

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 20, 1981

Page 1.

The ninth 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.

CONSIDERATION OF SENATE BILL 117:

AN ACT TO ALLOW A YOUTH UNDER JURISDICTION
OF THE YOUTH COURT TO PETITION FOR
PLACEMENT IN A HOME OTHER THAN A YOUTH
GUIDANCE HOME IF NO YOUTH GUIDANCE HOME
HAS BEEN ESTABLISHED IN A DISTRICT.

Senator Dover, District 24, Lewistown, presented the bill. He stated that the purpose of the bill is providing a home for a child who otherwise might have nothing more than a place to live. As the law is, a child can only petition to go to a district youth home; but many counties do not have this type of facility. In some cases, the only way a child can be remanded to a home other than his own is if he commits a crime. Senator Dover added that he would like to enlarge the scope of the bill so that if, at the time a child petitions for placement, the youth guidance home is filled, or if the judge feels that placement in a home other than the youth guidance home is preferable, the child could be assigned to a home other than the designated youth guidance home.

John Foster, Chief Probation Officer for the Tenth Judicial District, testified in behalf of the bill. He stated that his experience with children who want to get away from home because they know that if they don't they will end up in trouble has convinced him of the need for this sort of legislation.

Senator Mazurek asked if it would be important that the home be licensed. Mr. Foster replied that it wouldn't specifically be required because the designation "other home approved by the court" would automatically indicate a home licensed to be a foster home.

Senator Anderson asked what Senator Dover felt to be the main difference between his bill as originally written (marked Exhibit A and attached to these minutes), and the one presently before the committee. Senator Dover stated that insertion in line 19 of the words "if a district youth guidance home has not been established" limited somewhat the presiding judge's discretion.

DISPOSITION OF SENATE BILL 111:

David Niss discussed with the committee the two proposed amendments raised in yesterday's meeting, and suggested also that on page 6, line 4, the word "standards" be stricken and changed to read "rules". Senator B. Brown moved that all three amendments be adopted, and the motion carried unanimously. Senator Halligan then moved that Senate Bill 111 DO PASS AS AMENDED, a motion which carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 112:

It was the feeling of the committee that Senate Bill 56, which is presently in the Committee on State Administration, should be moved into this committee before disposition of this bill is made. Senator Crippen moved that this committee pass on Senate Bill 112 for the day, and passage of the motion was unanimous.

DISPOSITION OF SENATE BILL 89:

Upon a motion by Senator B. Brown, the bill was given a unanimous DO PASS. However, Senator Mazurek requested that discussion be reopened. Senator Olson moved that discussion be reopened, and all committee members voted in favor of the motion except Senator Tveit.

Senator Mazurek stated his concern that by enacting this bill as written the committee would be forcing the Attorney General's office into repeatedly making costly and ineffective challenges to determine whether the federal government has the sole right to preemption, or whether the state law can control such preemptions. He stated that once this question is settled, regardless of how it is settled, additional suits would be unnecessary.

David Niss stated that each action could come up under different applicable law, and under different circumstances, so that one decision would not necessarily be decisive regarding future projects.

Senator B. Brown moved once again that the bill be granted passage; and the vote was eight to two in favor of the motion.

DISPOSITION OF SENATE BILL 24:

David Niss passed out copies of Idaho statutes dealing with the subject of jury exemptions (marked Exhibit B and attached to these minutes), and explained Sections 2-211, 2-212, and 2-216 of the Idaho Code.

Senator Anderson stated that the Idaho statutes seem to be working, even though incompetents are not excluded from jury duty, so that this proposed bill should be even more effective. He added that the repealer in 3-15-314 should be left in, and Senator S. Brown concurred.

Senator Crippen then stated that nobody but Senator Hafferman and one judge seemed interested in this bill; and that since it represented a sweeping change in jury selection the committee should start over with a new bill instead of trying to improve on the existing one. He then moved that the committee recommend a DO NOT PASS on Senate Bill 24. In a roll call vote, the motion failed by a vote of six to four.

DISPOSITION OF SENATE JOINT RESOLUTION 2:

Senator B. Brown moved that on page 3 a new subsection be added to read, "efficiency, costs, and amination of the existing juvenile justice system."

Senator S. Brown then moved to strike "and" on page 3, line 10; and on page 3, line 12, strike "." and insert "; and". These amendments were unanimously adopted; and Senator Halligan moved that the committee recommend a DO PASS AS AMENDED. This motion passed unanimously.



Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/20/81

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.

SENATE JUDICIARY COMMITTEE

BILL SB 117

VISITORS' REGISTER

DATE 1/20/81

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOSE

Sandra Kelley

Children in Need, Inc

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Carolyn Lee Dick

Children in Need, Inc

117

Susan Aust

MHEA

John Hanif

Sen. Mike Halloran

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Michael D. Cahill

DEPT OF INST. Div of Corr.

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: John R. Foster DATE: Jan 20, 1981

ADDRESS: COURTHOUSE Lewis & Clark, MT-59457

PHONE: 538-9242

REPRESENTING WHOM? Tenth Judicial District

APPEARING ON WHICH PROPOSAL: JB/17

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

BILL NO _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO PETITION BY PERSON UNDER TWENTY-ONE TO BE PLACED IN DISTRICT YOUTH GUIDANCE HOME: AMENDING SECTION 41-5-921, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 41-5-921, MCA, IS AMENDED TO READ:

"41-5-921. PETITION BY PERSON UNDER TWENTY-ONE TO BE PLACED IN DISTRICT YOUTH GUIDANCE HOME. 'ANY PERSON UNDER THE AGE OF 18 YEARS OR ANY PERSON BETWEEN THE AGES OF 18 AND 21 YEARS WHO IS STILL WITHIN THE JURISDICTION OF THE YOUTH COURT MAY PETITION THE YOUTH COURT OF A DISTRICT IN WHICH A DISTRICT YOUTH GUIDANCE HOME HAS BEEN ESTABLISHED TO BE PLACED IN A DISTRICT YOUTH GUIDANCE HOME OR ANY OTHER HOME APPROVED BY THE COURT FOR ANY PERIOD OF TIME UP TO SAID PERSON'S 21ST BIRTHDAY."

DECISIONS UNDER PRIOR LAW

ANALYSIS

Authority of court.
Irregularity in summoning jury.
Professional jurors.

Authority of Court.

The trial court observed the law and did not commit any error in directing the special panel to be summoned on authority of the court upon finding that additional jurors were necessary to complete the jury ordering a special venire returnable later that same day. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957).

Irregularity in Summoning Jury.

Mere irregularity in procedure with regard to summoning grand jury by which indictment was found was not ground for quashing indictment, unless prejudice to

substantial rights of defendant was shown. *State v. Roberts*, 33 Idaho 30, 188 P. 895 (1920); *Rich v. Varian*, 36 Idaho 355, 210 P. 1011 (1922).

Professional Jurors.

The conclusion of bias resting on the assertion that sheriff called "professional" jurors which was attempted to be grounded on an affidavit alleging an investigation made some six months previously having to do with the manner in which the sheriff selected special veniremen cannot be treated as proof that any such situation existed at the time of appellant's trial setting. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957).

Collateral References.

47 Am. Jur. 2d, Jury, §§ 155 — 158, 159 — 162.

2-211. No exemptions. — No qualified prospective juror is exempt from jury service. [1971, ch. 169, § 10, p. 799.]

2-212. Excusing from jury service — Inquiry by court — Grounds for excusing. — (1) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

(2) A person who is not disqualified for jury service under section 2-209 may be excused from jury service by the court only upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction. [1971, ch. 169, § 11, p. 799.]

Collateral References.

38 Am. Jur. 2d, Grand Jury, § 17.

DECISIONS UNDER PRIOR LAW

Grand Jury.

Where a defendant was indicted for false pretense by a grand jury of 16, he was not prejudiced by the act of the judge in dismissing three members of a grand jury, one because of personal illness, and two because of the necessity of engaging in private employment, and appointed three additional individuals to the grand jury. *State v. Dunn*, 60 Idaho 568, 94 P.2d 779 (1939).

Excusing some of the members of the grand jury and substituting others leaving a jury of 16 does not show prejudice and accused is not entitled to a particular grand juror. *State v. Dunn*, 60 Idaho 568, 574 P.2d 779 (1939).

Collateral References.

47 Am. Jur. 2d, Jury, §§ 120 — 123.
50 C.J.S., Juries, § 205.

Compiler's notes. The words and figures enclosed in parentheses so appeared in the law as enacted.

2-215. Mileage and per diem of jurors. — A juror shall be paid mileage at the rate of ten cents (10¢) per mile for his travel expenses from his residence to the place of holding court and return and shall be compensated at the following rate, to be paid from the county treasury:

(1) Five dollars (\$5.00) for each one-half (½) day, or portion thereof, unless the juror travels more than thirty (30) miles from his residence in which event he shall receive ten dollars (\$10.00) for each one-half (½) day or portion thereof;

(2) Ten dollars (\$10.00) for each day's required attendance at court of more than one-half (½) day. [1971, ch. 169, § 14, p. 799.]

Collateral References.

47 Am. Jur. 2d, Jury, § 94.

50 C.J.S., Juries, § 207.

2-216. Limitation on required jury service. — In any two (2) year period a person shall not be required:

(1) To serve or attend court for prospective service as a petit juror more than ten (10) court days, except if necessary to complete service in a particular case[:];

(2) To be available for jury service for a period to exceed six (6) months; provided however, that the administrative district judge for the judicial district in which a county is located may by order specify a shorter term of required availability for jury service;

(3) To serve on more than one (1) grand jury; or

(4) To serve as both a grand and petit juror.

Appearance for jury service, whether or not the roll is called shall be credited toward required jury service. [1971, ch. 169, § 15, p. 799; am. 1977, ch. 54, § 1, p. 105; am. 1978, ch. 83, § 1, p. 157.]

Compiler's notes. The bracketed semi-colon in subdivision (1) was inserted by the compiler.

Collateral References.

47 Am. Jur. 2d, Jury, §§ 306 — 312.

2-217. Penalty for evasion of jury service. — A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for noncompliance with the summons, he is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars (\$100) and imprisoned not more than three (3) days, or both. [1971, ch. 169, § 16, p. 799.]

Collateral References.

47 Am. Jur. 2d, Jury, §§ 92, 93.

STANDING COMMITTEE REPORT

January 20, 1931

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 111

Respectfully report as follows: That SENATE Bill No. 111

be amended as follows:

1. Title, line 11.

Following: "PERSONS"

Insert: "BY CHANGING THE REFERENCE TO THE RULE-MAKING BODY"

2. Page 6, line 3.

Following: "the"

Strike: "state board of health and environmental sciences"

Insert: "division of forensic sciences"

3. Page 6, line 4

Following: "uniform"

Strike: "standards"

Insert: "rules"

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

January 20, 1981

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE JOINT RESOLUTION 2 Bill No.

Respectfully report as follows: That SENATE JOINT RESOLUTION 2 Bill No.
be amended as follows:

1. Page 3, line 10.

Following: ";"

Strike: "and"

2. Page 3, line 12.

Following: "the system"

Strike: "."

Insert: ";and"

3. Page 3.

Following: line 12

Insert: "(10) efficiency, costs, and administration of the existing juvenile justice system."

And, as so amended,

DO PASS

G.A.

STANDING COMMITTEE REPORT

January 20, 19 31

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **89**

Respectfully report as follows: That **SENATE** Bill No. **89**

DO PASS

P. A.
Mike Anderson

Chairman.

SENATE COMMITTEE JUDICIARY

Date Jan. 20, 1981 Senate Bill No. 3B24 Time 11:15

NAME	YES	NO
Anderson, Mike		✓
O'Hara, Jesse A.	✓	
Olson, S. A.	✓	
Brown, Bob		✓
Crippen, Bruce D.	✓	
Tveit, Larry J.	✓	
Brown, Steve		✓
Berg, Harry K.		✓
Mazurek, Joseph P.		✓
Halligan, Michael		✓

Robin Campbell
Secretary

Mike Anderson
Chairman

Motion: Recommend DO NOT PASS

(include enough information on motion--put with yellow copy of committee report.)