

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 23, 1979

The forty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, chairman, in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 184:

This is an act to generally revise and clarify the laws relating to criminal procedure. Joan Mayer from the Legislative Council offered an explanation of what this bill does. (See Exhibit A.) She also offered a handout. (See Exhibit B.)

There were no further proponents and no opponents. No questions were asked and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 185:

This is an act to generally revise and clarify the laws relating to contracts and other obligations, etc. Joan Mayer from the Legislative Council offered handouts in connection with the law on this bill. (See Exhibits C and D.) She went over the bill section by section.

Senator Towe moved that 28-1-1112 be stricken out of the repealer and the title. The motion carried unanimously.

Senator Towe moved that on page 7, line 3, the bill be amended by striking "contract debtor" and insert "maker". The motion carried.

Senator Towe moved that the bill be amended on page 4, lines 12 through 16 by reinserting all the stricken material. The motion carried with Senator Brown voting no.

Senator Towe moved that the bill be amended on page 10, line 19 following (1) insert "(a), (b), (c), and (d)". The motion carried unanimously after much discussion.

Senator Towe moved that the bill be amended on page 16, lines 5 through 12, by striking section 33 in its entirety. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 182:

This is an act to generally revise and clarify the laws relating to property. Bob Pyfer, staff attorney for the Legislative Council, gave an explanation of this bill.

Senator Towe moved that the bill be amended on page 7, line 9, following the word "interest" by inserting "or interest". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 12, line 24 after "is" by inserting "presumed to be". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously. Senator Turnage moved that this bill be placed on the consent calendar. The motion carried.

DISPOSITION OF HOUSE BILL 184:

A motion was made that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 194:

Joan Mayer from the Legislative Council went over this bill section by section. This is an act to generally revise the laws in Title 1, MCA, composed of general laws and definitions, etc.

Senator Towe moved that the bill be amended on page 2, lines 9 through 25, by striking section 3 in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be amended on page 2, line 25, by striking "proof or acknowledgment" and inserting "acknowledgments" and on page 3, line 1, by striking "or" and inserting "of". The motion carried unanimously.

Senator Towe moved that on page 9, line 19, following the word "swearing" the bill be amended by inserting "or affirming" and on line 21, after "swearing" inserting "or affirming". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSLINK, Chairman
Senate Judiciary Committee

Date Feb 23 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

95-1111

CODE OF CRIMINAL PROCEDURE

Collateral References

Amount of bail required in criminal action, 53 ALR 399.

Factors in fixing amount of bail in criminal cases, 72 ALR 801.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case, 29 ALR 2d 945.

95-1111. Reduction, increase, revocation or substitution of bail. (a) Upon application by the state or the defendant the court before which the proceeding is pending may increase, or reduce the amount of bail, substitute one bail for another or alter the conditions of the bail, or revoke bail.

(b) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant after verdict of guilty and before judgment.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967.

Revised Commission Comment

Both the state and the defendant must have notice of any proposed change in the status of the bail and either side may move for a change in the bail. This applies to all stages of the proceedings.

Source: Illinois Code of Criminal Procedure, Chapter 38, section 130-6; and Revised Codes of Montana 1947, sections 94-8307 and 94-8507.

Amount of Bail

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Collateral References

Bail¹ 53; *Habens Corpus*² 33.

S. C.J.S. Bail §§ 49, 51 (4).

S. Am. Jur. 2d 822 et seq., *Bail and Recognizance*, § 68 et seq.

95-1112. How bail is to be furnished. Bail may be furnished by the defendant in any of the following ways:

(a) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, stocks, or bonds, or any combination thereof approved by the judge; or

(b) By real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail; or

(c) By written undertaking executed by the defendant and by two (2) sufficient sureties; or

(d) By a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967.

Liberty Bonds as Bail

One depositing Liberty bonds as bail was estopped from claiming that their forfeiture was unauthorized, under former section stating that a "sum" might be deposited in lieu of giving bail, on theory that money only could be given when she had stipulated at the time bail was furnished that the bonds were substantially the equivalent of the amount fixed as bail in money or cash. *Kirschbaum v. Mayn*, 76 M 320, 329, 246 P 953.

Where a prisoner for whom bail was furnished by plaintiff by a deposit of

Liberty bonds was in court in the custody of the sheriff and released at once, the fact that a certificate of the deposit was not delivered to the officer as required by former section as authority for releasing him, was immaterial. *Kirschbaum v. Mayn*, 76 M 320, 329, 246 P 953.

Collateral References

Bail¹ 73.

S. C.J.S. Bail §§ 52, 53.

S. Am. Jur. 2d 834, *Bail and Recognizance*, §§ 84-85.

Mandamus to compel approval of bonds by justice of the peace, 92 ALR 1211.

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1979 Legislature
Code Commissioner Bill -- Summary

House Bill No. 184

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 46-4-203. Subpoenaing of witnesses. Grammatical changes.

Section 2. 46-5-201. Search warrant defined. In sub-sections (4) and (5) clarified that a person can be searched or seized (See 46-5-101 and 46-5-203(3).)

Section 3. 46-5-202. Grounds for search warrant. (See Section 2 and 46-5-201.)

Section 4. 46-5-305. Disposition of unclaimed property. Added "and the sale" to correct apparent oversight.

Section 5. 46-6-203. Manner of arrest with a warrant. Deleted "making the arrest" in three places as redundant and clarified use of pronouns.

Section 6. 46-9-203. Report to county attorney concerning drug users. Rewrote to clarify and eliminate redundancies.

Section 7. 46-9-311. Reduction, increase, revocation, or substitution of bail. In subsection (2) deleted "after verdict and before judgment" to clarify that notice is required at all stages of the proceedings (See Revised Commission Comment under 95-1111, R.C.M. 1947.)

Section 8. 46-9-403. Qualifying property as bail. In subsection (1) changed "or" to "and" for consistency with "a list of the stocks and bonds", and in subsection (4) clarified "so done".

(2/25)
E. J. Hart

Section 25. 46-22-201. Application for writ. Rewrote subsection (1)(c) to clarify.

Section 26. 46-22-202. By whom issued and before whom returnable. Corrected grammar in subsection (2).

Section 27. 46-23-108. Records and reports -- confidentiality. Clarified "report".

Section 28. 46-23-217. Service of term for additional crime. Corrected conflict with 46-18-401, which was amended in 1977.

Section 29. 46-23-306. Record of hearing. Clarified subsection (1).

Section 30. 46-23-402. Purpose of prisoner furlough program. In subsection (1)(c) changed "convicts" to "prisoners" and in subsection (2) changed "prisoner program" to "prisoner furlough" program" for uniform terminology.

Section 31. Repealer. 95-1709 and 95-2010 are superseded by the Supreme Court's rules on disqualification of judges.

64-102. (5674) Periods of minority—how calculated. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R. C. M. 1921. Cal. Civ. C. Sec. 26.

Inclusion or exclusion of day of birth in determining attainment of majority period. 5 ALR 2d 1147-1152.

Collateral References

Time \Leftrightarrow 4.

86 C.J.S. Time § 9.

42 Am. Jur. 2d 13, Infants, § 6.

Applicability of criminal statutes relating to offenses against children of a specified age with respect to a child who has passed the anniversary date of such age. 73 ALR 2d 874.

64-103. (5675) Unborn children. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R. C. M. 1921. Cal. Civ. C. Sec. 29. Field Civ. C. Sec. 12.

43 C.J.S. Infants §§ 1, 3.
42 Am. Jur. 2d 9, Infants, § 2.

Action for death of unborn child. 15 ALR 3d 992.

Wrongfully causing one to be born, tort liability for. 22 ALR 3d 1441.

Collateral References

Infants \Leftrightarrow 1.

64-104. (5676) Persons of unsound mind. Persons of unsound mind, within the meaning of this code, are idiots, lunatics, imbeciles, and habitual drunkards.

History: En. Sec. 14, Civ. C. 1895; re-en. Sec. 3588, Rev. C. 1907; re-en. Sec. 5676, R. C. M. 1921. Field Civ. C. Sec. 13.

28 C.J.S. Drunkards § 2; 44 C.J.S. Insane Persons § 2.
41 Am. Jur. 2d 541, 546, Incompetent Persons, §§ 2, 7.

Collateral References

Drunkards \Leftrightarrow 1; Mental Health \Leftrightarrow 1 et seq.

64-105. (5678) Powers of minors. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R. C. M. 1921. Cal. Civ. C. Sec. 33. Field Civ. C. Sec. 15.

an agent for any purpose, it is questionable whether the statute can be complied with in that respect by anyone as agent. Child's cause of action for personal injuries is a property right over which, under section 64-110, a parent has no control. Lazich v. Belanger, 111 M 48, 52, 105 P 2d 738.

Collateral References

Infants \Leftrightarrow 5; Powers \Leftrightarrow 6.

43 C.J.S. Infants § 23; 72 C.J.S. Powers § 4.

Agency—Parents' Neglect To Give Notice Not Imputable to Child—Child Incapable of Appointing Agent

Neglect of parents of injured child to give sixty-day notice provided for by Ch. 122, Laws 1937 (11-1305) may not be imputed to the child, and since, under this section, a child is incapable of appointing

64-106. (5679) Contracts of minors—disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter, and to the provisions of the chapters on marriage.

History: En. Sec. 17, Civ. C. 1895; 5679, R. C. M. 1921. Cal. Civ. C. Sec. 34. re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 16.

Exhibit C
(145)

28-1-1106. Application of performance when there are several obligations. Where a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation be manifested to the creditor, it must be so applied.

(2) If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion, and an application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

- (a) first-- of interest due at the time of the performance;
- (b) second--of principal due at that time;
- (c) third -of the obligation earliest in date of maturity;
- (d) fourth - of an obligation not secured by a lien or collateral undertaking;
- (e) fifth -of an obligation secured by a lien or collateral undertaking.

History: En. Sec. 2006, Civ. C. 1895; re-en. Sec. 4928, Rev. C. 1907; re-en. Sec. 7430, R.C.M. 1921; Cal. Civ. C. Sec. 1479; Based on Field Civ. C. Sec. 705; re-en. Sec. 7430, R.C.M. 1935; R.C.M. 1947, 58-407.

28-1-1107 through 28-1-1110 reserved.

28-1-1111. Receipt for money, instrument, or property delivered. (1) Whoever pays money or delivers an instrument or property is entitled to a receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

(2) A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

History: (1)En. Sec. 3411, C. Civ. Proc. 1895; re-en. Sec. 8037, Rev. C. 1907; re-en. Sec. 10681, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2075; re-en. Sec. 10681, R.C.M. 1935; Sec. 93-2201-2, R.C.M. 1947; (2)En. Sec. 2034, Civ. C. 1895; re-en. Sec. 4943, Rev. C. 1907; re-en. Sec. 7445, R.C.M. 1921; Cal. Civ. C. Sec. 1499; Field Civ. C. Sec. 720; re-en. Sec. 7445, R.C.M. 1935; Sec. 58-422, R.C.M. 1947; R.C.M. 1947, 58-422, 93-2201-2.

28-1-1112. Objections to tender -- waiver. The person to whom a tender is made must at the time specify any objection he may have to the money, instrument, or property or he must be deemed to have waived it; and if the objections be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires or be precluded from objecting afterward.

History: En. Sec. 3412, C. Civ. Proc. 1895; re-en. Sec. 8038, Rev. C. 1907; re-en. Sec. 10682, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2076; re-en. Sec. 10682, R.C.M. 1935; R.C.M. 1947, 93-2201-3.

28-1-1113. Creditor's retention of thing which he refuses to accept. If anything is given to a creditor by way of performance, which he refuses to accept

HB 182

1. Page 7, line 9.

Following: "interest"

Insert: "or interest"

2. Page 12, line 24.

Following: "be"

Insert: "presumed to be"

HB 185

1. Title, line 7.

Strike: "28-1-1112, MCA, AND SECTION"

2. Page 4, line 16.

Following: "property -"

Insert: "(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) "

3. Page 7, line 3.

Following: "maker"

Strike: "contract debtor"

Insert: "maker"

4. Page 10, line 19.

Following: "in"

Insert: "(a) through (l) of"

5. Page 16, lines 5 through 12.

Strike: section 33 in its entirety
Remember: all subsequent sections

6. Page 17, lines 7 and 8.

Strike: "28-1-1112, MCA, and section"

(over)

HB 194

1. Page 2, lines 9 through 23.

Strike: section 3 in its entirety

Renumber: all subsequent sections

2. Page 2, line 25.

Following: "acknowledgments"

Strike: "Proof or acknowledgement"

Insert: "acknowledgments"

3. Page 3, line 1.

Following: "of"

Strike: "or"

Insert: "of"

4. Page 9, line 19.

Following: "swearing"

Insert: "or affirming"

5. Page 9, line 21.

Following: "swearing"

Insert: "or affirming"

STANDING COMMITTEE REPORT

February 23

1979

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 135

Respectfully report as follows: That House Bill No. 135,

third reading bill, be amended as follows:

1. Title, line 7.

Strike: "28-1-1112, MCA, AND SECTION"

2. Page 4, line 16.

Following: "property."

Insert: "(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2)"

3. Page 7, line 3.

Following: "maker"

Strike: "contract debtor"

Insert: "maker"

DO PASS

(Continued)

February 23

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4. Page 10, line 19.

Following: "in"
Insert: "(a) through (d) of"

5. Page 16, lines 5 through 12.

Strike: section 33 in its entirety
Renumber: all subsequent sections

6. Page 17, lines 7 and 8.

Strike: "28-1-1112, MCA, and section"

7. Page 17, line 8.

Following: "1947,"

Strike: "are"

Insert: "is"

And, as so amended,
BE CONCURRED IN

PL.

STANDING COMMITTEE REPORT

February 23 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 182

Respectfully report as follows: That House Bill No. 182,

third reading bill, be amended as follows:

1. Page 7, line 9.

Following: "interest"

Insert: "or interest"

2. Page 12, line 24.

Following: "be"

Insert: "presumed to be"

And, as so amended,
BE CONCURRED IN

RL
DO-PASS

STANDING COMMITTEE REPORT

February 23 1973

MR. PRESIDENT.....

We, your committee on Judiciary
having had under consideration House Bill No. 184

Respectfully report as follows: That House Bill No. 133

DO CONCURRED IN

DO PASS xx *PL*

STANDING COMMITTEE REPORT

February 23

1979

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 194

Respectfully report as follows: That House Bill No. 194,
third reading bill, be amended as follows:

1. Page 2, lines 9 through 23.
Strike: section 3 in its entirety
Renumber: all subsequent sections

2. Page 2, line 25.
Following: "acknowledgments"
Strike: "Proof or acknowledgment"
Insert: "Acknowledgments"

3. Page 3, line 1.
Following: "of"
Strike: "or"
Insert: "of"

DO PASS

(Continued)

February 23

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4. Page 9, line 19.
Following: "swearing"
Insert: "or affirming"

5. Page 9, line 21.
Following: "swearing"
Insert: "or affirming"

And, as so amended,
BE CONCURRED IN

P.A.