

JUDICIARY COMMITTEE

January 20, 1977

The regularly scheduled meeting of the House Judiciary Committee was held at 8:00 A. M. in room 436 of the Capitol Buidling, Helena, Montana on Thursday, January 20, 1977. Chairman Scully presided. All members were present with the exception of Representatives Conroy, Dussault, Hand and Kennerly.

SCHEDULED FOR HEARING WERE HOUSE BILLS 188 and 201.

REPRESENTATIVE GOULD, CHIEF SPONSOR, District 98: People are beginning to get upset about crime. I sent to the door with this stack of petitions to present to the committee. More than 51% signed the petition. This bill is concerned with committing a crime with a firearm or knife. It is a very simple bill and something I think we have needed for a long time.

TOM DOWLING, MONTANA SHERIFF'S ASSOCIATION AND MONTANA COUNTY ATTORNEY ASSOCIATION: I am both pro and con, a sort of neutral position. He discussed the types of crimes and jail time and the conditions for probation. He gave examples of the kinds of crimes this bill would cover. The judge could, in some cases defer imposition or suspend execution of the sentence. The courts have to have some discretion. Mr. Dowling mentioned that Gene Turnage in the Senate was in favor of the bill. Then followed some discussion about firearms.

JACK WILLIAMS, CHIEF OF POLICE ASSOCIATION: I am in favor of this bill.

There were no other proponents and no opponents.

REPRESENTATIVE GOULD closed by saying: I would suggest you might take 20 men at random and see how they feel. I knocked on doors and I have 1,301 signatures for the record, in support of this bill.

Hearing closed on House Bill 188.

HEARING OPENED ON HOUSE BILL 201.

REPRESENTATIVE SCULLY, District 76: This is a medical malpractice bill, but is amending a section of the statute. When we held the hearings on these bills we wanted the insurance companies and the bar association members present. They didn't turn up for those hearings and their absence now is glaringly apparent. We don't think we had sufficient information from Aetna. This bill deals with the statute of limitations but I think it needs to be discussed. The bar association isn't here. We want to change the statute of limitations. An action shall be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable dilligence should have discovered the injury, but at no time could it run against a minor until the age of 7 years. However, this would not apply if the minor does not reside with the parent or guardian.

PROPONENT GERALD NEELEY, MONTANA MEDICAL ASSOCIATION: I would suggest an amendment to the existing statute. It differs in

many instances from other statutes. Montana has a "discover" statute, which is 3 years from the date of injury. There would be the age of majority plus 1 year in which to bring an action. It directly affects the availability of insurance. Insurance people feel it is a problem area. It can be from the date of discovery or to date of injury. From age 10 or from discovery of the injury whichever is greater, while he resides with his parent or guardian. There have been some 30 states that have passed this legislation in the last few years. Some 60% of the premium dollars have been set aside for future claims. Insurance companies don't know how much to set aside because of the length of time on the claim. He discussed re-insurance and explained what it meant. Each bill concerning malpractice stands on its own merit and particularly this one. They all have an impact on people.

OPPONENT TOM DOWLING, MONTANA TRIAL LAWYERS ASSOCIATION: I have a very direct interest in this bill. It is one of a package of 18 bills to be introduced this session concerning medical malpractice. What I would ask you to do is to wait until you have the entire package, so that you know what you are doing to people. Please wait. Get the package and see what each one does in turn and then make your decision.

No other proponents.

REPRESENTATIVE COURTNEY: What specialties are mostly sued? Mr. Neeley: The national association of insurance adjusters made a study. There is no particular type.

Representative Conroy came into the committee room.

Mr. Neeley: Five cases were settled in Montana. This bill was requested by the Montana Medical Association.

Mr. Dowling: Are you going to penalize a child and the rest of the tort system? Keep in mind you are not talking only about malpractice. It affects all insurance rates.

REPRESENTATIVE SCULLY: You can't tie this bill in with any others. Out of those packages most do not affect any other.

REPRESENTATIVE COURTNEY: How many doctors have lost their right to practice because of these claims, in the last 10 years? Mr. Loendorf: 6 to 8 have lost their licenses.

REPRESENTATIVE DAY: Are doctors coming into the state being treated fairly? What about when they apply for a license, how are they treated?

Mr. Loendorf explained and gave several reasons why a doctor might not be let in, such must be a citizen, etc.

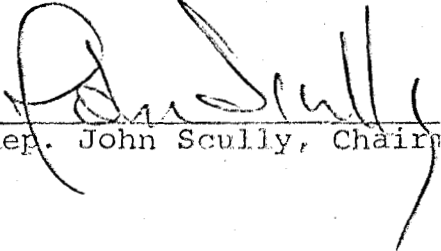
REPRESENTATIVE ROTH: Does this bill deal only with malpractice action?

Mr. Loendorf discussed the bill and insurance and malpractice.

About insurance, the availability and costs are not always practical. He agreed that the needs of the patient are of paramount importance and the deliberations and recommendations should always reflect this priority. The primary role is to search for the underlying caused of the medical malpractice crisis and to seek long-term solutions. A necessary ingredient in any solution is co-operative effort among the legal profession, the medical profession, and the insurance industry.

Following a question and answer session the hearing closed on House Bill 201.

The meeting adjourned at 10:00 A. M.


Rep. John Scully, Chairman


Mary Ellen Connelly, Secretary