

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 6, 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. Iverson, Rep. Matsko, and Rep. Huennekens, who were excused. Jim Lear, Legislative Council, was present.

SENATE BILL 119 SENATOR OCHSNER, chief sponsor, stated this bill is to revise the duties of district court clerks.

DAN BUKVICH, Clerk of District Court, was in favor of the bill.
EXHIBIT 1.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. KEYSER asked if the sections that were being repealed with this bill were covered in other areas of law. BUKVICH replied yes.

SENATE BILL 120 SENATOR OCHSNER, chief sponsor, stated this bill is to revise the law relating to juries. It raises the pay of the jurors that are selected. It also designates the clerk of the court as jury commissioner.

CLARA GILREATH, Clerk of District Court, supports the bill. It updates the administrative procedure. It allows the clerk to be appointed jury commissioner. Current law requires the judge to select jurors one by one through a drawing of capsules. In the smaller counties where a judge is only available once a month the clerks are taking over this responsibility presently. This bill will make their actions legal.

LORRAINE VAN AUSTOL, Clerk of the Court in Bozeman, stated this bill is to help make it easier for calling of the jury. The judges in her county support the bill. A juror who is called and does not serve will receive an appearance fee of \$12.00. Those who are selected for the jury will receive \$25.00 per day.
EXHIBIT 2.

There were no further proponents.

There were no opponents.

SENATOR OCHSNER closed the bill.

REP. KEEDY asked about excused jurors. GILREATH replied many jurors come in and do not sit at the questioning. Before the court session begins they ask for an excuse to leave. It happens more than what some people realize. REP. EUDAILY asked who approves

the request for exemption. The judge does was the answer.

REP. BENNETT asked why the change from 5 to 15 days. The sponsor replied it pertains to districts that are so far out. Many of them receive their mail service only twice a week.

BUKVICH stated the clerk of the court, as court commissioner, will be under the supervision of the judge.

REP. YARDLEY asked why the change from December to June. BUKVICH responded right after the general election the clerks do not have time to be ready for December. The month of June would be better.

SENATE BILL 145 SENATOR HAGER, sponsor, stated this bill is to increase to \$7500 the value of an estate that may be administered by summary procedure. This would involve people who die without heirs. The limit originally was \$1500 but was raised to \$7500.

There were no proponents.

There were no opponents.

In closing the Senator stated the Public Administration requested the bill.

REP. KEEDY asked why \$7500 was chosen. The sponsor replied a figure was hard to come up with. Some attorneys felt \$7500 was appropriate.

REP. HANNAH asked if the sponsor would mind if the bill was increased to \$10,000. The sponsor did not.

REP. CURTISS asked about homestead allowances on page 2, line 15. The sponsor stated that was existing law. There is a certain value of real property and the home. REP. CURTISS asked if this was archaic and does it really correspond with the bill. It was felt that it was appropriate.

SENATE BILL 149 SENATOR VAN VALKENBURG, chief sponsor, stated this bill's purpose is to create the criminal offense of false statement in obtaining an account from a financial institution. The penalty is six months in jail or \$500. The purpose is to get at the bad check writer before he has done a great deal of damage. Police forces could do a better job going after the big, bad check writer if they could arrest immediately after a false name or false address was given. Often times the police are a day behind the bad check writer. This does not need to be a felony offense.

LARRY HUSS, Montana Savings & Loan League, was in full support.

There were no further proponents.

There were no opponents.

REP. EUDAILY asked why savings accounts were included in the bill. SENATOR VAN VALKENBURG replied certain privileges go with a savings account. Cards are issued for cash machines. When the bill was first introduced savings accounts were not included, however, it was felt it would be beneficial to include it. HUSS agrees that it was appropriate to include savings accounts.

REP. TEAGUE asked if a false statement of money available would be included. It was replied that would be under insufficient funds and would not be prosecuted under this bill.

REP. KEEDY asked what type of false statement is the bill referring to. HUSS replied if the person's intention was to open an account to use it to defraud merchants.

REP. DAILY asked what responsibility the bank has. HUSS replied it does not bear a financial responsibility. REP. DAILY stated when a customer deposits money in a bank and the bank gives him checks for use, they should be responsible.

REP. CONN asked if the fine would be designated on the signature card. No was the answer.

REP. KEEDY felt that next session all types of salesmen, etc. would want to be protected under a similar bill. The Senator replied that is a problem with every bill. The line has to be drawn somewhere.

SENATE BILL 162 SENATOR MAZUREK, sponsor, stated this bill is to amend 27-1-703 to provide for contribution from joint tortfeasors. EXHIBIT 3, an amendment to the bill, was given to the committee.

In 1977 the legislature passed a statute which provides for contributory to joint tortfeasors. It would be possible to recover from both parties. It applies only if the plaintiff is not negligent. Being a passenger in the car would not be negligent. You cannot join other defendants. In allowing a plaintiff to select a defendant if more than one is at fault, all should be in the same suit.

PAUL KELLER, American Insurance Association, supports the bill. KELLER described a case involving a car wreck that had multiple suits filed. This bill would prevent that. It would help the courts clear up the calendar as it would place it all in one suit.

There were no further proponents.

MIKE MELOY, Montana Trial Lawyers Association, opposed the bill. This bill makes it clear that negligence applies whether guilty or not. MELOY did not like lines 21-25 on page 1 of the bill. The plaintiff should be able to chose who he wants to sue. Trial lawyers are likely to sue the person most likely to prevail on a particular case. That permits the defendant to bring in many people.

There were no further proponents.

In closing, SENATOR MAZUREK stated it is the courts job to decide who is responsible. Anyone of the defendants should be able to sue by one lawsuit. It is a function of the court.

REP. HANNAH asked what the supreme court's opinion was. SENATOR MAZUREK replied the supreme court examined the legislative history. They suggest this is a matter for the legislature to work out.

REP. EUDAILY asked about 19a in the bill. Should it be 19b? SENATOR MAZUREK replied it should be 19b but it might be more appropriate to leave it just as 19 to accomplish the intent of the bill.

There was no further discussion on the bill.

SENATE BILL 14 SENATOR TOWE, chief sponsor, stated this bill's purpose is to amend 46-18-201 providing for fines and assessment of costs in felony criminal cases. There are certain white collar crimes, where for a variety of reasons, incarceration is not a likely solution, yet nothing else is available. It is to add to punishments. It also provides that the individual can be required to pay the court costs.

Section 1 provides in felony cases where penalties of imprisonment may be imposed. Crimes against the body are in addition to that. It does not make sense to fine the criminal. If he is not able to pay the fine he must take into account the nature of the burden.

Section 4 limits the amount to \$50,000. In addition to the fine or in lieu of the fine, he may be required to pay court costs, transportation costs, witness fees, etc., depending on if he can pay the costs. The only way to revoke this is if he fails to make a good faith effort to pay. Installment payments are available.

This bill puts money into the general county fund. Section 6 of the bill makes it govern to existing law.

TOM HONZEL, County Attorneys, supports the bill. There were a number of felony cases that did provide for fines. In aggravated assault

cases, the defendant could be fined up to \$10,000.

Judges were imposing fines for deferred sentences. The Code Commissioners and County Attorneys thought the court did have that authority. This would give us a needed option. It would help out in theft cases and white-collar crimes.

MIKE STEPHEN, Montana Association of Counties, supports the bill. Counties pay 83% of the cost currently. While they do benefit from the money there is also an option of not putting that person in prison. Many times that is the option of the judge. STEPHEN feels this bill gives good flexibility.

There were no further proponents.

There were no opponents.

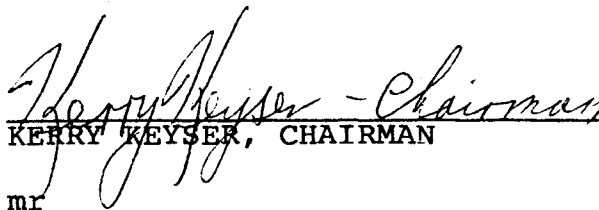
The Senator closed the bill.

REP. BENNETT asked about two separate embezzlement crimes, one involving a bank employee and the other the bank president. The Senator replied it would depend on the judge in each particular case as to the outcome.

REP. KEYSER asked about the installment payments. The sponsor replied the criminal would pay monthly installments until the debt was cleared. If he did not pay he would be picked up and thrown in jail.

That ended the discussion on Senate Bill 14.

The meeting adjourned at 10:30 a.m.


KERRY KEYSER, CHAIRMAN
mr

S.B. #119

PRESENTED BY THE MONTANA ASSOCIATION OF
CLERKS OF DISTRICT COURT

By: Dan Bukvich

This is an act to amend five statutes involving the duties of the Clerk of Court and repealing one other.

Section 1. Section 3-5-501, MCA is amended to read: General duties. The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

(7) Keep a minute book, which must contain the daily proceedings of court, which may be signed by the clerk, ~~and must be indexed in the names of both defendant and plaintiff;~~

The indexing required herein is a duplication of the direct and general indexes (3-5-502) that provide the means for finding the number of a case and corresponding register of actions. The register of actions provides the number of the minute book and the page on which the entry is made. There are few, if any, jurisdictions where this index is kept.

Section 2. Section 3-5-502, MCA is amended to read:

"3-5-502. Indexes to court records. Each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records required by law, a ~~book~~ an index called "General Index ~~to Court Records~~-Plaintiffs" and also a second ~~book~~ index to be called "Inverse General Index to Court Records-Defendants". Each index shall be in a form determined by the clerk to best fulfill the needs of the court and other users of the index and shall contain, at a minimum, those entries required by 3-5-503. The pages of the General Index shall be divided into 18 columns, and the pages of the Inverse General Index shall be divided into five columns, with heads to the respective columns as follows:

Presently the General Indexes in some jurisdictions are as described in the statute, with the information listed as follows on the left hand page:

Left Hand Page			NATURE	DATE
PLAINTIFF	DEFENDANT	CASE NO.	OF	BEGAN
			ACTION	

on the right hand pages the remaining columns are provided and never used, leaving every other page in the index blank except for the columns and titles. In the other jurisdictions, the indexes are columned on both the left and right hand pages for indexing as shown for the left hand page above.

The information in the many columns on the right hand page is provided elsewhere in the records of the Clerks' offices, in the Judgment Books, Registers of Action, etc.

This amendment will provide the opportunity to use a card index or other type of index. Card indexes will reduce the cost of indexing and provide a greater alphabetical breakdown. All necessary information can be placed on the card while the index will remain in a permanent position and not be moved from place to place as a book sometimes is.

Direct General Index—District

This is a sample page of the General Index as provided
There are 18 columns.
The Inverse Index has pages such as this left hand page
hand page, thereby having twice the number of pages as th

Second Judicial District, Sta

PLAINTIFF				DEFENDANT				NUMBER
Jones, Jason				Robert Marsh				64372
Jonke, Ralph				I. A. C. Inc.,				64412

Section 3. Section 3-5-503, MCA, is amended to read:

"3-5-503. Duties concerning indexes. Said clerk shall cause to be made in each of said ~~index books~~ index correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the General Index-Plaintiffs and alphabetically by the name of the defendants in the ~~Inverse~~ General Index, ~~continuing to make such entries in the manner aforesaid-from time to time as the progress of the case may require~~-Defendants."

This amendment will allow the use of all the pages (3-5-502) in the index and the use of other types of indexes. There will be no duplication of the record keeping yet there will be a complete record of each case filed. The indexes are the books most used by non-office personnel i.e. lawyers, arbitrators, researchers, etc., and it is possible for them to find all information needed, once they locate the case number in an index.

Section (4). Section 3-5-513, MCA is amended to read:

"3-5-513. Probate records. The clerk of the district court shall:

(1) keep a book called "Record of Probate Proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters and must be indexed in the names of the deceased person ~~and the executor or administrator or the names of the guardian and the~~ or ward;

This amendment is similar to Section (1) paragraph (7) but refers to Probate Proceedings rather than civil proceedings in the courts. The deleted information is available elsewhere in the probate records of the court, probate indexes and register of Estates.

(2) keep a book called the "Probate Record Book", in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed by law and which must be indexed in the same manner as the Record of Probate Proceedings;

The "Probate Record Book" referred to herein was more or less outmoded by the Uniform Probate Code. Some of the papers listed are no longer in use and the ones that remain are being microfilmed daily. At one time, all of these papers were copied by hand or typed and bound in large volumes. This is a duplication of records entered elsewhere in the probate records.

Section 5. Section 72-3-1015, MCA is amended to read:

"72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the ~~clerk of the district court~~ supreme court administrator shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

This represents a change in the person to notify the district Judge when an estate has not been closed in two years. The Supreme Court administrator receives reports from the Clerk of Court at the beginning of a case and at the conclusion of a case. This change would allow the Supreme Court Administrator to notify the District Judge who will make the order directed to the attorney for the estate. This will prevent the issuance of a notice to the Clerk of Court who would then notify the district Judge. The Court administrator has all of these records computerized and does not have the problem of searching through records to find if the two year period has expired. The court administrator is sending these notices at the present time.

Section 6. 46-18-602. Entry of judgment and judgment roll. When judgment upon a conviction is rendered, the clerk must:

(1) enter the same in the minutes, stating briefly the offense for which the conviction was had and the fact of prior convictions (if any); and

(2) within 5 days, annex together and file the following papers, which will-constitute the judgment roll:

(a) the indictment or information and a copy of the minutes of the arraignment, pleas, -and motions;

(b) a copy of the minutes of the trial;

(c) the instructions given or refused and the endorsements thereon;

(d) a copy of the judgment.

The duties outlined in this section are all provided for in other sections; 3-5-501, (4) provides for the entry of judgment and 3-5-501 (7) minute books containing the daily proceedings of the court; The court file (record) contains all the papers that constitute a judgment roll. 46-20-301 Composition of record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the register of actions shall constitute the record on appeal in all cases.

The Clerks of Court feel that there is no need for this statute while all of the duties are outlined in other sections.

WITNESS STATEMENT

NAME Lorraine For Rustol BILL No. 120
ADDRESS 117 E. Story Boston DATE 3-6-71
WHOM DO YOU REPRESENT Clerk of Courts Assoc
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

AMENDMENT TO SB 162

Page 2, line 6.

Following: "Shall"

Strike: remainder of lines 6, 7 and 8

Insert: "Make any party indispensable pursuant to Rule 19(b),
M. R. Civ. P."


SENATOR MAZUREK

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE
BILL

Date 3/6/81

SPONSOR Towe[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

119

Date 3/6/81

SPONSOR Ochsner

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL 120

Date 3/6/81

SPONSOR Ochsner

[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 145

Date 3/6/81

SPONSOR Hager

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL

162

Date 3/6/81

SPONSOR

Mazurek

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.