

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 12, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday, February 12. All members were present except Representative Daily.

Scheduled for hearing were House Bills 580, 586, 602, 603, 608, 609 and 611.

HOUSE BILL NO. 602: Representative Sivertson. This bill is to provide that in a criminal action compulsion must be proven by a preponderance of the evidence by the defendant.

TOM HONZEL: County Attorneys Association. Compulsion has been recognized as an affirmative defense. He talked about the Patty Hearst trial. We want to make this consistent. It could be included that notice be given to the prosecutor if they are going to raise one of the permanent defenses.

There was no discussion and the hearing closed on House Bill 602.

HOUSE BILL NO. 603: Representative Sivertson. We only have one change in this law.

MARK ROSCOE: Attorney Generals Office. The problem that a lot of the people are having in the field, it allows for the discovery of objects, everything the people have. He discussed field notes the officers might have. He discussed the changes briefly.

There was no discussion and the hearing closed on House Bill 603.

HOUSE BILL NO. 608: Representative Gould. I started working on this with the Montana Sheriffs Association. I have also been working with a correction judge in the institutions. This has 10 years for the pushers of hard drugs and 20 years on a 3rd conviction with no parole if a sale was to a minor. I asked that this be drafted as schedule 2 drugs. HB 463 is my bill on THC for medical if the federal government makes it a prescribable drug. What I would like to have the committee look at is an amendment that would make this effective for schedule 1 also.

REPRESENTATIVE KEEDY: When I was given the bill to sign I do not remember seeing a reference to marijuana. Would you say that a druggist can change one drug schedule to another. Since we are changing the scheduling, would you want to include some amounts of hashish.

REPRESENTATIVE CURTISS: Would a physician come under the scheduling on subsection 3. There was brief discussion about this.

The hearing closed on House Bill 608.

HOUSE BILL NO. 611: Representative Gould. The bill provides that on a second conviction of driving while intoxicated the person may be punished by imprisonment for a term of not more than 90 days. If they did not go into some kind of alcohol program they would be put in jail.

JIM JENSON: Montana Magistrates. We do support this bill as a rehabilitation tool for the Justices of the Peace in the state.

DWAYNE TOOLEY: Highway Patrol. We would support this bill because we are involved in the rehabilitation part of the program.

REPRESENTATIVE ROTH: Do you conduct these counseling centers. Mr. Tooley said, we are to some degree but mostly it is the Department of Institutions.

REPRESENTATIVE KEYSER: At the present time if the person is convicted the second time and if he does not go to the school and the judge is notified will the judge take any action at all.

MR. JENSON: Most of the time the judge does take some punitive action, usually in the form of a fine.

MR. KEYSER: Is there not a jail sentence on the second offense. Mr. Jenson answered, not at the present time. We want to move it back one step.

REPRESENTATIVE DAY: Would a 10 day jail sentence be more effective than a \$500 fine. Have you had people come back after the third offense. Discussion about this.

The hearing closed on House Bill 611.

HOUSE BILL NO. 609: Representative Tropila. This is one of the small bills you will see this session. A lot of my supporters are newspaper people. Many reporters are delegated to write an editorial. In these days of freedom of information, I think all editorials should be signed.

REPRESENTATIVE LORY: Suppose you had an editorial from the New York Times in the Missoulian.

REPRESENTATIVE TROPILA: As long as the author is indicated.

REPRESENTATIVE UHDE: Would you oppose adding a sentence.

REPRESENTATIVE EUDAILY: I am just wondering in my own mind what good this would do.

MR. TROPILA: If it is the newspapers opinion I think it should be stated so.

The hearing closed on House Bill No. 609.

HOUSE BILL NO. 586: Representative Teague. I am in the process of amending this bill to coincide with that bill. I am trying to stop last minute negative advertising. He gave an example of an ad in the Billings Gazette against people who had voted against the special session. We have to word this bill so that it will not be unconstitutional. If you advertise, lets play the game according to the rules.

OPPONENT, MARGARET DAVIS: League of Women Voters. We recognize that this can be a problem but we feel that this is unduly restrictive. There may be legitimate occasions and we are very concerned with the editorial part of the news.

REPRESENTATIVE SCULLY: Are you looking at the political libel section and maybe what is necessary is a stiffer penalty. In the House Journal there is no excuse for misquoting the voting record because its in the journal, Mr. Teague answered and said the record had been distorted in the Billings paper.

REPRESENTATIVE DAY: I had a case where there were deliberate lies and distorting the voting record. He showed the committee a copy. Discussion between Scully and Holmes about negative campaigns.

Representative Keyser commented that he didn't think this was going to help much. Representative Teague said the bill did have some problems.

REPRESENTATIVE EUDAILY: I think we should try to work this into the campaign finances part of Senate Bill 65, the election bill, and try to work it out.

There was no further discussion and the hearing closed on House Bill 586.

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HOUSE BILL NO. 580: Representative Fagg. Because Mr. Fagg was not available Representative Uhde carried the bill. The bill is basically trying to correct the part of the law where there is no consideration.

WALTER JAKOVITCH: Montana Landlords Association. This problem has been around for quite some time. This is one of the areas we are trying to address, the bad check. People have an obligation to fulfill for housing just like they do for any other thing.

TOM HONZEL: We get many complaints from landlords and their problem with renters. While I understand the problem, I don't think this is the way to get at it. What you have in a rental agreement is a contractual obligation. We do not use the criminal law to force people to comply with their contractual obligations. If a person just refused to pay the rent, he could not be prosecuted under this law, either he would have to go under the civil remedy. The language in this bill is quite broad. Under the landlord-tenant act there are some types of remedies. We did away with the debtors prison and I would hope we don't go back to that. This is just too broad to put in the criminal law.

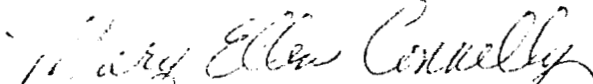
REPRESENTATIVE KEEDY: Asked about bad checks and lengthy discussion followed.

REPRESENTATIVE DAY: What would happen if you had a stop-payment on a check.


MR. HONZEL: He would have no defense.

There was no other discussion and the hearing closed on House Bill 580.

The meeting adjourned at 10:50 a.m.



Mary Ellen Connelly, Secretary



John P. Scully, Chairman