

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 8, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senators Regan and Roberts who were excused to attend other meetings.

WITNESSES PRESENT TO TESTIFY:

Rep. Holmes - Billings
Chuck O'Reilly - asst. director of the Justice Project
Mike McGrath - Department of Justice
Jack Williams - Chiefs of Police Assn. & Helena Chief of Police
Mickey Nelson - Montana Coroners Assn., Lewis & Clark Co. Coroner
Don Pratt - executive director of the Montana Funeral Directors Assn.
Tom Honzel - Montana County Attorneys Assn.
Rep. Gould - Missoula
Capt. D. Tooley - Montana Highway Patrol
Allen Toftely - Montana Highway Traffic Safety Division
Rep. Ramirez - Billings

CONSIDERATION OF HOUSE BILL 461:

Rep. Holmes of Billings, sponsor of the bill, told the committee that Montana should have a forensic laboratory because its population of 735,000 is greater than the number of residents which are recommended for one. She also said that it often takes 6 weeks for Montana to send evidence to Washington or another state and receive the evidence and results back. There is a lot of expense to having evidence tested in this manner because sometimes it has to be carried by hand on an airliner. Montana does have a lab in Missoula which analyzes drugs, etc., but it cannot test other evidence. During the study by the Crime Control task force, there was a call for a forensic lab to be established in Montana. The bill was accompanied by a second bill which was the bill for funding of a lab. The House passed the funding bill and this bill with the idea they would be ready to go into effect in 2 years. This has to be done, and Montana is going to be paying for it anyway. She submitted a newspaper article on the subject of a forensic lab and a forensic lab pathologist. (See Exhibit 1) Rep. Holmes also proposed some amendments for this bill. (See Exhibit 2). She then asked that the word "shall" be stricken on page 11, line 22, and that an "s" be added to "die" in that line also.

Chuck O'Reilly, assistant director of the Justice Project, was the first proponent of this bill to testify. He said the general counsel for the study commission had drafted this bill and that

Montana has six times the number of part I crimes as is necessary to have a forensic lab. He has talked with other states which feel that a state of this size, and with the number of crimes Montana has, should have a lab. If this is not passed during this session, we can probably forget the funding. This is not a spur of the moment thing because many associations have been involved in the study of it for some time.

Mike McGrath from the Department of Justice was the next proponent to testify. He said that this is an extremely important bill and that a good deal of time has been put into it. This was the No. 1 priority bill of the project. It provides for a medical examiner system and establishes a crime lab. It also calls for a 15-member board to be appointed to implement both of these things and to make rules, regulations, procedures, and hire the medical examiner and pick the location for the lab. There is somewhat of a problem in regard to the medical examiner and what happens in a suspicious death. They are asking for leadin time to try to get federal funds to implement this program.

Jack Williams, Helena Chief of Police, representing the Chiefs of Police Assn., said that they are in favor of this bill because too many times they are delayed in the field because they do not have a lab. They have to use out-of-state labs, and that takes much more time to obtain results. If Montana had a lab, we could probably get results on our evidence within one day to a week which would be a great help.

The next proponent was Mickey Nelson, representing the Montana Coroners Assn., who said that this bill may take care of the problem of funding if the proposed amendments of Rep. Holmes are adopted. Without the proposed amendments, this association is not in full accord with the bill.

Don Pratt, executive director of the Montana Funeral Directors Assn., said that their problem with the bill is that they are not allowed a member on the proposed 15-man board. He proposed an amendment to remedy that situation. (See Exhibit 3)

Tom Honzel, representing the Montana County Attorneys Assn., was the next proponent to testify. He told the committee of an instance in Helena where the judge ordered a trial in 3 weeks and the evidence could not be sent to Washington for testing and the results received in that time. However, in that case they sent the evidence to Oregon for testing and hope that it will be returned in time for the trial. Therefore, if Montana did have a lab it would help be a great help.

Mike McGrath told the committee at this time that the Justice Department was adding some repealers to the bill and that they would have them incorporated into Rep. Holmes proposed amendments for the committee's consideration.

There were no opponents to the bill. Questions were asked by committee members. The witnesses were thanked by the Chairman and excused.

CONSIDERATION OF HOUSE BILL 355:

Rep. Gould of Missoula, sponsor of the bill, told the committee that this bill was killed in the House and HB 145 which funded the operations of this bill was passed. Therefore, he had been able to get the committee report reversed and have HB 355 passed.

Capt. Tooley of the Montana Highway Patrol told the committee that the function of this bill is to provide the vehicle for HB 251 to be implemented. It gives the Highway Patrol the right to provide a driver rehabilitation program for DWI's. The concept is valid in that our present program does nothing to keep that individual from continuing to drive. He said that they would prefer to try basically to change the attitude of DWI drivers.

Allen Toftely of the Montana Highway Traffic Safety Division said that their concern is about getting a budget to handle the program. Otherwise they approve of this bill.

There were no opponents to HB 355.

DISPOSITION OF HOUSE BILL 355:

Sen. Towe moved to amend HB 355 by deleting section 3 in its entirety and to make the appropriate change in the title. The motion carried unanimously.

Sen. Warden moved that HB 355 as amended BE CONCURRED IN. The motion carried unanimously. Sen. Warden then volunteered to carry HB 355 on 2nd Reading.

CONSIDERATION OF HOUSE BILL 261:

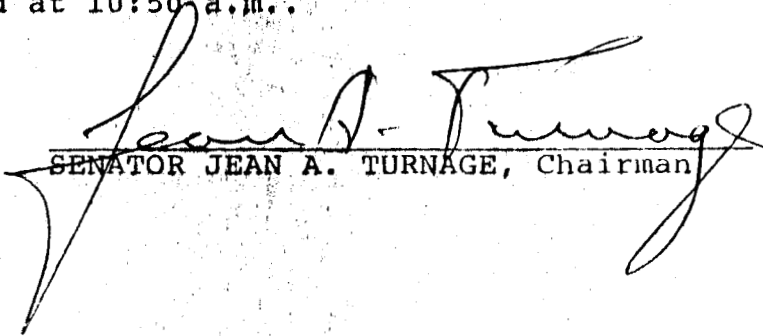
Rep. Ramirez of Billings, sponsor of the bill, said that it is the minimum mandatory sentencing bill. Right now the judges have almost complete discretion and there are no guidelines whatsoever. This bill is designed to try to bring some structure in sentencing. It is patterned after some suggestions of former Pres. Ford which were adopted in the Senate by Sen. Kennedy of Massachusetts, which makes them strictly non-partisan. This applies to violent crimes against a person. He then pointed out that the sentencing proposed is for first and second offenders, and that this bill gives the judges certain guidelines for sentencing. He said that he does not agree with the fiscal note as he feels it may be overstated.

Rep. Gould of Missoula, a proponent of HB 261, said that he was very much in favor of it and that he believed that 98 or 99% of the people are also in favor of it. In regard to the fiscal note, he said that crime is costing us money and it would be better to spend the money to stop crimes.

At this time, Tom Honzel who represents the Montana County Attorneys Assn. said that he believes that the fiscal impact will not be too great. The association is in favor of this bill as it will give everybody guidelines they can work with.

There were no opponents to this bill. After questioning of the witnesses by the committee, Rep. Ramirez closed on HB 261. He said that he believes that every judge finds sentencing is the most difficult part of his job and that he thinks the judges would like some guidelines to go by.

There being no further business before the committee at this time, the committee adjourned at 10:50 a.m..


SENATOR JEAN A. TURNAGE, Chairman

COMMITTEE

Date

4-8-77

[illegible]

State crime lab, pathologist urged

*Ex. 1
Rep. Holmes*

BY DARYL FARNSWORTH
Of The Gazette Staff

Some areas of law enforcement in Montana are nearly 20 years behind the times, according to Gerald Dell, Yellowstone County Undersheriff.

Dell says the lack of a forensic crime laboratory and only one forensic pathologist are prime examples of the state's backwardness.

Presently, criminal evidence, such as a suspected murder weapon, the victim's clothing, bullets or bloodstains, are sent to the FBI Criminalistics Lab in Washington, D.C., for testing and analysis.

Bodies of murder victims in the state must be flown to Great Falls for a forensic autopsy.

(Forensic pathology is the study of human tissues for evidence in legal proceedings.)

These routine procedures are expensive. An example: It cost the city of Billings \$1,200 for evidence in the Tillotson murder case to be sent to the FBI lab, according to retired Police Chief Gerald T. Dunbar.

"In an effort to hurry the results back we sent deputy Jack Trimarco along with the evidence ... he hand-carried the alleged murder weapon to the FBI lab," Dunbar said.

Three bodies from Billings have been sent to Great Falls in 1977: A man who drowned in the Big Ditch, a man shot to death in his bedroom and a young woman found shot to death near the city landfill.

The law enforcement agency investigating a crime must pay the cost of shipping evidence to the FBI lab, and air freight on a body if it is flown to Great Falls.

The cost of an autopsy is paid by the county coroner.

Yellowstone County Coroner Richard Taylor said a forensic autopsy costs about \$300. A non-criminal autopsy runs about \$150.

Taylor said those costs come out of the coroner's \$17,262 budget. Taylor, who is not a pathologist, earns \$3,750 annually as coroner.

Taylor presides at inquests, but he is not qualified to perform an autopsy. He owns and operates Billings Ambulance Service.

The forensic pathologist has a vital role in assisting the criminal prosecutor. "He must think like a cop," Dunbar said.

The forensic pathologist presents to investigators

• For autopsies Billings murder victims must be flown to Great Falls

• Criminal evidence is sent to the FBI in Washington for analysis

scientific evidence that he gathers from a post-mortem examination (autopsy). He also testifies at trials.

The analysis, identification and interpretation of physical evidence is termed criminalistics.

A criminalist is trained to recognize the physical evidence of a crime and separate it from the insignificant.

The primary aim of the criminalist is to apply objectively the natural and physical sciences to physical evidence and reconstruct events to prove a crime, and to connect or eliminate a suspect in that crime.

Lawmen say one forensic pathologist in Montana is not enough and more are needed to handle the heavy work loads.

House Bill 461, which asks for \$359,523 to operate a crime lab in Montana for two years, was proposed by the Board of Crime Control.

The bill is being discussed by the House's Public Health and Safety subcommittee.

Dunbar, a lobbyist for the bill, said it is "well on its way to getting approved by the House and Senate."

The final obstacle for the bill is to get the state Appropriations Committee to earmark the money for the crime lab.

It is not known where the crime lab would be located, but the general feeling among law enforcement people is that Helena probably would get it because of its central location.

There is a drug testing laboratory in Missoula and the nearest crime lab is in Seattle, Wash.

Billings Police Chief Gene Kiser said he would "definitely like to see a forensic crime lab established in Montana."

Holmes
(86-12)

STANDING COMMITTEE REPORT
Senate Judiciary Committee

That House Bill No. 461 be amended as follows:

1. Amend the title, page 1, lines 9 and 10.
Following: "16-3409"
Strike: ", 95-801, AND 95-802"
2. Amend the title, page 1, line 9.
Following: "16-3401"
Strike: the comma ","
Insert: "and"
3. Amend the title, page 1, line 10.
Following: "16-3402,"
Insert: "95-801, 95-802"
4. Amend the title, page 1, line 11.
Following: "95-810"
Strike: "AND 95-814,"
5. Amend pages 12 and 13, beginning at page 12, line 1.
Strike: Sections 24 and 25 in their entirety.
6. Amend page 12, line 1.
Insert: Section 24. There is a new R.C.M. section numbered
_____ that reads as follows:

"_____. Procedures upon suspicious deaths. (1) before a corpse is embalmed, cremated or dissected the coroner shall make or have performed any investigation he considers necessary whenever a death occurs or a body is found in his county and the death occurred under any of the following circumstances:

- (a) criminal violence;
- (b) by accident;
- (c) suddenly, when in apparent good health;
- (d) by suicide;
- (e) when unattended by a practicing physician;
- (f) in any prison or penal institution;
- (g) when in police custody;

- (h) in any suspicious or unusual circumstances;
- (i) by criminal abortion;
- (j) by poison;
- (k) by disease constituting a threat to the public health;
- (l) by disease, injury, or toxic agent resulting from employment;
- (m) when a corpse is brought into the state without proper medical certification.

(2) The county coroner shall perform or have performed an investigation into any death upon request of the attorney general, county attorney or the medical examiner. The county coroner may request an autopsy be performed.

(3) It shall be the duty of every person acquiring knowledge of the death of a person under the circumstances described to report the same forthwith to the coroner of the county in which the death apparently occurred.

(4) In cases where criminal conduct is suspected, the coroner shall immediately notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

(5) After his initial examination and investigation the coroner shall immediately prepare a full record of the facts found on a form provided by the Division of Forensic Science in triplicate, the coroner, medical examiner, and county attorney each retaining one copy.

(6) The state medical examiner has the authority in any death under the circumstances herein described to perform or have performed an autopsy or any other laboratory examination he considers necessary or in the public interest.

(7) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(8) In ordering an autopsy the state medical examiner shall order the body to be exhumed if it has been interred."

7. Amend page 13, line 16.
Renumber remaining sections in sequence.

8. Amend page 13, line 23.
Following: "~~16-34097~~"
Reinstate: "95-801, 95-802,"

9. Amend page 13, line 16.
Following: 95-802.
Insert: "and"

10. Amend page 13, line 23.
Following: "95-810"
Strike: "and 95-814"

Ex 3
Pratt

1. Amend page 3, Section 6, subsection (3).
Following: "ASSOCIATION." on line 24
Strike: "."
Insert: "; and"
2. Amend page 3, Section 6, subsection (3).
Following: line 24
Insert: "(p) a funeral director recommended by the Montana
funeral directors' association."

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Mr. [unclear]	Mr. [unclear]	✓ 461	✓	
Mr. [unclear]	Mr. [unclear]	✓ 461	✓	
Mr. [unclear]	Mr. HP	✓ 355	✓	
Mr. [unclear]	State of Calif. Assoc.	✓ 461		
Mr. [unclear]	Medicare Assoc. of [unclear]	✓ 461		
Mr. [unclear]	himself	✓ 261	✓	
Mr. [unclear]	his bill	✓ 355	✓	
Mr. [unclear]	Highway Traffic Safety Div (DCA)	✓ 355	✓	
Mr. [unclear]		✓ 461		
Mr. [unclear]	Mont. Funeral Directors Assoc.	✓ 461	✓	
Tom Honzel (JAT)	Co. A Hy Assoc.	✓ 461	✓	
Jack Ramirez (JAT)	Sponsor	261	✓	
Tom Honzel	County Attorneys	261	✓	