

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
January 28, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser presiding. All committee members were present except Rep. Teague, who was excused. (Rep. Teague later was present for the executive session). Jim Lear, Legislative Council, was present.

HOUSE BILL 300 REP. MATSKO, chief sponsor, told the committee this was an act to enact the provisions of the model drug paraphernalia act. The bill is practically an enactment of the DEA drug act. All items that would be included are listed in the bill.

CAPTAIN GERALD OBRESLEY, representing Law Enforcement, noted he has been with the department for 16 years. Ten of those years he has dealt with drug investigation. OBRESLEY stated paraphernalia are instruments used by a person who uses drugs. Paraphernalia helps to facilitate the crime of taking drugs. By eliminating this we are going to somewhat eliminate drug users. Law enforcement officers educate youth about the dangers of drugs. When the students leave the class and see a head shop it seems to be a double standard of the law.

OBRESLEY showed the committee items used for taking the drugs. He stated marijuana is the only type of substance that could be used in the pipes and bongs as regular tobacco would not work. The owners of these shops are making a big profit. If these shops were prohibited to sell the paraphernalia it would still not close the shops completely since most shops sell other items such as records or clothes.

OBRESLEY stated at fairgrounds they have booths and games that sell various types of paraphernalia.

REOBERT C. JONES, Law Enforcement, is in support of this bill. JONES showed committee members various magazines and books that promote the use of drugs. Most of these can be found on bookshelves in book stores. The youth feel they identify with the drug culture by buying these items.

JOHN SCULLY, Sheriff and Police Office in Bozeman, supports this bill. The bill is well written and covers all aspects of the drug industry.

TOM HONZEL, County Attorneys, supports this bill.

JUDY GRIFFITH, CAC, supports this bill. GRIFFITH stated the public needs to give the enforcement agencies help in this. Many people feel that eliminating the legal sale of paraphernalia in stores will eliminate the drug problem. GRIFFITH stated it would not. She showed the committee different homemade paraphernalia. It is important to realize the drug problem will not be eliminated but by enactment of this bill it will help slow down the drug scene.

GRIFFITH stated she is against the sale of paraphernalia.

There were no further proponents.

TIM RECTZ feels this bill would be unconstitutional. He stated another state ruled that it was unconstitutional in a bill they had. RECTZ feels the sale to minors is wrong and an age limit should be set. Most stores have signs stating the paraphernalia is not for sale to minors. RECTZ felt it might be a good idea to have a room for adults only to look at the items in the store.

There were no further opponents.

In closing, REP. MATSKO stated there is estimated to be about 25,000 head shops in the United States today. Thirty-six million dollars is grossed annually. Most shops make up to 200-300% profit on each item sold from what the store pays. REP. MATSKO feels this is a double standard act having the drugs illegal yet the paraphernalia legal. This act is held up in 12 other states.

REP. CURTISS asked on what grounds the bill was unconstitutional in the other state. RECTZ did not know the details.

REP. SEIFERT stated most of the things passed around had U.S. patents on them. REP. MATSKO replied the enactment of this bill would eliminate manufacturing in Montana.

REP. ANDERSON mentioned some of the things listed as paraphernalia were bowls, spoons, balloons, etc. SCULLY replied the officers would take the context of how the item was used in relation to the crime.

REP. HANNAH asked about the penalty. REP. MATSKO replied sections 4, 5, and 6 all dealt with penalties.

REP. CONN asked about magazines that carry advertisements for this type of paraphernalia. REP. MATSKO replied magazines are tailored by regions to the type of advertisements.

CHAIRMAN KEYSER asked how many stores in Montana sell the items. SCULLY replied there were eight in Bozeman and three in Great Falls. The rest of the figures were not known.

There was no further discussion on House Bill 300.

HOUSE BILL 335 REP. KANDUCH, chief sponsor, gave the committee written testimony. It was noted of an amendment he proposed on page 1, line 13 striking "otherwise" and following the word "states" adding the words "a later date,". EXHIBIT 1

Proponent BILL HAND supports this bill.

PETER JACKSON supports this bill. There is a need for necessary time, JACKSON stated.

F. A. BOLES, Montana Chamber, supports this bill. BOLES serves on an advisory committee. Everything the office has done is tentative. Rules that are not specified makes it confusing. There should be a date where those initiatives come into action.

REP. KANDUCH closed the bill.

REP. EUDAILY asked if line 16 would have to be amended to reflect the amendment he gave. REP. KANDUCH replied not necessarily. REP. EUDAILY questioned if it is changed to the effective date of October 1 and not make a provision to a later date. REP. KANDUCH had no objection to that amendment.

REP. KEEDY stated the amendment says October 1 because the sponsor felt that was when all legislation would come into effect. LEAR stated the Senate had a bill that would address that.

There was no further discussion on House Bill 335.

HOUSE BILL 289 REP. KEEDY stated the only change was on page 12 with respect to serious bodily injury. This bill is identical to one in the '79 session, which died in committee conference. The bill arises from a Supreme Court decision in 1976, St. v. Fuger. The defendant had kicked the victim in the head several times. He wound up in the hospital for five days. The question was whether the injuries were serious bodily injury. The conviction was upheld. The Supreme Court stated that the legislature had not defined serious bodily injury. The present definition is not very substantial. Under codes prior to '73 the term was grievous bodily harm.

There were no proponents.

MIKE MELOY, Montana Trial Lawyers Association, opposed the bill, stated it does not do what it is intended to do. MELOY stated that KEEDY felt the definition of serious bodily injury makes it clear what it is. MELOY felt the definition is making is less clear. A jury will be confused by this definition. MELOY stated there is no problem with juries understanding the present definition.

In closing REP. KEEDY stated the bill is to clarify a definition, which at the present is far too restrictive.

That closed the hearing on House Bill 289.

HOUSE BILL 315 REP. KEYSER presented the bill for sponsor GOULD. KEYSER noted the bill was to provide that an escape from a half-way house, life skills center, or furlough placement constitutes felony escape.

DONALD ROBEL, Department of Institutions, stated there were 14 escapes from these types of places out of 115 inmates sent there. Under the present law it is regarded as a misdemeanor. This bill would make the crime a felony.

There were no other proponents.

There were no opponents.

REP. MATSKO asked the number of women sent to life skill centers. ROBEL replied there are 12 in Billings and 16 in Missoula at the present time.

REP. SEIFERT asked if this would include the girls home in Helena. ROBEL replied no because this was for adults only.

CHAIRMAN KEYSER noted that people sent to halfway houses are convicted felonies who are serving the remainder of their time there.

There was no further discussion on House Bill 315.

HOUSE BILL 316 REP. KEYSER presented the bill for sponsor GOULD. KEYSER noted the Department of Institutions had requested the bill. It is an act to substitute the Department of Institutions for the Board of Pardons with regard to jurisdiction over certain prisoners.

ED HALL, Department of Institutions, stated the purpose was to rectify the language. The Board of Pardons does presently have jurisdiction which was given in the 1950's. In 1975 it was changed to the Department of Institutions by legislative action but this section was inadvertently left off.

There were no further proponents on the bill.

There were no opponents.

There was no further discussion on House Bill 316.

HOUSE BILL 317 REP. KEYSER presented the bill for sponsor GOULD. KEYSER noted it was to allow the Department of Institutions to issue warrants of arrest and return of persons who abscond from furlough

or community placements. DONALD ROBEL stated it simply provides a procedure to obtain warrants of arrests for people who have escaped. ROBEL noted out of 14 escapes, 10 were from Billings. This puts additional burden on the Yellowstone County judicial system.

There were no opponents.

REP. HUENNEKENS asked who can issue warrants now. ROBEL noted parole officers and the law enforcement agencies can (police, sheriff). In order to update immediacy the Department would like to have the ability to issue warrants.

JIM LEAR read to the committee parts of 46-23-1012 concerning probation violations, and 46-23-1023, arrest of alleged parole violators.

REP. EUDAILY asked if the people in these places are on furlough. It was noted they are on a prerelease and not parole. REP. EUDAILY questioned if there was a real need for this. ROBEL stated it would save time if the Department were allowed this.

REP. MCLANE asked what type of security measures were at the life skill center in Billings. ROBEL stated it is an open setting outside of Billings. Many of the women work in Billings.

The regular meeting ended at 9:30 a.m.

#### EXECUTIVE SESSION

HOUSE BILL 273 REP. HUENNEKENS moved to reconsider House Bill 273. The motion was defeated with REP. YARDLEY, REP. ABRAMS, REP. SHELDEN, REP. DAILY and REP. HUENNEKENS the only members voting for the motion.

HOUSE BILL 289 REP. EUDAILY moved do not pass. He was not sure the bill would accomplish what is was intended to do.

REP. KEEDY stated the bill had a good trip through the House last session. If the only reason for voting against the bill is House Bill 10, KEEDY urged members to vote for the bill stating House Bill 10 would probably not make it to the governors desk.

REP. CURTISS moved to defer judgment on the bill until the County Attorneys were notified of the bill. The County Attorneys requested the bill the last session. It was noted that a representative from the County Attorneys was present at the meeting but declined to testify. REP. CURTISS withdrew her motion.

REP. CURTISS made a substitute motion of do pass. The motion of do pass was defeated 10 to 8. Those representatives voting no were: KEYSER, SEIFERT, BENNETT, EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, YARDLEY and BROWN. Those voting yes were: CONN, CURTISS, HANNAH, IVERSON, MATSKO, ANDERSON, KEEDY, and MCLANE. The vote was reversed to do not pass. Those voting yes were: KEYSER, SEIFERT, BENNETT, EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, YARDLEY and BROWN. Those voting no were: CONN, CURTISS, HANNAH, IVERSON, MATSKO, ANDERSON, KEEDY and MCLANE.

HOUSE BILL 301 REP. BROWN moved do pass.

REP. IVERSON moved to strike on page 2, subsection 3, line 22, the new language and leave the old language as is; and on page 3 lines 6 and 7 strike the new language and leave the old language as is. The motion passed unanimously.

REP. EUDAILY moved to reinstate the original language in 40-6-237 and 40-6-238 deleting 1 and 2 in its entirety, renumbering the following sections. REP. BROWN opposed the amendment. The motion failed.

REP. MATSKO moved to amend the title and to insert on line 6 "and to increase to \$2500 the amount of recovery allowed against parents under sections 40-6-237 and 40-6-238, MCA. The motion passed with REP. YARDLEY and REP. EUDAILY against it.

REP. BROWN moved to pass as amended. The motion passed with REP. YARDLEY and REP. EUDAILY voting against it.

HOUSE BILL 315 REP. DAILY moved do pass. The motion passed unanimously.

HOUSE BILL 316 REP. YARDLEY moved do pass. The vote was unanimous in favor of the motion. REP. CONN moved to place the bill on the consent calendar. The motion carried unanimously.

HOUSE BILL 317 REP. EUDAILY moved do not pass. It was decided to hold this bill until 1/29/81 for executive action until Dan Russell from the Department of Institutions could speak to the committee to answer questions.

HOUSE BILL 335 REP. BROWN moved do pass.

Judiciary Committee  
Executive Session  
January 28, 1981  
Page 7

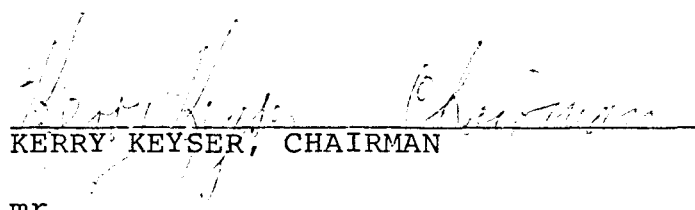
REP. CURTISS moved to amend page 1, line 15 following "." inserting "However, if the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval." The amendment passed unanimously.

REP. IVERSON moved do pass as amended. The motion passed with REP. YARDLEY voting no.

In other matters, REP. KEEDY moved a draft be written by the Legislative Council for a committee bill concerning post conviction relief. The motion passed unanimously.

REP. MATSKO moved a draft be written by the Legislative Council for a committee bill concerning use of immunity. The motion passed unanimously.

The meeting adjourned at 11:00 a.m.

  
KERRY KEYSER, CHAIRMAN

mr

HOUSE BILL 335

By Kanduch, et al

Through an oversight, the full amendment I had intended by HB 335 was not contained in this draft. Therefore, before discussing this bill, may I urge an amendment which would strike the word "otherwise" on line 13, page 1 of the bill and then add immediately following the word "states" the words "a later date,".

Thus, the paragraph as amended would read "(1) Unless the petition placing an initiative on the ballot states a later date, an initiative issue approved by the people is effective on October 1 following approval."

My purpose of this amendment becomes quite clear when we consider the problems confronting everyone under the lobbyist disclosure initiative. You will remember that that initiative called for the adoption of rules, regulations and forms by the Commissioner of Campaign Practices. The initiative also became effective on approval by the voters.

The rules, regulations and forms could not become effective until all of the notices and hearings required by the Administrative Procedure Act had been completed, and yet the initiative required the impossible--by demanding immediate compliance with rules and regulations which were nonexistent.

My bill establishes a date in the future for the initiative to become effective which will give time for the adoption of rules and regulations under the Administrative Procedure Act. I have selected October 1 because I understand that will become the standard effective date for all legislation.

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HOUSE                      JUDICIARY                      COMMITTEE

Date 1/28/81

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



HOUSE            JUDICIARY            COMMITTEE

315

Date 1/28/81

~~GOULD~~

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

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Date 1/28/81

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

