

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 8, 1979

The fifty-fourth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 668:

This is an act to amend the forcible entry and detainer and unlawful detainer law to provide a standard of due diligence in locating defendants within the state for purposes of service of summons, etc. Representative Rameriz gave a statement of what the bill was about.

Walter Jakovich, representing the Montana Landowners Association, stated that they have a few problems serving summons and that people skip away in the night and this bill will help.

There were no further proponents and no opponents.

There were a few questions and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 673:

This is an act to revise the laws relating to the Montana Youth Court Act, revising the salary schedule of probation officers, etc. Representative Keedy gave an explanation of this bill.

Glen Hatch, the chief probation officer in Kalispell, gave a statement in support of this bill. He stated that they have had no cost-of-living raise or salary adjustment since 1974 and he told of the work and additional education they have been doing.

Jeremiah Johnson, representing the Montana Probation Officers Association, stated that their concern is with no increase in the last four years, they would like to set up some matrix system, if possible.

Senator Brown questioned when we pass on an added cost, we have to pass on funding for local governments and would this have to be taken into consideration. Representative Keedy said yes, he would think so.

There were several further questions in regard to pay schedules and comparable salaries and the hearing was closed.

CONSIDERATION OF HOUSE BILL 652:

This is an act to amend section 45-5-501, MCA, relating to the definitions of terms used in the sexual crimes statutes, to make the definition of "without consent" applicable to sexual assault. Representative Harper gave a brief explanation of what this bill involved.

There were no further proponents and no opponents.

There were a few questions and then Senator Turnage stated that if you amend forcible rape into 502, then all the forcible rapes will be treated as misdemeanors. He said that by stating that number in there here is what happens: you say that sexual assault, even if it is committed by force or even by death, is locked into the misdemeanor statute. There was some discussion on this.

Joan Mayer stated that it was her understanding that if it were a 15 year old and an 18 year old, that it would come under the felony category. Representative Harper stated in all honesty, his only concern if it were two 15 year olds we could be in some trouble.

There was considerable discussion over the problems of age, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 666:

This is an act ceding to the United States concurrent jurisdiction over crimes and offenses under the laws of the state over and within certain lands dedicated to national park purposes, etc. Representative Conroy explained the bill.

There were no further proponents and no opponents.

Senator Towe questioned if he anticipates that the government will in fact acknowledge jurisdiction so that we can accept it and will accept it. Representative Conroy stated this is the request of the park service and other states have the statute on their books.

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

CONSIDERATION OF HOUSE BILL 678:

This is an act to allow publicity concerning the identity of an arrested youth and youth court proceedings involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision; to provide that the public and the media may not be excluded from such proceedings, etc. Representative Pistoria read a prepared statement explaining this bill.

There were no further proponents.

Senator Van Valkenburg stated that as he sees the intent is to publize names without regard to whether the person is guilty or not and he stated that our system has been designed to not lump youths with adults. He said that splashing names to the media does have the effect of making stars overnight. He said if the intent is to identify those youth who have been found guilty, then the title and the bill need more revision.

Glen Hufstetler, representing Montana Probation Officers' Association, stated that he works with youth on a continual basis. He said that this would lock that kid into being a juvenile delinquent and the public is going to treat him like one and he is going to have to play the part. He further stated that in areas where they do publish names, the juvenile crime rate has continued to grow as much as if they are not published. He stated that he wished that it were a deterrent, but they do not feel that it is and there is no real value. He said that they initiated a work program in Kalispell, where they have done public work - they have shoveled snow for old age homes, all kinds of new and innovative programs.

Jeremiah Johnson, representing the Montana Probation Officers Association, stated that it is hard to say if in favor of this bill or oppose. He said he was not aware if there has been any success at all in the publishing of names and it may have the opposite effect and youth look in papers to see what kind of crimes they report.

John Foster, representing the Montana Probation Officers Association, Fergus County, stated that serious crime has not increased in the juvenile area since they have initiated some new programs and crime has decreased and he did not feel that they need to publish names of the youth. He said that in some counties it would be disastrous because everybody knows everybody.

Representative Pistoria said that in Great Falls, they are totally behind this, and he thought this could be tried and that this is by public demand

Senator Brown questioned if any of the probation officers have an opinion about the effect of publicity on parents - do the parents really try and make things better for the youth because of the publicity. Mr. Johnson said that their records show that over fifty per cent of the youth will have only one contact with them and they never see them again, another 30 per cent is probably up to three times and they generally have good cooperation from parents with 20 per cent of those. He said our problems are with about 20 per cent of the youth. He stated that a lot are from broken homes and lots of disruption in the family and these are the toughest cases, but they have reduced these activities by over 40 per cent with really progressive things going on.

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

CONSIDERATION OF HOUSE BILL 270:

Professor Lester Rusoff, from the Montana State Law School in Missoula, offered some information on perpetuities.

Senator Turnage said that he guessed he understood this now. There were a few questions.

Senator Turnage moved that this bill be concurred in. The motion carried unanimously. Senator Towe stated that he wanted the following language put in the minutes: it is decreed by existing law and we do not intend by this statute to change existing law. The committee unanimously agreed to put this in the minutes.

DISPOSITION OF HOUSE BILL 668:

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

DISPOSITION OF HOUSE BILL 673:

Senator Towe moved that the bill be concurred in.

Senator Lensink questioned if this is the proper pay grade for them to be placed in. Senator Brown stated that you are going to see lots of other locally-funded people back in next session to ask for similar treatment. Senator Lensink wondered again if this was the proper category to fit them in. Senator Brown stated that engineers are grades 13 to 15, a first year attorney is a grade 13.

Mr. Glen Hatch stated that grade 14 is for a chief and he has experience.

The motion carried with Senator Brown voting no.

DISPOSITION OF HOUSE BILL 652:

Senator Turnage moved that the bill be not concurred in.

Senator Anderson suggested that maybe the researcher should take a look at it. Senator Van Valkenburg stated that the real need is for when bodily injury occurs in a sexual assault and where bodily injury occurs is where the problem is and maybe we can make this apply.

Senator Turnage withdrew his motion and suggested that Joan Mayer and Senator Van Valkenburg take a further look at this.

DISPOSITION OF HOUSE BILL 678:

Senator Towe stated that publication of the name as soon as they are arrested is really not a good idea. He stated that the old law says that the media cannot be excluded from the court but this bill would allow anyone in on a felony.

Senator Towe moved that the bill be not concurred in.

Senator Brown made a substitute motion to delete the repealer in section 2. The motion carried unanimously.

Senator O'Hara asked if this matter could be possibly put off as they think we are not giving much thought to these things. Senator Lensink stated that he did not think we should be cowed. Senator O'Hara stated that he felt we need to have a rapport with that body and he would just like to wait on this. He stated that 99.5 per cent of the kids are fantastic, but there is a big problem with burglaries, etc., and it is growing daily. He said that many times things that happen we never find out about and he said that he knew that probation officers have a big problem and there is no communication.

Senator Turnage suggested that the bill be amended on line 24, page 2, after "excluded", strike the "." and insert "except when the court determines a closed hearing to be in the best interest of the youth." Senator Towe said that in some cases this may be the thing to do and in some cases, this may not be done. Mr. Johnson stated that if this is left up to the court, it is going to be let to the public and in some instances this is wrong. Mr. Hufstetler stated that possibly the problem in Great Falls could be alleviated if every week we sent a news letter out telling what is happening and what we are doing. He stated that it sounds as though they do not have good communication in that area.

Senator Van Valkenburg said that as he understood the way this would read is the process would be open unless the court closed it and he would prefer the proceedings be closed unless the court opened it.

Senator Turnage moved that the bill be amended on page 2, line 24 as previously stated but using Joan Mayer's wording and then strike everything in lines 1 through 4. The motion carried unanimously.

Senator Olson questioned that Pisotoria will not get publication of the names unless the court orders it and Senator Turnage said we are putting the responsibility where it belongs - with the judge. Senator Turnage moved that the bill be concurred in as amended. The motion carried.

DISPOSITION OF HOUSE BILL 638:

Senator Turnage stated that he had talked to an individual who did not think they need a medical team to inspect the prison. Senator Towe said that Polly Holmes had come to him and wondered what he thought of bringing in specific persons who had knowledge of how medical matters were being handled and he stated that they were prepared to offer us direct assistance but the department of institutions had talked them out of it. He said that he did not think much of setting up a new team and he said that it was reported that when one of the spouses complained about the medical treatment her husband was getting, the next day the individual was put in the hole. Senator Turnage stated that the house has a select committee on this right now.

Senator Olson stated that he did not understand why they do not have a full-time physician - they have ten LPNs and 2 RNs and the prison population is consistent with the doctor population in the United States. Senator Galt stated that there was testimony that they were going to move one over from Galen.

There was some further discussion and Senator Turnage suggested that we should table this and see what happens. Senator Turnage moved that this bill be tabled with the intent to obtain the select committee's report and then consider this report. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 248:

Joan Mayer from the Legislative Council offered the statement of intent for this bill. Senator Towe moved that the statement of intent be adopted. The motion carried unanimously.

There being no further business, the meeting was adjourned.

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SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 3/1/79

ROLL CALL

JUDICIARY COMMITTEE  
46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Joan 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.







# STANDING COMMITTEE REPORT

..... March 9, ..... 19 73

MR. President:.....

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

having had under consideration ..... House..... Bill No. 353

Respectfully report as follows: That..... House..... Bill No. 353

BE CONCURRED IN

*D.G.*

DG. PASSER

# STANDING COMMITTEE REPORT

March 8, 1970

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 658

Respectfully report as follows: That House Bill No. 663

BE CONCURRED IN

FOR PASSAGE

# STANDING COMMITTEE REPORT

March 8, 19 72

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 655

Respectfully report as follows: That House Bill No. 655

BE CONCURRED IN

~~XXXXXXXXXX~~  
~~DO PASS~~

# STANDING COMMITTEE REPORT

..... March 8, ..... 19 79

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

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

having had under consideration ..... House ..... Bill No. 270

Respectfully report as follows: That ..... House ..... Bill No. 270

BE CONCURRED IN

DO-PASSX

# STANDING COMMITTEE REPORT

..... March 9, ..... 19 73

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

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

having had under consideration ..... House ..... Bill No. 673

Respectfully report as follows: That ..... House ..... Bill No. 6

BE CONCURRED IN

DO:PASSXXX



STATE OF MONTANA  
 DEPARTMENT OF ADMINISTRATION  
 STATE PERSONNEL DIVISION  
 MITCHELL BUILDING  
 HELENA 59601

449-3871

THOMAS L. JUDGE, Governor

*H.B. 673*

February 15, 1979

Representative John Scully, Chairman  
 House Judiciary Committee  
 Room 436, State Capital  
 Helena, Montana 59601

Dear Representative Scully:

After observing the hearing on House Bill 673, setting salaries for Probation Officers under 41-5-704, MCA, I wish to provide some information which may be helpful to you.

The current salary range of 12,500 to 16,000 is similar to the state pay range for grade 12 (12,793 - 16,372). I have attached the 1978 - 1979 pay matrix so you can find the salary levels for grade ranges stated in the bill.

For your information, the State Department of Institutions employs Probation and Parole Officers for work with adult offenders. I have listed the current grade levels for employees within the State Probation and Parole Bureau.

<u>TITLE</u>	<u>GRADE</u>	<u>NUMBER OF POSITIONS</u>
Bureau Chief	17	1
Administrative Officer	15	1
Regional Supervisors	15	3
Parole & Probation Officers	11	2
Parole & Probation Officers	12	17
Parole & Probation Officers	13	9

Following are examples of the types of positions classified at the grade 18 thru 20 range under the State Classification Plan:

Grade 18:

- Chief, Water Quality Bureau, Department of Health
- Chief, Right of Way Bureau, Department of Highways
- Assistant Chief, Highway Patrol, Department of Justice
- Chief, Labor Relations Bureau, Department of Administration
- Administrator, Income Tax Division, Department of Revenue
- Administrator, Gross Vehicle Weight Division, Department of Highways

Grade 19:

- Administrator, Liquor Division, Department of Revenue
- Administrator, Forestry Division, Department of Natural Resources
- Administrator, Personnel Division, Department of Administration

*(Handwritten initials)*





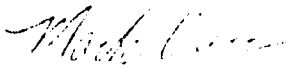
Representative John Scully, Chairman  
Page 2  
February 15, 1979

Grade 20:

Administrator, Workers' Compensation Division, Department of Labor and  
Industry  
Administrator, Environmental Sciences Division, Department of Health  
Deputy Director, Department of Administration  
Deputy Director, Department of Revenue  
Deputy Director, Department of Natural Resources  
Deputy Director, Department of Fish and Game

I hope this information will be useful to you. I would be happy to answer  
any further questions you may have.

Sincerely,



Mark Cress, Chief  
Classification & Pay Bureau

MC/dl

Attachment

1979-1979 PAY PLAN  
 ANNUAL SALARY  
 DOES NOT INCLUDE INSURANCE

GRADE	1	2	3	4	5	6	7	8	9	10	11	12	13
1.0	5595	5726	5424	5551	5671	5760	5850	5965	6082	6207	6331	6412	6495
2.0	6054	6195	5850	5966	6083	6207	6331	6460	6591	6721	6852	6941	7030
3.0	6552	6705	6351	6460	6591	6721	6852	6999	7141	7285	7433	7524	7621
4.0	7103	7270	6850	6996	7141	7285	7430	7581	7732	7895	8051	8172	8280
5.0	7705	7887	7430	7581	7732	7895	8061	8233	8405	8583	8761	8879	8995
6.0	8374	8571	8061	8233	8405	8583	8761	8948	9133	9325	9510	9648	9779
7.0	9096	9310	8761	8946	9133	9325	9519	9723	9929	10142	10356	10499	10643
8.0	9896	10129	9518	9723	9929	10142	10356	10582	10808	11042	11275	11434	11592
9.0	10335	10578	10015	10262	10509	10756	11003	11250	11497	11744	11991	12238	12485
10.0	10774	11027	10455	10713	11071	11429	11787	12145	12503	12861	13219	13577	13935
10.5	11255	11519	10979	11246	11604	11962	12320	12678	13036	13394	13752	14110	14468
11.0	11731	12007	11457	11736	12104	12472	12840	13208	13576	13944	14312	14680	15048
11.5	12252	12550	12007	12307	12607	12907	13207	13507	13807	14107	14407	14707	15007
12.0	12793	13094	12550	12852	13154	13456	13758	14060	14362	14664	14966	15268	15570
12.5	13373	13687	13134	13440	13746	14052	14358	14664	14970	15276	15582	15888	16194
13.0	13947	14275	13718	14028	14338	14648	14958	15268	15578	15888	16198	16508	16818
14.0	15205	15563	15018	15328	15638	15948	16258	16568	16878	17188	17498	17808	18118
15.0	16596	16986	16431	16741	17051	17361	17671	17981	18291	18601	18911	19221	19531
16.0	18130	18556	18001	18311	18621	18931	19241	19551	19861	20171	20481	20791	21101
17.0	19795	20261	19711	20021	20331	20641	20951	21261	21571	21881	22191	22501	22811
18.0	21631	22139	21581	21891	22201	22511	22821	23131	23441	23751	24061	24371	24681
19.0	23651	24207	23651	23961	24271	24581	24891	25201	25511	25821	26131	26441	26751
20.0	25854	26462	25854	26164	26474	26784	27094	27404	27714	28024	28334	28644	28954
21.0	28280	28945	28280	28595	28910	29225	29540	29855	30170	30485	30800	31115	31430
22.0	30941	31668	30941	31256	31571	31886	32201	32516	32831	33146	33461	33776	34091
23.0	33852	34648	33852	34167	34482	34797	35112	35427	35742	36057	36372	36687	37002
24.0	37052	37923	37052	37367	37682	38000	38315	38630	38945	39260	39575	39890	40205
25.0	40536	41519	40536	40851	41166	41481	41796	42111	42426	42741	43056	43371	43686

ASTDP-4 0

Report on

HB 270 - Rule Against Perpetuities

70-1-408, MCA (67-406(b), RCM) the rule against perpetuities, has been in Montana's statutes since 1959. Its predecessor, 70-1-406, MCA (67-406(a), RCM) the suspension of alienation rule has been in the statutes since 1895, this statute was based upon the New York statutory rule against perpetuities. I could find no Montana cases interpreting the 1959 statute. In 1955, an associate professor of law at the Montana State University, T.L. Waterbury, wrote a law review article discussing Montana's perpetuities statute and called for reform - Waterbury, "Montana Perpetuities Legislation - A Plea for Reform," 16 Mont. L.Rev. 17 (Spring 1955). His concern was that there was little local law on the subject and that as other states enacted other statutes, Montana had little other case law to help in construing its statute. Waterbury called for adoption of the common law rule against perpetuities (Waterbury, P.41). In 1959, the statute was amended to adopt the Uniform Law on the rule against perpetuities - Model Rule Against Perpetuities Act, §1, 9C U.L.A. This model act did not contain the words "if at all". However, most courts that have dealt with the subject have adopted Gray's statement of the rule which includes the three words.

Professor <sup>Russouff</sup> Russouff of the Law School of the Montana State University drafted HB 270. His concern is to make the statute consistent with the usual court interpretation of the rule against perpetuities to avoid possible future litigation. He wants to make it clear that Montana's law is the same as generally stated by the text writers. It is Professor Russouff's opinion that as our statute is presently worded, without the three words, it is possible to argue that no future contingent interest is valid because it appears that the

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statute requires vesting to make an interest valid; whereas, it is only required that a final determination (as to vesting or failure to vest) <sup>can</sup> be made during the perpetuities period.

Professor Russouff has corresponded with two men who have written books on the rule against perpetuities - Robert J. Lynn, Ohio State University Law School and Jesse Dukeminier, Professor at U.C.L.A. Law School. Both men felt that Russouff's draft of the bill to include "if at all" was responsible and sound. In a letter to Prof. Russouff in 1976, Prof. Dukeminier stated his opinion of Montana's statute and indicated that adding "if at all" is an important clarification. In Dukeminier's opinion, without the three words, all contingent interests would be void by a literal reading of the Montana statute because there is no certainty that any contingent interest will ever vest. If a court construed the statute literally, a future contingent interest would be invalid from the beginning and never get a chance to vest. It is Prof. Russouff's opinion that the statute should be made consistent with the necessary court interpretation to avoid possible future litigation.

It is my personal understanding of the three words "if at all" that they mean "or fail". That is, a contingent interest must be sure to vest or fail within the perpetuities period. The three words are meant to be a clarification of the rule.

Bills to be heard by  
Senate Judiciary  
Thursday, March 8, 1979

1. HB 673 (Keedy)

Current law - In the Montana Youth Court Act, 41-5-704 sets a chief probation officer's salary at \$12,500-\$16,000; 41-5-705 sets a deputy probation officer's salary at up to 90% of a chief probation officer's.

Proposed bill - revises the salary schedule for probation officers. Sections 2 and 3 of the bill adopt a schedule based apparently on the pay matrix established for the executive branch and found in 2-18-311 and 312. Based on 2-18-312, the matrix for 1978-79, probation officers' salaries, as amended by the House, would be as follows:

Chief probation officer -	\$15,566-\$21,168
Deputy probation officer -	\$14,307-\$18,228.

(The sums originally asked for in the bill were substantially higher.) The matrix for 1979-1980 will establish slightly higher sums. Also, note that these sums include a health care insurance contribution.

2. HB 668 (Ramirez)

Current Law - Forcible entry is defined in 70-27-102, it means to enter real property by force or violence; or once upon property peacefully to turn out the party in possession by force or violence.

Forcible detainer is defined in 70-27-103, it means to unlawfully keep possession of real property by force or violence; or to unlawfully enter upon real property and after demand for surrender is made, to refuse to surrender possession for a period of 5 days.

Unlawful detainer is defined in 70-27-108, it means for a tenant to remain in possession of leased or rental property after notice of the expiration of the term or failure to pay rent or other breaches of his lease or agreement. A landlord or owner who is injured by the above actions can sue for return of the property and damages. Under 70-27-114 summons in such a suit must be served personally on the defendant if he is within the state -- but if he is not in the state, this service can be under 70-27-110 which allows a summons to be left at a defendant's home or business or mailed to the defendant's home or by posting notice on the property.

Proposed bill - amends 70-27-114 to provide a standard of due diligence in locating defendants within the state for purposes of service of summons. That is, a plaintiff must show that,

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exercising due diligence, he was unable to find a defendant within the state for personal service before he will be allowed to serve summons on the defendant in a less stringent method than personal service.

HB 652 (Harper)

Current law applies the common, nonlegal definition of "without consent" to the crime of sexual assault. Therefore, no crime is committed if there is actual consent. Current law is the result of a conscious decision on the part of the Montana Criminal Law Commission. (Source, Duke Crowley)

Proposed bill would apply the technical, legal definition. The effect would be to make it a crime to have sexual contact (defined as "any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party") with anyone who is under the age of 16 or mentally defective or incapacitated. This would include two teenage 15 year old sweethearts. If one of them is 18, he would be guilty of a felony and subject to 20 years imprisonment.

Related bills House Bill 865 deals specifically with child molesting.

HB 678 (Pistoria)

Current law - provides that the public must be excluded from youth court proceedings in which a youth is claimed to be delinquent or a youth in need of supervision except when the youth is charged with a felony.

Proposed bill, as amended by the House, prohibits the exclusion of the public except when no felony has been charged and the court determines that a closed hearing would be in the youth's best interest.

Note The House did not amend the title. Suggestion -- insert "in certain cases" following "that" on line 9.

HB 666 (Conroy)

Current law - 2-1-102 provides that that sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States. Diverse jurisdiction can cause problems regarding enforcement of laws when state laws are broken in federally-administered parks within the state. In 2-1-213, Montana accepted concurrent jurisdiction over Big Hole National Battlefield.

Proposed bill - cedes concurrent jurisdiction to the U.S.  
over certain lands and accepts jurisdiction over certain  
federal lands.

Section 1. NEW. Concurrent jurisdiction of  
the U.S. over certain lands dedicated to  
national park purposes. Cedes jurisdiction  
to the U.S. to enforce state laws within  
(a) Big Horn Canyon; (6) Grant-Kohrs National  
historic site; (c) Big Hole National Battle-  
field; and (d) Fort Union Trading Post. That  
is, both the federal and state governments  
could prosecute violations of state law.

Section 2. NEW. Acceptance of jurisdiction  
over federal lands. Authorizes the governor  
to accept for the state retrocession of  
jurisdiction by the U.S. over national parks  
within Montana.

Section 3. NEW. Filing of acceptance of  
jurisdiction over federal lands.