

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on March 19, 1991, at 9:14 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)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Jim Rice (R)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)  
Diana Wyatt (D)

**Members Excused:** Rep. Russell and Rep. Johnson

**Staff Present:** John MacMaster, Leg. Council Staff Attorney  
Jeanne Domme, Committee Secretary

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

**EXECUTIVE ACTION ON SB 308**

**Motion: REP. WHALEN MOVED SB 308 BE RECONSIDERED.**

**Discussion: REP. MEASURE** stated that SB 308 is the simple bill to remove the words "advanced age" as a criteria for an incapacity proceeding. He stated that he was concerned about removed advanced age not because it is a status that older people enjoy, but because how it fits into the statutory scheme. He stated that he talked with the law school and found that the code

was instituted in 1969 and reviewed and revised in 1987 but the definition of incapacity was not changed at that time. He asked the law school what removal of "advanced age" would do and he got the response that age is not a function change it is a cosmetic change, but is used in the court as a criteria. He said a new set of codes would be coming out in two or three years at the law school and that is when it should be changed. Rep. Measure stated that he would like to see the bill tabled but he would leave it up to the committee.

Vote: Motion carried.

Discussion:

REP. JOHNSON asked REP. MEASURE if the committee leaves the bill as is and takes "advanced age" completely out, what does it do to make it effective immediately and the change you suggested Professor Eck wanted to make? REP. MEASURE stated that it doesn't do anything with the change. He stated that if the committee takes "advanced age" out of the bill, it leaves the state limits one less tool that has been used in measuring incapacity.

CHAIRMAN STRIZICH stated that removing "advanced age" detracts from the bill and leaves it very open.

REP. NELSON stated that a person can be incapacitated at an "advanced age" and would be a more comfortable phrase to say that grandma is incapacitated because of old age rather than saying she had a mental illness. She felt she didn't find it as derogatory as some of the other members of the committee.

REP. STICKNEY stated that "advanced age" is a clean-up type of wording that would not show discrimination.

Motion/Vote: REP. JOHNSON MOVED HB 903 DO PASS. Motion carried 16 to 4 with Rep's: Wyatt, Whalen, Nelson and Measure voting no.

EXECUTIVE ACTION ON SB 51

Motion: REP. GOULD MOVED SB 51 DO BE CONCURRED IN.

Discussion:

REP. WHALEN state that he had some concerns about being in a position to address the bill because of its size. He stated that he consulted with some Criminal Defense Lawyers and one stated that it was an excellent bill and there were many good things in it, except for section 138. REP. WHALEN stated that he had John MacMaster draft an amendment for the committee.

Motion: REP. WHALEN moved to amend SB 51.

**CHAIRMAN STRIZICH** stated that before the committee goes any further he would like the committee to deal with issue raised by Mr. MacMaster on 618 and that the committee can choose to do nothing with this bill and, if so, the amendments that the committee passed on 618 will be placed into the law. He stated if the committee prefers what is in SB 51 then there need to be a coordination amendment.

**Motion:** REP. MEASURE MADE A SUBSTITUTE MOTION TO MOVE THE COORDINATION OF SB 51.

Discussion:

**John MacMaster** stated that HB 618 and SB 51 both amend 46-17-311. Each bill clarifies that section. He stated that the committee can adopt either version as far as the clarification because they both clarify the same thing. He stated that the committee cannot adopt both of them. In addition, HB 618 has some provisions saying "on appeal from a Justice Court, City Court or District court, the JP or City Court may be compelled by the District Court to transmit the record and maybe fined for neglect of not transmitting the records. He stated that the last provision is in HB 618 but not SB 51. "If the committee likes that provision then you should leave HB 618 alone and say SB 51 amendment section void and that would allow the clarification to the section in HB 618. He stated that if the committee doesn't like the provision about the judges, then the committee would say, in a coordination instruction in SB 51, that HB 618 is void.

**REP. MEASURE** asked **John MacMaster** what the past provisions were?

**John MacMaster** stated that "within 30 days after the appeal is filed, the entire record of the Justice or City Court proceedings must be transferred to the District Court. It is the duty of the defendant to prefect the appeal."

**REP. MEASURE** stated that there is an incentive either way for the Judges to do what they are supposed to do.

**REP. BOHARSKI** asked what happens when the records are transferred to another court for an appeal? Who is responsible for that?

**John MacMaster** stated that under the section that is being talked about is an appeal from the JP Court or City Court to the District Court and it is the lower courts responsibility to transfer the files.

Vote: Motion carried unanimously.

Discussion:

**REP. WHALEN** asked **John MacMaster** to explain his draft amendment to the committee.

**John MacMaster** stated that the amendment is on page 120 of SB 51 and the section begins on page 118, line 14. He stated that the bill is amending a section of the code that states which things the defendant in a criminal case has to disclose to the prosecution. The bill states "within 10 days after receiving the recorded examination". He stated that this section talks about a psychiatric examine the defendant has on himself, if the defendant chooses to have the examine, after he gets the report from whoever did it, the defendant has 10 days to provide the prosecutor with written notice of his intent to introduce at the trial of the defense that due to a mental disease or defect the defendant did not have the particular state of mind that is essential on the defense. **John MacMaster** stated that the defendant may introduce the evidence of the examine in court or he may not. "Rep. Whalen's amendment in on page 120, lines 9 - 12, the underlined language be deleted." **Mr. MacMaster** stated that the underlined language says within 10 days after the defendant receives from his psychiatrist his examine report, he has to give notice that he might use the examine before the trial and he has to include with the notice all written reports and statements which were made during the examine, even though he may not use those at the trial. He stated that the effect of taking the underlined language out is that the prosecutor would not get these reports and examine results unless and until the defendant brings them up at trial and introduces it as evidence.

**REP. WHALEN** stated that the amendment makes a lot of sense because it is privileged communication between the client and psychiatrist and there are some 5th consideration amendment as far as incriminating yourself until such time as the introduction of the evidence itself.

**REP. BECKER** asked if the amendment means that the defendant would still have to tell them you are going to examine reports in court?

**REP. WHALEN** stated that it will be required for the defense to tell the prosecution what the defense is going to do at the time of the trial.

Vote: Motion carried.

Discussion:

**REP. WHALEN** stated that there were some amendments offered by Michael Sherwood, Montana Trial Lawyers Association, and the majority of them are clean-up language.

Motion: **REP. WHALEN** moved to amend SB 51 with the amendments provided by Michael Sherwood. **EXHIBIT I**

Discussion:

John MacMaster stated that he talked with Mr. Sherwood, Greg Petesh, and Rep. Van Valkenburg about the proposed amendments and that they all agree that they mostly clarify things. He stated that amendments 8 and 10 allow discovery in lower courts.

Vote: Motion carried.

Discussion:

CHAIRMAN BILL STRIZICH asked John MacMaster to clarify something on the last amendment.

John MacMaster stated that on page 126, line 17, in the section where a person can compel a person's testimony if you give them immunity. "If a person is required to give testimony or produce evidence connected with this section, then any investigation or proceeding compelled testimony for evidence may not be used against the witness in any criminal procedure." He stated that amendment 9 of the Sherwood amendments put back in the language that is struck on lines 20 and 21 and the effect is if a person is forced to testify, you cannot in later criminal proceedings, use his compelled testimony or evidence or can he use any information directly or indirectly to arrive at compelled testimony of evidence.

Motion: REP. WHALEN MOVED TO RECONSIDER AMENDMENT NUMBER 9 OF THE SHERWOOD AMENDMENTS.

Discussion:

REP. WHALEN stated that the committee should vote separately on this amendment.

Vote: Motion failed.

Discussion:

REP. WHALEN stated that he had an amendment that he would like John MacMaster to explain to the committee.

John MacMaster stated that on page 135, line 7, in the section that says "whether psychiatric report of the defendant for an examine request by the defense or the prosecution, the report of the examine must include the following", there is a long list of things the examine must include. He stated that the night circuit court says that with respect to an examine the defendant requests so that it is the defendants examine and the defendants report. He stated that the committee cannot constitutionally force the defendant to have himself examined on all of these things and include them into the report and that is what this section of the bill does. "I suggest that on line 7, page 135, strike "must" and insert "may"."

Motion/Vote: REP. WHALEN moved to amend SB 51 with the amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that there are two sections to title 46 that are repealed by SB 331 and amended by SB 51. SB 331 is the County Coroner's bill that generally revises the County Coroner's Law. He stated that he looked at the 2 sections of SB 331 that repeal and the amendments made in SB 51 and he concluded that the committee could add a coordination instruction in SB 331 saying that "if SB 51 is passed the amendments to those sections are void".

Motion/Vote: REP. WHALEN moved to amend SB 51 with the amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that section 46-4-101 is clarified in SB 51 and SB 331 has the same type of clarifications but it does some extra things also. He suggested that the committee put a coordination instruction in SB 331 that voids the same section that SB 51 amends.

Motion: REP. LEE moved to amend SB 51 with the coordination amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that SB 51 and SB 331 both amend section 46-4-103. Subsection 1 in SB 51 is a very minor change by substitution the word "coroner" for the word "he". Subsection 2 is amended in SB 51 and is deleted in SB 331. He stated that the deleted language is reinstated in SB 331 in one of its new sections. He stated that the main difference between the bills is that SB 331 has a new subsection that SB 51 doesn't. He felt the committee should look at SB 331 and read the new subsection to see if it is acceptable and coordinate the two bills accordingly.

Motion/Vote: REP. GOULD moved to amend SB 51 with a coordination instruction saying if SB 331 is passed and approved, section 11 of SB 51 is void. Motion carried.

Discussion:

John MacMaster stated that 46-4-201, the definition of inquest, is deleted in SB 51 and is kept in SB 331. He felt that the committee should keep the definition of "inquest" in the bill.

Motion/Vote: REP. GOULD moved to amend SB 51 with the recommendation by John MacMaster to keep the definition of "inquest" in SB 51. Motion carried.

Discussion:

John MacMaster stated that under the current law on the death of a person in a jail or penal institution or in usage of a firearm, the county attorney shall request the coroner is do an inquest. He stated that on page 15, line 13, in SB 51, it changes that provision to say, "if a death is caused by a police officer" which would mean an inquest would be requested whether or not a firearm was used in the death. He stated that this amendment isn't in SB 331 and the committee should decide if they want to make that change.

Motion: REP. LEE moved to amend SB 51 with a coordination instruction putting that language in SB 331.

Discussion:

John MacMaster stated that if SB 51 passes that will be okay but if it doesn't pass that language won't be put in SB 331. He stated that the coordination instruction should be put in SB 331.

REP. LEE WITHDREW HIS MOTION

REP. MEASURE stated that there are some additional provisions in section 14 of SB 331 that he didn't like.

Motion: REP. MEASURE moved to amend SB 51 to incorporate new subsection 4 of SB 331 in SB 51 and delete the other language in SB 331 if SB 51 passes.

Discussion:

REP. MEASURE stated that the provision that he is referring to specifically is on page 12 of SB 331, section 14, lines 20 through 23 that are not in SB 51. He stated that it has to do with a message that says consent of the family is not required for an autopsy required by the County Coroner. He stated that the reason for his objection is that people are often times involved very thoroughly in the objection of an autopsy. He stated that requesting an autopsy is a matter of law already. He stated that he doesn't want to participate in passing a law that violates the First Amendment.

Vote: Motion carried 19 to 1 with Rep. Gould voting no.

Motion/Vote: REP. LEE MOVED SB 51 DO BE CONCURRED IN AS AMENDED.  
Motion carried 18 to 2 with Rep's: Wyatt and Brown voting no.

EXECUTIVE ACTION ON SB 331

Motion: REP. RICE MOVED SB 331 DO BE CONCURRED IN.

Discussion:

John MacMaster stated that SB 331 and SB 51 amend 46-4-201. He stated that SB 51 on page 15, line 13 is where the current law says that the coroner has to hold an inquest of an inmate in jail is killed by the use of a firearm used by a peace officer. SB 51 amends that section to say "if an inmates death is caused by a peace officer in any way, then an inquest must be held".

Motion/Vote: REP. LEE moved to amend SB 331 with the amendment described by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that on page 16 of SB 51 in the same section, on lines 5 and 6 there is an amendment that is not in SB 331. He stated that a coroner who also serves as a peace officer cannot conduct an inquest in certain cases and in those cases the county attorney has to request a qualified coroner from a neighboring town to come and do the inquest. He stated that in SB 51 it is stated that when the neighboring county coroner comes in and does the inquest his expenses has to be paid by the county that requests that he come in. He explained that the current law says the neighboring coroner's expenses and salary must be paid by the county that requests he come in. Mr. MacMaster stated that the committee must decide whether they want "and salary" included in SB 331.

John MacMaster stated that 46-4-202 is the next section needing an amendment. He stated there are two different conflicts the committee is going to have to decide on. When there is an inquest there is a jury. He explained that under the current law the jury is composed of not more than 9 persons. SB 51 changes that to say it has to be at least 3 but not more than 9. SB 331 changes that to say it has to be at least 6 but not more than 12. He stated that the committee can leave it at current law of 9 or choose one of the amendments in the two bills.

REP. DARKO stated that the committee has had coroner's bill in the committee before and this bill was worked on very hard and she felt the committee should be careful about eliminating language in SB 331.

Motion: REP. BROOKE moved to amend SB 331 by accepting language in SB 51, a jury of not less than three but not more than nine.

Discussion:

REP. BROOKE stated she felt that three to nine was a sufficient number of people to do the job that is needed to be done.

REP. RICE stated that he was concerned that the cases have six people when they are determining whether or not someone has died by a criminal means. He stated that it was such a significant

decision, he felt more comfortable with having at least six people on the jury. He stated that the state mandates six people for a traffic ticket and a such a critical decision such as this should have a mandated jury of six people.

Vote: Motion failed 1 to 19 with Rep. Brooke voting yes.

Discussion: John MacMaster stated that on page 16 of SB 51 in the same section, puts in a new subsection as follows: "The jurors may be required to inspect the body of the deceased whether or not an autopsy has been performed at the discretion of the county attorney." He stated that provision is in SB 51 but not SB 331 and if the committee decides to adopt that provision the coordination instruction would be to strike section 14 of SB 51 after adding the new subsection to SB 331.

Motion: REP. LEE moved to amend SB 331 with the coordination instruction explained by John MacMaster.

Discussion:

REP. RICE asked if there is a prohibition against the coroners jury inspecting the body in the present law?

John MacMaster stated that it gets into another section of the bill that needs to have a coordination instruction. He stated that on page 17 of SB 51, page 17, line 20 is amended to say "after instruction body if required". He stated that it clarifies that they are going to instruct the body if it is required by the County Attorney.

REP. RICE stated that SB 51 makes inspection of the body permissive and SB 331 makes inspection of the death scene only by video tape, photographs or slides. He felt that it was an unnecessary restriction.

John MacMaster stated that committee could adopt the SB 331 version of 46-2-205 and adopt SB 51 new subsection saying the county attorney can require that it be inspected.

Motion/Vote: REP. RICE MADE A SUBSTITUTE MOTION to amend SB 331 by adopting the language out of SB 51 allowing the inspection of the body be permissive. Motion carried.

Motion/Vote: REP. RICE moved to amend SB 331 by putting in the requirement that the jury view the death scene and put a sentence at the end "The requirement may be satisfied by video tape, photographs, and slides transparencies, in addition." Motion carried.

Motion: REP. MEASURE moved to amend SB 331 on page 12, line 20, through the word " " on line 23, and delete the underlined language.

Discussion:

REP. MEASURE stated that it states that consent of family or next of kin of the deceased does not require an autopsy ordered by the court or county attorney or attorney general. He stated that this language is not in the law now and he felt it shouldn't be in there now. He felt that it is excess protection for the coroners.

Vote: Motion failed on a tie vote. EXHIBIT 2

Discussion:

REP. RUSSELL stated that she wanted to make sure there could be Native Americans on the jury.

John MacMaster stated that it would be determined on what test to put into the bill to insure a racial balance on the jury. He felt the committee could put something in the new section saying "composition of the jury must be racially balanced proportioned to the races living in the area", or something on that order.

REP. DARKO stated that these juries are summoned the same way for any court which is by the luck of the draw. If a person is registered to vote you can be picked, if you are not registered to vote you cannot be picked.

REP. RICE stated that he thought the committee could amend section 16 by inserting language saying "it has to be drawn by lot of that list" or something similar to that?

REP. DARKO stated that selection of jury isn't really a law but with the new language proposed by Rep. Rice it would be law.

REP. MEASURE stated that he felt it wouldn't be difficult to place some language in the bill stating jurors will be chosen from a list of registered voters that represents jurisdiction of the surrounding areas.

Motion: REP. MEASURE moved to amend SB 331 with conceptual wording of using whatever criteria the state has for selecting jurors at the present time, but that those selected would represent the demographics of the coroners area of jurisdiction in the areas of race and gender.

Discussion:

REP. TOOLE stated that the jurisdiction area is the county and there are automatic geographic boundaries and if they are drawn at random from a list that is furnished by the clerk, then the selecting process would be as good as the process used in generating the clerks.

**Motion:** REP. TOOLE MADE A SUBSTITUTE MOTION to amend SB 331 by adding the words "selected at random".

REP. RUSSELL stated that her area has had strong voter registration drafts but many times barriers are set up. She stated that many times there are emergency situation and people are needed right away and felt that Rep. Measure's language would be fine for her situation.

**Vote:** Motion carried 19 to 1 with Rep. Johnson voting no.

**Discussion:**

REP. MEASURE asked REP. MESSMORE on page 6, new section 6, reporting of fetal death, is it correct?

REP. MESSMORE stated that it was correct.

**Motion:** REP. MEASURE moved to amend SB 331 in section 6, that a in the event the reporting physician did not certify the death only then would those people have to notify the coroner.

**Discussion:**

REP. MESSMORE said that it would be a very sticky situation when a death in the home with the attendance of a mid-wife occurs and you are proposing a physician sign the death certificate. It isn't likely a physician would sign that death certificate.

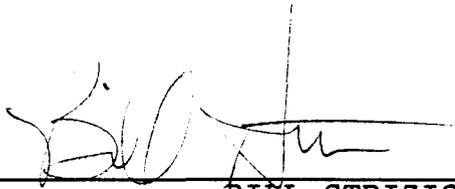
REP. BECKER stated that doctors will not be involved in these types of deaths and they will not sign a death certificate for a death they weren't involved in.

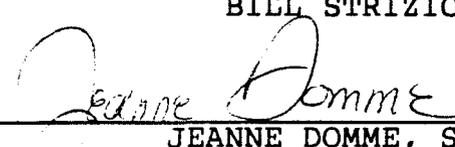
**Vote:** Motion failed.

**Motion/Vote:** REP. RICE MOVED SB 331 DO BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 11:55 a.m.

  
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BILL STRIZICH, Chair

  
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JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-19-91

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	/		

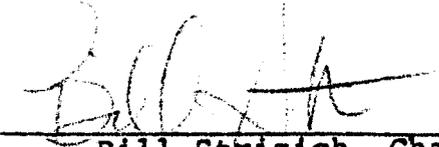
HOUSE STANDING COMMITTEE REPORT

3/26/91  
8:55am  
BOA

March 26, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 51 (third reading copy -- blue) be concurred in as amended.

Signed:   
Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:

1. Page 10, line 18.

Following: "before"

Insert: "the first witness is sworn at the time of"

2. Page 25, line 7.

Following: "state"

Insert: ", except that a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred"

3. Page 49, line 22.

Following: "counsel"

Insert: "or that has jurisdiction over the case"

4. Page 52, line 4.

Strike: "not in contumacious default in the payment"

Following: "~~thereof~~"

Strike: "of"

Insert: "able to but refuses or fails to pay"

5. Page 67, line 11.

Strike: "\$500"

Insert: "\$1,000"

6. Page 77, line 23.

Following: "issue"

Insert: "a summons or"

7. Page 99, line 15.

Strike: "verdict is returned"

Insert: "judgment as to guilt or innocence is reached"

8. Page 103.

Following: line 11

Insert: "(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public."

9. Page 120, lines 9 through 12.

Strike: ", together" on line 9 through "comparisons" on line 12

10. Page 126, line 12.

Following: "district"

Insert: "or municipal"

11. Page 126, line 21.

Following: "evidence"

Insert: "and any information directly or indirectly derived from such testimony or evidence"

12. Page 127, line 10.

Strike: "felony"

Insert: "district or municipal court"

13. Page 135, line 10.

Strike: "must"

Insert: "may"

14. Page 223.

Following: line 18

Insert: "NEW SECTION. Section 265. Coordination instruction.

(1) If House Bill No. 618 is passed and approved and if it includes a section that amends 46-17-311, then that section of House Bill No. 618 is void.

(2) If Senate Bill No. 331 is passed and approved and it repeals 46-4-102 and 46-4-204, then the sections of [this act] that amend sections 46-4-102 and 46-4-204 are void.

(3) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-101, then the section of [this act] that amends 46-4-101 is void.

(4) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-103, then the section of [this act] that amends 46-4-103 is void."

HOUSE STANDING COMMITTEE REPORT

March 26, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 331 (third reading copy -- blue) be concurred in as amended.

Signed:   
Bill Strizich, Chairman

Carried by: Rep. Strizich

And, that such amendments read:

1. Page 14, line 10.

Strike: "from the use of a firearm"

Insert: "is caused"

2. Page 15, line 10.

Following: "selected"

Insert: "at random"

Following: "list"

Insert: "of eligible jurors"

3. Page 15, line 22.

Following: "form."

Insert: "The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies."

4. Page 15, lines 24 and 25.

Strike: "BY VIDEOTAPE, PHOTOGRAPHS, OR SLIDE TRANSPARENCIES"

5. Page 17.

Following: line 7

Insert: "NEW SECTION. Section 20. Coordination instruction.

(1) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-201, then that section of Senate Bill No. 51 is void.

(2) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-202, then that section of Senate Bill No. 51 is void.

(3) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-205, then that section of Senate Bill No. 51 is void.

March 26, 1991  
Page 2 of 2

(4) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-206, then that section of Senate Bill No. 51 is void.

Renumber: subsequent section

Proposed Amendments to SB 51  
Michael J. Sherwood  
Member of the State Bar Commission on Criminal Procedure

1. At Page 10, line 18, after "before",

INSERT: "before the first witness is sworn at the time of"

Reasoning: It may happen that a defendant wishes to object to the trial taking place in a particular jurisdiction because the jury panel has been prejudiced by publicity. This may not become apparent until the panel has been interviewed. This process takes place at the beginning of a trial. Witnesses are sworn only after a jury has been selected from the panel.

2. At page 25, line 7, after "state",

INSERT: "except that a warrant for the violation of a city ordinance may not be acted upon unless the person is located within the city limits where the violation is alleged to have occurred"

Reasoning: This makes Section 28 consistent with Section 30 at page 27, lines 10 through 13.

3. At page 49, line 22, after "counsel",

INSERT: "or that has jurisdiction over the criminal cause"

Reasoning: Oftentimes counsel is initially appointed by a J.P. even though the case is a felony. It might very well be that counsel will seek to be relieved from an appointment by the District Court or Supreme Court.

4. At page 52, line 4, after "in",

STRIKE: "is not in contumacious default in the"  
and

INSERT: "has refused or failed, when able, to make"

Reasoning: "Contumacious" is a big word, even for lawyers.

5. At page 67, line 11,

STRIKE: "\$500"

and

INSERT: "\$1,000"

Reasoning: Often a bail will be set on a second or third-time DUI or other misdemeanor offense which exceeds \$500.

Ex. 1  
3-19-91  
SB 51

6. At page 77, line 23, after "issue",

INSERT: "a summons or"

Reasoning: This makes Section 96 consistent with Section 29.

7. At page 99, line 15, after "a",

STRIKE: "verdict is returned"

and

INSERT: "judgment as to guilt or innocence is reached"

Reasoning: Juries return verdicts, judges reach judgments.

8. At page 126, line 12, after "district",

INSERT: "OR MUNICIPAL"

Reasoning: HB 69 now limits trial de novo in an appeal from municipal court. A party that wishes to have a witness granted immunity for purposes of trial may only get that opportunity at the municipal court level.

9. At page 126, line 20, after "evidence",

INSERT: "OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR EVIDENCE"

Reasoning: This language was inadvertently deleted from the code.

10. At page 127, line 10,

STRIKE: "felony"

and, after "cases",

INSERT: "PENDING IN DISTRICT OR MUNICIPAL COURT"

Reasoning: HB 69 has now restricted trial de novo in municipal court cases. The reasoning was to eliminate using the municipal court trial as a discovery tool. This is fine so long as meaningful pre-trial discovery is available in municipal court.

11. At page 159, line 19,

~~INSERT: "(3) AN ORDER FOR THE DISMISSAL OF AN ACTION AS PROVIDED IN THIS CHAPTER IS A BAR TO ANY OTHER PROSECUTION FOR THE SAME OFFENSE IF IT IS A MISDEMEANOR, BUT IT IS NOT A BAR IF THE OFFENSE IS A FELONY."~~

EXHIBIT 2

DATE 3-19-91

FILE 331

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-19-91 BILL NO. SB 331 NUMBER \_\_\_\_\_

MOTION: House amendment

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	9	9