

JUDICIARY COMMITTEE
February 21, 1977

The regularly scheduled of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. on Monday, February 21, 1977 in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of the following representatives, Dussault, Hand, Kennerly and Seifert.

Scheduled for hearing were House Bills 462, 466, 774, 705, 777, 778.

HOUSE BILL #777:

REPRESENTATIVE LORY, DISTRICT #99:

This bill will establish the office of public defender. It would guarantee counsel for indigent defendants, in criminal, youth court, and involuntary commitment proceedings within the court and state to assure fair representation.

PROPOSER, FRED VANVALKENBURG, MISSOULA PUBLIC DEFENDER:

I am the president of the Montana Criminal Defender Lawyers Association. This bill has support from many groups and organizations in the state. It is a result of a study that determined that the Montana defense system was sub-standard. He went on to explain his reasons and how the system would work.

PROPOSER, PAUL SMITH, MISSOULA:

The people we represent are not popular. One of the things I have found is that we have improved the public defense system. I think that with proper representation by counsel we can cut off a lot of juvenile problems. I believe we would have a viable system. It is one of our best premises in America that we have the constitutional right to defense.

PROPOSER, RICHARD WEBBER, SOCIAL AND REHABILITATION SERVICES:
It appears to us that this particular legislation is a more uniform way of providing defense.

LARRY ELLISON, GOVERNOR'S OFFICE:

It is mandated by the U.S. constitution. It would cover all these offenses. I urge this committee to look very carefully at the cost factors involved. This bill will equalize the cost among various counties. In one way or another the people will have to fund it. Be sure you calculate the cost factor and make sure there is adequate money built into it.

REPRESENTATIVE LORY:

In closing, you heard the discussion on the public defender system and it will transfer the cost from county to state.

REPRESENTATIVE ROTH:

Are these costs all funded by counties now?

Mr. Ellison:

There are some state costs. The most important reason is that it will provide better service. It will equalize the costs.

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REPRESENTATIVE RAMIREZ made several comments about the present system and the necessity to upgrade, the staff, etc.

REPRESENTATIVE BAETH asked if it is possible to set a limit on what can be charged.

JUDGE NAT ALLEN gave examples of exorbitant fees.

A general discussion followed about the number of regional offices that would be set up, 3 urban in Billings, Great Falls and Missoula, 3 urban-rural, such as in Kalispell, 12 rural to cover the remainder of the state. There would be 18 or 19 offices. The discussion then moved to fingerprints, etc.

THE HEARING CLOSED ON HOUSE BILL #777.

THE HEARING OPENED ON HOUSE BILL #774.

REPRESENTATIVE BURNETT, DISTRICT #71:

I attended a meeting in Billings and as a result of that meeting I introduced this bill. He mentioned the bill pertained to illegal search and seizure and the remedy as a cause for action for damages.

PROPOSER, JUDGE SANDE:

We have all put in 18 or 19 years on the bench. We are not talking from theory but from experience. This is not some half-baked idea that we had. I feel there is somewhat of a presumption that it will be constitutional. And then there is the question that people wonder, what is it going to do to me. You still have to get a search warrant. The judge explained how a search warrant worked, what was required, etc.

PROPOSER, JUDGE NELSON:

I think the remedy provided in the bill is better than the remedy now. I support the bill.

PROPOSER, JUDGE ALLEN:

I support the bill. I think it will be constitutional.

PROPOSER, TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:

We support this legislation. Basically the exclusionary rule is a judge made rule. We have taken this exclusionary rule further than any other state. Montana is the only state that suppresses evidence taken by an individual. He discussed the search and seizure procedure, what might happen, the suppression of evidence, etc. I would emphasize that we are talking only about the 4th amendment rights, not the 5th.

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OPPONENT, JIM DRISCOLL:

I am representing only myself. I have read the 4th amendment. It is my opinion that this bill will be declared unconstitutional. The officer will no longer need a search warrant or else it will be a blanket search warrant. He would not have to have any probable cause. I feel that this goes against the constitution that a person is presumed innocent until proven guilty. This bill would result in long drawn out court actions.

OPPONENT, WILLIAM LEAPHART:

I feel you are being asked to pass some test legislation. A supreme court ruling may prove this to be unconstitutional. The bill does not speak to all violations of the 4th amendment rights.

OPPONENT, PAUL SMITH, MISSOULA CITY PUBLIC DEFENDER OFFICE:

We are talking about a process of law that finds someone guilty. I don't think this bill stops criminals. Personally I think this would probably restrict a police officer. He discussed ways in which this type of legislation might lead to gun control.

FRITZ GILLESPIE:

I would suggest that you add a subsection, on page 5. This would put some teeth to the remedy. He also suggested they might want to amend page 6. This was discussed at some length. You should become familiar with the 4th amendment rights.

FRED VanVALKENBURG, MISSOULA PUBLIC DEFENDER:

I submit the remedy proposed is largely illusory. I don't think law enforcement officers support this bill. The legislature would be in the business of buying illegal evidence. What happens if it is unconstitutional. The criminal would be set free because of unconstitutional legislation.

LARRY ELLISON:

I do not represent the governor's office. I am opposed to the legislation. I don't think there has been a very careful reading of this piece of legislation. It is an alternative to the exclusionary remedy. I don't think it is a viable alternative. At this time this law is, on its face, unconstitutional before the U.S. Supreme court.

JUDGE BENNETT:

Looking at the bill, I think the drafting could be improved. It is patently unconstitutional. The exclusion has a possible four dissenters on the supreme court. No one has figured out a possible deterrent to crime. The judge went on and took the bill apart, section by section and explained what was wrong with it and what it would do. I do see a meaningful substitute. The constitution is a higher law than the law itself.

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REPRESENTATIVE BURNETT:

It would appear to me from the smoke it brings back the indignation of the public. He went on and discussed the possible ramifications of this.

REPRESENTATIVE COURTNEY:

You are talking about some type of technical violation.

REPRESENTATIVE BURNETT:

This would take care of all violations

REPRESENTATIVE RAMIREZ made some comments about violations as he saw them.

REPRESENTATIVE HOLMES:

This is a test legislation?

JUDGE SANDE:

Yes, it is.

CHAIRMAN SCULLY:

It seems we are talking about judge made law. Why couldn't we get into a similar argument and direct ourselves to the violation of constitutional law.

MR. EALISON:

There is an existing procedure. He went on and elaborated on this theme.

There being no further discussion the hearing closed on HB 774.

THE HEARING OPENED ON HOUSE BILL #466:

REPRESENTATIVE DRISCOLL, DISTRICT #91:

He presented proposed amendments to the bill and then went on to explain them. He talked about open-pit mining technology, and how it would effect the surface owners property. He discussed and explained the Reardon amendment, page 4, lines 2 through 4. We are facing the question of open-pit mining all over the state. I am convinced the Anaconda Company and others like them would become the victims of speculation. There are four things I would like to bring out. 1. we want to eliminate the dumping problems. 2. We want to remove the Reardon amendment and retain the amendment to the Reardon amendment 3. would grant a new section on line 10, page 4, would grant a new policy. 4. create a board of necessity with 5 members.

PROPOSER, PAT SMITH, NORTHERN PLAINS RESOURCE COUNCIL:

We feel that the right to condemn property for dumping is a gross abuse of eminent domain. I feel the bill as amended is constitutional.

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OPPONENT, BILL STERNHAGEN, ANACONDA COMPANY:

He went through the bill, commenting on it, for example, on line 12 page 2 they give the right back. This right could be used in extreme cases. I would like to point out that you must prove necessity. 93-9905. You have had to prove before the court that you have had need. The board of necessity is not necessary because this is already in the law. He went on to explain eminent domain and how it came about, the reason for it, etc. I would like to go through the history of the amendment. He went on and explained how the 1963 amendment came about. No adverse effect has come about because of it. The repeal may have the effect of destroying open-pit mining. He submitted a copy of an ad, and copies of letters. (attached).

GENE PHILLIPS, OPPONENT:

I think you should look at the impact of this bill on the small miners. He went on to talk about speculators, and who it would be possible to appeal to.

OPPONENT, NEIL LYNCH, MONTANA MINING ASSOCIATION:

I am involved with this litigation with the Anaconda Company. If this law is not in effect the company can just weave its way through Butte. There are hundreds of people who would be affected.

OPPONENT, JOE CROSSWHITE, WESTERN ENVIRONMENTAL TRADES ASSOCIATION: I am also the representative for the operating engineers and heavy equipment operators. These are the same people who opposed the coal mines in eastern Montana. Arco hasn't committed itself. I would like you to consider what this bill will do.

OPPONENT, JOE ROSSMAN, TEAMSTERS UNION:

I oppose this bill.

OPPONENT, TOM WINSOR, MONTANA CHAMBER:

We voted unanimously to oppose this bill.

OPPONENT, BURT SHERBURT, MONTANA MINING ASSOCIATION:

We are as sensitive as anyone else to the property rights. We oppose the concept of the bill.

OPPONENT, JOHN KLEM, GEOLOGIST FROM MISSOULA:

The number of people affected will probably be very small, but I oppose the bill.

OPPONENT, JIM CADIGAN, SW BUILDING TRADES COUNCIL:

The union cannot support this bill.

MIDDLE TRADES COUNCIL REPRESENTATIVE, AL FUNDELL:

I represent 6700 people. We feel passage of this bill would be detrimental at this time.

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OPPONENT, GILES WALKER, GEOLOGIST:

I represent only myself but I am opposed to this bill.

REPRESENTATIVE DRISCOLL:

I am not arguing that mining is not important. The whole point of this bill is that this states economy depends on mining. I think this bill addresses the problem better than Senator Reardons bill did. The board is aware of all of the ins and outs and their decision is final.

REPRESENTATIVE HOLMES:

Why are they so afraid.

STURNHAGEN:

They are afraid that eminent domain might be taken away from mining.

PHILLIPS:

This makes no appeal from the ad hoc board.

RAMIREZ:

Does this permit a repeal.

DRISCOLL:

It does.

ROTH:

What is the purpose of the amendment.

There was general discussion about the amendment and what effect it would have.

The hearing closed on HB 466.

THE HEARING OPENED ON HOUSE BILL #778:

REPRESENTATIVE PALMER:

This bill allows for the best way to solve the problem of the dissolution of the parent-child relationship.

PROPONENT, JIM ROMENELKO, ST. THOMAS CHILDRENS HOME:

Children in foster care have been shoved around. I am talking about them going from home to home. The childrens right in Montana are not being carried out. I think there is a need that we should look to.

OPPONENT, RICHARD WEBER, SOCIAL AND REHABITATION SERVICES:

We are in the situation of opposing this bill. We are in opposition to the way in which these goals will be set up. We feel this bill does not mesh with the current law. Will this be the sole means of termination of the parent-child relationship or will it be instead of. We feel it does place an undue burden on the natural parents. This bill does not seem to be consistent with the adoption law.

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In addition, there are some technical defects in the bill. On page 4, line 9, and page 23, line 1 and 10. I would like to make it clear we do not oppose the spirit of this bill. It just appears unworkable at this time.

OPPONENT, PETE SURDOCK, JR., SRS:

Currently under Montana law, there is allowance for the family unit, but the focus seems to be taking the direction of taking the child from the family instead of working it out. We ask that you put it into an interim committee for study.

LEGAL SERVICES REPRESENTATIVE:

I think this is a vast improvement but it does not do it. Even though the policy is not to interfere this bill could allow the taking of the child away from low income families. We feel they should sever the family unit only as a last resort. The time period should be more flexible.

WILLIAM HUTCHISON, ATTORNEY FOR MONTANA LEGAL SERVICES:

There is no repealer. The proceedings are going to have a harsher impact on people of low income. I would question the classification placed on wealth. There is another problem under section 13, you may bring a petition. It states that anyone may bring a petition and you would have spite petitions brought. There is no emergency protection situation.

RUSSELL LABAIN, LEGAL SERVICES:

I represent many of the parents. There are some good points in the bill. It also allows for court consideration. It gives foster parents rights they don't have under the present statute, and I don't like this. It gives them the right to be involved in the process.

REPRESENTATIVE PALMER:

Most lawyers agree this is a good bill.

Mr. ROMENESKO:

I would have liked to have more input into a bill. We try to get a legitimate protection of the child's rights. If you do not pass this bill I would hope you would look into an interim committee.

REPRESENTATIVE PALMER:

It is patterned after Oregon law.

A discussion about whether the opponents of the bill would work with Representative Palmer to get a good bill that would do what they want it to, since most of the opponents agreed with the concept of the bill.

The hearing closed on House Bill #778.

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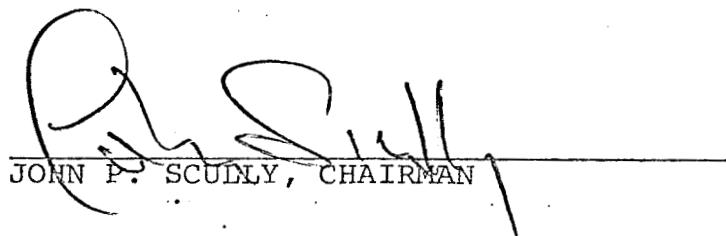
THE HEARING OPENED ON HOUSE BILL #705:

REPRESENTATIVE DUSSAULT, DISTRICT #95:

This bill will provide for identifying devices for disabled persons. This would allow them to have medical treatment, such as if they were injured in an accident or a similar situation. This bill is to encourage them to wear identifying devices. If Representative Burnett's bill passes I want this one killed, because this might then allow them to be searched.

After some further discussion the hearing closed on House Bill 705.

The meeting adjourned at 10:55 a.m.



JOHN P. SCULLEY, CHAIRMAN



Mary Ellen Connelly
Mary Ellen Connelly, Secretary