

HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
February 9, 1979

The regular meeting of the Judiciary Committee was called to order at 8:00 a.m. in room 436 of the Capitol Building by Chairman John Scully. All members were present except Representative Eudaily, excused.

Bills scheduled were Senate Bills 204, 205 and 149 and House Bills 568 and 569.

SENATE BILL NO. 204: Senator Aklestad. The bill provides for a rebuttable presumption that a defendant convicted of deliberate homicide is a danger to others and not entitled to bail. He passed out a hand-out, exhibit #1.

TOM HONZEL: County Attorneys Association. He quoted a case that he was familiar with. Sometimes, a deliberate homicide is a family type affair and may be the only crime that a person might commit. With that type of appeal a person may be let out. He elaborated briefly.

There were no other proponents and no opponents.

SENATOR AKLESTAD: I would hope that we would quit coddling criminals and pass this bill.

REPRESENTATIVE KEEDY: Asked about the defendants right to overcome the presumption. Mr. Honzel stated that in some cases it might not happen again.

The hearing closed on Senate Bill 204.

SENATE BILL NO. 205: Senator Aklestad. A person might rob a store and might not be put into the minimum sentencing category. I think when they walk into a store and have a weapon of some kind then I would think we could pull this person out of this category and give him at least two years. At least it gives the judge a little latitude. I would hope that this would have a deterrent effect because the individual would know what is going to happen.

TOM HONZEL: County Attorneys Association. The mandatory minimum sentence was passed in 1977, and when Representative Ramirez put that bill together he thought there might be cases where the mandatory minimum sentence might apply. As the Senator has pointed out, there are cases where they do not inflict bodily injury and because no bodily injury was inflicted they might argue that they take into consideration subsection 5. We think it makes much more sense. I think we should add the language "unless a weapon". Discussion about this.

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REPRESENTATIVE KEEDY: Would you please mention one or more of the offenses for which a mandatory minimum sentence could be committed without a weapon.

TOM HONZEL: Kidnapping, or maybe drugs. There was brief discussion. Exhibit #2.

The hearing closed on Senate Bill 205.

SENATE BILL NO. 149: Senator Hazelbaker. This bill was introduced to clarify the recall act, to correct an oversight. The counties have had a few problems with it. The League of Women Voters offered some amendments to make it more clear with the final approval of the Judiciary Committee in the Senate. There was certain language on page 2 that was changed.

REPRESENTATIVE LORY: He questioned the number of votes needed for the recall, page 2, lines 15 and 16.

There was brief discussion and the hearing closed on Senate Bill 149. Exhibit #6.

HOUSE BILL NO. 569: Representative Iverson. This is an attempt to tighten the defense for more protection for the officer. It is something that we should be doing something about. I wanted to learn if this was something that we would be able to do.

TOM HONZEL: Montana County Attorneys. Entrapment is nothing new to the law. It has always been recognized as a defense in Montana law. It is recognized in the Montana statutes. Read down to line 18, what this bill does, it recognizes that it is an affirmative defense. And second, it requires this defense to be proven by a preponderance of the evidence. Patterson vs N. Y., this case has been to the Supreme Court, requiring that you prove by a preponderance of evidence it does not violate the constitution. We are not deviating with this bill or the other one that you will hear on Monday.

There is one problem that we see. The reason to have an affirmative defense is to give notice prior to trial. I would have some language to amend. I would ask that you give consideration to give it some consistency in the law.

REPRESENTATIVE KEMMIS: The state is required to show all of the elements of the crime. Are you shifting the burden away from the state.

MR. HONZEL: The Supreme Court said "no".

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REPRESENTATIVE KEMMIS:

Isn't entrapment a different case to carry off in Montana law.

MR. HONZEL:

We are more interested in making the law consistent.

There was no other discussion and the hearing closed on House Bill 569.

HOUSE BILL NO. 568:

Representative Scully. Vice-Chairman Teague took over the meeting, while Mr. Scully presented this bill. This bill came about for numerous varied and different reasons. Mr. Bardanouve asked that they look for a way to fund the Forensic and to look at other states to see how they did it. The bill increases numerous different fees. He went through the list of the ones to be raised. One of the things that the department was finding out was that the fees that were placed on the act were not enough to do the job. That was another reason for introducing the bill. He passed out figures, copy attached.

Automobiles are used in the commission of many crimes. The question has been raised whether this is the place to plug in the cost of law enforcement. I have one amendment that I would like to put in at the present time. What we intend to do is round off the figures. On page 1, line 23, 1/2 of each fee. I think we have to recognize a number of items in the Legislature. The law enforcement academy has done a good job, and done it well and very economically. He discussed the forensic lab, the funding introduced last session. Then he discussed the bicentennial plate. Historically we used to do this every two years. There will be the initial cost of the license plate and is the fee reasonable. I would suggest that the \$5 fee is legitimate. We can retain some of that money to the local fund.

MIKE McGRATH:

I have a further addition of the sheet that Mr. Scully passed out. Law enforcement throughout the state is in a kind of a crunch, especially in the academy and the law enforcement system. In 1977 we had found additional funding for the academy and the LED system. We have terminals in most sheriffs offices and city offices throughout the state with a central terminal. We hear that there will be no general fund money for the law enforcement academy. It performs an excellent function in the state and gives excellent service for \$6.00 per day. We have to find a source of funding for the academy, and the forensic lab.

Representative Holmes introduced the bill that created the forensic lab, but it was not funded. There was discussion about sending specimens to the FBI lab in Washington D. C. The registration fee would raise the most

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money, \$1,524,938. Funding the Law Enforcement Academy, Law Enforcement Telecommunications System and the Crime Lab from this source would save the general fund \$674,860 for fiscal year 1980 and \$772,264 for fiscal year 1981. Exhibit #5.

WILLIAM ROMINE:

Montana Sheriffs & Peace Officers.

We are wholeheartedly in support of this bill, of some method of paying for the academy. The courts are continually handing down decisions and we need this academy to have this education. The only problem with this bill is that the academy takes a priority over the forensic lab. I recognize that that is an appropriate problem, the academy first, the communications second, and the forensic lab third.

LARRY MAJERIS:

Motor Vehicle. I want to explain some of the problems and conditions with motor vehicle. We offered a 24 hour radio time in Deer Lodge. It was manually search and get back to them. We had 45,000 requests. As a result we depend totally on LETS. In addition the division of motor vehicle must keep track of state cars. He elaborated further.

DEAN ZINNECKER:

Montana Association of Counties. It

has been a biennial concern. We do want to see user fees increased. This has proved an adequate solution. In addition the proper training of law enforcement people does have an effect on the insurance rates. They would keep them lower.

CHUCK O'REILLY:

Sheriff, Helena. I started as a deputy.

I spent the first 6 months in that car and I had no idea what to do so I just drove around. In 1969 the academy was funded by federal grant. We had 28 schools, 58 school weeks with a minimum amount of 288 hours of training. He discussed the antique method of communications. We had problems with losing witnesses. I think it is imperative that we have a forensic lab to assist law enforcement.

DON WHITE:

County Attorney, Gallatin, Bozeman and

Florence. I am in total support of the LETS system. I would echo what has been said here. I have seen a very dramatic increase in the performance of the officers in the field. They are giving us fewer cases with severe problems. Most of the negligent homicide and deliberate homicide are as a result of a motor vehicle. Most of the NCIC hits are stopped because of auto defects, and largely because of telecommunications. I would like to touch briefly on the need for the forensic science lab. Its absolutely essential that we have some type of question document identification, for checks, etc. To send to Washington D. C. is very time-consuming and costly. We need a forensic pathologist in the lab, because we have to eliminate the problem of the body already embalmed and cremated. It is essential that you have this evidence.

It is so critical that I could talk about it for hours. The crime lab is presently in absolutely deplorable condition. They have inadequate storage and equipment. We need some help.

JERRY KISER: Police Chief, Billings. He talked about the need for the telecommunications and the forensic lab. We do not at the present time have the coordination that we need in the pathology area and ballistics. The vital time is within 24 hours. We lose a lot of evidence and a lot of time in finding who the suspect might be in a case. I would like to have them all be number one, the academy, the lab and the LETS.

MURSEL KYE: Police officer. I would echo the same things. We support this in every way, shape and form.

OPPONENTS:

JIM MANION: Montana Automobile Association. There are 53,000 motorists in the state of Montana. The car owner should not be made to pay the burden. The actual amounts in this bill are not small. The total would be \$18 dollars more than under the current system. Lets compare this to the 1 cent gas tax increase, a 15 gallon tank at 1 cent tax would cost \$3.00. We feel that this subsidy should come from the general fund of government rather than the car-owner. The motorist is sick and tired of being asked to fund everything. I think we could put all of the fees into the general fund. I think it is not fiscally responsible to have earmarked funds. I think the most important thing here is that we have to come up with a reasonable fee. I do hope you give considerable consideration to an amendment.

REPRESENTATIVE KEYSER: What were the other sources of funding.

MR. MCGRATH: I don't remember, some federal money available on a one-time basis.

MR. SCULLY: I think it was some form of money for a crime control project.

There was discussion about the estimated revenue that would be generated. The question was raised by Representative Curtiss as to which budget they were in, not in the executive budget and not in the fiscal analysts budget.

REPRESENTATIVE DAY: He questioned line 21 on page 5. There was lengthy discussion concerning this. It was not clarified as to what was meant.

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REPRESENTATIVE SCULLY:  
be issued.

REPRESENTATIVE CURTISS:  
for months.

LARRY MAJERIS:

The average is fourteen days, but it sometimes takes longer if there is a problem.

of having it take so long.

The legislature has been statutorily mandated whether the new plates will

Why does it take so long to get a title transfer? I have waited sometimes

It used to take about thirty days, but we try to get it out within ten days.

There was lengthy discussion on the length of the transfer and the nuisance

Bill Number 568.

With no other discussion and no further questions, the hearing closed on House

The meeting adjourned at 9:45 a.m.

*Mary Ellen Connelly*  
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Mary Ellen Connelly, Secretary

  
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John P. Scully, Chairman