

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 18, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 392, SB 371, SB 321, SB 408
Executive Action: SB 406, SB 344, SB 264, SB 153, SB 321

HEARING ON SB 392

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, said that this bill is one of a series of bills strengthening child support enforcement in the state of Montana. SB 392 provides seek-work orders; the department will be able to require people who owe

child support and evade court duties by purposely remaining unemployed or underemployed to seek employment.

There is also a lien on lottery winnings for child support. While this will not change the system for payment under \$600, for large winners the Montana Lottery will be required to check the listing of those who owe child support.

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Division (CSED), Social Rehabilitation Services, presented written testimony. EXHIBITS 1 and 2

Charmaine Murphy, Director, Montana Lottery, said that Lottery has been working with Ms. Wellbank and her department to come to an agreement, and it supports the bill as amended.

Amy Pfeifer, Montana State Bar, Women's Section, did not testify but was present to answer any questions from the committee.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BERGMAN said if the state can't force these parents to seek work now, how will this be enforced in the future. **Ms. Wellbank** explained there are laws on the books now that should enforce child support payments, but unfortunately, they don't cover every situation. Generally, there are a lot of cases that fall between the cracks because the circumstances are different. **REP. BERGMAN** asked **Ms. Wellbank** whether judges are enforcing payment and, if not, whether this is a problem. **Ms. Wellbank** said it is a big problem, but she doesn't think it starts with the judges. First, CSED is administrative and does a lot of its own enforcement in Montana; but secondly, until there's national recognition of the child support problem, people will continue to treat it lightly.

REP. WHALEN referred to page 8, lines 10-13, and said this Section puts in a criminal offense. **Ms. Pfeifer** said the intent here is that the order of support speaks for itself, and the language that says "no other evidence is required to prove" comes from criminal law statutes from other states. **REP. WHALEN** asked **Ms. Pfeifer** to furnish him with a copy of those laws from other states.

REP. CLARK asked **Ms. Pfeifer** what the intention of Section 1 is and how CSED is going to enforce that section. **Ms. Pfeifer** explained that Section 1 refers to people who have professional degrees and skills and are making quite a bit of money; generally people who have high-paying jobs choose to take something lower so that they can get out of paying child support.

REP. TOOLE referred to page 8, lines 10-13 which states on line 10, "In the absence of a support order..." He asked Ms. Pfeifer if a court order has been placed and she said yes. The State just has to show that the person is a parent. REP. TOOLE asked if the parent will be prosecuted for a potential felony even through there's been no law established. Ms. Pfeifer said it is a moral obligation for a parent to support his or her child; it wouldn't be a felony but probably a first time misdemeanor.

REP. RICE referred to Section 1 and declared the language is vague. He asked John McRae, staff attorney, CSED, if he had any objection to adding due process consideration. Mr. McRae told REP. RICE that this particular statute dovetails with already existing procedures. CSED has administrative law process and administrative rule authority which allows them the contested case proceedings for determining these issues. As to issues of underemployment, CSED handles that all the time on a regular basis, and the modifications, for example, establish new orders. If an individual says he earns \$10,000 now, and in checking his back history CSED finds out he was formerly a geophysicist, an administrative officer ultimately makes that decision which is subject to judicial review by the District Court.

REP. RICE was concerned about the potential liability to the Lottery. He said the Lottery is making a good faith attempt to help with payments, and asked Ms. Murphy if the Lottery's staff has done an analysis. She replied that the Lottery is concerned about the winnings, and that was primarily the reason for putting the amendment in.

REP. VOGEL asked Mr. McRae whether this legislation would allow CSED to force a person to go back into a job, similar to the former job, so that he could retain a higher level of pay. Mr. McRae replied that only if it were determined that the person was underemployed as that term is defined, and that's why REP. RICE suggested having that term clarified. A hearings officer can make that decision based on the input by the parties.

REP. RICE said the bill as it reads on page 2, states that the State Lottery has liability to collect funds. If someone fell through the cracks and the Lottery made no effort to collect from that person, it would seem that the Lottery is liable, and it would have to reimburse the agency or the person who missed out on the child support payment. Mr. McRae and REP. RICE will work together on an amendment to clarify this language.

Closing by Sponsor:

SEN. WATERMAN stressed the hardships parents are causing children by not paying child support. She said she was talking about parents who willingly choose not to support their children, and she believes, as a state, Montana should not accept that. She emphasized that only 16 percent of parents who owe child support

in the state pay it. The legislature is trying to balance the Human Services budget, and they can't balance it until these people pay the state and their families.

HEARING ON SB 371

Opening Statement by Sponsor:

SEN. DAVID RYE, Senate District 47, Billings, introduced SB 371 as an act clarifying and limiting a motor vehicle liability insurer's liability under a policy. This is what is known as "stacking." In this case, it is the frequent case of the customer ripping off the company and ripping off other consumers as well. The insurance policies are based upon actual actuary experience. The 1987 legislature addressed the issue of stacking; unfortunately, the language adopted in the present law still allows stacking to occur. Stacking is a case of someone being insured under a multiple vehicle policy or under several policies, having an accident, and collecting on all the policies. This bill attempts to rectify that situation. The key part of the bill is on page 1, lines 17-19.

Proponents' Testimony:

Ronald Waterman, Farmers Insurance of Montana, said that in 1987, the legislature prohibited stacking of uninsured motorist policies that utilized the phrase "regardless of the number of motor vehicles insured under policy." Some people have more than one policy for more than one vehicle. The language in the 1987 legislation shows only the covered part, and it was the intention to basically say stacking is prohibited.

Jacqueline Lenmark, American Insurance Companies Association, said that the AICA supports SB 371.

Greg Van Horssen, State Farm Insurance, said that State Farm Insurance supports SB 371.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, presented written testimony. EXHIBIT 3 and 3A

Questions From Committee Members and Responses:

REP. VOGEL asked **Ron Ashabraner, State Farm Insurance,** what the difference is between underinsured and uninsured. **Mr. Ashabraner** said that "uninsured motorists" is coverage that protects the insurer from the negligence of a person who is insured. It will cover a person for any bodily injury received in a person's own

vehicle as the result of negligence. It will cover a person if that person is a passenger or driver of any vehicle that is not the insured vehicle. It will also protect a person if he is a pedestrian and he is struck by an uninsured vehicle. Uninsured coverage is to protect a person for the bodily injury he receives. It will pay both medical bills and pain and suffering collected from his own company as a result of negligence.

Underinsured is intentional. It is a coverage paying for the difference between what a person receives from the insurance company of the negligent driver, and the person injured as a result of the negligence of an insured driver. The insured driver, for all intents and purposes, did not have adequate coverage.

REP. GRIMES asked SEN. RYE if he had seen the amendments proposed by the Montana Trial Lawyers Association. SEN. RYE said yes and added it would be permissible for the committee to adopt the amendments.

Closing by Sponsor: None

HEARING ON SB 321

Opening Statement by Sponsor:

SEN. B.F. CHRISTIAENS, Senate District 18, Great Falls, said that SB 321 revises the criteria for medical parole. This bill has been in law for two years; however, because of some ambiguity in the law, it's not working very well. He referred to lines 16-20, page 1, which will make it easier for the Parole Board to parole people who are medically ill and physically incapacitated.

Proponents' Testimony:

Mr. John Thomas, Chairman, Board of Pardons, said the Board of Pardons sees the need to change the wording so that doctors are more willing to give the Board of Pardons a medical report.

Jim Pomroy, Deputy Administrator, Department Corrections and Human Services (DCHS), presented written testimony. EXHIBIT 4

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SMITH asked Mr. Pomroy whether inmates who are on medical leave now are receiving Medicaid and, if not, who is paying their medical costs. Mr. Pomroy said they are not receiving Medicaid because incarcerated individuals are not eligible. DCHS pays

medical costs incurred for anyone who is incarcerated in the state prison. The current budget is \$3.2 million with \$2 million budgeted for 1994-95. Under this bill, it is assumed that two people will leave the prison with a savings of approximately \$15,000 per inmate or \$30,000 per year.

REP. SAYLES asked Mr. Pomroy what the approximate cost is to house an inmate at the Montana State Prison for one year?

Mr. Pomroy said it costs \$15,000. REP. SAYLES then asked why more than two cases can't be released each year. Mr. Pomroy stated that, of the 12 cases that come across his desk each year, he believes that 50 percent of those aren't legitimate.

REP. VOGEL is concerned that the state prison releases too many people too soon. He asked whether, if these people are paroled on medical leave, they are paroled to the end of their sentencing. Mr. Thomas said that when an individual gets to a point where he has returned to his full capacity to commit crimes, then he may return to his normal sentence. If he is incapable of committing a crime, the Board would not return that person to prison.

REP. RUSSELL asked what happens to women inmates who are pregnant and ready to deliver. Mr. Pomroy said the women are sent to the hospital to deliver the baby. At the present time, the Montana State Prison does not have the facilities to allow delivery at the prison. She would deliver at the hospital and put the baby in foster care or with family.

Closing by Sponsor:

SEN. CHRISTIAENS explained why this bill was introduced. Unless a person was in a coma, under current law, there would still be a parole committee. There are people who are in the chronic, last stages of a disease who could be treated better somewhere else and from a different source of funding other than general funds. This bill allows those people who have serious diseases and who are terminally ill to have the Parole Board make that decision.

HEARING ON SB 408

Opening Statement by Sponsor:

SEN. B.F. CHRISTIAENS, Senate District 18, Great Falls, explained that SB 408 amends the Montana Elder and Developmentally Disabled Abuse Prevention Act. In the Senate, Section 1 was fully deleted from the bill. This was at the request of the Montana Trial Lawyers Association.

SB 408 was proposed due to some alleged abuse issues in the Bozeman area, and it was dragged on into the courts for almost two years. As soon as the bill was presented, the case was

miraculously dropped. This bill will allow someone to function at their level of ability, and it redefines the definition of neglect.

Proponents' Testimony:

Joe Roberts, Service Providers, Helena, said that Service Providers is a non-profit organization that provides services to developmentally disabled people through contracts with the state, primarily the department of Social and Rehabilitation Services (SRS). These people live in group homes or independent living situations, and many work through an actual job program. Service Providers did agree to drop Section 1. There are language changes in the bill, but the main thing is the definition of neglect on page 2, line 21, which refers to the extent of legal responsibility. Legal responsibility is more and more a key phrase which means people are moved out of an institutional-type setting and into a group home type setting where the level of care is not as extensive.

Section 2, pages 3 and 4 is new language, and it explains what SB 408 attempts to do. It basically states that in a potentially abusive situation that appears to have been caused by an employee or the provider of services, there may be some kind of screening committee to review the people involved. That committee will include a service provider or somebody from SRS who has experience in developmental disabilities to make a recommendation to the county attorneys as to whether charges would be filed.

Hank Hudson, Director, Department of Family Services, said that he and DFS support SB 408.

Mike Hanshaw, Administrator, Developmental Disabilities Division, SRS, noted his and SRS's support of SB 408.

Wally Melcher, Chief Executive, Helena Industries, Helena, said that Helena Industries, Inc. provides vocational training and case management to the developmentally disabled.

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN FAGG asked **Mr. Roberts** to explain language on page 4, lines 10-13. **Mr. Roberts** said the terminology was based on recommendation. SRS's intention is to allow the prosecutor to decide whether or not to prosecute a case. **CHAIRMAN FAGG** stated if that's the intention, why not take out lines 10-13. **Mr. Roberts** said that SRS doesn't want to be in the position of telling a prosecutor which cases to prosecute. **Mr. Roberts** agreed that it's not appropriate language and will redraft it.

Closing by Sponsor:

SEN. CHRISTIAENS believes this is an important piece of legislation and a better way of attacking alleged abuse. He said that those with disabilities should live in homes with the least restrictive and most independent environment; law enforcement should work quickly when and if severe abuses are occurring.

EXECUTIVE ACTION ON SB 321

Motion/Vote: REP. WHALEN MOVED SB 321 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 406

Motion: REP. BROOKE MOVED SB 406 BE CONCURRED IN.

Motion/Vote: REP. VOGEL moved an amendment to insert on page 6, line 15 after the word "weapon": "During or otherwise in connection with a quarrel, fight, or abusive behavior." Amendment carried unanimously.

Motion: REP. BROWN MOVED SB 406 BE CONCURRED IN AS AMENDED.

Discussion:

REP. WHALEN referred to page 2, subpart (e). He wondered if it is necessary to have that type of provision in the TRO statute relating to dissolution procedure. CHAIRMAN FAGG spoke for Ms. Pfeifer and said she believes that's very important language. It gives the judge the option to order counseling in situations where he or she believes there is a chemical or alcohol problem. CHAIRMAN FAGG'S own feeling is that a judge would not do that unless it was a very extreme situation.

REP. WHALEN said he does not have a problem giving a judge that option, especially in abusive situations. However, this bill is referring to people who are involved in obtaining a divorce and that doesn't relate directly to an abusive situation. REP. BROOKE added this was an option for cases in which a judge believes there is an abusive relationship. Therefore, the judge can order the abuser to have counseling. She added that domestic violence doesn't end with the dissolution of marriage, but usually there's habitual abusive behavior that can be carried on.

In response to REP. BROOKE'S comment, REP. WHALEN said subsection (b) and (c) already contain, within the statute, issuance of a TRO. He said the bill is going beyond that by sending someone to counseling or rehabilitation. REP. WHALEN said that may be appropriate when referring to domestic abuse.

MR. MACMASTER said the domestic abuse statutes are already

amended in this bill on page 6 and 7.

Motion: REP. WHALEN offered an amendment to strike subsection (e), 44-121 subpart (2) on the basis that there's no criteria set forth for including these conditions on a TRO. This type of order can be a condition of a person receiving visitation rights.

Discussion:

REP. TOOLE believes the language must be kept in as an abusive clause. He said he thinks REP. WHALEN'S amendment puts restrictions on parties.

REP. RUSSELL agrees with REP. TOOLE that the bill needs the language. A real critical time is when people are on a temporary order or a temporary injunction.

REP. WHALEN closed on his amendment. Over the years he has seen the courts meddle in private family life, and that's justified, but this bill is giving blanket authority to a court in a dissolution proceeding to order these people for chemical dependency treatment.

Vote: REP. WHALEN'S concept amendment to allow only that counseling to be in visitation situations failed 15-2 with CHAIRMAN FAGG, REPS. BROWN, BIRD, BERGMAN, BROOKE, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE, and WYATT voting no. REP. WINSLOW was absent.

Motion: REP. TOOLE moved a concept amendment to allow the amendment on lines 4-7, page 5, be done without extending temporary orders to be changed by affidavit if the final decree is amended.

Discussion:

CHAIRMAN FAGG referred to line 6, page 5, and said modifications of final decrees are in current statute. CHAIRMAN FAGG assumed this means there will be modification of a final decree, and it's already by affidavit. REP. TOOLE said 40-4-208 requires an affidavit, and that's true for the timeframe before the final decree is issued. If the words "before final decree" are eliminated, that can be meant to extend the affidavit process to anytime including post decree situations.

REP. TOOLE said he has no desire to change the substance of the language. He does believe there's a technical problem with the language and will work on it and discuss it on the House floor.

Vote: REP. TOOLE withdrew his amendment in committee and will discuss it on the House floor.

Vote: SB 406 BE CONCURRED IN AS AMENDED. Motion carried 17-1. REP. TASH voted no.

EXECUTIVE ACTION ON SB 344

Motion: REP. WYATT MOVED SB 344 BE CONCURRED IN.

Discussion:

Mr. MacMaster said SB 344 conflicts with SB 125 which passed the Senate and out of this committee. Both these bills amend 46-18-111. He referred to the last line on page 1 in SB 344, under statute 45-5-502 through 505. Instead of listing statutes 502 through 505, only statutes 503 and 504 should be listed. There's different wording in both bills which means they can't be codified. He suggested amending SB 344 to list all four sections.

Motion/Vote: CHAIRMAN FAGG moved an amendment proposed by Mr. MacMaster to make this bill language the same as SB 125. Amendment carried 18-0.

Mr. MacMaster referred to page 2, lines 15-20, and said this bill deletes subsection 2. SB 125 does not delete that section, but it puts the word "district" in the section on line 15 after the words "if the." SB 125 doesn't delete subsection 2, and it says district court on line 15 instead of court. He suggested putting in a coordination instruction in SB 344 voiding that insertion of the word district in SB 125.

Vote/Motion: CHAIRMAN FAGG moved to amend the coordination instruction. Amendment carried 18-0.

Mr. MacMaster referred to line 20, page 2, SB 124, and suggested that after the words "unless the" insert the word "district." This language is in SB 125, but SB 125 changed district court throughout the section. SB 344 should also say district court. On page 2, line 13, SB 344 says county, state or both. It used to be up to the last session that the Department of Commerce was the entity which channeled this funding. Last session, the legislature amended that law such that, depending on the circumstances, sometimes the county pays it all, and sometimes the state pays it all. The main circumstance is how much general fund money is appropriated each biennium. This bill amends it to say county, state or both, which is exactly what might happen. SB 125 has deleted Department of Commerce and has inserted the words Supreme Court Administrator. Both bills attempt to clean the language up and clarify what actually happened. It isn't really paid by the Supreme Court Administrator; it's paid by either the county or the state or both. Mr. MacMaster recommended putting a coordination instruction in this bill which voids that amendment in SB 125.

Motion/Vote: CHAIRMAN FAGG moved both amendments. The first one is to add District before court on page 2, line 20; and the second one is the coordinating instruction suggested by Mr. MacMaster. Amendments carried 18-0.

Motion/Vote: REP. BROWN MOVED SB 344 BE CONCURRED IN AS AMENDED.
Motion carried 18-0.

EXECUTIVE ACTION ON SB 264

Motion: REP. BROWN MOVED SB 264 BE CONCURRED IN.

Motion: REP. BROWN moved an amendment on page 2 to reinsert lines 20, 21, and 22 on page 2.

Discussion:

This is legislation REP. BROWN carried in the 1991 session for the Sheriffs and Peace Officers Association. They requested this language be reinserted after he spoke with them so that the sheriffs don't have to record everything when someone comes in and out of the local jail. This removes "jail"; but that language means that if a major felon leaves prison or a mental institution or wherever else, they still have to try to make those calls.

Vote: REP. BROWN'S amendment to reinsert lines 20, 21, and 22 on page 2 carried 17-1 with REP. TOOLE voting no.

Vote: SB 264 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 153

Motion: REP. VOGEL MOVED SB 153 BE CONCURRED IN.

Motion: REP. RICE offered an amendment to strike the Senate amendments and increase the fines as introduced in the bill originally.

Discussion:

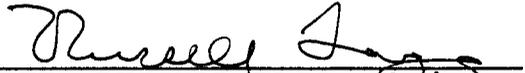
REP. VOGEL said that currently those fines haven't been working because an insurance policy is many times more costly than what the fine will be. This bill is trying to make the fine high enough so that it's beneficial for them to buy a \$600 or \$700 a year insurance policy instead of two or three fines.

CHAIRMAN FAGG asked REP. RICE if he would consider a friendly amendment, which is: Fines are not to exceed \$500 on the first offense, \$750 for the second offense, and \$1,000 for the third offense. This would give judges discretion. REP. RICE said he'd rather not have numbers that big in the bill.

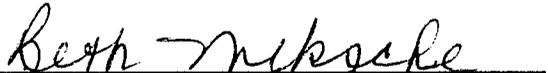
EXECUTIVE ACTION ON SB 153 CONTINUED AND COMPLETED IN MARCH 25 MINUTES.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHÉ, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE 3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

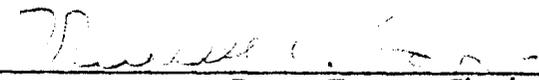
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HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 406 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Vogel

1. Page 6, line 15.

Following: "weapon"

Insert: "during or in connection with a quarrel, fight, or abusive behavior"

-END-

Committee Vote:
Yes 17, No 1.

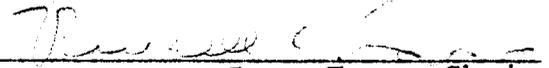
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HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 264 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Brown

1. Page 2, line 23.

Following: line 22

Insert: "(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;"

Renumber: subsequent subsections

-END-

Committee Vote:
Yes 1, No 0.

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 344 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Brown

1. Page 1, line 25.

Strike: "THROUGH"

Insert: ", 45-5-503, 45-5-504,"

2. Page 2, lines 20 and 25.

Following: "the"

Insert: "district"

3. Page 2, line 25.

Following: "The"

Insert: "district"

4. Page 3, line 3.

Following: line 2

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 125 is passed and approved and if it amends 46-18-111 by:

(1) inserting in subsection (1) the words "against a victim", then the word "against" is changed to "involved";

(2) substituting in subsection (1) the words "supreme court administrator" for the words "department of commerce", then the words "supreme court administrator" are changed to "county or the state, or both,";

(3) inserting the word "district" before the word "court" near the beginning of the first sentence of subsection (2), then the word "district" is stricken."

Renumber: subsequent section

-END-

Committee Vote:
Yes , No .

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Bth

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 321 (third reading copy -- blue) be concurred in .

Signed: *Russ Fagg*
Russ Fagg, Chair

Carried by: Rep. L. Smith

Committee Vote:
Yes L, No ~~X~~.

CHILD SUPPORT ENFORCEMENT DIVISION OF SRS
Mary Ann Wellbank, Administrator

The Child Support Enforcement Division urges "DO PASS" on the following legislation, which will significantly improve child support enforcement in Montana and help us fill the gaps in services we provide to Montana children who depend upon us.

BILLS:

HB 228 Toole
HB 335 Toole (On behalf of SRS)
HB 482 Bohlinger

SB 150 Bartlett (On behalf of SRS)
SB 217 Nathe (Grosfield) (On behalf of SRS)
SB 392 Waterman

SUMMARY:

HB 228 - Uniform Interstate Family Support Act - resolves numerous interstate jurisdictional problems- may interstate cases have multiple child support orders issued by different states at different times. The bill specifies which order is enforceable.

HB 335 - CSED "Omnibus Bill". Has many necessary clean-up and efficiency provisions. See attached summary. Codification instruction coordinates amendment of 40-5-118 with HB 228.

HB 482 - 3 of the 4 main provisions are recommended by U.S. Interstate Commission on Child Support in its report to Congress - employer reporting of new hires, hospital paternity establishment, suspension of state issued licenses. Identical process for license suspension as SB 217, although covers more state issued licenses. Bill also improves Civil Contempt and makes it a more useful and effective tool.

SB 150 - Necessary legislation to achieve conformity with fed regs.

SB 217 - CSED bill to suspend professional and occupational licenses for delinquencies. Has built in due process and other safeguards which opportunity for hearing, repayment agreement, or "stay" of suspension in cases where suspension would cause financial hardship. Should be a very effective tool for enforcement of obligations of self-employed professionals who can afford to pay. Purpose is not to hurt person's ability to earn income, but to motivate repayment. HB 482 has identical license suspension process, although HB 482 encompasses all state licenses. If HB 482 is enacted, SB 217 becomes void.

SB 392 - Seek work requirements, lottery lien and most important, enhances criminal non-support to make laws more effective

HB 335 "AT A GLANCE"

DO PASS

An Act To Improve Efficiency and Effectiveness of Child Support Enforcement

1. **Providing for Additional Fees, Statutorily Appropriating Fees & Penalties**
Section 14: Expands CSED ability to develop regulations to charge fees to both obligors, and obligees, when appropriate or when neither party is "at fault"
2. **Requiring Notice to CSED when Notice Required to Department**
Sections 11 and 25: Requires legal notices to be served on CSED rather than Department in general. Assures that CSED receives notices promptly.
3. **Defining Support Order to Include Tribal Courts**
Section 10: Clarifies ambiguity in law to allow CSED to continue to enforce orders of tribal courts in cases where CSED has jurisdiction. Does not expand jurisdiction
4. **Extending Services to Children Over Age 18**
Section 10: Redefines child to include 19 year olds, plus mentally or physically handicapped children over 18. Many support orders go beyond the age of 18 for students or handicapped children, yet the division cannot enforce them.
5. **Requiring Private Businesses to Share Information**
Section 12: Requires businesses to provide information to assist the CSED in the location of an obligor or the obligor's assets.
6. **Allowing Child Support to Follow Child**
Sections 8 & 24: Physical custody of some children frequently changes from a mother to a grandparent to an aunt. Allows support to follow child when physical custody changes without need for modification of order.
7. **Enhancing Existing Support Liens on Real and Personal Property**
Sections 19, 20 & 27: Creates centralized record of liens in CSED, but amended language neuters this.
8. **Providing Administrative Contempt Authority**
Section 16: Gives the CSED authority to enforce its own orders by providing for fines of up to \$500 for obligors who ignore orders to pay support.
9. **Consolidating and Standardizing Statutes of Limitations**
Sections 2 - 7, & 21: Current statutes of limitations vary and provide incentive for obligor to evade payment until limitation is reached. Will standardize statutes to uniform period of 10 years after support order is terminated
10. **Distribute Income Withholding Payments between Multiple Obligees**
Section 22: Allows the division to develop rules to distribute collections from an obligor's income to all the obligor's children of multiple obligees
11. **Eliminating Obsolete Provisions**
Section 9: Housekeeping. Part of section 9 amending 40-5-118, MCA becomes void if HB 228 (Uniform Interstate Family Support Act) passes.
12. **Correcting Inconsistent Provisions**
Section 18: Conforms two contradictory statutes with intent of law
13. **Conforming Income Withholding Periods to Obligor Pay Periods**
Sections 8 & 23: Makes it easier for employers to comply with withholding requirements by permitting weekly or bi-weekly withholding of monthly ordered amounts.
14. **Payment of Debts due the Department**
Section 28: Requires written agreement of the department before a debt can be considered paid in full. Protects department. Simple (accidental) endorsement on back of check won't suffice as agreement.

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Facts about the Division to Support Budget and Legislation

- Montana's Child Support Enforcement program is an important cornerstone of welfare reform. Shifting the burden for supporting dependent children away from taxpayers and back to financially able parents sends a clear and responsible message as well as raising needed revenue for this department and the state. The program permits repayment of monies spent on AFDC benefits, and helps keep borderline non-AFDC families off welfare. Once child support income becomes regular, many families are able to make the transition from welfare dependency to self-sufficiency.
- The division generates sufficient income through collections and federal matching funds to fully support its operations. For the most part, division funding is 66% federal; and 34% state special revenue. The division currently handles 38,000 cases, and cases are growing at a rate of 500 new cases per month. Caseload is projected to reach 53,356 cases within the next two and a half years. Greater efficiencies and legislative enhancements are needed to address the growing demand for services.
- The program receives no general fund dollars. In fact, last year the program raised and returned \$800,000 to the general fund. Better services and more collections help offset rising general fund costs of welfare programs, and will allow more children to be supported by their parents.
- Last year, the CSED collected nearly \$20 million from parents responsible for paying child support, representing a \$12 million increase in collections since 1989. Of this, \$7.3 million was returned to the state and federal governments to help offset AFDC payments made to families, and \$12.1 million was forwarded to custodial parents who do not receive AFDC. Currently, \$100 million in past due support is owed in Montana!
- In addition to its collections, the CSED actually saves Montana taxpayers money. National statistics show that for every \$5.00 of child support collected for families who aren't on AFDC, \$1.00 in public welfare benefits is saved. For last year, this cost avoidance translated to a savings of \$2.42 million for Montana citizens. Additionally, the division achieved savings of \$1,000,000 in Medicaid costs by identifying private insurers responsible for childrens' medical coverage. The division also collects parental contributions on behalf of the Department of Family Services
- Out-of-wedlock births continue to grow. Currently 25% of all Montana births are out-of wedlock.

EXHIBIT 2
DATE 3-18-92
SB 392

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, Ph.D
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

PO BOX 5955
HELENA, MONTANA 59604-5955

March 22, 1993

To: Sen. Mignon Waterman and members of the House Judiciary Committee

From: Mary Ann Wellbank, Administrator *[Handwritten signature]*

Re: SB 392 - Increasing the State's ability to enforce support obligations

During the House Judiciary Committee hearing on SB 392, Rep. Whalen requested copies of other state's statutes from which the language of subsections (4) & (5) of Section 4 of the bill were taken. The language at issue provides that a support order is prima facie evidence of a person's legal obligation to provide support, that in the absence of a support order no other evidence is required to prove a legal obligation to provide support than that which is necessary in a civil action, and that payment records are prima facie evidence of the amount of support paid and the arrearages accrued.

The language the CSED relied on when drafting these sections comes from four states: Illinois, Nevada, Wisconsin and Wyoming.

Illinois Rev. Stat. ch. 40, par. 1109 provides:

@6. No other or greater evidence shall be required to provide the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

Nevada Rev. Stat. Ann. @201.070 provides:

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.

Wisconsin Stat. §948.22 provides:

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild, or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support equal to at least the amount set forth under s. 49.19 (11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

Wyoming Stat. §20-3-104 provides:

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. . . .

ILL. REV. STAT. CH. 40, PAR. 1109 (1992) printed in FULL format.

ILLINOIS REVISED STATUTES

*** THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT (1991 SESSIONS) ***

CHAPTER 40. DOMESTIC RELATIONS
NON-SUPPORT OF SPOUSE AND CHILDREN ACT

Ill. Rev. Stat. ch. 40, par. 1109 (1992)

[Effective 1/1/93, Cite as: 750 ILCS 15/6]

1109. Evidence

@ 6. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

NEV. REV. STAT. ANN. @ 201.070 (1991) printed in FULL format.

NEVADA REVISED STATUTES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 1991 SUPPLEMENT ***
*** (SIXTY-SIXTH (1991) SESSION) ***

TITLE 15. CRIMES AND PUNISHMENTS
CHAPTER 201. CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS
DESERTION AND NONSUPPORT OF SPOUSE AND CHILDREN

Nev. Rev. Stat.. Ann. @ 201.070 (1991)

@ 201.070. Evidence; husband and wife competent witnesses

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.

2. In no prosecution under NRS 201.020 to 201.080, inclusive, does any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife are competent witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of any child or children; but neither may be compelled to give evidence incriminating himself or herself.

3. Proof of the desertion of a spouse, child or children, in destitute or necessitous circumstances, or of neglect or refusal to provide for the support and maintenance of the spouse, child or children, is prima facie evidence that such desertion, neglect or refusal is willful.

HISTORY: 1923, p. 288; CL 1929, @ 10521; 1985, p. 64.

NOTES:

CROSS REFERENCES. --As to husband-wife privilege, see NRS 49.295.

CASE NOTES

EVIDENCE TO SUSTAIN A CONVICTION. --In order to sustain a conviction under NRS 201.020, the state must prove: (1) parentage under NRS 201.025; (2) that defendant owed a legal obligation to pay child support (e.g., through a court order) under this section; (3) that defendant knew, or should have known, of the obligation; and (4) that defendant willfully failed to support his children. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

ESTABLISHMENT OF WILLFULNESS. --The state establishes willfulness by showing that a parent: (1) had the ability to generate income; (2) earned wages during the time period in question; and (3) failed to make the child support payments. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

Once the state established the element of willfulness, the defendant was free to demonstrate by way of a defense, that his nonsupport was lawfully excused or justified. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

WIS. STAT. @ 948.22 (1989-1990) printed in FULL format.

WISCONSIN STATUTES 1989 - 1990

*** THIS DOCUMENT IS CURRENT THROUGH THE 1989 - 1990 LEGISLATIVE SESSIONS ***

CRIMINAL CODE
CHAPTER 948 CRIMES AGAINST CHILDREN

Wis. Stat. @ 948.22 (1989-1990)

948.22 Failure to support

(1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90(1)(a) 2 and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of Class E felony.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount set forth under s. 49.19(11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

Wis. Stat. @ 948.22 (1989-1990)

(6) Under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. If no court order described under subd. 1 exists, enter such an order and do so, for orders for child or spousal support, after considering s. 767.25.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

HISTORY: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212.

NOTES:

Under 940.27(2), 1987 Stats., [now 948.22(2)] state must prove that defendant had obligation to provide support and failed to do so for 120 days; state need not prove defendant was required to pay specific amount. Sub. (6) does not unconstitutionally shift burden of proof. State v. Duprey, 149 W (2d) 655, 439 NW (2d) 837 (Ct. App. 1989).

WYO. STAT. @ 20-3-104 (1992) printed in FULL format.

WYOMING STATUTES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT ***
*** (1992 REGULAR SESSION) ***

TITLE 20. DOMESTIC RELATIONS
CHAPTER 3. DESERTION OF WIFE OR CHILDREN

Wyo. Stat. @ 20-3-104 (1992)

@ 20-3-104. Evidence required to prove marriage and parenthood; husband and wife as competent witnesses; disclosure of confidential communications; desertion, neglect, or refusal to support, as prima facie evidence of willfulness

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. In a prosecution under this act [@@ 20-3-101 to 20-3-104] no statute or rule of law prohibiting the disclosure of confidential communications between husband and wife shall apply. Both husband and wife are competent witnesses to testify against each other to any relevant matters including the fact of marriage and the parentage of the child or children but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the wife, child or children in destitute or necessitous circumstances, or of the neglect or refusal to provide for the support and maintenance of the wife, child or children is prima facie evidence that the desertion, neglect or refusal is willful.

HISTORY: Laws 1915, ch. 72, @ 6; C.S. 1920, @ 5036; R.S. 1931, @ 32-808; C.S. 1945, @ 9-808; W.S. 1957, @ 20-76; Laws 1977, ch. 152, @ 1; Rev. W.S. 1957, @ 20-3-104.

NOTES:

CROSS REFERENCES. --As to husband and wife as witnesses in civil and criminal cases generally, see @@ 1-12-101 to 1-12-104.

REPEALING CLAUSES. --Section 7, ch. 72, Laws 1915, repealed all laws and parts of laws in conflict therewith.

LAW REVIEWS. --See note, "Spouse's Testimony in Criminal Cases," 19 Wyo. L.J. 35 (1964).

For discussion of husband-wife testimonial privilege and the Federal Rules of Evidence, see XII Land & Water L. Rev. 601 (1977).

USER NOTE: For more generally applicable notes, see notes under the first section of this division, subarticle, article, chapter or title.

Montana Trial Lawyers ASSOCIATION

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Director Emeritus
- Monte D. Beck
- Thomas J. Beers
- Michael D. Cok
- Michael W. Cotter
- Karl J. Englund
- Robert S. Fain, Jr.
- Victor R. Halverson, Jr.
- Gene R. Jarussi
- Peter M. Meloy
- John M. Morrison
- Gregory S. Munro
- David R. Paoli
- Paul M. Warren
- Michael E. Wheat

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
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March 17, 1993

Officers:

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President
- Monte D. Beck
President-Elect
- Gregory S. Munro
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- Michael E. Wheat
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- William A. Rossbach
Governor
- Paul M. Warren
Governor

Rep. Russell Fagg, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59624

RE: SB 371

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to SB 371, which would limit a motor vehicle liability insurer's liability under a policy. MTLA opposes SB 371 for several reasons:

1. Montana law currently allows an insurance company to prohibit "stacking" of uninsured-motorist coverages when a single policy covers multiple vehicles. An insurance company can legally prohibit "stacking" simply by issuing a single policy to cover multiple vehicles. Many Montana insurance companies do precisely that. Therefore, no statutory amendment is necessary.
2. Montana law currently allows an insurance company to prohibit duplicate payments for the same elements of loss, even when it issues multiple policies to cover multiple vehicles. Thus, a Montana motorist cannot "stack" different policies to recover for more losses than he or she suffers.
3. Montana motorists who purchase separate policies of uninsured-motorist coverage pay separate premiums for those policies and reasonably expect separate coverages in return. Uninsured-motorist policies, even when issued as part of a liability policy, protect Montana motorists regardless of whether they are negligent and regardless of whether they occupy a vehicle named in the policy. Thus, a Montana motorist who purchases a second or third uninsured-motorist policy to cover a second or third vehicle gains no additional personal coverage. Such separate policies only extend coverage to occupants of those vehicles who would not otherwise be insured.

4. Insurance companies which sell separate policies of uninsured-motorist coverage to the same Montana motorist typically collect full premiums for each coverage and do not adjust those premiums to reflect the number of policies covering the same individual. Yet since 1979 the Montana Supreme Court has held, "There are no added risks to justify the full premium paid on the second and third vehicles." (*Chaffee v. USF&G*, 591 P.2d 1102, 1104) In other words, an insurance company which sells separate policies of uninsured-motorist coverage to the same Montana motorist will retain windfall profits if it only pays the maximum benefits under a single policy.

5. The distinction between single and multiple insurance policies did not arise after current law was enacted. The Montana Legislature specifically intended to distinguish between single and multiple insurance policies when it enacted Sec. 33-23-203, MCA, which SB 371 now seeks to amend. In doing so, this Legislature recognized that Montana motorists who purchase separate uninsured-motorist policies reasonably expect separate coverages from those policies.

MTLA urges this Committee to reject SB 371. However, if this Committee approves SB 371, MTLA requests the accompanying amendment for the following reasons:

1. Distinguishing between single and multiple policies is one thing. Adding underinsured-motorist coverage to a statute that currently addresses only uninsured-motorist coverage is a quite different thing.

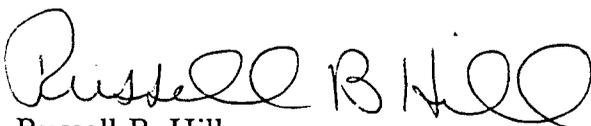
2. The same public policy that governs uninsured-motorist coverage governs underinsured-motorist coverage: innocent victims of motor vehicle collisions should be protected from irresponsible drivers who cannot pay for the harm they cause.

3. Since Montana imposes relatively low minimum-liability limits on motorists (\$25,000 per person/\$50,000 per accident), it also requires insurance companies to offer uninsured-motorist coverage to their policyholders, Sec. 33-23-201(1), MCA. Those policyholders can reject such coverage, Sec. 33-23-201(2), MCA.

4. If SB 371 treats uninsured- and underinsured-motorist coverage the same for purposes of "stacking," it should also treat them the same for purposes of notice to consumers. The accompanying amendment requested by MTLA does that and nothing else by simply adding to the bill the language already contained in Sec. 33-23-201(2), MCA, regarding uninsured-motorist coverage.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,



Russell B. Hill
Executive Director

EXHIBIT 3A
DATE 3-18-93
SB 321

Amendments to Senate Bill 371
Third Reading Bill (Blue Copy)

Requested by Montana Trial Lawyers Association
March 17, 1993

Prepared by Russell B. Hill
Montana Trial Lawyers Association

1. Page 2, line 13.

Following: "loss."

Insert: "(3) The named insured shall have the right to reject both uninsured and underinsured motorist coverage pursuant to Section 33-23-201, MCA."

Cross-References

Nonadmissibility of liability insurance, Rule 411, M.R.Ev. (see Title 26, ch. 10).

33-23-103. Casualty insurance policy — conformity with state statutes. A casualty insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 23, Ch. 798, L. 1991.

Part 2**Motor Vehicle Liability****Part Cross-References**

Attorney's fees — motor vehicle claim, 25-10-303.

Collateral source reductions in actions arising from bodily injury or death — subrogation rights, 27-1-308.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Discrimination prohibited — nongender insurance law, 49-2-309.

Motor vehicle — transfer of ownership by insurer, 61-3-205.

Motor vehicle liability policy defined — minimum limits, 61-6-103.

Motor vehicle registration — liability insurance required, Title 61, ch. 6, part 3.

Family member exclusion, 61-6-301.

Motor club service companies — insurance and services, Title 61, ch. 12, part 3.

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) No motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom, caused by an accident arising out of the operation or use of such vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, or the use of which is not insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured

had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975; R.C.M. 1947, 40-4-403; amd. Sec. 7, Ch. 139, L. 1987; amd. Sec. 40, Ch. 83, L. 1989.

Cross-References
Claims by insureds or third parties against insolvent insurers, 33-2-1367.

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value. Each motor vehicle insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle must be based on a "book" value rather than on the actual replacement value is void as to such provision, and reimbursement must be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969; R.C.M. 1947, 40-4404; amd. Sec. 8, Ch. 139, L. 1987.

33-23-203. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, must be determined as follows, regardless of the number of motor vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident is the limit specified for the motor vehicle involved in the accident;

(b) if no motor vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident is the highest limit of coverage specified for any one motor vehicle insured under the policy; and

(c) the limits of coverage specified for each motor vehicle insured under the policy may not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent duplicate payments for the same element of loss.

History: En. Sec. 1, Ch. 212, L. 1981; amd. Sec. 9, Ch. 139, L. 1987.

33-23-204. Definitions. As used in this part, the following definitions apply:

(1) "Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state. The term does not include a bicycle as defined in 61-1-123.

(2) "Motor vehicle liability policy" means any policy of automobile or motor vehicle insurance against liability now or hereafter required under Title 61, chapter 6, parts 1 and 3.

History: En. Sec. 6, Ch. 139, L. 1987.

EXHIBIT 4
DATE 3-18-93
SB 321

MONTANA STATE PRISON

MEMORANDUM:

TO: JACK McCORMICK
WARDEN

FROM: W. O. AUTERY, JR., M.D. *W.O. Autery, Jr. M.D.*

SUBJECT: Medical Parole Considerations

DATE: May 20, 1992

If we adhere to the severity of the medical condition as defined under Policy (A) "incapable of presenting a danger to society;" it would seem the utility and therefore the budgetary benefit to MSP may be rather small. (A proven nefarious person such as we have here may be "capable" of presenting a danger as long as he can "twitch a trigger finger.")

It probably was written into the law this way to be quite restrictive. but if "incapable of presenting" were changed to a scientifically more acceptable phrase such as "highly unlikely to present," there would be more room for subjective consideration and we would therefore be in a more advantageous utilitarian position.

The other obvious snag on utilization would be the small percentage of inmates with financial resources to cover the enormous outlay necessary for care that becomes a burden to even the state.

However, any amount of incremental change will be a definite benefit and I will help to facilitate the process in any suitable case.

c.c. James M. Gamble, Adm. Corr. Div. Redistributed 11/23/92
Jack McCormick, Warden by request
Mike Mahoney, AW (T)

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES
SWAN RIVER FOREST CAMP



STAN STEPHENS, GOVERNOR

BOX 99

STATE OF MONTANA

(406) 754-2292
FAX (406) 784-2293

SWAN LAKE, MONTANA 59911-0000

TO: Mike Ferriter, Bureau Chief
Community Corrections

FROM: Letitia Miller, R.N. *Letitia Miller*

DATE: November 18, 1992

SUBJECT: Medical Parole

It is my opinion that it would be impossible to determine in a medical diagnosis whether a person would be a danger to society as stated in subsection (a) of the medical parole statute (46-23-210). This requirement should be deleted, in my opinion.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary
DATE March 18, 1993

COMMITTEE

BILL NO.

SB 392

SPONSOR(S)

M. Waterman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RJ HERTZEL Helena 3000 VILLARD #1074 59601	self	✓	
Kate Cholewa	MT Novem Lobby	X	
M A Wellbank	CSED	✓	
John McRae	CSED	✓	
Amy Pfeifer	CSED	✓	
Charmaine Murphy	LOTTERY	✓	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 371
DATE March 18, 1993 SPONSOR(S) D. Rye
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Wideman	Farmers Ins.	✓	
Randy Dix	ATLA		✓
Tom Ashalter	State Farm Ins	✓	
Marjuline Benmark	Am. Ins. Assoc.	✓	
Greg Van Horssen	Natl. Assn. Ind. Insurers	✓	
Greg Van Horssen	State Farm Ins	✓	
Russell B Hill	Mont Trial Lawyers		✓

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