whom the defendant may  
23 call as witnesses in the defense case-in-chief, together  
24 with their statements;

25 (b) the names and addresses of experts whom the

1 defendant may call at trial, together with the results of  
2 their physical examinations, scientific tests, experiments,  
3 or comparisons, including all written reports and statements  
4 made by these experts in connection with the particular  
5 case; and

6 (c) all papers, documents, photographs, and other  
7 tangible objects that the defendant may use at trial.

8 (7) The defendant's obligation under this section  
9 extends to material and information within the possession or  
10 control of the defendant, defense counsel, and defense  
11 counsel's staff or investigators.

12 (8) Upon motion of the prosecutor showing that the  
13 prosecutor has substantial need in the preparation of the  
14 case for additional material or information not otherwise  
15 provided for, that the prosecutor is unable, without undue  
16 hardship, to obtain the substantial equivalent by other  
17 means, and that disclosure of the material or information  
18 will not violate the defendant's constitutional rights, the  
19 court, in its discretion, may order any person to make the  
20 material or information available to the prosecutor. The  
21 court may, upon request of any person affected by the order,  
22 vacate or modify the order if compliance would be  
23 unreasonable or oppressive. The defense counsel may not be  
24 required to prepare or disclose summaries of witnesses'  
25 testimony."

-End-

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0068, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill eliminating the termination of the limitation on governmental tort liability.

ASSUMPTIONS:

1. The Department of Administration developed general liability premiums for inclusion in the executive budget on the assumption that current liability limits would continue into the 1995 biennium. Therefore, this bill would not affect amounts budgeted statewide for general liability premiums or current estimates of general liability claims.
2. In the absence of this bill, the state would be exposed to a significantly greater general liability risk. Due to the unpredictability of catastrophic events which would lead to claims against the state for amounts in excess of the current liability limits, it is not possible to develop an estimate of savings to the state.

FISCAL IMPACT:

Inestimable but significant savings to the state self-insurance fund (proprietary revenue). The reduced costs of general liability premiums would affect nearly all funding sources.

Dave Lewis 1-8-93

DAVE LEWIS, BUDGET DIRECTOR DATE

Office of Budget and Program Planning

Chet Blaylock 1/11/93

CHET BLAYLOCK, PRIMARY SPONSOR DATE

Fiscal Note for SB0068, as introduced

SB 68

APPROVED BY COMMITTEE  
ON JUDICIARY

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(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his the defendant's hair, blood, saliva, urine, or other specified materials

that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within ~~10~~ 30 days after the omnibus--hearing--in district--court arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements

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4 report or statement unless he the defendant intends to use  
5 the privileged report or statement, or the witness who made  
6 it, at trial.

7 (5) Prior to trial the defendant may, upon motion and  
8 showing of good cause, add to the list of witnesses the  
9 names of any additional witnesses and disclose their reports  
10 or statements as required by this section. After the trial  
11 commences, no witnesses may be called by the defendant in  
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20 reproduction:

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22 persons, other than the defendant, whom the defendant may  
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24 with their statements;

25 (b) the names and addresses of experts whom the

1 defendant may call at trial, together with the results of  
2 their physical examinations, scientific tests, experiments,  
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4 made by these experts in connection with the particular  
5 case; and

6 (c) all papers, documents, photographs, and other  
7 tangible objects that the defendant may use at trial.

8 (7) The defendant's obligation under this section  
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11 counsel's staff or investigators.

12 (8) Upon motion of the prosecutor showing that the  
13 prosecutor has substantial need in the preparation of the  
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15 provided for, that the prosecutor is unable, without undue  
16 hardship, to obtain the substantial equivalent by other  
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19 court, in its discretion, may order any person to make the  
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