

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 5, 1979

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday. All members were present except Representatives Pavlovich, Uhde, and Seifert. Representatives Seifert and Pavlovich came in later.

Bills scheduled for hearing were Senate Bills 106, 202, 367, 232, 260, 281, 341, 345, 397.

SENATE BILL NO. 397: Senator McCallum. This bill would require district court programs funded by the county to be subject to the county budget laws.

FRANK GUAY: County Commissioner, Kalispell. Since I have been in office over the last 4 years, we have had a problem in budgeting. This has been aggravated by the district courts that they are not subject to the budget law. With a 25 mile limit in our general fund we have to be cognizant of things that can get out of hand. We want to be able to justify the budget.

BEVERLY GIBSON: Montana Association of Counties. We support this bill. We feel it is a step in the right direction.

REPRESENTATIVE SCULLY: There is an old bill very similar to this. #229, get with the sponsor and decide what you are going to do.

The hearing closed on Senate Bill No. 397.

SENATE BILL NO. 106: Senator Bob Brown. There is a similar bill in the House, Representative Keedy has it. The bill will provide salary increases for probation officers and a minimum salary for deputy probation officers. The amount would be adjusted depending on the formal training and experience of each respective officer.

JERRY JOHNSON: We already appeared on 673 and whether the committee approves that bill or not we felt we should appear on this bill and support it.

BEVERLY GIBSON: Montana Association of Counties. We are not necessarily against this bill but we would like to see a salary increase.

Mr. Johnson commented that what the bill refers to is the reimbursement rate for contract employees, on page 2, subsection (2).

REPRESENTATIVE KEEDY: Asked about the 15-18-501 and 503 in the code, and Mr. Weinberg said it should be 2-18-503.

REPRESENTATIVE SCULLY: We will hold this bill until we see what happens to the other one.

The hearing closed on Senate Bill No. 106.

SENATE BILL NO. 281: Senator Hager. This bill was put in by request. It will clarify the requirement that the offense of fleeing a police officer must include the actions for the conviction of reckless driving. The department said they had had some close calls on this.

REPRESENTATIVE KEYSER: In 1977 when we passed this bill they testified that there was a definite need for it.

SENATOR HAGER: This was put in at the request of the Highway Patrol.

REPRESENTATIVE KEMMIS: What is accomplished by sub-part (b). It says the same thing except that it covers fleeing from a policeman. Why not must remove sub-part (b)?

CAPTAIN TOOLEY: Unfortunately in codifying, the penalty section became detached from this bill. That was the intent, to make it something stronger. It is still in the code.

MR. SCULLY: Are you saying that there is a penalty for (a) and a penalty for (b). Discussion about this.

REPRESENTATIVE IVERSON: It appears that it wasn't necessary to be driving a car. Does it say somewhere here that you can be covered other than by driving a car.

Some discussion followed and the hearing closed on Senate Bill No. 281.

SENATE BILL NO. 345: Senator Towe. This bill will revise the law regarding the procedure following an acquittal on the grounds of mental disease or defect. It will re-introduce the question of mental disease for sentencing problems. On page 2, the provision for a hearing within 50 days is changed to 1 year. That hearing for all practical purposes has been ignored. Just recently somebody requested that and it created quite a bit of difficulty. The purpose of the bill is to move that 50 day hearing back to the original place of the hearing. This would make it comply with the other areas of the code. There is a change in that we are saying there should be an annual hearing. If the other bills, 495 and 877 pass then they would eliminate this bill entirely. This would be completely inconsistent. There is a problem that this bill would

address. The defendant may not be confined in the custody of the superintendent for a period longer than the maximum sentence of imprisonment permitted by law. He elaborated further.

TOM HONZEL: We do support this bill. There has been a problem with the 50 days. It doesn't say where that hearing is supposed to be, some thought at the state level and some thought at the state hospital so consequently there wasn't another hearing at the 50 day period. I have a problem with keeping subsection (3) that would require an annual review. There is a section that says that at any time the superintendent can file a petition. I don't know where we are going to have that hearing review. I don't know that there is any real reason for the section, except maybe to make it conform. There is due process in the law so that if you have an acquittal, the only basis would be to conform it to the civil commitment. I am not so sure that this bill should die even if these other bills should go through, because it would keep in the law the fitness to proceed. There is a constitutional requirement that anyone declared unfit he has to be given competency to proceed.

SENATOR TOWE: Look at line 17, page 1. The individual who is sent to Warm Springs is not sent there and then forgotten. I think that the annual review is a warranted situation in these cases.

Representative Keyser asked about the provision for psychiatric examination, and Senator Towe answered, the reason we have to put it in there is because it has to be constitutional because we have to submit a present mental condition.

REPRESENTATIVE KEEDY: Tom, did I understand you to say that there is confusion in the hearings. What does the bill clear up?

MR. TOWE: The section that clears it up is subsection (1) and subsection (2). It would be held at the 50 day level.

MR. KEEDY: You imply that the annual review would take place at the district court.

MR. TOWE: Some are of the opinion that they all have to go back to Warm Springs.

MR. KEEDY: I am not satisfied that the bill does what they say it will do. There was much discussion about this. Mr. Towe commented that the hearing would take place at the state hospital or in the 3rd Judicial District. The

fifty day hearing is clarified because we eliminate it. It is the least restrictive alternative.

MR. KEEDY: What is a less restrictive alternative.

MR. TOWE: I suspect that it is conceivable that someone could say that someone was not dangerous and under the circumstances the appropriate treatment for him would be at the local health center for outpatient care.

MR. KEEDY: Then it is conceivable that the commitment to the less restrictive area could involve involuntary confinement. Much discussion followed this. Mr. Towe commented, on page 3, it is highly unlikely but it could happen.

The hearing closed on Senate Bill No. 345.

REPRESENTATIVE SCULLY: Senator Towe, will you get together with Representative Keedy on 495 and 877. This was agreed to.

SENATE BILL NO. 202: Senator Van Valkenburg. This bill would provide a district court judge for the fourth District Court. The judge in this judicial district is needed because of the heavy work load from the district. The 4th district has heard about 1600 cases. In Billings another judge was added and they now have four down there. In the fourth district in 1963 a 3rd judge was added and there has been a significant increase in the work load since then. The fiscal impact would be for only six months. There would be an election in 1980. There have been two appointments in this district.

DEXTER DELANEY: President, Western Montana Bar Association. We consider this to be one of the problems in the state. There are 135 lawyers in the Western Bar Association and they can tell you that justice is denied because justice is delayed. Article 2, section 16 of the 1972 constitution provides for a speedy trial. One of the problems is to require a speedy trial under rather restrictive circumstances. I discussed this with Judge Green and on January 1st he had 180 cases ready for trial. As of Friday of last week he had 275 ready for trial and action. It is very difficult without judicial help to say how we can solve this problem. He gave statistics on the number of cases per judge in 1964. In 1968 there were 1600 cases per judge per year. This does not include guardianship or those kinds of cases. We have as many cases as the old judicial judge did in 1964. He gave a personal example of a case that has been at issue for over two years. He left a resume of cases from 1960 to 1968.

SENATOR TURNAGE: I do support the bill and what has been said about it. It should be considered with a companion bill that creates a new district that has been tabled.

MIKE ABLEY: I have a summary of the statistics. One of the things that I do want to say is that they are very close to having cases dismissed because of the lack of a speedy trial. Another thing is that there is a great deal of travel in the district.

JEREMIAH JOHNSON: Probation officer. I am here to testify in favor of this bill. We need another judge.

MR. VAN VALKENBURG: In the data on the last page there is a ranking of the districts. At the time of the study we did not have the extra judge in two of the districts, so it would change the figures some.

REPRESENTATIVE SCULLY: Why didn't you change this district? Mr. Turnage said that he thought this bill could be amended to handle that. There isn't really any problem with housing the judge in either Mineral or Sanders. The courthouse could handle this.

Senator Van Valkenburg led discussion about the best way to handle this. Judge Green thought the best thing would be to assign one judge to criminal cases and let the other three judges handle the civil cases. I know that there is a problem with travel and that there might be a problem with space.

REPRESENTATIVE SCULLY: I can't see studying this for 30 seconds more, we don't need to. Why doesn't Judge Green want the new district. Mr. Turnage said that Judge Green has a great interest in Lake County.

DEXTER DELANEY: I think the most effective way is to appoint a judge. Most of the crime cases are in Missoula anyway. I think one judge could do it more efficiently.

SENATOR TURNAGE: I would like to ask the committee to look at the other Senate bill.

The question was asked, what is the best way to do it, and Mr. Abley said that he thought the best way was by redistricting. Senator Turnage said that SB 219 is the one. The bottom line is relief for the judge.

REPRESENTATIVE KEEDY: Asked of Van Valkenburg, could you comment on the fiscal impact of this bill as compared to the other bill, and Mr. Van Valkenburg answered, the state and local level is \$28,000 for the counties involved. It includes all the staff, equipment and travel.

The hearing closed on SB 202.

SENATE BILL NO. 341: Senator Turnage. The change proposed in the bill would allow those retired judges to be compensated on a day to day basis. They would be paid the difference between the current salary and their pension.

MIKE ABLEY: We have had to call in district judges from time to time and we have had difficulty because of the per diem. The actual impact on the state would be minimal. In the very near future we will have five judges that are retired that we can call on.

MARGARET DAVIS: League of Women Voters. We support this bill.

There was no other testimony, and no discussion and the hearing closed on 341.

SENATE BILL NO. 367: Senator Van Valkenburg. This bill repeals a section of the criminal code that says that concealed weapons offenses at the district level have jurisdiction. The reason for this is that the 1977 legislature amended the law so that it would be a \$100 fine for a 1st offense, and there does not seem to be a good reason why the JP Court should not hear these cases.

TOM HONZEL: County Attorneys Association. This just puts concealed weapons in the same category as other crimes. It would be a felony type sentence that would be handled in the district court and there does not seem to be any good reason why misdemeanor cases cannot be handled in the JP Court.

There was no discussion and the hearing closed on SB367.

SENATE BILL NO. 260: Senator S. Brown. This bill will amend the provisions relating to the disclosure of proceedings and related documents of the Judicial Nominating Commission. On line 13 and 14, that language probably conflicts with the right to know provision in the constitution. I really think that there is a need for the committee to share more of the thought processes with the Governor. Section two of the bill would add a requirement that when they submit the list they will have to submit reasons why they are qualified and the vote on the individual. This bill does not require that they disclose a vote if it would embarrass anyone.

REPRESENTATIVE KEEDY: I question the new language.

SENATOR BROWN: There are embarrassing questions that can be asked and that's why I put in that kind of language.

REPRESENTATIVE EUDAILY: Is the written report open to the public?

SENATOR BROWN: Only the list that is submitted to the Governor.

REPRESENTATIVE SCULLY: Are you saying that the Commission will establish the rules for disclosure?

SENATOR BROWN: I would like them to have flexibility. I think it will help the commission. I think this will help guarantee what goes on in the meetings about why they feel so strongly.

Representative Scully led a discussion about how to determine someone has bearing and honesty as opposed to someone who has 4 or 5 degrees. Then followed discussion about how an appointment would be made and the reasons why.

The hearing closed on Senate Bill 260.

SENATE BILL NO. 232: Senator S. Brown. This bill would allow an amendment to the constitution to allow statutory exceptions to the confidentiality of the documents of the judicial standards commission. Look at page 1, lines 24 and 25, the constitutional provision. I wanted to make it clear. Look at the stricken language on page 2 of the bill. He discussed how to investigate and the confidentiality. The Press Association also supports this bill.

Representative Scully asked Mr. Abley, I want to know what the courts decision is on both of these bills. Mr. Abley answered, There are some parts in the bill that they don't like but they have decided not to come out in opposition of the bill.

REPRESENTATIVE SCULLY: Why is there noone here from the Commission?

SENATOR BROWN: I don't know. I did talk with Berniece Kingsbury. I did discuss briefly with Mr. Hatfield, also.

There was discussion about what information would become public. Senator Brown asked whether the right to know prevails or whether the counstitutional right for privacy prevails.

The hearing closed on Senate Bill 232.

SENATOR BROWN: In going back to SENATE BILL NO. 397, I

want to delete section 1. Section 2 was retained as is the section on budget figures. The Judiciary branch is the only one not involved in the budgeting process. The burden should be on the district court to show that.

There was lengthy discussion about the interference of jurisdiction.

With no other discussion and no further questions the hearing closed on Senate

Bill No. 397.

The meeting adjourned at 9:35 a.m.



Mary Ellen Connelly, Secretary



John P. Scully, Chairman