

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1979

The fiftieth meeting of the Senate Judiciary Committee was called to order in room 311 of the capitol building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 464:

This is an act to change the requirement that a youth may waive his rights only with the advice of counsel when the youth is over the age of twelve and the youth and his parents do not agree about making a waiver.

Representative Keyser gave an explanation of this bill, stating that what has happened is that some judges have interpreted the law to say that any time a youth is picked up for any little thing that he should have counsel there representing him.

Tom Honzel, representing the Montana Association of County Attorneys, stated that the youth court act passed in 1964 and the language seemed to indicate that you didn't always have to have an attorney present and the Montana Supreme Court said when you question a youth, you have to have an attorney present. He stated that the policy is to work with a youth early and do it on an informal basis.

Dick Meeker, a juvenile probation officer in Montana, gave a statement in support of this bill and he said that many youth are having to go to court when they could work with them on an informal basis.

There were no further proponents.

Karen Mikota, representing the Montana League of Women Voters, stated that the original bill, when it first came out, stated "only with the advice of counsel" and she said she did not see where it does anything more than the original law did.

Senator Towe stated that the meat of the bill is in subsection (3) and he felt that you certainly want counsel present if he is about ready to sign consent of something and wondered why they need with or without advice of counsel.

Mr. Honzel stated that the original law did not have this and the problem was the Staple-Kemper case, that the supreme court said that they could not make it without counsel. He noted that once a petition is signed, then an attorney is automatically appointed.

Senator Van Valkenburg questioned why the last sentence was added on this bill. Representative Keyser answered that he thought it was to get at the matter that they did not have to bring counsel in for every little thing - he said maybe the youth was not even involved in a crime but just had some knowledge about something. He said that if he was going to waive a constitutional right, then very definitely he should have an attorney there.

Senator Van Valkenburg said that something that does not involve a constitutional right but involves an attorney being there is a lineup. He felt that there were certain constitutional mandates in the way in which a lineup can be conducted and in some instances it requires the protection of an attorney. Representative Keyser said that what they are trying to do is that if they agree that they do not want an attorney present, they can make a waiver and do not have to have an attorney there. If there is a disagreement with the parents, he has to have an attorney there and that this bill is trying to clarify to the courts when an attorney has to be present for the youth.

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

CONSIDERATION OF HOUSE BILL 369:

This is an act to modify the procedure for executing warrants issued by the Department of Revenue for the collection of unpaid individual income tax, etc. Representative Robbins stated that he introduced this at the request of the Department of Revenue and gave a brief explanation of the bill.

Cal Simshaw, representing the Department of Revenue, gave further explanation of this bill.

There were no further proponents and no opponents.

Senator Turnage stated that this bill goes beyond what the IRS can do. Representative Robbins stated that we are saving a great amount of money. He questioned what do you do when you put a levy on Steve Brown - which Steve Brown are you going to get. He said that the IRS can't do this and he wondered why we should be able to do this. Mr. Simshaw stated that if he goes to the bank and sees what happened with this, then he can get it straightened out.

Senator Turnage questioned what is the penalty if he receives a letter and just ignores it. Mr. Simshaw answered that any sanction would be what is available in bank execution statute.

Senator Olson questioned what if he refused to sign the letter. Mr. Simshaw answered that we would either personally serve it or look for some other way to serve it.

Senator Turnage said that he would like to have Joan or Valencia see if there are any penalties and, if there are no penalties, then the bill is alright.

Senator Towe wondered if this is constitutional - no hearing, no nothing and he stated now you are going to do it by certified mail.

Senator Turnage questioned if there are no sanctions to honor by mail, were they still satisfied that the bill would have some benefit. He stated that he did not want to harass those who are innocent, but if they want to volunteer, that is fine and he did not know if there were any sanctions or not - that there may be in related sections of warrants and restraints.

Senator Lensink questioned what is the magnitude of the problem and Representative Robbins stated that it might amaze you and stated that the computer list would run from one end of that table to the other.

Senator Lensink questioned if in most instances, do you send these out by certified mail and Representative Robbins said that they try to exhaust all remedies before they get to that point.

Senator Turnage explained that they have to send a letter to the sheriff with the warrant, then the sheriff has to travel anywhere from two to fifty miles, it costs a lot of money to do it; and he felt that if the letter would be effective, the bill would be alright. He stated that he was apprehensive that they would come down hard on someone if he does not answer the letter.

Senator Lensink asked Joan Mayer from the Legislative Council to research this item.

There being no further questions or comments, the hearing on this bill closed.

CONSIDERATION OF HOUSE BILL 443:

This is an act to provide that interest on a judgment involving a contractual obligation must be paid at the rate specified in the contractual obligation, etc. Representative Feda gave an explanation of this bill. He stated that HB 475 deals with the same section, that this just got in the committee and it is not scheduled yet but should probably be looked at the same time.

There were no further proponents and no opponents.

Senator Van Valkenburg said the reason for HB 475 is that with the rate of interest on judgments being 6 per cent, it is a real incentive for a defendant to appeal the case, take that money that might be involved in the judgement and invest it and, in effect, drag the case on. He said that the economic situation is such that this can make more than 6 per cent with the money nowadays.

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

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

Senator Towe then moved that we reconsider the action taken on this bill. The motion carried unanimously.

Senator Towe moved that the bill be amended on page 2, following line 16, by adding "Section 3. Effective date. This act shall be effective on July 1, 1979 and shall apply to all judgments entered after that date." The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 422:

This is an act to define criminal possession of precursors to certain dangerous drugs, including amphetamine, methamphetamine, and phencyclidine, providing criminal sanctions, etc. Representative Lory gave an explanation of this bill, which he stated was requested by the county attorneys.

Tom Honzel, representing the Montana Association of County Attorneys, stated that they became aware last year of a big problem because of angel dust and p.c.p. He told of a case in Roundup, where there was a lab and where they also were able to get a conviction. He stated that they could not find anything but all the precursors, which, he stated, in themselves are not considered controlled substances. He said that they did find some amphetamines in the lab and, on that basis, they were able to get a conviction. He testified that they were manufacturing dangerous drugs.

There were no further proponents and no opponents.

Senator Brown questioned why they would have a statement of intent on HB 422, but not on HB 500, which were related. Representative Lory stated that there was a statement of intent on both of them.

Senator Turnage stated that in subsection 3, you are going to turn all these drug manufacturers into farmers. He moved that the bill be amended by deleting on page 2, lines 4 through 10 subsection (3) in its entirety. The motion carried unanimously.

Senator Towe asked if these products are very easy to process and Representative Lory stated yes, that p.c.p. is particularly easy to manufacture. Senator Towe questioned what kind of drugs are they; and Representative Lory answered that amphetamine and methamphetamine are speed drugs, that p.c.p., or angel dust, is the most dangerous drug we have and frequently is the easiest to manufacture. He stated that it is much worse than L.S.D. and one man in San Francisco took some and it took six men to control him and that this drug just wipes them out.

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

CONSIDERATION OF HOUSE BILL 500:

Representative Lory said that this bill was introduced at the request of the county attorneys association. This is an act to require a report on the sale or transfer of precursors to controlled substances. He stated that this bill would give the department of justice a lead on large sales of these substances and that it does exempt certain individuals.

Tom Honzel, representing the Montana Association of County Attorneys, said that they do support this bill and most of the information is contained in the statement of intent.

There were no further proponents and no opponents.

Senator Anderson questioned if any of these substances are used continually in large amounts and Representative Lory stated that there are exceptions but that they are not in common use.

Senator Lensink questioned as to where this list came from and Representative Lory stated that they were copied from the California law.

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

DISPOSTION OF HOUSE BILL 464:

Senator Turnage moved that this bill be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 369:

Senator Brown moved that this bill be concurred in. The motion carried with Senator Olson voting no.

DISPOSITION OF HOUSE BILL 332:

Senator Turnage moved that the bill be amended on page 2, line 2, following the word "transcribed" by inserting the word "verbatim". The motion carried unanimously.

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Senate Judiciary Committee
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Senator Anderson moved that the bill be amended on page 1, line 23, after the word "sworn" the words "or affirmed" be inserted. The motion carried unanimously.

Senator Towe moved that in the county attorney's amendment that it be amended by inserting "shall" and that the amendment be so adopted. The motion carried unanimously.

Senator Turnage moved that the bill be concurred in as amended. The motion carried with Senators Towe and Van Valkenburg voting no.

CONSIDERATION OF HOUSE BILL 32:

Senator Turnage moved that this bill be amended on page 3, subsection (c) line 6 through 15, by deleting all the new material and reinsert all the deleted material. He stated that this is going to delete that fund overnight. Senator Van Valkenburg stated he did not think that that is true - only where an automobile is used to purposely commit a crime - only where a person would take a car and deliberately run a human being down with it. Senator Turnage said that we should make exceptions of a normal traffic violation.

Senator Turnage moved to amend the amendment and further amend on page 3, following line 45 by inserting the new language: "does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle as described in Title 61." The motion carried unanimously.

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

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/3/79

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.

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Bills to be heard by Senate Judiciary
Saturday, March 3, 1979

1. HB 369 (H. Robbins)
By request of the Dept. of Revenue

Proposed bill - provides that the department of revenue's agent can send notice of levy on property for taxes by certified mail. As originally drafted, the bill also provided that a levy on salaries and wages would continue in effect until the amount due is recovered - this provision of the bill was deleted by the House.

2. HB 464 (Keyser)

Current law - When a youth alleged to be delinquent is taken into custody, he must be informed of his rights immediately. He can waive his rights under the following situations:

- (a) if youth is under 12, his parents can make a waiver (no mention of with or without counsel)
- (b) if youth is over 12, youth and his parents can make waiver (no mention of with or without counsel)
- (c) if youth over 12, if youth and his parents do not agree, youth can waive only with advice of counsel.

Bill as originally proposed - only effective change was in (c) so that a youth over 12, who disagrees with his parents, can waive his rights without counsel.

Bill as amended by House - clarifies (a) and (b) by specifying that waiver by a youth's parents or by a youth and his parents can be with or without counsel. Amended bill reasserts requirement that a youth over 12 who disagrees with his parents can waive his rights only with advice of counsel and adds new (3) that states that presence of counsel is not required for any purpose other than waiver of constitutional rights.

Net effect of HB 464 as amended:
clarify 41-5-303(2)(a) and (b) and add new (3).

Note: HB 464 deals with waiver of rights of a youth who has been apprehended and before a petition has been filed. SB 454 deals with a youth's right to counsel after a petition has been filed. These two bills are not in conflict (but would have been as HB 464 was originally drafted).

3. HB 443 (Feda)

Current law - parties to a contract can agree on a rate of interest to be paid on a loan. Limits are set on the rate by statute; these rates can be higher than the 6% rate allowed on judgments recovered in court. Presently, if there is a lawsuit on a contract, a party can receive the higher interest up until judgment and then he is limited to the 6% limit after judgment.

Proposed bill - would amend 31-1-110 and 31-1-107 to provide that interest on a judgment for breach of contract must be paid at the agreed-upon interest rate. This means that the interest would be paid at the contract rate both before and after judgment.

4. HB 422 (Lory)

Current law makes it a criminal offense to possess dangerous drugs.

Proposed bill - creates a new criminal offense of possession of chemicals that can readily be used to manufacture dangerous drugs. The House added a 2-year minimum penalty. Section 2 provides for exemptions for licensed drug manufacturer persons authorized by rules of the Board of Pharmacy, and employees and students (added by House) of colleges and universities engaged in authorized teaching or research.

Section 3 gives the Board of Pharmacy rule-making authorization.
Problems: 1. Subsection (3) of Section 1 does not require that particular combinations of chemicals be possessed in order to constitute the crime.

Suggestions: on page 2, lines 9 & 10, change "precursors to a dangerous drug" to "the chemical that can be manufactured from such precursors or the chemical contained in such compound or mixture"

2. There is no statement of intent.

5. HB 500

Section 1. Requires reports to the Department of Justice of all sales and transfers of certain chemicals which can readily be used to manufacture dangerous drugs; grants the department the power to add or subtract from the list of chemicals by rule; and provides for exemptions from the reporting requirement (the House added transfer within a college or university for authorized teaching or research).

Section 2. Requires the department to provide forms for reports requiring specified information.

Section 3. Requires the department to provide forms for regents requiring specified information.

Section 4. Requires reports to the Department of Justice of losses and thefts of such chemicals.

Section 5. Makes it a felony to knowingly fail to report.

Please sign & return to: Sec. of the Senate

SENATE Justice COMMITTEE

BILL _____

VISITORS' REGISTER

DATE 1/2/79

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOS.
<u>Earl Lee</u>	<u>Rep. District 41</u>	<u>422</u> <u>5327</u>	<input checked="" type="checkbox"/>	
<u>Tom Hong</u>	<u>County Attorney</u>	<u>422</u> <u>5327</u> 464	<input checked="" type="checkbox"/>	
<u>Cal Samsen</u>	<u>Dept. of Revenue</u>	<u>HB 369</u>	<input checked="" type="checkbox"/>	
<u>J. ...</u>	<u>...</u>		<input checked="" type="checkbox"/>	
<u>Karen M. ...</u>	<u>Montana League of Women</u>	<u>HB 464</u>		<input checked="" type="checkbox"/>
<u>Pat ...</u>	<u>...</u>	<u>...</u>	<input checked="" type="checkbox"/>	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Foster
Kawata (Tame)

HB 443

1. Page 2:
Following: Line 16
Insert: "Section 3. Application.
This act applies only to
judgments entered after
June 30, 1979."

Lory (O'Hara)

HB 422

1. Page 2, lines 4 through 10.
Delete: subsection (3) in its
entirety

HB 332

1. Page 1, line 23.
Following: "sworn"
Insert: "or affirmed"
2. Page 2, line 2.
Following: "TRANSCRIBED"
Insert: "verbatim"

MSH

~~4-2-33~~
3. Page 2.

Following: line 4

Insub: "(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 circumstances require its immediate issuance he shall telephone the judge and 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 convinced that the warrant should be issued by telephone, he 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, if convinced that the warrant should be issued by telephone, 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.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."

STANDING COMMITTEE REPORT

March 5 1979

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 332

Respectfully report as follows: That House Bill No. 332,

third reading bill, be amended as follows:

1. Page 1, line 23.

Following: "sworn"

Insert: "or affirmed"

2. Page 2, line 2.

Following: "TRANSCRIBED"

Insert: "verbatim"

3. Page 2.

Following: line 4

Insert: "(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 circumstances require its immediate issuance, he shall telephone the judge and

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(Continued)

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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). If the judge approves a warrant, 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.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."

And, as so amended,
BE CONCURRED IN

E.L.

STANDING COMMITTEE REPORT

March 3, 1979

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 422

Lory (O'Hara)

Respectfully report as follows: That House Bill No. 422

third reading bill, be amended as follows:

- 1. Page 2, lines 4 through 10.
Strike: subsection (3) in its entirety

And, as so amended,
BE CONCURRED IN

DOPASSX

Chairman.

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STANDING COMMITTEE REPORT

March 3

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MR. President

We, your committee on Judiciary

having had under consideration House 443 Bill No. 443

Peda (Towe)

Respectfully report as follows: That House 443 Bill No. 443

third reading bill, be amended as follows:

1. Page 2.

Following: line 16

Insert: "Section 3. Application. This act applies only to judgments entered after June 30, 1979."

And, as so amended,
BE CONCURRED IN

~~DO PASS~~

STANDING COMMITTEE REPORT

March 3, 1979

MR. President:

We, your committee on Judiciary

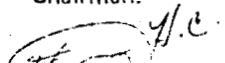
having had under consideration House Bill No. 464

Keyser (none)

Respectfully report as follows: That House Bill No. 464

BE NOT CONCURRED IN

DO PASS



STANDING COMMITTEE REPORT

..... March 3, 19 73.....

MR. President:.....

We, your committee on Judiciary.....

having had under consideration House..... Bill No. 359.....

H. Robbins (Tarnage)

Respectfully report as follows: That..... House..... Bill No. 359.....

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 5, 1979

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 500

Respectfully report as follows: That House Bill No. 500

BE CONCURRED IN

GO-PASSY

500