

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 3, 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. All members were present except Rep. Iverson, who was excused and Rep. Teague, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 8 SENATOR VAN VALKENBURG, sponsor of the bill, stated this was to amend 46-18-201 to increase to five years the maximum period for deferred imposition of sentence for a felony. An interim committee on corrections policy and facility needs requested the bill. The maximum period for deferred imposition of sentence has been changed from three years to five years. If maximum deferment is increased there would be instances where judges would use the deferred sentence where they might not otherwise do so.

If theft is a person's first offense, it can be difficult to accomplish restitution of that money in a three year period. It is thought that the opportunity to make restitution will be enhanced. It gives the judge the ability to keep the person under supervision a longer period of time.

The positive incentive is getting a clean record with a deferred sentence.

There were no proponents.

There were no opponents.

SENATOR VAN VALKENBURG closed the bill.

REP. HANNAH asked if 18 year olds are primary applicants. The sponsor replied there is no age limit to the bill.

REP. KEEDY asked about a fiscal note. The Senator replied there is none. If the assumption is made that everyone who had a three year sentence would have a five year sentence that would be a false assumption. The judges do not use the deferred sentence as often as they could. This might help the individual and the community.

SENATE BILL 27 SENATOR S. BROWN, sponsor, stated this is to amend 7-32-2121 to charge the sheriff with the duty of supervising search and rescue operations in the field. It makes sense to have just one person in charge.

CHUCK O'REILLY, Montana Sheriffs & Peace Officers, was in support of the bill. Traditionally the sheriff's department has been in charge of these operations. However, there is nothing in the law that defines the sheriff is actually the one to be in charge. Private groups can come in and charge for their service. When a

private group is involved it is hard to say who is in charge of the two groups.

MIKE STEPHEN, Montana Association of Counties, supports the bill. Although this will cost the counties more money it will be a benefit. There has been a problem in the past where a family member is lost. Who actually says the search has been enough? There is a problem when a private organization comes in to search.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. EUDAILY asked who has the legal liability in these cases. O'REILLY stated currently the sheriff's department is liable and the bill would make the sheriff directly liable. The sheriff's department is the only agency opened 24 hours a day. The people call the sheriff when there is a problem. O'REILLY does not see an increase in funds needed if the bill is passed.

REP. EUDAILY asked if the sheriff's men have liability insurance. O'REILLY replied it is different in every county. They get some county funds, the rest is donations through fund drives.

REP. KEEDY asked under what authority are these people called to this. O'REILLY replied under the authority of the sheriff. Our power is very broad. The sheriff's department has the necessary resources including diving equipment, ropes, etc. A private helicopter and ambulance service are available free.

REP. KEEDY asked if in some counties search and rescue operations can be called other than through the sheriff's department. O'REILLY replied the sheriff is the chief law enforcement officer in the county.

REP. HANNAH asked if the sheriff's department can stop any search already in progress. O'REILLY replied they have that ability now. There have been instances where individuals have contracted with private groups. The sheriff's department was searching a river for a body. After three weeks with no sign of the body, they started a spot check method which went on for three months. The family hired people later on to walk the river and search. The sheriff's department cannot stop that as it is up to the family.

REP. HANNAH stated if total control were given to the department then it would seem we are also giving authority to begin and end searches. O'REILLY responded this bill is not changing anything. It is putting into effect what is practiced now.

SENATE BILL 24 SENATOR HAFFERMAN, sponsor, stated this is to eliminate exemptions from jury service. It qualifies when a juror may be excused. EXHIBIT 1 was read. EXHIBIT 2, a list of exemptions, was handed out.

J. C. WEINGARTNER was in favor of the bill. The important part of the bill is the section that is being repealed, section 3-15-311, which lists who does not have to serve on a jury. If a person wants to be excused from jury duty he signs an affidavit and the court determines whether he shall be excused. There are certain people who don't ever serve and others who are always being called. The burden is on the ones who always serve.

SENATOR JOE MAZUREK felt this is a good bill. The exemptions are very broad.

There were no further proponents.

There were no opponents.

REP. KEEDY asked what was being repealed in this bill. SENATOR MAZUREK replied 3-15-314 eliminates affidavit to claim exemption that he was employed in one of the listed occupations. The doctor in a large town would be able to get away from his practice to be on a jury yet a doctor in a small town might not.

REP. HANNAH asked if this was a one time thing. SENATOR MAZUREK replied there is an initial drawing of everyone who is eligible for jury duty. The affidavit could be filed at that time. If it was a continuing one then the judge could excuse that person. If not, it would apply on a case-by-case basis and could result in a continuing application.

REP. EUDAILY asked if there is a reason why a teacher would not be exempt under any circumstance since she has to be in the classroom. SENATOR MAZUREK replied that is how the list of exemptions started. Under this bill it will depend on the court's determination of each particular case.

REP. CURTISS asked about signing the affidavit. SENATOR MAZUREK replied if it is rejected the person is on the panel of those eligible to serve. There is a criminal statute for false swearing.

SENATE BILL 36 SENATOR GOODOVER, sponsor, stated this bill is to provide a method for district court judges as ex officio probate judges to issue deeds for lots. This is to correct a situation when it was repealed.

LEE HEIMAN, Legislative Council, spoke in favor of the bill. EXHIBIT 3.

There are still some of these deeds that have to be cleared up. The bill is needed to eliminate a really involved legal process. Since the judge will be holding the land in trust there will not be the problem with someone sneaking over to get the land. There is a real problem with some of the entry town site deeds.

There were no further proponents.

There were no opponents.

REP. YARDLEY asked if a normal title action covers this. HEIMAN replied they tried to work that out and it literally does not. Title insurance companies disagree with that.

REP. KEEDY asked if a claimant can claim a lot smaller than the township site. A lot is smaller. He would have to pick the township land and so possess it and have title to it since 1921. The RCM section provides only two sections. At one time a deed was issued then anybody else there would lose that right. REP. KEEDY asked if that is what we want. HEIMAN replied his job is to recreate the RCM. There are many ways to add to it.

REP. HANNAH asked if the federal law is the same as what is drafted. HEIMAN replied it is the RCM. Federal law has been repealed except in Alaska.

REP. HANNAH asked if the bill is applied will there be conflicting problems. HEIMAN did not think so.

SENATE BILL 29 SENATOR HAGER, sponsor, stated this bill is to prohibit persons who establish residence near agricultural or farming operations from bringing nuisance suits. The bill is introduced after similar legislation in Massachusetts and Georgia. It is not meant as a substitute of good management.

JO BRUNNER supported the bill. EXHIBIT 4.

PAT UNDERWOOD, Montana Farm Bureau, supported the bill. EXHIBIT 5.

RAY BECK, Montana Association Conservation Districts, supported the bill. EXHIBIT 6.

CHRIS JOHANSEN, Montana Farmers Union, supports the bill.

ALICE FRYSLIE, Montana Cattlemen and National Farmers, supports the bill.

JACK CASEY supports the bill.

JOHN ASAY supports the bill. EXHIBIT 7.

There were no further proponents.

Opponent MIKE MELOY, Montana Trial Lawyers Association, felt the bill has some problems. In the Helena valley dairy farms have depleted because of the city moving outward. A bill like this will not solve that problem. It puts into the law a new type of concept. The bill is exempt from nuisance suits and any complaint against the operation of livestock. Are chickens and turkeys livestock? This bill would prevent a person from bringing suit even though he was there first.

There were no further opponents.

In closing, SENATOR HAGER stated the realtors have no problem with the bill. Harassment and threat of these suits makes it difficult to operate this.

REP. YARDLEY asked for the definition of livestock. It was replied cattle, hogs, dairy and poultry are considered livestock.

REP. HANNAH asked if currently nuisance suits can be filed. MELOY responded it has to be clarified. The judge will decide whether the injury is adequate.

REP. HANNAH asked why this was just limited to agriculture activities. Softball fields are a type of nuisance in the summer around residential areas in the evenings. The sponsor replied noise pollution should be addressed in another bill.

REP. CURTISS asked if there was any consideration to qualify this. The sponsor replied if a facility has been in operation one year or more before another activity appeals.

#### EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:45 a.m.

SENATE BILL 8 REP. YARDLEY moved do pass. He felt this would give the judge additional discretion and give him more control. The sentence is still imposed.

REP. HANNAH felt the bill was too broad.

REP. YARDLEY stated the existing law is three years. It would not

be just to say that three years is given for an older person and five years is given for a young person.

REP. DAILY did not feel the committee should make deferred imposition easier. REP. HUENNEKENS replied the essential thing is we are making it harder.

REP. SEIFERT made a substitute motion to table the bill. The motion carried with YARDLEY, BENNETT, EUDAILY, and BROWN voting no.

SENATE BILL 24 REP. SEIFERT moved do pass.

The motion carried with BROWN and MCLANE voting no.

SENATE BILL 27 REP. SEIFERT moved do pass.

REP. HANNAH stated it needs to be clarified what happens if a member is called into service and they have to respond. REP. MATSKO replied as a member of the unit you say you will respond. If you don't you have stopped being in the unit.

REP. KEYSER stated search and rescue is formed for that. If they are called out that is where they will go. If they do, they are under the sheriff's supervision.

The committee asked Sheriff O'REILLY his opinion. O'REILLY stated it is a voluntary group. Work is coordinated with the sheriff's department. A roster is used to see who is available.

REP. HANNAH asked if this gives the sheriff that authority. O'REILLY replied that when the unit is formed the sheriff's department makes a call saying they would like volunteers to respond. The sheriff's department cannot force them to go.

REP. ANDERSON asked about abandoning a search. O'REILLY replied a sheriff could not stop a person from abandoning or continuing a search as long as he was not in violation of the law.

REP. HANNAH asked if the sheriff's department has jurisdiction inside the city limits. It was replied yes. The sheriff is the chief law enforcer in the county.

REP. KEEDY moved following "whenever" on line 17 page 2 to strike through "service" on line 18 and to insert "their services are requested by him". The motion failed with only HANNAH, BENNETT, EUDAILY and KEEDY voting for the amendment.

REP. SHELDEN made a motion to insert on line 18, page 2 "or volunteer for" after "into". The motion failed.

REP. KEEDY was convinced if this bill is passed the sheriff's office will be burdened with legal liability whenever they have to go out.

The motion of do pass carried with KEEDY, HANNAH, EUDAILY, and MCLANE voting against the motion.

SENATE BILL 36 REP. KEEDY moved do pass.

REP. KEEDY moved to postpone action on the bill until an amendment was drawn up. The motion carried.

SENATE BILL 29 REP. MCLANE moved do pass.

REP. CURTISS moved to amend page 2, line 7 after "more" inserting "before residential subdivision or other commercial development occurs". REP. HUENNEKENS felt subdivision is too restrictive. REP. CURTISS withdrew the motion.

REP. KEEDY moved to strike lines 6 and 7 after operation and to insert "longer than the complaining resident has been in possession or commercial establishment has been in operation". The amendment carried.

REP. KEEDY moved to amend the title and page 2, line 2 after "the" striking the rest of the line and line 3 through "manure" and insert "normal operation thereof".

REP. EUDAILY asked for an example of this. REP. KEEDY replied noise from daily farm operations, spraying, or flies.

The amendment carried.

REP. MCLANE moved do pass as amended.

REP. BENNETT felt the owner of the new place next to the farming operation is not being protected. It is being assumed every farmer will get along well with his neighbor. REP. KEEDY responded the second amendment would help eliminate cases where circumstances arose from abnormal operations.

REP. HANNAH felt this should not be tailored to one specific area. What about rifle ranges, baseball fields and airports? If there is a problem we are not doing our purpose if we don't address the whole problem.

Judiciary Committee  
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REP. YARDLEY did not feel there was a problem. Not very many local nuisance actions are brought up.

The motion of do pass as amended carried with BENNETT, YARDLEY, HANNAH and SEIFERT voting no.

The meeting adjourned at 11:10 a.m.


  
~~KERRY KEYSER, CHAIRMAN~~  
mr





Exhibit 1  
Exhibit A

# Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER  
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman  
Montana Senate  
Capitol Station  
Helena, Montana 59601

Dear Senator Hafferman:

There are two bills currently pending in the Senate in regard to the selection and exemption from service of jurors. The bill which you proposed eliminates the exemptions under MCA-3-15-311 and makes other changes in regard to excuses from service.

The second bill was proposed by the Clerks of Court of Montana and similarly repeals the exemption statute, but then goes on to change the process of selection by appointing the Clerk of Court the "Jury Commissioner". I have inspected both bills quite carefully and heartily endorse both. However, I would urge that the Clerk of Court's bill be passed by the Legislature because it encompasses your bill and puts in reform needed in the larger counties.

I would first like to address the question of jury exemptions. If you look at the history of the bill, you will see that most of the exemption statutes were passed in earlier times. The main concern was the taking of a person vital to community life from the community for a considerable period of time in jury service. Transportation was slow and the trip to the county seat might involve several days in itself. The automobile now makes such plea irrelevant.

*1 Day or 1 Case*

About the only other plea that the persons who now claim exemptions can really make is "I don't want to be bothered" or "I don't want to get involved". Far too often a judge hears that as the real reason that some person who claims an exemption under the present code does not want to serve. While these people claim to be too busy to partake in their civic duties, we frequently find them occupying ski hills, golf courses, taking extended vacations and the like. Such activities which really show that the real reason they want out of jury duty is as stated above.

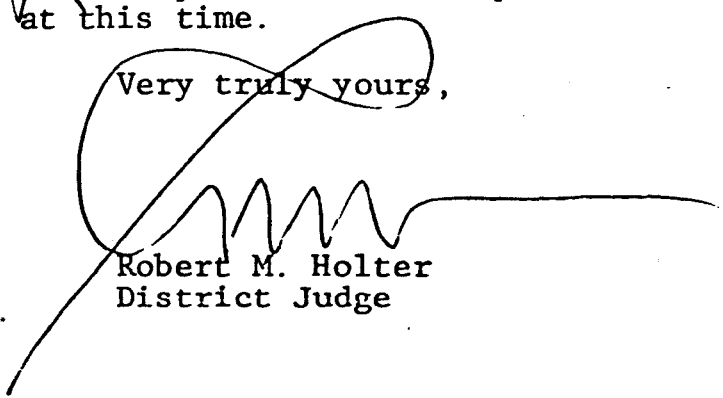
A careful perusal of the exemptions listed will show that the people exempted are the very ones who ought to

to serve on juries. The Legislature every session is in one manner or another approached by persons who wish to limit liability to themselves or their groups. All professional groups these days talk of "malpractice" yet these are the same ones who claim exemptions! Needless to say, it is ironic that the persons who claim to be targets of lawsuits do not want to serve on juries. In the smaller communities, these persons also represent the ones who have had better educational opportunities, greater exposure to the more complicated problems of life and as a result thereof are probably better informed. While they do not want to put aside their daily labors, I must remind you that their daily pay is no more important to them than a person who does not have the exemption. Nay, the person with less education probably sacrifices more by missing a few days of work.

In regard to the Jury ~~Commissioner~~ as suggested by the Clerks of Court of Montana. This is another jury service reform which will be very helpful. Under the present usage, it takes a great deal of the District Judge's time to comply with the jury selection requirements. Under the Clerk's bill, the Clerk would be substituted for the judge and would take over the judge's duties. The Clerk would be bound by the same stringent rules which guide the judge. Statewide, this bill will result in the saving of a great deal of the District Court Judge's time, freeing him for duties which are judicial other than simply administrative as the jury selection process is.

You have the right to utilize these observations for any purpose you wish in regard to the pending legislation. I wish I could spare the ~~time~~ to present them in person, but find it impossible to do at this time.

Very truly yours,



Robert M. Holter  
District Judge

RMH:jr

C. 1907; re-en. Sec. 4449, R.C.M. 1921; re-en. Sec. 4449, R.C.M. 1935; Sec. 16-810, R.C.M. 1947; R.C.M. 1947, 16-810, 93-1302.

**3-15-303. Who not competent.** A person is not competent to act as juror.

- (1) who does not possess the qualifications prescribed by 3-15-301; or
- (2) who has been convicted of malfeasance in office or any felony or other high crime.

History: En. Sec. 231, C. Civ. Proc. 1895; re-en. Sec. 6338, Rev. C. 1907; re-en. Sec. 8892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 199; re-en. Sec. 8892, R.C.M. 1935; R.C.M. 1947, 93-1303.

**3-15-304 through 3-15-310 reserved.**

**3-15-311. Who exempt.** (1) A person is exempt from liability to act as a juror if he is:

- (a) a judicial, civil, or military officer of the United States or of this state;
- (b) a person holding a public office in this state or in a county, city, or town of this state;
- (c) an attorney in practice;
- (d) a member of the clergy of any religion following his profession;
- (e) an editor following his profession;
- (f) a teacher in a university, college, academy, or school;
- (g) an employee of the Montana state school for the deaf and blind;
- (h) a practicing physician, dentist, or druggist actually engaged in the business of dispensing medicines;
- (i) a regularly licensed embalmer or undertaker;
- (j) an officer, keeper, or attendant of a hospital, mental health facility, or other charitable institution;
- (k) an officer or attendant of the state prison or a county jail on active duty;
- (l) an express agent, mail carrier, or superintendent, employee, or operator of a telegraph line doing general telegraph business in this state;
- (m) an active member of the national guard of Montana;
- (n) an active member of a fire department of any city or town of this state;
- (o) a superintendent on a railroad;
- (p) a nurse engaged in a case; or
- (q) a person caring directly for one or more children.

(2) The number of firefighters exempted under subsection (1)(n) may not exceed 28, including officers, for each company organized. The exempt members shall be selected from the roll of each company according to the seniority of membership. The secretary of each company shall make a list of the exempt members and file it with the clerk of the board of county commissioners on the first Mondays of March, June, September, and December. Failure to file the list is considered a waiver of the exemption.

(3) When a person claims exemption under subsection (1)(g), the certificate of the superintendent of the school, under the official seal of the school, is sufficient evidence of qualified employment.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en.

RE: Senate Bill 36

Repealed section from Revised Codes of Montana, 1947, that is basis for S.B. 36.

11-3026. (5356) District judge authorized to execute deeds—procedure. Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a townsite, under the provisions of an act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or other and subsequent acts of Congress relating to entering lands for townsite purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such townsite is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex officio probate judge, for any lot or tract of land situated in such townsite other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919;  
re-en. Sec. 5356, R. C. M. 1921.

NAME Jo Brunner BILL No. SB 29  
ADDRESS 531 South Oakes DATE 3/3  
WHOM DO YOU REPRESENT Women Involved in Farm Economics  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

Mr. Speaker, members of the committee, for the record, my name is Jo Brunner and I represent Women Involved in Farm Economics.

We are in support of Senate bill 29. We feel such protection for land owners and business people is long overdue. We have all at one time or another seen what happens to an established business when subdivisions crowd in around them, and find the odors and animals unacceptable. Before long the move is underway to eliminate that nuisance.

This would give the established business or operation the protection it needs.

We would like to see this carried <sup>a</sup> ~~one~~ step further so that offensive unincorporated businesses and operations could not move into small towns and subdivisions and set up work....

We ask that you pass Senate bill 29.

Thank you/

NAME

PAT Underwood

Bill No.

SB 29

ADDRESS

BOX 1207 Bozeman, MT.

DATE

MAR 3, 1981

WHOM DO YOU REPRESENT

MONTANA FARM BUREAU

SUPPORT



OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit 5

## Comments:

The MONTANA FARM BUREAU has policy which SUPPORTS the concepts presented in this BILL. IT is a good piece of legislation that is needed now in MONTANA, we URGE a "DO PASS" on SB 29.



# Montana Association Of Conservation Districts

Exhibit 6

7 Edwards  
Helena, Montana 59601  
Ph. 406-443-5711

SB 29

Studies indicate that an average of about 12 square miles of U.S. farmland each day is being paved over for parking lots and highways, subdivided for houses, factories and shopping centers, flooded to form reservoirs or converted to other uses. That adds up to a loss of 3 million acres a year, 1 million acres of which are considered prime agricultural land.

Senate Bill 29 addresses a problem that is becoming a big concern to many farm and ranch operators in Montana. Although this bill will not be the solution to all the pressures being placed on agricultural units where subdivision encroachment is taking place, it will eliminate the nuisance suit problems which will be a very big benefit.

The Montana Association of Conservation Districts and the Montana Association of State Grazing Districts would like to be shown in the record as in strong support of Senate Bill 29.

Thank you.

RAY BECK  
Executive Vice President

NAME John Asay BILL No. SB 29  
ADDRESS 800 5<sup>th</sup> St. DATE 2/3/81  
WHOM DO YOU REPRESENT Montana Cattlefeeders Assoc.  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

this legislation offers necessary and justifiable protection for the huge investments of existing Rural livestock businesses from the risks imposed by capriciously located later development.

Passage of Senate Bill 29 into law will impose responsible judgement on exploiters of rural property, inject fairness into relative judicial determinations, and offer relief from one unpredictable and unfair risk to an already high-risk agricultural investment.

We urge this committee to grant an affirmative vote for S.B. 29 and thank you for your favorable consideration.



## VISITORS' REGISTER

HOUSE.

JUDICIARY

COMMITTEE

SENATE

BILL

8

Date 3/3/81

SPONSOR

Van Valkenburg

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE

JUDICIARY

COMMITTEE

SENATE

BILL 27

Date 3/3/81

SPONSOR S. Brown

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE  
BILL 36 Date 3/3/81

SPONSOR . Goodover

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL 29

Date 3/3/81

SPONSOR Hager

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.