

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 13, 1981

Page 1.

The fifth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 63:

AN ACT TO CONFORM THE STATUTES REGARDING
AMENDMENT OF CHARGES IN CRIMINAL CASES
TO CASE LAW.

Senator Mazurek, representing District 16, introduced the bill at the request of the Attorney General. Citing the case of State vs. Cardwell (reference Exhibit A, attached to these minutes), Chris Tweeten, from the Attorney General's office, spoke in support of conforming Montana's statutes with case law, as did Tom Honzel, of the County Attorney's office.

There were no opponents, and no questions.

CONSIDERATION OF SENATE BILL 76:

AN ACT AMENDING SECTION 19-5-103, MCA,
TO PERMIT A RETIRED JUDGE OR JUSTICE TO
SUSPEND PAYMENT OF HIS BENEFIT ALLOWANCE
UNDER THE JUDGES' RETIREMENT SYSTEM AND
NOT BE SUBJECT TO A CALL FOR DUTY DURING
THIS SUSPENSION.

This bill was sponsored by Senator Crippen, of Billings, Senate District 33. He stated that he could think of three reasons why a judge might want to suspend his retirement -- because of tax ramifications; to get another job which might make him subject to the criticism of double dipping; or if he just didn't want to be a judge anymore.

Questions centered around problems which might be caused by a judge's deciding to elect in and out of the retirement program as his needs changed, whether this might cause a shortage of judges available to hear water rights adjudications, and whether or not the bill really was needed. In summation, Senator Crippen stated that there probably was a need for its passage, to clarify and codify into statute that which is

currently being done anyway. He felt that, particularly in the area of double dipping, this bill would be helpful.

Senator Anderson then asked if district judges were under the Public Employees' Retirement System, and if so, would failure to draw their retirement pay over a period of time allow the sum to accrue to their benefit, and become a part of their estate. Senator Crippen will check this point and respond to it at a later date.

Senator S. Brown suggested that before too much research is carried out on this matter, it be decided in Executive Session whether the bill has sufficient merits to consider its passage.

CONSIDERATION OF SENATE JOINT RESOLUTION 2:

REQUESTING AN INTERIM STUDY OF THE
MONTANA CRIMINAL JUSTICE SYSTEM,
INCLUDING ALTERNATIVE WAYS AND EFFECTS
OF REDISTRICTING MONTANA'S DISTRICT
COURT SYSTEM, ESTABLISHING A STATEWIDE
DISTRICT ATTORNEY SYSTEM FOR CRIMINAL
PROSECUTIONS, AND PROVIDING FOR A
STATEWIDE SYSTEM OF REPRESENTATION
FOR INDIGENTS ACCUSED OF CRIMES.

Senator Van Valkenburg introduced this resolution at the request of the Attorney General of the State of Montana. None of the present means of providing for legal services for the indigent are cost efficient, nor are they actually providing the intended services. He would also like to see the handling of juvenile problems included within this study, as well as the disparity of work loads among district judges.

Mike Abley, representing the Supreme Court, said that some of the judges spend much more time on the road than in the court itself. He also said that he could offer assistance to the committee regarding compilation of statistics, and added the fact that since many judges were about to retire, this might facilitate the redistricting.

Margaret Davis, speaking for the League of Women Voters, spoke in support of this study. She said that while the legislature has been most responsive in the past concerning situations where a district judge is overworked, it has been impossible to deal with the situation of a judge with a decreasing work load until passage of the new constitution.

John Maynard, of the Attorney General's office, said that much of what would be studied has already been compiled. He stated that judges' caseloads vary from four hundred to fourteen hundred per year, and that while some judges travel only three

hundred miles, others have to travel as much as twenty thousand miles per year. He said that speedy trials and taking of guilty pleas are jeopardized by the present system.

Tom Honzel spoke in support of passage of this resolution.

Mike Stephen, Executive Director of the Montana Association of Counties, said that more efficiency and lower costs offered by passage of this resolution appealed to his group. He also proposed to amend Page 3, Line 13, by adding subparagraph 10, which would read:

- (10) The efficiency, costs and benefits of the juvenile justice system.

There were no opponents to the resolution.

Senator Berg was concerned that a two-year study of the problems would delay a badly needed redistricting, but Senator Van Valkenburg and Mr. Abley stated that the matter could not be handled within that two-year time frame even at best.

DISPOSITION OF SENATE BILL 43:

Senator Halligan moved that this bill receive a DO PASS. The motion was seconded, and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 24:

Senator Crippen voiced concern that this bill would unduly limit a judge's discretion in granting exemption from jury duty. He felt that "may be exempt" would be preferable to "shall be exempt" so far as language of the bill was concerned. He also felt that, in keeping with more modern times, some of the exemptions could be weeded out.

Senator S. Brown proposed that the repealer be deleted, and an amendment made to the introductory clause of 3-15-313 which would add a requirement that the person disclose in an affidavit the damage that would specifically occur to him if he should have to serve as a juror.

Senator Mazurek suggested that the matter of who might be excused be left to the discretion of the judge.

Senator S. Brown suggested that staff member David Niss bring a copy of Idaho's statute on this matter to the next meeting. He further suggested that the affidavit for exemption given to the district judge should have to describe the great injury or material hardship that would occur from serving as a juror.

Senator Anderson said that if we do away with a list of exemptions the affidavit must be mandatory in order for the judge to have something to use as a basis for his decision.

Senator Berg said that before our staff member is directed to do extensive research on the bill, this committee should decide whether or not they feel it stands a chance of passage.

DISPOSITION OF SENATE BILL 75:

Senator S. Brown moved that this bill receive a DO PASS. His motion was seconded, and passed unanimously. It was unanimously voted to have this bill placed on the Consent Calendar.

FURTHER CONSIDERATION OF SENATE BILL 40:

Senator Olson stated that he tends to be against passage of a law which would benefit one person.

Senator Crippen said that the committee should decide whether or not the bill's proponent, Senator Hafferman, would be able to bring back anything which would influence the committee enough to pass it.

Senator Anderson said that as a courtesy he would delay disposition of the bill until notifying Senator Hafferman of its probable failure.

FURTHER CONSIDERATION OF SENATE BILL 14:

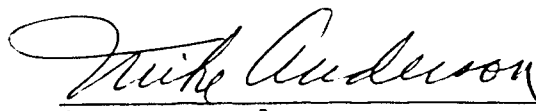
Previous discussion on this bill concerned the fact that sexual assault had been omitted as an exclusion to the crimes which could be punished with either or both a fine and a prison sentence.

Senator Mazurek quoted Tom Honzel as saying that no maximum on the fine limit left a situation where a defendant could not be advised of his probable punishment. He felt that a maximum amount of fine should be included.

Senator Anderson asked David Niss to write an amendment adding sexual assault and to clarify the provision for both a fine and imprisonment in the case of crimes against a person, and to include a maximum fine.

Senator S. Brown suggested a maximum of fifty thousand dollars, a sum which was unanimously approved.

The meeting adjourned at 11:49 a.m.



Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/13/81

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.

VISITORS' REGISTER

DATE 1/13/81

(check one)

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: 11-5-71 DATE: 1-5-71

ADDRESS: Room 232, N. 1st St., San Francisco, Cal.

PHONE: 440-2103

REPRESENTING WHOM? James Earl Ray

APPEARING ON WHICH PROPOSAL: 2501

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: MARGARET S. DAVIS DATE: 13 JAN 84

ADDRESS: 917 HARRISON, HELENA, MT 59601

PHONE: 443-3487

REPRESENTING WHOM? League of Women Voters of Montana

APPEARING ON WHICH PROPOSAL: SJR 2

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: In the past several sessions the legislature has been responsive to the needs of judicial districts with growing and demanding case loads. However, it is administratively and politically difficult to deal district-by-district with courts that are under utilized. The League of Women Voters supports a study of the judiciary as proposed in SJR 2, and recognized that the administration of state ~~law~~ courts is an important function of state government that deserves legislative consideration in 1983.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

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DATE: 1-13-51

ADDRESS: 7110 1st Ave. S. E. Tacoma, Wash. 98404

PHONE: 2-4444

REPRESENTING WHOM? *As a private citizen*

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Ida H. Maynard DATE: 1/18/87

ADDRESS: Attorney General's Office, State Capital

PHONE: 440-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: SIR 7

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME:

DATE:

DDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Mike Stephen DATE: 13 Jan 81

ADDRESS: 1402 11th Ave

PHONE: 442-5209

REPRESENTING WHOM? MT Assoc of Counties

APPEARING ON WHICH PROPOSAL: STR 2

DO YOU: SUPPORT? L AMEND? _____ OPPOSE? _____

COMMENTS: _____

MT Assoc of Counties
Amend STR-2

Page 3 line 13
(10) the efficiency and
costs and benefits of the
Juvenile Justice system.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MEMORANDUM

8 January 1981

TO: Senator Joe Mazurek
FROM: Chris Tweeten
RE: SB 63

In State v. Cardwell, ___ Mont. ___, 609 P.2d 1230 (1968), the Montana Supreme Court held that the provision of section 46-11-403(1), MCA, allowing substantive amendments to informations without leave of court, violated Article II, Section 20 of the 1972 Montana Constitution. The Court found that leave of court was a constitutional condition to a substantive amendment of an information and established procedures for complying with the constitutional mandate. 609 P.2d at 1233. SB 63 codifies these procedures.

The major function of leave of court is to assure that the amended charge is supported by probable cause. SB 63 meets this need by requiring the prosecutor to support his amended information with an affidavit stating facts showing the existence of probable cause, and requiring the judge to find probable cause before granting leave to amend. The second procedure established by the Court involves notice. The Court held that a defendant must have sufficient time to prepare for trial and that he must be arraigned on the amended information. New subsections (d) and (e) of section 46-11-403 satisfy this requirement.

The bill provides two other departures from present law. The statute currently allows one substantive amendment without leave of court. It is unclear whether subsequent amendments are permissible with leave of court, since the statute is silent on the matter. The amendment in SB 63 strikes the word "once" from the statute, allowing multiple substantive amendments if the procedures set forth in the statute are followed. This seems reasonable, since the notice procedures and the requirement that the defendant be given a reasonable time to prepare eliminate the possibility of prejudice.

Senator Joe Mazurke
Page 2
8 January 1981

SB 63 also creates explicit authority to amend complaints in justice and city court proceedings. Current section 46-11-403 applies to amending a "charge", whether brought by information, complaint, or, presumably, indictment. Cardwell establishes that special constitutional constraints apply to informations and not complaints. It therefore is proper to limit the Cardwell procedures to informations and provide a separate authorization for amending complaints. Bill Section 2 amends the statute dealing with complaints to allow a complaint to be amended on motion with leave of court at any time before the jury returns its verdict. The defendant's rights are safeguarded in such a case through the leave of court requirement and the availability of a trial de novo on appeal in district court. This approach also conforms with the actual practice followed by most prosecutors in justice and city court proceedings.

The primary purpose of this bill is to give prosecutors and judges some guidance in applying Cardwell. We feel that the existence of an unconstitutional statute on the book only invites confusion. Since the legislature has adopted a criminal procedure code, it should reflect the procedures actually followed.

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STANDING COMMITTEE REPORT

.....January 13,..... 19 81.....

MR.**PRESIDENT**.....

We, your committee on.....**JUDICIARY**.....

having had under consideration**SENATE**..... Bill No. **43**.....

Respectfully report as follows: That.....**SENATE**..... Bill No. **43**.....

DO PASS

y.c.

STANDING COMMITTEE REPORT

.....January 13, 19 81.....

MR.PRESIDENT.....

We, your committee onJUDICIARY.....

having had under considerationSENATE.... Bill No....75.....

Respectfully report as follows: That.....SENATE..... Bill No....75.....

**A MOTION WAS MADE AND PASSED UNANIMOUSLY TO PLACE SENATE BILL 75
ON THE CONSENT CALENDAR.**

DO PASS