

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 6, 1979

The fifty-second 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 9:34 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 580:

This is an act to provide that it is not a defense to the crime of issuing a bad check that consideration was not received at the same time a check or other order is issued or delivered. Representative Fagg felt strongly that there should be some tightening of the law so that these checks can be collected.

Mary Jo Lovely, representing the Montana Landlords Association, stated that they encourage the use of checks, but when these checks cannot be collected, she stated it is very hard on the owner, particularly the elderly person with one renter or one person just getting started, that a bad check can really be bad for them.

Representative Scully stated that this bill is directed at landlords who are collecting rent, but he stated that is not the only case. He said that it is important to know that the check law that they now have says you must receive goods at the time you write the check. He told of an example where-in an individual from Idaho wrote a check for \$36,000.00 for twine and other farm goods on a wholesale basis for a retail store and the judge decided that at the time of the writing of the check, the goods had not been delivered and that this was not a bad check.

There were no further proponents.

Tom Honzel, representing the Montana Association of County Attorneys, stated that he did not think that this bill was needed. He stated that he thought the problem of rent checks is adequately covered under the landlord-tenant act and the retainer act. He believed that the principle thing is consideration and if there is a failure of consideration, he did not think the county attorneys should have to prosecute.

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Senator O'Hara questioned if this means that if you don't have any money in the bank that that person can be prosecuted and charged with a felony. Representative Scully stated that it depends on the amount of the check. Representative Fagg stated that since he had put this bill in, this has happened to him that an individual wrote him a check for \$175.00 and left; and that he is stuck with that check.

Senator Galt said that you could have every cattle trader in the state of Montana in jail. He explained that there isn't one of them that doesn't write a check anticipating to put the money in the bank later. Representative Fagg said that that is fine, if the money is there when the check comes in, then there is no problem.

Senator Lensink questioned if this is particularly applicable to rent as you do not receive it until the end of the month. Ms. Lovely stated that sometimes you end up being owed two months rent.

Senator Van Valkenburg stated that landlords are generally protected because they do have some kind of deposit. Representative Fagg explained that the problem you get into there is this deposit is for cleaning and the place can be a disaster, and this plus the fact that he took \$175.00 for the rent. He stated that there are some people who put excessive amounts of money on for deposits but that this is the exception, not the rule.

Mr. Honzel stated that he thought the problem we have here is deposits, that this language is extremely broad, someone would pay \$175.00 for their rent in cash, gave a check for the deposit, and he could be prosecuted if the check does not clear and the individual who does not pay his rent is not subject to prosecution.

Representative Fagg noted that if the guy does not pay his rent, you can get him out in ten to twelve days, but if he writes a check that does not clear, then the process can continue for a long period of time.

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

CONSIDERATION OF HOUSE BILL 549:

This is an act expanding the definition of theft to include fraudulently obtained public assistance, etc. Representative Scully stated that there is a battle over whether or not the county attorneys should prosecute or whether the department should. He stated that this bill was introduced at the request of the department of revenue to try and meet that problem and place it in the criminal court where it belongs.

Ronald Bartsch, representing the Department of Revenue, Investigative Division, stated that they have had several cases that have been refused by the county attorneys. He said that they have a \$7 million a month fraud bill and that they just have to get a handle on it. He testified that they become extremely frustrated and they have had only about 30 successful prosecutions; and many times the county attorneys refuse to prosecute.

Mike Garrity, staff attorney with the Department of Revenue, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Olson questioned if \$7 million a month was right. Mr. Bartsch stated that this was the total welfare bill - that is everything. Senator Olson said this is not just the fraudulent acts and Mr. Bartsch replied that no, the amount of fraud is about 6 per cent of this. Senator Lensink said that this would still be \$420,000.00 a month. Senator Olson said that this bothers me about this much money a month and wondered how long this has been going on. Mr. Bartsch stated that this is difficult to say - that they haven't found all the fraud here is and they haven't even begin to look hard at the offenders. Senator Olson questioned him as to if they can do something about it. Mr. Bartsch replied that it is difficult. He stated that they are getting some recoveries and some prosecutions, but they do cut them off of welfare.

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

CONSIDERATION OF HOUSE BILL 569:

This is an act to provide that in a criminal action entrapment is an affirmative defense which the defendant must prove by a preponderance of the evidence, etc. Representative Iverson explained the bill and stated that this bill will not constitute any major change.

Tom Honzel, representing the Montana Association of County Attorneys, stated that the issue is not new to the criminal law and the new language was only added at the end.

There were no further proponents and no opponents.

Senator Van Valkenburg stated that his research indicates that an affirmative defense does not necessarily mean you have to prove by a preponderance of the evidence and he wondered if they were saying otherwise. Mr. Honzel stated that in the case of entrapment, that seems to be the standard.

Senator Turnage stated that in self-defense, if the issue arises, then the burden doesn't shift to the accused, that the burden of proof is on the state beyond a reasonable doubt that an offense has been committed. He stated what he did not like is the shifting of the burden of proof and he felt that entrapment is one of the most heinous crimes a man can participate in.

Ron Bartsch, from the Department of Revenue, stated that this is a pretty rough crime, and is pretty serious for a police officer to be accused of. He stated if he is accused and is guilty until he can prove otherwise, and he felt that there are two blades to the knife.

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

CONSIDERATION OF HOUSE BILL 539:

This is an act to provide for notification of an inquiry process for nonrenewal or cancellation of motor vehicle insurance, etc. Representative Gilligan stated that he had a friend who was not renewed by his insurance company because

he was involved in three accidents - two of which were not his fault and one that was and this individual did not know what to do. The computer had kicked his card out.

There were no further proponents and no opponents.

There was a number of questions asked and the hearing on the bill was closed.

DISPOSITION OF HOUSE BILL 580:

Senator Turnage moved that this bill be not concurred in. He stated that this is a bad bill and he felt that this would result in housewives being put in the county jail. The motion carried with Senators Healy and Galt voting no.

CONSIDERATION OF HOUSE BILL 602:

This is an act to provide that in a criminal action compulsion is an affirmative defense which the defendant must prove by a preponderance of the evidence, etc. Representative Sivertson gave an explanation of this bill.

Tom Honzel, representing the Montana Association of County Attorneys, stated that compulsion is defined here and as recognized by the courts, it is a little broader than the definition we have here. He stated that Professor Evertsen thinks the term "necessity" might be a better term.

There were no further proponents and no opponents.

Senator Towe questioned what is the situation now - how is it being handled - courts say you have to disprove beyond a reasonable doubt. Mr. Honzel stated that they have not said that, they are just trying to make some consistency, they have recognized compulsion now and entrapment, but that neither one of them say that they are an affirmative defense. Senator Towe asked how do the courts treat them now and Mr. Honzel stated they have generally been accepted as an affirmative defense and this is not changing anything. Senator Towe wondered if they were changing the burden of proof on it. Mr. Honzel stated that as far as compulsion is concerned, the court did talk in terms that the defendant

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would have to prove that by a preponderance of the evidence. He stated that they do not recognize it in self-defense.

Senator Turnage stated that these issue never rise until it is appealed. He said if convicted and he appeals, I suppose then the court sets a standard for the court to rule by. He said that he would imagine the courts are doing that now.

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

DISPOSITION OF HOUSE BILL 549:

The question was asked what was McCallum's bill and Senator Turnage said that it was SB 376, but that was in the welfare statute itself and this is in the criminal code. Senator O'Hara moved that the bill be concurred in.

Senator Towe stated that he was concerned about it and he felt that people can get on the bad side of individuals and they can be given a bad time.

Senator Van Valkenburg made a substitute motion to amend the bill on page 3, line 1 by striking this language in its entirety. He stated that the reason for this is that we took this out of McCallum's bill and he did not think we should have the inconsistency. Senator Turnage stated that it is still there in the language "knowingly false statement, representation or impersonation".

The motion carried with Senators Galt and Olson voting no.

Senator O'Hara moved that the bill be concurred in, as amended.

DISPOSITION OF HOUSE BILL 569:

Senator Towe stated that entrapment is darn hard to prove in any event. Senator Turnage stated that he thought the supreme court does this now. Senator Turnage explained entrapment, preponderance of the evidence, and burden of proof. Senator Towe stated that very rarely is entrapment successful.

Senator Turnage moved that the bill be not concurred in. The motion carried with Senator O'Hara voting no.

DISPOSITION OF HOUSE BILL 602:

Senator Turnage moved that this bill be not concurred in. Senator Lensink stated that in criminal law, they have to prove beyond a reasonable doubt and in civil law has to prove preponderance of evidence. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 539:

Senator Anderson moved that this bill be not concurred in. The motion carried with Senator Healy voting no.

DISPOSITION OF HOUSE BILL 248:

Senator Towe stated that the department said there is confusion about eligibility at least until they have served one-half of the sentence

Joan Mayer from the Legislative Council went over the proposed amendments and she stated that this is really a substitute bill. Senator Turnage moved the adoption of the amendments. The motion carried unanimously. Senator Turnage stated that a statement of intent should probably be made.

Senator Towe stated that the bill will (1) state that they don't have to pay minimum wage; (2) in order to be eligible for furlough, have to comply with the rule of the department, also makes it clear he isn't eligible until he has served one-half of his sentence; (3) if picked up for furlough violation, he has a right to counsel but only at his own expense.

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

It was agreed that a statement of intent should be included on this bill and the committee will consider it again when a statement of intent is prepared.

DISPOSITION OF HOUSE BILL 270:

Senator Lensink stated that nothing has happened in the last 84 years. Senator Turnage stated that you can't have atrust that will never vest. Senator Towe said we should look at it and Senator Turnage stated this "if at all" just turns it all backwards and Senator Van Valkenburg said that it intends to clarify. Senator Turnage stated that if this is to clarify, he would suggest that the bill die. Senator Lensink stated that you might want to talk to Representative Kemmis and take this up tomorrow. This was agreed upon.

DISPOSITON OF HOUSE BILL 250:

Senator Brown stated that he thought that this is going to create tremendous problems and is the best relief bill for attorneys that has ever passed. He stated that that notice is going to be so general from now on that it is going to cause more harm to the public. He stated that some amendments are very, very necessary and if you pass this bill, you are necessitating two hearings.

Senator Turnage said he did not know about 30 to 40 days notice. Senator Brown stated that the reason they are extending this to 30 days is because of the deadline in the Secretary of State's office.

Senator Brown moved that this bill be not concurred in and the motion carried unanimously.

DISPOSITION OF HOUSE BILL 514:

Senator Towe moved that this bill be amended on page 1, line 5, strike "not intended to constitute" and on page 1, line 6, strike "under the small tract financing act", and amend on page 1, line 16, following "of trust", strike "or" and on line 17 insert "," and insert "or trust indentures,". 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 at 11:28 a.m.

Date 3/6/79

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.

SENATE

COMMITTEE

BILL

VISITORS' REGISTER

DATE 3/6/72

Please note bill no. (check one) SUPPORT OR

NAME

REPRESENTING

BILL #

SUPPORT OR

HARRISON FARR

STATE REP

580

X

Muriel J. Lundy

Mont. Landlands

580

X

Maurice S. Larson

✓ ✓

580

X

Ruth J. Pollock

State Rep

539

X

Dorothy J. Lundy

✓ ✓

569

Michael L. Lundy

Dept of Revenue

549

X

Ronald A. Bartel

Dept of Revenue

549

X

Tom Hazel

County Atty.

549

502

✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

#52

STATEMENT OF INTENT RE: HB 248

A statement of intent is required for this bill in that it delegates authority to adopt rules in section 2.

Section 2 (section 46-23-405, MCA) directs the Department of Institutions to adopt rules which include guidelines concerning prisoner eligibility to participate in the prisoner furlough program. Such guidelines are intended to provide objective criteria for evaluating each individual's chance for success such as the type of crime for which he is incarcerated, prior felonies, revocations of parole, escapes, and time to parole eligibility. Each prisoner is to be given points under each criterion, and each criterion is to be weighted in accordance with its relative importance.

First adopted by the SENATE COMMITTEE ON JUDICIARY on March 8, 1979.

HB 248

1. Title, line 5.

Strike: "GENERALLY"

2. Title, line 6.

Following: "PROGRAM"

Insert: "BY ALLOWING MORE FLEXIBILITY IN
THE AMOUNT OF COMPENSATION A FURLOUGHED
MUST RECEIVE, REQUIRING A FURLOUGHED
TO PAY FOR ~~THE~~ COUNSEL TO REPRESENT
HIM AT HEARINGS, AND CLARIFYING
ELIGIBILITY TO PARTICIPATE"

3. Title, line 7.

~~Following: "PROGRAM"~~

Following: ~~Following: "PROGRAM"~~ "SECTIONS"

Strike: ~~Following: "PROGRAM"~~ "45-7-306, 46-23-401 THROUGH"

Insert: "46-23-402,"

4. Title, line 8.

Following: line 7

Strike: "THROUGH 46-23-413"

Insert: "46-23-422"

Following: "AND"

Strike: "46-23-415 THROUGH 46-23-426"

Insert: "46-23-425"

5. Title, lines 8 and 9.

Following: "MCA" on line 8

Strike: remainder of line 8 through "MCA" on line 9

6. Pages 1 through 15.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 46-23-402, MCA, is amended to read:

"16-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~and provide for the minimum hourly wage required by law for the prevailing rate of pay for persons employed in similar occupations or the same employer to be paid to such convicts while so employed.~~

~~and~~ (c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"16-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with

Title 2, chapter 4, to implement and control the same. Rules shall include ~~penal~~ guidelines for:

(1) ~~working at paid employment for a rate of pay not less than the minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer~~ prisoner eligibility;

(2) participating in an educational, treatment, or training program;

(3) approval of supervising agency; and

(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

-- eligibility

"46-23-411. Application to participate. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program ~~at least in the time the inmate~~ if he has served at least one half of the time required to be considered for parole and qualifies under the rules established by the department."

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner ~~is entitled to~~ may be represented by counsel

~~representation~~ at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner ~~is entitled to be represented by~~ may be represented by counsel ~~at the expense of the department~~ at his own expense.

Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison. " "

SENATE JUDICIARY COMMITTEE

HB 539

HB 539 WILL NOT IMPROVE THE QUALITY OF SERVICE WHICH THE INSURANCE DEPARTMENT NOW PROVIDES TO THE PEOPLE OF THIS STATE. ON THE CONTRARY, THE SMALL BENEFIT WHICH MIGHT ACCRUE TO SOME WOULD BE MORE THAN OFFSET BY THE POTENTIAL MISCHIEF CREATED BY IMPLYING THAT THERE MAY BE SOLUTIONS WHEN IN FACT NO PROBLEMS EXIST.

THERE ARE VERY FEW INSTANCES WHERE CANCELLATION OF AN AUTOMOBILE INSURANCE POLICY GIVES RISE TO A VALID COMPLAINT AGAINST THE INSURER. WHILE A PARTICULAR CANCELLATION MAY PROVE TROUBLESOME TO THE POLICYHOLDER, IF IT IS GIVEN IN COMPLIANCE WITH THE APPLICABLE STATUTORY PROVISIONS [33-23-211 THROUGH 33-23-216, MCA] THERE IS NO RECOURSE UNDER THE LAW. THE BARRAGE OF COMPLAINTS OR INQUIRIES TO THE INSURANCE DEPARTMENT WHICH WOULD CERTAINLY FOLLOW PASSAGE OF THIS LEGISLATION WOULD BE TO NO AVAIL, AND SCARCE RESOURCES WOULD BE WASTED IN MAKING THE APPROPRIATE RESPONSES.


OUR CREDIBILITY IS NOT ENHANCED BY HAVING TO MAKE SUCH NEGATIVE RESPONSES ON A CONTINUING BASIS. WE CAN AND DO ASSIST THE PUBLIC, AND WE ARE PROUD OF OUR RECORD OF SERVICE AND THE REPUTATION WE HAVE IN REPRESENTING THE CONSUMER.

AN ADDITIONAL CONCERN IS, OF COURSE, THE COSTS TO THE INSURANCE COMPANIES OF REPRINTING AND

REFILING FORMS. THESE COSTS ARE NOT JUSTIFIED BY THE ANTICIPATED RESULTS.

THE PUBLIC KNOWS THAT WE EXIST AND WE TAKE EVERY OPPORTUNITY TO KEEP THEM INFORMED (INCL. A TOLL-FREE LINE). BUT THIS SPECIALIZED "AD-CAMPAIGN," WHICH APPEARS TO DWELL ON NON-EXISTENT PROBLEMS, IS MORE ADVERSE THAN BENEFICIAL TO OUR EFFORTS.

WE REQUEST A DO NOT PASS ON HB 539


Fred N. Jensen
Chief Counsel
Montana Insurance Dept

HB 549

1. Page 2, line 24.
Following: "or"
Insert: "or"
2. Page 2, line 25 and line 1 on page 3.
Following: "device" on line 25
Delete: remainder of line 25
through "second" on line 1

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HB 514

1. Title, line 5.
Following: "OF TRUST"
Delete: "NOT INTENDED TO CONSTITUTE"
Insert: "AND"
2. Title, line 6.
Delete: "UNDER THE SMALL TRACT
FINANCING ACT"
3. Page 1, line 16.
Following: "of trust"
Delete: "or"
Insert: "or"
4. Page 1, line 17.
Following: "deeds,"
Insert: "or trust indentures,"

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HB 549

1. Page 2, line 24.
Following: "or"
Insert: "or"
2. Page 2, line 25 and line 1 on page 3.
Following: "device" on line 25
Delete: remainder of line 25
through "second" on line 1

HB 514

1. Title, line 5.
Following: "OF TRUST"
Delete: "NOT INTENDED TO CONSTITUTE"
Insert: "AND"
2. Title, line 6.
Delete: "UNDER THE SMALL TRACT
FINANCING ACT"
3. Page 1, line 16.
Following: "of trust"
Delete: "or"
Insert: " "
4. Page 1, line 17.
Following: "stocks,"
Insert: "or trust indentures,"

STANDING COMMITTEE REPORT

March 6, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 514

Respectfully report as follows: That House Bill No. 514, third reading bill, be amended as follows:

1. Title, line 5.

Following: "OF TRUST"

Strike: "NOT INTENDED TO CONSTITUTE"

Insert: "AND"

2. Title, line 6.

Strike: "UNDER THE SMALL TRACT FINANCING ACT"

3. Page 1, line 16.

Following: "of trust"

Strike: "or"

Insert: ",."

4. Page 1, line 17.

Following: "deeds,"

Insert: "or trust indentures,"

And, as so amended,

~~DO PASS~~ BE CONCURRED IN

STANDING COMMITTEE REPORT

..... March 6 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 32

Respectfully report as follows: That House Bill No. 32,

third reading bill, be amended as follows:

1. Page 3, lines 11 through 15.

Following: "vehicle" on line 11

Strike: remainder of line 11 through "45" on line 15

Insert: "does not include conduct arising out of
the ownership, maintenance, or use of a motor vehicle
as described in Title 61"

And, as so amended,
BE CONCURRED IN

DO TASSX

(H52)

STANDING COMMITTEE REPORT

March 6, 1979

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 549

Respectfully report as follows: That House Bill No. 549, third reading bill, be amended as follows:

1. Page 2, line 24.

Following: "i"

Insert: "or"

2. Page 2, line 25 and line 1 on page 3.

Following: "device" on line 25

Strike: remainder of line 25 through "income" on line 1

And, as so amended,
~~CLASS~~ BE CONCURRED IN

STANDING COMMITTEE REPORT

March 9, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 243

Respectfully report as follows: That House Bill No. 246,
third reading bill, be amended as follows:

1. Title, line 5.
Strike: "GENERALLY"

2. Title, line 6.
Following: "PROGRAM"
Insert: "BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A
FURLONGHEE MUST RECEIVE, REQUIRING A FURLONGHEE TO PAY FOR COUNSEL TO
REPRESENT HIM AT HEARINGS, AND CLARIFYING ELIGIBILITY TO PARTICIPATE"

3. Title, line 7.
Following: "SECTIONS"
Strike: "45-7-306, 46-23-401 THROUGH"
Insert: "46-23-402,"

4. Title, line 8.
Following: line 7
Strike: "THROUGH 46-23-413"
Insert: "46-23-422"
Following: "AND"
Strike: "46-23-415 THROUGH 46-23-426"
Insert: "46-23-425"

(continued)

5. Title, lines 8 and 9.

Following: "MCA" on line 8

Strike: remainder of line 8 through "MCA" on line 9

6. Pages 1 through 15.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid for said convicts while so employed;~~

~~(d)~~ (c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include provisions guidelines for:

(1) ~~working-at-paid-employment-for-a-rate-of-pay-not-less-than-the minimum-hourly-wage-as-required-by-law-or-the-prevailing-rate-of-pay for persons employed in similar occupations by the same employer~~ prisoner eligibility;

(2) participating in an educational, treatment, or training program;

(3) approval of supervising agency; and

(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program at least by the time the inmate if he has served at least one-half of the time required to be considered for parole and qualifies under the rules established by the department."

(continued)

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner ~~is entitled to have~~ may be represented by counsel appointed to represent him at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to

determine an alternate proposal. In this hearing the prisoner is ~~entitled-to-have~~ may be represented by counsel ~~appointed-to-represent~~ him at his own expense. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison."

And, as so amended,
BE CONCURRED IN

P.R.

STANDING COMMITTEE REPORT

.....March 5,..... 19...79....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationHouse..... Bill No....250.....

Respectfully report as follows: That.....House..... Bill No....250.....

BE NOT CONCURRED IN

DO PASSE

Pa

STANDING COMMITTEE REPORT

March 6, 1972

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 539

Respectfully report as follows: That House Bill No. 539

BE NOT CONCURRED IN

J.L.

~~EXRASSX~~

STANDING COMMITTEE REPORT

..... March 6, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 569

Respectfully report as follows: That House Bill No. 569

BE NOT CONCURRED IN

P.G.

~~DO PASS~~

STANDING COMMITTEE REPORT

March 6, 1973

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 560

Respectfully report as follows: That House Bill No. 560

BE NOT CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

.....March 6,..... 19 79.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationHouse..... Bill No. 602.....

Respectfully report as follows: That.....House..... Bill No. 602.....

BE NOT CONCURRED IN

PA.

XOOEASSXX

(1153)

BILLS TO BE HEARD BY
SENATE JUDICIARY
Tuesday, March 6, 1979

1. HB 539 (Gilligan)

Current law - 33-23-212 requires that an insurer cannot cancel an insurance policy without first giving written notice 30 days in advance (or 10 days and the reason in cases of non-payment of premiums). Notice must include a statement informing the insured that he can request the insurer to specify the reasons for the cancellation if such request is made not less than 15 days before the cancellation date. 33-23-214 requires similar advance notice of non-renewal - in such case, the insured has until 1 month after the termination date to request the reason for the non-renewal.

Proposed bill - as originally drafted, would have established an appeal process for insureds in cases of cancellation or non-renewal. As amended by the house, the bill provides an inquiry process. A notice of non-renewal or cancellation must include notice to the insured that he can carry an inquiry to the commissioner of insurance. Effective January 1, 1980.

2. HB 549 (Scully)

Current law - 53-2-107 makes fraudulent obtaining of public assistance theft as provided in 45-6-301 - fraudulent obtaining is defined as "knowingly obtains by means of a willfully false statement, representation, impersonation or other fraudulent device."

NOTE: SB 376 (McCallum, Turnage) attempted to amend 53-2-107 by including "purposeful failure to reveal resources or income" as fraud. This amendment was rejected by the Senate Judiciary Committee.

Proposed bill - amends 45-6-301 which is the definition of the crime of theft. The bill would expand the definition of theft to include fraudulently obtained public assistance. This new definition includes essentially the same (but not quite) language of 53-2-107 except NOTE: this bill would include the language, "a knowing failure to reveal sources of income" which this committee rejected in SB 376.

3. HB 580 (Fagg)

Current law - 45-6-316 makes it a crime to issue a check knowing it will not be paid. The statute is worded in terms of "obtaining" control over another's property

Proposed bill - rewords 45-6-316 to make it apply to "retaining" possession to another's property as well as "obtaining" possession and provides that it is no defense to the crime that consideration for the check was not received at the same time as the check was issued.

HB 569 (Iverson)

Current law - 45-2-213 provides that entrapment is a defense to a crime. Entrapment occurs when a public servant induces another to commit a crime. To successfully prosecute a defendant, the state must prove beyond a reasonable doubt that the defendant committed the crime. The burden of proof in a criminal prosecution can never shift from the prosecution to the defendant although the burden of going forward with evidence may change often.

Proposed bill - would provide that in a criminal action entrapment is an "affirmative defense" which the defendant must prove by a preponderance of the evidence. To plead an affirmative defense, a defendant must essentially admit committing the alleged offense and plead mitigating circumstances such as entrapment; then the defendant has the burden of proof.

HB 602 (Sivertsen)

Current law - 45-2-212 provides that compulsion is a defense to a crime.

Proposed bill - would make compulsion an affirmative defense which the defendant must prove by a preponderance of the evidence. [See the above discussion of affirmative defenses with respect to HB 569.]