

JUDICIARY COMMITTEE
January 24, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. on Monday, January 24th, 1977 in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Colburn and Courtney.

Scheduled for hearing were House Bills 226, 228, 251, 260 and 261:

The hearing opened on House Bill #226:

REPRESENTATIVE KEYSER, DISTRICT #81, chief sponsor of the bill: There has been a tremendous increase in people fleeing from police officers or patrolmen. We want to increase the fine and make a mandatory jail sentence on the 1st conviction and increase for the second.

PROPONENT, GARY R. JANES, MONTANA HIGHWAY PATROL:

He discussed various cases in which people were running away from a patrolman and had accidents, either themselves or involving the police vehicle. He talked about the extreme speed involved in these cases and the charges of reckless driving, sometimes drunken driving, etc.

Representatives Kennerly and Courtney came in.

PROPONENT, CAPTAIN D. B. TOOLEY, MONTANA HIGHWAY PATROL:

This type of thing has been done before, and failed to pass, however, the idea of doing it in this manner is one that we strongly favor. Sometimes people can get into a situation without intending to. We do feel that the offense is a serious enough one that it will make the offender think if the penalty is a little stronger.

There were no opponents and the hearing closed on HB 226:

The hearing opened on House Bill #260:

REPRESENTATIVE GOULD, DISTRICT #98:

This is a very simple bill. For persons convicted of a third offense of drunken driving there would be a mandatory prison sentence of 10 days. He mentioned several cases of DWI. I feel there are some areas where this will be quite effective.

PROPONENT, CAPTAIN TOOLEY, MONTANA HIGHWAY PATROL:

We are in favor of this bill, but you might want to amend lines 20 - 22 on page 3. It is already on the record, but for the most part the mandatory sentence is not being used by the courts. They end up with only a fine.

There were no opponents.

REPRESENTATIVE KENNERLY asked why not have the penalty on the 3rd offense instead of the 2nd.

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REPRESENTATIVE GOULD: What we are hoping to do, is we can get a little bit of funding, so what we are going to try to do is try rehabilitation and that is the reason for the 3rd instead of the 2nd.

Discussion about the 60 day limit, the third offense, the cost that might be involved, etc.

CAPTAIN TOOLEY explained the point system and how the habitual offender could accumulate 30 points within every 5 year period.

The hearing closed on HB #260.

The hearing opened on House Bill #251.

REPRESENTATIVE HAL HARPER, DISTRICT #30:

This is really a bad problem that we don't see any real progress toward being solved, persons involved in driving while intoxicated or under the influence of drugs. We have to provide some way to revoke their driving privileges.

PROPONENT, TOM HONZEL, REPRESENTING THE COUNTY ATTORNEYS:

The DWI problem has been the biggest problem of county attorneys for as long as I can remember. We are trying to come up with a solution to this problem. This will help but will not completely solve the problem. We just have to consider rehabilitation. For some time now, what has happened is that the sentence is deferred or suspended. The justice of the peace officers and the judges are deferring if they, the offender, goes for some kind of treatment program. We would like to be notified that a person is attending the treatment program or if he has not then we can invoke the sentence. It gives us a tool to work with. I would recommend you give it a do pass.

PROPONENT, ROBERT OCKLER, GALEN STATE HOSPITAL:

We have needed something like this for a long time. I have seen this type of thing work. In North Dakota they have this type of legislation and it is working. During the 28 day program we have a patient review. He discussed the program and how it worked and that it had been successful. I am very much in favor of this bill. We have a problem with leverage and this bill gives us some leverage. It gives us a chance to take a look and evaluate this program.

There were no opponents.

Mr. HARPER: Answered questions on suspending the license, how section 4 would take care of this, and about the three steps in the bill; 1st, suspension, not more than 6 months; 2nd, stronger, and 3rd the mandatory sentence. We feel it is a proper gradation.

The hearing closed on House Bill #251.

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The hearing opened on House Bill #228:

REPRESENTATIVE HAND, DISTRICT #82:

The intent of this bill is to extend the law for people who are down and out. He discussed some of the cases that might cause a person to want to change their name.

PROPONENT, RUSSELL LAVIGNE, Jr., MONTANA LEGAL SERVICES:

Under present law the publication costs can range anywhere from 40 to 50 dollars. I believe the bill would help people who cannot afford to pay that cost. He explained his work and how the need might arise for someone to change their name.

There were no opponents.

Representative Hand stated that this was something that people really need. It is something we should consider very carefully.

The hearing closed on House Bill #228.

The hearing opened on House Bill #261.

REPRESENTATIVE RAMIREZ, DISTRICT #64:

This bill will require mandatory prison sentences for certain drug-related crimes. He went on to explain the bill more fully. There is a wide disparity between judges and this is unfair and whenever we have a system that is unfair it engenders bitterness. The system allows the offender to try to get the best deal he can, and it can be beaten. The system is so flexible that they are going to get the best deal that they can. He went on to explain how this is possible under present law. This bill is designed to give some guidelines and it provides some exceptions. The bill is patterned after a proposal that was first presented by President Ford. A bill was drafted based on this. He passed out a handout. This bill is to attack crimes committed against a person. He mentioned the five crimes this consists of, murder, rape, assault, kidnapping and robbery. He discussed the 2 year minimum mandatory sentence. The main difference here is that the judges will have some guidelines and if they are going to defer sentences there would be some rules to go by.

PROPONENT, TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:

There are several other bills that will be introduced regarding this same problem. We support this concept. I like this approach. It gives guidelines and it provides for a review process and it gives a county attorney something to work with.

A short recess was taken.

Mr. Honzel stated that the county attorneys association supports this type of legislation. There seems to be no consistency in the sentencing at the present time. This is because of the lack of some

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type of guidelines and with this bill we would see more consistency in sentencing. The review process by the judge is a good thing because the judge could then defer a sentence. One of the biggest criticisms of mandatory is that it does away with flexibility but I think with the review process this will do away with that problem. He discussed the exception and said that he would like to see that - part deleted. The problem that I see with the bill is that the Kennedy-the federal bill-would provide that there would be no parole for the minimum time.

PROPONENT, TOM DOWLING, REPRESENTING THE COUNTY ATTORNEYS AND THE SHERIFF AND PEACE OFFICERS ASSOCIATION.

He discussed the bill and stated they were in favor of it. People don't feel safe. Why are we letting the habitual offender out. We are trying to address this problem. This bill looks like one we have been working for.

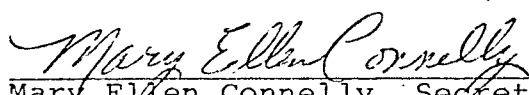
Then followed discussion about a life sentence in Montana and that it is now 18 years.

The hearing closed on House Bill #261.

The meeting adjourned and went into executive session, at 10:45.



JOHN P. SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary