

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 12, 1979

The thirty-fourth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 355:

Senator Stimatz gave an explanation of this bill, which is an act to provide a minimum compensation for personal representatives of estates. He said that he introduced this bill at the request of the attorney general and that this bill is necessary in order to dispose of some small estates that will escheat to the state of Montana if they cannot get anybody to administer them. He stated that the fee is quite small - three percent of the amount or usually just about \$20.00. He stated that \$40.00 is the maximum and that this bill proposes \$100.00.

Mike McGrath, representing the attorney general's office, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Brown moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 367:

Senator Van Valkenburg gave an explanation of this bill, which is an act to repeal section 45-8-320 MCA relating to jurisdiction of the district courts over certain weapons offenses.

He stated that the maximum sentence for a first offense is six months or \$500.00 fine and this should be in a justice peace court rather than clogging up the district courts.

Tom Honzel, representing the Montana County Attorneys Association, gave a statement in support of this bill.

Senator Van Valkenburg moved that this bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 357:

Senator Goodover gave an explanation of this bill, which is an act to adopt the revised uniform limited partnership act. Senator Turnage gave an explanation of what a limited partnership is. Senator Towe said that the most frequent use of a limited partnership is in those situations where a general partner plays the major part and there is a number of partners who only want to invest a share of their money but do not want to have the responsibility of

a full partnership.

There were no further proponents and no opponents. The hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 374:

Senator Van Valkenburg gave an explanation of this bill, which is an act to clarify that a divorce decree may be modified to allow maintenance or support even though it was not allowed in the original decree. He stated that when a default decree is entered, many times the judge is not aware of all the circumstances of the case and he may not have awarded support or maintenance because it was not asked for at that time. He said that at the time of the divorce, it is an emotional and traumatic experience; and that one party may not employ a lawyer and at a later date, this bill would allow the court to award maintenance or support.

There were no further proponents and no opponents.

Senator Turnage noted that there was no limitation as to when you can bring this up. Senator Van Valkenburg said this might be the period of time when people get over this emotional period they go through when involved in a divorce - usually one year or two.

Senator Towe moved that on page 1, line 23, after the word "be" that the bill be amended by inserting "within two years of the date of the decree." The motion passed unanimously.

Senator Van Valkenburg moved that the bill do pass as amended. The motion carried unanimously.

Senator Turnage moved that the committee request the drafting of a bill 40-4-219 to eliminate the provision that a custody decree cannot be modified earlier than two years and to eliminate that restriction on time, and also to permit the district court to act ex-arte on temporary custody matters.

The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 357:

Bob Pyfer, attorney from the Legislative Council, gave the committee information on this bill. He stated that the bill requires the registration of foreign partnerships, increases the rights and remedies of limited partnerships as against general partnerships. He said that the states are concerned because the Internal Revenue Service has been somewhat skeptical as to whether the corporate income tax should apply in these cases, they felt that it makes them somewhat like a shareholder and IRS says that they are looking more and more like a corporation. He stated that one thing that might be appropriate would be a delayed effective date. He said if this bill passes, Montana will be the first state to adopt this. There was some question about the bill and Senator Lensink requested Bob Pyfer to get some further information to bring back to the committee.

The hearing on this bill was closed.

DISPOSITION OF SENATE BILL 282:

Senator Brown stated that he felt that Al Rose, one of those whose facility would be affected by this bill, was the last of the great rugged individualists and that he felt that the health department has a tough time with them, they want to do business their own way. He stated that he knew that it was unfair but he thought it was being dealt with slowly, but that they are getting them cleaned up without this legislation.

Senator Turnage moved that this bill do not pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 295:

Senator Brown stated that he supported the concept on page 1, lines 19 and 20. Senator Lensink suggested that the committee discuss whether they think this is feasible or should they try to fix the bill up and then kill it anyway.

Senator Van Valkenburg stated that \$30,000.00 is available right now from the Board of Crime Control for this operation and he said there was some county and some federal funds available over a three-year period. He said that it would take some initial outlay originally from the state government, probably \$50,000 to \$75,000.00 a year.

Senator O'Hara stated that he had some problem with the bill - he felt it might make a whole new bureaucratic system.

Senator Brown questioned Section 9 of the bill and said that we are going to be asking the counties to come back and contract with the state and Mr. Zinnecker from the Association of Counties supported the bill and that in the long run, the counties feel that apparently it will save them a lot of money and from that standpoint, he did not feel that the bill will create much of a fiscal impact. Senator Anderson said that eventually the bill could be a tax saving.

Senator Van Valkenburg stated that he thought the whole thing is underfunded right now, that the attorneys are subsidizing this, that statewide the attorneys are unfairly bearing the burden of public defense and at some time, there is going to be a lawsuit.

Senator Towe stated that when he first started practicing, he did one case wherein he earned less than \$1.00 an hour, and he stated that the attorneys who do take these cases probably are not very good attorneys.

Senator O'Hara questioned how the guy in Cut Bank does it - he seems to be making quite a lot - he has made \$60-some thousand. Senator Van Valkenburg said that there is some federal law that says it must be reasonable.

Senator O'Hara questioned why is there so much more expense on the Duncan McKenzie case, and Senator Towe replied that it is a capital case and they have to be especially careful on that case.

Senator Brown stated that he will support the bill if his amendments on 2(d) are adopted and then he would support it and he said that he did not want to upset executive reorganization.

Senator Turnage stated that he had no quarrel with the concept of the bill.

Senator Brown moved that the bill be amended on lines 19 and 20, page 1, by striking "(1)(b), (1)(c), (2)(b), and (2)(c),". The motion carried with Senator Towe voting no.

Senator Turnage moved that this bill do not pass. The vote was 6 yeases and 4 nos. (See Roll Call Vote.)

DISPOSITION OF SENATE BILL 345:

Senator Towe stated that what he wanted to do is to eliminate the defense of mental disease or defect altogether, that this does not let the guy off the hook, he did or did not commit the crime.

Senator Towe moved on page 1, line 19 that the bill be amended by striking "may" and insert "shall" and strike "in its discretion," and insert "which will include the present mental condition of the defendant." The motion carried unanimously.

Senator Towe said that there is a question of where the hearing should be held and Senator Turnage stated that the hearing should be right where it was. There were further questions and comments on yearly hearings and review.

Senator Towe moved that the bill do pass, as amended. The motion carried with Senator O'Hara abstaining.

DISPOSITION OF SENATE BILL 277:

Senator Towe stated that there are some people who are hesitant to have a guardian appointed.

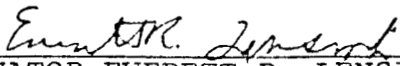
Senator Olson questioned in a limited guardianship would it be just limited to medical or limited to any one thing.

Senator Towe said there is a cost involved in getting it done and you might as well get it done the whole way.

Senator O'Hara moved that this bill do not pass. A roll call vote was taken and the vote was 5-5, which means the bill will stay in committee.

Senator Towe suggested that Senator Van Valkenburg be given a chance to work up some amendments.

There being no further business, the meeting was adjourned.

  
\_\_\_\_\_  
SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 2/15/79

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.

DATE. 2/12/22

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

$$= 34$$

Bills to be heard by Senate Judiciary Committee  
on Monday, February 12, 1979

SB 374 (Van Valkenburg)

Proposed bills: provides that a court can modify a divorce decree to allow maintenance or support even though the original divorce decree did not provide for such.

(H 34)



Current law: Provides for compensation of personal representative of estate but sets no minimum compensation. A public administrator is to be paid in the same manner as a personal representative. A public administrator would be appointed according to 72-15-102 for an estate which is being wasted and for which there are no known heirs. The minimum compensation for a public administrator is \$25.

Proposed bill: Amends 72-3-631 to establish a minimum compensation for personal representatives of estates in the amount of the lesser of \$100 or the value of the gross estate; the bill also amends 72-15-301 to delete the \$25 minimum compensation of a public administrator. Under the bill the public administrator would have a higher minimum compensation which is covered in 72-3-631.

Proposed bill: repeals 45-8-320 relating to jurisdiction of the district courts over offenses dealing with the carrying of concealed weapons.

Effect of bill: first time offenders (who are guilty of a misdemeanor under the current law) could be prosecuted in the justices' courts instead of in the district courts as under the current law. Second time offenders and prisoners who carry concealed weapons are guilty of a felony under the current law and these cases would still be under the jurisdiction of the district courts.

Current law - Montana has the Uniform Limited Partnership Act.

Proposed bill: repeals the current act and adopts the Revised Uniform Limited Partnership Act. New provisions - provides a list of all definitions, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. Article 1 and 2 reflect an important change in the statutory scheme: recognition that the partnership agreement rather than the certificate of limited partnership is the basic document in any partnership. Article 5 makes important changes in the prior law by allowing contributions of services and promises to contribute cash, property or services as contributions. Article 6, dealing with distributions from and the withdrawal of partners from the partnership, makes some changes in the prior law. Article 9 provides for registration of foreign limited partnerships and specific choice-of-law rules (when a limited partnership is involved in a dispute involving parties in more than one state). This summary is from the Commissioners' prefatory notes. The Commissioners' note also contains this caveat: As of May 1977 "provisions of this Act have not been ruled upon by the Internal Revenue Service. We advise any state or interested party to monitor the tax consequences carefully when considering it. Particularly, we suggest that a delayed effective date be inserted in any bills introduced. A substantially delayed effective date would permit an IRS ruling before that date with respect to an enactment, and would preclude any adverse consequences to those who might rely on the Act's provisions."

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

DEC 11 1978

Mr. Brockenbrough Lamb, Jr.  
Christian, Barton, Epps, Brent & Chappell  
1200 Mutual Building  
Richmond, VA 23219

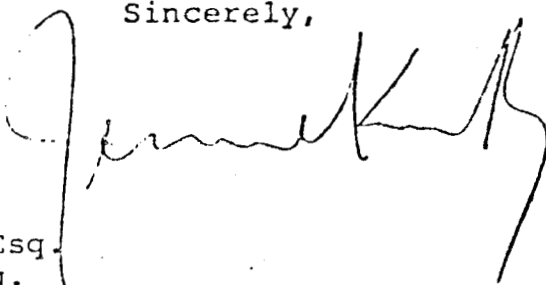
Dear Mr. Lamb:

Subsequent to our conference on September 18, 1978 regarding the status of the Revised Uniform Limited Partnership Act as compared to the Uniform Limited Partnership Act, we have given this matter further consideration.

As a result, we propose to initiate an amendment of section 301.7701-2 of the Procedure and Administration Regulations. It is our intention that the notice of the proposed rule-making should reflect the conclusion that the present form of the Revised Act will generally be treated as a statute corresponding to the Uniform Limited Partnership Act. However, the Revised Act will be treated as a statute corresponding to the Uniform Limited Partnership Act for purposes of centralization of management under section 301.7701-2 of the regulations, only if the partnership agreement does not allow for removal of a general partner by the limited partners. If such removal is allowed, a facts and circumstances test will be applied to determine whether the partnership possesses centralized management.

We appreciate your kind cooperation and assistance to us in our consideration of this matter.

Sincerely,



cc: Theodore A. Kurz, Esq.  
Bruce D. Haims, Esq.

RECEIVED

JAN 24 1979

MONTANA LEGISLATIVE  
COUNCIL

RECEIVED

DEC 13 1978

CHRISTIAN, BARTON, EPPS, BRENT & CHAPPELL

Department of the Treasury

Internal Revenue Service

SENATE COMMITTEE JUDICIARY

Date 5/10/79 Senate Bill No. 297 Time 11:02

NAME	YES	NO
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)		✓

Alfred B. ... Secretary Chairman

Motion: Do not pass

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(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 2/10/79 Sen. 10 Bill No. 295 Time \_\_\_\_\_

NAME	YES	NO
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)		✓
	6	4

Adrian Conroy  
Secretary

\_\_\_\_\_  
Chairman

Motion: Do not pass  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(include enough information on motion--put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

.....February 12..... 19 79.....

MR. ....President:.....

We, your committee on.....Judiciary.....

having had under consideration .....Senate..... Bill No. 139.....

Respectfully report as follows: That.....Senate..... Bill No. 139.....

DO PASS

# STANDING COMMITTEE REPORT

.....February 12,..... 19 79

MR. President:.....

We, your committee on ..... Judiciary .....

having had under consideration ..... Senate ..... Bill No. 282 .....

Respectfully report as follows: That ..... Senate ..... Bill No. 232 .....

DO NOT PASS

DO PASS



# STANDING COMMITTEE REPORT

.....February 12..... 19 79.....

MR. ....President:.....

We, your committee on .....Judiciary.....

having had under consideration .....Senate..... Bill No. 295

Respectfully report as follows: That.....Senate..... Bill No. 295

DO NOT PASS  
DO PASS

*W.E.*

# STANDING COMMITTEE REPORT

February 12

79

19

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 345

Respectfully report as follows: That Senate Bill No. 345,

introduced bill, be amended as follows:

1. Page 1, line 19.

Following: "court"

Strike: "may, in its discretion,"

Insert: "shall"

2. Page 1, line 21.

Following: "46-18-113"

Insert: " , which must include an investigation of the present mental condition of the defendant"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 12 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 374

Respectfully report as follows: That Senate Bill No. 374,

introduced bill, be amended as follows:

1. Page 1, line 23.

Following: "modified"

Insert: "within 2 years of the date of the decree"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

.....February 12, 1979.....

MR. President:.....

We, your committee on .....Judiciary.....

having had under consideration .....Senate..... Bill No. 355.....

Respectfully report as follows: That.....Senate..... Bill No. 355.....

DO PASS

# STANDING COMMITTEE REPORT

February 12, 19 79

MR. ...President:.....

We, your committee on ..... Judiciary .....

having had under consideration ..... Senate ..... Bill No. 357

Respectfully report as follows: That ..... Senate ..... Bill No. 357

DO PASS

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 12, 1979

The thirty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 4:40 p.m.

ROLL CALL:

All members were present with the exception of Jack Healy.

DISPOSITION OF SENATE BILL 271:

Senator Towe moved that the committee adopt amendments #1 and 2 of those offered. (See Exhibit A.). The motion carried unanimously.

Senator Towe moved tht the committee adopt amendment #5 and also #3, 4, 5, and 6. The motion carried unanimously.

Senator Towe moved the adoption of amendment #7. The motion carried unanimously.

Senator Towe moved that amendment #8 be not adopted. The motion carried.

Senator Towe moved that amendments #9 through 15 be adopted. The motioin carried unanimously.

Senator Towe moved that the committee adopt amendments #16 and 17. The motion carried unanimously.

Senator Towe moved the adoption of amendments #18 and 19. The motion carried.

Senator Towe moved the adoption of amendment #20. The motion carried.

Senator Towe moved that we adopt amendment 12 through 20. The motion carried.

Senator Towe moved that amendment #11 be adopted. The motion carried.

Senator Towe moved that the committee adopt amendment #21. The motion carried unanimously.

Senator Towe moved the adoption of amendments #22, 23, and 24. The motion carried unanimously.

Senator Towe moved the adoption of amendments #25 through 29. The motion carried unanimously.

The committee decided not to accept amendment #30.

Senator Brown moved that the bill be amended on page 21, lines 14 and 15, following "(3)" by striking remainder of line 14 and through "agencies" on line 15 and inserting "conduct audits of the

criminal history record information systems of a representative sample of a state and local criminal justice agencies chosen annually on a random basis." The motion carried unanimously.

Senator Towe stated that he thought that this should be given an individual because after twenty years or so, he has the opportunity to wipe that slate clean and that he gets faced with it every time he turns around.

Senator Turnage commented that they lock everything into those computers - that we were relatively safe before the age of the computer as they couldn't find records. There was further discussion on other areas of this bill.

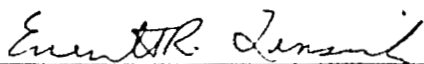
Senator Towe moved that the bill do pass, as amended. The motion carried. See Roll Call Vote.

DISPOSITION OF SENATE BILL 214:

There was some discussion on labor agreements and disputes.

Senator Turnage stated that if they arbitrate they take management's position away. Senator Roskie stated that this act does not subject anyone to do anything unlawfully or unconstitutionally. There was further discussion on the bill. Senator Lensink asked for a motion on the bill. Senator O'Hara wondered about putting in something on the last best offer.

There being no agreement or motions on the bill, the meeting was adjourned at 5:47 p.m.

  
\_\_\_\_\_  
SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

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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)	✓		✓ - present
Healy, John E. (Jack) (D)			✓

Each Day Attach to Minutes.



Senate Bill No. 271, introduced copy is amended as

follows:

1. Page 2, line 18.  
Following: "(4)"  
Insert: "(a)"

*carried* 2. Page 3, line 2.  
Following: "."  
Insert: "(b) Criminal history record information  
does not include:  
(i) records of traffic offenses main-  
tained by the division of motor vehicles  
within the department of justice; or  
(ii) court records."

3. Page 4, line 20.  
Following: "(10)"  
Insert: "(a)"

4. Page 4, lines 21 through 22.  
Strike: "to determine guilt or innocence"

*carried* 5. Page 4, line 23 through line 2 on page 5.  
Following: "termination" on line 23  
Strike: line 23 through "postponement."  
on line 2, page 5  
Insert: ", or information relating to  
sentencing, correctional supervision, release  
from correctional supervision, the outcome  
of appellate or collateral review of criminal  
proceedings, or executive clemency. Criminal  
proceedings have terminated if a decision  
has been made not to bring charges or  
criminal proceedings have been concluded,  
abandoned, or indefinitely postponed. (b)"

6. Page 5, line 4.  
Following: line 3  
Strike: "(a)"  
Insert: "(i)"  
Renumber: subsequent subsections accordingly

*carried* 7. Page 6, line 1.  
Following: "parole."  
Insert: "(c) A single arrest of an individual may  
result in more than one disposition."

*Erskine & A*

*1.35*  
*4.58*

8. Page 8, line 25.  
Following: "for"  
Insert: "a"  
Strike: ", "  
Insert: offense other than driving while under the  
influence of alcohol or drugs, or a"
9. Page 9, line 1.  
Strike: "offenses"  
Insert: "offense"
10. Page 9, lines 10 through 12.  
Following: "inform the" on line 10  
Strike: line 10 through line 12 in its entirety  
Insert: "originating agency. If it is determined  
that the individual has a criminal record,  
the state repository shall send the originating  
agency a copy of the individual's complete  
criminal history record."
11. *Did not*  
Page 10, line 2.  
Following: "rosters" *Carried*  
Strike: "shall"  
Insert: "may"
12. *Carried*  
Page 10, lines 18 through 23.  
Strike: subsection (2) in its entirety  
Insert: "(2) dispositions resulting from formal  
proceedings in a court having jurisdiction  
in a criminal action against an individual  
who has been photographed and fingerprinted  
under [section 6] shall be reported to the  
originating agency and the state repository  
within 15 days. If the dispositions can  
readily be collected and reported through  
the court system, the dispositions may be  
submitted to the state repository by the  
administrative office of the courts;"
13. Page 10, lines 24 through 25.  
Following: "(3)" on line 24  
Strike: "criminal justice agencies authorized  
under [section 6]"  
Insert: "an originating agency"
14. Page 10, line 25.  
Following: "repository"  
Insert: "within 30 days"

15. Page 11, line 1.  
Strike: "arrests, proceedings, and"

16. Page 11, lines 1 through 3.  
Following: "dispositions" on line 1  
Strike: line 1 through line 3 in its entirety  
Insert: "concerning the termination of criminal  
proceedings against an individual who has  
been photographed and fingerprinted under  
[section 6];"

17. Page 11, line 5.  
Following: "repository"  
Insert: "within 30 days"  
Following: "all"  
Strike: "changes in custodial status"  
Insert: "dispositions"

18. Page 11, line 6.  
Following: "conviction"  
Strike: "within 30 days of such changes;"  
Insert: "of an individual who has been photographed  
and fingerprinted under [section 6];"

19. Page 11, line 22.  
Following: "shall"  
Strike: "promulgate"  
Insert: "adopt"  
Following: "rules"  
Insert: "for criminal justice agencies other than  
those that are part of the judicial branch of  
government"

20. Page 11, line 23.  
Following: "section."  
Insert: "The department of justice may adopt rules  
for the same purpose for the judicial branch  
of government if the Montana Supreme Court  
consents to the rules."

21. Page 12, line 17.  
Following: "is"  
Strike: "required"  
Insert: "authorized"

22. Page 12, line 24.  
Following: "record information"  
Insert: "that is not public criminal justice  
information"

23. Page 13, line 1.  
Following: "agencies"  
Strike: "except"  
Insert: "unless:  
(a) the information is disseminated"

24. Page 13, lines 3 through 4.  
Following: "20]" on line 3  
Strike: line 3 through line 4 in its entirety  
Insert: ";  
(b) a district court considers dissemination  
necessary;  
(c) the information is disseminated in  
compliance with [section 13]; or  
(d) the agency receiving the information  
is authorized by law to receive it."

25. Page 16, line 5.  
Following: "data"  
Strike: "input"  
Insert: "input"

26. Page 18, lines 4 through 5.  
Strike: "or transfer to any other person"

27. Page 18, line 6.  
Following: "individual"  
Insert: "or transfer copies of that information  
to any other person"

28. Page 18, line 18.  
Following: "of"  
Insert: "copies of"

29. Page 18, line 23.  
Following: "transfer"  
Insert: "of copies of that information."

*no*  
30. Page 21, line 14.  
Following: "criminal"  
Strike: "justice"  
Insert: "history record"  
Following: "information"  
Strike: ", "

Senate Bill No. 271, introduced copy, is amended

as follows:

*adopted*

Page 21, lines 14 through 15.

Following: "(3)" on line 14

Strike: line 14 through "agencies" on line 15

Insert: " conduct audits of the criminal history  
record information systems of a representative  
sample of state and local criminal justice  
agencies chosen annually on a random basis

*(H.S.S.)*  
*128*

SENATE COMMITTEE JUDICIARY

Date \_\_\_\_\_ Bill No. 271 Time 5:30

NAME	YES	NO
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)	✓	

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: De pass, as amended

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(include enough information on motion--put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

February 15,

19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 271

Respectfully report as follows: That Senate introduced bill, be amended as follows: Bill No. 271,

1. Page 2, line 18.

Following: "(4)"

Insert: "(a)"

2. Page 3.

Following: line 2

Insert: "(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the  
division of motor vehicles, department of justice; or  
(ii) court records."

3. Page 4, line 20.

Following: "(10)"

Insert: "(a)"

4. Page 4, lines 21 and 22.

Strike: "to determine guilt or innocence"

~~DO PASS~~

(continued)

5. Page 4, line 23 through line 2 on page 5.

Following: "termination" on line 23

Strike: remainder of line 23 through "postponement." on line 2, page 5

Insert: "or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b)"

6. Page 5, line 4.

Following: line 3

Strike: "(a)"

Insert: "(i)"

Renumber: subsequent subsections accordingly

7. Page 6.

Following: line 1

Insert: "(c) A single arrest of an individual may result in more than one disposition."

8. Page 8, line 25.

Following: "for"

Insert: "a"

9. Page 9, line 1.

Following: "game"

Strike: "offenses"

Insert: "offense"

10. Page 9, lines 10 through 12.

Following: "inform the" on line 10

Strike: remainder of line 10 through line 12 in its entirety

Insert: "originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record."

11. Page 10, line 2.

Following: "rosters"

Strike: "shall"

Insert: "may"

12. Page 10, lines 18 through 23.

Following: line 17

Strike: subsection (2) in its entirety

Insert: "(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall

(continued)



be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts;"

13. Page 10, lines 24 and 25.

Following: "(3)" on line 24

Strike: "criminal justice agencies authorized under [section 6]"

Insert: "an originating agency"

14. Page 10, line 25.

Following: "repository"

Insert: "within 30 days"

15. Page 11, line 1.

Strike: "arrests, proceedings, and"

16. Page 11, lines 1 through 3.

Following: "dispositions" on line 1

Strike: remainder of line 1 through line 3 in its entirety

Insert: "concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];"

17. Page 11, line 5.

Following: "repository"

Insert: "within 30 days"

Following: "all"

Strike: "changes in custodial status"

Insert: "dispositions"

18. Page 11, line 6.

Following: "conviction"

Strike: "within 30 days of such changes"

Insert: "of an individual who has been photographed and fingerprinted under [section 6]"

19. Page 11, line 22.

Following: "shall"

Strike: "promulgate"

Insert: "adopt"

Following: "rules"

Insert: "for criminal justice agencies other than those that are part of the judicial branch of government"

20. Page 11, line 23.

Following: "section."

Insert: "The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules."

(continued)

21. Page 12, line 17.

Following: "is"

Strike: "required"

Insert: "authorized"

22. Page 12, line 24.

Following: "record information"

Insert: "that is not public criminal justice information"

23. Page 13, line 1.

Following: "agencies"

Strike: "except"

Insert: "unless:

(a) the information is disseminated"

24. Page 13, lines 3 and 4.

Following: "20]" on line 3

Strike: remainder of line 3 through line 4 in its entirety

Insert: ";

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with [section 13]; or

(d) the agency receiving the information is authorized by law to receive it."

25. Page 16, line 5.

Following: "data"

Strike: "input"

Insert: "input"

26. Page 18, lines 4 and 5.

Strike: "or transfer to any other person"

27. Page 18, line 6.

Following: "individual"

Insert: "or transfer copies of that information to any other person"

28. Page 18, line 13.

Following: "of"

Insert: "copies of"

29. Page 18, line 23.

Following: "transfer"

Insert: "of copies"

30. Page 21, lines 14 and 15.

Following: "(3)" on line 14

Strike: remainder of line 14 through "agencies" on line 15

Insert: "conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis"

STATEMENT OF INTENT RE: SENATE BILL NO. 271

This bill delegates authority to the department of justice to adopt rules in sections 9 and 23.

Section 9(7) requires the department of justice to adopt rules to implement that section, entitled "Procedures To Ensure Accuracy Of Criminal History Records." The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to facilitate

the linking of dispositions to specific arrests.

Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionary rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use.

First adopted by the Senate Judiciary Committee on February 19, 1979.

- End -