

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 16, 1981

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. Jim Lear, Legislative Council, was present.

SENATE BILL 336 SENATOR RYAN, sponsor, stated this bill will allow the Board of Pardons to delegate certain hearing functions relative to parole eligibility. It simplifies matters. Rather than send an official of the prison out of state to conduct the interview it allows an out-of-state official to conduct the interview and present it to the Board of Pardons.

HANK BURGESS, Board of Pardons, was in support of the bill. This will save the state money. Montana has inmates in Billings and in Swan River. The Board has been sending hearing officers to both facilities but have not been covered on that. This will allow that.

There were no further proponents.

There were no opponents.

In closing, the Senator stated this will facilitate the process of whether parole will be granted.

REP. CURTISS asked will these people be as qualified as the ones who do it now. BURGESS replied the present people are members of the staff. It will remain the same only out of state boards will be able to conduct the interview.

REP. ANDERSON asked what different adult correctional facilities there are. BURGESS replied they are called different names from state to state.

SENATE BILL 306 SENATOR HIMSL, sponsor, stated this bill is to amend 1-2-201 to change the automatic effective date of non-appropriation statutes to October 1st. EXHIBIT 1.

There were no proponents.

There were no opponents.

The Senator closed the bill.

No questions were asked by the committee.

SENATE BILL 316 SENATOR TOWE, chief sponsor, stated this bill is to amend 7-4-2613 to require County Clerks to record a document

terminating the interest of a deceased joint tenant. When a person dies the spouse fills out a form that includes a questionnaire of what property there is and how much is in joint tenancy. This is submitted to the Department of Revenue. The Department determines how much inheritance tax shall be assessed. The form is returned to the spouse who then takes it to the County Treasurer to pay the tax. The clerk and recorders office files the form. The only proof the person has that the process has been completed is a receipt that the tax is paid. When dealing with an attorney from another state it is hard to prove that the process has actually been completed. This bill will provide that a document is issued to the spouse to prove the process has been completed.

EXHIBIT 2, amendments to the bill, was handed out.

WILLIAM L. ROMINE, Clerk & Recorders, was in support of the bill.  
EXHIBIT 3.

HELEN KOVICH, Montana Clerk & Recorders, was in favor of the bill. Her office started recording this information about three months after the previous bill was in effect. Information was being filed at \$3.00 each yet the assessor was not picking it up.

JIM JENSEN, LISCA felt this bill is important for peace of mind. He read a statement from TOM RYAN, Montana Senior Citizens.  
EXHIBIT 4.

There were no further proponents.

There were no opponents.

In closing, the Senator stated there have been some courthouses that have tried to do this. This bill will give that authorization.

REP. CURTISS asked if the clerks normally have this information readily available. It was replied they would have to file documents.

REP. CURTISS asked about the list of items on page 2 of the bill. SENATOR TOWE replied the only thing being changed is number 3 relating to the documents. The form that would be devised would spell out clearly the information that is required.

REP. YARDLEY asked if the form has to be submitted as it is now to the Department of Revenue. Yes was the answer. When inheritance taxes were abolished joint tenancy was not absolved.

By filling out the form and sending it back they will have proof of it.

REP. SHELDEN asked about the fourth amendment concerning life estate interests. Would a living trust come under it? It was replied it may or may not, depending on the terms of the trust.

REP. YARDLEY asked how many people were not submitting the forms. TOM STOLL, Department of Revenue, replied they do not have a cost basis to refer back to for the purpose of income tax. He recommends the form be completed because that would establish a cost basis.

SENATE BILL 341 SENATOR MAZUREK, sponsor, stated this bill is to provide for trial in any county where an offense that is part of a common scheme is committed.

This arises from a case in Blaine County where an individual broke into jukeboxes. The same individual also broke into jukeboxes in Roosevelt County. The Blaine County Attorney prosecuted the individual for both offenses. The Supreme Court overturned the case stating the individual should have been tried in each particular county for each particular case.

MIKE MCGRATH, Attorney General's Office, was in support of the bill.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. KEEDY asked if it would broaden the bill to say "or when two or more acts are committed" rather than just offenses. SENATOR MAZUREK felt there was no problem with that. MCGRATH did not feel it was necessary.

SENATE BILL 400 SENATOR HALLIGAN, sponsor, stated this bill is to clarify that upon petition for rehearing of a supreme court decision the adverse party may file objections. EXHIBIT 5.

JOHN MAYNARD, Attorney General's Office, was in support of the bill. After the losing party has filed a petition the winning party has an opportunity to respond. "Reply" and "objection" to a request for rehearing has been confusing as to the difference. This bill will clear that up.

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There were no further proponents.

There were no opponents.

No questions were asked.

#### EXECUTIVE SESSION

The House Judiciary Committee went into Executive Session at 9:00 a.m.

SENATE BILL 306 REP. SEIFERT moved do pass.

The motion carried unanimously. REP. ANDERSON was assigned to carry the bill on the House Floor.

SENATE BILL 316 REP. EUDAILY moved do pass. REP. EUDAILY moved the amendments do pass as in EXHIBIT 2. The motion carried.

REP. EUDAILY moved do pass as amended.

REP. YARDLEY showed the committee copies of the form used for joint tenancy.

The motion of do pass as amended carried. REP. YARDLEY was assigned to carry the bill on the House Floor.

SENATE BILL 336 REP. TEAGUE moved do pass. He felt this would save travel and hotel expenses.

REP. CONN agreed the bill is important because the state is needlessly sending people out to do this.

REP. CURTISS felt this would be using people other than those on the staff.

REP. MATSKO stated by allowing the board to designate a staff member to conduct some of the interviews would be better. If there was an inmate in Great Falls to be released he could be interviewed by someone there so designated instead of someone from the prison going up for the interview. The report to the board would be the same.

REP. HUENNEKENS felt that statutory authority was needed.

JIM LEAR stated 46-23-202 requires the Board of Pardons to interview a prisoner prior to release on parole.

REP. HUENNEKENS stated this is a multi-step process. This would clarify the process before the final step. JIM LEAR replied if that is true, it is fine to leave it in there. If the sponsor intended to have the interview by out of state people that would be in conflict with the mandate in 46-23-202.

REP. HANNAH asked if this would allow for a parole without a direct interview of the board. JIM LEAR stated if this is enacted and 202 is left the way it is it would be a tough decision.

The motion of do pass carried with IVERSON, KEEDY, EUDAILY and HANNAH voting no. REP. MATSKO was assigned to carry the bill on the House Floor.

SENATE BILL 341 REP. SEIFERT moved do pass.

REP. KEEDY made a motion on line 15 following "more" to insert "acts or" and to amend the title accordingly.

REP. YARDLEY was opposed to the amendment as he felt it was already covered. REP. KEEDY stated if an act is committed in furtherance of a common scheme then you could prosecute in the county where the act is committed.

The amendment resulted in a roll call vote. Those voting yes were: SEIFERT, BENNETT, CONN, CURTISS, HANNAH, MATSKO, MCLANE, ANDERSON, HUENNEKENS, and KEEDY. Those voting no were: KEYSER, EUDAILY, IVERSON, ABRAMS, SHELDEN, TEAGUE, YARDLEY and BROWN. The amendment carried 10 to 8.

REP. SEIFERT moved do pass as amended. The motion carried unanimously.

REP. CONN was assigned to carry the bill on the House Floor.

SENATE BILL 400 REP. SEIFERT moved do pass.

REP. KEEDY stated "objections" and "reply" seems interchangeable. JIM LEAR stated the amendment is ignoring the issue of whether they are interchangeable. REP. HUENNEKENS stated there is no reference for reply since that is being stricken from the bill.

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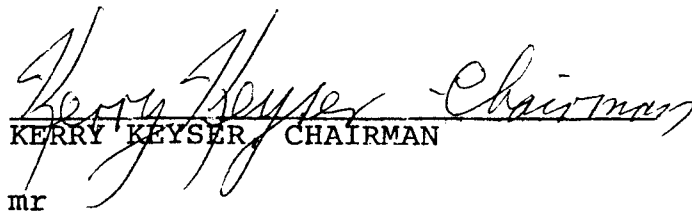
JIM LEAR stated the holding of a rehearing is what is being objected to. This limits the scope of the arguments should they rehear the case.

REP. HUENNEKENS stated requesting a reply is eliminated. We are changing the statute.

REP. CURTISS asked if this would provide that other than the court could request the rehearing. REP. KEEDY stated the party that lost the case would request the rehearing. The court would not request a rehearing on their decision.

The motion of do pass resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, EUDAILY, ANDERSON, DAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. Those voting no were: CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, KEEDY and BROWN. The motion carried 11 to 8. REP. SEIFERT was assigned to carry the bill on the House Floor.

The meeting adjourned at 9:45 a.m.

  
KERRY KEYSER, CHAIRMAN  
mr

Explanation of Senate Bill 306  
Reporting Penal Violations to the Attorney General

The Legislative Audit Act Title 5, Chapter 13, MCA, requires state agencies to report immediately in writing to the Legislative Auditor the apparent theft of state money or property. After completion of audit work which confirms any apparent theft, the Legislative Auditor is required to notify the Attorney General who then investigates the allegations. As the audit work is often several months after the alleged theft, there may be a considerable time lag between the time the theft occurred and the time it is reported to the Attorney General.

This bill amends section 5-13-309, MCA, to require agencies to report apparent thefts to both the Attorney General and the Legislative Auditor. This will allow concurrent or joint audit and investigation which will reduce duplication of effort and reduce the present time lag. The Attorney General supports this bill.

JWN/dci

March 14, 1981

AMENDMENT TO SENATE BILL 316

1. Title, line 5.

Following: "TERMINATING"

Strike: "THE INTEREST IN JOINTLY HELD PROPERTY OF A DECEASED  
JOINT TENANT"Insert: "INTERESTS NOT REQUIRING PROBATE WHEN THE TERMINATION RESULTS  
FROM THE DEATH OF THE PERSON HOLDING THE INTEREST"

2. Page 2, line 10.

Following: "that"

Strike: "a joint tenant"

Insert: "the holder of a nonprobate interest"

3. Page 2, line 11.

Following: "interest"Strike: "in the joint property"

4. Page 2, line 12.

Following: "terminated."Insert: "A nonprobate interest in real property is a joint tenancy  
interest, a life estate interest, or any other interest not  
requiring probate."

5. Page 2, line 16.

Following: "that the"Strike: "joint tenant"

Insert: "holder of the nonprobate interest"



Exhibit 3

NAME: William L. Romine DATE: 3-16-81

ADDRESS: P.O. Box 1691, Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Clerk & Recorder's Assoc.

APPEARING ON WHICH PROPOSAL: S.B. 316

DO YOU: SUPPORT? x AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: It is necessary that the Terminations of Joint Tenancy forms  
be Recorded Rather than merely filed. Sometimes the county  
assessor will not catch the Termination form when filed, but would  
note the transfer if it were recorded. In fact, in a few  
counties, the clerk & recorder has been recording the forms  
already. It is also much easier to trace a title if the form  
has been recorded rather than filed. Finally, an instrument  
which has been recorded is better protected from being  
lost or misplaced, & even if it is somehow lost or destroyed  
in the court house, the surviving joint tenant will have the  
original.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

## WITNESS STATEMENT

316

NAME Tom Ryan BILL No. 316  
 ADDRESS Helena DATE 3/16/81  
 WHOM DO YOU REPRESENT Montana Senior Citizens  
 SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

Montana Senior Citizens support  
 this bill -

Survivors, especially elderly  
 women are in need of this  
 type of single document.  
 Traumatized seniors are not  
 conducive to the orderly life  
 people in this age group need.  
 Such things as paper work  
 lawyers - trips to court houses  
 notaries etc will be eliminated.

Exhibit 5

THE SUPREME COURT OF MONTANA

FRANK I. HASWELL  
CHIEF JUSTICE



STATE CAPITOL  
HELENA, MONTANA 59601  
TELEPHONE (406) 449-2626

September 20, 1980

ATTORNEY GENERAL'S OFFICE  
HELENA, MONTANA

SEP 24 1980

RECEIVED

Honorable Mike Greely  
Attorney General  
State Capitol Building  
Helena, MT 59601

Re: Replies to Petitions for Rehearing

Dear General:

The Court has considered your letter of September 12, 1980 under the above caption. It is obvious, as you point out, that there is an ambiguity in section 46-20-705, MCA, with respect to how a successful party on appeal should respond to a petition for rehearing.

In spite of the ambiguity, the practice largely observed in these matters has been for the adverse party to file his objections to the petition for rehearing, and to expand on those objections when the adverse party thought it necessary. We would want to see the usual practice continued in spite of the ambiguities.

We would suggest therefore, that when petitions for rehearing are filed and your office represents the adverse party, that you continue the practice of filing your objections thereto within the seven days and that you feel free as you have in the past to expand on those objections. In that situation there ought to be no reason for a further reply.

In the meantime it would be desirable that your office, as you suggest, draft clarifying legislation for the upcoming legislative session. We would appreciate being kept advised.

Sincerely,

*Frank I. Haswell*

Frank I. Haswell  
Chief Justice

STATE  
OF  
MONTANA

ATTORNEY GENERAL  
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

12 September 1980

The Honorable Frank I. Haswell  
Chief Justice  
Montana Supreme Court  
State Capitol  
Helena, Montana 59601

Re: Replies to Petitions for Rehearing

Dear Chief Justice Haswell:

A problem has arisen in our office with respect to replies to petitions for rehearing because of section 46-20-705, MCA:

46-20-705. Petitions for rehearing. (1) A petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered unless the time is shortened or enlarged by order. The adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days.

(2) A petition for rehearing may be presented upon the following grounds and none others:

(a) that some facts material to the decision of some question decisive of the case submitted by counsel was overlooked by the court; or

(b) that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed.

(3) Oral argument in support of the petition will not be permitted. No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. Six copies of the petition, produced in accordance with part 5 of this chapter, shall be filed with the clerk.

(Emphasis added.)

The second underlined sentence seems to limit the scope of a permissible response to a petition for rehearing in a criminal case to the "objections" referred to in the first underlined sentence. However, the statute is ambiguous as

to whether the "objections" must be filed within seven days or whether they may be filed only upon request of the Supreme Court. It is interesting to note that the civil counterpart to this section, Rule 34 of the Mont. Rules of Appellate Civil Procedure, does not contain a provision similar to the second underlined sentence.

The problem that has arisen because of the wording of section 46-20-705, MCA, is that the attorneys in our office are uncertain about when they should reply to a petition for rehearing, in light of the fact that the Court has, in the past ascribed some significance to our failure to reply, e.g. State v. Allen, (see attachment), yet has not requested a reply.

If you, and the other members of the Court, might help us clarify the distinctions between "objections" to a petition and a "reply to a petition", perhaps we could draft a bill for the next legislature that would clarify the intent of section 46-20-705, MCA.

Thank you for your consideration of this matter.

Very truly yours,



JOHN H. MAYNARD  
Assistant Attorney General

cc: Justice Harrison  
Sheehy  
Shea  
Daly

# VISITORS' REGISTER

SENATE	HOUSE	JUDICIARY	COMMITTEE
BILL	341		Date 3/16/81
SPONSOR	Mazurek		

[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 306

Date 3/16/81

SPONSOR      Hims1

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

SENATE HOUSE JUDICIARY COMMITTEE  
BILL 316 Date 3/16/81  
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 336

Date 3/16/81

**SPONSOR** Ryan

[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 400

Date 3/16/81

SPONSOR Halligan

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.