

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 7, 1977

The meeting of this committee was called to order by Senator Murray, acting Chairman, on the above date at 10:00 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

Committee members present were Senators Murray, Olson, Lensink and Warden. Excused to attend other meetings were: Senators Turnage, Towe, Regan and Roberts. A quorum was not present for this meeting, but the witnesses were allowed to testify before the committee on the scheduled bills.

WITNESSES PRESENT TO TESTIFY:

Rep. Quilici - District 84, Silver Bow County
John Frankino - director of Montana Catholic Conference
Prof. Al Murray - director of the Victimization & Offender
Restitution Study
Tom Honzel - County Attorneys Assn.
Mike McGrath - office of the Attorney General
Joan Uda - office of Budget & Program Planning
Norman Grosfield - Workmen's Compensation Division
Joan Brown - Council of Churches, Helena

CONSIDERATION OF HOUSE BILL 357:

Rep. Quilici of Silver Bow County, sponsor of the bill, told the committee that it is the innocent victim of crime bill and is really important legislation. Twenty-one other states have this type of legislation. This bill will prove to the people that the state and the legislature are concerned about the victims of the terrible crimes which are committed.

He distributed an amended fiscal note to the committee and read statements of where the money is to go from the fiscal note. He said that the offender would be paying to fund this type of program and that the bill should have an adverse effect on local revenue. He had John Frankino and Al Murray present to elaborate on the bill for him.

John Frankino, director of the Montana Catholic Conference, was the first proponent to testify. He said they have been concerned with elements of the criminal justice system for some time, and especially about the innocent victim of a crime. His committee had received a grant from the Board of Crime Control to do a study on this issue. The funding was set up by the last session of the legislature. He said that Prof. Al Murray has very efficiently directed this six-month study. He then presented the committee with a chart on the Criminal Justice System (See Exhibit 1) and a copy of the report from the Victimization & Offender Restitution Study. (See Exhibit 2) They advocate criminal justice and compensation to the innocent victim of a crime.

Al Murray was the next proponent to testify. He is director of the study. He read a statement to the committee (See Exhibit 3) and told the committee that they had some statistics from North Dakota which they had tailored to fit Montana's problem. Many Montanans are victims and are left with very bad effects after crimes and, at present, they cannot receive restitution -- often there is bodily injury. He said that he believes this bill will help crime enforcement by increasing citizen participation when a crime is committed. If this bill passes, 50% of all compensation paid to the innocent victims of crimes will be paid by the federal government.

The next proponent to testify was Tom Honzel who represents the County Attorneys Assn. He said that they had indicated during the last several sessions that they do support this type of legislation and that Prof. Murray has done an excellent job on the present bill. The legislature should pass this type of legislation. His association asks for favorable consideration by this committee.

Mike McGrath of the Attorney General's office also appeared as a proponent of HB 357. He said that the Attorney General's office is very much in support of this bill and that it is particularly important because it is limited to victims. It will enhance law enforcement throughout the state.

Joan Uda of the office of Budget & Program Planning said that they strongly support this legislation. Their office has worked with those involved trying to find the money for this bill.

Norman Grosfield of the Workmen's Compensation Division said that they have worked closely with the committee drafting this bill and support the bill.

Joan Brown of Helena, representing the Council of Churches, said they support this bill, and gave a pamphlet concerning it to the Chairman.

Rep. Quilici closed at this time, since there were no other proponents or opponents present to testify. He told the committee that this act has been really researched and is long overdue in Montana and that, under subrogation, the defendant would have to pay. He said that Sen. Humphrey has introduced a bill in the U.S. Senate to give federal funding to this program.

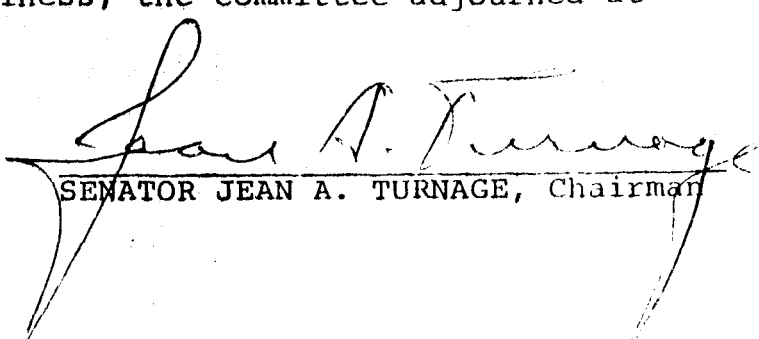
At this time, the Chairman allowed questions by the committee. During the questioning it was brought out that crimes of murder would result in \$25,000 restitution payments, but some crimes, such as those within a family, are not paid. Prof. Murray showed the committee statistics from the state of Hawaii which is comparable to Montana. Their law was enacted in 1968. He said that this bill would require a staff of a G-14, which is the section chief classification, an investigator at a G-12, and a secretary at grade 8.

Lon and Joan, attorneys attached to the Judiciary committee, both had questions as to amending the bill, but Rep. Quilici said that, if they were not necessary, he would prefer that they did not amend the bill at this late date.

In regard to the funding of this act, John Frankino said that there is adequate funding. Rep. Quilici said he would get the exact figures over to the committee.

The Chairman thanked and excused the witnesses.

There being no further business, the committee adjourned at 10:40 a.m..



SENATOR JEAN A. TURNAGE, Chairman

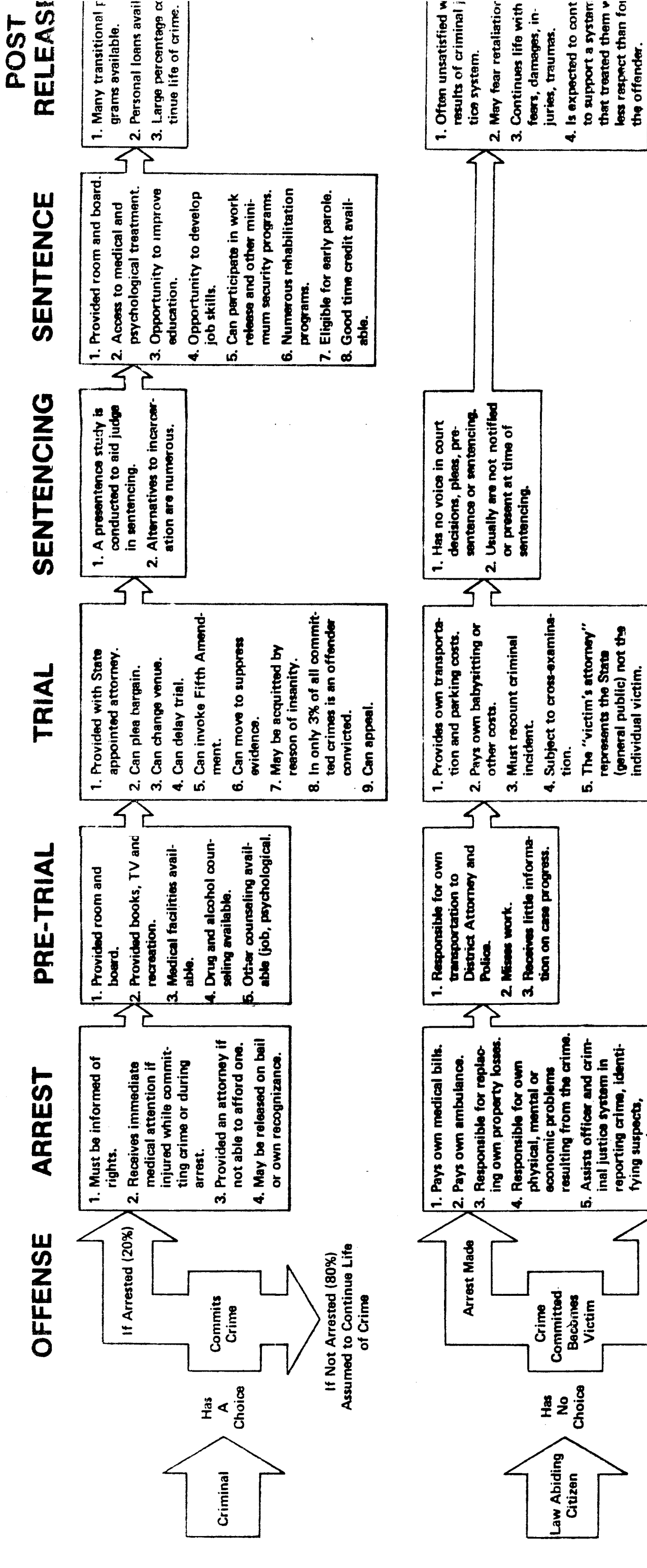
JUDICIARY COMMITTEE

Date 4-7-77

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THE CRIMINAL INJUSTICE SYSTEM

(29)



HARL HAAS
DISTRICT ATTORNEY
MULTNOMAH COUNTY
PORTLAND, OREGON

(Ex 2)

VICTIMIZATION AND OFFENDER

RESTITUTION STUDY

(HB 357)

(113)
(6513)

THE CRIME VICTIMS COMPENSATION ACT OF MONTANA

HOUSE BILL 357

A.J. MURRAY

Crime has become a major source of personal and sudden disaster to many Montana families. It strikes without warning and is capable of inflicting more ruin than any natural disaster. Unfortunately, current penal programs do not reform many felons, while our law enforcement agencies simply cannot prevent every crime before it occurs. The result is that crime can strike many Montanans with sever bodily injuries and the possibility of long-term hospitalization which can quickly wipe out a lifetime of savings. In addition, a victim can be faced with temporary or permanent loss of a job due to personal injuries. To some people it can mean complete disaster.

By 1976, twenty-one states had adopted varying programs for compensating victims of crime. Numerous foreign countries, including the United Kingdom, Canada, New Zealand, and Australia have established comprehensive systems. Presently, federal legislation is pending in Washington, D.C. for a national victims compensation program.

The American tradition in this area is well-established. When a president is killed in office, his widow and children are not left to shift for themselves. The government provides funds for their readjustment in life. Congress has seen fit to allow the military to compensate its members for injuries sustained during time of conflict and has approved legislation for the extensive medical and social welfare provisions of the Veteran's Administration by which the community suffers in the loss of the individual who has suffered for the community from the external aggression of war. The state should likewise share the loss

to those who suffer from the external aggression of crimes of personal violence.

In an article from the Congressional Record, Senate, April 10, 1975, relative to a discussion of the Victims of Crime Act of 1975 (S. 1399) Senator Mike Mansfield said the following:

"In the last 100 years the criminal and the state have dominated the arena of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to protection for the losses they suffered from violence, can only serve to strengthen the social fiber of our nation."

Today our criminal justice system is offender-oriented. The concerns of the system lie with the criminal and the underlying causes of his anti-social behavior. Yet, for some reason, these same people who have seen to the exemplary treatment of the offender have virtually ignored the plight of the victim. Long after the prisoner has made payment for his debt to society, the victim may still be struggling under the debts incurred by medical bills, irretrievably lost wages, and possible permanent injuries.

The evolving concepts of the criminal justice system evidence the concern felt by society for protecting and safeguarding the rights of the accused. However, in terms of extending these same rights to the victim, the criminal justice system has been strangely silent. The victim has become the Cinderella of the criminal justice process. Once brutalized by the criminal, the victim has few rights and even fewer avenues for redress of his grievances. He cannot receive immediate restitution, it is unlikely that he has adequate insurance, and our current tort process offers little hope for meaningful reparations. In view of this, the enactment of legislation to care and provide for the innocent victim of crime will have three important benefits.

First, such a law will guarantee for the first time that the victim will receive at least the same consideration we now mandate for the criminal. The scales are presently weighted in favor of the offender, but this legislation will help to balance the scales and for the first time place the state clearly

on record as being concerned with the plight of the victim.

Second, by providing a mechanism for compensation to the victim of a crime, such a law will undoubtedly encourage more people to report crimes and to cooperate with law enforcement officials.

Third, compensation to innocent victims or intervenors can help eliminate the peculiar phenomenon of multiple witnesses watching while a criminal act occurs. ("Good Samaritan" Law: this legislation directly encourages citizen participation in law enforcement and fosters improved relations between citizens and law enforcement officers).

The Crime Victim Compensation Act of Montana would establish payment to an innocent victim of a crime, a dependent of a deceased victim, a Good Samaritan or an authorized person acting on behalf of any of the foregoing. Excluded as a claimant is the offender or an accomplice of the offender, familial members of the offender or accomplices' household, and any person serving a sentence or residing in any public institution which provides for the person's maintenance.

The administering agency is included in the Workers' Compensation Division since the structure, expertise, and procedures to handle and process claims and render decisions relative to same is therein established.

Expenses covered are "out-of-pocket" expenses for medical, both hospital and doctors, loss of work (more than one week's wages) and funeral and burial expenses (maximum \$1100). All expenses are reduced by the amount of collateral sources payments before any payment is awarded under the Act. Not covered are property loss, pain and suffering, inconvenience, physical impairment or non-bodily damage.

Awards have a maximum of \$25,000 for employed claimants and \$20,000 for unemployed claimants. Maximal weekly payments for loss of work for employed claimants of \$125 and for unemployed claimants, \$100. Emergency awards may be

made prior to a final settlement of the claim to ward off financial hardship.

Time limitations are: within 72 hours of the crime, it must be reported to a law enforcement agency and within one year to the Crime Victim Compensation Agency. The claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of offenders.

Recovery rights by the state of an amount equal to the compensation paid are included by subrogation where the suit is initiated by the claimant or the division and restitution from the offender, when ordered by the Court, as a condition of probation or parole.

This Act does not establish an absolute entitlement nor is payment retroactive unless the legislature so appropriates. If the division determines that funds are not available to pay fully all claims, it may proportionately reduce benefits.

Lead-in time of six months is necessary to select personnel, establish the format and adequately advertise the program and establish working liaison between the agency and units which will deal with innocent victims. Claims will be accepted as of January 1, 1978.

The fiscal note based upon the best projections of crime statistics by the Montana Board of Crime Control and experiences of other states in compensation programs is as follows:

Personnel:

	<u>1978</u>	<u>1979</u>
Section Chief G-14	14,332	14,668
Claims Invest. G-12	11,919	12,199
Secretary G-8	8,222	8,415
Benefits @ 13.5%	4,653	4,763
Total Personnel Expenses	39,126	40,045
Operating Expenses	12,000	12,000
Capital Expenses	8,000	-0-
Total Costs	59,126	52,045
Compensation	63,000	214,500
Total	122,723	266,545
Total (1978-79)	389,268	

There is little question that the legislation is urgently needed. It would unequivocally prove to the people that the state is concerned with the ruinous consequences of violent crime. For the first time, a victim would be guaranteed the same consideration as the criminal and the state would be acting in a tangible way to encourage citizen participation with law enforcement.

