

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BILL STRIZICH**, on February 22, 1991,
at 7:15 A.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 920

Motion: REP. DARKO MOVED HB 920 DO PASS.

Discussion:

REP. DARKO explained Montana will be under sanction from the Federal government if legislation to amend the statutes of limitations is not passed. The penalty will be one to six percent of AFDC money from the Federal government. The bill removes the limitations of three years from the birth of child or two years from the date of first application for services from the Department to prove paternity. The time has been extended so that paternity can be established at any time prior to the

child's 18th birthday. Any actions barred because of the statutes of limitations previously can now be dropped. A paternity action can be brought from the time of birth to the age of 18.

REP. MEASURE stated the bill is unfair because people who were free and clear from suit under the previous legislation will be under new rules. **REP. BOHARSKI** has the same question. There is no problem with what the bill attempts to do, and there is no question it is a good cause. Isn't this unconstitutional? **John McRae, Department of SRS, Child Support Division**, said considerable research was done on this issue which has been brought up in several states. In the state of Hawaii the issue was addressed and people in that state determined the heart of the situation was a remedial situation. Any remedial type law can retroactively correct a problem. The problem lies with imposing retroactive liability. There is a constitution prohibition against that. This prohibition is provided for in the bill. It does not revive the liability for past due support, there is no liability to the agency. The child has a private right of action to pursue the father for paternity at any time. The bill applies only to the state agency.

Vote: Motion that HB 920 do pass carried with Reps. Whalen, Measure, Brown and Wyatt voting no.

EXECUTIVE ACTION ON HB 921

Motion: **REP. DARKO** MOVED HB 921 DO PASS.

Discussion:

REP. DARKO said this bill requires social security number at the time birth certificates are registered to help identify birth parents, especially in enforcing support. The numbers only appear on the statistical portion, and can only be used for child support purposes. No one else will have access to the social security numbers.

Motion: **REP. TOOLE** moved HB 921 be amended on the first page, "except for the required by the Department rules, the social Security Numbers of the child's parents when known must be printed on the medical health part of the birth registration form. The Department may adopt a rule specifying those instances in which, for good cause shown, the social security numbers are not to be included."

Discussion:

REP. BROWN asked what does "for good cause shown" mean? What reason would there be for asking that a social security number not be included on a birth certificate? **REP. TOOLE** said the Department is to create rules providing direction for those exceptions. Rep. Toole hopes the exceptions will be broad.

John McRae said the federal people suggested the state have rules for exemptions. Examples for exemption are situations where the child was born as a result of rape, incest, or if there is likely to be an abusive situation within the family unit and the best interest of the child is numbers not be included in records. This would involve the Department of Health and Environmental Services.

REP. MEASURE questioned if without any process of law, at the time of a child's birth, when the hospital is preparing a certificate of birth requiring individual social security numbers, the clerk makes a determination if there might be an abusive situation letting the person out of the requirement.

Vote: Motion to amend HB 921 carried.

Motion: REP. DARKO MADE A SUBSTITUTE MOTION THAT HB 921 DO PASS AS AMENDED.

Discussion:

REP. BOHARSKI asked how much problem it would be for the department if due process were to be added in determining if the social security number should be used.

John McRae said part of the problem is when the father deserts the family. This bill tries to approach that. The mother may have information about the social security number of the absent father, and that is a tool that would be used to locate him. Without the social security number, the opportunity of locating is diminished considerably. There is no way in advance of informing the individual that his social security number is used.

Motion: REP. BROWN MADE A SUBSTITUTE MOTION THAT HB 921 DO NOT PASS AS AMENDED.

Discussion:

REP. BROWN said the right to privacy outweighs nearly everything. People have the option of not using social security numbers on drivers licenses. The use of social security numbers is not required for selective service. In every instance, the legislature has not allowed the social security number to be used and potentially abused in the way this bill does. If there is a child born in a hospital, the person at the desk is supposed to make a determination whether the person involved should be excepted from this requirement. There is too much discretion on too sensitive an issue for any department to have.

REP. STICKNEY is not clear what the problem is since half the people put their social security number on their check stubs. There is not much concern about who gets your social security number any more.

REP. BROOKE said during the last session the Department of Social and Rehabilitative Services came in at the last minute and in an appropriation bill switched the child support enforcement program from the Department of Revenue to SRS because the Department of Revenue director did not like child support enforcement programs. It was done within the appropriation process without a public hearing on the policy nature of location of the child support enforcement program. It may be appropriately placed in SRS, but there was no chance to discuss that. This program concentrates solely on AFDC parents. There are many parents needing child support enforcement services who are not on AFDC. With this bill SRS is trying to make enforcement more effective. Rep. Brooke opposes the social security number on birth certificates, and also the past history of how SRS got the program. REP. DARKO said anyone can request services from the department. John McRae said services are offered equally across the board. It is a federal mandate. Anyone can apply for services. Non-AFDC cases is the major increasing portion of the caseload right now. There is also a federal requirement to publicize the existence of the program. The Department is aware that a large part of the population cannot afford the legal representatives needed to get support money. They can apply to child support enforcement and receive essentially free services.

REP. GOULD asked Mr. McRae to explain what someone has to do to avail himself of the services? Does he have to come to Helena? John McRae said the process is easy. Any regional office, or the Helena office can be contacted and an application form will be mailed. Or the application can be picked up in person. REP. GOULD asked if that application will be as zealously pursued as for a person on AFDC? John McRae replied it will be. The federal government has strict audit standards on equality of service and they audit on a three year basis. If the Department is found not in compliance with that requirement, the agency will suffer sanctions. In the past, there have been problems gearing up to meet standards for non-AFDC people due to limited staff. Recently, the staff level increased.

REP. BECKER spoke on logistics. There is no time to make a determination whether a person should have an exemption at the time birth papers are prepared.

REP. BROWN said on page 3, it is unlawful to disclose data including social security numbers appearing on medical health portions of birth registration form. This bill talks about paternity cases. Why put the whole population through this sensitive information disclosure to get at the small percent of paternity cases.

Motion/Vote: REP. BROWN MADE A SUBSTITUTE MOTION THAT HB 921 AS AMENDED BE TABLED. Motion to table passed 14 to 6 by roll call vote. EXHIBIT 1

EXECUTIVE ACTION ON HB 922

Motion: REP. DARKO MOVED HB 922 DO PASS.

Discussion:

REP. DARKO stated HB 922 asks for administrative modifications of child support orders. Again, these are all federal modifications made last summer. In order to comply, the bill needs to be enacted. Rep. Darko would like John McRae to address the bill.

REP. MEASURE objected. There was a hearing on the bill, with plenty of time for Mr. McRae to speak. The bill comes at the last minute. There was time to give the committee data, and none was received. They attempted to sneak the four bills by us.

REP. DARKO disagrees with Rep. Measure. Rep. Darko requested that Mr. McRae be brief at the hearing. If the time needed had been granted to Mr. McRae to explain the bills, the committee would not have completed the hearing.

REP. STRIZICH ruled that testimony would be received from Mr. McRae by direct questions from the committee members.

REP. BOHARSKI asked how long does it take to run through this bill? REP. TOOLE responded it would be of some benefit to at least give another explanation.

CHAIRMAN STRIZICH delayed Executive Action on this bill until later. The motion has been withdrawn.

EXECUTIVE ACTION ON HB 766

Motion: REP. MESSMORE MOVED HB 766 DO PASS.

Discussion

REP. STICKNEY believes HB 766 is made unnecessary because of the committee bill.

REP. TOOLE stated this bill increases to six months available sentence for DUI in order to force alcohol schools. The committee bill does not affect a deferred imposition of sentence. You can't have probation for a DUI. The committee bill will address all circumstances except deferred imposition, which could be attached. The first 24 hours cannot be deferred, but otherwise the sentence can be deferred. It is up to the committee whether it wants to do as Rep. Fagg said. Rep. Toole feels the committee bill addresses the issue. There is a small gap in deferred imposition of sentence, but it is not a big gap.

Motion/Vote : REP. GOULD MADE A SUBSTITUTION MOTION THAT HB 766 BE TABLED. Motion carried with Reps. Messmore, Clark, Johnson and Boharski voting no.

HEARING ON HB 928

Presentation and Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said HB 928 would enable producers of environmental violators pursued in the name of the state to enforce actions under Title 75, environmental laws. It would add to Montana statutes a counterpart found in federal statutes authorizing the same action. Federal statutes dealing with clean water and other aspects of environmental law contain provisions that take precedence in authorizing citizens to assist in enforcing laws. HB 928 would bring some of those provisions to Montana environmental law. Section 2 sets it up, stating a person may bring an action under certain conditions in the name of the state against an alleged violator to enforce an environmental law. Those conditions begin on the top of page 2. Notification must be given to the Department of Environmental of the desire to do so and the Department must commence an action within 30 days after that notice. There is no right to pursue or to initiate a separate suit if the Department is enforcing the law. After a second notice, if the Department fails to bring suit, the citizen can do so. The court can order a person who brings a harassment suit to pay for costs. The Department position is that environmental violation should be mitigated and the matter brought to a head quickly as possible. This tends to reduce the necessity for civil pursuits. There are still situations where there is a need for this kind of litigation due to limited resources of the Department. Persons who live near sites of environmental violations are familiar with facts and circumstances of those violations. If a person wants to participate in lawsuit brought by the Department of Health and Environmental Science to enforce a violation or to remedy a violation under the law, it will be at their own expense. If an action is initiated by a citizen because the Department failed to act, there is provision for attorney fees. There is no provision for damages. This bill brings to the state of Montana what has been in place in federal statutes for the last 15 or 20 years. Rep. Toole urges support of the bill.

Proponents' Testimony:

Jim Jensen, Montana Environmental Information Center (MEIC), stated MEIC strongly supports HB 928. It provides Montana with an additional tool for notification of violations. Department of Health and Environmental Services has been chronically underfunded. The idea of allowing the private sector to assist goes back to the founding of the United States when many laws were designed to be enforced by private individuals. More recently, one of the leading federal laws allows private individuals to seek people who are defrauding the United States and bring them to justice. A similar statute was passed in Michigan and the state has saved many thousands of dollars working in coordination with private nonprofit parties to enforce environmental law.

Dennis Olson, Northern Plains Resource Council (NPRC), supports HB 928. Written testimony was provided. EXHIBIT 2

Kim Wilson, a private attorney appearing on his own behalf, urges the committee to support HB 928. Mr. Wilson has worked with the water quality act, and in his view the Water Quality Bureau and the Department of Health have insufficient manpower to accurately enforce all permits. This bill will give the state a tool to enforce the water quality provision. The reverse attorney fee provision for a person bringing an action which is subsequently dismissed would be a strong deterrent to anyone bringing actions not based in fact.

Opponents' Testimony:

Mike Manion, Montana Power Company (MPC), is a practicing lawyer and has dealt with the Department of Health. MPC feels that agency is more than capable of handling this type of action. Taxes are being paid to support the Department. Is it fair that any person who is not connected with a particular action can file against another person? This is not talking about corporations, but individual citizens. Would it be fair that any citizen could bring an action against you? This bill encourages litigation. Under current law, if a citizen believes the Department of Health and Environmental Sciences is not actively enforcing this regulation, it can bring action in District Court against that agency. Assume an individual files notice with the Department. The Department does not believe the citizen has done adequate research and takes it under advisement to do its own research. After the second notice the Department has not reached a conclusion, and the citizen files a suit. If the Department in another 10 days believes there is a legitimate complaint, the Department files notice against the alleged violator. The question is, does the alleged violator proceed down the administrative track with the DHES and also participate in a suit a citizen has filed? The bill does not answer the question, is filing a notice diligently prosecuting a suit? Legislators must decide that. Citizens are granted the right to intervene. Where is the motion for interdiction filed? Statute of limitations for this bill is seven years, which Mr. Manion feels is excessive. Mr. Manion recommends HB 928 do not pass.

John Fitzpatrick, Director of Community and Governmental Affairs, Pegasus Gold Corporation, this bill as proposed has some problems. There needs to be more criteria for the basis of complaint. Once a complaint is issued or if an action takes place parties affected by it should have the right to receive compensation if the case is dismissed. Pegasus opposes the bill in its current form.

Questions From Committee Members:

REP. RUSSELL referred to testimony there were other ways for citizens to participate in this kind of action and asked Mr.

Jensen to address that. **Jim Jensen** thinks that was reference to the ability of a party to seek a writ of mandate in District Court to compel an agency of government to do something the legislature has no discretion over. The agency must take an action. The most recent writ of mandate regarding the water quality act Mr. Jensen is aware of was denied by the judge who felt the agency had discretion and had properly utilized the discretion.

REP. BROWN asked Rep. Toole if this affects city water and sewer programs? **REP. TOOLE** replied laws that refer to water quality in general are in act 75. This bill does address that. Water quality violations have to be tied to certain water quality laws. The city must comply with categories in the DHES on a permit basis. **REP. BROWN** said in the case of sewer facilities in Butte with the superfund sight mixed with sewer system, under this bill one individual could stop the whole community from proceeding with needed maintenance. Is that right? **REP. TOOLE** said this bill allows the enforcement of penalties provided for in statutes by a person who can show the liability for enforcement is there. Remedies are generally limited to compliance and violation type remedies. In certain instances, an injunction may be available to a citizen. The best safeguard in the bill is the obligation to communicate to the DHES what the violation is about, and the Department must act on that.

REP. BROWN asked if one individual should be able to hold up a process. In the hard rock act, it was limited to local government unit. **REP. TOOLE** answered that his experience on the Board of Health and Environmental Sciences indicated a dilemma associated with enforcing environmental law in this state. The dilemmas had to do with staffing and manpower problems and attitudes in certain situations. There have been serious problems with leach operations that were not properly designed and not properly cleaned up. There are people who, because of the proximity to the situation and the ability to determine what the facts are, can react to a situation in ways that DHES cannot. This bill can help these people to do what the state needs to do and can't do.

REP. JOHNSON asked Mr. Jensen if the bill would take care of his concerns stated to Rep. Russell regarding the water quality in Virginia City. **Jim Jensen** said this bill does not focus on and does not attempt to, and does not intend to correct the problem at his home.

REP. JOHNSON said the testimony given by Mr. Olson from Northern Plains listed a number of violations and lack of action. If the proper job were done there, this legislation would not be needed. Is that a correct assumption? **Jim Jensen** said there are two assumptions, one is correct. The first is the MEIC is a state agency. It is not, it is a private organization. The second assumption if laws are properly enforced and agencies were fully staffed, this law would not be necessary is true.

REP. KELLER asked Rep. Toole would this be an example for accelerated action on the situation in Park County? **REP. TOOLE** replied the DHES didn't let that one slip through the cracks. The litigation was begun and action taken very quickly. Overtime hours are being spent addressing it. Complaints could not have been initiated under this bill because the procedure would have precluded individuals from initiating action. This bill is only addressing cases that fall through the cracks.

REP. LEE addressed Mr. Jensen. In Northern Plains testimony, a number of examples were listed that should have been handled by the Department. If this bill had been in effect, would it have changed the outcome? **Jim Jensen** did hear Mr. Olson's testimony, but hasn't had a chance to review all the cases. He believes the Department was involved in taking action on those cases. This bill would not have changed anything, because provisions in the bill against duplicating the efforts of the agency.

REP. BOHARSKI asked John Fitzpatrick why he took strong opposition to the bill? **John Fitzpatrick** said there were two major defects in the bill. Mr. Fitzpatrick deals with complaints from the public and there are a large number filed without merit. One thing of concern with a bill of this type is it can be so open ended. Citizen contribution is not going to help the Department of Health meet staffing demands. The opposite is true. These complaints put a great deal of strain on the Department to supply adequate information, get depositions, etc, to support a lawsuit. The portion addressing lawsuits without merit needs to be strengthened. Anytime a complaint is made against an operator, the Department must respond to it. This involves cost, not just attorney and court costs. **REP. BOHARSKI** asked if Mr. Fitzpatrick felt in harassment cases, the bill requires reimbursement? He replied the bill does not require, but says the court may grant reasonable attorney and court costs.

Closing by Sponsor:

REP. LEE stated the bill needs to have a strong deterrent for harassments. From watching the Department of Health in action, and knowing their limited resources and staffing, there will be instances when this bill will be of good value. In Rep. Brown's situation, the need for Rep. Daley's bill regarding the problems of the pit might have been alleviated had this bill be in effect. This bill says if a person knows of a violation and is unable to get the Department to act, the individual is empowered to enforce it. It does not provide any damages, it does not provide for a particular reward. Rep. Lee believes the bill should be passed.

HEARING ON HB 810

Presentation and Opening Statement by Sponsor:

REP. CHUCK SWYSGOOD, House District 73, Dillon, presented HB 810, an act to limit liability to forest landowners in respect to

firewood gatherers. This bill addresses concern of Forestry Committee of Headwaters Resource Conservation & Development located in Butte. The concern is private landowner liability for people entering his land with or without permission. The bill is fashioned after an Idaho law.

Proponents' Testimony:

Bob Andreozzi, Staff Forester, Headwaters Resource Conservation & Development in southwest Montana, stated in his job as a forester he communicates with private landowners throughout southwest Montana and throughout the state who are concerned about persons injuring themselves. The Headwaters R C & D has as one of its goals the continue utilization of slash or similar wood that is acceptable for firewood. Many landowners are reluctant to let anyone on their land because of the liability. From a utilization standpoint, the committee would like to see some type of exclusion as long as there is not gross negligence on the part of the landowner, that enables private individuals to continue to utilize that waste material for wood. The Idaho law has been in effect for about three years and there have been no challenges.

Opponents' Testimony: None

Questions From Committee Members:

REP. WHALEN asked Mr. Andreozzi how many landowners in that area have been sued? He replied he was not aware of any lawsuits.

REP. WHALEN said in the bill, gross negligence was the standard. Does Mr. Andreozzi feel liability of that of that stature would be landowners perceiving something about their land that would cause injury to someone else and if the landowner doesn't warn others, he will be liable. **Bob Andreozzi** doesn't have expertise in the field of law. There are inherent dangers in cutting firewood, but if there are other dangers present which the landowner is aware of, the firewood cutter should be notified.

REP. WHALEN is trying to determine what instances will be covered with this bill. **Bob Andreozzi** said the bill is an attempt to protect the landowner from lawsuits from incidents which should not be construed to be landowner liability. **REP. WHALEN** said in an instance where the landowner perceives a danger on his land that could injure someone and does not warn anyone, and as a direct result a person is injured. Do you think the landowner is responsible in those cases? **Bob Andreozzi** agrees, if the party could have been warned.

Closing by Sponsor:

REP. SWYSGOOD said the bill is concerned with the landowners, who want to see people continue to utilize waste wood products located on lands, but have a valid concern about the liability issue. Rep. Swysgood urges do pass.

HEARING ON HB 915

Presentation and Opening Statement by Sponsor:

REP. DOROTHY CODY, House District 20, Wolf Point and Poplar, brings HB 915, requested by Fort Peck Reservation. There has been a problem with people who take flight from prosecution, both on the state side and on the reservation side. HB 915 includes a recognized Indian tribe within the state of Montana under the uniform extradition act, to acquire an agreement between the tribes and the state. As the law is now, the attorney general has nothing in place allowing him to enter into this type of agreement. That is the reason for the bill. Copies of tribal ordinances relating to extradition are provided, along with copies of letters from county attorneys in counties surround the reservation. EXHIBIT 3

Proponents' Testimony:

Ron Arneson, Chief Special Prosecutor, Fort Peck Tribal Court, said it is sincerely hoped by the Fort Peck Tribes that the committee pass this legislation. Mr. Arneson has worked for the Fort Peck Tribe for about five years and has prosecuted approximately 100 cases both in the federal and state courts. A severe problem involving a family violence issue resulted in the convicted person using a gun to threaten and frighten his family for several hours. He was prosecuted and convicted for assault in a jury trial. Subsequently a writ was filed in federal court challenging the process of the tribal court. The federal court approved the tribal court process. At that point the convicted person left the reservation and went to another county. The tribe was unable to return the convicted person to the reservation. That incident led to this bill. Mr. Arneson has worked with the tribes and judges, and it is his belief the legal authorities support the bill. The tribal code defines misdemeanor as requiring a maximum penalty of six months or a \$5,000 fine or both. A felony within the tribal code has a maximum penalty of one year and \$5,000. As it relates to the definition of the state code, he believes felony levels are in excess of one year. You will see that addressed in the amendment.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. CODY would appreciate the committee's concurrence in the legislation.

HEARING ON HB 896**Presentation and Opening Statement by Sponsor:**

REP. MARY LOU PETERSON, House District 1, Eureka, introduced HB 896, a clean up measure intended to modernize the fire marshall statute and to make it consistent with other laws in the state. One question brought up several times is what will happen to the State Fire Marshall? On page 3, line 20, says the state fire marshall will still be the state fire marshall.

Proponents' Testimony:

Beth Baker, Department of Justice, passed out an explanation of the Fire Marshall Bureau Programs. **EXHIBIT 4** This bill has three major purposes. The first is to modernize and clean up the code as it pertains to fire marshalls. The office of the fire marshall has been in existence since at least 1911 and many of the statutes pertaining to its functions have also been there since 1911 and many are obsolete. There is one fee increase in the bill, raising from \$25 to \$50 the potential fee that may be charged to licenses and permits to sell and service fire protection equipment. This will generate about \$700 a year to help defray the cost of the program. The second major purpose of the bill is to change the terminology of State Fire Marshall to Fire Prevention Investigation Program of the Department of Justice. The statute will refer in most cases to the Department rather than to the fire marshall. This gives flexibility in assigning functions. The final purpose of the bill is to make changes in what is required of the fire marshall. Inspection of all state buildings will be subject to the same requirements as inspections of state institutions and units of the university system. The most significant change in this bill is in sections 16 and 18. Section 18 will eliminate the requirement that every public building in the state be inspected at least once every 18 months to allow the department to establish a priority for these buildings. Section 16 will allow the department to certified a local fire inspection program for local fire codes, so the fire marshall would not have to be involved in the day to day operations of the local fire departments. Sections 18 removes the responsibility county sheriffs have to make fire code inspections. Two amendments are being proposed. **EXHIBIT 5** This is a good government bill that improves the efficiency of the law, and Ms. Baker urges do pass.

Ray Blehm, State Fire Marshall, supports HB 896 and provided written testimony. **EXHIBIT 6**

Don Hurni, Chief Helena Fire Department, represents the City of Helena. Chief Hurni is in favor of the bill, but proposes an amendment. **EXHIBIT 7** Some buildings that have problems are state owned buildings, and if it is a recommendation instead of ordering compliance, it is harder to deal with.

Duane Larson, Kalispell, represents Montana State Fire Chiefs Association in support of HB 896.

Opponents' Testimony: None

Questions From Committee Members:

REP. BOHARSKI asked Ms. Baker if she had seen the amendments proposed by Chief Hurni? **Beth Baker** said, yes, a few minutes ago. Presently the city fire marshall inspects units of the university system and units of state institutions and make recommendations. The City of Helena has been responsible for inspecting state owned buildings. The city position is they should be able to order the state to comply with the fire code in the same fashion they order private citizens to comply with the fire code, rather than making recommendations. It has been our experience that to order the state to spend \$3,000 to design a sprinkler system may be a waste of time until it goes through all the regular appropriation processes.

REP. BOHARSKI said there appears to be a difference between what the City of Helena wants to do, and the recommendations the fire marshall wants to make on all state buildings uniformly. **Chief Hurni** said they would like to be able to treat state owned buildings the same as they would treat Helena High School. If the High School is told to have a certain exit so the fire department can get the kids out safely, and a state building has the same problem, Chief Hurni would rather not make a recommendation. He has a responsibility to get the exit to get people out of the building safely. Not just recommend, see the job gets done.

REP. BOHARSKI asked who currently deals with the university system? **Chief Hurni** said currently the State Fire Marshall takes care of institutions. If buildings are state owned and inside a corporate city limits, the State Fire Marshall does it with the local jurisdiction. The local jurisdiction has the obligation of getting the job done, but it can't complete the job because it is only a recommendation. **REP. BOHARSKI** said with this bill, the Department of Justice will have the responsibility. **Chief Hurni** said no. Local jurisdictions have an inspection program which is approved by the state fire marshall, but the local jurisdiction is still responsible for making recommendation.

REP. JOHNSON asked Ms. Baker if we would accept this amendment will it have fiscal impact on the state of Montana? **Beth Baker** thinks there will be a serious fiscal impact because of violations that would be ordered to comply.

REP. BROOKE asked Ms. Baker if this bill was an outgrowth of concern from a bill submitted last session to exempt rural fire district out of a schedule of inspections? **Beth Baker** said the responsibility exists on a rural and volunteer fire departments only if they have established an inspection program. If they

have no inspection program, the responsibility would be on the state fire marshall. That is also the section being amended to allow certification of a local program. That will eliminate duplication of effort where the city has an inspection program and fills the void where the rural fire district does not have an inspection program.

REP. BOHARSKI asked who is currently making the Department of Institution and the University System comply? **Beth Baker** said the deputy fire marshalls do all inspections of units of the university system and state institution. They make a report with recommendations but do not order the institutions to comply.

Mr. Blehm presented an illustration. The prison has a woodshop which is a highly hazardous occupancy. A report was received that the woodshop did comply with a recommendation made for a dust collection system and some other things. **Mr. Blehm** contacted the Department of Institutions and told them of the violation of code. The Department was trying to comply, had been put out for bids and only received two bids and one of which did not meet the needs. The woodshop could have been closed until it complied. Instead the fire marshall worked with them trying to get compliance as fast as possible. There is a liability consideration for the state of Montana if recommendations are ignored and operation proceeds not in conformance with fire codes. True, they are not ordered, but the fire marshall does work with them on compliance.

Closing by Sponsor:

REP. PETERSON will let the committee deliberate on all the issues raised.

HEARING ON HB 851

REP. TIMOTHY WHALEN, House District 93, Billings, presented HB 851 which is a modification to a bill passed in 1987. In 1987, Representative Spaeth carried a bill relating to Wrongful Discharge and limiting damages an employee could recover from a wrongful discharge action. HB 851 removes the artificial cap placed on damages and leaves that up to a jury to determine each specific case. It also leaves the law the way it is with every other legal dispute under uniform arbitration act. At any time an agreement is entered into, they can arbitrate if they so desire.

Proponents' Testimony:

Dan Edwards, International Representative of Oil, Chemical, and Atomic Workers Union, and member of the Board of Directors of the Montana ACLU, believes the changes proposed by Rep. Whalen are appropriate. It is not fair to limit the damages a person who is wrongfully discharged can collect. **Mr. Edwards** asks committee support of the bill.

Michael Sherwood, Montana Trial Lawyers Association, supports HB 851.

Opponents' Testimony:

GARY SPAETH represents the Liability Coalition appearing in opposition to HB 851. He supports the present law which is good and should not be changed. The changes proposed are not small, they are serious changes. The law was set up on one side to have "good cause" the standard employers had to comply with, and on the other side limited liability. It didn't eliminate lawsuits. The caps put on damages in the present law are reasonable. Since the law was passed in 1987, the Montana law used as an example by other states.

Brett Dahl, Tort Claims Division, presented written testimony. EXHIBIT 8

John Sullivan, Montana Defense Trial Lawyers, opposes HB 851, because the legislation would destroy a compromise the legislature worked to achieve in 1987. The compromise is that under the Montana Wrongful Discharge Act, an employer must have good cause for termination. In exchange, employers were allowed to limit damages in these cases to four full years of lost wages and benefits. When that bill was first introduced in 1987, the damage limitation was two years and through the legislative process of compromise, damage limitation became four years. There are four reasons to continue that damage limitation. 1. Prior to the enactment of the wrongful discharge act in 1987 awards and claims in wrongful discharge cases had gotten out of hand. 2. The four year limitation provides enough time for a terminated employee to get back into the job market. 3. The four year limitation still allows adequate recovery. The minimum earnings in Montana are about \$15,000 a year. 4. This law has been held constitutional and reasonable by the Montana Supreme Court.

Jeff Kirkland, Executive Vice President, Montana Credit Unions League, opposes the bill, particularly the repeal of arbitration.

Jim Nys, personnel consultant, Helena, opposes HB 851, and presented written testimony. EXHIBIT 9

Stuart Doggett, Montana Innkeepers Association, and Manufactured Housing Association, goes on record in opposition to HB 851.

Kay Foster, Billings Area Chamber of Commerce, opposes HB 851.

Charles Brooks, Executive Vice President, Montana Retail Association, Montana Hardware and Implement Association, opposes HB 851.

Curt Meeds, Jordan Hotel Co., Glendive, opposes HB 851.

Mike Manion, Montana Power Company, opposes HB 851.

Jackie Terrell, American Insurance Association, opposes HB 851.

Questions From Committee Members:

REP. WYATT told Mr. Edwards who testified as an opponent, the ACLU supported the law as it stands. Has he changed his mind. **Dan Edwards** said he learned of HB 851 from the national director of ACLU, and ACLU supports these changes.

Closing by Sponsor:

REP. WHALEN said prior to 1987 there was a law that was confusing and didn't give employers any kind of certainty as to what type of conduct or standard they were being held to. The law has been developing and it needs clarification. Parts of the law that were not good are addressed in the bill. Limitation on damages is removed. Oftentimes, damages are least important. Most important are lost wages because if you are 40 or 45 years old and have been working for an employer for 20 years, are shoved out the door to be replaced by someone hired cheaper, you have family obligations and may lose your home, your car. A uniform arbitration law is on the books, and that is not being repealed by this law. What is being repealed is the provision in the wrongful discharge act compelling arbitration under the threat of having to pay employers attorney fees if you don't enter arbitration. It should be voluntarily entered into between the parties and although the language of the bill suggests it is voluntary, requiring it be a written agreement between the parties makes it not purely voluntary.

HEARING ON HB 887

Presentation and Opening Statement by Sponsor:

REP. TIMOTHY WHALEN, House District 93, Billings, introduced HB 887, a bill addressing a serious problem that developed over the last few years. For a simple slip and fall injury case an insurance company defense lawyer will send two lawyers to take a deposition of a client, and take five hours to do it in order to meet their overhead. A series of rules have been adopted by the Supreme Court and some have been adopted by the Federal courts providing for getting information from opposing parties of the lawsuit prior to time of trial. There are several mechanisms for doing that. One is interrogatories, which are questions answered under oath on paper. The second one is deposition, where people meet with a court reporter present, witnesses are sworn under oath and questions and answers proceed. The purpose of a civil justice system is to provide for the speedy and just information in all cases. The Supreme Court has recognized this. This bill is presented because under current rules the onus is on the person trying to prevent the discoverer from going into

court. It is rare that a court will grant a protective order because it feels as much discovery as possible should be obtained. The problem is if in the middle of a deposition you move for a protective order, there is a provision of the law saying the court can impose sanctions and if it rules against you, you can be repressed unreasonably. That makes you reluctant to exercise the right. This bill puts the onus on the people that seek court action. It is a reasonable bill.

Proponents' Testimony: None

Opponents' Testimony:

John Sullivan, Montana Defense Trial Lawyers, opposes this legislation. In attempting to amend the rules by which civil discovery is accomplished, Rep. Whalen is in the wrong forum. The rules of discovery under our constitution are subject to being amended, adopted and changed by the Montana Supreme Court. Montana Supreme Court through a rules and civil procedure committee deals with amendments to rules of civil procedure. The difficulty with the proposals is limits imposed on the number of interrogatories, number of production requests and how long a deposition can last are totally arbitrary. These situations have to be judged on a case by case basis. There are some cases in which a four hour deposition would be unreasonably long, there are other cases in which a four hour deposition would be just getting started. The kinds of limits proposed have been debated in lawyer journals for years and have not received a very warm reception on a federal basis or in other states. Existing law provides an adequate remedy for discovery appeals in situations where lawyers ask too many questions or conduct depositions for too long a time. The system that exists is being used by Montana District Court judges.

Jacqueline Terrell, American Insurance Association, opposes this bill. This is the wrong forum. This type of action is prohibited by Montana Constitution, also by Montana Code and by the Rules of Civil Procedure. It is not a good bill for Montana. If a person is sued, every legal tool should be available for the best protection possible. This bill limits the ability of attorneys to defend their clients.

Oliver Goe, Montana Municipal Insurance Authority, a coalition of cities and towns banded together to protect government funds from liability suits, opposes HB 887. The problem does not really exist. There are ample remedies in current rules for protecting against unduly search and discovery. The purpose of discover is not to harass, it is to determine what the other person's case is. This is done in a variety of ways provided by the rules. Justice will be served when everybody knows all facts of the entire case. Discovery can eliminate cases from the trial dockets which should not be tried.

Mike Manion, Montana Power Company, opposes the bill.

Questions From Committee Members:

REP. TOOLE asked specifics regarding prohibition of the legislature acting in this area? **Jacqueline Terrell** cited Article VII, Section 2, which sets out the Supreme Court's jurisdiction constitutionally. Also, Section 3-2-701, Montana Codes, generally describes the Supreme Court's jurisdiction, and specifically states that the Supreme Court has jurisdiction over practice and procedure. Rule 1 in the Rules of Civil Procedure provides that the Supreme Court has jurisdiction over practice and procedure in lawsuits.

REP. TOOLE said this bill sets guidelines without attempting to flatly refute a discovery that exceed the guidelines. Would Mr. Sullivan speak to the hypothetical ordinary case and state whether or not you think these guidelines will do. **John Sullivan** replied the guidelines are unreasonable because they set numerical limits on questions asked and how long depositions may be. Many times in a deposition questions are not answered, then the witness may ask for a break to talk to his attorney, and a four hour limit on depositions will encourage that problem. Judges hate discovery fights. This bill is going to drive District Court judges crazy because they will have to referee discovery suits. Every time the four hour limit is exceeded, the judge will be contacted to extend the limit. If a deposition is getting too long, lawyers are getting abusive, the remedy is to get the District Judge to intercede. That will increase the amount of time a judge has to spend on a case.

Closing by Sponsor:

REP. WHALEN stated the purpose of discovery is to flush out your case. It is the plaintiff's lawyer who has the burden of proving his case. All this bill does is put the burden on the person who wants to enter into judgments to justify it in advance. It is a matter of fairness to all parties.

EXECUTIVE ACTION ON HB 834

Motion/Vote: REP. SPRING MOVED HB 834 BE TABLED. Motion carried unanimously.

HEARING ON HB 938**Presentation and Opening Statement by Sponsor:**

REP. ROYAL JOHNSON, House District 88, Billings, presented HB 938, a bill regarding emergency medical personnel. Emergency medical services are provided by people well trained in their business. There are also limitations which are created by persons at the other end of the emergency system trying to give the proper instructions on what personnel ought to be doing.

Proponents' Testimony:

Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences, expressed support of HB 938 and presented written testimony. EXHIBIT 10

John Delano, Montana Medical Association, is in favor of HB 938.

R. Mark Zandhuisen, President, Montana Emergency Medical Services Association, presented written testimony. EXHIBIT 11

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, opposes this bill. This bill protects not only volunteers, but every hospital in the state of Montana and every EMS provider, in spite of the fact persons are being paid for their time and experience. Who should pay for the social costs of injuries and lost wages when someone gets hurt? If someone does something wrong it should not be the victim who bears that cost. Emergency workers do operate under adverse conditions and if there is negligence which results in a lawsuit, the jury would be instructed that all conditions should be taken into account in determining if there was carelessness involved in causing injury to the person involved. This is a business wanting to be treated different than any other business in the state. It is special interest legislation and poor public policy because EMS persons are asking for approval not to insure.

Questions From Committee Members:

REP. BOHARSKI asked if EMTs, MTIs and nurses go through the medical malpractice law. Michael Sherwood said these people work for medical health providers and any claim for negligence requires that the claim for negligence be screened through the medical malpractice panel.

Closing by Sponsor:

REP. JOHNSON commented that the new section 2 on page 3 attempts to directly exempt the physicians or registered nurses who might be called on in an emergency to help and give advice to people who are out in the field. Line 23 and 24 states, except damages for injury resulting from gross negligence of the physician or nurse. Rep. Johnson would not want everyone to be exempt and not liable for anything. If a person is ever in an emergency situation of a serious accident, and a responder comes to that accident and in spite of all his training has some doubt, he can contact someone by radio for instructions. If the person on the other end knows he will be liable, it is difficult for them to respond.

HEARING ON HB 898**Presentation and Opening Statement by Sponsor:**

REP. CHAR MESSMORE, House District 38, Great Falls, presented HB 898, requested by the Department of Institutions. HB 898 would require before a defendant could be committed to Warm Springs State Hospital for a psychiatric examination, the District Court would need to find that extraordinary circumstances existed. The bill addresses the Department's interest in having mental health services delivered locally. The bill would allow the state psychologist resources to be utilized for patient treatment rather than forensic evaluation. Two of the four professionals at the State Hospital currently do these evaluations nearly full time. The bill is permissive and allows the Warm Springs option for the courts. Patients admitted to Warm Springs Hospital last year for forensic evaluation totalled 76, with an average length of stay 48 days. Cost per patient is \$6,990 plus professional salaries, lab, x-rays, etc. For service provided in the community funding would be through the Department of Commerce using a portion of the vehicle licensing fees. Psychiatric evaluations would be billed to the county by the provider and the county would request reimbursement from this fund. Currently court fund is able to reimburse 100 percent.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Institutions, stated support for HB 898 and presented written testimony. EXHIBIT 12

John Shontz, Mental Health Association of Montana, endorses HB 898. Mr. Shontz called attention to page 2, section B, and proposes an amendment. Language refers to a qualified psychiatrist or licensed psychologist being available in the county for the examination. The amendment proposes to substitute "region" for the word "county". There might not be a psychologist in that county, but would be available through a regional mental health center. The bill does not preclude judges sending people to the state hospital, but the reasons must be extraordinary. The cost to the state of Montana and to local government will probably decline under HB 898.

Opponents' Testimony:

John Van Hassel, PhD, Montana State Hospital, has a primary responsibility for the forensic evaluation program, provided information for the committee. EXHIBIT 13 The first page details professional objections to this legislation. The remainder of the handout is 15 different letters from the judicial community opposing this legislation.

Mike McGrath, Lewis and Clark County Attorney, represents Montana County Attorneys Association and the Association of Counties, in

opposition to this bill. This is an extremely important bill to the Montana County Attorneys Association and to the criminal justice system. It will cost the taxpayers of Montana money. There is need of private evaluation. Most are done at the request of defense attorney, and many are done after the State Hospital does an evaluation. In some cases, those are extraordinarily expensive. The people being dealt with have committed very serious crime and have been referred by the court for evaluation. They are dangerous criminals. Recently the legislature funded a new forensic unit at the State Hospital and one of the main reasons for building that facility was to provide this service. Services from the forensic unit are excellent.

Jeff Sturm, Supervisor, Forensic Treatment Facility, State Hospital, opposes HB 898. Montana State Hospital does the best evaluation in the state of Montana, employing the best psychologists in Montana.

Teresa Reardon, Montana Federation of State Employees, appears on behalf of employees at the Montana State Hospital, who strongly oppose the bill.

Questions From Committee Members:

REP. STICKNEY is in favor of community based services. Would **Dan Anderson** reiterate the major motivation behind this proposal? **Dan Anderson** said the major motivation is the amount of time and professional resources that go into evaluations at the State Hospital, particularly when a significant number of these people turn out to be people who there is not much question about. **REP. STICKNEY** said she is concerned that it is an attempt to move a major service out of an institution before services are available locally. Does Mr. Anderson see that? **Dan Anderson** said this is the beginning of a process and if a bill had been presented that the State Hospital may not be used for forensic evaluation, that would have been inappropriate. The State Hospital or some state facility will always be needed for some of these evaluation.

REP. RUSSELL asked Mr. Shontz in talking about the least restrictive environment, where would community based evaluations be held? **Dan Anderson** thinks there are sites in the community where evaluations could be made. Some persons would be out on bail during the pretrial period and the evaluation could be done on an outpatient basis. Some cases would be done within a jail environment. Some cases would be hospitalized locally for the evaluation.

REP. RUSSELL asked if the Hospital Association was contacted about this bill? **Dan Anderson** replied no.

REP. BROWN said this bill appears to be an end run around all other attempts to close Galen and Warm Springs campus. Does Mr. McGrath see it that way? **Mike McGrath** replied it is a bill that determines ultimately if the state will continue these service or

will local governments be forced to find resources for these services. It is the state's effort to try to reduce budgets.

REP. MESSMORE said the Mental Health Association is on record as opposing any changes at Montana State Hospital.

REP. JOHNSON asked Mr. Anderson if he would like to make a short statement on Rep. Brown's question? **Dan Anderson** assured the committee this bill has nothing to do with the Galen issue. This has nothing to do with any anti-institution issue. It is an embarrassing position for the Department to support a bill with some of the key staff opposing it. It would be fair to say a problem of inappropriate admission to the forensic unit was brought to the Department by the staff. The Department is proposing this legislation as a solution to that problem. Some of the staff doesn't think this is the right solution, but at least the staff is in agreement that there is a problem.

Closing by Sponsor:

REP. MESSMORE said the bill intends to keep these services more on a community based setting.

EXECUTIVE ACTION ON HB 922

Motion: **REP. DARKO** MOVED HB 922 DO PASS.

Discussion:

REP. DARKO spent some time with the bill. Basically it sets up an administrative procedure for monitoring child support orders. Currently, the Department reviews cases every three years. This bill sets up and maintains a support order registry. New section 2 sets up the application for review of those orders. Anyone can request the Department to modify a child support order.

REP. MEASURE wanted to discuss the present procedure for modifying a child support order and compare to the bill. Presently to modify an order requires a substantial change in condition noted by the court, and two years must pass before an order will be reviewed. The bill takes that authority away from the court and rests it solely in the Department. The Department will review the court orders every two years or upon the application of either party and make the determination whether to change child support. At that point, the party would have the choice of appealing to the Department. The entire process would have to be followed before it could be addressed at the District Court level. It is a substantial change. An administrative agency does not have the discretion of a District Judge. This is a major change in the law, and Rep. Measure does not favor the bill. **REP. DARKO** said in order to go before the administrative procedure, you have to apply for services from the Child Support Enforcement Bureau. Access to the courts to get orders changed is nearly impossible. This proposed procedure would be less

expensive and would be more accessible for people who need these services and can't afford to go to an attorney for access to the court. **REP. MEASURE** agrees partially. It is hard to put the same level of responsibility on an administrative hearings officer that you do on a District Court.

REP. BROWN asked Rep. Measure if after a 36-month review it is decided to raise or lower a child support payment, and the other party disagrees, they go to a hearing. If there is still dissatisfaction, before any change is made, it must go back to the District Court. Is there any change in the meantime, any monetary impact? **REP. MEASURE** said he was not sure. If it is like other law in this area, the Agency will impose what they determine to be a fair amount of child support first, and that child support stands until such time as a determination is made. They increase or decrease the amount after the hearing. On top of everything else, it seems it is putting the agency in a position of making decisions that would only be favorable to them.

REP. BROWN did read the bill and he does not see that can be implemented without the court's direction. It is not giving the Department authority to implement anything the court does not agree. Their recommendation will weigh heavy with the court. By 1993, the federal guidelines require the state to have a rule like this in the system. Rep. Brown will vote for the bill. While he feels concerns are well placed, he does not see the problem.

Vote: Motion that HB 922 do pass carried with Reps. Wyatt, Toole, Measure, and Rice voting no.

EXECUTIVE ACTION ON HB 915

Motion/Vote: **REP. STICKNEY** MOVED HB 915 DO PASS. Motion carried unanimously.

Motion/Vote: **REP. RUSSELL** MOVE HB 915 BE PLACED ON THE ALTERNATE CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON HB 584

Motion: **REP. WHALEN** MOVED HB 584 DO PASS.
REP. WHALEN moved to amend HB 584.

Discussion:

John MacMaster explained the amendments. Strike all of line 14 and 15 do not strike (a) or the semi-colon and "or" on line 15. Insert the following language, "if the attorney prevails on a part of or issue in a case, either cost in excess of 25 percent of the dollar value to his client of the benefits the client gained due to the attorney's efforts". This language is drafted to track language in the current workers comp statute which puts

limits on the amount of contingent fees the workers attorney can get and what that fee is based on. Subsection b on lines 16 and 17, strike the words "by fee or otherwise" and insert the words "of attorney fees or cost". After the word "work" insert "on a part of or issue". On line 17, strike the words "on which" and insert "will". At the end of the line after the word "prevail", put the words "on that part of or issue in the case".

REP. WHALEN said the amendments track the language so the same language applies to insurance companies and injured workers attorneys. That is the purpose of the amendment. What is fair for one ought to be fair for both.

Vote: Motion to amend HB 584 as stated carried.

Motion: REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 584 DO PASS AS AMENDED.

Discussion:

REP. RICE cannot support the bill. Most of the defense attorneys work on the basis of a per hour fee because they do not have an opportunity at the end of the case to get a contingency fee, a large fee based upon a successful case. Claims attorneys working on a contingency fee system run a risk of getting a large fee or the possibility of getting nothing.

REP. BOHARSKI said if he understands the bill correctly if a defense attorney defends the case and he wins however many thousand dollars, he gets paid, if there is no settlement he can't get paid. John MacMaster said the attorney's fee can be up to but not in excess of 25 percent of the dollar value of what he does for his client. For example, if a client has been offered \$10,000 and goes to court and receives \$20,000, the attorney fee is based on the difference between the amount offered and the amount granted, \$10,000.

REP. WHALEN said the bill puts the defense lawyer and the claims lawyer on the same footing.

Vote: Motion that HB 584 do pass as amended failed 10 to 10 by roll call vote. EXHIBIT 14

Motion/Vote: REP. NELSON MOVED HB 584 BE TABLED. Motion carried 11 to 9 by roll call vote. EXHIBIT 15

EXECUTIVE ACTION ON HB 652

Motion: REP. WHALEN MOVED HB 652 DO PASS.
REP. WHALEN moved to amend HB 652.

Discussion:

REP. WHALEN asked John MacMaster to explain the amendment. John MacMaster said Rep. Toole had a bill passed out of this committee which amended 33-18-201, to add to that section a new subsection 15. Page 2 of HB 652 line 25 and over to line 1 of page 3 strikes out certain subsections of 33-18-201. Rep. Whalen wants to insure that subsection 15 of section 33-18-201 will also be stricken as are the other subsections on line 1, of page 3, to be sure that this bill and Toole's bill don't have the result of subsection 15 not being stricken for purposes of section 1 of this bill.

Motion/Vote: REP. BROWN MADE A SUBSTITUTE MOTION THAT HB 652 BE TABLED. Motion carried 14 to 6 on roll call vote. EXHIBIT 16

Motion/Vote: REP. WHALEN MOVED TO RECONSIDER THE BILL. Motion failed.

EXECUTIVE ACTION ON HB 896

Motion: REP. RICE MOVED HB 896 DO PASS.
REP. JOHNSON moved to amend HB 896 as provided by the staff attorney.

Vote: Motion to amend carried.

Motion/Vote: REP. JOHNSON MADE A SUBSTITUTE MOTION THAT HB 896 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 887

Motion: REP. WHALEN MOVED HB 887 DO PASS.
REP. WHALEN moved to amend HB 887 on line 15, striking numeral 4 and insert numeral 8.

Discussion:

REP. WHALEN said the purpose of the amendment to provide the 8 hours for a deposition instead of 4.

Vote: Motion to amend carried

Motion: REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 887 DO PASS AS AMENDED.

Discussion:

REP. WHALEN said this is the correct forum to deal with civil procedures. There are 13 statutes that deal with civil procedures.

REP. MEASURE endorses the bill.

Vote: Motion that HB 887 do pass as amended carried 11 to 8 by roll call vote. EXHIBIT 17

EXECUTIVE ACTION ON HB 928

Motion: REP. TOOLE MOVED HB 928 DO PASS.

Discussion:

REP. TOOLE said this bill attempts to track and is based upon federal statutes. It is for enforcement procedures to follow with citizen complaints.

REP. BROWN appreciates the concern. We have tried to get to the point in the state where one wall is not against the other constantly. The problems one individual can cause under this legislation moves the state backwards ten years. As the bill stands, if I am in the country and don't like the way my neighbor is putting in his septic tank I can take him to court. One individual can protest subdivisions. Feedlots could be closed over night. Burning logs in a fireplace could be attacked.

REP. NELSON agrees with what Rep. Brown said. As an agricultural person, Rep. Nelson has to oppose the bill.

REP. LEE asked Rep. Toole about testimony that if the statute is being violated, you can go to court and get a writ. REP. TOOLE said Jim Jensen properly characterized what circumstances were available to obtain a writ.

Motion/Vote: REP. BROWN MADE A SUBSTITUTE MOTION THAT HB 928 BE TABLED. Motion carried.

EXECUTIVE ACTION ON HB 851

Motion: REP. WHALEN MOVED HB 851 DO PASS.

Discussion:

REP. WHALEN said this bill is needed because these situations occur every day and impact a lot of people. Employees are being replaced at age 45 or 50. They are not under the age discrimination act. They have obligations. They may find a job in a year, but in the meantime he has lost a lot. The employer does it for the economic reason he can hire someone right out of college for a half of what someone who has been there for ten years is paid.

REP. BOHARSKI read in articles that Montana has the most progressive laws on the books on wrongful discharge. His employer friends think the law goes too far. Another union man doesn't like the bill a whole lot either. But both sides agree that the law works very well. He will either vote to table the bill or vote against the do pass motion and leave the law alone.

REP. MEASURE has witnessed firings in industry to save management money. Retirement system vested rights are adjusted. Rep. Measure endorses the bill.

Vote: Motion that HB 851 do pass failed.

Motion/Vote: REP. BOHARSKI MOVED HB 851 BE TABLED. Motion failed 10 to 10 by roll call vote. EXHIBIT 18

EXECUTIVE ACTION ON HB 938

Motion: REP. JOHNSON MOVED HB 938 DO PASS.
REP. JOHNSON moved to amend HB 938.

Discussion:

REP. JOHNSON said the amendments before you were a compromise. The primary problem is in the rural area, and the amendments take care of that.

Vote: Motion to amend carried.

Motion/Vote: REP. DARKO MADE A SUBSTITUTE MOTION THAT HB 938 DO PASS AS AMENDED. Motion carried with Reps. Whalen, Wyatt, Russell, Becker, Boharski and Measure voting no.

EXECUTIVE ACTION ON HB 898

Motion: REP. MESSMORE MOVED HB 898 DO PASS.

Discussion:

REP. BROWN wondered if the bottom line is to try and spread the cost away from the state fund to county funds? REP. MESSMORE said hopefully it is still a state fund. REP. BROWN said is care the reason for the bill? REP. MESSMORE replied care, community based services and use of community resources. REP. BROWN said if that's the basis, there was some pretty strong testimony on the opposite side, not only from the hospital but from Mike McGrath who has good instincts in these matters. With that on top of what is currently going on with the Warm Springs campus, Rep. Brown doesn't see the need for the bill and will vote no.

REP. JOHNSON supports the bill. There is a need to be able to evaluate those persons in local communities with trained individuals. It is a waste to send someone from Billings to Warm Springs for evaluation to be sent back to Billings for evaluation again. That is not true in every city in the state, but money is in the state budget for that. It will come from the Commerce Department.

REP. MEASURE asked Rep Messmore how many psychiatrists or psychologists are in communities other than Great Falls and Billings? REP. MESSMORE said the Warm Springs psychologist

indicated all psychologists have training in forensics psychiatry. Some are more specialized.

REP. MEASURE said his concern is two fold. Several clients have been evaluated and it was hard to find someone qualified to get the right evidence together for the court. The local community would have to insure enough work for an individual in that area, and might be subsidizing the individual. There is an incredible amount of money provided for the psychiatrists at Warm Springs.

REP. BOHARSKI said if qualified community based facilities are not available, there is the option of going to Warm Springs. The court can make the decision where the person should go.

Motion/Vote: REP. BROWN MADE A SUBSTITUTE MOTION HB 898 BE TABLED. Motion carried 14 to 6 by roll call vote. EXHIBIT 19

EXECUTIVE ACTION ON HB 810

Motion: REP. BROWN MOVED HB 810 DO PASS.

Motion/Vote: REP. MEASURE MOVED HB 810 BE TABLED. Motion carried 10 to 9 by roll call vote. EXHIBIT 20

EXECUTIVE ACTION ON HB 473

Motion: REP. TOOLE MOVED TO RECONSIDER ACTION ON HB 473 AND TAKE FROM THE TABLE FOR THE PURPOSE OF CONSIDERING SOME AMENDMENTS.

Discussion:

REP. TOOLE is a bill that provides broad-based protection against closing down information about hazardous entities. The bill was tabled on a tie vote. The bill as presented addresses products which are hazardous and persons and procedures. It had a pretty considerable scope. In products liability cases the evidence against defendants is locked up to settle the case. This amendment is directed at those products. Any reference to people and processes is taken out and what is talked about is products which are proved dangerous and could cause injury. It makes no sense to lock up information about hazardous products as a condition of settlement, that information won't be available because it came out of a lawsuit.

REP. BROWN said it is limited to products only. What kind of assurance do I have nobody is going to mess with this bill on the floor? REP. TOOLE said it is a products liability issue, and there is no reason to change it.

Vote: Motion to reconsider carried 11 to 9 by roll call vote. EXHIBIT 21

Motion: REP. TOOLE MOVED HB 473 DO PASS
REP. TOOLE moved to amend HB 473.

Discussion:

REP. TOOLE referred to the amendment sheet. The amendments provide limitation on the phrases which include individuals or persons and procedures. Strike the references to a public hazardous product or instrument that is likely to cause injury. The amendment limits the bill to products.

Vote: Motion to amend HB 473 carried with Reps. Whalen, Keller, and Gould voting no.

Motion: REP. TOOLE MADE A SUBSTITUTE MOTION THAT HB 473 DO PASS AS AMENDED.

Discussion:

REP. BROWN asked what does "instruments" mean?

REP. TOOLE replied it is an object that cause injury.

REP. RICE said the amendments have narrowed the bill somewhat, but not very much. The language can be left in of public hazard and still have a lot of the problems. These files are public, all discovery is public and now there is a balancing test that the court goes through in deciding whether to release information. The bill changes all of that. The reason the settlement information is not made public, is that in the settlement the parties agree the information is to be kept secret.

REP. JOHNSON said everyone is concerned about tremendous economic problems of the state and businesses are moving out. It appears the outside businesses will not be let in.

Vote: Motion that HB 473 do pass as amended carried 11 to 9 by roll call vote. EXHIBIT 22

EXECUTIVE ACTION ON HB 466

Motion/Vote: REP. MOVED TO RECONSIDER ACTION ON HB 466 AND TAKE FROM THE TABLE. Motion to reconsider failed.

EXECUTIVE ACTION ON HB 426

Motion: REP. STICKNEY MOVED HB 426 DO PASS.
REP. LEE moved HB 426 be amended.

Discussion:

REP. LEE has a list of five things of concern. 1. The situation involved no compensation. There is no agreement there. 2. Patient not previously seen by a physician or association and no medical record is available. There is an amendment addressing that concern. 3. Risking another job. There is an amendment

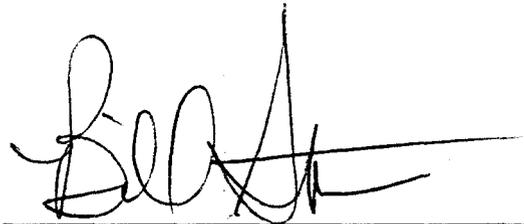
addressing. 4. No insurance coverage for the situation. There is no agreement on that. 5. Amounts not to exceed 2,000. The amount should be changed from \$2,000 to 6,000.

Vote: Motion to amend carried with Reps. Brown, Darko, Measure, Toole, Whalen and Strizich voting no.

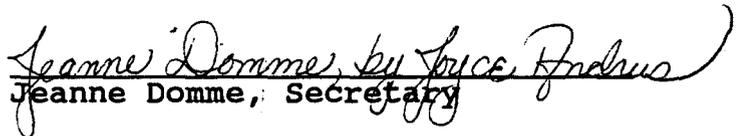
Motion: REP. LEE MADE A SUBSTITUTE MOTION THAT HB 426 DO PASS AS AMENDED. Motion failed on a roll call tie vote. EXHIBIT 23

ADJOURNMENT

Adjournment: 1:30 P.M.



BILL STRIZICH, Chair



Jeanne Domme, Secretary

BS/jd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

EXEC. ACTION & HEARING DATE 2-22-91

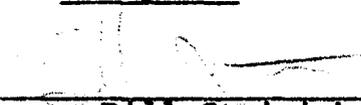
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 920 (first reading copy -- white) do pass.

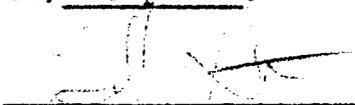
Signed: 
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 922 (first reading copy -- white) do pass .

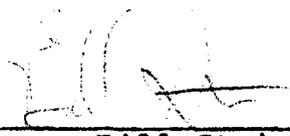
Signed: 
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 915 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: 

Bill Strizich, Chairman

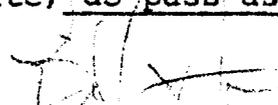
3/10
2-22-91
JDR

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 896 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 5, line 22 through page 6, line 9:
Strike: subsections (a) through (c) in their entirety
Renumber: subsequent subsections
2. Page 6, line 10.
Following: "inspect"
Insert: "state-owned and other"
Following: "public"
Strike: ", "
Insert: "buildings and"
Following: "business"
Strike: ", "

11:50
2-23-91
WMS

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 887 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 15.
Strike: "4"
Insert: "8"

3:10
2-23-91
JDR

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 938 (first reading copy -- white) do pass as amended .

Signed: [Signature]
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: ", "

Insert: "AND"

2. Title, lines 10 and 11.

Strike: ", AND" on line 10 through "INSTRUCTIONS" on line 11

3. Page 3, line 6.

Following: "personnel."

Insert: "The term does not include a physician who volunteers his services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed \$5,000."

4. Page 3, line 21.

Following: "service"

Insert: "without compensation or for compensation not exceeding \$5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward"

5. Page 4, lines 11 through 21.

Strike: subsection (3) in its entirety

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 473 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 6 through 8.
Strike: ", SUCH" on line 6 through "HAZARDOUS" on line 8
Insert: "IN PRODUCTS, INSTRUMENTS, OR DEVICES"
2. Title, line 9.
Following: "CONCEALING"
Insert: "SUCH"
3. Page 1, line 15.
Strike: "any instrumentality" through "to any"
Insert: "a product,"
4. Page 1, line 16.
Following: "device,"
Insert: "or"
Strike: ", person, procedure, or product"
5. Page 1, line 17.
Following: "of a"
Insert: "product,"
Following: "device,"
Insert: "or"
6. Page 1, lines 17 and 18.
Strike: ", person, procedure, or product,"

EXHIBIT 1
DATE 2-22-91
HB 921

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22-91 BILL NO. HB 921 NUMBER _____

MOTION: Brown: Motion to Table

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON		/
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	14	6

Northern Plains Resource Council

DATE 2-22-91
HB 928

TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL BEFORE THE HOUSE JUDICIARY COMMITTEE ON HB 928 Friday, February 22, 1991

Mr. Chairman, members of the Committee, my name is Dennis Olson, and I am testifying on behalf of the Northern Plains Resource Council (NPRC) in support of HB 928.

NPRC has historically fought for strong local citizen participation in all phases of mine regulation: from siting, to permitting, to enforcement. For example, NPRC fought successfully to include a strong citizens enforcement procedure in the federal Surface Mining Control and Reclamation Act. We have advocated strong citizen participation in mine regulation in the belief that the local people, who will have to live with the potential adverse impacts of mining, will work the hardest to find the most effective ways to avoid or mitigate those impacts. Given the current limited resources of state agencies, NPRC believes that strong citizen participation in environmental regulation is urgently needed now more than ever. NPRC supports HB 928 today for the following reasons:

1) The state environmental regulatory agencies are currently unable to adequately enforce environmental laws in an effective and timely manner because of insufficient staffing, inadequate funding, procedural obstacles, and in some cases, a lack of political will in the upper echelons of the bureaucracy.

2) Bonds required for mining projects do not provide enough disincentive for mining companies to take adequate steps up front in the permitting process to avoid water damages or contamination.

3) Bonds currently required for mining projects are not high enough to provide the state with enough resources to restore or replace water resources damaged or contaminated by mining when companies refuse to live up to their legal obligations to reclaim mine sites.

4) Lack of inspections and ineffective penalties have failed to

deter some mining companies from violating water quality and mine permitting laws.

As of August 1990, over 20 mining companies have had over 40 outstanding violations for "noncompliance" of their mine permit conditions. Many of these are water quality violations. The amount of these fines is over \$606,000. As of October of 1990, the state agencies had collected only \$62,050 of these fines. Examples of these fines include the following:

* In June and July of 1988 the Water Quality Bureau recommended a \$30,000 fine against the Pangea Mining Company for several water quality violations associated with the dumping of arsenic and other mine wastes into Grub Creek, a tributary of Basin Creek. The Water Quality Bureau ended up settling with Pangea for \$6,901.

* In November of 1989, DSL cited the Pegasus Gold Company for cyanide leaking off one of its lined leach pads at its Basin Creek Mine. The field inspector recommended a \$6,000 fine for the violation. However, this violation languished for well over a year without any action being taken against the violator. Finally, on February 9, 1991, DSL negotiated a \$2,600 settlement with Pegasus for its November 1989 \$6,000 fine. But as of February 19th, the state has yet to receive payment.

* In June of 1990, Pegasus illegally discharged tons of sediment from one of its Basin Creek Mine pits into Monitor Creek, a tributary of Ten Mile Creek which is a source of drinking water for Helena. Pegasus failed to report this violation for five days, and in early July another "leak" of a few more tons of sediment into Monitor Creek occurred. The Water Quality Bureau recommended a \$20,000 fine for these two violations, but subsequently settled for \$10,000.

* The Golden Maple Mining Company forfeited its \$35,500 reclamation bond in December of 1986 for a cyanide heap leach operation near Lewistown which had contaminated groundwater. Water treatment alone for the unreclaimed tailings has cost the state \$85,000, and DSL estimates minimal surface cleanup to cost

an additional \$120,000. The company has since left the state leaving behind \$42,400 in unpaid fines to the both the Water Quality Bureau and DSL.

* In the summer of 1989, the El Dorado Gold Company intentionally discharged sediment laden waste water from a mine pit into Browns Gulch near Virginia City in direct violation of state water quality laws. Several months later the Water Quality Bureau filed a complaint asking the company to reclaim the damages. A few days later the mine owner forfeited his bond and left Montana. He was quoted as saying "if it cost me more than my bond, then I'm going to run."

* In December of 1989, Chelsa Resources, Inc. forfeited its \$75,000 bond for its Spotted Horse mine in central Montana. In May of 1990, a spring rainstorm filled the abandoned tailings pond with cyanide laced water threatening area water resources. The \$75,000 bond only covered land reclamation, and the state has so far spent an additional \$10,000 to clean up the contaminated water.

* In January of 1991, the Blue Range Mine was forced to shut down, throwing 100 miners out of work, because inadequate permit conditions resulted in the leaking of cyanide into groundwater. This contamination threatens Sheep Creek, which is a tributary of one of Montana's most treasured water resources, Spring Creek. The mine has posted a \$69,000 reclamation bond, but as is usual DSL policy, this bond is not enough to pay for cleanup of water resources that could be potentially damaged by the mining operation.

I have more examples, but I think you can see that the state, for a variety of reasons, is not doing its job to protect water resources from mining. As you can also see, the people of Montana can no longer afford to depend solely on the good will of the mining industry to protect our water resources. HB 928 will give the rest of the citizens of Montana the opportunity to help the state agencies hold those accountable who would place themselves above the law. NPRC strongly urges a "do pass" vote on HB 928. Thank you for your consideration.

jailer. No medicines will be allowed in cell blocks.

(b) The Chief Jailer shall maintain records each showing the date, time and reason for each instance of medical treatment of prisoner, and showing all prescriptions issued to each prisoner, and showing the date and time of each issuance of medication to each prisoner.

Sec. 309. Women's cell block.

Female prisoners shall be confined in a separate cell block. The Chief Jailer shall assure the privacy of the women's cell block. To the extent reasonably possible, a female jailer shall be available for duty in the women's cell block. Only under emergency circumstances shall any male jailer or police officer, or other male person enter the women's cell block.

Sec. 310. Release.

No prisoner shall be released from custody until a release form or other order is signed by the presiding tribal judge, the prisoner's sentence is served, or release is ordered by a court having jurisdiction over the matter.

Chapter 4. Extradition

Sec. 401. Definitions.

(a) Fugitive from justice.
Any Indian who has fled to the Reservation and is charged by a state with a crime committed within the jurisdiction of the state but outside of Indian country, or is charged by an Indian tribe with an offense committed in Indian country.

(b) Demanding jurisdiction.
The governor of the state, or tribal chairman of the Indian Reservation, from which the fugitive from justice fled, or the authorized agent of such person..

Sec. 402. Tribal Court to issue warrant.

Whenever a demanding jurisdiction requests a fugitive from justice and produces a copy of the indictment found, or complaint and warrant, or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction, the Tribal Court may issue a warrant for the apprehension and commitment of the Indian so charged, to the end that such Indian may be brought before the Tribal Court for hearing and determination of the issues set forth in Section 405 of this Chapter.

Sec. 403. Notice of hearing; waiver of hearing.

As soon as possible after the apprehension of the accused Indian, and in any event within twenty four (24) hours, the Tribal Court shall fix a date for the hearing on the issues defined in Section 405 of this Chapter. The hearing date shall be not more than two (2) weeks after the date of apprehension of the accused, unless the accused is in custody at the time the demand is received. At the same time, the Tribal Court shall:

(a) In open Court and on the record advise the accused Indian of his/her rights to present evidence and testimony at the hearing on the issues defined in Section 405 of this Chapter, furnish the accused Indian with a copy of this Chapter calling particular attention to Section 405 defining the issues to be heard, and advise the Indian that the Indian may voluntarily

waive the hearing and agree to be delivered to the demanding jurisdiction.

(b) Immediately notify the demanding jurisdiction of the date of the hearing by telephone if necessary, furnish the demanding jurisdiction with a copy of this Chapter calling particular attention to Section 405 of this Ordinance defining the issues to be heard, and advise the demanding jurisdiction of its right to present evidence and testimony and to be represented by counsel.

(c) Immediately notify the Chairman of the Executive Board of the date of the hearing. The Executive Board may, through any representative designated by it, be present at the hearing, and present evidence and legal arguments.

Sec. 404. Accused may be admitted to bail -- conditions of bond.

The Tribal Court may release the accused Indian from custody pending the hearing provided for in Section 405 of this Chapter in accordance with Title II (Criminal Procedure), Section 402(a), provided that the Court shall impose such conditions of release as it deems proper for the appearance of the Indian before the Tribal Court at the hearing and for the surrender of the Indian to the demanding jurisdiction, if so adjudged after the hearing.

Sec. 405. Issues for determination.

At the hearing as provided in Section 403 hereof, the Tribal Court shall hear and determine the following issues:

(a) Whether the accused Indian is the person before the court and is the person charged by the demanding jurisdiction with the commission of a crime.

(b) Whether there is evidence of criminality. For purposes of this Section, criminality is established if evidence is found sufficient to justify commitment for trial if the crime had been committed on the Reservation. Evidence need not be such as is required to convict an accused at a trial. The Tribal Court shall not determine guilt or innocence.

(c) Whether the circumstances surrounding the charge by the demanding jurisdiction indicate that the accused Indian was the victim of discrimination by reason of his/her race.

(d) Whether the demanding jurisdiction can assure the accused Indian of nondiscriminatory and safe treatment in jail of the demanding jurisdiction.

(e) Whether the demanding jurisdiction can assure the accused Indian of a fair trial in the area of the demanding jurisdiction where such a trial would be held.

(f) Whether the criminal charges by the demanding jurisdiction were in good faith, or for the purpose of using criminal process to compel payment of a civil debt or some other improper motive.

(g) Whether, under all the facts and circumstances, justice would best be served by delivering the Indian to the demanding jurisdiction.

Sec. 406. Entry of judgment.

If the accused Indian waives in writing the right to a hearing, or if the issues defined in Section 405 hereof are resolved against the accused Indian, the Tribal Court shall enter a judgment authorizing the demanding jurisdiction to arrest and remove the accused Indian from the Reservation.

Office of The

Sheridan County Attorney

January 15, 1991

COURTHOUSE BUILDING
100 WEST LAUREL AVENUE
PLENTYWOOD, MONTANA 59254
(406) 765-2310

Mr. Ron Arneson, Special Prosecutor
Fort Peck Assiniboine/Sioux Tribes
Fort Peck Tribal Court
Wolf Point, MT 59201

RE: Extradition procedures

Dear Mr. Arneson,

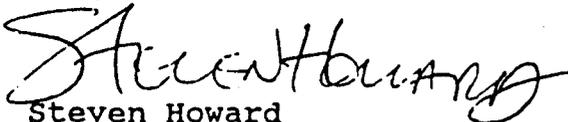
Because part of Sheridan County lies within the boundaries of the Fort Peck Reservation, and because I am the Sheridan county attorney, I have a interest in the policies established between the tribal law entities and the law that exists on a county and statewide level.

The problem that exists concerning the lack of an extradition policy between the tribal court and other law enforcement entities, unfortunately seems to have evolved into a territorial turf dispute, that in the long run, get no one anywhere, except to make cross-jurisdictional criminal apprehension and prosecution very difficult. By operating as adversarial factions, we are restricting our law enforcement capabilities, and the only ones who will gain from our non-cooperation, are the criminals who readily understand the jurisdictional "havens".

It is imperative that we, the Tribal Court and all law enforcement in the surrounding counties, all work toward a common goal - seeing that justice is being served, regardless of boundaries.

I certainly endorse the efforts of Mr. Patch, Roosevelt County Attorney in trying to establish a plan wherein a reciprocal extradition policy can be agreed upon by all of us. It only makes sense that we present a united front to dealing with criminals attempting to flee from justice.

Very truly yours,



Steven Howard
Sheridan County Attorney

ra.115

cc. Jim Patch
John Grainger



ARNIE A. HOVE
COUNTY ATTORNEY
Box 184
Telephone 406-485-2952

McCone County

Circle, Montana 59215

January 14, 1991

Attorney General Marc Racicot
Justice Building
215 North Sanders
Helena, MT 59620-1401

Re: Extradition with the Indian Tribes of Montana

Dear Attorney General Racicot:

I am requesting that your office do whatever is necessary to enter into an extradition agreement with the Indian tribes within the State of Montana for the purposes of extradition from off of the reservations and onto the reservations by the tribes for crimes committed within the respective jurisdictions.

On Friday, January 11, 1991, I was contacted by Sheriff John Q. Grainger of Roosevelt County wherein he was requesting my support for a resolution by the Fort Peck Tribal Council permitting extradition by Roosevelt County and the surrounding counties under the existing provisions of their CCOJ. I informed Sheriff Grainger I supported his position on such a resolution, however, I feel that your office can accomplish much more by entering into an agreement with the Fort Peck Tribes permitting extradition statewide.

I have found the Fort Peck Tribal Council to be fair and easy to deal with. If the state will concede and allow the Fort Peck Tribes to extradite from the various counties within the State of Montana, I am confident the tribal council will enter into an agreement and resume extraditions under the provisions provided for in their CCOJ. Enclosed is a copy of my letter to the Fort Peck Tribal Council.

I would appreciate your office giving this matter your careful and immediate attention.

Thank you.

Sincerely,


Arnie A. Hove

AAH/tk

cc: Sheriff John Grainger
Sheriff Robert Jensen
Tribal Council
McCone County Commissioners



COUNTY OF ROOSEVELT
OFFICE OF
COUNTY ATTORNEY

WOLF POINT, MONTANA 59201

January 10, 1991

Ron Arneson, Special Prosecutor
Fort Peck Assiniboine/Sioux Tribes
Fort Peck Tribal Court
Wolf Point, MT 59201

Re: Extradition procedures

Dear Mr. Arneson:

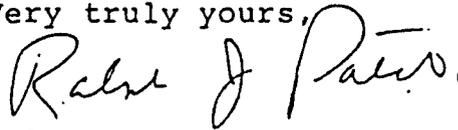
Two things occur which have created a law enforcement and jurisdiction problem in that portion of Roosevelt County which is located within the exterior boundaries of the Fort Peck Assiniboine/Sioux Indian Reservation. First, a crime is committed by an Indian person on the Reservation who then flees the jurisdiction of the Tribal Court. Second, a crime is committed by an Indian person in Roosevelt County outside of the Reservation boundaries and that person then flees to the Reservation. In the absence of an extradition agreement or policy, the end result is that the criminal avoids prosecution and the victims fail to see justice being done.

I am aware of the problems that arose in the so-called "Turcotte case". However, I believe that is an isolated incident and should not be the basis of non-cooperation. In order to avoid that kind of problem in the future, it will be the policy of the Roosevelt County Attorney's office to actively seek extradition through the Tribal Court of any Indian person who has committed a crime in Roosevelt County and who has then fled to this Reservation. Further, it will be the policy of this office to assist the Tribal Court in obtaining jurisdiction over an Indian person who may have fled the jurisdiction of the Fort Peck Indian Reservation to a place either in Roosevelt County or elsewhere in the State of Montana.

It is my belief that if this policy is established and cooperation results, then the criminal element will no longer feel safe from prosecution. By this letter I am asking the County Attorneys of the counties adjacent to the Fort Peck Assiniboine/Sioux Indian Reservation to adopt this policy.

I am circulating this letter to the County Attorney offices in counties adjacent to the Fort Peck Indian Reservation for their response.

Very truly yours,



Ralph J. Patch
Roosevelt County Attorney

RJP/lcp

cc: Chairman of the Fort Peck Assiniboine/
Sioux Tribal Executive Board
Chief Judge Howard Bemer
Chairman of the Law and Order Committee
Francis J. McCarvel
Arnie Hove
Ken Hoversland
Steve Howard
Michael Weber

HB # 314

STATE
OF
MONTANA
DEPARTMENT OF JUSTICE
FIRE MARSHAL BUREAU

EXHIBIT 4
DATE 2-22-91
HB 896

Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620-1417 (406) 444-2050

FIRE MARSHAL BUREAU PROGRAMS

INSPECTIONS

The Bureau has responsibility for inspections in virtually every type of occupancy except private homes. The majority of effort gets placed on inspections which have separate statutory requirements such as the university system, institutions, homes for the developmentally disabled, and day care centers. In recent years, inspections related to flammable liquids and liquor license transfers have increased dramatically.

CODE DEVELOPMENT AND ADOPTION

The Bureau adopts model codes for fire prevention inspections, with such modifications as are needed to insure that the adopted codes conform to state law. Further, in those areas of regulation where there is no model code available, the Bureau develops administrative rules to implement state law .

INSPECTION SUPERVISION AND CODE INTERPRETATION

The Bureau is responsible for supervision and direction of local officials in implementation and enforcement of fire safety rules adopted to provide for public safety.

FIRE INVESTIGATION AND INSPECTION TRAINING

The Bureau presents training programs to fire and law enforcement personnel, as time and resources permit. Budgeted funds are offset by fees charged to particular parts in the programs. The Bureau also participates with the Fire Services Training School in course development and delivery.

FIRE PREVENTION AND SAFETY

The Bureau provides information to public officials and the public on fire safety. This includes home safety, heating safety, fire prevention grant administration, wild land fire interface safety, public presentations, development of PSA's and other efforts.

FIRE INVESTIGATION

The Bureau provides assistance in the determination of fire cause and origin to local authorities and further investigation of suspicious and incendiary fires.

2-22-91
HB 896

THREATS OF EXPLOSIVES IN STATE BUILDINGS

The Bureau is responsible for establishing rules for buildings housing state offices.

FIRE REPORTING PROGRAM

The Bureau collects fire and hazardous materials reports on forms provided by the Bureau to local agencies. The MFIRS system used is based on the National Fire Information System and Montana data is included in the national data base. The Bureau provides training to local agencies as time and resources permit.

FIRE PROTECTION EQUIPMENT

The Bureau provides licenses, permits and certificates of registration for fire extinguishers, fire alarm systems and fire extinguishing systems. These are required to install, service or sell such equipment.

LIAISON ACTIVITIES

Bureau personnel participate in programs with local, state and federal governments as well as insurance organizations and model code bodies on fire related issues.

EXHIBIT

DATE

2-22-91

HB

896

AMENDMENTS TO HB 896

Prepared by Beth Baker, Department of Justice

Page 12, line 17, through page 13, line 6: strike entire section.

Page 31, lines 3-11, amend to read:

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations ~~or, under the provisions of 50-62-108, orders~~ OR, UNDER THE PROVISIONS OF 50-62-102, ORDERS by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident.

Page 31, lines 19-20: Amend to read:

NEW SECTION. Section 38. Repealer. Sections 50-3-104, 50-3-105, 50-3-107, 50-3-108, 50-39-201, 50-39-202, 50-39-203, 50-61-104, 50-61-105 ...

EXHIBIT 4
DATE 2-22-91
HB 896

STATE
OF
MONTANA

DEPARTMENT OF JUSTICE

FIRE MARSHAL BUREAU

Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620-1417 (406) 444-2050

TO: Beth Baker
Assistant Attorney General

FROM: Ray E. Blehm, Jr.
State Fire Marshal

DATE: February 21, 1991

SUBJECT: HB 896 - STATE FIRE MARSHAL TESTIMONY

Mr. Chairman, members of the committee, for the record my name is Ray Blehm and I am the State Fire Marshal.

The State Fire Marshal is responsible for providing a range of services state-wide. These you will find detailed in the handouts provided to the committee.

In addition to myself, there is one deputy in Helena who is assigned to coordinate inspection activity and who also conducts on-site inspections in the Helena district.

There are five area deputies who are to provide investigations, inspections, assist local fire departments, answer code questions, provide fire safety information and deliver training to agencies and the public in their districts.

The Bureau also has two office staff to manage the state fire incident reporting system, issue licenses for fire protection equipment sales, service and installation, process correspondence and file.

When our deputies go into local areas, they are instructed to work with the fire service people and, if they are willing, to take them along for

inspections and investigations. This provides a type of on-the-job training.

Deputies are also instructed to make contact with local agencies about their duties and responsibilities under state law in order to implement the Bureau's responsibility to provide general charge and supervision.

The Attorney General interprets state law to require consistency with the State Fire Marshal's interpretation of the fire code. This results in a considerable amount of time researching and consulting with local authorities on the meaning of the fire code.

Many inspections performed by the Bureau are done in conjunction with other state agencies which license particular occupancies. For instance, failure to comply with the fire code can prevent renewal of a liquor license or day care center license.

Another area of significant activity revolves around above and below ground petroleum tank installations and the adoption of rules for these installations.

As State Fire Marshal, I attend meetings of organizations which represent the fire service in Montana, make presentations on the duty of the fire service organizations under state law and various types of information of interest to the fire service community. I also serve on many committees, including the state's Hazardous Materials Response Commission, the Petroleum Tank Release Compensation Board as Vice Chairman, and currently am the chairman of the Building Codes Advisory Committee.

The bill before you today is the result of four and one-half years

working with and reviewing the state law and statutes with Beth Baker, Marc Racicot and others in the Department of Justice on implementation of the provisions of Montana's laws and adopted fire codes.

The result of this bill will be to better integrate the state Fire Marshal into the Department of Justice. It will modernize the provisions for the inspection and investigation program and improve our ability to implement the law. It will also correct some current provisions such as the requirement for county sheriff's to conduct fire inspections that are impractical and another requirement that all buildings be inspected every eighteen months.

Thank you for your consideration on HB 896. I recommend approval.

A109c.91

ARTICLE 1
DATE 2-22-91
HB 896

HOUSE BILL NO. 896

DELETE:

Section 6. - lines 22-25 on page 5
lines 1-9 on page 6

INSERT:

Section 6. - line 10

10 (d) inspect state-owned, public, business, or industrial

EX. 7
2-22-91
HB 896

HOUSE BILL NO. 896

DELETE:

Section 6. - lines 22-25 on page 5
lines 1-9 on page 6

INSERT:

Section 6. - line 10

10 (d) inspect state-owned, public, business, or industrial

CAPTION _____
DATE 2-22-91
HB 851

DEPARTMENT OF ADMINISTRATION
TORT CLAIMS DIVISION



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2421

HELENA, MONTANA 59620

February 22, 1991

TESTIMONY IN OPPOSITION TO HB 851, by Brett Dahl

Mr. Chairman, Members of the Committee, my name is Brett Dahl. I am Administrator of the Tort Claims Division of the Department of Administration. The Tort Claims Division opposes HB 851 because the balance struck to create the Wrongful Discharge From Employment Act in 1987 will be upset if this bill is passed.

Legislation creating the Act in 1987 was passed after a great deal of compromise between the competing interests of the employer and the discharged employee. Wrongful discharge law in Montana had changed from at will employment through a series of supreme court decisions. The standards of liability changed rapidly and dramatically leaving employers with no standards upon which to rely when considering termination of an employee.

The balance struck provided clear guidelines for protection and an effective remedy to employees not fairly treated and let employers know what was acceptable employment practice. The balance to the creation of this clear right to sue include a limitation of damages.

Damages were limited also because it was unfair to reward a terminated employee with a lifetime of lost wages when that employee would most likely obtain other employment. Four years was considered a reasonable time for a discharged employee to be reinstated in the labor market.

Arbitration was included because it was seen as a formal, fast and less expensive method to resolve a dispute than full blown litigation. This option should remain a part of the Act.

The Tort Claims Division recommends that you do not pass HB 851.

DATE 2-22-91
HB 851

Mr. Chairman, members of the Committee. My Name is Jim Nys. I am a personnel consultant that works with employers throughout the state to improve their personnel practices including those related to disciplining or terminating employees. I am also a small business owner with offices in Helena and Missoula.

I appear today on my own behalf in opposition to HB 851 for the following reasons:

The current law is workable and provides for a balance between the rights of employers and the rights of terminated employees. I am not aware of any wide-spread abuse by employers that justifies the changes proposed by this bill.

This bill appears to be what some would label a "lawyer relief" bill. It re-introduces "other forms of damages"- and tort remedies. The result would raise the cost of bringing and defending wrongful discharge disputes for both employees and employers. The bill would also eliminate the arbitration provisions of the law. This change would clog the courts with suits that could have and should be settled much sooner and less expensively using an arbitration procedure. I question who will benefit most from these changes- the lawyer or the terminated employee. Certainly not the struggling small business owner who risks being put out of business by the remedies in this bill.

More importantly, I am concerned about the possibility of re-introducing the managerial paralysis that existed prior to 1987. Many managers complained that they "couldn't fire someone even when they deserved it." This bill has the potential to re-introduce such fear in managers by clouding the waters related to wrongful discharge claims and remedies.

The greater risk and costs of doing business under HB 851 would create another reason for businesses to choose to avoid Montana. Montana already has a reputation of being anti-business. This bill not only would add to that reputation but would do so without providing any real improvement in the rights of a terminated employee.

I urge a "DO NOT PASS" on HB 851. I would be happy to answer any questions from members of the committee.

HOUSE BILL 938

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

Pre-hospital EMS providers render emergency care under very adverse circumstances ... poor weather, poor lighting, and rowdy crowds. Physicians and nurses give the EMTs and paramedics orders, by radio, under the most urgent conditions - without the benefit of their own patient examination, or the patient's old chart.

Physician supervision of pre-hospital emergency medical services is essential to assure the appropriateness and quality of care. Physician medical directors are required for all pre-hospital *advanced life support services*. Basic life support emergency medical services are encouraged, but not required, to have a medical director.

However, emergency medical services often have a difficult time finding a physician to serve as their medical director. Assuming the responsibility for the medical direction of pre-hospital care providers increases the physician's liability. Some malpractice carriers do not cover these physicians. In Montana, a majority of the EMS medical directors are not compensated for their time.

This legislation is intended to encourage physicians to become more involved with the supervision of pre-hospital emergency care. It provides liability protection to:

1. Physicians and nurses who give instructions to pre-hospital EMS personnel.
2. The off-line medical director...that physician who generally supervises an emergency medical service, reviews their care rendered, makes recommendations for improvement, and is responsible for the care administered.
3. The pre-hospital emergency personnel who follow the direction of a physician or nurses.

Several facts should be emphasized:

1. The individuals must be operating within their scope of practice and within their approved protocols and medical control plan. They are not provided liability protection for acts they are not legally authorized to perform.
2. Whether physicians, nurses, or EMTs, they are still responsible and accountable, under their own licensure laws, for the care they render.
3. They are still liable for gross negligence.

I would appreciate your support of this bill. It will greatly assist local emergency medical services in obtaining appropriate medical direction.



Montana Emergency Medical Services Association

P.O. Box 30336
Billings, MT 59107
(800) 247-2369

EXHIBIT 11
DATE 2-22-91
HB 938

*Rm 312-2
By 8:00 AM*

DATE: February 21, 1991
TO: House Judiciary Committee
Bill Strizich, Chair
SUBJECT: Testimony Concerning HB938

Please verbally enter the following into the House Judiciary Committee hearing concerning HB938.

The Montana Emergency Medical Services Association Inc. (MEMSA) is the professional organization of Emergency Medical Technicians (EMT, D, I, P) in our state. Membership is voluntary and consists of over 800 members. The majority are associated with rural volunteer emergency medical service (EMS) organizations.

We support Senator Johnson in the introduction of HB938, a bill that we feel supports emergency medical services (EMS) and will be beneficial to the quality and availability of care provided.

Montana, being a rural, sparsely populated state, depends on volunteer emergency medical services organizations to assure that EMS is available when needed. The voluntary participation of physicians and nurses contributes directly to the quality and level of care that the system can provide. This bill by providing limited liability protection to the physicians, nurses and EMS providers will have a positive impact on the recruitment and retention of members for the EMS team, thus providing for the growth and improvement of EMS in our state. MEMSA, by a unanimous vote of the House of Delegates, strongly supports this bill and urges you as a committee to give it a "DO PASS" recommendation.

Thank you for consideration of this issue.

Sincerely;

R. Mark Zandhuisen
R. Mark Zandhuisen
President

Gary R. Haigh
Gary R. Haigh
Legislative Committee



EXHIBIT 10
DATE 2-22-91
HB 898

TESTIMONY ON
HOUSE BILL 898

TO THE HOUSE JUDICIARY COMMITTEE

BY
DAN ANDERSON
FEBRUARY 22, 1991

MR. CHAIRMAN, MEMBERS OF THE
COMMITTEE. MY NAME IS DAN
ANDERSON AND I AM THE
ADMINISTRATOR OF THE MENTAL
HEALTH DIVISION OF THE
DEPARTMENT OF INSTITUTIONS.

THE DEPARTMENT OF INSTITUTIONS'
VISION OF A COMPREHENSIVE AND
EFFECTIVE PUBLIC MENTAL HEALTH
SYSTEM INCLUDES THE MONTANA

STATE HOSPITAL AS AN ESSENTIAL
COMPONENT OF THE SYSTEM.

THE ROLE OF THE STATE HOSPITAL
MUST, HOWEVER, BE CLEARLY
DEFINED AND THAT ROLE SHOULD
BE TO PROVIDE SERVICES WHICH
CANNOT BE PROVIDED IN LOCAL
COMMUNITIES.

ONE OF THE SERVICES WHICH IS
PROVIDED AT THE STATE HOSPITAL
IS EVALUATIONS OF CRIMINAL
DEFENDANTS TO DETERMINE THEIR
COMPETENCY TO STAND TRIAL AND
WHETHER THEY CAN BE HELD

RESPONSIBLE FOR A CRIMINAL ACT.
CURRENT LAW ALLOWS THE JUDGE
TO SELECT ANY QUALIFIED
PSYCHIATRIST OR LICENSED
CLINICAL PSYCHOLOGIST TO
PERFORM THIS EVALUATION. ONE
OPTION IS TO SEND THE DEFENDANT
TO THE STATE HOSPITAL FOR THE
EVALUATION.

IT IS DIFFICULT TO GET AN EXACT
COUNT OF THE NUMBER OF CRIMINAL
COURT EVALUATIONS DONE
STATEWIDE. BUT THERE IS NO
DOUBT THAT THE MAJORITY OF
THOSE EVALUATIONS ARE

CURRENTLY BEING DONE AT THE STATE HOSPITAL. DURING FISCAL YEAR 1990, 76 PEOPLE SPENT TIME IN THE STATE HOSPITAL FOR CRIMINAL COURT EVALUATIONS. THE 10 BED UNIT, WHICH IS SET ASIDE FOR THESE PATIENTS, WAS ALWAYS FULL AND THERE IS, AT ALL TIMES, A 5 TO 8 WEEK WAITING LIST. THE 76 PATIENTS WHO USED THESE BEDS IN FY 1990 SPENT AN AVERAGE OF 48 DAYS AT THE STATE HOSPITAL DURING FY 1990.

IT IS CLEAR THAT THE STATE HOSPITAL IS BEING USED AS THE USUAL SITE OF CRIMINAL EVALUATIONS RATHER THAN THE

SITE OF EVALUATIONS ONLY WHEN
LOCAL EVALUATION IS IMPOSSIBLE.
THE DEPARTMENT SUPPORTS HB 898
AS A MEANS TO REDUCE THE
NUMBER OF FORENSIC EVALUATIONS
DONE AT MONTANA STATE HOSPITAL
FOR THE FOLLOWING REASONS:

1. A SIGNIFICANT NUMBER OF
DEFENDANTS SENT FOR
EVALUATIONS SHOW NO SIGNS OF
MENTAL ILLNESS. IT IS A
SERIOUS MISUSE OF HOSPITAL
STAFF TO CARE FOR AND
EVALUATE PEOPLE WHO COULD BE
DETERMINED QUICKLY IN A LOCAL

EVALUATION TO BE FREE OF
MENTAL DISEASE.

2. EVEN WHEN THERE IS A
LEGITIMATE QUESTION OF MENTAL
DISEASE, COMPETENT
EVALUATIONS CAN OFTEN BE
DONE AT THE LOCAL LEVEL,
LESS EXPENSIVELY AND MORE
QUICKLY THAN THEY ARE DONE
AT THE STATE HOSPITAL.

3. CRIMINAL COURT EVALUATIONS
REQUIRE A SIGNIFICANT
INVESTMENT OF STATE HOSPITAL
STAFF RESOURCES. IN
PARTICULAR, THE TIME OF
HIGHLY QUALIFIED PROFESSIONAL

STAFF IS REQUIRED. IF MORE COURT EVALUATIONS WERE DONE IN THE COMMUNITY, MORE STAFF RESOURCES COULD BE DEVOTED TO THE STATE HOSPITAL'S PRIMARY MISSION, THE TREATMENT OF PEOPLE WITH SERIOUS MENTAL ILLNESSES.

LET ME ADDRESS TWO ISSUES WHICH MEMBERS OF THE COMMITTEE MAY BE CONCERNED ABOUT IN REVIEWING THIS BILL. THOSE TWO ISSUES ARE THE QUALITY OF THE EVALUATIONS WHICH CAN BE DONE IN THE COMMUNITY AND THE COST OF THOSE EVALUATIONS. IT'S

IMPORTANT TO ACKNOWLEDGE THAT
THE MONTANA STATE HOSPITAL
STAFF DOES EXCELLENT FORENSIC
EVALUATIONS. UNDOUBTEDLY, ONE
REASON THAT JUDGES USE THE
STATE HOSPITAL SO OFTEN IS THAT
THEY KNOW THEY WILL RECEIVE
HIGH QUALITY EVALUATIONS FROM
THE STATE HOSPITAL. BUT, I
BELIEVE THAT QUALITY
EVALUATIONS CAN ALSO BE
PROVIDED LOCALLY.

IN THE STATE OF VIRGINIA OVER
THE PAST 10 YEARS, THEY HAVE
MOVED FROM ALMOST EXCLUSIVE

RELIANCE ON THEIR STATE
HOSPITALS FOR FORENSIC
EVALUATIONS TO A SYSTEM OF
ALMOST EXCLUSIVE COMMUNITY-
BASED EVALUATIONS. THEY HAVE
FOUND NOT ONLY THAT THE COST
OF THESE EVALUATIONS HAS
DROPPED DRAMATICALLY BY DOING
THEM LOCALLY, BUT ALSO THAT IN
A SURVEY OF JUDGES, PROSECUTING
ATTORNEYS, AND DEFENSE
ATTORNEYS THE QUALITY OF THE
EVALUATIONS DONE AT THE LOCAL
LEVEL IS RATED VERY HIGHLY.

PART OF WHAT THEY DID IN VIRGINIA WAS TO SET UP A TRAINING PROGRAM TO PREPARE PROFESSIONALS TO DO THESE EVALUATIONS.

THE DEPARTMENT OF INSTITUTIONS IS NOT IN A POSITION TODAY TO ANNOUNCE THE KIND OF EXTENSIVE TRAINING PROGRAM THAT VIRGINIA HAS, BUT WE HAVE MADE A COMMITMENT TO SUPPORT COMMUNITY-BASED FORENSIC EVALUATIONS THROUGH MAKING TRAINING OPPORTUNITIES AVAILABLE. IN COOPERATION WITH THE

WESTERN INTERSTATE COMMISSION
ON HIGHER EDUCATION, A
TELECONFERENCE TRAINING EVENT
ON CRIMINAL COURT EVALUATIONS
HAS BEEN SCHEDULED. LATER THIS
SUMMER THE DEPARTMENT, IN
COOPERATION WITH THE AMERICAN
PSYCHOLOGICAL ASSOCIATION, IS
HOLDING A 2 DAY TRAINING
CONFERENCE ON FORENSIC
EVALUATIONS IN HELENA.

OUR GOAL IS TO HELP MAKE THE
NEEDED TRAINING AVAILABLE SO
THAT INCREASING NUMBERS OF
PSYCHOLOGISTS AND PSYCHIATRISTS

ARE WILLING AND ABLE TO PROVIDE
HIGH QUALITY LOCAL EVALUATIONS
OF CRIMINAL DEFENDANTS.

A COST ANALYSIS DOCUMENTS
DRAMATIC DIFFERENCES BETWEEN
STATE HOSPITAL BASED
EVALUATIONS AND LOCALLY BASED
EVALUATIONS. IN FY 1990 THE
AVERAGE BASIC HOSPITAL COSTS
OF PATIENTS RECEIVING FORENSIC
EVALUATIONS AT THE STATE
HOSPITAL WAS NEARLY \$7,000. THAT
COST DOES NOT INCLUDE THE COST
OF THE PROFESSIONAL TIME OF
PSYCHOLOGISTS AND PSYCHIATRISTS

WHICH GO INTO PROVIDING THE
EVALUATION. THE \$7,000 COVERS
ONLY THE BASIC HOSPITAL COSTS.

THE BEST ESTIMATE WE HAVE OF
WHAT COMMUNITY-BASED EVALUA-
TIONS OF CRIMINAL DEFENDANTS
CURRENTLY COST IN MONTANA IS
SOMEWHERE IN THE NEIGHBORHOOD
OF \$250 TO \$1,200 PER EVALUATION.

STATE LAW MAKES CLEAR THAT THE
COST OF THESE FORENSIC
EVALUATIONS IS TO BE CHARGED
TO THE COUNTIES. THE COUNTIES
ARE THEN ABLE TO ASK FOR

REIMBURSEMENT FROM THE DISTRICT COURT FUND WHICH IS IN THE DEPARTMENT OF COMMERCE.

THE DEPARTMENT OF INSTITUTIONS MADE A POLICY DECISION SEVERAL YEARS AGO TO NOT CHARGE THE COUNTIES AND THE DISTRICT COURT FUND FOR EVALUATIONS DONE AT THE STATE HOSPITAL. WERE THE DEPARTMENT TO CHARGE THE COUNTIES, THE TOTAL COST FOR FY 1990 WOULD HAVE BEEN IN THE RANGE OF \$550,000 TO \$600,000. THIS WOULD HAVE HAD A SERIOUS IMPACT ON THE COURT FUND.

REIMBURSEMENT FROM THE DISTRICT COURT FUND WHICH IS IN THE DEPARTMENT OF COMMERCE.

THE DEPARTMENT OF INSTITUTIONS MADE A POLICY DECISION SEVERAL YEARS AGO TO NOT CHARGE THE COUNTIES AND THE DISTRICT COURT FUND FOR EVALUATIONS DONE AT THE STATE HOSPITAL. WERE THE DEPARTMENT TO CHARGE THE COUNTIES, THE TOTAL COST FOR FY 1990 WOULD HAVE BEEN IN THE RANGE OF \$550,000 TO \$600,000. THIS WOULD HAVE HAD A SERIOUS IMPACT ON THE COURT FUND.

Expanded

COMMUNITY-BASED PSYCHIATRIC
EVALUATIONS OF DEFENDANTS
WOULD BE CHARGED TO THE
COUNTY WITH THE COUNTY SEEKING
REIMBURSEMENT FROM THE DISTRICT
COURT FUND. CURRENTLY THE
DISTRICT COURT FUND HAS BEEN
ABLE TO REIMBURSE 100% OF THOSE
CHARGES. IT IS CONCEIVABLE THAT
IF THERE IS A DRAMATIC
INCREASE IN LOCALLY BASED
FORENSIC EVALUATIONS THAT THE
DISTRICT COURT FUND WILL NOT BE
ABLE TO REIMBURSE 100% OF THE
COSTS AND THAT SOME COUNTIES,
WILL PAY ADDITIONAL COSTS.

HOWEVER, IT NEEDS TO BE CLEARLY
RECOGNIZED, THAT THE ACTUAL
COST TO THE PUBLIC OF THESE
FORENSIC EVALUATIONS IS 80 - 90%
LESS, IF THEY ARE DONE LOCALLY,
THAN IF THEY ARE DONE AT THE
STATE HOSPITAL.

I WOULD LIKE TO POINT OUT THAT
THIS BILL DOES NOT REQUIRE THAT
FORENSIC EVALUATIONS BE DONE
LOCALLY. THE BILL LISTS A
NUMBER OF CIRCUMSTANCES UNDER
WHICH THE JUDGE MAY USE THE
STATE HOSPITAL AND ALSO LEAVES
AN OPENING FOR THE JUDGE TO

FIND OTHER CIRCUMSTANCES
BEYOND THOSE LISTED THAT
REQUIRE THE STATE HOSPITAL TO
BE USED. I THINK THIS IS A
CONSERVATIVE FIRST STEP TOWARD
MOVING THE PRIMARY FOCUS OF
FORENSIC EVALUATIONS TO THE
LOCAL LEVEL AND I URGE THE
COMMITTEE TO VOTE FAVORABLY ON
HB 898.

THANK YOU.

HW Van Hassell

EXHIBIT 12
DATE 2-22-91
HB 898

Forensic Treatment Facility
Position Statement Regarding Court Ordered Evaluations
5/25/90

Montana State Hospital supports the position that court ordered mental evaluations should continue to be completed on an inpatient basis at the Forensic Treatment Facility. It is the opinion of the staff and management that attempting to complete these evaluations in the communities will result in a significant decrease in the quality of the evaluations as well as a significant increase in the cost of providing this service to the judicial system.

There are a number of important advantages in maintaining the current evaluation system. Since forensic evaluations differ substantially from routine mental health assessments, it is essential that the professionals conducting forensic evaluations receive training and maintain expertise in this highly specialized area. Familiarity with more general mental health assessment techniques is not sufficient and most mental health professionals receive no training in forensic work. The forensic evaluation team has observed that the vast majority of "forensic" evaluations received from community sources contain major deficiencies when compared to the accepted national standards for forensic work. Competent forensic work requires extensive familiarity with criminal legal concepts, the adversarial process, legal rights of the accused, specialized data collection, assessment of malingering, specialized report writing techniques, and expert witness skills. The current system allows the professionals involved in the forensic evaluation process to specialize in these areas, resulting in a much greater level of expertise than would be available by utilizing community mental health personnel who would only be performing forensic work for a fraction of their professional time.

In addition to supporting a better trained, more specialized assessment staff the current inpatient evaluation system allows a number of advantages in the manner in which court ordered evaluations are completed. Evaluations are currently completed by a multidisciplinary assessment team including psychologists, psychiatrists, social workers, nursing staff, and ward personnel. This diversification of specialty areas allows a more complete, unbiased assessment of the patient than would be possible if the patient was assessed by only one individual (as would probably be the case in the community). In addition, each specialty area is able to make a unique, specialized contribution to the overall assessment since each professional discipline tends to emphasize certain aspects of assessment. This approach also allows efficient exploration of possible problem areas which may fall outside one professional's area of expertise. For example, it is a simple matter for a psychologist to consult with the medical doctor in ordering medical tests to evaluate certain problem areas. This process would be far more cumbersome and time consuming in a community setting.

The specialized nature of forensic assessment imposes a number of requirements which are best addressed by this inpatient, multidisciplinary approach. For example, one major difference between forensic evaluations and other mental health assessments is the fact that the patients are typically not being assessed on a voluntary basis. This fact, combined with the medicolegal context of the evaluation situation, makes possible malingering an important issue in the majority of forensic cases. Specialized assessment techniques are required to address this issue and these are typically absent from community evaluations. For example, it is important to collect extensive background data from sources other than the patient in order to corroborate or dispute the patient's claims. Time constraints and lack of familiarity with this process make the collection of such data rare in a community setting. Perhaps the most important assessment tool, extended continuous observation, is not available on an outpatient basis. It is quite easy for many patients to deceive mental health professionals by malingering symptoms for a few hours during an office or jail evaluation. It is much more difficult to consistently malingere symptoms in a believable manner during a thirty to sixty day period of inpatient observation. The importance of this issue is summarized by David Shapiro, Ph.D., writing in "Psychological Evaluation and Expert Testimony":

There is no better way to detect malingering than prolonged inpatient observation. If an outpatient examination is being conducted and the issue of malingering arises...no final opinion should be rendered. (Emphasis added).

A number of practical problems arise when the prospect of providing evaluations of comparable quality in the community is considered. It is often difficult to access prisoners in a jail facility when desired and the interview/testing facilities are often entirely inadequate. Noise and lack of adequate space are typical. The logistics of scheduling adequate contact time and of clarifying additional questions (which often arise during the course of an evaluation) with the prisoner are difficult at best. An adequate evaluation requires multiple contacts over time by a number of professionals, with consultation among the professionals in the interim. Arranging such contacts is quite easy in an inpatient setting but would be very difficult at best in the communities. Cost must also be considered a significant factor. Individuals conducting private forensic evaluations routinely charge in excess of \$100/hour, resulting in evaluation costs several thousand dollars and up. The evaluations can be completed in a much more cost effective manner under the present system.

It is also important to consider the possibility of bias, conscious or unconscious, being introduced into the evaluation process should these evaluations be conducted on a profit making basis by community professionals or organizations. Despite the ideal of impartiality, it is nevertheless a fact that pressure does exist to report findings helpful to one side or another in a criminal case, when one side is paying for the professional service. While not all professionals respond to such pressure, the continuation of lucrative referrals may well depend, in some cases, on the production of "helpful" results. In contrast, the present system allows the examining professionals to function completely independently, with no such concerns that their findings may result in future financial repercussions.

In summary, it is our opinion that performing court ordered evaluations in the communities involves a number of significant problems which will inevitably result in a serious reduction in the quality of those evaluations. Producing even a moderately complete report in a community setting will result in substantial cost increases. It is our recommendation that the present system of completing court ordered evaluations on an inpatient basis at Montana State Hospital be continued.

John Van Hassel, Ph.D.
Psychologist
Forensic Treatment Facility

Jeffrey K. Ritow, Ph.D.
Psychologist
Forensic Treatment Facility

Jeff Sturm, M.S.W.
Unit Supervisor
Forensic Treatment Facility

H.C. Xanthopoulos, M.D.
Psychiatrist
Forensic Treatment Facility

Steve Ryan, M.S.W.
Social Worker
Forensic Treatment Facility

Joe Thompson
Social Worker
Forensic Treatment Facility

Marlene Launderville, R.N.
Registered Nurse
Forensic Treatment Facility

FIFTH JUDICIAL DISTRICT

JOAN EMGE
SECRETARY
406-683-5841



KATHY C. HILTON
COURT REPORTER
406-683-6137

FRANK M. DAVIS
DISTRICT JUDGE
2 SOUTH PACIFIC, CL #6
DILLON, MONTANA 59725-2713

Exhibit # 13
2/22/91 HB 898

February 14, 1991

Forensic Treatment Facility
Montana State Hospital
Warm Springs, Montana 59756

Gentlemen:

I adopt the position statement of the Forensic Treatment Facility regarding proposed legislation which would restrict the Court's authority and discretion in the matter of mental evaluations.

While this is my personal view, as President of the Montana Judges' Association, I believe that organization would take the same position.

This bill is an ill advised proposal, and seems to be another attempt by the bureaucracy to invade the province of the Judiciary. The Department of Family Services has already done so and I am informed that there is also proposed legislation to limit the Court's sentencing power.

I have used and will continue to utilize community based professionals depending on the facts in a particular case. Other Judges do likewise. For the legislature to require a finding of "extraordinary circumstance" before a commitment to the State Hospital, in my opinion, can not be supported under any rational theory.

Very truly yours,

/lah

pc: All District Judges

TED L. MIZNER
JUDGE OF THE DISTRICT COURT
409 Missouri Avenue
Deer Lodge, Montana 59722
(406) 846-3680, ext. 38
(406) 563-8421, ext. 222

THIRD JUDICIAL DISTRICT
Deer Lodge, Powell and
Granite Counties

BEVERLY GIANNONATTI
Court Reporter

February 12, 1991

John Van Hassel, Ph. D.
Montana State Hospital
Warm Springs, MT 59756

Dear Mr. Van Hassel:

Thank you very much for your correspondence of February 4, 1991, concerning the proposed legislation limiting court ordered evaluations. I solidly agree with the position that you and the other professional forensic staff have taken against the passage of this legislation. This legislation is another disingenuous attempt to unfairly shift costs from the state level to the county level without regard for the serious consequences. This proposed measure is totally incongruous with the recent legislative action which increases, rather than decreases, the state's share of the funding for the district courts and felony prosecutions.

As a county attorney for nine years and now as a district judge for nearly four years, I believe that the proposed legislation would be a giant step backward from all that I've seen accomplished over the years with these court ordered mental evaluations. The present evaluations and reports are done by highly trained staff with the result being that professional comprehensive reports are now available as invaluable aids to the courts. In my experience, the State Hospital evaluations are rarely challenged and frequently expedite pending court proceedings.

To shift the cost of these evaluations to the counties and the preparation of the evaluations to untrained and inexperienced professionals in the communities would be a great disservice to the courts, the counties, prosecutors and the criminal defendants. In addition, most communities simply do not have an appropriate, secure facility in which to conduct these evaluations that would in any way compare with the new Forensic Treatment Unit at the State Hospital. We've come a long way with providing appropriate staff and facilities to get these professional evaluations - I hope we don't regress.

Sincerely,


District Court Judge

TLM:jj

Park County Attorney

Wm. Nels Swandal

Tara DePuy Deputy

Jon M. Hesse Deputy

414 East Callender - Livingston, MT 59047
Telephone: (406) 222-6120 ext. 239

February 13, 1991

Forensic Treatment Facility
Attn: John Van Hassel, Ph.D.
Montana State Hospital
Warm Springs, MT 59756

re: bill concerning court ordered mental
health evaluations

Dear Dr. Van Hassel:

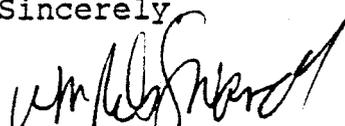
I have reviewed the bill the Department of Institutions plans to introduce concerning court ordered mental evaluations and agree that it is a bad and unnecessary bill.

Few communities in this state have the trained personnel or the facilities to conduct forensic evaluations. As you point out in your letter, in order to accurately evaluate a patient it takes more than one psychiatrist or psychologist. The multidisciplinary assessment team at Warm Springs provides an extended continuous observation which would simply not be available in a community setting. The result is a thorough, accurate assessment which protects both the community and the patient.

It also appears to me that attempting to duplicate the services at Warm Springs in a community setting would be costly. Our district court cannot afford the costs associated with hiring individuals to conduct forensic evaluations in all cases where they are needed. In a recent case where that became necessary, Park County had to expend over \$10,000.00.

The present system works well and I have heard few complaints, other than those concerning the wait it takes to secure a spot for an evaluation. The legislature and the people of Montana would be better served if legislation was introduced to pay for additional, needed personnel at the hospital.

Sincerely



WM. NELS SWANDAL
Park County Attorney

OFFICE OF THE COUNTY ATTORNEY

County of Hill

Exhibit # 13
2/22/91 HB 898

P.O. BOX 912
HAVRE, MONTANA 59501-0912
265-4364

DAVID G. RICE
COUNTY ATTORNEY

PATRICIA JENSEN
DEPUTY COUNTY ATTORNEY

February 20, 1991

Dr. John Van Hassel
Forensic Treatment Facility
Montana State Hospital
Warm Springs, MT 59756

RE: Amendments to §46-14-202, MCA

Dear Dr. Van Hassle

I have received your letter of February 4, 1991, concerning some proposed changes to the above statute along with the discussion bill proposing those changes. I would certainly support the position you have taken concerning the proposal.

In my now nearly eighteen years of public prosecution, I have only recently seen the introduction of psychologists in our community who are even willing to consider forensic evaluations. Their lack of facilities and experience have made their results questionable so we've always relied on the State Hospital as a basis for securing a well-done impartial evaluation. I agree with you that the ones that have been done are not well done. As you know from cases we have been involved in ourselves, the evaluations are subject to much criticism and are often times in opposition to evaluations which you have done at the forensic unit in the State Hospital.

While I appreciate the State's desire to reduce its costs of operating State institutions, it has to bear some responsibility in this area because all of the people who go to the State hospital for evaluation are there because of a violation of State law. Unless they plan on making a big enough change to reduce the need for staff at the State hospital, the State should continue to bear that expense by operating the hospital and providing the service which has proved effective over these many years.

Dr. Van Hassel
February 20, 1991
Page 2

In conclusion, I support the position you have taken and would resist the proposed changes to the law for the reasons set forth above. I have always appreciated the frankness with which the staff of Montana State Hospital has addressed issues and your position here is further evidence of your willingness to do that.

Very truly yours,

DAVID G. RICE
HILL COUNTY ATTORNEY

DGR:teb



OFFICE OF THE COUNTY ATTORNEY
BEAVERHEAD COUNTY, MONTANA

Exhibit # 13
2/22/91 HB 898

2 SOUTH PACIFIC, CL #2
DILLON, MONTANA 59725
(406) 683-4306

February 13, 1991

THOMAS R. SCOTT
COUNTY ATTORNEY
W. CECIL JONES
DEPUTY
CALVIN ERB
DEPUTY

Chuck Swysgood
Capital Station
Helena, Montana 59620

RE: FORENSIC TREATMENT FACILITY
BILL LC-1287

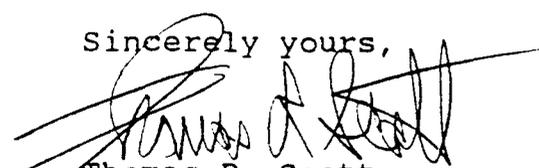
Dear Chuck:

Enclosed with this letter please find some correspondence that I recently received from the Forensic Treatment facility at the Montana State Hospital. The enclosed information from the Forensic Treatment Facility with respect to proposed Bill LC-1287 causes me great concern and alarm.

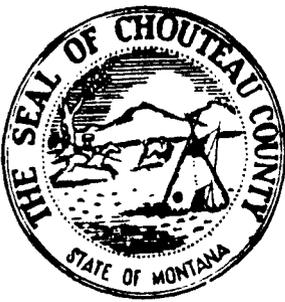
I totally and unconditionally agree with the logic and rationale of the Forensic Treatment Facility with respect to proposed Bill LC-1287. In addition to the rationale set forth in the Forensic Treatment Facility letter of February 4, 1991, this office continues to be concerned with the continued effort by the Department of Institutions to close facilities and shift the burden of alcohol treatment, mental health treatment and evaluations to counties. It is my understanding that should Bill LC-1287 pass and evaluation for criminal purposes be conducted at the local level, that the financial burden of those evaluations be borne by the counties. This is a burden that the counties cannot afford.

It is requested that on behalf of this office and Beaverhead County you oppose proposed Bill LC-1287. Should you have any questions concerning this matter, it is requested that you contact this office. Your anticipated cooperation is greatly appreciated.

Sincerely yours,


Thomas R. Scott
Beaverhead County Attorney

TRS/clgh
c: Forensic Treatment Facility



COUNTY OF CHOUTEAU
OFFICE OF THE COUNTY ATTORNEY

1309 Franklin P.O. Box 112
FORT BENTON, MONTANA 59442

ALLIN H. CHEETHAM
COUNTY ATTORNEY

PHONE (406) 622-3246

February 12, 1991

Forensic Treatment Facility
Montana State Hospital
Warm Springs, MT 59756

RE: Proposed Forensic Evaluation Legislation

Gentlemen:

I am in writing in response to your request for assistance in opposing proposed legislation concerning forensic evaluations. While the proposed legislation may not have a great effect on us here in Chouteau County, due to the fact that we have no local qualified psychiatrists or licensed clinical psychologists, I still think it is a poor idea. I strongly agree that having evaluations performed by an impartial third party is much more desirable than having an evaluation performed by an expert paid by one side or the other. In a great number of those instances, the evaluation process will more than likely have to be duplicated since the opposite side would probably demand an evaluation of its own. This duplication will only further increase the cost of these investigations. The majority of the time the mentally ill individual who is being examined do not have funds to pay for his own examination anyway. The state therefore would be required to absorb the additional expenses.

I also agree that most areas do not have adequate places to house these mentally ill individuals while evaluations are being conducted. We in Chouteau County have a fairly new and modern jail facility but it is not in any way designed to house mentally ill individuals, nor are the people operating are jails properly trained to handle mentally ill individuals.

I therefore agree with your position and strongly oppose the proposed legislation to require the court to make findings in writing that extraordinary circumstances exist before a forensic evaluation can be conducted at the state hospital. If you need anything further along these lines, feel free to contact me at your convenience.

Sincerely yours,


Allin H. Cheetham
Chouteau County Attorney

AHC:slb

cc: Representative Roger DeBruckner
Senator Bob Hockett

LEONARD H. LANGEN
DISTRICT JUDGE
SEVENTEENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA

February 12, 1991

P. O. BOX 1110
GLASGOW, MONT. 59230
TELEPHONE: 228-2221

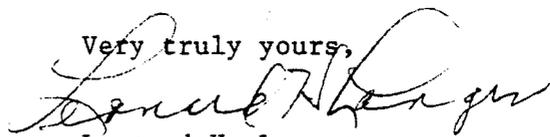
Forensic Treatment Facility
Montana State Hospital
Warm Springs, Montana 59756

Re: LC-1287

Gentlemen:

This is to advise that I support your opposition to the bill described in your letter to me dated February 4, 1991.

Very truly yours,



Leonard H. Langen
District Judge



Dale Cox
District Judge

365-2666

District Court

Seventh Judicial District
Glendive, Montana 59330

February 12, 1991

Forensic Treatment Facility
Montana State Hospital
Warm Springs, Montana 59756

RE: Legislative Proposal LC-1287

Gentlemen,

I am in receipt of your letter of February 4, 1991 regarding the Department of Institutions' Bill LC-1287.

I, too, am opposed to this proposal, and agree with you that it should be defeated.

Very truly yours

A handwritten signature in cursive script that reads "Dale Cox".

DALE COX
District Judge

Exhibit # 13
2/22/91 HB 898



PENNY UNDERDAHL, Clerk of Court
DIANA L. FELTON, Treasurer
CORRINE MERHAR, Assessor
LOUISE LORENZEN, Co. Supt.
JERRY MURRAY, Coroner
TONY LUNDA, Public Administrator
JAMES C. FARRAR, Justice of the Peace

COUNTY OF TOOLE
SHELBY, MONTANA

February 12, 1991

Forensic Treatment Facility
Montana State Hospital
Warm Springs, Montana 59756

Dear Sirs:

I am writing this letter to voice my opposition to the proposed bill requiring local forensic psychiatric examination of defendants. This bill is not workable for a rural county such as ours. We do not have any such professionals in our community and it is extremely difficult if not impossible to have a professional in Great Falls, Montana, examining a defendant. I also believe that under the new bill, it would be possible to exploit the "hired guns" theory of examination - that is, both the State and defendant's counsel will be able to manipulate the system to obtain the psychiatric opinion they want.

I currently have an individual incarcerated, waiting for an evaluation at your facility. I attempted to have the individual evaluated in Great Falls, Montana at County expense and have learned a valuable lesson. The private hospital could not properly deal with the defendant's actions and he had to be returned to our County jail. Further, the bill from the hospital was very alarming.

Please feel free to pass my opinion along to the legislature when it considers this bill.

Sincerely,

Merle Raph
Toole County Attorney

MR/ch

OFFICE OF THE COUNTY ATTORNEY

; Phillips County, Montana

John C. McKeon
County Attorney

155 South First Ave. East
P.O. Box 1279
Malta, Montana 59538
Phone (406) 654-1256

February 14, 1991

Forensic Treatment Facility
Montana State Hospital
Warm Springs, MT 59756

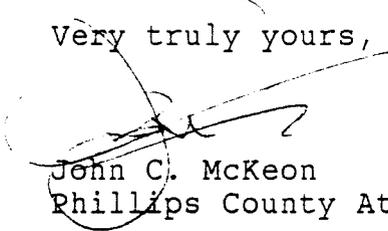
Gentlemen:

I have received your letter dated February 4, 1991, as it pertains to legislation dealing with court ordered mental evaluations. I feel the points given in your letter are well taken. However, I regret to tell you that I have not had any defendants in the last five years that have been court ordered for a psychiatric examination.

I have though had civil proceedings in the nature of mental illness commitments and am concerned about the cost of these proceedings. Phillips County does not have any resident psychiatrist or licensed clinical psychologist. In addition, we do not have jail facilities or other facilities to hold individuals of this nature. As a result, we contract with a hospital in Valley County. During this recent examination, this cost exceeded \$ 3,000.00 for an approximate four to five day stay and consultation with mental health professionals.

I am concerned that similar costs would be incurred should a defendant be required to perform his psychiatric examination in the local community. It is still my opinion that the Department of Institutions through the Warm Springs facility is the best place for these examinations to be conducted.

Very truly yours,


John C. McKeon
Phillips County Attorney

JCM/kk

- DAWSON COUNTY ATTORNEY -
215 SO. KENDRICK • P.O. BOX 1307
GLEN DIVE, MONTANA 59330
(406) 365-2532

Exhibit # 13
2/22/91 HB 898

February 14, 1991

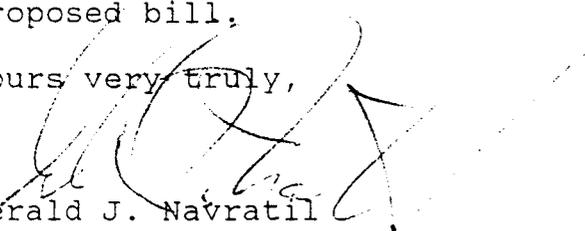
Forensic Treatment Facility
Montana State Hospital
Warm Springs, Montana 59756

To Whom It May Concern:

Please be advised that this office is concerned about the possibility that the District Court may be limited in its ability to commit Defendants to Montana State Hospitals for the purposes of obtaining a mental evaluation. It is our position and belief that your facility is the appropriate facility to conduct this type of evaluation. Also, your personnel are trained and qualified to conduct this type of evaluation. Most smaller communities across the state do not possess the facilities or the personnel necessary to appropriately and professionally do so.

Therefore, -we encourage and express strenuous opposition to this proposed bill.

Yours very truly,


Gerald J. Navratil

cc: John Johnson,
Betty Bruski
Cecil Weeding

Ronald S. Efta

WIBAUX COUNTY ATTORNEY

P. O. BOX 300 WIBAUX COUNTY COURTHOUSE

WIBAUX, MONTANA 59353

PHONE 406-795-2431

February 13, 1991

Dr. Jeffrey K. Ritow, Ph.D.
Psychologist, Forensic Treatment Facility
Montana State Hospital
Warm Springs, MT 59756

RE: Proposed Bill Altering Court Ordered Mental Evaluations

Dear Dr. Ritow:

I am writing in regard to a proposed bill to be introduced in the legislature which will alter court ordered mental evaluations. It is my hope that the bill will be defeated. I support the efforts of the Forensic Treatment Facility Staff in opposing the proposed bill.

A substantial portion of our state, particularly the eastern part, is made up of relatively isolated communities with no facilities or professional personnel available to conduct forensic evaluations. Many county jails are simply not equipped for long care housing of prisoners. They could not cope with providing care and facilities for holding and evaluating prisoners who have mental problems.

Last year we sent a criminal defendant to your unit for evaluation. In my opinion, the evaluation which the court received was extremely accurate. We had had a criminal case dealing with the same defendant several years before. In the disposition of that earlier case, the individual was ordered to receive outpatient counseling at the regional mental health center. He was able to convince the personnel during those counseling sessions that further treatment was not needed. However, the sixty day period of observation and evaluation at Warm Springs, resulted in a much more complete evaluation of the individual's problems. The staff at the unit was able to perceive his attempts at manipulation. The staff was also able to determine that the information he was providing personally was unreliable.

The proposed legislation by the Department of Institutions will have a detrimental effect on the criminal justice system. I believe that the current evaluation process at the forensic unit of the Montana State Hospital is the best option available for obtaining a valid mental evaluation. I believe it is also the

Dr. Jeffrey K. Ritow
February 13, 1991
Page 2

Exhibit # 13
2/22/91 HB 898 -

most cost effective method for both individual counties and the state.

If I can do anything further to support your efforts, please let me know.

Sincerely yours,

A handwritten signature in cursive script that reads "Ronald S. Efta". The signature is written in black ink and is positioned above the typed name.

Ronald S. Efta

RSE:kam

J. ALLEN BRADSHAW

Granite County Attorney

BOX 490

PHILIPSBURG, MONTANA 59858

PHONE 406 - 859 - 3541

February 13, 1991

Bea McCarthy, Representative
Bob Pipinich, Senator
Montana State Legislature
Capitol Building
Helena, Montana 59620

RE: PROPOSED AMENDMENT TO TITLE 46-14-202 MONTANA CODE ANNOTATED
Psychiatric Examination of Defendants in Criminal Cases

Dear Senator Pipinich and Representative McCarthy:

I am opposed to the Legislation, which I understand has been introduced, or will be introduced, attempting to amend Title 45-14-202, M.C.A.

Basically, the Amendment will require that there be a hearing in District Court to prove that there are extraordinary circumstances before the Defendant can be examined at the Montana State Hospital.

I agree with the reasons stated in the Forensic Treatment Facility Position Statement Regarding Court Ordered Evaluations, dated May 25, 1990, a copy of which I attach to this letter for your reference.

In addition, it is totally nonsense to require a Hearing to determine whether there is or isn't a qualified psychiatrist or licensed clinical psychologist available within the County. This is information that is well known to the Court as well as to the attorneys representing the respective parties to the criminal action.

The simplest matter would be a Stipulation presented to the Court by the attorneys confirming the existence of this situation.

To require a hearing is another waste of valuable time and is totally unnecessary.

I would appreciate your response to this letter and would further appreciate your opposition to this Legislation.

Thanking you, I am

Yours very truly,



J. Allen Bradshaw

JAB/bd

cc: Forensic Treatment Facility

Denzil R. Young

P.O. Box 620

Baker, Montana 59313

Fallon County Attorney

Phone: (406) 778-2406

February 13, 1991

Jeff Sturm, M.S.W.
Unit Supervisor
Forensic Treatment Facility
Montana State Hospital
Warm Springs, MT 59756

Re: EXTRAORDINARY CIRCUMSTANCES BILL

Dear Jeff:

Thanks to you and Steve Ryan and Doctors Van Hassel and Ritow for your February 4 letter. I certainly agree with you that the EXTRAORDINARY CIRCUMSTANCES BILL would greatly jeopardize a system of forensic psychological evaluation which has been worked out over a period of years and which works very well in my opinion.

The cost of making arrangements for private psychological evaluations in forensic cases would be prohibitive.

The heck of it is that the people who are sponsoring this bill may very well not utilize out-patient evaluations whenever possible, it is only in EXTRAORDINARY CIRCUMSTANCES for the most part (in my opinion) that we resort to commitment to Warm Springs for purposes of such evaluations.

I suspect that if this bill passes, there would be no less work-load on the forensic unit at Warm Springs than there is now.

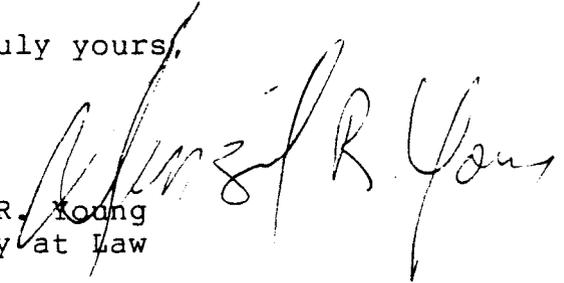
The law requires that people suspected of having mental health problems are required to be detained in the "least restrictive environment" compatible with the mental condition of the defendant/patient/person to be evaluated and so naturally the court and prosecutor as well as the defense attorney are all very sensitive to the commitment procedure for evaluation purposes.

I make use of the local mental health team far more frequently as the Fallon County prosecuting attorney, than I do the Warm Springs psychiatric staff.

Page Two
February 13, 1991

Also I can certainly identify and agree with the criticisms which you gentlemen have so clearly articulated in your February 4 letter. In my opinion it would be terrible to have the EXTRAORDINARY CIRCUMSTANCES bill enacted into law and I will certainly do whatever I can to cooperate with you gentlemen in endeavoring to defeat it.

Very truly yours,


Denzil R. Young
Attorney at Law

DRY/bk

cc: County Attorney's Association

EXHIBIT 14
 DATE 2.22.91
 HB 584

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22-91 BILL NO. HB# 584 NUMBER _____

MOTION: Whalen - OPA

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	10

EXHIBIT 12
DATE 2.22.91
HB 584

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22-91 BILL NO. HB# 584 NUMBER _____

MOTION: Nelson Table bill

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	11	9

EXHIBIT 14
DATE 2-22-91
HB 652

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22-91 BILL NO. HB#652 NUMBER _____

MOTION: Brown motion to Table

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO	/	
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	14	6

EXHIBIT 11
DATE 2-22-91
HB 887

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22 BILL NO. HB 887 NUMBER _____

MOTION: under - OPA

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	8	8

10
DATE 2-22-97
HB 851

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2/22 BILL NO. 4B851 NUMBER _____

MOTION: ~~whalen~~
Ben. Motion to Table

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	10

EXHIBIT 19
DATE 2.22.91
HB 898

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2.22.91 BILL NO. HB 898 NUMBER _____

MOTION: Table Move by Brown

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE	/	
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	14	6

EXHIBIT 20
 DATE 2-22-91
 HB 810

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE HB 810 BILL NO. _____ NUMBER _____

MOTION: Table by Measure

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN		/
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE	/	
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	9

EXHIBIT 21
DATE 2-22-91
HB 473

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-22

BILL NO. HB#473

NUMBER _____

MOTION: _____

Reconsidered by Toole

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	AYE	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	11	9

EXHIBIT 22
 DATE 2-22-91
 HB 473

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2/22 BILL NO. HB# 473 NUMBER _____

MOTION: Toole: PASSED AS AMEND

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	11	9

EXHIBIT 22
 DATE 2-22-91
 HB 426

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2/22 BILL NO. HB 426 NUMBER _____

MOTION: _____
 Rep Lee: Do Pass ~~Pass~~
 AS AMENDED

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	10	10

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

House Judiciary COMMITTEE BILL NO. HB #928
 DATE 2-28-91 SPONSOR(S) Rep. Tode

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dennis Olson Box 1133 2026km	NPRC	X	
HISHELL M. ROBBINS	MOSS-Dev. Corp		X
John Fitzpatrick	Pegasus Gold Co., Inc.		X
Don Allen	Nat. Wood Product Assn		X
Mike Manion	MPC		X
Susan Brooke	Stockgrowers Woodgrow		X
Marvin Barber	A.P.A. Agricultural Prod. Assoc		X
Kim Enkerud	MT Assn. State Grazing Assn.		X
Jim Jensen	MEIC	X	
Kim Wilson	Self	X	
Mary Woodwood	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. #B# 896
 DATE 2/29/91 SPONSOR(S) Rep. Peterson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
BETH BAKER	DEPT OF JUSTICE	896		✓
DUANE LARSON	MT. FIRE CHIEF	896		✓
Ray Blehm	Dept of Justice Fire Marshal	896		✓
RICH LEVANDOWSKI	DEP. FIRE MARSHAL	896		✓
Henry E Lohr.	Mont State Col. Firefighter	896		X
Dan Humni	City of Helena	896		X
Bob Knudson	" " "	896		X

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HOUSE OF REPRESENTATIVES

1062

VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

413#851

DATE

2-22-91

SPONSOR(S)

Rep. Whalen

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim NYS - Helena	Self	851	X	
RILEY JOHNSON	WFIB	851	X	
Kay Foster	Billings Chamber	851	X	
Paul Dall	Tort Claims	851	X	
Stuart Doyette	MT Homekeepers mt manufactured housing Assoc.	851	X	
DAN EDWARDS	OCAL ALLU	851		X
Jeffery M. Kirkland	Montana Credit Unions League	851	✓	
Jacqueline N. Terrell	Am. Insurance Assoc	851	X	
Christ Meade	Jordan Hotel Co	851	X	
Don Allen	MT Wood Products Assn	851	X	
Jim Ambold	FARMER Ins. Group	851	X	
John Sullivan	MT Defense Trial Lawyers	"	X	
Sue Weingartner	MT Solid West Contractors	"	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

2022

Judiciary

COMMITTEE

BILL NO.

851

DATE 2-22-91

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MACK LANGOOR	AFSCME	X	
MIKE MANIM	MPC		X
Michael Sherwood	MTLA	X	
Larry Zarnett	Fidelity Coalition	X	X
Bob Heiser	UFCW	X	
Charles R. Brooks	MT Retail Assoc		X

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB 887
 DATE 2-22-91 SPONSOR(S) Rep. Whalen

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Kay Foster	Billings Chamber	887	X	
John Sullivan	Mont Defense Trial Lawyers		✓	
Jacqueline N. Jewell	Am. Ind. Assoc.	887	X	
Thomas J. Rembolds	FARMERS Ins. Group	887	X	
Oliver Crow	Mt. Municipal Gasco Authority	887	✓	
Mike Manion	MPC		✓	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. 45#898

DATE 2-22-91

SPONSOR(S) Rep. Messmore

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Teresa Reardon	MFT/MFSE	898	X	
Dan Anderson	Dept. Institutions	898		X
John VAN HASSEL, Ph.D.	MONTANA STATE HOSPITAL	898	X	
JEFF STURM	NSH		X	
LINDA STOLL-ANDERSON	MT Assn of Counties	898	✓	
John Shontz	Mental Health Ass. of Mt	898		X
SALLY JOHNSON	DEPT. of INSTITUTIONS	898		X
MIKE McGRATH	MT COUNTY ADMS Assn	898	X	

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