

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 17, 1981

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

HOUSE BILL 689 REP. KEYSER stated this was a bill the Judiciary Committee had requested. This is to provide for the compulsion of incriminating testimony of witnesses before courts, state agencies, and the legislature.

REP. MATSKO, requestor of the bill, stated the purpose is to provide for "use immunity".

CARROLL BLEND gave the committee EXHIBIT 1. This bill removes the fifth amendment right and the person is required to testify. The alternative is use immunity. It cannot be used against him. BLEND stated this is patterned after a federal law in 1972 and adapted to Montana.

The first change in this bill is that only the prosecutor can ask for immunity. Under the present law either party can ask. The second change this creates is to allow administrative agencies to ask the district courts for immunity orders. At present the legislature would have to ask for transactional immunity. It governs as to what is in the statute.

There were no further proponents.

There were no opponents.

In closing, REP. MATSKO stated information was given to the committee when the bill was requested. It is unfair to take a principal party in an action and let him off. This will help stop people getting off because of immunity.

HOUSE BILL 690 REP. KEYSER stated this was a bill the Judiciary Committee had requested. This is to generally revise and clarify chapters pertaining to postconviction and habeas corpus relief.

REP. KEEDY, requestor of the bill, felt this would address many problems of postconviction relief. Presently there is no time limit. The perception of the public is designed more to promote delays and denials than justice.

JOHN MAYNARD, Attorney General's office, supports this bill. Whenever a person is convicted he has 60 days in which to appeal to the Supreme Court. If he does not file he is precluded from filing. He can, however, petition for postconviction relief. In that case it does nothing more than allow a second appeal. The current postconviction procedure act was from the 1955 Uniform Postconviction Act. This bill would tailor that act to serve

the needs of Montana. The problem is if a person pleads guilty and then waits 5-10 years before he challenges it the state has a problem in trying to retry him again.

This bill would eliminate from 46-21-108 the phrase "any justice of the supreme court". It would limit the time in which a person may petition to five years, which would be comparable to federal rules. It would eliminate the requirement that any argument in support be omitted. Section 4 of the 1955 act language is stricken. The bill also seeks to eliminate the second appeal. Many times the county attorney is served the papers but the Attorney General's office is not notified. Line 15 seeks to clarify what is contemplated. The time from which an appeal must be taken is limited to 60 days. It is currently 6 months. Six months is a big time lag.

There is a big confusion as to where postconviction relief and habeas corpus relief is limited to certain types of actions. It is not just another form of postconviction relief.

There were no further proponents.

There were no opponents.

REP. KEEDY closed the bill.

REP. HUENNEKENS asked about cases concerning a convict acting as his own attorney. Is the bill too restrictive for state pen inmates with the five year limit? MAYNARD stated there are few cases brought to court after five years from conviction. REP. HUENNEKENS wondered if the 60 days would be too restrictive on the inmate. MAYNARD replied the postconviction stage might be a burden on the plaintiff; 90% of cases at postconviction stage are legal actions. The hearings are usually limited to thirty minutes. The work should have been done prior to filing of the petition.

HOUSE BILL 644 REP. PAVLOVICH, chief sponsor stated this bill is to revise and clarify the gambling laws concerning electronic machines. The purpose is to make legal the county's option to decide if they want these machines. EXHIBIT 2, a list of amendments, and EXHIBIT 3, a newspaper article were handed out. REP. PAVLOVICH stated there was a bill in the senate similar to this that was killed. The problem was to leave it up to the county.

These are not slot machines. They have 78-81% pay off. With these machines you play against the machine.

BOB DURKEE, Montana Tavern Association, was in support of the bill. DURKEE felt killing the bill is not the answer. It needs to be defined who is responsible. With the proposed amendments it is

in the hands of the cities and counties.

There were no further proponents.

REV. GEORGE HARPER, Yellowstone Conference of the United Methodist Church, was in opposition to the bill. EXHIBIT 4.

JAN BROWN, Montana Association of Churches, opposed the bill.

GARY JENSEN, Montana Conference of Seventh Day Adventists, opposes the bill. Allowing electronic devices to be legal would open the door to casino-type gambling. These are games of chance. Section 5, page 4 and 5 would open trouble because it would not require the licensing of the machines mandatory. More and more gambling bills are being introduced. The sponsors are never satisfied. If Montana wants to be like Nevada then the legislature should pass all the bills. JENSEN feels greed is the rationale behind gambling. This would allow any group to get into the gambling business.

In closing, REP. PAVLOVICH stated it is the will of the people. Tavern owners are not bad people. They sponsor many youth and adult teams. Without their help many of these groups would not have sponsors. REP. PAVLOVICH does not feel Montana will become another Las Vegas. The mafia will not be coming into the state if this bill is passed. Money from this provides revenue. There are all kinds of bills that tax the cities, this would help them.

REP. YARDLEY stated the payoff is 78-81%. What machines payoff? The sponsor replied pinball. REP. YARDLEY asked if poker machines payoff. The sponsor stated they can.

REP. TEAGUE asked HARPER if the majority of Montana citizens want gambling. HARPER replied there was a vote of whether there should be laws governing gambling. It was decided there should be laws. The people want games like bingo and card games. They do not want casino-type gambling or machines. REP. TEAGUE asked how these machines were compared to Vegas machines. HARPER replied these machines are like Vegas machines because you don't play against the machine itself you play against an element of chance. REP. TEAGUE responded the machines are ones the player has to make a decision on; they are not slot machines. HARPER replied the machines are set by the company. A person cannot play the machines and bet it more than a certain amount of time.

REP. TEAGUE asked if poker machines are under the poker law. Yes was the answer.

REP. BROWN asked if this is a morality issue. HARPER replied we look at the history of gambling and we do not want that kind of

atmosphere to deal with in our personal life. It would be better as a state option than a local option.

REP. YARDLEY stated this bill has nothing to do with poker. The sponsor replied that would be left up to the local government.

REP. KEEDY inquired if there is a statute now that limits gambling activities to those communities who have that authority. The sponsor replied it is legal now up to \$100.00. This would only cover electronic poker games. REP. KEEDY stated he could bring a machine into an establishment and they could say no we don't want it, but if he brought in the actual card game they could not say anything. The sponsor stated that was correct.

HOUSE BILL 729 REP. HARRINGTON, chief sponsor, stated this bill is to permit the formation of nonprofit corporations to provide prepaid legal services. This bill was introduced at the request of the state bar. It was their feeling such matters should be regulated.

J. C. WEINGARTNER, State Bar Association, stated this bill is like a health insurance plan. It provides the members or the employer contributes to a fund which is regulated by a corporation. If a person has to have some form of legal service that would be covered. There are definitions in the terms of the bill. A person can go out and contact an attorney to see if he is interested in participating.

Page 4 of the bill lists rules and regulations the commissioner of insurance can issue. Page 5 authorizes the corporation to contract with attorneys in the state. The first time it was a closed contract with only one law firm. It is completely open now. Any attorney can participate. The corporation sets up the terms of the contract. All attorneys must be covered with malpractice insurance.

There were no further proponents.

There were no opponents.

In closing, the sponsor felt this was a good bill.

REP. EUDAILY asked if the attorney must expect the amount required or could he claim more. REP. HARRINGTON stated on page 6, section 9, the money paid would be as agreed upon.

REP. HUENNEKENS asked if this was patterned after a model law. It was based on a legal service act in Texas.

REP. HANNAH asked if there is a law prohibiting this now. There is no law that would prohibit that but it would not carry the rights

of the people.

HOUSE BILL 773 REP. KEEDY, chief sponsor of the bill, stated this is to provide for recording and distribution of sentencing data pertaining to the performance of district court judges. This bill is introduced for the public's right to know. It would allow the public to review the judge's decisions. It would also help the judge to see if he is unduly harsh or unduly lenient. It is safe to say that sentencing fulfills society's actions.

On page 2, line 4, the clerk of the district court would state the reasons of the judge for each case. It is important that the public have an idea of reasons of the judge. The material would be published quarterly.

DAVID STEWART was in support of the bill. The public measures what a judge does by the sentencing he hands down. A court clerk would record judgments. EXHIBIT 5. The supreme court clerk could use EXHIBIT 6 to keep a record of each judge's decisions. This might help the voters in Montana. The voters are entitled to information of what a judge is doing.

There were no further proponents.

There were no opponents.

REP. CURTISS asked who the interested parties might be and what provision is made for them to receive the information. REP. KEEDY replied anyone who is interested could simply ask for the information from the clerk's office.

REP. HANNAH asked about judges who are disqualified by an attorney. That would be important to know. REP. KEEDY replied little thought went into that. REP. HANNAH stated there are some judges who do not like to go to court and use their power to place pressure on both parties to settle out of court. REP. KEEDY replied in that case the information would not be placed on the record because it was settled out of court. Many times judges do a valuable service by doing this.

REP. DAILY said decisions are not simple. Should there be a listing of why the judge decided a particular way. REP. KEEDY replied there are limitations to the plan. It is a vast improvement over the present plan. REP. DAILY asked if this information should be available on an annual basis. REP. KEEDY replied the less frequent the information is available the less value the bill has. The idea is for public disclosure. Reasons why a judge voted a certain way would be written and submitted, as they are now.