

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 20, 1979

The meeting was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building on Tuesday, February 20. All members were present except Representative Willy Day, excused to chair the Agriculture Committee. Scheduled for hearing were House Bills 746, 797, 798, 799, 801, 803, 812, 820, 831, 833, 840, 836, 861, 845, 865, 870, 877 and 878.

HOUSE BILL NO. 820: This bill will provide that the members on a police commission will not be replaced during a hearing until a decision has been made. Representative Pistoria, as sponsor of the bill, gave examples of cases. He commented that he was controversial and that a controversial person tells the truth and people don't want to hear the truth. He gave an example of the case which led up to the bill being drafted, and commented that they were on the case 2 1/2 years and during the case they changed the members. The old members should finish the case.

There was very little discussion and no questions and the hearing closed on House Bill 820.

HOUSE BILL NO. 833: Representative McBride. This bill will address some of the problems dealing with solar energy and solar easements.

RONALD POGUE: Alternative Energy Resources Organization. What we are looking for is some type of legal rights so that when you build a solar reflector you will have the use of it. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same recording requirements as any other easements on real property. He gave some details and statistics on cost of solar energy. He discussed the verticle and horizontal angles, expressed in degrees, at which the easement extends over the property subject to the solar easement.

CHUCK HAMMONS: I drafted this bill at the request of Ted Doney, of the Department of Natural Resources. I would just like to state that the purpose of the bill is to promote solar energy. In the Senate there was a bill which was killed in committee. This bill we have now is just to grant rights for solar easements.

Representative Roth asked who would give these easements. Mr. Hammons said that an easement is negotiated and would be recorded the same as any other easement.

There was no further discussion and the hearing closed.

HOUSE BILL NO. 746:

Representative Curtiss. This bill would restrict the United States from taking land through condemnation procedures unless approved by the legislature. She talked about the exercise of eminent domain and pointed out on a map the area in Lincoln County that is forest land and private land and cooperative land. She reviewed the effects of Libby Dam and the Corps of Engineers. In Lincoln County over 75% is federally owned. If more land is taken the tax base is in jeopardy. She discussed the pressure from the Fish and Game to acquire 9,000 more acres of land.

SENATOR HAFFERMAN:

I am in support of this bill. He asked that the committee not take away their bread and butter. If you take away our tax base you are taking away our bread and butter. They want to take away our tax base when the land area is already 85% federal land.

SENATOR ROBERT BROWN:

The people in Lincoln County are not willing to sell as long as they think their neighbors land might be condemned. The economy is going to suffer. He explained some of the effects that a smaller tax base would have. Even if you think it is a good idea you should pass this bill. It may not help but it is a start.

SENATOR McCALLUM:

The same thing is happening in Sanders County, as you can see by the map. We need all of the tax base we can have. He also talked about the demand for more land and the condemnation practices.

JACK SALMOND:

I am from Choteau. Our ranch is involved in the condemnation surrounding Libby Dam. He talked of his grandfather and father and now himself operating the ranch, and that they have no intention of selling. The Corp has already purchased 3,000 acres. The Department of Fish and Game wants the other 9,000 acres of game land. Our ranch is several hundred miles from Libby Dam. We have been harassed. We have never been notified by any of the agencies. At present we have no plans to sell and hope that we are not forced out by condemnation. I hope the committee will pass this bill.

BEVERLY GIBSON:

Montana Association of Counties. We support this bill. We do not like to see tax base taken away.

REPRESENTATIVE CURTISS:

I want to draw your attention to the reservoir area. She talked about the 1969 agreement between the Fish and Game and the Forest Service. There are three agencies involved here, the Corps, the Fish and Game and the Fish and Wildlife. It is imperative that we preserve our tax base. After general discussion the hearing closed on House Bill 746.

HOUSE BILL NO. 798:

Representative Metcalf. This bill requires that county jails be inspected, for the purpose of determining if they are appropriate for the detention of juveniles. It would be for the protection of the juvenile, for the shelter, care and detention, if necessary, if no other area is available, to keep them separate from adults. Currently it is the responsibility of the Department of Institutions to inspect jails and they have already developed standards for adult detention, it is the intent that in accordance with the Administrative Procedures Act the Department of Institutions be allowed to establish any additional standards for county jails in which juveniles may be detained, to assure that they are appropriate. If a jail is found in violation they will be notified and have 90 days from the notification to correct any deficiency.

STEVE NELSON:

Board of Crime Control. We have attempted an improvement of the problems relating to juveniles in regard to detention facilities. This time our major concern is to assure that those juveniles that are held in jail are in a proper area. They might be held anywhere from 3 days to 2 weeks here. Most are out within 24 hours but we are concerned about time they are in jail that they are not in contact with adult prisoners. They are very vulnerable. About 13 counties do have adequate jails. We want to have separation between adults and juveniles. There would be an initial stage for the Department of Institutions to develop guidelines then it would go to the Department of Health.

BOB RATE:

Department of Institutions. We can implement this. We do have the personnel to do so. There are also juveniles held in city jails and maybe that should be considered also.

REPRESENTATIVE-DEPARTMENT OF HEALTH:

We inspect our jails. We check all the menus and the medical records. We have an architect that inspects the building plans. We inspect once a year and we have support from the local health department. We have adopted some recommendations for jails and do have a very meaningful program but it should have some clout behind it. We neither support or oppose it.

KAREN MIKOTA:

LEAGUE OF WOMEN VOTERS. We support the bill.

JOHN BELL:

Montana Sheriffs and Peace Officers. We oppose the bill. He went on at some length stating the reasons.

P. S. Howard:

Teton County Sheriff. I oppose the bill. I have prepared a review of the existing law. We are responsible to three agencies, the County

Commissioners, the State Board of Health and the State Fire Marshal. He passed out a copy of the form used for the inspection. He said the County Commissioners are responsible for the care of building, inspection, and repairing the jail, and once every three months, inquire into its state, the condition, the security, the treatment and condition of prisoners, and they must take all necessary precaution against escape, sickness, or infection. It is a county responsibility and we would like it to remain there. It is a project that can't be sectionalized if we are to house juveniles, females, and the handicapped. We have had the sheriff house a prisoner in his own home on occasion if there was no facility. You can't be implemented in 90 days. I think the Department of Institutions has its hands full right now.

BEVERLY GIBSON:

Montana Association of Counties. We also oppose the bill because this leads to a state department setting guidelines and standards. We also need to know who is going to pay for this.

REPRESENTATIVE METCALF:

First of all, I think they stopped reading this bill after the word inspection. It only calls for an inspection for the protection of juveniles. We want a suitable place so that juveniles are not in contact with hard core criminals. I would not be adverse to having city jails included.

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

on House Bill No. 798.

HOUSE BILL NO. 865:

Representative Manning. This bill will provide for a mandatory minimum sentence that may not be suspended except under limited circumstances for crimes involving the molesting or raping of children. The offender would not be eligible for parole or be in the prisoner furlough program while serving the mandatory part of his sentence. There would be no time off for good behavior. This puts these people away for a period of time so that we don't have to worry about them.

There was no discussion and no question and the hearing closed on House Bill 865.

HOUSE BILL NO. 812:

Representative Cooney. I have introduced this bill to try to bring the financing of the state more into the contact of all the legislators. The legislative fiscal analyst is responsible to the legislature. This was taken directly out of the codes. I feel this will bring us closer to the financial needs of the legislature. He discussed the duties of the legislative auditor and what he felt the bill would do.

SENATOR MATHERS:

I oppose this bill. We want to bring out some of the problems. When I was the Chairman of the Legislative Finance Committee we tried to study the possibilities of economy and efficiency in state government. I also have served on the Audit Committee as Chairman. He went on and explained the office and the duties of the fiscal analyst. Our main concern is section 9, the last section of the bill. I think what we are trying to do there is really going to create some problems, when the annual budget comes in. You have to let the fiscal analyst have some latitude at his discretion to work for the committee. We review and write down every action that he takes. He discussed the budget book, and again commented that section 9 will hamper that particular area of the legislature.

REPRESENTATIVE BARDANOUVE:

We save so much money because we have for the first time some access to the Governor's budget. And these people are the very people who want to curtail or abolish the very thing that is the only alternative to the Governor's budget. He gave the history of the budget and mentioned Winfield Page, who warned that the state would become at the mercy of the Governor's budget. We had no alternative to the budget. We have an alternative for the first time. We have research and we have a vehicle that is absolutely vital without partisan pressure. He mentioned the opposition that they have had from the University system in trying to get them accountable. He also went on to discuss the basic budget of the fiscal analyst as compared to the Governor's budget. If it were not for the fiscal analyst's budget there would not be 5 million dollars more for the University system, than is recommended in the Governor's budget.

REPRESENTATIVE COONEY:

I appreciate the presence of the President of the Senate and the Chairman of the Appropriations Committee. I think if you read section 9 it is not the horror that you say it is. If you think it guts the act then kill it. All I want to do is get me as a member of the Legislature a little more into the financial area of the Legislature.

Representative Rosenthal asked about
Page 5, lines 4 through 7 and some
discussion followed.

The hearing closed on House Bill 812.

HOUSE BILL NO. 845:

This deals with Industrial Revenue Bonds said Representative Ramirez, the sponsor of the bill. This bill is very nearly identical to HB 747, which was here also. This one would be the easiest to amend on the floor but they both do the same thing. I would suggest another amendment. It was brought to our attention by Big Sky Airlines and

as that they would like to be included under revenue bonds. They would have a lot better chance of serving smaller communities in this state.

TOM HARRISON:

I agree that this is the easiest bill to amend. Both sections are wrong in both bills but this would be the easiest. The bills originated from the same place.

After some discussion and no questions the hearing closed on House Bill 845.

HOUSE BILL NO. 797:

Representative Uhde. This bill will clarify who will be permitted access to youth court records. I introduced it at the request of the probation officers.

GLEN HUFSTEDDER:

Chief Probation Officer, Kalispell. We would encourage your support in this bill. The bill does very much the same as what the Youth Court Act already does, but in some areas the intent of the Youth Court Act has not been made clear. I would like to pass out just a couple of things. This only takes place after the youthful offender has been found guilty of the offense then we would encourage the use of the information that is obtained. They are trying to do what is best for the youth. We feel it is best to use the juvenile records that are already available. This would deal with only 2% of the offenders. We would like to see this bill passed so they could through court order obtain these records.

REPRESENTATIVE SCULLY:

Can't you go to court now and get these records?

MR. HUFSTEDDER:

Yes, but it is very difficult because it is not clear in the law.

There was no discussion and the hearing closed on House Bill No. 797.

HOUSE BILL NO. 831:

Representative Burnett. This bill would allow the County Commissioners to cancel delinquent taxes if the cancellation is in the best interest of the county and if it would not affect county obligations. One thing I would add is that I would amend it on the floor that there would be a public notice and a public hearing for this. He discussed the fact that it should be amended to include the words non-profit organization.

There was some discussion and the hearing closed on House Bill No. 831.

HOUSE BILL NO. 861: Representative Scully turned the meeting over to Representative Teague, the Vice-chairman to present this bill.

The bill would remove the requirement that agencies reestablished after sunset review be subject to scheduled review every 6 years. There hasn't been any sunset yet and we should strike that after 6 years. What it does, is that in the sunset act, if any of the boards are reinstated and if you reinstate any board then after 6 years you can reexamine.

There was no discussion and no questions and the hearing closed on House Bill

861. Representative Teague continued with the chair so that Mr. Scully could present the following bill also.

HOUSE BILL NO. 836: Representative Scully. What this bill does is set forth the liability as it concerns the skiers and then it sets forth the liability of risk. Everyone recognizes that there is risk in the sport of skiing, and it is the purpose of this bill to define those areas of responsibility of the skier and the ski area operator.

PAT MELBY: Northern Ski Area Operators Association. What this bill does is simply to define the responsibility of the ski area.

BOB McDONALD: Bridger Bowl. In the 40's there was a federal decision that established the assumption of risk. It places the responsibility with the ski area over which they have control. It also sets the liability.

GEORGE WILLETTE: Shodown Ski Area. He passed out a fact sheet concerning skiing responsibility. The basic concern to us is the liability insurance rates and the increase in the cost. Without passage of a bill of this type, cost and availability of liability insurance could become prohibitive. We have approximately 20 to 30 employees and if we had to close down I don't know what they would do. If we could not get insurance we would have to terminate our operation.

PHIL HAUKE: MONTANA Tramways Safety Board. We have a definite obligation to skiers and this bill would put the state obligation in proper perspective.

BILL DOWNS: I am representing the skiers, on the Board of Directors of the Northern Ski Area Association. Something that concerns us is the possibility of accident when a skier comes down the hill and hits another skier.

There were no questions and no discussion and the hearing closed on

House Bill No. 836.

Representative Scully resumed the chairmanship of the meeting.

HOUSE BILL NO. 840:

Representative McBride. This bill would provide for justice court jurisdiction

over residential landlord-tenant disputes.

BOB PYFER:

This bill does three things. It would give jurisdiction to the Justice

Court Act, on page 2, lines 4 and 5. Second, on page 4, lines 19 through 24, extends the notice period for termination without cause from 30 days to 90 days for mobile homes. Third, this chapter except as it relates to forcible detainer and as it relates to forcible entry does not apply to Chapter 24. Chapter 27 means that it does not apply to residential situation. He discussed the chapter relating to forcible entry. Enforceable detainer is not covered by the landlord-tenant act. It would not apply to residential property but only to commercial property.

BOB PALMER:

Senator from Missoula. The landlord-tenant act passed last session and

when we passed that act we had duplicate language. We have one area of conflict, the 90 days for mobile homes. They had disagreed about 30 days and 90 days.

GAIL STOLTZ:

Human Resource Council. We support the bill.

DIANA BURGESS:

Greater Billings Tenants Rights Organization. We are here in support of

House Bill No. 840. This bill would amend so that it would take precedence over the current 1977 act. She compared the old law and the new if it should pass. This would make it more feasible for the JP Court to work out landlord-tenant disputes.

WALTER JACKICH:

Montana Landlords. We are for this bill and the part dealing with the

justice courts and the unlawful detainer act. We are against the mobile home part, and the provision for 30 days and we propose that that part be stricken.

JIM JENSON:

The Justice of the Peace Court is written into this bill. We support

this bill.

JERRY JOHNSON:

MONTANA Coalition for Human Services.

Mr. Johnson read a letter from the Covered Wagon Tenants Association. I would like to make the committee

aware of a problem. The practice of closed courts that gives priority. He discussed the low income section of Great Falls.

DEAN LUNTOCK:

I would ask you to support House Bill No. 840, including the mobile home

provision.

REPRESENTATIVE McBRIDE:

This bill does show that there is coordination between the landlords

and the tenants. I will leave the 30 or 90 days to the discretion of the committee.

Representative Teague asked about the 30 days and 90 days for clarification.

MR. JUKITCH:

It shouldn't be a statutory thing.

There was more discussion and a few questions and the hearing closed on

House Bill No. 840.

HOUSE BILL NO. 799;

Representative Porter. This bill would create the office of district

attorney to replace the office of county attorney in certain counties and would provide for funding and deputy district attorneys.

ROBERT DESCHAMPES:

Missouls. This bill would affect only three counties. This bill does four

things. He discussed the tenure and termination only for cause. It allows the contract with adjacent counties. It would allow counties to specialize. Third, It makes the office of the district attorney similar to the office of district judge, a non-partisan office. Vacancies shall be filled by appointment of the county commissioners. I think this bill could stand alone, but I would like to see all four.

FRED BOURDEAU:

Cascade County Attorney. I have been there 20 years and the next person

in seniority has been there 2 years. We desperately need people. What we need also is money and we are simply asking that you continue the salary. I think it is significant that you can prioritize. This is one way you can extend professionalism.

TOM HONZEL:

Trial Lawyers Association. One thing you should be aware of. Several

years ago we did a study of the number of duties that the county attorney does and there were 200 things. He elaborated on this.

MR. PORTER:

Harold Henser is in accord with what has been said.

MR. DAILY:

What would the additional cost be?

MR. DESCHAMPS: It would be about \$550,000.

Representative Keedy asked about page 4, section 7, When they provide services to the adjoining county after that provision took effect, would the adjoining counties pay for it.

MR. DESCHAMPS: Yes, and he explained how it would work.

MR. KEEDY: Is it true that the adjoining county would be provided for only if they did not have their own county attorney.

MR. DESCHAMPS: Yes, and he explained.

Representative Keedy asked about page 6, line 5, asked for an explanation.

Mr. Scully commented that there was duplication of the language on page 6. There was discussion about this, and no further questions and the hearing closed on House Bill 799.

HOUSE BILL NO. 801: Representative Meyer. They lost my information on this bill in the Legislative Counsel. It should be tied in with 616 but part of it got lost so I had to come up with another bill. It changes the 40,000 to 100,000, basically that is all it does.

Representative Scully asked why not just amend the bill instead of introduce another one. There was discussion about this.

Representative Rosenthal asked what was the purpose of increasing the figures and Mr. Meyer said, this would provide them with enough money to lease the equipment.

The hearing closed on House Bill 801.

HOUSE BILL NO. 803: Representative Anderson. This bill is an attempt to define confidential health care information and provides for that disclosure only in certain cases. I will go through the bill. There are safeguards for maintaining the integrity and confidential nature of the information. He explained the definition. On lines 22 and 25 without written consent with some exceptions under subsection A. He commented on lines 4 and 5 of section 4, page 4. On page 5 it talks about privileged information. There are certain exceptions to this rule as well. Section 7, page 7, talks about the remedies, would be guilty of a misdemeanor.

JERRY LINDORF:

The major reason for this bill is to check those types of situations.

Page 3 is probably the real guts of it, the exceptions. There is also an exception in regards to courts. It exempts all of the reporting laws, such as gunshot wounds, venereal disease, and such as that. The main purpose of the act is to keep information confidential. We would consent to the proposed amendments.

CHAD SMITH:

Montana Hospital Association. We support this with certain amendments.

The first 6 pages does not say anything that we are not doing now, except for program audits and that sort of thing. The last pages get into another matter altogether which we think is not necessary. We are asking that the page 7, line 10 be deleted with the exception of subsection 2 of 10, lines 13, 14 and 15. There is not reason for a criminal penalty in this. We are asking for rules that we can follow. He discussed page 1, line 22. The title must be amended also.

Representative Holmes asked about page 3, line 20. Could an employer

get personal information about a personal health record to deny a person insurance.

MR. LENDORF:

An employer has no problem getting those records now. There was discussion

about this.

Representative Eudaily asked what is meant by other medical persons.

Discussion and the hearing closed on House Bill 803.

HOUSE BILL NO. 870:

Representative Keedy. This bill would provide that the existence of a mental state necessary for commission of a criminal offense may be inferred from the acts of the accused. The facts and circumstances connected with the offense would provide that defenses relating to a lack of the required mental state must be proved by the defendant by a preponderance of the evidence. He went on to explain the bill in more detail, but said it is self-explanatory.

TOM HONZEL:

This was the rule before adoption of the criminal code but was left out.

They did not intend to leave it out. Professor Crowley from the law school, felt this would be better to get this into the criminal code.

There was some general discussion and the hearing closed on House Bill 870.

HOUSE BILL NO. 877:

Representative Keedy. This bill would exclude the old insanity defense. This bill would bring about a great change. He talked about a persons accountability for their actions. We have a system in Montana now where by virtue of the so-called mental disease defense a person can be confined against his will far longer than if he had been dealt with criminally. They could also be out on the street again virtually overnight. I don't believe any of us would create such a system if we had started from scratch. I think we have been sold a bill of goods in this area. He gave examples of scientifically verifiable data. We bring psychiatrists into these cases as expert witnesses, but psychiatrists are making godly and outrageous statements. Psychiatrists and social workers should be removed from the criminal justice process. Psychiatric determinations are not scientifically verifiable. In 1974 Goldwater was declared paranoid and schizophrenic by psychiatrists. I think if a defendant is charged and acquitted on the ground of mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state. I think they are criminals and should be charged as such in our courts. The mental statute we have now was patterned after the Durham rule. The courts are very clear that non-penal treatment makes sense only if people not wanting it do have it. I believe that criminal law should presume that each of us is capable of free choice of behavior. It must be passed upon the offense rather than the offender. My purpose with the bill is to hold people accountable for their criminal acts. If we were to start over would you again want the system that is so obviously turned on its head.

MARGARET OLMSTEAD:

We are basically not proponents or opponents. We would like to recommend rather than pass this issue we would like to recommend that there be a resolution that would set up a study of this issue. We have a recommended resolution, which she passed out to the committee.

TOM HONZEL:

Trial Lawyers Association. We do support this bill. For some time we have needed to abolish the defense of mental disease in criminal law. He mentioned an interview that Mr. Adams had with a psychiatrist from back east. I think Representative Keedy has a better approach than the bill that Senator Towe has. This makes it much more sensible. Trials involving insanity defenses always become "battles of the experts". The focus should be, "did the individual commit the crime"?

REPRESENTATIVE KEEDY:

I wanted to take extreme care with these bills. These were not hastily drafted. Just by way of allaying fears that you may have, I want to say that these bills are the product of considerable time and attention.

After numerous questions the hearing closed on House Bill No. 877.

HOUSE BILL NO. 878:

Representative Keedy. This bill would prohibit involuntary commitment.

I believe that the concept of mental illness as it has been used to compel people against their will, that that concept is an attempt to clothe punishment in the respectable guise of mental illness. He elaborated further.

MARGARET OLMSTEAD:

We oppose this bill.

Representative Keedy explained the inconsistencies between the two bills.

He discussed maximum security treatment and imprisonment.

REPRESENTATIVE KEMMIS:

Isn't there a constitutional right that you have to show the state of

mind, and Mr. Honzel said that this is clarified by some of the new language.

There was discussion about constitutionality, and if found to be unconstitutional then would he be retried.

Chairman Scully asked how you would deal with a person who is potentially dangerous to themselves. Mr. Keedy said you would treat them according to criminal law.

Then followed discussion about the interpretation of the law as concerning

seriously mentally ill.

Representative Daily asked what would happen to someone already committed

if this bill should pass.

Mr. Keedy, I am not certain of that. They may be released.

There was a long discussion about involuntary and voluntary commitment.

No further questions or discussion, the hearing closed on House Bill 878.

The meeting adjourned at 10:30 a.m.



John P. Scully, Chairman