

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:00 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All members of the committee were present, however, Senators Regan and Roberts arrived at 9:55 and 9:40 respectively, and Senator Warden arrived at 10:05 and was excused again at 10:30 a.m.. These senators were excused to make presentations in other committees.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 311:

Senator Towe moved the adoption of the attached amendments. (See Attachment #1) The motion carried unanimously. He then moved that S.B. 311 as amended DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 335:

Senator Towe moved the adoption of the amendments previously made. The motion carried unanimously. (See attachment #2)

Senator Lensink moved that S.B. 335 as amended DO PASS. The motion carried unanimously.

HEARING - 9:30 a.m.

CONSIDERATION OF SENATE BILL 439:

Senator Hazelbaker presented the bill to the committee as he had sponsored it at the request of the Crime Control Board. He then introduced Wally White of the Board of Crime Control who said that the committee who wrote the bill has five members present at this meeting and that it was written because of a requirement in the federal register that came out in March, 1975, requiring states to make confidentiality regulations about records, and it provides that people can have their records, such as police records, checked for accuracy.

The next proponent of the bill was Ron Semple of the Independent Record in Helena, representing the Montana Press Assn., who said he believed this can be made an excellent bill by adding on page 11, line 16, following the word "about", the word "arrests.". (See Exhibit 1) He further said that this is a fine thoughtful piece of legislation.

Sam Gilluly, Montana Press Assn. said that they like the bill with the proposed amendment. The chairman of the committee which authored the bill said that it had been discussed by the committee and most of the committee members will accept the amendment, and that Senator Towe who was a member of that committee had reviewed the amendment.

There were no opponents to S. B. 439 present, so the Chairman allowed the committee members to ask questions of the witnesses.

Senator Turnage, Chairman, asked about a fiscal note for this bill, and suggested that the local government impact should be considered too in the fiscal note.

CONSIDERATION OF SENATE BILL 418:

Deirdre Coughlan, representing the Womens Law Caucus and Women's Place, spoke in support of this bill, saying that this bill would discourage county attorneys from refusing to prosecute rape cases when a woman was a social companion and had been drinking or doped. There are not many of these cases. The rules of evidence would apply in this kind of case. She also said that the law has been misconstrued and proposed an amendment. (See Exhibit 1)

There were no opponents to the bill, so the Chairman allowed committee members to question the witness.

EXECUTIVE SESSION (Resumed)

The following Senate Bills were acted on as follows:

S.B. 41 - Senator Regan had Joan Mayer, attorney for the Legislative Council, draft a new section 1, and moved that the present section 1 be stricken and the new section 1 inserted. (See attachment #3) The motion carried unanimously. Senator Regan then moved that S.B. 41 as amended DO PASS. The motion carried with Senator Olson voting "No".

S.B. 12 - Senator Towe submitted two pages of amendments (See Exhibits 1 and 2) and moved that they be adopted. The motion carried unanimously. He then moved to amend page 1, section 2, line 14, following "includes", by inserting "but is not limited to". The motion carried unanimously. He then moved that S.B. 12 as amended DO PASS. The motion carried on a vote of 4 - 3 with Senator Warden excused as she was at another meeting, and later voting "Yes", thereby making the vote 5 - 3.

S.B. 67 - Sen. Towe moved DO PASS. Motion failed on a vote of 2 - 5 with Senator Warden excused and later voting "Yes", thereby making the vote 3 - 5.

S.B. 439 - Senator Olson moved that S.B. 439 DO NOT PASS. Motion carried on a vote of 5 - 1 with Senator Towe voting "No" and Senators Warden and Regan excused to attend other meetings.

S.B. 245 - Senator Murray moved to amend page 3, line 10, by striking "and" and inserting "or". The motion carried unanimously.

Senator Towe moved to amend page 3, line 9, following "may", by inserting ", in its discretion,". This motion also carried unanimously.

Senator Murray moved that S.B. 245 as amended DO PASS. The motion carried with Senator Towe voting "No" and Senators Warden and Regan excused.

S.B. 213 - Senator Olson moved that S.B. 213 DO NOT PASS. The motion carried unanimously, but with Senators Warden and Regan excused.

SJR 16 - Senator Roberts moved DO NOT PASS. The motion carried with Senator Murray abstaining and Senators Warden and Regan excused.

S.B. 222 - Senator Murray moved that S.B. 222 DO NOT PASS. The motion carried with Senator Towe voting "No" and Senators Warden and Regan excused.

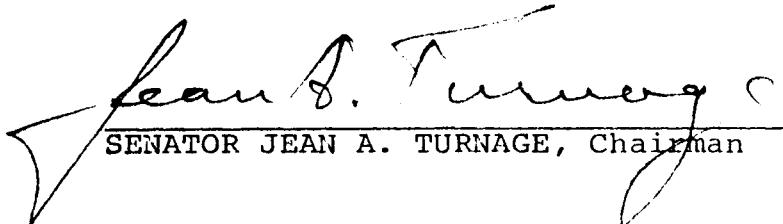
S.B. 255 - Senator Roberts moved to amend page 1, line 25, by striking "\$100" and inserting "\$250". The motion carried unanimously. He then moved that S.B. 255 as amended DO PASS. The motion carried unanimously.

S.B. 385 - Senator Murray moved that S.B. 385 DO PASS. The motion carried with Senator Towe voting "No".

S.B. 418 - Senator Lensink moved that S.B. 418 DO NOT PASS. The motion carried with a vote of 4 - 2 and 2 excused.

S.B. 393 - Senator Towe moved to strike the effective date. The motion carried. He then moved that S.B. 393 as amended DO PASS. The motion carried on a vote of 5 - 1 with Senator Olson voting "No".

There being no further business at this time, the committee adjourned at 12:10 p.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-17-77

Respectfully report as follows: That.....

SENATE

Bill No. 311

(Attach #1)

the introduced bill, be amended as follows:

1. Amend title, lines 6 and 7.

Following: "ADOPTION;"

Strike: "AMENDING SECTION 61-313, R.C.M. 1947;"

Following: "SECTIONS"

Insert: "61-317,"

Following: "61-325"

Insert: ", "

2. Amend page 1, section 1, line 19.

Following: "Montana"

Strike: "or"

Insert: ", "

Following: "agency"

Insert: ", or a person"

3. Amend page 2, section 1, line 14.

Following: "Montana"

~~XXXXXX~~ Strike: "or"

Insert: ", "

Following: "agency"

Insert: ", or the person"

STATE PUB. CO.
Helena, Mont.

4. Amend page 2, section 1, line 22.

Following: "Montana"

Strike: "or"

Insert: ","

Following: "agency"

Insert: "*, or person"

5. Amend page 3, section 2, line 18.

Following: "Montana"

Strike: "or"

Insert: ","

Following: "agency"

Insert: "*, or the person"

6. Amend page 9, section 8 5, line 10.

Following: "31-331"

Strike: "(1)"

Insert: "(2)"

7. Amend page 9, section 5, line 22.

Following: "hearing"

Strike: "lay"

Insert: "laid"

8. Amend page 13, section 7, line 3.

Following: "whether"

Insert: "the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether"

9. Amend page 13, section ~~XXX~~ 7, line 5.

Following: "Montana"

Strike: "or"

Insert: ","

10. Amend page 13, section 7, line 6.

Following: "agency"

Insert: "*, or person"

11. Amend page 13, section 7, line ~~12~~ 12.

Following: "Montana"

Strike: "or"

Insert: ","

12. Amend page 13, section 7, line 13.

Following: "adoption agency"

Insert: "*, or a person"

Following: "the agency"

Insert: "or person"

14. Amend page 13, section 6, lines 21 through line 8 on page 14.

Following: line 20

Strike: section 6 in its entirety

Renumber subsequent subsections

XXX

15. Amend page 14, section 9, line 9.

Following: "Sections"

Insert: "61-317,"

Following: "61-325"

Insert: ","

(Attach #2)

Respectfully report as follows: That.....SENATE..... Bill No....335,
the introduced bill, be amended as follows:

1. Amend title, line 7.

Following: "CHILDREN"

Insert: ";" ADD TO REDEFINE THE SCOPE OF THE OFFENSE"

2. Amend page 2, section 1, line 1.

Following: line 25, page 1.

Strike: "leave or"

Insert: XXXXX ":(i)"

3. Amend page 2, section 1, line 2.

Following: "guardian"

Strike: ", to"

Insert: ";" (ii)"

4. Amend page 2, section 1, lines 3 and 4.

Following: "prostitution"

Strike: ", to"

Insert: ";" or (iii)

Following: "conduct"

Strike: ", or to enter places exclusively for adults"

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(Attach # 3)

Respectfully report as follows: That.....SENATE.....Bill No.....41,
the introduced bill, be amended as follows:

1. Amend the bill, page 1, lines 9 through 17.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Court approval of attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

(L)
(Ex 1)
(S.B. 439)

Proposed Amendment to Senate Bill 439

Presented by the Montana Press Association

On Page 11, Line 16 of the Introduced bill, following the word "about" add the Word "arrests" and a comma.

(Ex. 1) SB 418)

Proposed amendment to § 3 ⁴¹⁸ ~~418~~

94-5-506....

(3) In a prosecution under the preceding sections on sexual crimes (94-5-502 to 94-5-504) in which the victim's lack-of consent is based invalid solely because he was mentally incapacitated ¹¹⁵² as a result of ingestion of intoxicating substances, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant, and the intoxicating substance was voluntarily and knowingly taken.

NAME: Deirdre Coughlin DATE: 2/18/27

ADDRESS: 630 Phillips, Missoula, Mont.

PHONE: 728-8137

REPRESENTING WHOM? Women's Law Caucus, Women's Place

APPEARING ON WHICH PROPOSAL: SB 4458

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS : _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(Ex. 1)
(SB. 12)

Proposed amendments to SB 12

- ✓ Page 3, line 2, strike the word "adult".
- ✓ Page 4, after line 12, add (i):
 - (i) any bonafide newsmen in the immediate accompaniment of law enforcement officers obtaining entry under a valid or apparently valid search warrant or in the immediate accompaniment of law enforcement officers lawfully gaining entrance when there is evidence that a crime has been committed.
- ✓ Page 5, line 7, after the word "communication" insert:
"while such communication is being conducted or before it reaches the intended receiver or receivers"
- ✓ Page 22, line 17, after the word "both" insert:
"provided, however, that no such act or omission shall be punishable unless it is first established that the accused person knew such act or omission was unlawful. Proof of such knowledge must be established as an independent fact and cannot be inferred or presumed."
- ✓ Page 22, line 20, after the word "both" insert:
"provided, however, that no such act or omission shall be punishable unless it is first established that the accused person knew such act or omission was unlawful. Proof of such knowledge must be established as an independent fact and cannot be inferred or presumed."
- ✓ Page 23, line 24, after the word "apply" insert:
This provision shall not apply to any act or omission which would not be unlawful if consent were given by a proper person provided the accused person acts under a reasonably formed, although mistaken, impression that such consent was given. This exception shall not apply to an agent or employee of a governmental unit acting in the course of his employment."

(Comm)

(Ex. 2)
(SB 12)

Proposed amendment to SB 12

Page 12, line 18, after the word "above" add:

"Provided however, that any person may waive any right of privacy through the voluntary providing of information or facts to any representative of the news media. Any such waiver, once given, may not be revoked."

made after such info has been provided

Press 12

SB. 439

Visitors Register

4/18/77
Note Bill No.

2/18/77

HR2-3-5

VISITOR'S REGISTER

(Please leave prepared statement with Secretary)