

THE MINUTES OF THE EXECUTIVE MEETING OF THE JUDICIARY COMMITTEE  
February 11, 1981

The meeting was called to order by Vice-Chairman Carl Seifert at 8:00 a.m. in room 437 of the Capitol. All members were present except Rep. Kerry Keyser, who was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 598 REP. YARDLEY moved do pass. It was decided to hold action on this bill until John Maynard was present with amendments later during the meeting.

HOUSE BILL 576 REP. IVERSON moved do not pass.

REP. YARDLEY, sponsor of the bill, stated the wrong section is in the bill.

He would not oppose the motion.

The motion of do not pass carried 16-0. (Absent members were REP. ANDERSON and REP. HANNAH).

HOUSE BILL 598 JOHN MAYNARD was available to present amendments to the committee. The first amendment was on line 18 changing "shall" to "may". There are points in time when the state would argue that a stay should be continued then a new execution date set. The other amendment was on line 20 after 90 days striking "date of dissolution of stay" and inserting "from the day the date is set".

REP. BROWN moved the amendments as stated by MAYNARD.

REP. KEEDY made a substitute motion to strike "may" on line 18 and insert "shall" and on page 1, line 19 following "stay" insert "and petition by the state", and to include REP. BROWN's second amendment.

All were in favor of the amendment.

REP. EUDAILY moved do pass as amended. The motion passed 16-0 (Absent members were REP. KEYSER, REP. ANDERSON and REP. HANNAH).

HOUSE BILL 531 REP. TEAGUE moved do pass. REP. TEAGUE stated he would like the doctor's discretion to be in the bill. There should be an effective date on records so they could not pick up something in the past.

REP. KEEDY did not want the doctor's discretion. If the patient is able to receive only certain records the right is diluted.

REP. HUENNEKENS stated physician's think they are God making all the decisions for the patient. This will demand the doctor to handle the

records and he might destroy them.

REP. HANNAH agreed with the bill. He further stated the medical insurance companies verify that claims are paid. This could create problems for them.

REP. KEEDY stated the fact that records are not complete does not mean they are not valid. Most people would go to the doctor to get records and not to the insurance company. You have every right to see what the basis of denial was by the insurance company. The third party has the discretion to transfer the information to the patient's doctor.

REP. CURTISS felt doctors should release x-rays to the patient. Many times the patient has to go to a specialist and have duplicate x-rays made.

REP. EUDAILY made a substitute motion of do not pass.

REP. EUDAILY stated he has never been refused in his requests for information.

REP. TEAGUE asked if the sponsor would oppose a summary of the records given to the patient. REP. KEEDY was reluctant to accept that type of amendment. If he can summarize he can leave out things the patient has the right to know.

REP. MCLANE did not feel there is much of a problem. She has been able to take x-rays and medical records from Laurel to Billings when the need arose.

REP. CONN indicated if some patients are given all the information in their files they might worry themselves to death. It is best for the doctor to decide.

REP. HUENNEKENS felt this was meddling into the doctor-patient relationship.

REP. KEEDY replied that the legislature is not saying they have superior knowledge above the doctors. This bill is just indicating that upon request of the patient the records shall be made available.

REP. EUDAILY stated if a patient was not satisfied with a doctor he would find a different doctor. REP. EUDAILY stated there is not enough of a problem with the present law to change it. There are isolated cases in just about everything. Most people take prescriptions without even knowing what they are.

REP. ABRAMS stated a situation where a doctor was moving west. He told all of his patients he would sell their records to them. If

they did not purchase them they would be destroyed.

REP. HANNAH stated if it is not a problem nothing is affected by the bill. In rural areas patients might not have a choice of doctors.

A roll call vote on the motion of do not pass resulted. Those voting yes were: REP. CONN, REP. EUDAILY, REP. MCLANE, and REP. YARDLEY. Those voting no were: REP. SEIFERT, REP. BENNETT, REP. CURTISS, REP. HANNAH, REP. IVERSON, REP. MATSKO, REP. ANDERSON, REP. HUENNEKENS, REP. SHELDEN, REP. KEEDY and REP. TEAGUE, REP. ABRAMS. The motion failed 12 to 4.

REP. IVERSON moved to reverse the vote to do pass. Those voting yes were: REP. SEIFERT, REP. BENNETT, REP. CURTISS, REP. HANNAH, REP. IVERSON, REP. MATSKO, REP. ANDERSON, REP. ABRAMS, REP. HUENNEKENS, REP. SHELDEN, REP. KEEDY and REP. TEAGUE. Those voting no were: REP. CONN, REP. EUDAILY, REP. MCLANE, and REP. YARDLEY.

House Bill 531 passed.

HOUSE BILL 519 REP. CURTISS moved do not pass. She stated that testimony given indicated this is not the way to go.

REP. SEIFERT indicated the original intent of Swan River Youth Camp was built to handle youths up to 18 years old out of Pine Hills and Mountain View schools. The camp was designed for 55-60 people. They have ended up with about 30 people which is not up to capacity.

Some of the judges a few years were sending adult offenders up to 25 years old to the camp. There is nothing in the statutes that allow them to do this. At the present time the average age at the camp is 23. REP. SEIFERT is against the bill in particular lines 19-21 on page 5. It is considered as a youth camp up to 18 years old. The Department may establish rules to let them be placed in the camp. The law is weakened more and more each session. There is not much security there.

REP. YARDLEY stated he served on a subcommittee of Department of Institutions. The law does not allow youth and adult offenders to be lodged in the same facility. There are currently 45 people between the ages of 18 and 25 at the camp. Nothing changes in this bill what they have been doing. This bill basically makes what is going on comply with the law.

REP. KEEDY felt this is a bad bill because it will lock us into a situation which we may want to retreat from in years to come. When an opportunity presents itself to reconvert to youth camp we won't be able to with this bill on the books.

REP. HANNAH stated the problem is the Department of Institutions has already done it. REP. SEIFERT replied that was about three sessions ago. REP. KEEDY stated it was his understanding the request was by the Department of Institutions.

REP. HANNAH stated it needs to be clarified. The judges would be in violation of the federal law if they place adults with youths. REP. KEEDY stated on page 2, line 19 the director of the Department of Institutions designates it.

The department with the court will decide where the person goes or can transfer him.

REP. CONN felt the prison would not be able to handle the population if these adults are forced to go from the camp to the prison. The bill should pass.

REP. MATSKO stated one problem is adults are considered by law as 18 instead of 19 or 21. The bill could be passed to stop juveniles from being placed in there. Maybe a new camp would have to be set up.

REP. DAILY agreed with REP. KEEDY. This is getting away from the facility's original purpose. It is not fair to the people who live around the area. If we as legislators feel there is a need for additional prison space we should look at the prisons. We should look at what the people want.

REP. BENNETT asked if the bill is killed will anything change? REP. YARDLEY stated this bill just says an adult over 18 could be sent up there. Some courts like to designate where the offender goes.

REP. ANDERSON asked if the bill has an age limit. REP. YARDLEY stated no one under 25 could be there.

REP. ANDERSON stated he lives near the facility and it is functioning better with the adult offender than with the youth offender.

REP. SHELDEN stated since it has worked so well why not accept the fact.

REP. EUDAILY moved to amend line 6 and the title striking youth and to insert young adult throughout the bill.

JIM LEAR stated 41-5-523 would be altered if that provision would be made.

REP. EUDAILY made a substitute motion to strike youth. JIM LEAR stated it would be better to strike the word youth and not replace it. The motion to strike youth throughout the bill passed with only REP. DAILY voting no. (REP. IVERSON and REP. ANDERSON were absent during the vote). REP. DAILY stated his reason for voting no was it should be kept as a bad bill instead of trying to amend it.

REP. YARDLEY moved the statement of intent be included with the bill. EXHIBIT 1. The motion passed with REP. DAILY voting no. (REP. ANDERSON was absent during the vote).

REP. CURTISS moved do not pass as amended. A roll call vote resulted. Those voting yes were: REP. SEIFERT, REP. BENNETT, REP. CURTISS, REP. HANNAH, REP. IVERSON, REP. MATSKO, REP. MCLANE, REP. ANDERSON, REP. DAILY, REP. KEEDY, REP. TEAGUE and REP. BROWN. Those voting no were: REP. CONN, REP. EUDAILY, REP. ABRAMS, REP. HUENNEKENS, REP. SHELDEN and REP. YARDLEY. REP. YARDLEY requested a minority report. Those representatives who requested to be on the minority report were: REP. YARDLEY, REP. HUENNEKENS, REP. CONN, REP. ABRAMS and REP. EUDAILY.

HOUSE BILL 590 REP. HUENNEKENS moved do pass. After a brief discussion it was decided to hold the bill until amendments were brought in. REP. HUENNEKENS withdrew his motion.

HOUSE BILL 621 REP. HUENNEKENS moved do pass. He stated there is a problem with computer-related crimes and this bill will help solve it. Computers are being used throughout the state. The motion passed 17 to 1 with REP. MCLANE voting no. (REP. TEAGUE was absent during the vote).

HOUSE BILL 208 REP. KEEDY moved do pass.

REP. KEEDY handed out an amendment to the bill. EXHIBIT 2. REP. KEEDY moved the amendment be adopted.

REP. EUDAILY inquired if the title would have to be changed. JIM LEAR stated no-just an internal reference to the section would be made. The amendment passed unanimously. (REP. ANDERSON was absent during the vote).

REP. KEEDY moved to amend page 1, line 21 following "(c)" inserting "except in 45-5-502,". The motion passed unanimously. (REP. ANDERSON was absent during the vote).

REP. KEEDY moved do pass as amended. The motion carried with REP. YARDLEY, REP. TEAGUE, REP. BENNETT, and REP. EUDAILY voting no. (REP. ANDERSON was absent during the vote).

HOUSE BILL 5 REP. YARDLEY moved do pass. The amendments and minutes of the sentencing subcommittee were given out. EXHIBIT 3. REP. YARDLEY moved the amendments do pass. Testimony indicates 90-95% of all cases have some type of plea bargaining used. There

is no procedure now. This would make it public record and make it uniform throughout the state.

REP. EUDAILY stated the subcommittee recommends do pass as amended. The amendments passed unanimously. (REP. ANDERSON was absent during the vote).

REP. YARDLEY moved do pass as amended. The motion passed unanimously. (REP. ANDERSON was absent during the vote.)

HOUSE BILL 626 REP. IVERSON moved do pass.

REP. HUENNEKENS opposed the motion. He did not feel the committee was in a position to take action. There is no background to do it. No other state has done it.

REP. HANNAH was in favor of the motion. The subject needs to be repealed, changed or addressed.

REP. CURTISS asked JIM LEAR to do research on information from California. JIM LEAR stated there are three bills introduced in California addressing this situation, all to amend their constitution.

REP. DAILY was in favor of repealing the exclusionary rule. There are bad judges as well as bad policeman. REP. DAILY stated we are getting into the middle of it. If it happened one time other police officers would be hesitant to obtain a search warrant. REP. DAILY thought the committee should amend everything out except lines 5 and 8. REP. DAILY felt SCULLY's testimony was valid in parts.

REP. MATSKO, as a police officer, stated he would not touch a search warrant with a ten foot pole if this bill was passed. A judge issues the search warrant. The officer goes to the place and confiscates the evidence, which is taken back to the court. Later, when the action is brought in front of the judge, he might reverse his decision saying no initial reason for the search.

REP. CONN stated on page 3, civil liability exclusion would be against the state not the employee. The only decision is whether it was done in good faith. REP. IVERSON stated in order to prosecute you have to prove he did not act in good faith. The purpose is not to create what will not work, it is to force the supreme court to take another look. REP. IVERSON supports the bill.

REP. HANNAH asked if the sponsor would object to the removal of section 6. REP. KEEDY was not really sure.

REP. MATSKO felt that there would be a lesser problem if it was indicated as "willful" violation. An officer, may deserve it if he

has injured another party on purpose.

REP. DAILY supports the repealing of the exclusionary rule but feels the bill will cause more problems as written. REP. DAILY made a substitute motion to table the bill. After a brief discussion REP. DAILY withdrew his motion to table the bill and made the motion to delay action on the bill until committee members spoke with their law enforcement officers.

The motion to postpone action carried with KEEDY, BENNETT, and SEIFERT voting no. (REP. ANDERSON was absent during the vote).

HOUSE BILL 534 REP. HANNAH moved do pass.

REP. MCLANE asked if there were amendments. It was stated the procedure is clarified on page 5.

REP. CURTISS felt the department does this now. It seems strange they did not come to testify. REP. CURTISS opposes the bill.

REP. HUENNEKENS stated money recovered goes to the county. This would provide the debtor a fair hearing.

The motion of do pass carried with REP. CURTISS and REP. KEEDY voting no. (REP. IVERSON, REP. ANDERSON, REP. BENNETT were absent during the vote).

The meeting adjourned at 10:50 a.m.

  
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CARL SEIFERT, VICE-CHAIRMAN

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Exhibit 1

STATEMENT OF INTENT FOR HB 518

Before House Judiciary Committee

The Department of Institutions has requested this legislation which would revise the existing statutes which allow placement of juvenile offenders at the Swan River Youth Forest Camp. This statement of intent is required because Section 3 of the bill enacts language authorizing the department to establish rules for placement and release of persons placed in youth forest camps.

According to the Federal Juvenile Justice Act (Public Law 93-415, as amended by Public Law 95-509) juvenile delinquents shall not be housed or detained in an institution where they would have regular contact with adult persons convicted of felony offenses. Due to the Federal legislation and program changes instituted by the department, Swan River Youth Forest Camp will now only incarcerate young adult felony offenders with a minimum security rating. This act will prohibit any judicial commitments to the institution.

The department will have rule making authority which will establish the criteria for admission or transfers to the camp, programmatic and security operation of the camp, rules for release or transfers back to more secure facilities and any other rules necessary to implement this act. The department intends that these rules will be drafted with the assistance of the warden of the Montana State Prison and the superintendent of the camp to insure consistency with existing regulations and goals.



AMENDMENT TO HOUSE BILL 208

Proposed by Representative Keedy

1. Page 1, lines 16 and 17.

Following "is"

Strike: "not" on line 16 through "him" on line 17

Insert: "compelled to submit by force, coercion, or  
intimidation or by deception or threat as defined  
in 45-2-101"

MINUTES OF THE SUBCOMMITTEE MEETING - SENTENCING  
February 7, 1981

HOUSE BILL 5

REP. YARDLEY proposed amendments (amendments 2 through 6) and said that except for arrangement, they were an adaption of language from existing federal rules.

REP. KEEDY asked, referring to page 3 line 13, if the plea agreement is made under oath. REP. YARDLEY said no, and commented that the intent was to allow necessary discretion.

REP. HUENNEKENS moved do pass on amendment #2. The amendment passed unanimously.

REP. HUENNEKENS moved do pass on amendment #3. The amendment passed unanimously.

REP. HUENNEKENS moved do pass on amendment #4. The amendment passed unanimously.

REP. HUENNEKENS moved do pass on amendments #5 and #6. The amendments passed unanimously.

CHAIRMAN EUDAILY asked for discussion on the Bill.

REP. HUENNEKENS moved do pass on House Bill 5.

REP. HUENNEKENS asked if staff attorney, Jim Lear, had prepared amendments for line 22, page 1. Jim Lear presented amendment #1. REP. HUENNEKENS moved do pass on amendment #1. The amendment passed unanimously.

REP. KEEDY asked if amendments from the first subcommittee meeting (page 2 line 2) would be included. REP. EUDAILY said yes.

REP. YARDLEY said that there would be a conflict with his amendments.

REP. IVERSON moved to strike the page 2, line 2 amendments as approved at the January 13th meeting. The motion passed unanimously.

REP. HUENNEKENS moved to recommend do pass on House Bill 5. The motion passed unanimously.

The meeting ended at 9:00 a.m.

  
REP. RALPH EUDAILY, CHAIRMAN

mr

Attachment

HOUSE JUDICIARY SENTENCING SUBCOMMITTEE

Proposed Amendments to House Bill No. 5.

1. Page 1.

Following: line 22

Insert: "(2) Any agreement reached shall be reduced to writing and a copy given to the defendant."

Renumber: subsequent subsection

2. Page 1.

Following: line 24

Insert: "Section 2. Notice to court of plea agreement.

Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court."

Renumber: subsequent sections

3. Page 2, lines 1 through 3.

Following: "shall" on line 1

Strike: "hear the agreement upon arraignment. The agreement must be heard in open court and entered"

Insert: ", on the record, require the disclosure of the agreement in open court"

4. Page 2, line 4.

Following: "camera"

Strike: "and off the record"

5. Page 4, line 5.

Following: "through"

Strike: "7"

Insert: "8"

6. Page 4, line 8.

Following: "through"

Strike: "7"

Insert: "8"