

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 30, 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 except REP. TEAGUE, who was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 361 REP. BRAND, chief sponsor, stated this bill permits incarceration of third felony offenders. It is based on an Oregon law. Two judges, BRAND spoke with, are in favor of this type of legislation. REP. BRAND stated one of the judges expressed to him that if a third felony is committed the person will never be corrected and something should be done.

There were no proponents.

Opponent KAREN MIKOTA, League of Women Voters, opposes this bill since it does not discriminate between one felony or another.

There were no further opponents.

REP. BRAND closed the bill.

REP. HANNAH asked what type of felonies would make this bill acceptable to the League. MIKOTA stated indiscriminate felonies not committing crimes against people.

REP. KEEDY asked MIKOTA if she is opposed to the present law. It was stated no.

REP. KEEDY stated page 1, line 19 requirements would be less than five years. Under existing law 46-18-502 a judge now can mandate when a felony is imposed from 5 to 10 years. KEEDY inquired how would it be possible for a felony offender to commit a felony before he is let out of prison since he would be there for a minimum of five years. REP. BRAND stated that is a problem.

REP. KEEDY noted the fiscal note. CURT CHISHOLM, Department of Institutions, stated he does not feel it will impact the prisons much. If the judges started to give out persistent felony offenders designation it would increase the prison population a lot. There are only 5-10 persistent offenders designated as persistent. About 7000 individuals who could be convicted are within one more felony as being designated persistent.

That ended the discussion on House Bill 361.

HOUSE BILL 363 REP. MCBRIDE, chief sponsor, stated this bill is to revise and clarify Montana's code of ethics to improve enforcement and to make it more stringent.

Page 1, lines 16-22 define public trust. It clarifies what employees of the state or officials may not do. Page 2, section 2 deals with rules of conduct. Page 3, section 3, lines 18-21 deal with guidelines

for public employees and officials. Page 5, line 15 clarifies the whole section on voting, an example is teachers voting on teacher's issue. It clarifies it is not a breach of ethical conduct. Page 6, line 10 adds language to what may constitute misconduct.

ALLEN OSTBY, Common Cause, feels this bill would restore the public's confidence.

There were no further proponents.

There were no opponents.

In closing, REP. MCBRIDE stated the bill gives guidelines and helps restore the public's interest.

REP. HANNAH questioned economic benefit. REP. MCBRIDE gave an example of a bill dealing with hunting privileges. If there was a person who lived in that area and would benefit economically, he would have a conflict of interest.

REP. DAILY asked if there is a problem in the legislature with this. REP. MCBRIDE stated she did not introduce the bill to address a particular problem. She stated we all need the types of guidelines stated in the bill. REP. MCBRIDE stated everyone has economic interests in one thing or another. The changes in the bill would not change the privacy act.

REP. CURTISS asked if this bill passed would legislators be required to publish official statements of disclosure. REP. MCBRIDE stated she did not know the effect of that.

HOUSE BILL 364 REP. VINCENT, chief sponsor, stated a lot of people talked to him about problems of this bill, however, no one had objections to the bill after he explained it to them. This bill would provide that a person with .10 percent alcohol in his blood is guilty of driving or being in control of a motor vehicle within this state while under the influence of alcohol.

REP. VINCENT explained the problem with the bill is based on Washington State constitution with a similar bill they had. In Washington, taking a test for alcohol .10 percent in the system has been ruled out because you would have to have had an attorney present to administer the test at the scene. There were 275 fatal accidents in 1975. There were 332 fatalities involved; 164 involved at least one driver drinking. Many of the accidents involve an innocent victim.

The bill calls for a mandatory one day jail sentence on the first offense. There is little flexibility. The prospect is if a person is found guilty of DWI he might be deterred from doing it again.

REP. VINCENT stated Swedish law states a person loses his license, there is a jail sentence, and a fine on the first offense of drunk driving. The fine for shooting a deer out of season in Montana is higher than DWI on the first offense.

MIKE MURRAY, Department of Justice, supports the bill. He feels page 5, lines 21-23 should be amended to read "to complete an alcohol information school at an alcohol treatment program approved by the Department of Institutions." MURRAY gave EXHIBIT 1 with the proposed change.

ALBERT GOKE, Highway Safety, supports the intent of the bill. GOKE feels there is a serious problem. If properly worded this bill could read to support alcohol schools. GOKE stated the final section of the bill is seriously flawed as far as the constitution. The individual should pay for the cost of the school.

MIKE MCGRATH, Department of Justice, supports the intent of the bill. MCGRATH handed out EXHIBIT 2 which lists areas of concern identified by the Department of Justice.

D. B. TOOLEY, Montana Highway Patrol, supports the intent of the bill to get the drunk driver off the road. His records indicate currently 45-50% of the people who are arrested for drunk driving are currently attending schools. He feels it would be a good idea to be mandatory.

There were no further proponents.

There were no opponents.

REP. VINCENT stated in closing he was sorry he could not correct the problems of the bill before it came to the committee.

REP. CURTISS asked if there would be a duplication of effort with alcohol programs. REP. VINCENT replied the intent was not to duplicate. REP. EUDAILY asked about the school. It was replied the alcohol school is an information school of five sessions, two hours each. They have educational means of getting across information about alcohol, drinking and driving, etc. They are able to distinguish the people who got caught drinking and driving as compared to the person who cannot make a decision on alcohol.

REP. BENNETT asked if penalties reduce the drinking and driving. REP. VINCENT did not know.

CHAIRMAN KEYSER suggested the sponsor and witnesses get together to work out possible amendments to bring back to a subcommittee.

HOUSE BILL 379 REP. HEMSTAD, chief sponsor, stated this bill is by request of the State Auditor's Office. It is a bill to increase the maximum sentence for criminal violations of the Montana Securities Act.

BRUCE LARSON, Attorney of State Auditor's Office, stated under the Securities Act a person who is caught stealing can be fined \$5000 and sentenced three years in prison. LARSON feels the current statute of limitations should be extended. Often times an investor does not know he has been defrauded until the five-year limitation is over. The Department wants the ability to go in after the five-year limitation on a one year discrepancy after the finding of the crime.

There were no further proponents.

There were no opponents.

REP. HEMSTAD closed the bill.

HOUSE BILL 443 REP. BRAND, chief sponsor, stated this bill is to require the attorney general to prepare instructions on how to probate a will or settle an estate, etc., and to distribute the instructions and forms to the public.

DENNIS DUNPHY, Department of Justice, stated they were neither for or against the bill. He stated one of the problems is that people are not seeking advice like they should be. This would be an important service as it would produce a manual that would outline procedures which could serve as a mechanism to get people to an attorney when they need one.

The manual would be supervised by the Attorney General's office. It would be a step-by-step procedure that would list when it is advisable to seek an attorney and guidelines along the way. If the law is passed as written we could provide a service to the public by assisting them in handling their own affairs and secondarily encourage them to seek professional advice when needed.

In closing, REP. BRAND feels this is an important piece of legislation.

REP. HANNAH inquired if this will help the state to assist people who are competent to help themselves. DUNPHY replied they believe it could help advise in the area of probate.

REP. EUDAILY asked if there was a fiscal note. REP. BRAND replied if the committee wanted one it would be made.

TOM STOLL, Department of Revenue, stated he does not take a stand

on the bill. STOLL stated there would be plenty of funds that would be taken out of the general account.

That ended the discussion on House Bill 443.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:05.

HOUSE BILL 359 REP. CONN moved do not pass.

REP. HUENNEKENS stated a permit is needed in any case. He questioned if there shall be a fee for the investigation.

REP. HUENNEKENS made a substitute motion of do pass.

REP. HUENNEKENS moved to amend from \$25 to \$5.

REP. BENNETT stated the initial expense should be \$25 for the first application and \$5 for the second time.

REP. MATSKO stated there was a study he knows of in Cascade county that addresses this.

REP. DAILY moved to hold the bill in committee until the Cascade information comes in.

The motion passed unanimously.

HOUSE BILL 361 REP. DAILY moved do pass.

REP. KEEDY moved to amend page 1, lines 19 and ~~20~~ following "between" on line 19 striking through "and" on line 20; and inserting after offense: "and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction." The amendment passed.

REP. EUDAILY moved do pass as amended. The motion failed 11 to 6. Those representatives voting no were: SEIFERT, BENNETT, CONN, CURTISS, EUDAILY, IVERSON, ANDERSON, ABRAMS, HUENNEKENS, SHELDEN, and YARDLEY. Those voting yes were: HANNAH, MATSKO, DAILY, KEEDY, BROWN and MCLANE.

REP. ANDERSON moved to reverse the vote to do not pass. REP. KEEDY objected to the motion.

The motion of do not pass by REP. ANDERSON passed 9 to 8. Those

voting yes were: SEIFERT, BENNETT, CONN, EUDAILY, ANDERSON, ABRAMS, HUENNEKENS, SHELDEN and YARDLEY. Those voting no were: KEYSER, CURTISS, HANNAH, MATSKO, DAILY, KEEDY, BROWN and MCLANE. REP. DAILY requested a minority report of do pass.

HOUSE JOINT RESOLUTION 15 REP. DAILY moved do pass. DAILY stated if the committee does not like the law they should vote for this bill. The states should have to start telling congress what is right.

REP. SEIFERT stated it was the best testimony on both sides he has ever heard on the issue. REP. SEIFERT said there is a lot of philosophical differences between the two sides.

REP. HUENNEKENS stated we are moving into an area that can be nothing but divisive. He stated this issue will split the country right down the middle. REP. HANNAH stated he felt the committee should bring this out to the floor so freshmen legislators as well as the others could debate it.

REP. DAILY stated it is a decision that should be made between the woman and her doctor. He wished the Supreme Court would have stated it was none of their business and not heard the case.

The motion of do pass failed 11 to 7. Those voting no were: KEYSER, BENNETT, CONN, MCLANE, ANDERSON, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, YARDLEY and BROWN. Those voting yes were: SEIFERT, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, and DAILY.

REP. KEEDY moved to reverse the vote to do not pass. Those voting yes were: KEYSER, BENNETT, CONN, MCLANE, ANDERSON, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, YARDLEY and BROWN. Those voting no were: SEIFERT, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, and DAILY.

REP. HANNAH requested a minority report be submitted.

HOUSE BILL 263 REP. SEIFERT moved do not pass.

The motion of do not pass carried 12 to 6. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, DAILY and BROWN. Those voting no were: ANDERSON, ABRAMS, HUENNEKENS, SHELDEN, KEEDY and YARDLEY.

HOUSE BILL 379 REP. CURTISS moved do pass. REP. CURTISS stated there is increased instances of fraud and this bill would help address that. REP. KEEDY stated he like the bill.

JIM LEAR read to the committee parts of 45-1-205.

The motion of do pass passed unanimously.

HOUSE BILL 443 REP. HANNAH moved do not pass.

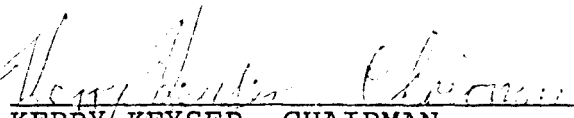
REP. HANNAH stated this is an example of more government instead of less. This would require having a professional write the manual, clerks to be trained to help with it in each county, and probably an advertisement plan to make the people aware of the service.

REP. EUDAILY stated this would be funded through the general fund and it would take \$95,000 out of the fund.

REP. YARDLEY stated he has problems with the bill because probate is a complicated matter.

The motion of do not pass carried with REP. KEYSER, KEEDY, SHELDEN and HUENNEKENS voting no. REP. YARDLEY abstained.

The meeting adjourned at 11:15 a.m.



KERRY KEYSER, CHAIRMAN
mr

HOUSE COMMITTEE

Date 1/30/81

NSOR

ΟΡΡΟΣ

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE

COMMITTEE

ILL 364
INSOR VINCENT, CONN

Date 1/30/81

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

COMMITTEE

BILL

JNSOR

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Suggested Modifications of HB 364

DARRYL BRUNO, Chief

Community and Program Development Bureau

Alcohol and Drug Abuse Division

Department of Institutions

Page 5

Lines 21-23: to complete an alcohol information school
at an alcohol treatment program approved
by the Department of Institutions.

TESTIMONY PRESENTED TO THE HOUSE JUDICIARY COMMITTEE

47th Legislature

By The Department of Justice

H.B. 364

30 January 1981

The following items are areas of concern identified by the Department of Justice after a preliminary review of H.B. 364 regarding D.U.I. (sections 61-8-101, 61-8-401, and 61-8-714, MCA):

1. The proposed legislation departs from existing law which establishes presumptions for driving under the influence of alcohol. Under the proposed legislation a blood alcohol reading of .10 percent or more is a per se violation of the criminal statute. This approach to D.U.I. is apparently adopted from statutes of the state of Washington. The Supreme Court of the United States in Washington v. Fitzsimmons, Docket No. 80-365 (decided last year), was faced with a challenge to the procedures followed under Washington's per se law. The Court held that the breathalyzer test was a "critical stage" in criminal proceedings and that therefore legal counsel must be present in every case unless waived. This decision puts the taking of a breathalyzer test in the same category with custodial investigation by law enforcement (Miranda Situations) and police lineups in every state with a per se D.U.I. law. In Montana, it would mean that a D.U.I. suspect arrested in Colstrip at 2 a.m. would have to be transported to Forsyth and an attorney summoned to witness the testing process. We've begun to build considerable, favorable case law under present law and haven't had a serious problem with convictions. Also, under the implied consent law, many defendants may refuse to take a breathalyzer and take their chances in the courts.

2. Unlike existing law, there is no specificity in the proposed legislation as to the degree to which a drug must affect driving to constitute a violation. Therefore, under the terms of the legislation as proposed, a person could conceivably be convicted of D.U.I. while operating under the effects of his morning cup of coffee. Ref. Sec. 61-8-401(1)(c); H.B. 364, sec. 2.

3. The proposed legislation imposes an assessment on bail and penalties to fund driver services programs and a statewide alcohol safety action program. A similar statute was enacted in

1965 to fund the operations of driver education programs in the Montana high schools. In Sanders v. Butte, 151 Mont. 171 (1968), the Montana Supreme Court struck down the assessment established by the Legislature. The Court characterized the assessment on bail as "... an unreasonable toll, tax fee, penalty, assessment, or what have you on a man's liberty. As such it is a deprivation of due process under (the Constitution of Montana)." The assessment on fines was struck down on other constitutional grounds.

4. Section 1 of the bill, in broadening the application of the D.U.I. statutes to areas other than simply on Montana highways is covered by H.B. 162, introduced by Rep. Gould, which has already passed in the House. However, the exception created in section 2 of H.B. 364 (top of page 4) (for physical control) would leave us with a law which is more liberal than existing statutes. Under the exception, an individual stuck in the median or in the borrow pit with the engine running and passed out against the steering wheel would not be in violation of the law. This is so because the definition of roadway in the vehicle codes is significantly narrower than the definition of highway -- which includes the entire width of the right-of-way.

5. The potential jail term for a second offense of D.U.I. under the proposed legislation is shorter than that for a first offense. The maximum penalty provided here for a second offense is thirty days, first offense is one year. Ref. H.B. 364, sec. 3.

6 The enhanced penalty for a D.U.I. conviction while an individual's license is suspended or revoked could result in a situation in which an individual's license which had been suspended for alteration or for accumulating fifteen points within three years would suffer an enhanced penalty on first conviction of D.U.I.

7. An ambiguity is created in H.B. 364 at page 5 regarding the authority given to municipalities. Does the Legislature intend to allow municipalities to create their own definitions of D.U.I. as long as the definition is "more stringent" than the state's definition? Does the Legislature intend that municipalities may impose penalties for D.U.I. more stringent than provided for in the state statute? The Supreme Court has held it to be inappropriate to expand the authority of a lower court without a specific legislative enactment.

8. To the extent that increased penalties without provision for suspended sentences increase pressures for reduction of D.U.I.s to reckless driving (a not infrequent practice even under the present law), the Division of Motor Vehicles' ability to suspend

or revoke the driver license of a drunken driver will be impaired. For example, an individual convicted of first offense D.U.I. loses his license for six months. An individual convicted a second or subsequent time within five years has his license revoked for a period of one year. On the other hand, an individual would have to be convicted of reckless driving three times within a single year in order to have his license revoked.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 443

Date 1/30/81

ANALYST: BRAND:

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.