

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 23, 1979

The regular meeting of the Judiciary Committee was called to order by John P. Scully, Chairman at 8:00 a.m. in room 436 of the Capitol Building on Tuesday, January 23. All members were present with the exception of Representative Day, excused and Representative Seifert, absent.

Scheduled for hearing were House Bills 226, 229, 238, 248, 250 and Senate

Bill No. 63.

HOUSE BILL NO. 229: Representative Sales. This bill would specifically include district court judges in the county budget law. Except as provided this applies to expenditures made by district court judges in excess of district court appropriations authorized by the county governing body.

DEAN ZINNECKER: Montana Association of Counties. This bill will place district court judges on the same level as other county officials. I don't see why the district judge should be considered any different from anyone else in the county. This would not affect emergency procedures. He told of actual cases where the court was ordered to make added expenditures. He went on to discuss the intent of the bill.

There was no other discussion and the hearing closed on House Bill 229.

HOUSE BILL NO. 248: Representative Menahan. This bill will revise the laws relating to the prisoner furlough program. It would allow more flexibility in the amount of compensation a person must receive requiring the person to pay for counsel to represent him at hearings, and clarifying eligibility for participation.

LARRY ZANTO: Director of Department of Institutions. There are a whole lot of changes. On page 5, section 6 the major substantive change in the bill. This bill was passed two sessions ago. I think the work for incentive program should be preserved for those who can qualify. A good deal of work has gone into it.

CAROLINE ZIMMERT: Bureau Chief, Department of Institutions. She distributed handouts. A lot of work by a lot of people went into this matrix. She went over the details of the last revocation and the list of felony evaluations on the back shows how they weighted the matrix. A score of 255 points should be reached to be paroled. We feel this is more than subjective, it is objective.

HENRY BURGESS: Board of Pardons. I would like to support this because of the fact that the Board of Pardons has the last judgment to make on this program. We felt over the years we have been able to make some determination to make it a very much better program. The more tools we have to work with the better the program. He gave examples of a number of cases. We have had 41 furlough grants over the last 3 years and only 5 failures. There may be one more so there would be only 6 failures over the course of the years.

KAREN MIKOTA: League of Women Voters. The League is opposed to HB 248. We support the furlough program. She gave a copy of her testimony. She questioned the section about the length before parole, and discussed the repeating crimes, and the crimes that society are most worried about. The parole board feels that this bill will help them with some problems that they have had. She questioned the cost of the program. How would a prisoner afford counsel if he is in prison.

There was no other testimony, no discussion and no questions and the hearing closed on House Bill No. 248.

HOUSE BILL NO. 250: Representative Stobie. This bill was introduced at the request of the Code Commissioner. The bill will lengthen the time for notice requirements. It extends the period from 30 to 60 days.

ROBERT PYFER: Staff Attorney, Legislative Counsel. He went through the bill and explained the changes, it sets a standard guideline for agencies to follow.

CHAD SMITH: Montana Hospital Association. We support this bill. It does correct two things that have been troublesome. We feel that it is very important. The hearing should be renoticed. We strongly endorse the extension of time because the time has not been sufficient.

Representative Lory asked who would decide after the hearing. Mr. Pyfer said that basically it fixes a standard, but ultimately it would be the court.

REPRESENTATIVE KEMMIS: On page 2, lines 8 and 9, that sentence is talking about two different things. Originally the time was the same for both of those.

MR. PYFER: No, originally it was 20 and 28.

There was no other discussion and the hearing closed on House Bill No. 250.

HOUSE BILL NO. 238: Representative Lund. This bill was at the request of the Department of Social and Rehabilitation Services. The department does not have any law in state law that allows them to recover. He read the new language at the bottom of page 1.

JIM McCABE: Chief, Program Integrity Bureau. This bill would grant specific authority to impose sanctions and penalties on Medicaid providers who abuse or defraud the Medicaid program. Federal regulations governing the Medicaid program require the state to have procedures for suspending and/or terminating abusive providers. He gave a copy of written testimony. (attached)

CHAD SMITH: Montana Hospital Association. We strongly support the bill even though we have lost a great deal of money by participating in the Medicaid program.

REPRESENTATIVE KEYSER: On page 2, lines 2 and 3, what language do you consider to be abusive.

MR. McCABE: Split prescriptions, or a captive audience, such as a nursing home. Or a billing for the wrong service just to get a few dollars more.

REPRESENTATIVE CONROY: Do you still use the service out of Great Falls to do your book work.

MR. McCABE: Yes, at this time we still do.

MR. CONROY: There has been a lot of criticism of the Dykewood Corporation. Are you looking at that problem and trying to remedy the situation.

MR. McCABE: Yes, we have put it up for bid.

MR. CONROY: Why have you delineated the local people from administering this problem.

REPRESENTATIVE SEIFERT: How many employees do you have in the field just on fraudulent cases.

MR. McCABE: I suppose 20% of my time checking on medical providers.

REPRESENTATIVE ROSENTHAL: How much could you recover.

MR. McCABE: On the national scale it is 5%. I have myself recovered about 5 to 10 thousand. I think we need visibility.

JOHN MEREDITH: Attorney. We have no opportunity to raise the percentage figure. He made reference to line 20, in answer to a question raised by Representative Jack Uhde.

Representative Rosenthal asked if there was a procedure for investigating an offender and Mr. McCabe said, depending on what we suspect and try to compare it. There was lengthy discussion about generic substitution.

Representative Daily asked what access do you have to records and Mr. McCabe answered, the provider must have supporting documents. The Department of Revenue has subpoena powers. If it is abuse we handle it but if it is criminal the Department of Revenue would handle it.

MR. McCABE: Discussed drugs and drugstores and the cost of the program, and the many other states that have had the same problem.

REPRESENTATIVE ROTH: Who makes the final determination, and Mr. McCabe said, we outline it in a letter to the provider and have a hearing. If he is dissatisfied with the hearing he can sue us.

There followed discussion about how fraud is investigated. Mr. McCabe stated that mostly it is incidental to another investigation. Most are from a recipient, county welfare office, etc.

REPRESENTATIVE KEYSER: In returning to the language of "fraudulent, abusiveimproper." Can you get an absolute list.

REPRESENTATIVE SEIFERT: What percentage of facilities are being investigated and the answer was 20% of pharmacies and 10% of doctors. In nursing homes we just do spot checking. The PSRO is the agency that handles nursing homes.

REPRESENTATIVE KEMMIS: We have to define very carefully the sanctions. We have to be very sure that you define fraud, abuse, improper, would you look to other states before you throw this up. The answer was yes, by the attorney, California, Illinois and Ohio, for example, but they will not all be definable.

Representative Kemmis asked, have those statutes, the definition, been challenged in court, and the answer was no.

Representative Keyser asked, how many drugstores refuse to participate in the program because of the paperwork. Mr. McCabe answered that there are three in the state.

REPRESENTATIVE CURTISS: Are there federal rules that apply to this type of thing.

MR MCCABE: They instruct you to have rules to sanction providers, but no specific rules.

Again, Mr. Keyser asked, could you have a list of rules before we have executive action.

There followed discussion about the suspension of payments to nursing homes. Following this the hearing closed on House Bill No. 238.

SENATE BILL NO. 63: Senator Anderson. This bill is concerned with the misrepresentation of insurance companies. I am an insurance agent in private life. This bill deals with false advertising and misrepresentation. A lot of the things that have happened because of Medicare.

JO DRISCOLL: Chief Deputy, Insurance Commissioners Office. The amendments define more thoroughly. We had some hearings recently on a supplement to Medicare. She went on to discuss life insurance solicitation regulation and the omission of telling someone something in cases, especially with older persons, it is very misleading. They must fully disclose.

There was discussion about misrepresentation, following which the hearing closed on Senate Bill 63.

HOUSE BILL NO. 226: Representative Conroy. In 1975 Montana adopted the Uniform Divorce and Marriage Act. This bill provides that a County Attorney may not be appointed counsel for a minor in divorce or guardianship proceedings.

TOM HONZEL: Montana County Attorneys Association. This bill is a response to a Supreme Court case in the adoption of children, a guardianship proceeding. 40-4-205, that section refers to the Uniform Divorce Act. In the past the attorneys fees were assessed against the parents. I don't

think it was the intent of the Legislature to have the County Attorney get involved. We feel we don't belong in these domestic or divorce cases. We don't want to come under this Supreme Court case. There just isn't any basis in the statute and we are asking you to clarify this.

REPRESENTATIVE CONROY: In our county we don't have an Assistant County Attorney and our attorney is working night and day to take care of the work load that they have. They shouldn't be loaded down with other matters.

REPRESENTATIVE KEYSER: I think you should clarify the law on the lines 11 and 12.

REPRESENTATIVE LORY: Is there any county that has the County Attorney as the only attorney, and the answer was yes, there are several.

Then followed discussion led by Representative Kemmis about correcting the language. Representative Keedy commented that it would only preclude the deputy county attorney.

MR. HONZEL: I suggest that a judge could do that if it was made clear. If you wanted to make it clear that deputy would be included I have no objection.

There was no other discussion and the hearing closed on House Bill No. 226.

The meeting adjourned at 10:35 a.m.


John P. Scully, Chairman

Mary Ellen Connelly, Secretary