

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 2, 1979

The forty-ninth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building by Senator Everett R. Lensink, Chairman on the above date at 9:34 a.m.

ROLL CALL:

All members were present with the exception of Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 32:

This is an act to amend the laws relating to crime victims compensation by clarifying terminology, by deleting welfare benefits as a collateral source, by permitting the division of workers' compensation to adopt requirements concerning information on the availability of assistance to victims and the establishment of escrow accounts for funds owed to individuals inflicting injury or death, by permitting the reduction or elimination of compensation when the victim contributes to the injury or death, and by changing a reference to earmarked revenue fund to agency fund. Representative Quilici stated that this bill amends the crime victim's compensation act and would make Montana law coincide with the federal law. He introduced Norman Grosfield, Administrator of the Worker's Compensation Division of the Department of Labor and Industry.

Mr. Grosfield stated that this act would conform Montana law to proposed federal legislation and under the federal legislation they may be able to get some reimbursement of what they pay out. He stated that they can offset under different programs such as insurance benefits, unemployment compensation, etc. He stated that the federal government will not let us offset against welfare. He stated that the House placed a provision in the bill that would allow benefits involving the use of an automobile if the automobile was used as a weapon. He then went over the rest of the bill and explained the changes.

There were no further proponents and no opponents.

Representative Quilici stated that these amendments really make this bill conform to the new federal statute and we will have a better chance to receive funds for this program through the federal government. He stated it might be some problem with the motor vehicles and he would have no objections to amending this out of there.

Senator Van Valkenburg asked what is the financial status of this fund right now and Mr. Grosfield stated that it was a little over \$300,000.00 at the present time.

Senator Van Valkenburg stated that he was concerned about the department having discretion about whether the victim may have contributed to the crime - he said that a rape victim who has not resisted an attack, and then somebody comes along and says they contributed to the crime. Mr. Grosfield stated that they make thousands of determinations such as this and you must put faith in the division as to the use of good judgment.

Senator Towe asked how this was funded and Mr. Grosfield stated that this is funded by a six per cent assessment on all traffic moving violations. Senator Towe asked how much had been paid out; and Mr. Grosfield answered that the fund was originally set up on July 1, 1977 and benefits could be paid out on July 1, 1978; and he said he believed, to date, there has been paid out approximately \$60,000.00. He stated that his anticipation is that, as in all programs, they start out quite slowly; and after the first year in California, they had a 300 per cent increase in benefits.

Senator Turnage asked if he could break down the claims that have been paid out - the type of claim - amounts - what damages there were, etc. Mr. Grosfield stated that they paid in a homicide case \$1,100 for a funeral, a woman lost an eye by a chair being put in her eye and he did not know the exact amount; they have hospital bills, medical bills and rape cases and that damages are usually total medical payments, hospital payments and actual wage loss. He stated that the maximum can not exceed a \$25,000.00 limit. He stated that generally aggravated assault cases and murder are the types of crime that this act addresses.

Senator Towe asked him to explain the earmarked revenue. Mr. Grosfield stated that the earmarked fund is a fund to carry on the administration costs of the agency as opposed to the benefits.

Senator Turnage questioned if you have to have a conviction before a victim can get this. Mr. Grosfield stated that there is no requirement that a conviction must be received. Senator Turnage questioned what about an acquittal, and Mr. Grosfield stated that the determination of a benefit is more on a civil concept rather than a criminal concept.

There were no further questions or comments, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 332:

This is an act to amend section 46-5-202 to permit the application for a search warrant to be made by a sworn telephone statement which is electronically recorded. Representative Keyser gave an explanation of this bill. He stated at the present time, if you believe that a crime has been committed, you have to go to the judge at his office or his home to secure this warrant. In many areas, some live 40 to 60 miles away and by the time they would get there, contact the judge, get the search warrant, then the goods are gone. He stated that the case in Townsend was a good example with the use of an airplane and one of the largest amounts of marijuana ever discovered. He stated that he would offer an amendment which would make it necessary to contact the county attorney first; he would have this recorded; and if he felt that this information was valid, then he would contact the judge; and then the judge would be in contact with the officer and issue a telephone search warrant.

Jim Burnes, undersheriff of Cascade County, stated that this bill was modeled after the present Washington statute. He stated that he wanted to clear up a misconception - that they don't intend for this to be a constant thing. He told of two major homicides, both of which happened on Sunday; and he had no success the entire day in contacting one of their judges and he stated that the first forty-eight hours in a major crime is critical; that evidence deteriorates, contraband moves fast; criminals move fast; and he asked the committee to support this bill.

John Bell, representing the Montana Sheriffs and Peace Officers Association, stated that he enthusiastically supports this bill. He stated that Augusta has a little airstrip and they are many miles out of Helena. He felt that this bill should pass as they should be able to use any electronic tool that is available.

Bill Romine, representing the Montana Sheriffs and Peace Officers Association, stated that the phone is being used now, that when a deputy is a long ways from the justice of the peace, he calls another deputy, explains what is going on, that the deputy then fills out an affidavit of what is going on, based

on the information that he has received over the telephone, then he goes to the county attorney's office, and then to the justice of the peace. He stated that we are already using the telephone system, but they do not have a system where we are recording; and it is a stopgap procedure. He felt that safeguards are in this bill and it would be much better all recorded and typed up.

Jim Jensen, representing the Montana Magistrates Association, stated that they support this bill with the amendment.

Mike McGrath, Assistant Attorney General, stated that the Department of Justice support this bill.

There were no further proponents and no opponents.

Representative Keyser stated that the officer has to have a just cause and were under the same obligations as when they contacted a district judge. He said that they want our officers and law enforcement people to be up to date and able to take care of situations as they arise.

Senator Van Valkenburg questioned what is their opinion as to the constitutionality to the provision that the application must be in writing. Mr. McGrath stated that he had not researched the bill. Representative Keyser stated that this was used in Clark County, Washington since 1972; and they have never lost a case yet because it was unconstitutional. Mr. Romine stated that as he understands that reducing this to writing is a safeguard and takes care of the constitutional question.

Senator Turnage stated that he would feel more comfortable if this was required verbatim.

Senator Towe questioned how would a person know if someone comes on your doorstep and shows a warrant, how do you know that the judge has actually signed it; and wondered how they are going to prevent that. It was noted that unless a person knows the judge's writing right now, he doesn't know if the judge signed the warrant; and that once an officer pulls something like that, that officer is dead, if he ever has to go to a judge again; and he can't afford to take that risk.

Senator Healy asked what if neither the county attorney or the deputy is available. Representative Keyser said that then he should contact the judge.

Senator Towe asked how are we going to be assured that this does not become routine. Representative Keyser stated that he personally did not think this would be a problem as the judges and courts have control; and most judges have strong beliefs about issuing search warrants; they are tough to get; the judges are very reluctant to issue them; and if there is an abuse, that judge will cut them right down.

There were no further questions and no further comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 311:

This is an act to eliminate the requirement providing that a justices' court wait for a defendant one hour beyond the time set for trial before the court may enter a default, etc. Representative Ramirez gave an explanation of this bill and he stated that the present system creates some problems for the justices of peace.

Jim Jensen, representing the Montana Magistrates Association, stated that they heartily endorse this bill, especially in small claims courts, and this would help a speedy remedy.

There were no further proponents and no opponents.

Senator Van Valkenburg moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 335:

This is an act to provide for a custody hearing, if requested, upon the death of a custodial parent, etc. Representative Ramirez stated that under the present law, if one parent dies, custody automatically goes to the other natural parent; and that this has created some problems. He said that in some cases, the natural father may not have seen this child for many years and a stepfather may want this child; he has raised the child; been part of the family and yet is not entitled to this child.

There were no further proponents and no opponents.

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 270:

This is an act to amend section 70-1-408 to clarify the statement of the rule against perpetuities. Representative Kemmis stated that the Montana statute does not include "if at all" and that there is interest in property that is contingent remainder. He gave an example if a person gives his interest to his wife, and then to his son, if he lives to 21 years of age, that they would want that interest to be good and to be able to vest, and the words "if at all" should be in the law to make it clear.

There were no further proponents and no opponents.

Senator Towe said that this was enacted in 1895 and wondered if it had ever been interpreted by the Montana courts. Representative Kemmis stated that he has not found any and he felt that the problem probably has not been raised.

There were no further questions and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 308:

This is an act to repeal section 40-1-211, MCA, requiring that a license to marry may not be issued if either applicant for such license has failed to support lawful dependents. Representative Kemmis stated that this was introduced at the request of the attorney general, and the attorney general stated that they thought our statute was probably unconstitutional, and this would save everyone the expense of taking it to the supreme court.

Mike McGrath, Assistant Attorney General, stated that they have had several requests to issue an opinion on this statute, and there was considerable amount of confusion with the clerks.

There were no further proponents and no opponents.

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

CONSIDERATION OF HOUSE BILL 338:

This is an act to provide standards for inspections by government officials and a procedure for the procurement of inspection warrants; to restrict the admissibility of evidence obtained by unlawful inspection, etc. Representative Kemmis gave an explanation of this bill, and he stated that our cities are particularly caught in the position that if they can't get a consent, they can't conduct the search; or they have to conduct it illegally. He stated that the supreme court has made this absolutely clear, and we have no procedures in Montana to obtain a search warrant for this type of agency search.

Chris Tweeten, Assistant Attorney General, offered some amendments to this bill and went through the sections.

Mike McGrath, Assistant Attorney General, stated that this is a high priority bill in their department and gave a statement in support of this bill.

Mae Nan Ellingson, deputy city attorney in Missoula, explained some problems they had in enforcing zoning restrictions. She stated there were ten people living in a single room and a one-person apartment. She stated that they must seek consent; and if they refuse to consent to enter, then we are shut out. She said there is a very serious situation right now in Missoula,

where many of the downtown hotels are fire hazards and are in violation of fire code, and their ability to enter is nil.

Vernone Sloulin, representing the Food and Consumer Safety Bureau, of the Department of Health and Environmental Sciences, stated that he had some suggested amendments. He said that they issue some 7,000 licenses a year for the reason of protecting the public's health and some they have been inspecting for over forty years. He stated that if the kitchens are not considered part of the areas open to the public, they can inspect the dining room but not the kitchen. He also said that if there is a suspected case of illness from food in some establishment, that there is a need to get into that kitchen immediately; that if they can't get in there within a half hour or an hour, there may be another five, ten or fifty people eating in that establishment; and he felt that it is very important in this situation especially as it relates to food establishments.

He also stated that on page 4, line 14, that the language "after 6 p.m. or before 8 a.m." be stricken and insert "only during regular business hours". He said that many places do not open until 5:00 or 6:00 p.m. in the evening.

Mike Young, from the Department of Administration, stated that he originally was in opposition of this bill, he said they issue 25,000 building permits a year, and those that have something to hide are going to tell us to get lost, and those that are conforming give their consent.

He also offered an amendment in subsection (d).

Douglas Olson, from the Department of Health and Environmental Sciences, gave a statement in support of this bill.

There were no further proponents.

Dave Gossart, representing the City of Billings, gave a statement in opposition to this bill. (See Exhibit A.)

Phil Strobe, representing the Montana Tavern Association, stated that his concern is that they want to change the way the state does business; and this would give to the state the administrative power to search and examine without probable cause. He stated that the supreme court is toying with this idea, he explained that an OSHA inspector was denied, the OSHA ordered to be admitted because the OSHA law said they had a right; and the supreme court denied the right. He said that what they said was in the majority opinion, the OSHA law authorized an unreasonable search of private property because there was no safeguard in it. He stated that the fourth amendment says that no search warrant can be issued in absence of a demonstration of probable cause; and that you are passing into law the right of the state to literally go on a fishing expedition.

Representative Kemmis said that most of the amendments he has no problems with; and that the proposed amendment of the Department of Health overlaps the attorney general's. He stated that the one that related to regular business hours, that he felt the way it was worded would be unworkable; and he would prefer that the third amendment not be adopted; the amendment to examine construction sites, he felt that this is unnecessary and is probably a dangerous amendment. He stated that he was impressed with Mr. Strobe's testimony and he said that he was not usually in a position of infringing on civil liberties; that he looked very carefully at the bill when it was given to him and requested redrafting in regard to civil liberties. He stated that we have to inspect food establishments, and he did not feel that society would allow them to endanger their health, and that the majority of opinions show that Montana is in a bad position.

Senator Brown questioned what happens if this bill does not pass - are you precluded from getting a warrant.

Ms. Ellingson said that you have to proceed with the idea that that part of the law is invalidated. She said that they wrote to the attorney general, and he said that that was probably right, they could be denied the opportunity to inspect, and the only alternative would be to seek a mandatory injunction.

Senator Turnage questioned on page 1, section 2, the language that you are going to get these warrants that are authorized by regulation, and he wondered if they realize how many regulations there are in Montana under the Administrative Procedure Act. He stated there are thousands of them and he questioned the authority of any time, without probable cause, you can get a warrant to enter anybody's business, bedroom, etc., and that the word "regulation" covers the whole spectrum.

Senator Brown stated that he was not sure that this is what it says - that the inspection authority is authorized. Senator Turnage stated that he thought there is a criminal penalty that underlines everything you are trying to check on, and he stated that if you go home and tell the people we are letting the state into their bedrooms, he just didn't know.

There was some further discussion and Senator Lensink said that we will not act on this until Monday, and if anyone would like to offer some more amendments, they could do so.

There being no further business, the meeting was adjourned at 11:39 a.m.

Date _____

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.

Please sign & deliver to Secretary's Office

SENATE

Judiciary

COMMITTEE

BILL

VISITORS' REGISTER

DATE 3/2/1

Please note bill no.

(check one)

SUPPORT OPT

NAME

REPRESENTING

BILL #

SUPPORT OPT

Mike Young
Mike M. Smith

Dept. Admin
ATTY Gen

HB 338
HB 338
HB 338

✓
✓

Davy Olson

DHES

HB 338

✓

VERNON S. SPOONER

DHES

HB 338

✓

Joe Ginter

DIST FY

Norm Springfield

Div of Workers' Comp

HB 332

✓

Gerry Haysler

Dist #81

HB 332

Mae Han Ellingson

City of Minnola

HB 338

✓

James R. Burns

Min. Sheriff's Assn

HB 332

✓

John Bell

Sheriffs

H. 332

✓

William L. Remick

State Sheriff's & Peace Officers

H. 332

✓

Bill Hanson

URD



CITY OF BILLINGS

220 NORTH 27TH STREET
P. O. BOX 1178
BILLINGS, MONTANA 59103
PHONE (406) 248-7511

The City of Billings is opposed to HB 338. This bill has been reviewed by various departments within the City and we are all very concerned that the problems that would result from implementation would be greater than the problem this bill is attempting to resolve.

We have attempted to obtain clarification from the appropriate state agencies about the system that would result from this bill, but without success.

In view of the problems we feel would result and the inability to receive further clarification on the results of this bill, we oppose this bill and ask this committee to give it a "do not pass".

Exhibit A

7149

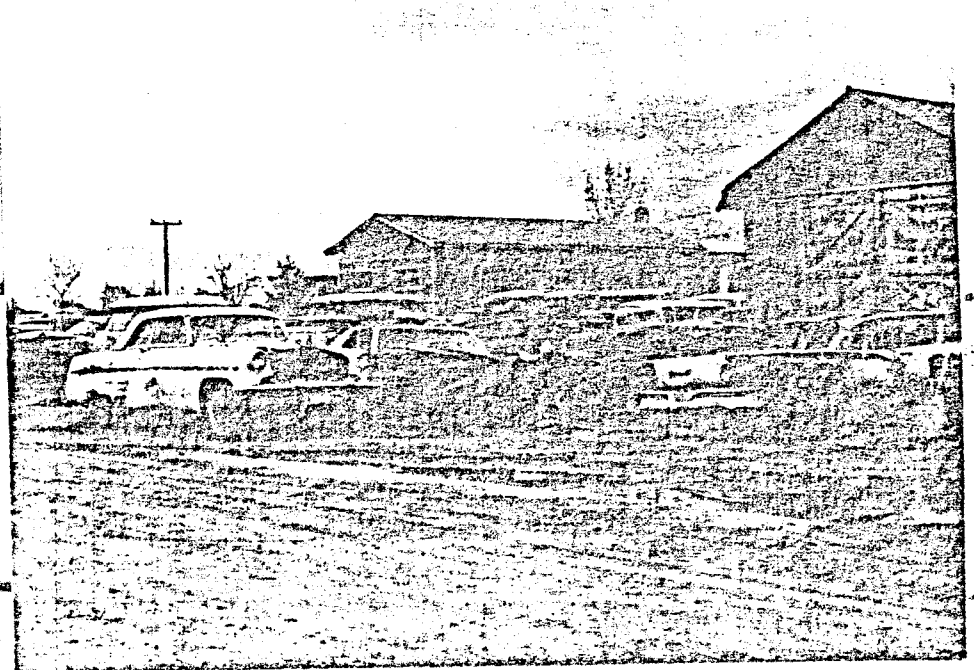
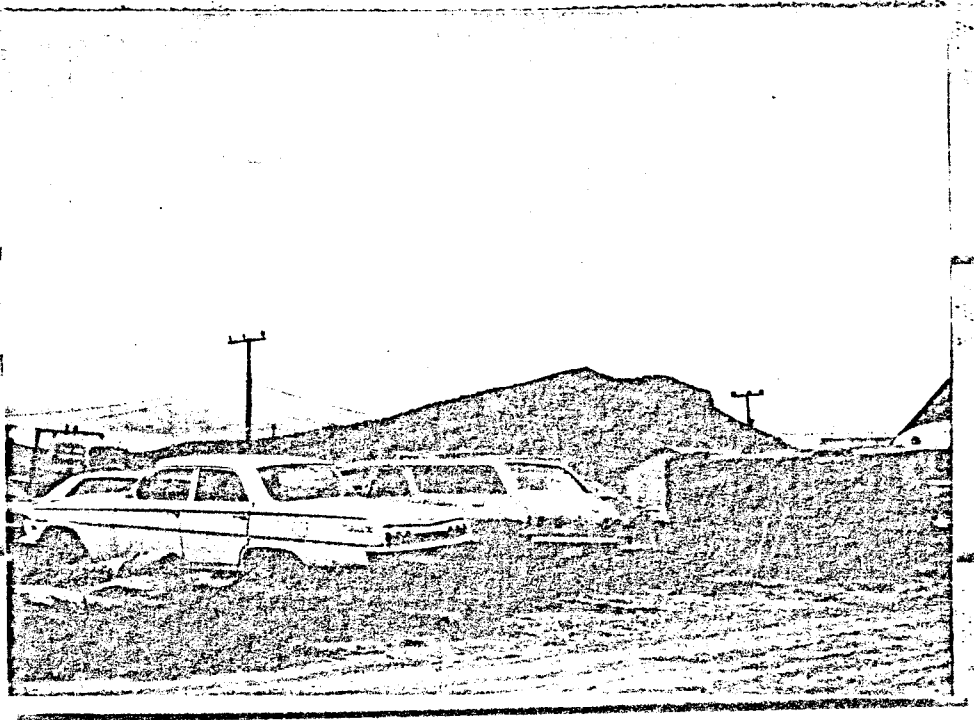
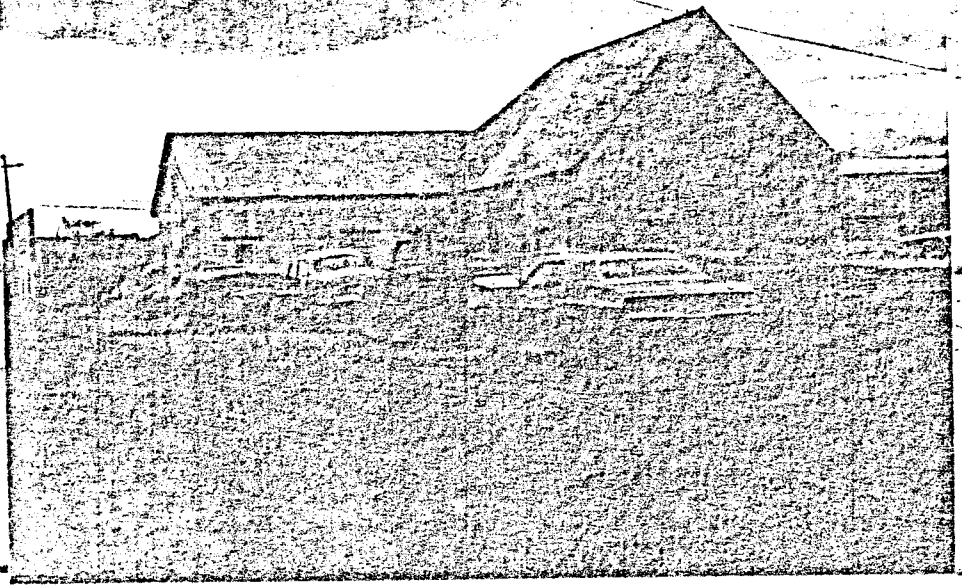


Exhibit B

1) Generally creates ~~more~~ additional red tape and inefficient use of manpower thus meaning more expense & therefore more cost to taxpayer.

2) Page 2 line 6 - What constitutes "prior consent."?

Is a building permit regarded as prior consent.

What constitutes prior consent for health inspections, fire, etc.?

How long before the inspection must prior consent be obtained.

* These questions not answered in bill.

These are usually signed by contractor, can he give consent to inspect bldg he does not own?

3) Page 2 lines 6 & 7 - Who constitutes the "lawful occupant." In a house under construction is the contractor or foreman the lawful occupant? If so what happens if he gives consent but the owner later says no, after the inspection is complete.

4) Page 2 line 15 - Most inspections that turn up violations are not found in areas open to gen'l public.

5) Page 2 Sect 4 line 21-25 - Health & fire conduct annual inspections. These are routine inspections & not done because there's reason to believe something

Page 5 line 16-20 - This puts a burden on inspector which he perhaps is incapable or unwilling to accept. What liability does he face if he finds the conditions do not exist which he felt existed when he decided to use forcible entry.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

STANDING COMMITTEE REPORT

..... March 3, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 303

Respectfully report as follows: That HOUSE Bill No. 303

BE CONCURRED IN

DO-PASS

STANDING COMMITTEE REPORT

March 2, 1973

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 311

Respectfully report as follows: That House Bill No. 311

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 2, 1979

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 335

Respectfully report as follows: That House Bill No. 335

BE CONCURRED IN

DO-PASS

Bills to be heard by
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HB 32 (Quillici)

By request of the Department of Labor and Industry

Current Law - Montana has the Crime Victims Compensation Act.

Crime victims are entitled to benefits under the Act. Benefits are reduced by amounts paid through collateral sources such as governmental sources or insurance contracts, and specifically, from welfare. A victim may be entitled to full benefits even though he contributed to the criminal act.

Proposed Bill - amends the Act to conform to federal law and make the Act more easily administered. The bill would delete welfare benefits as a collateral source; reduce a victim's compensation in proportion to his contribution to the injury; and change a reference to an earmarked revenue fund to agency fund.

Section 1. amend 53-9-103. Definitions.

Section 2. amend 53-9-104. Powers and duties of division.

Section 3. amend 53-9-109. Crime victims compensation account.

HB 270 (Kemmis)

Current Law - the common law rule against perpetuities is a doctrine developed at common law to determine the validity of future interests in property. The "future" in a future interest refers to the time of possession; that is, a future interest is an interest in land which is nonpossessory at the present time but may become possessory in the future. For example, a landowner can convey his land to another person for a period of years and at the end of that time, the land can revert to the original owner or vest in a third person. The Rule states: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." The Rule is designed to prevent land from being tied up indefinitely and to promote the free transferability of land.

Proposed Bill - attempts to clarify the Rule by inserting "if at all" into the statute. The statute did not contain this language as originally drafted. The new language is to clarify the idea that the interest must vest or fail within the perpetuities period; that is, the contingency must be resolved, one way or the other, during the period.

HB 311 (Ramirez)

Current Law - a justices' court must wait one hour beyond the time set for trial before it can enter a default judgment

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if one party fails to appear.

Proposed Bill - gives the court the discretion to commence proceedings at the designated time.

HB 335 (Ramirez)

Current Law - child custody is determined by the provisions of Title 40, chapter 4, part 2. Presently, a custody decree can be modified only if the court finds that changed circumstances make a modification in the best interests of the child.

Proposed Bill - provides for a procedure for a hearing to determine custody in case a custodial parent dies. Custody would go to the noncustodial parent unless a hearing is requested by a proper party.

NOTE: SB 516 (Judiciary Committee bill) amended 40-4-219 to delete the 2-year limitation on modifications.

Section 1.	NEW.	Hearing upon death of custodial parent.
Section 2.	NEW.	Parties who may request a hearing.
Section 3.	NEW.	Determination of custody.
Section 4.	amend 40-4-219.	Modification.
Section 5.	amend 40-6-221.	Custody, services, and earnings of child.

HB 308 (Kemmis)

Repeals section 40-1-211, MCA, which provides that a marriage license may not be issued to a person who is delinquent in providing support to dependents unless a court of record authorizes the issuance of a license.

HB 332 (Keyser)

Current law requires that an application for a search warrant be made "before the judge" (in person).

This bill permits an application to be made by telephone if the judge records the testimony on a device in his custody and the recording is transcribed as soon as possible.

HB 338 (Kemmis - by request of Attorney General)

Current law does not provide for inspection warrants and does not provide adequate standards and procedures for inspections conducted without a search warrant.

This bill creates standards and procedures for the issuance

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and execution of inspection warrants authorizing inspections required or authorized by a state or local building, fire, safety, plumbing, electrical, health, or zoning law or regulation.

- Section 1. Clarifies that the procedure is civil in nature and that the rules of criminal procedure do not apply.
- Section 2. Defines "inspection warrant".
- Section 3. Specifies when inspections may be conducted.
- Section 4. Specifies how an application for an inspection warrant is made and the contents of the affidavit supporting the application.
- Section 5. Specifies what constitutes cause for issuing an inspection warrant.
- Section 6. Provides that the judge may hear witnesses and must be satisfied that cause for issuing a warrant exists.
- Section 7. Provides that if the judge is satisfied, he shall issue a warrant, and specifies the contents of the warrant.
- Section 8. Provides that the warrant automatically expires after a specified time.
- Section 9. Provides a procedure for executing the warrant.
- Section 10. Limits the situations in which force may be used in executing the warrant.
- Section 11. Requires the official who executed the warrant to report back to the court.
- Section 12. Limits the admissibility of evidence obtained as a result of an inspection unlawful under the bill.
- Section 13. Makes it a misdemeanor to obstruct an inspection under an inspection warrant.
- Section 14. Amends current law regarding searches by adding a reference to inspections under inspection warrants.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that ~~the~~ the circumstances require its immediate issuance, he shall telephone the judge and ~~state~~ ~~that~~ ~~he~~ state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney and the officer shall make his application as provided in subsection (2). ~~When the judge is satisfied that the officer is convinced that the warrant should be issued by telephone, the judge shall telephone the officer at the number provided by the county attorney or deputy county attorney and the officer shall make his application as provided in subsection (2).~~

~~The judge shall telephone the officer at the number provided by the county attorney or deputy county attorney and the officer shall make his application as provided in subsection (2).~~
The officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.