

JUDICIARY COMMITTEE

February 18, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present except Representative Day, excused, to carry a bill.

Scheduled for hearing were House Bills 363, 411, 455, 457, 758, 761, and 763.

The hearing opened on House Bill 758.

REPRESENTATIVE SOUTH, DISTRICT #51:

The bill is to avoid conflict between states in child custody proceedings, providing interstate judicial assistance in custody cases to discourage illegal schemes to gain possession of a child in contested cases. There seems to be a constitutional restriction on what the federal government can do. Eight states have adopted this law. A parent might have custody in another state. I would ask you to look very favorably on this bill. He went to give examples of cases in which the child might be the subject of illegal schemes.

The hearing closed on House Bill 758.

THE HEARING OPENED ON HOUSE BILL 363.

REPRESENTATIVE COONEY, DISTRICT #83:

This bill would give the victim the right to decide if she would like to have her tests video-taped. The equipment is available right now. The concept is not new although it might be in Montana. The testimony of the victim and at the request of the victim, with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at the trial, and would be received as evidence.

TOM DOWLING, MONTANA COUNTY ATTORNEYS ASSOCIATION:

I think the bill has a couple of problems in language. He went on to talk about cases he was familiar with, such as the five year old victim of a sexual assault. This is another tool to bring these people to justice. However, the bill does need some cleaning up.

RICK CRONEN, MONTANA COUNTY ATTORNEY ASSOCIATION:

I would hope the committee would give this favorable attention. I think this might encourage further reporting. We feel that this is an option that should be available. I would like to ask that you support this bill.

REPRESENTATIVE COONEY:

I think this is a needed piece of legislation.

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SHIRLEY HUDSON, RAPE AWARENESS PROGRAM:

We support HB 363. Sexual intercourse without consent is an act that leaves the victim with many fears, emotional problems and guilt, many of these don't become apparent and are kept well-hidden by the victim, sometimes for years. If the victim can video-tape the testimony shortly after the attack, she can begin recovering and return to a healthy way of life, and not be traumatized all over again by the trial.

All the myths and prejudices about sexual intercourse without consent leaves the victim with the need to defend her/him self and her/his character, which again brings up all the fears and guilts which has or could have been healing. The fear that people are looking at them because of this attack is reinforced and worsened by the trial which anyone can attend. We feel the video-taping helps lessen the trauma for the victim.

REPRESENTATIVE KEYSER asked several questions about the testimony, how it would be presented.

REPRESENTATIVE TEAGUE asked why not use just a tape, why the video.

MR. DOWLING:

I think you would have to have some kind of physical appearance. That is why we could use the taping.

After some further discussion the hearing closed on House Bill 363.

THE HEARING OPENED ON HOUSE BILL 455.

REPRESENTATIVE MELOY, DISTRICT #29:

This bill corrects an error. When money or property does not vest in the person who is supposed to take it, then it escheats. All this bill does is reinstate the notice.

MIKE McGRATH, ATTORNEY GENERALS OFFICE:

This is a very light application. This would only apply to other countries that would not have a reciprocity agreement with the United States.

I would like to suggest an amendment on line 14, strike: "under", insert: "because of".

After a short question and answer period the hearing closed on HB 455.

THE HEARING OPENED ON HOUSE BILL #411.

REPRESENTATIVE DUSSAULT, DISTRICT #95:

What we have attempted to do is add some new language to title 38. Chapter 12 sets out a method of treatment. This bill would permit the court to provide treatment for developmentally disabled persons

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or the seriously mentally ill. These are people who lack fitness to be tried for a criminal offense under the procedure for treatment of these persons. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, and the court shall commit him to the custody of Warm Springs State Hospital, or other appropriate institution until such time as the unfitness endures.

NICK ROTERING, CHIEF COUNSEL, DEPARTMENT OF INSTITUTIONS:
I think they are amending the language section of the court. That should be handled differently. This bill amends 95-506 and should amend 95-508 instead. I think it is a good idea to allow the judge to try to work with this individual. I recommend that it be amended.

There were no opponents.

REPRESENTATIVE DUSSAULT:

I will look at 95-508 and see what the impact is and prepare some amendments. She mentioned that there was a typographical error on page 3, line 6, trail should be trial, and that this should be amended to correct it.

REPRESENTATIVE SCULLY:

I don't see any practical effect that will be gained by this amendment to correct the bill, all I see is difficulties.

REPRESENTATIVE DUSSAULT:

We are talking about the developmentally disabled and not the mentally ill. The intent is not to take them out of the institutional environment but to assure that they are receiving treatment. Warm Springs is an inappropriate place. They should be at Boulder. They should be treated under the civil code.

REPRESENTATIVE SCULLY:

Maybe we could make it very clear that we are dealing with the developmentally disabled and not the mentally ill.

REPRESENTATIVE MELOY:

I have a possible amendment, to insert the language, "as long as the fitness endures". There was discussion about this.

I want to strike chapter 13, I don't want to confuse the issue.

After much general discussion, the hearing closed on House Bill 411.

THE HEARING OPENED ON HOUSE BILL #761.

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REPRESENTATIVE HARRINGTON, DISTRICT #88:

This was proposed by the State Bar of Montana. It is a pre-paid legal plan for nonprofit corporations and to regulate the activities of such corporations. Page 3 is limited to nonprofit corporations and on line 15, a legal services corporation which complies with this act is not considered as being engaged in the business of insurance and is not subject to the laws regarding insurers.

LES LOBLE, STATE BAR OF MONTANA:

No legal services corporation may enter into an exclusive agency or management contract unless the contract is first filed with and approved by the commissioner. On page 5, a corporation, before issuing any membership shall have contracts with a sufficient number of attorneys to enable the fulfillment of its contractual obligations to its members. A legal services corporation may not practice law in any manner. He went on to discuss membership contracts.

The insurance commissioner has the right to examine the fitness of any corporation. All forms of membership contracts must be filed with the commissioner within 30 days. This permits a kind of flexibility. This is exactly the way Blue Shield and Blue Cross plans are set up. He went on to discuss the exemptions and grievance, malpractice insurance in a minimum amount, violations, and provisions for dissolution, the cease and desist order, etc.

OPPONENT, JIM MURRAY, AFL-CIO:

We are going to try to work out some kind of compromise of the problems with the bill. We are afraid that this may conflict with in-house attorneys. We think the law should allow for both open and closed panels. We believe in the pre-paid legal services concept. He went on to explain some of the problems that might be created.

REPRESENTATIVE HARRINGTON:

I just hope this can be worked out, the problems between these two groups.

REPRESENTATIVE HARRINGTON and MR. MURRAY agreed to try to work out some amendments that would be satisfactory to both parties and present them to the committee.

REPRESENTATIVE EUDAILY:

Would it be assumed that the corporation would set up the pay that the attorney would get.

LES LOBLE:

I think you could have many kinds of contracts. It could be a percentage. It would be up to the group.

REPRESENTATIVE EUDAILY:

Would the group write their own plans.

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MR. LOBLE:

If standard plans would work that is fine but they may want to write their own.

After general questions and answers the hearing closed on HB 761.

THE HEARING OPENED ON HOUSE BILL #763:

REPRESENTATIVE RAMIREZ, DISTRICT #64:

We have had several supreme court judgments that have provided for some of these problems. There are no procedural safeguards for the debtor. This bill is designed to eliminate all of the problem with the present attachment statute. When a writ has been issued upon the showing, the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. There has to be a notice given and a chance for a hearing before the property can be attached. He felt the provision for notice should be clarified and would present an amendment to the committee.

DAVE COGLEY:

We worried if Montana attachment statutes are constitutional. There should be a judge that issues the writ. All this bill is doing is say that the judge issues the writ. (attachment statute research)

MIKE McGRATH, ATTORNEY GENERALS OFFICE:

I wonder whether the wage garnishment is constitutional. He went on to talk of this and the comment was made that the current statute is unconstitutional. There was further discussion.

REPRESENTATIVE SCULLY:

Is this the same procedure as in the claim and delivery section?

MR. COGLEY:

Claim and delivery is property that the complaining party has an interest in. This bill is for immediate property.

REPRESENTATIVE TEAGUE:

What is the percentage of the garnishment amount?

MR. McGRATH:

Only 3 times the minimum allowed wage.

REPRESENTATIVE SCULLY:

It looks like you are making it permissive for the defendant to challenge it in 3 days.

There followed a discussion about the method of giving notice. We don't say what the notice is for, was one comment made.

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REPRESENTATIVE SCULLY:

We are talking about two notices. There was a great deal of pro and con discussion about this.

The hearing closed on House Bill #763.

THE HEARING OPENED ON HOUSE BILL 457:

REPRESENTATIVE VINCENT, DISTRICT #78:

This bill is to clear up the language and clarify the actual duties of the county attorney and the attorney general. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney shall make a report to the department within 30 days of the final disposition of the matter.

HAROLD PITTS:

I am opposing because of the personal interest I have in the consumer act. I was the director of the Department of Business Regulation. We took the act and put it into effect and it has worked. I think this would be a mistake. I don't think this would be in the best interest of the consumer. He went on to talk about a book published by this department, "BE AN OPEN-EYED CONSUMER", to educate people to be a better consumer. I would appreciate your killing this bill.

REPRESENTATIVE TEAGUE made several comments about the book and praised the content and said it was an excellent book.

REPRESENTATIVE SCULLY asked Mr. Pitts. Who is the attorney for the state of Montana?

MR. PITTS:

I presume it would be the attorney general.

MR. McGRATH, ATTORNEY GENERALS OFFICE:

This is our bill. We are in support of it. We like it. We are not interested in taking over the Department of Business Regulation. The bill will just clarify the powers of the county attorney. All this does is say that the supervisor also has the same authority as the county attorneys. We have no desire to usurp the authority of the department. This bill would avoid unnecessary litigation as to his authority.

REPRESENTATIVE SCULLY:

This bill will be one of many. I have had cases, such as smart-pak, in which no one has coordinated the investigation. Each individual county would handle their own small portion. He explained the case and how it was a fraudulent scheme and how it took a great deal of

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cooperation between the counties and the attorney general to stop it. There is no way that a county attorney can go across state lines. I think this is a very proper bill. Had this bill been in effect about a year ago, we would not have had so much trouble in stopping the smart-pak scheme. I would really support the legislation.

DICK DISNEY, CONSUMER AFFAIRS DIVISION, DEPT. OF BUSINESS REGULATION: I think the title is simply misleading. In 25-4116, it is legislating to clarify something that doesn't exist. We fear it will create another duplication of effort. He also mentioned the coordination of the smart-pak operation, and how his department had been instrumental in bringing it to a head.

REPRESENTATIVE VINCENT:

I think the issue is consumer protection. It is an effort to clarify the role for the prosecution of fraud.

REPRESENTATIVE SCULLY asked Mr. Disney about the role of the department in the smart-pak operation.

MR. DISNEY:

He explained about the sales force and a Mr. Duncan, how they had had many telephone calls from people and that they had filed the investigative demand. He went on in some detail how they had conducted the investigation with the help of various county attorneys.

REPRESENTATIVE SCULLY asked Mr. Disney how many cases of criminal prosecution his department had handled.

MR. DISNEY:

We do not have criminal authority. We head up the consumer protection division and have set up a consumer cooperative effort in many states. I would like to point out the fact that I have seen in larger states there are separate groups going their own way. I will repeat the fact that you are duplicating an effort.

MR. McGRATH:

We are only interested in criminal prosecution. We feel that we need the authority to go ahead with these investigations. I think you might get objections from the county attorneys office.

REPRESENTATIVE ROTH:

It seems to me that the consumer protection people are doing a good job. You already have authority over criminal activity.

MR. McGRATH:

We do not have the authority as set forth in the statutes, it is merely presumed. We would like to have it set forth in the law. We don't

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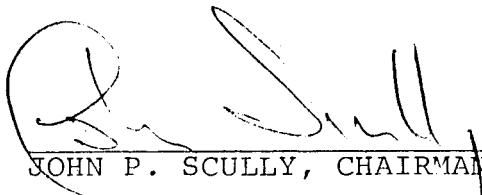
want to have to fight in court of who has the authority.

REPRESENTATIVE COURTNEY asked Mr. Disney to state how he felt there would be a duplication of services.

MR. DISNEY said there would be duplication in the fact that the attorney general and his office would be doing the same investigating that the department of business regulation now does.

After a rather heated discussion between Mr. Disney and Representative Scully the hearing closed on House Bill 457.

The meeting adjourned at 12:05.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary