

## JUDICIARY COMMITTEE

January 13, 1977

The regularly scheduled meeting of the House Judiciary Committee convened at 8 A. M. with Chairman Scully presiding. All members present with the exception of Colburn and Dussault, absent.

Scheduled for hearing were House Bills 72, 77 and 79. House Bill #77 was cancelled because the fiscal note was not yet available.

HEARING OPENED on House Bill 79. Nice-chairman Teague took over the meeting.

REPRESENTATIVE SCULLY, District #76, Sponsor. He explained the basic background for it and the reasoning behind it. This bill will allow district judges to sentence persons convicted of felonies to imprisonment with no possibility of parole or participation in the prisoner furlough. There would be a mandatory minimum. He mentioned that in Montana someone could be sentenced and be back on the street in a short time. He could end up serving only 1/5 of the sentence. He mentioned that Pat Ryan of Great Falls, a probation officer, was highly in support of this bill.

A judge can have three alternative. 1. raise the sentence, 2. lower the sentence, and 3. leave it as it is. Montana has done all three, but for the most part, they stay the same. I don't believe in a mandatory sentence, but this is one way to cover the alternatives.

He gave examples of actual cases, the use of a weapon, etc. Obviously there is a problem in that there are no two situations alike, and its obvious that discretion has to be used.

It would require the district judge to give mandatory flat time sentencing. You have to look at the process. The other alternative is to do away with the penalty form of system.

This is the only sentencing measure that makes sense. I hope you give it a great deal of thought and consideration. He talked about the sentence review board and explained how it works.

REPRESENTATIVE KENNERLY asked if it gives the judge more authority to do more straight sentencing.

REPRESENTATIVE SCULLY answered that they recognized that problem. There are also a lot of social and economic problems that went into that also.

The system is not infallible, but when you have a sentence review board, that process is a sufficient safeguard, and review is getting to be almost automatic. He gave examples of actual cases from his own experience.

He mentioned that a pre-sentence hearing can be requested by the judge, the individual or the board. He mentioned the cost of proper funding and the problem of trying cases.

There was comment about another similar bill introduced in the Senate by Senator Towe and Representative Scully and it was a mandatory sentencing bill.

REPRESENTATIVE HOLMES said about the Towe bill, that rather than having a parole board, it would be a service agency that would help the person ease his way back into society. It was again noted, that the sentence review board was the final check.

OPPONENT REPRESENTATIVE KIMBLE, he stated that he feels we have to be careful, especially in those areas that allow discretion to the judge. It creates a precedent in the state that might be difficult to overturn.

REPRESENTATIVE SCULLY made the comment that this is not a mandatory bill.

Hearing closed on House Bill #79.

HEARING OPENED On House Bill #72.

REPRESENTATIVE RAMIREZ, Chief Sponsor, district #64. This bill requires a sheriff or constable to post notice of sale upon the request of a trustee in the case of a foreclosure of a trust indenture. He discussed the bill and explained the various sections.

REPRESENTATIVE KEYSER asked who will pay the cost of the posting and Representative Ramirez stated that there is a general fee arrangement to take care of this. The sheriff will post it on the property to be sold.

There were no other proponents or opponents.

Hearing closed on House Bill #72.

#### JUDICIARY COMMITTEE

#### EXECUTIVE SESSION

The committee went into Executive Session following the regularly scheduled meeting January 11, 1977. Chairman Scully presiding.

REPRESENTATIVE KEYSER moved that House Bill #79 "Do Pass". The motion was seconded, discussion followed.

There was some speculation what this bill would actually do. CHAIRMAN SCULLY said this is the only bill that deals with flat time, or fixed time. This bill does not conflict with any other bill that has been introduced.

REPRESENTATIVE RAMIREZ, wondered if we might not get into a patchwork and we should consider all these bills together.

REPRESENTATIVE HOLMES asked how the work furlough program is now funded. Representative Dussault explained the program and how it works. She felt there should be a study to revise the criminal system. She made a motion to amend out the furlough program. The motion was seconded and called and the motion failed, with Representatives Holmes and Dussault voting yes.

REPRESENTATIVE HOLMES moved to pass for the day to allow time for further study: The motion was seconded and called and the motion failed.

REPRESENTATIVE RAMIREZ made a motion to amend subsection 3, line 25, page 3. Following line 24, strike: judgement and insert: judgment. This would correct the spelling of the word judgment. The motion carried with unanimous vote.

After some discussion it was decided to postpone action until later that day on House Bill #79.

CHAIRMAN SCULLY appointed a sub-committee to study House Bills #80, 91 and 92, all dealing with landlord and tenant relationships. The committee as appointed were: Representative Teague, Chairman, Representative Dussault, Representative Seifert and Representative Colburn.

Representative Seifert moved "Do Pass" on House Bill #72. The motion was seconded and the question called. The motion carried with a unanimous vote.

REPRESENTATIVE HAND moved that House Bill #22 be amended as follows: (copy attached).

The amendments carried with unanimous vote.

REPRESENTATIVE KEYSER made a motion that House Bill #22 "Do Pass" as amended. The motion was seconded, question called and the motion carried with note unanimous.

REPRESENTATIVE DUSSAULT made a motion that House Bill #39 "Do Pass". The motion was seconded, question called, and the motion passed with the note unanimous.

REPRESENTATIVE LORY made a motion to "Do Pass" as amended on House Bill 79. The motion was seconded and the question called. Carried with Kennerly, Courtney, Dussault and Holmes voting "No".

Committee staff attorney, Jim Gardner, reported back on House Bill #43. He explained that an attorney is not a judicial officer. Page 17 lines 8. Pages 17, 9 and 13. Who may be impeached? Heads of the departments are subject to impeachment.

Meeting adjourned 11:35 A. M.

Rep. John Scully, Chairman

Mary Ellen Connelly, Sec.

MEC/dm

January 13,

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MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 22

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 69-6104 TO EXTEND  
VALIDITY OF CONSENT OF MINORS TO ABORTION IN CONFORMANCE WITH THE MONTANA  
ABORTION CONTROL ACT."

Respectfully report as follows: That HOUSE Bill No. 22

introduced bill, be amended as follows:

1. Amend title, line 5.

Following: "69-6104 TO"

Strike: "EXTEND VALIDITY OF"

Insert: "CLARIFY THE LAW REGARDING"

2. Amend section 1, subsection (4), page 2, line 5.

Following: "(4)"

Strike: lines 5 and 6 in their entirety

Insert: "In case of sterilization of minors, the consent of the  
parents or guardian of the minor is required."

DO PASS AS AMENDED

January 13,

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