

MINUTES OF THE MEETING OF THE HOUSE JUDICIARY COMMITTEE
January 26, 1981

The meeting of the House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All members were present. Jim Lear, Legislative Council, was present.

HOUSE BILL 294 REP. PISTORIA, chief sponsor of the bill, stated he introduced this bill as a layperson. Civil cases presently have four jurors, criminal cases have six jurors and capital cases have eight jurors. This bill would change the present four jurors on civil cases to six jurors. REP. PISTORIA feels this will help the individual in civil cases.

There were no further proponents.

There were no opponents.

In closing, REP. PISTORIA stated there are more civil cases than there are criminal cases. He feels this is a step in the right direction.

There were no questions asked by the committee.

HOUSE BILL 248 REP. GOULD, chief sponsor, stated this is a simple straight-forward bill requiring the removal of a justice or judge who fails to impose a criminal sentence in the manner prescribed by law. Page 1, lines 13 to 18 indicates that five people will be on the judicial standards commission including two district judges, one attorney and two citizens who are neither judges or attorneys. Lines 4-9 on page 2 indicate if the commission recommends to the Supreme Court that a justice or judge be removed from office if it finds that he willingly failed to impose a criminal sentence in the manner prescribed by law. Upon receiving a recommendation under this subsection, the Supreme Court shall remove the judge or justice.

REP. GOULD indicated if the people of Montana are not able to look at the judge to uphold the laws, the citizens should not feel they have to keep the laws. The judges should have to listen and follow the laws like everyone else.

REP. GOULD presented a letter from ERNEST SLOV. EXHIBIT 1

There were no proponents.

J. C. WEINGARTNER, State Bar of Montana, is in opposition to the bill. The Montana Constitution is the back bone of the state. It is a concise mechanism for the state. If this is added it will clutter up the constitution. If there is a real problem amend the constitution. If there is a real problem, more judges, lawyers and laymen should be added to the commission. The bar does not oppose that. Once the constitution is amended it is there forever

until another amendment is made, which never happens. WEINGARTNER urged giving the present system a chance to work. If it is unacceptable, amend the constitution.

TOM HARRISON, Montana Judges Association, was opposed to the bill.

In closing, REP. GOULD stated legal counsel did research and felt this could not be done by statute. GOULD disagrees this would clutter up the constitution. He feels it is utmost important that that people are treated fairly.

CHAIRMAN KEYSER asked in the research done what was the number of cases in which judges have not imposed a mandatory or required sentence and ignored the law. GOULD replied he did not know the exact number of cases. In the area of using a firearm in three years, only one judge had handed out the proper sentence.

CHAIRMAN KEYSER asked how many recommendations have been before the commission to investigate judges concerning failure to abide by the law. HARRISON stated he was not certain that was public information and that he did not have access.

REP. EUDAILY asked if a statement of intent were needed. REP. GOULD replied no.

There was no further discussion on House Bill 248.

HOUSE BILL 220 REP. HARPER stated this bill was an act to preclude criminal or civil liability of persons donating food, apparently fit for human consumption, for free distribution. REP. HARPER stated many food stores donate food to food banks that do not have a pleasing appearance to the buyers. This would include small carrots, or dented cans. Although the food does not have an attractive appearance it is still nutritious. There has been a recent trend to get more of these food banks.

This bill intends to limit liability for distributing food if it is done in a charitable way. The bill does not establish food banks, just is a first step. In a time of high unemployment this is one good way of getting nutritious food back into the economy at no additional expense.

JIM HENSEN, Low Income Senior Citizens, stated food banks are for low income people. The stumbling block is the liability placed on retailers and producers of food. This bill removes the liability. Grocers will be willing to work with churches and organizations like the Salvation Army if the liability is removed. Just because the food has lost its cosmetic value does not mean the nutritious value is gone. Other states that have this type of statute have increased food banks dramatically.

JANE DELAGE, Community Food and Nutrition Program, stated the food stamp program often times is not enough. Food banks could be established to meet the needs of the people that food stamps don't. During the last year 461 families came to the Friendship Center for food. This included 788 adults. Many migrant farm workers come. Food should not be wasted.

GLEN DRAKE, American Insurance Association, supports this legislation.

MARGARET PRICE, CFNP, supports this legislation. PRICE believes we have a movement to become less dependent on federally funded programs. This is one of the most available resources we have. In Bozeman three organizations supply food. The Salvation Army usually serves 30 families a month on an average. There were 40 families last month alone. They don't have the facilities needed to serve more. The Community Service Center has a food closet. In October 800 cans of food were there; presently there are approximately 200 cans left. The Help Center gives out canned food but prefers to give out meals.

NANCY MUNSON, REACH Program, works as a teacher and trainer. Of the people she works with that are disabled, their average monthly income is \$280, which makes it difficult for ends to meet. Food stamps are obtained but even with this it is hard to make proper food plans. MUNSON felt the people would benefit from a food bank.

CAPTAIN ALAN R. HOOFT, Salvation Army, said his organization served over 5,000 meals in the past year alone. This represents 1200 families and individuals. The Salvation Army currently has a small food bank. The Salvation Army is also a disaster shelter, which means they have a need for maintaining a large stock of food. Statistics of referrals from 1979 doubled in 1980 and the future does not look good. HOOFT said states which presently have this type of statute have not experienced any adverse effects.

There were no further opponents.

MIKE MELOY, Montana Trial Lawyers Association, opposed the bill. MELOY stated there is nothing under the present system of civil and criminal penalties that cannot permit the kinds of donations the proponents want. Under present law people who distribute food do it under ultimate care. If food got into the stream of commerce and a person died because of it there would be no recourse.

MELOY stated section 4 of the bill on page 3 states there is no criminal penalty. The bill does not address the preparing of food. If the Salvation Army prepared the food and in the course of preparation put poison in it that made a person die, they would not be immune of any liability as long as they are acting with the ultimate care.

In closing, REP. HARPER stated he was confused by MELOY's testimony. MELOY at first indicated there was no need for the bill and then indicated the bill did not go far enough concerning penalties. REP. HARPER felt there is plenty of enforcement.

REP. CONN questioned the use of poison by the Salvation Army in preparing food. MELOY stated he should have used the thawed turkey that was refrozen and given to the Salvation Army. Someone eats the turkey and dies because the turkey is poison.

REP. HANNAH asked if the bill covered prepared foods like from McDonalds. REP. HARPER stated the organizations would not accept such foods.

REP. HANNAH asked if the IRS handled deductions in relation to food banks. REP. HARPER stated yes, in some states deductions can be made for donating to food banks.

The hearing on House Bill 220 ended.

HOUSE BILL 273 REP. METCALF, chief sponsor, stated this bill would permit the publishing of names of youths in the paper who were repeat delinquent offenders. This bill is a good compromise of whether names should be published. Opponents state you might be dealing with the youth who is suicidal. That is a questionable argument. Other opponents might state youths will be encouraged by seeing their names in the paper. REP. METCALF doubts this will happen. Whether it will decrease delinquency he does not know. Parents might exercise control if they know the family's name might be damaged.

DICK MEEKER, Probation Department, is for this bill with reservations. He questions whether it will be a deterrent. Generally the youths don't think about what the actions are before they commit a crime. MEEKER feels the public should be aware of repeat offenders.

There were no further proponents.

Opponents KAREN MIKATA, League of Women Voters, feels the names should be printed in the paper after the youth is found guilty of the crime.

In closing, REP. METCALF stated he has no objections to raising the cost to \$1500. He also did not have objections to amending "in need of supervision."

REP. BROWN asked why two crimes were considered repeat instead of say three. REP. METCALF stated it is hard to define what a repeat offender would be.

HOUSE BILL 301 REP. MATSKO, chief sponsor, stated this is an act to increase the ability of victims of criminal mischief to recover restitution from the offender. REP. MATSKO stated a person convicted of the offense of criminal mischief shall be ordered to make full restitution. Currently the amount for restitution shall not exceed \$1500. REP. MATSKO feels it should be raised to \$2500.

There were no proponents.

There were no opponents.

In closing REP. MATSKO felt this bill was straight forward and clear.

REP. KEEDY asked if any type of ceiling should be left in. REP. MATSKO replied in Great Falls there was a situation where a juvenile set fire to a school. The parents' insurance could not cover the millions of dollars of damage caused. The bulk of damages usually done \$2500 would cover.

HOUSE BILL 216 REP. KEEDY, sponsor of the bill, stated this bill is an act to define sexual contact as touching of another for the purpose of arousing or gratifying the sexual desire of either party. The only change is on page 12 being that sexual contact is no longer necessary for prosecution purposes but the person's anatomy was violated.

REP. KEEDY stated there may be child molesting cases where a man massaged the stomach of a young girl. He might be arousing or gratifying sexual desire by doing this act. REP. KEEDY stated sexual contact should not be limited to the touching of private parts.

There were no proponents.

There were no opponents.

REP. TEAGUE inquired if a pat on the butt would be considered as sexual contact. REP. KEEDY replied that is is considered sexual contact under the present statute.

There was no further discussion on House Bill 216.

EXECUTIVE SESSION

The House Judiciary Committee went into Executive Session at 9:35 a.m. on 1/26/81.

HOUSE BILL 216 REP. IVERSON moved do pass.

REP. EUDAILY inquired if this bill was really needed. REP. KEEDY replied it is an attempt to clarify what is meant by sexual contact. REP. YARDLEY stated there are changes in other sexual laws and this bill might be covered in one of those laws. He does not see the need for this bill.

REP. HUENNEKENS stated the definition is so broad and subjective it has almost lost meaning.

REP. SHELDEN stated suppose a man and woman are dancing and his hand is on her back, could she sue him for sexual gratification? REP. KEEDY replied this is the real world. He has a reasonable doubt someone would sue the other party for that. REP. KEEDY stated he does not want his daughter in a position where an old man is receiving arousing or gratifying sexual desire from touching her legs.

REP. TEAGUE asked if a third party could bring suit, in example, the girl's parents. REP. KEEDY replied a civil case could result.

REP. HANNAH stated he was in favor of the bill.

A roll call vote resulted on the motion of do pass. The motion passed 11 to 7. Those representatives voting yes were: KEYSER, SEIFERT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, ANDERSON, KEEDY, BROWN and MCLANE. Those representatives voting no were: BENNETT, EUDAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. House Bill 216 did pass.

HOUSE BILL 220 REP. HANNAH moved do pass.

REP. YARDLEY moved to amend lines 23 through line 1 on page 3 striking subsection (3)(b) in its entirety. REP. KEEDY stated the purpose of the amendment was to return normal concepts of liability. Line 13 charitable organizations receive no liability. REP. KEEDY questioned if people who receive the food have no recourse unless they buy it.

REP. YARDLEY stated the intent of the bill would let organizations donate food without liability. REP. YARDLEY stated he was not sure of the meaning of subsection b. REP. HANNAH replied the Salvation Army has a thrift store which sells clothing and items for a minimal amount, like five to ten cents.

The amendment of REP. YARDLEY passed unanimously.

REP. HANNAH moved do pass as amended. The motion passed with REP. SEIFERT and REP. KEEDY voting no.

Judiciary Committee
Executive Session
January 26, 1981
Page 7

REP. EUDAILY moved to reconsider the bill while Jim Lear, Legislative Council, did some research. The motion passed unanimously.

HOUSE BILL 273 REP. EUDAILY moved do pass. REP. EUDAILY moved to amend page 2, lines 17 and 18, following "delinquent" strike through "supervision". The amendment passed unanimously.

REP. EUDAILY moved on line 20, page 2, strike \$500 and insert \$1500. REP. HANNAH felt it should be increased to \$2500 to coincide with a House Bill that REP. MATSKO was sponsoring. REP. BENNETT asked if there were crimes or offenses where \$1500 worth of damage the penalty is less than one year in jail. REP. BENNETT felt the value should be stricken and leave the maximum penalty of one year.

REP. YARDLEY felt there should be a distinction between the type of felonies.

REP. TEAGUE felt the financial portion should be left off. REP. CONN agreed. REP. IVERSON stated there should be a dollar amount because the juvenile would not be able to get away with it if he were an adult. IVERSON felt both provisions should be left in.

REP. KEEDY made a substitute motion of following "offense" on line 19, page 2 striking through "and" on line 20.

REP. CONN made a substitute motion to include REP. KEEDY's motion and following ":" on page 2, line 18, strike "or" and insert "and".

REP. SEIFERT moved to table the bill. The motion failed.

REP. CONN's motion failed 9 to 9. Those representatives voting yes were: BENNETT, CONN, MATSKO, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE, YARDLEY and BROWN. Those representatives voting no were: KEYSER, SEIFERT, CURTISS, EUDAILY, HANNAH, IVERSON, ANDERSON, KEEDY and MCLANE.

The discussion returned to REP. KEEDY's motion.

REP. HUENNEKENS moved to table the bill. The motion failed.

REP. EUDAILY made a motion to pass for the day with this bill and to have JIM LEAR draft the bill as to amendments passed. The motion passed unanimously.

Judiciary Committee
Executive Session
January 26, 1981
Page 8

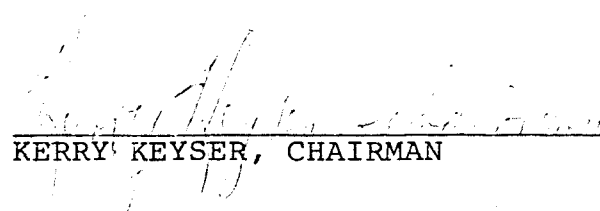
HOUSE BILL 294 REP. IVERSON moved do pass.

REP. EUDAILY inquired if there was a need for the bill. REP. MATSKO inquired if a unanimous jury is needed in a civil case. REP. YARDLEY replied only a 2/3 vote is needed.

The motion of do pass failed with only REP. KEYSER and REP. BROWN voting for it. REP. IVERSON moved the vote be reversed to Do Not Pass. Those voting no for do not pass were REP. KEYSER and REP. BROWN.

In other business, REP. KEEDY distributed information for a committee bill. EXHIBIT 2.

The meeting adjourned at 11:10 a.m.



KERRY KEYSER, CHAIRMAN

mr

Bud

Exhibit 1
MRS. Solla
Jan 21 - 1988

shot time devices proper
study, And I am rusty for
being long away from the
bench. I do take retirement
seriously. And since hearing
on HB 284 comes early
tomorrow morning, it
is not possible for me to
attend. Sorry. However,
I could say no more in essence
than that it is elementary
that elected public officials
- particularly those who are
the keepers of the conscience
of the people - as judges above
all others are so nobly
sworn to be - should

Obey the Statute Law; and
Obey even humbly to
obey it with neither fear
nor equivocation. Above
Ten years particularly are
indentured to the Magna
Carta (1215 A.D.) which proclaims
"We Will deny Justice to None.
Not delay it. Every uschin
knows that Justice delayed
is Justice denied, - he must
learn this from his father in the
family woodshed.

I leave use the enclosure
as you want, who speaks with
more Authority than the Chief
Justice of the United States
Supreme Court? And

For my part
I don't see file 13
(*) I don't see file 13
(*) I don't see file 13
(*) I don't see file 13

likewise use this letter
as you think proper*. The
editorial makes the point:
No matter how well intentioned
it may be - Just
as the pavement along the
road to Hell is well intentioned
the quality of mercy comes
sadly strained whenever
Mercy ignores the dead
body of the innocent victim,
stretched out ^{there} so pitiously on
the living room floor.
Before rehabilitation, first
must come repentance for
the wrong.

Sumner Sloan

_ _ _ _ BILL NO. _ _ _ _

INTRODUCED BY _ _ _ _ _

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY CHAPTERS 21 AND 22 OF TITLE 46, MCA, dealing with postconviction and habeas corpus relief."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-21-101, MCA, is amended to read:

"46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence, or the supreme court, ~~or any justice of the supreme court~~ to vacate, set aside, or correct the sentence."

Section 2. Section 46-21-102, MCA, is amended to read:

"46-21-102. When petition may be filed. A petition for such relief may be filed at any time ~~after~~ within five years of the date of conviction."

Section 3. Section 46-21-104, MCA, is amended to read:

"46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. ~~Arguments-and-citations-and-discussion~~ ~~of-authorities-shall-be-omitted-from-this-petition-~~ The petition shall be accompanied by a supporting memorandum including appropriate arguments and citations and discussion of authorities."

Section 4. Section 46-21-105, MCA, is amended to read:

"46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds ~~ether-than-constitutional-grounds~~ not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, claims which could reasonably have been raised on direct appeal may not be raised in his original or amended petition."

Section 5. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively

show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading the court may dismiss the petition as a matter of law for failure to state a claim for relief, or it may grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed."

Section 6. Section 46-21-201, MCA, is amended to read:

"46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within ~~6-months-from the-entry-of-the-order-~~ 60 days of the entry of the order."

Section 7. Section 46-22-101, MCA, is amended to read:

"46-22-101. Who may prosecute writ. Every person

imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom. Relief under this chapter is not available to attack the validity of the convictions of persons who have been adjudged guilty of an offense in a court of record and who have exhausted their remedy of appeal. Relief for such purposes is limited to the provisions of chapter 21 of title 46."

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

216

~~KEEDY~~
SOR

Date 1/26/81

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

IL 204 _____ Date 1/26/81
Pistoria, Conroy, Feda
SOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

RULL 220

Date 1/26/81

SPONSOR Harper, Vincent, et al

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

LL 248

Date 1/26/81

LL 240
Gould, Burnett, et al
SOR

1SOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ALL	294
INSOR	Pistoria

Date 1/26/81

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

1/26/81

Date _____

LL 301

ASSOR

Turnage, et al

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.