

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 6, 1981

page 1.

The first meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 8:04 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL NO. 8:

Senator Fred Van Valkenburg, sponsor of this bill, explained that it would change the maximum period for a deferred sentence from three to five years, and would dictate a change in Line 18, Page 1 of the bill. The purpose of the bill is to increase use of the deferred sentence, which has been a successful tool in the sentencing and correction process in Montana. Deferred sentencing is a positive incentive for a person to successfully complete parole without violation. Eighty-five to ninety percent of all people who receive deferred sentences go through their deferred period successfully. It was initially used in misdemeanor drug cases, and has worked so well that judges have expanded it into other areas. It is primarily, although not exclusively, limited to crimes of a non-violent nature.

The need to increase the maximum deferred sentence from three to five years exists because often a substantial amount of restitution is assessed against a defendant; and in order for him to have the time to collect the amount, an extension must be made. In addition, many eighteen-year-olds are involved with this, and they need the additional time to mature. In 1967, when deferred sentencing was adopted, the majority age was twenty-one, and the three year deferment took the person involved to the age of twenty-four. Now, with a majority age of eighteen, the defendant is still only twenty-one when the sentence expires.

There were no further proponents of the bill, and no opponents.

CONSIDERATION OF SENATE BILL 27:

Senator S. Brown, sponsor of this bill, explained that the bill would clarify who should have control of a search and

rescue team when they are called out to perform their services. He stated that this bill would provide that the sheriff would have the authority to direct their efforts, with the exception of times of martial rule, which has been covered by separate legislation.

John Scully, representing the Sheriffs and Peace Officers Association, stated that search and rescue associations were formed usually because no similar help was available within an area. In recent years, he said, they have allowed volunteer peace officers to aid in times of increased burden. There has been no figure authorized to direct these undertakings. He feels that someone should be in charge, with authority to direct operations, so that future questions of authority would be eliminated.

Chuck O'Reilly, Lewis & Clark County Sheriff, testified that he was primarily concerned that there was no statutory reference made to authority over operations. The present law, he said, is simply not clear enough as to who has the right to authority. Should a private group choose to come in and take over, they would have very little access to special law enforcement groups; they could conceivably contaminate the scene of a crime, in instances where a crime has been committed; and they would not have access to short wave radios unless they operated them under his license.

Joe Mazurek asked if there presently existed any instances where the search and rescue would be called into service without the sheriff's office's involvement, and whether, in writing this proposed bill, there should be allowance made for any such instances. O'Reilly replied that no such situation existed.

Mike Steven, representing the Association of Counties, spoke in support of the bill.

There were no further proponents of the bill and no opponents, and the witnesses left the meeting.

Chairman Mike Anderson then introduced David Niss to the committee as their staff counsel, and outlined the ways in which David could assist committee members. Anderson requested that all requests by committee members for research go through the chairman.

Chairman Anderson asked his committee to discuss at this time any procedural changes they would like to see made in the conduct of future committee meetings. Senator Olson suggested that he call for all proponents, then all opponents, and only then ask for questions, which would all have to be directed,

along with their responses, through the chairman.

Senator Anderson responded that he had a great deal of respect for the precision with which Senator Lensink had conducted Judiciary Committee meetings last year. For this reason, he intends to set guidelines for witnesses. No testimony is to be repeated. A person who wishes to comment on testimony already given can either concur or take issue, but not repeat it lengthily. He further stated that he intends to have no great number of bills to consider on transmittal day of this session, but intends to keep the workload current.

Senator S. Brown suggested that when controversial bills attract a large number of witnesses, the decision of whether or not to put a time limit on testimony can be made by asking for a show of hands for proponents and for opponents. If it seems wise to limit the time for each, be sure to grant both sides equal time.

Chairman Anderson agreed, and stated that the location of the hearing would be moved if a large crowd appeared for a hearing.

Discussion then centered around legislative intent, whose interpretation should be put into the minutes, and the importance of it. David Niss informed the committee that there are two types of statements of legislative intent: One is required when a committee grants an executive agency rule-making authority, in which case the legislative intent must be stated and such intent must be submitted with the bill; the other type of legislative intent occurs when the committee wants to make such a statement separate and apart from the bill because they consider it to be of importance. This last type is not required by law.

It was the agreement of the committee that if any specific "statement of intent" were to be drawn and included in the minutes, by staff counsel David Niss, said statement of intent would be reviewed and voted upon by the committee. Distinguishing this formal "statement of intent" is in no way intended to reflect favorably or unfavorably upon any comments made by members of the committee, senators or representatives carrying bills, or witnesses, as to future readings or interpretations of the minutes in an attempt by any reader to gain insight into the intent of the bill or testimony less formally expressed.

Chairman Anderson scheduled decision on Senate Bills 8 and 27 for Wednesday, January 7, and adjourned the meeting at 9:30 a.m.

A handwritten signature in cursive script, reading "Mike Anderson".

Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

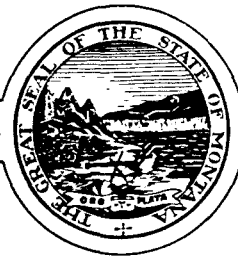
Date 1/06/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

DEPARTMENT OF INSTITUTIONS

Exhibit A



Ted Schwinden

~~XXXXXXXXXXXX~~ GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

(406) 449-3930

January 6, 1981

HELENA, MONTANA 59601

Senator Mike Anderson, Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT. 59620

Dear Senator Anderson:

I had intended to testify on SB8 at the hearing which was scheduled for 10:00 a.m. on 1/6/81, however, I was not informed of the time change.

In our conversation today, you suggested that I provide you with a copy of the information we compiled relating to deferred sentences. As indicated in the attached notes, the Department does not wish to speak as a proponent or an opponent to SB8. Our intentions in sharing this information with the committee are simply to provide them with the data we possess on deferred sentences and to point out the predicted impact that this bill may have on the probation caseloads of our field officers.

If you have any questions about the enclosure, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Daniel D. Russell".

Daniel D. Russell, Administrator
Division of Corrections

DDR:em

Enclosure

1

SB8 is related to sentencing practices which are a matter of public opinion and the Department does not wish to speak as a proponent or in opposition to the bill.

1. There have been 1050 cases sentenced since 1979 under the Montana Codes Annotated.
2. In 55% of the 1050 cases sentenced (527 cases) the judgement was a deferred imposition of sentence.
3. Of the 527 deferred impositions, 51% or 270 cases were sentenced for the maximum of three years.
- ✓ 4. There are many examples of consecutive deferred impositions being imposed to lengthen sentences to five or six years.
5. If 270 sentences were imposed for the maximum of five years under SB8, the eventual increase is estimated to be a minimum of 104 additional cases on probation. This figure would fluctuate consistent with the increased or decreased use of the maximum sentence.
6. If the same percentage of individuals are given the maximum deferred sentence as in the past, the caseload will have to increase proportionately since the same number of cases will be sentenced and will remain in the system for longer periods of time.

Aggravated Assault	-	57%
Criminal Mischief	-	80%
Burglary	-	53%
Theft	-	59%
Crim. Poss. of Dangerous Drugs	-	73%



FOURTH JUDICIAL DISTRICT
MISSOULA, RAVALLI, SANDERS,
MINERAL AND LAKE

Jack L. Green
JUDGE OF THE DISTRICT COURT
COUNTY COURTHOUSE
MISSOULA, MONTANA 59801

January 5, 1981

Senator Mike Anderson
Chairman, Senate Judiciary Committee
State Capitol
Helena, MT 59601

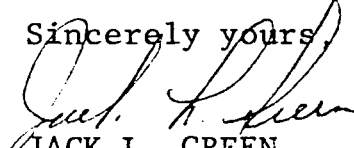
re: Senate Bill 8

Dear Senator Anderson:

I understand that Senate Bill 8, which would amend Section 46-18-201, M.C.A. to permit the deferment of a sentence for a period up to a maximum of five years for any felony, will be scheduled for committee hearing in the immediate future.

I would like to add my support to the bill. Often as a sentencing judge, we are faced with the dilemma of an offender who we feel should probably receive a deferment of imposition of sentence but at the same time feel that for the welfare and safety of society a period of supervision in excess of three years is required. This amendment would give us greater discretion and make the provision for deferment more meaningful.

Sincerely yours,


JACK L. GREEN
District Judge

JLG/jbs