

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 22, 1979

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully in Room 436 of the Capitol Building at 8 a.m. on Monday, January 22, 1979. All members were present with the exception of Representatives Anderson, Daily, Holmes, and Pavlovich, excused and Representative Uhde, absent.

Bills scheduled for hearing were: House Bills 223, 224 and 225.

HOUSE BILL NO. 223:

Representative Conroy, as sponsor of the bill said that this bill came about as a result of the Clyde Rector case in Eureka. It would help provide law enforcement in that type of situation. It would allow law enforcement personnel to control telephone communications to and from a person holding hostages.

TOM HONZEL:

County Attorney Association. The problem came to our attention during the case in Eureka. I am sure all of you are aware of the legal proceedings that followed that case. That legal battle continued for a long time. This bill does not address the problem of getting the tape, but they would be capable of keeping the lines of communication open.

Representative Uhde came in.

Mr. Honzel continued, time is often critical. It is important that the person be able to talk to someone quickly if he should have to do so. About the bill, I find that there is a problem with the language. I understand that some of the telephone companies do not have any type of security. He offered an amendment on page 3, line 14.

Amendments will be prepared as previously designated, and presented to the committee.

JIM HUGHES:

Telephone Company official. We don't have any problem with this once we have tuned up for logistics purposes. We are concerned that we might be held liable without some type of security.

There was some further discussion on the amendment and with no questions and no further discussion the hearing closed on House Bill No. 223.

HOUSE BILL NO. 224:

Representative Conroy said this is a simple line amendment. He explained the purpose of the bill. A person does not commit an offense under

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this section if he voluntarily returns such person to lawful custody prior to arrest.

TOM HONZEL: County Attorneys Association. I have a very important amendment, in changing one word, trial to arrest. A custody situation is very different from a kidnapping situation. Under the old criminal code we would have to handle the situation like kidnapping. In custody cases one parent is awarded the child by the court and the other parent might take the child from custody and refuse to return them. This can be handled with a contempt of court. Further they should provide some kind of a defense and the one they opted to, that is if the parent returns the child. You cause problems for other states because of the extradition. He gave examples of cases he had handled.

There was some discussion about the Deaconess Home. By changing the wording of this we hope to solve some of these problems.

Representative Keedy asked about subsection 3 and divorce proceedings.

Would the County Attorneys Association object to elimination of subsection 3.

Representative Kemmis. The purpose of this defense is because the office felt that the real need here was to get the person back where they belong rather than prosecute.

Mr. HONZEL: That seems to be what the feeling is but we run into problems with other states.

There was no further discussion and no further questions and the hearing closed on HB 224.

HOUSE BILL NO. 225: This is a simple little cowboy bill, the trespass of livestock. It provides a penalty for knowingly permitting livestock to enter or remain on another person property.

TOM HONZEL: County Attorneys Association. We have not had this part of the criminal code since 1973. He explained this briefly and mentioned that trespass was in 45-06-201.

There was discussion about the livestock running loose. In Gallatin County this problem has been especially bad.

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MONS TIEGEN:

Livestock Association. He discussed the bill and said they did not want to create any problems for the Montana Range Law.

After Representative Conroy closed there was discussion about horses shot where he lives. I think it is important that someone running livestock should keep them in.

Representative Day commented that possibly there should be an amendment on line 11. There was discussion about filing a complaint. Then discussion about livestock defined, which would be pre 1973, since it is not defined in the present code. Mr. Day said that it should constitute proper notice if they called on the telephone, whereupon Mr. Honzel said you have to have proof of notice.

Representative Day asked, if you have these cattle that have strayed onto land that is posted "no trespassing" does that give you the authority to go in and remove these cattle from the land with the no trespass.

CHAIRMAN SCULLY:

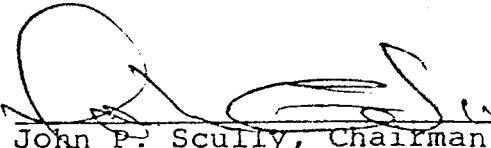
Mr. Scully asked Mr. Honzel to get him the definition of the livestock trespassing section in the old criminal code. Mr. Honzel said he would do so.

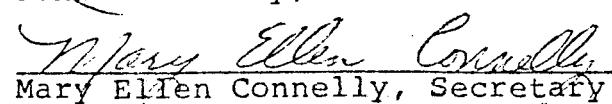
Mr. Honzel did find the information and a copy of his letter is attached.

closed on House Bill No. 225.

There was no further discussion and no further questions, and the hearing

The meeting adjourned at 9:00 a.m. and went into executive session to take action on bills pending in the committee.


John P. Scully, Chairman


Mary Ellen Connelly, Secretary