

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 29, 1979

The nineteenth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building on the above date by Senator Everett R. Lensink at 4:28 p.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 204:

Senator Turnage moved that we amend this bill by striking the lines 19 through 23 and insert, "defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which provision is rebuttable." The motion carried unanimously.

Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 205:

Senator Brown commented how this would apply for students in college taking someone out of a dormitory; it could be considered kidnapping. The judge would have to consider it as mandatory minimum sentence.

Senator Turnage said that you have to give the courts some flexibility. He said that if we had a mandatory sentence for every single offense, there would not be enough jails.

Senator Towe said that he was apprehensive about the broadening of this application.

Senator Lensink wondered if the reason for mandatory sentences is that the judges weren't doing a good job. Senator Van Valkenburg said that he thought the judges are reacting to public pressure and are doing a much better job of handing out sentences. He stated that the prisons are full and the county jails are 3/4 full. He did not feel that we should limit the discretion of fairly experienced people about who should go to prison and who should not.

Senator Turnage moved that on page 2, lines 10 and 11, the bill be amended to read, "unless a weapon was used in the commission of the offense" and also amend the title. The motion carried unanimously. He also moved to amend the title by striking "delete" and insert "to restrict the exceptions". The motion carried. Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 132:

Senator Brown moved that this bill cannot be amended to

raise the percent to 1/2 of 1 percent. He stated that this could be done on the election bill.

Senator Turnage wondered if the committee would be willing to amend SB 65 to this percentage. Senator Towe mentioned that the committee might not want to go to 1/4 of 1 percent in a statewide election. Senator Turnage said that it might be best to amend 1/2 of 1 percent at the district level.

Senator Turnage moved that the bill be tabled, with the idea we will operate on SB 65 on the percentages. The motion carried with Senator Towe and Senator Brown voting no.

DISPOSITION OF SENATE BILL 149:

The League of Women Voters offered some amendments to this bill. Senator Towe moved the amendments. The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion passed unanimously.

DISPOSITION OF SENATE BILL 104:

Senator Brown stated that this bill must have a statement of intent. Senator Turnage moved the adoption of a statement of intent. The motion carried unanimously.

DISPOSITION OF SENATE BILL 152:

Senator Towe offered amendments to this bill. Senator Towe moved that these amendments be adopted. The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 164:

Joan Mayer from the Legislative Council offered some new amendments to this bill. Senator Brown moved adoption of the amendments. The motion carried unanimously. Senator Turnage moved that the bill do pass, as amended. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 7:

Senator Towe moved on page 46, line 2, strike "of such payment" and insert, "the cause of action accrues". The motion carried unanimously. Senator Brown moved the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 75:

Senator Van Valkenburg moved that House Bill 75 be amended as follows: on page 2, line 20, insert "an offender is considered to have been previously convicted for the purpose of this section, if less than five years have elapsed between the commission of the present offense and a previous conviction". The motion passed unanimously.

Senator Van Valkenburg moved that the bill be concurred in, as amended. The motion carried unanimously.

There being no further business, the meeting adjourned.



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SENATOR EVERETT R. LENSINK  
Chairman, Senate Judiciary  
Committee

Date 1/22/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

STATEMENT OF INTENT RE: SENATE BILL 104

A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered work shop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

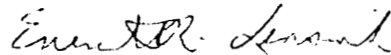
2. While there are duties for which SRS has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee, SRS introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

Statement of Intent RE: SB 104

3. The express authority given to SRS under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law.

First adopted by.....Senate Judiciary Committee on

January 29, 1979



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EVERETT R. LENSINK, Chairman

SUGGESTED AMENDMENTS TO SB 152

1. Page 1, line 19.  
Following: "residing"  
Insert: "or is found"
2. Page 1, line 22.  
Following: "earlier."  
Insert: "The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released or a different plan for treatment should be pursued by the department of institutions."
3. Page 2, line 7.  
Following: "notice"  
Strike: "that the"  
Insert: "of the"
4. Page 2, line 8.  
Following: "hearing"  
Insert: "."  
Strike: "is to determine whether he has committed the"
5. Page 2, line 9.  
Following: line 8  
Strike: lines 9 through 13 in their entirety.
6. Page 2, line 20.  
Following: "to"  
Strike: "request that"  
Insert: "have"
7. Page 2, line 25.  
Following: line 24  
Insert: "(g) a record of the hearing."
8. Page 3, line 2.  
Strike: "(g)"  
Insert: "(h)"
9. Page 3, line 9 and 10.  
Following: "hearing."  
Strike: "The county attorney shall assist the department in the conduct of the hearing as necessary."  
Insert: "In the conduct of the hearing, the department may request the county attorney's assistance as necessary."
10. Page 3, line 15, 16, and 17.  
Following: "violation"  
Strike: "and that there are no mitigating circumstances"

Suggested Amendments to SB 152, continued

Page 2

11. Page 3, line 20.

Following: "youth."

Insert: "In making this recommendation, the referee may  
consider mitigating circumstances."



Amendments to Senate Bill No. 164

1. Title, line 8.

Following: "ANNOTATED,"

Insert: "TO PROVIDE PROCEDURES FOR THE ACCOMPLISHMENT OF RECODIFICATION"

2. Title, line 9.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 8.

Following: "language"

Insert: "as"

4. Page 2, line 20.

Following: "amendments"

Strike: "."

Insert: ";

5. Page 2.

Following: line 20.

Insert: "(j) renumbering all ARM rules in the new three-part numbering system;

(k) eliminating unnecessary information in the history of ARM rules;

(l) reserving blocks of page numbers in ARM where growth has been consistent in the past or future growth is anticipated;

(m) providing the secretary of state with an "Old to New" numbering table to be filed in front of each title;

(n) removing all repealed rules from ARM and listing them on the "Old to New" numbering table;

(o) providing the secretary of state with a schedule of prospective chapter numbers and prospective page numbers, indicating the blocks of page numbers to be reserved in the agency's title, for the purpose of assisting the secretary of state in providing to ARM subscribers instructions for page removal and insertion of replacement pages."

6. Page 2, line 22.

Following: line 21

Strike: "January"

Insert: "July"

7. Page 2, line 24.

Following: "publication, and"

Strike: "file"

Insert: "refile"

8. Page 2, line 25.

Following: "state."

Strike: "Rules not refiled are invalid."

9. Page 2.

Following: line 25

Insert: "(2) The secretary of state may set a schedule requiring an agency to recodify and refile its rules in chapter increments and prescribing the number of recodified pages to be submitted by each agency to the secretary of state at each scheduled date for replacement pages during the period beginning on [the effective date of this act] and ending on July 1, 1980,

Amendment 9 (continued)

~~1121~~ (3) Each agency shall submit a schedule to the secretary of state listing the chapter names, chapter numbers, and pages in its title that will be recodified and refiled to meet the requirements of subsection (2). The validity of the rules that are not refiled by the scheduled date is suspended on that date.

~~1141~~ (4) Such suspended rules may be recodified and refiled with the secretary of state by the next scheduled replacement page date, and if so recodified and refiled, they become valid and effective on that date. If such suspended rules are not so recodified and refiled by that date, they are permanently invalid and may be revived only by fulfilling all requirements of the Montana Administrative Procedure Act relating to rulemaking in the same manner as new rules proposed for adoption."

Renumber: subsequent subsections

10. Page 3, line 1.

Following: "to"

Strike: "January"

Insert: "September"

11. Page 3, lines 4 and 5.

Following: "Title ...."

Strike: ", together with replacement pages for that title."

12. Page 3, line 8.

Following: "(4)(e)"

Insert: "and (4)(j) through (4)(o)"

13. Page 3, lines 9 through 11.

Following: "change." on line 9

Strike: lines 9 through 11 in their entirety

Insert: "The report must be made available by the secretary of state on request and at a fee set by 2-6-103."

14. Page 3, line 13.

Following: "date"

Insert: "of"

Following: "replacement"

Strike: "pages are distributed"

Insert: "page issue"

15. Page 3.

Following: line 13

Insert: "NEW SECTION. Section 3. Effect of recodification and refileing. The rules in ARM that are recodified and refiled pursuant to [section 2] shall be given effect as a continuation of the rules in ARM as they exist on [the effective date of this act] and not as a new adoption. A rule that is invalid, in whole or in part, on [the effective date of this act] is not rendered valid by the process of recodification and refileing."

Renumber: subsequent section

Amendments to Senate Bill No. 164  
Page 3

16. Page 3, lines 18 through 21.  
Following: "repealed." on line 18  
Strike: lines 18 through 21 in their entirety

17. Page 3, line 24.  
Following: "report"  
Insert: "to the administrative code committee"

18. Page 4.  
Following: line 2  
Insert: "Section 5. Effective date. This act is effective on  
passage and approval."

AMENDMENTS TO SENATE BILL #104  
BY REQUEST OF STATE OF MONTANA  
SOCIAL AND REHABILITATION SERVICES

1. Title, lines 6 through 11.

Following: "AN ACT"

Strike: lines 6 through 11 in their entirety

Insert: "TO GIVE EXPRESS RULEMAKING AUTHORITY FOR CERTAIN PROGRAMS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-2-201; 53-3-102; 53-5-304, AND 53-7-302, MCA."

2. Pages 1 through 9

Strike: all of the bill following the enacting clause

Insert:↩

"SECTION 1. SECTION 53-2-201, MCA, is amended to read:  
~~as follows:~~

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

SECTION 2. SECTION 53-3-102, MCA, is amended to read ~~as follows~~:

"53-3-102. Administration. The department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties, and functions as prescribed in chapter 2 of this title. The department may adopt ~~any~~ rules and take <sup>other</sup> ~~any~~ action ~~as may be necessary~~ necessary to carry out <sup>its responsibilities under</sup> ~~the purposes of this ~~chapter~~ chapter.~~"

SECTION 3. SECTION 53-5-304, MCA, is amended to read ~~as follows~~:

"53-5-304. Standards for adult foster family care homes. The department may establish by rules standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the

safety and comfort of the residents and shall be subject to the advice and recommendations of the department of health and environmental sciences in relation to fire and safety requirements."

SECTION 4. SECTION 53-7-302, MCA, is amended to read ~~as follows~~:

"53-7-302. Administration. The department shall provide the services authorized by this part to blind individuals determined by it to be eligible therefor. In carrying out the purposes of this part, the department may, among other things:

(1) cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this part to blind individuals; in studying the problems involved therein; and in establishing, developing, and providing, in conformity with the purposes of this part, such programs, facilities, and services as may be necessary or desirable;

(2) enter into reciprocal agreements with other states to provide the services authorized by this part to residents of the states concerned;

(3) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(4) provide supplementary services to any applicant or recipient who is in need of treatment either to prevent

blindness or to restore his eyesight, whether or not he is blind, if he is otherwise qualified for services or training under this part and if the supplementary services are recommended because of the findings of an ophthalmologist or optometric examination. The supplementary services may include necessary travel and other expenses to receive treatment from a hospital or clinic designated by the department.

(5) make ~~make~~ rules and take ~~take~~ other action necessary or appropriate to carry out this part."

- End -

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes; and

(g) administer and supervise all state and federal funds allocated to this state and all state funds appropriated to the department for public assistance ~~activities~~ ~~and~~ ~~the department shall~~ <sup>and</sup> do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may: