

JUDICIARY COMMITTEE
January 25, 1977

The regularly scheduled meeting of the House Judiciary Committee was held at 8:00 a.m. with Chairman Scully presiding on January 25, 1977, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representative Kennerly.

Scheduled for hearing were House Bills #280, 291, and 320.

The hearing opened on House Bill #291:
REPRESENTATIVE GILLIGAN, DISTRICT #38:

This bill simply deals with the matter of concealing or obscuring the identity or altering the serial number or any other distinguishing identification number on an article or vehicle.

PROPONENT, BERT KRONIN, COUNTY ATTORNEYS COORDINATOR:

This is merely a housekeeping matter. It clears up some discrepancies.

THE HEARING CLOSED ON HOUSE BILL #291.

THE HEARING OPENED ON HOUSE BILL #280:

CHAIRMAN SCULLY turned the meeting over to the vice-chairman, Representative Teague in order to present the bill, of which he is chief sponsor.

REPRESENTATIVE SCULLY, DISTRICT #76:

This bill will provide a specific time period in which a criminal charge may be amended by the prosecution as to matters of substance and to limit such amendments to one occasion. This came about as a reaction to a supreme court case. The case involved an aggravated assault. He went on to explain the details and circumstances of the case and the resultant decision. It concerned the proving of serious bodily harm and it was asked that it be changed to intent of serious bodily harm. It was necessary to prove apprehension of serious bodily harm, instead of serious bodily harm. He explained the difference. This bill will allow the county attorney any time before 15 days before the trial to amend once in matters of substance, so you can clear up any mistake of misinformation. You can't be always sure that you are completely accurate. The trial is to arrive at the truth.

PROPONENT, TOM HONZEL, DEPUTY COUNTY ATTORNEY:

Representative Scully has outlined the problem. I think the important thing to remember in the bill is the rights of the defendant. The purpose of the document is to give the defendant time so that the defendant knows what he is charged with. We are not violating any substantive rights of the defendant.

OPPONENT, WILLIAM LEAPHART, MEMBER OF THE MONTANA CRIMINAL DEFENSE LAWYERS:
He mentioned an amendment to the code of criminal procedure. You cannot change any matters of substance but matters of form. There are several drawbacks. 1. This bill extends the 5+ years to file a criminal

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proceeding. 2. It allows to automatically amend without the courts permission. 3. It works to the prejudice of an accused person. 4. One of the other sections 95-1803 provided 10 days if he enters a plea, if he gives notice of alibi. 5. the criminal defendant has no corresponding right to change the plea. He can only change the plea if he is once into court, if for some reason the plea was not freely given. Essentially this bill does not do anything that is not already available to the prosecution. I recommend this bill do not pass.

REPRESENTATIVE SCULLY:

In closing, this bill allows some practicality and some speed. Dismissal of a case handles all five of the points presented by Mr. Leaphart, if you take the position that dismissal will solve all these arguments. Reality and practicality tells you that you amend the information. Usually on a case the defendant is already in jail. The prosecution is by law to bring them immediately to a speedy trial. I see no point in starting over by dismissing the case. I think this is the place to take care of the problem. You don't have 15 days before a trial if the plea is guilty. This is not practical in handling the arrest and prosecution charge that we have made. He then discussed the errors of form and elements of the crime that could be involved. He again stated the case that had caused the bill to be introduced. The only way you can overturn that type of supreme court decision is through a statutory change.

Then followed discussion about various types of charges, elements of the crime, whether the same charge or not, the difference in whether a change in form or in substance, the different penalty, etc.

REPRESENTATIVE SCULLY explained the documents involved if necessary to start over, etc.

TOM DOWLING:

93% of the people in jail have not been convicted of any crime.

REPRESENTATIVE HOLMES:

Would adding the workds, "with leave of court solve the problem?"

Mr. LEAPHART:

Yes, it would help.

No further questions, the hearing closed on House Bill #280.

THE HEARING OPENED ON HOUSE BILL #320:

REPRESENTATIVE RAMIREZ, DISTRICT #64:

This bill is concerned with comparative negligence. If a person is injured by the negligence of someone else but if they also contributed to the negligence, that has been changed. He gave examples, such as 80 to 20 percent of negligence, etc. It left many questions about

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procedure. If we do it by means of statutes it will solve a lot of problems. It answers 3 questions. 1. the percent of negligence of the defendant, 2. the percent of negligence of the plaintiff, 3. percent of damage sustained by the plaintiff. Section 5 usually applies to products. It preserves the present law, just makes clear and clarifies.

CHAIRMAN SCULLY:

This just clears it up some.

There followed a discussion about the dram shop act. A tavern or bar that serves intoxicating beverages and then that person goes out and injures someone, whether the barowner is thus liable for a % of the damages. This gives the defendant the right to bring in other people he feels may also be responsible.

REPRESENTATIVE DUSSAULT:

How do they determine the percent of negligence.

REPRESENTATIVE RAMIREZ:

This is to help everyone to clarify since that has always been a problem.

PROPONENT, TOM DOWLING:

The trial lawyers love it. They support the bill.

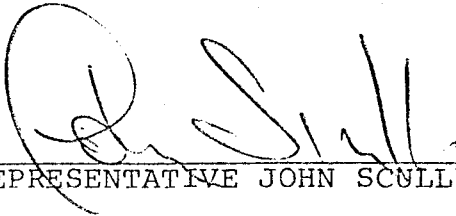
REPRESENTATIVE RAMIREZ:

This is mainly a procedural statute. It doesn't effect anything that has already come to pass. It will apply to every case pending as of July 1, 1977.

A general discussion followed about if the title should change.

The hearing closed on House Bill #320.

The meeting adjourned at 9:55 a.m.


REPRESENTATIVE JOHN SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary