

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 16, 1979

The Judiciary Committee was called to order by Chairman Scully at 8:00 a.m in room 436 of the Capitol Buildin. All members were present except Representatives Conroy and Seifert.

SENATE BILL NO. 217

Representative Keedy presented prepared amendments to the committee. He explained the amendments and the drafting of them. It would retain the exclusionary rule. The exclusionary rule, which requires the exclusion of otherwise admissible evidence, has consistently permitted the guilty to escape prosecution and punishment because the police have committed errors which in many cases have been technical in nature and in most cases have been made in good faith. Actual police lawlessness has seldom been deterred by the rule in cases where prosecutions have resulted since the exclusion of the evidence at trial carries no personal sanction against the police officer involved. Such police lawlessness has seldom been deterred by the rule where the police have had goals other than the prosecution of criminals since such activity is subject to virtually no judicial scrutiny and the rule provides no remedy for the innocent victims of such lawlessness. Application of the rule often deflects the truthfinding process and often frees the guilty. The disparity in cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Although the rule is thought to deter unlawful police activity because of the respect for the fourth amendment, it may well have the opposite effect of generating disrespect for the law and administration of justice. He went on to explain the bill as his amendments would affect it and what they would do.

Representative Scully questioned subsection 4, concerning civil liability and proof by a preponderance of evidence that there was a violation of the rights of a person protected by the fourth amendment. Some discussion followed.

Then followed discussion about the warrant and the civil damages, and further discussion about civil liability. Representative Kemmis asked about the provision of violation. Would they be weighed one against the other.

Larry Weinberg, staff attorney, explained the new section three as used in this bill. He explained the exclusive remedy and the laws of Montana relating to search and seizure.

After much further discussion Representative Keedy moved the amendments. He stated that on page 5, it would be necessary to strike the new section in the big sheet presented to the committee and adopt the new section 11 of the

small sheet. On page 7, line 6, insert the word "seized". On page 7, subsection (2) strike "criteria of" and insert "criteria in".

Representative Holmes moved to amend the new section 11 on page 1, by striking "grossly". The amendment failed with only Representative Holmes voting "yes".

The question was called on the amendments of Representative Keedy. The motion to adopt the amendments carried with Representative Pavlovich voting "no".

Representative Keedy moved "be concurred in as amended". The motion carried with a roll call vote of 9 yes, 8 no and 2 absent. Mr. Keedy will carry.

SENATE BILL NO. 106: Representative Lory moved to amend on page 2, line 8 by striking "15-18-501 through 15-18-503" and inserting "2-18-501 through 2-18-503". The motion carried with the vote unanimous. Representative Keedy moved to amend page 1, line 14, by striking "\$19,500 and inserting \$22,500". The motion carried by unanimous vote after lengthy discussion.

Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry.

SENATE BILL NO. 88: Representative Kemmis moved to amend page 3, line 7, by striking "has" and inserting "have". Representative Keedy moved to amend page 4, line 5, by striking "in the future", and on page 4, line 19, by striking "hereof". The motion to amend carried in both cases by unanimous vote.

Representative Roth moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Roth will carry.

SENATE BILL NO. 54: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. Representative Kemmis will carry.

SENATE BILL NO. 243: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. This is a companion bill to 54. Representative Kemmis will carry.

SENATE BILL NO. 283: Representative Keedy moved to amend, page 7 by striking section 1 and reinserting

sections 5 and 6 on page 4. Representative Keedy moved to amend the title. The motion to amend carried with Representative Keedy voting "no".

Representative Roth moved "not concurred in as amended". The motion failed.

Representative Roth moved "be concurred in as amended". The motion failed because of a tie vote, 7 yes, 7 no, 2 abstaining and 3 absent. The vote was again called and the motion "not concurred as amended" carried.

SENATE BILL NO. 284: Representative Keedy moved to insert the language that the Senate had stricken. The motion carried with Representatives Rosenthal, Anderson and Lory voting "no".

Representative Teague moved "be concurred in as amended". The motion carried with Representative Lory abstaining. Representative Pavlovich will carry.

SENATE BILL NO. 348: Representative Keedy moved to amend line 13, by striking "may" and inserting "need". The motion carried with the vote unanimous. Representative Curtiss voted to amend subsection 1, lines 16, 17, and 18. The motion failed. Representative Iverson moved "not concurred in as amended". The motion carried with a roll call vote, 10 yes, 6 no and 3 absent.

SENATE BILL NO. 374: Representative Kemmis moved prepared amendments. The motion carried with the vote unanimous after some discussion.

Representative Uhde moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis will carry on the floor.

SENATE BILL NO. 380: Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Lory will carry.

SENATE BILL NO. 202: Representative Lory moved "be concurred in". The committee discussed the bill at some length. Representative Anderson moved to pass for the day. The motion carried with the vote unanimous.

SENATE BILL NO. 250: Representative Curtiss moved to amend. The motion carried with the vote unanimous. (copy attached) Representative Lory moved "be concurred in as amended". The motion carried with Representative Anderson voting "no". Representative Scully will carry the bill on the floor.

SENATE BILL NO. 271: Representative Keyser moved the amendments as presented. The motion carried with Representative Holmes and Uhde voting "no". Representative Eudaily moved to amend page 10, line 22. General discussion followed. The comment was made that this does not prevent other records from being kept which do contain prior criminal record information. Discussion about this. Representative Eudaily moved to strike "in addition to any other records". The motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Uhde will carry on the floor.

SENATE BILL NO. 301: Representative Curtiss moved the amendments. It was found that all of the members did not have copies. It was decided to pass for the day and get a copy of the amendments for every member, since they are quite lengthy.

SENATE BILL NO. 404: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SENATE BILL NO. 431: Representative Lory moved to amend page 2, line 1, by striking "no" and inserting "whenever notice is required, no". The motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". Representative Curtiss will carry on the floor.

SENATE BILL NO. 468: Representative Holmes moved amendment #1 as presented to the committee. The motion carried with the vote unanimous. Representative Kemmis moved amendments #2 and 3. He discussed his feeling on them and explained what they would do. The motion carried with the vote unanimous. Representative Lory moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SJR 27: Representative Conroy moved "be concurred in". The motion carried with the vote unanimous. Representative Conroy will carry.

SENATE BILL NO. 482: Representative Uhde moved to amend page 1, line 4 by striking 1 kilogram and inserting 250 grams. There was considerable discussion pro and con whether this was the right amount for it to be changed to. The words would have to be amended on page 3, line 8 also. It was decided that this was the right amount and the motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". The motion carried with Representatives Kemmis and Holmes voting "no". Representative Curtiss will carry on the floor.

HOUSE BILL NO. 899:

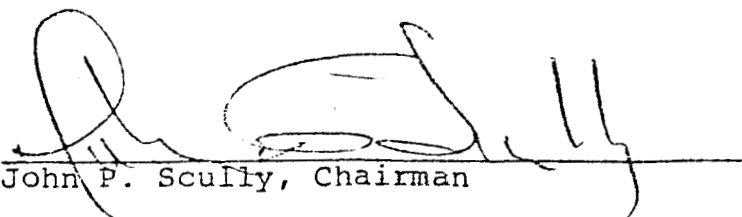
Representative Lory moved to table. The motion carried with the vote unanimous.

SENATE BILL NO. 65:

Representative Eudaily presented copies of a statement of intent for this bill. It was agreed that as written, it was satisfactory. Representative Eudaily moved the adoption of the statement of intent. The motion carried with the vote unanimous.

There was some discussion about why House Bill No. 899 was tabled, and finally decided that it was not needed at this time.

The meeting adjourned at 11:25 a.m.



John P. Scully, Chairman