

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 22, 1981

Page 1.

The eleventh 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 119:

Senator Don Ochsner, District 26, Miles City, presented the bill for the clerks of district court. He stated that this bill would simplify some of the duties of the clerks of the district court.

Dan Bockvich, one of the clerks of court present, presented written testimony (marked Exhibit A and attached to these minutes).

Clara Gilreath, Clerk of District Court in Helena went on record as supporting the bill.

Senator Mazurek asked if the Supreme Court Administrator had any objections to the bill, and was told by Mr. Bockvich that there were no such objections.

CONSIDERATION OF SENATE BILL 120:

Senator Ochsner presented this bill on behalf of the clerks of district court. He pointed out that the bill suggested a change in jury selection and in jury pay.

Florence McGiboney, Cascade Clerk of District Court, stated that the clerks of court wanted to be appointed jury commissioners so that the judges would not be the only ones able to excuse a juror. She also stated that they would prefer that there be no categories of automatic exemption.

Lorraine Van Ausdol, Clerk of Court in Gallatin County, spoke in favor of each section of the bill. She stressed that the changes suggested in the bill would free district judges from many of their more mundane tasks, allowing them to spend more time on their case loads.

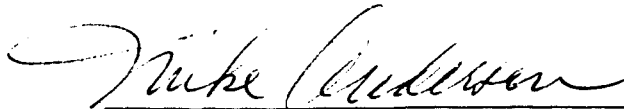
FURTHER CONSIDERATION OF SENATE BILL 14:

Senator Anderson stated that the crime of aggravated

kidnapping had been overlooked when the amendments (marked Exhibit C and attached to these minutes) were drawn up for this bill. Senator Halligan had drawn up proposed amendments (marked Exhibit B and attached to these minutes) in which misdemeanors had been added as crimes punishable by a fine. Senator Halligan moved that his amendments be adopted, and the motion passed unanimously. It was then decided that revision of amendments and the additional amendments would be referred to David Niss for further work.

FURTHER CONSIDERATION OF SENATE BILL 38:

Senator Anderson introduced Frances Elge, who is a lawyer and was an administrative law judge with the Interior Department for twenty-three years. Ms. Elge passed out copies of actual probate cases (marked Exhibit D and attached to these minutes) showing the complications which could result from passage of this bill as it is written. To avoid fractionalizing estates beyond a reasonable limit, she suggested striking from line 13, page 6, through line 11, page 7, and reinserting the language from the present law. Subsection (4) would be renumbered (3) and subsection (5) would become (4).



Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/22/81

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

COMMITTEE

BILL SB 119
SR 120

VISITORS' REGISTER

DATE Jan. 22, 1981

Please note bill no.

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

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NAME: Gerenee McElhannon DATE: 1-22-81

ADDRESS: Clerk of Dist Court - Casco Co.

PHONE: 761-6700 ext 436

REPRESENTING WHOM? Clerk of District Court

APPEARING ON WHICH PROPOSAL: SB/19 - SA 120

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

COMMENTS: _____

Lorraine Eae Busdol

DATE:

January 22, 1981

ADDRESS:

117 East Street

Bozeman, MT

59715

PHONE:

587- 3530 home

586-2061 office

REPRESENTING WHOM?

Clerk of Courts Association

APPEARING ON WHICH PROPOSAL:

SB. 119 & 120

DO YOU:

SUPPORT?



AMEND?

OPPOSE?

COMMENTS:

PHONE: 252-0419

REPRESENTING WHOM? S. S. S. S.

APPEARING ON WHICH PROPOSAL: 5, 11, 18

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit A-1

S.B. #119

PRESENTED BY THE MONTANA ASSOCIATION OF
CLERKS OF DISTRICT COURT

*Dan
Burkish*

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.

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PROPOSED AMENDMENTS TO SB 14

1. Title, line 7
Following: "cases"
Insert: "and misdemeanor cases"
2. Page 1, line 12
Following: "cases"
Insert: "and misdemeanor cases"
3. Page 1, line 14.
Following: "felony"
Insert: "or misdemeanor"
4. Page 2.
Following: line 3
Insert: "or misdemeanor"

STANDING COMMITTEE REPORT

Exhibit C-1

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Journal

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 14

Respectfully report as follows: That SENATE Bill No. 14

introduced bill, be amended as follows:

1. Title, line 9.
Following "SECTION"
Insert: "45-5-103, 45-5-202, 45-5-302, 45-5-401, 45-5-502,
45-5-503, 45-9-101, 45-9-102, 45-9-103, and"
2. Page 1, line 15.
Following: "fine"
Insert: "in accordance with subsection (2), in lieu of or
in addition to a sentence of imprisonment"
3. Page 1, line 15.
Strike: "Except as"
Insert: "For the crimes for which penalties are"
4. Page 1, line 17.
Following: "45-5-401(2),"
Insert: "45-5-502(3),"

XXXXXASS

(continued)

January 20, 1981

5. Page 1, line 18.
Strike: "may"
Insert: "shall"
6. Page 1, line 19.
Strike: "in lieu of or"
Insert: "in accordance with subsection (2) of this section"
7. Page 2, line 1.
Following: "court"
Insert: "to a maximum of \$50,000"

45-5-303

8. Page 3.
Following: line 19
Insert:

"Section 6. Section 45-5-103, MCA, is amended to read:
"45-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such an explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years, except as provided in 46-18-222, and fined not more than \$50,000."

Section 7. Section 45-5-202, MCA, is amended to read:
"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

- (a) serious bodily injury to another;
- (b) bodily injury to another with a weapon;
- (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- (d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222, and fined not more than \$50,000."

Section 8. Section 45-5-302, MCA, is amended to read:
"45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years, except as provided in 46-18-222, and fined not more than \$50,000."

(continued)

January 20, 1981

Section 9. Section 45-5-401, MCA, is amended to read:
"45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

- (a) inflicts bodily injury upon another;
- (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or
- (c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years, except as provided in 46-18-222, and fined not more than \$50,000.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

Section 10. Section 45-5-502, MCA, is amended to read:
"45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years, and fined not more than \$50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 11. Section 45-5-503, MCA, is amended to read:
"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2

(continued)

(11)

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years or more than 40 years, except as provided in 46-18-222, and fined not more than \$50,000.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section."

Section 12. Section 45-9-101, MCA, is amended to read:
"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 46-18-222, and fined not more than \$50,000.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more than life, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 10 years or more than life, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 13. Section 45-9-102, MCA, is amended to read:
"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(continued)

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(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101 (18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in 46-18-222, and fined not more than \$50,000.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 14. Section 45-9-103, MCA, is amended to read:
"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222, and fined not more than \$50,000.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Renumber: all subsequent sections.

And, as so amended, DO PASS

Joseph T Lavallie	Al 1733	neph	$\frac{1}{36}$	a	$\frac{48}{1728}$
Rose Lavallie Olson	Al 1785	niece	"		
Noel Lavallie	Al 1786	neph	"		
Simon Lavallie	U-7880	neph	"		
Mary Zilda Lavallie Matell	U-7882	niece	"		
Edward Lavallie	U-7883	neph	"		
Lillian Lavallie Foreman	U-7884	niece	"		

Emily Lars Olson		gr niece	$\frac{1}{216}$		$\frac{8}{1728}$
Steven John (Vondal) Lord Bird		gr neph	"		
Joseph Emile Vondal		gr neph	"		
Philip de Marmont Vondal		gr niece	"		
Bonnie May Vondal		gr niece	"		
Mary Jane Vondal		gr neph	"		
Ernest Lavallie	U-7885	gr neph	$\left(\frac{1}{144} + \frac{1}{16}\right) \frac{5}{72}$		$\frac{12}{1728}$
Antoine Lolita Lavallie	U-7886	"	"		
Marie Cecile Lavallie Mother		gr niece	"		
Louise E Lavallie		"	"		

Rosalie Eugene de Laboulain	Al 536	niece	$\frac{1}{24}$		$\frac{72}{1728}$
Patrice Belgaarde	U 11910	neph	"		
Alexander "	U 11659	"	"		
Francis "	U 549	"	"		

Omar Gormeau		gr neph	$\frac{1}{48}$		$\frac{36}{1728}$
Baile "	Coch	gr niece	"		

Mary Louise Mother Counts		gr niece	$\frac{1}{48}$		
Clifford Pat Mother		gr neph	"		



United States Department of the Interior

PROBATE
IP BI 504C 77

OFFICE OF HEARINGS AND APPEALS
Room 3319, 316 North 26th Street
Billings, Montana 59101

IN THE MATTER OF THE ESTATE OF)
)
GEORGE NAGORAMIE,) ORDER DETERMINING HEIRS
)
DECEASED SHOSHONE ALLOTTEE 955)
OF THE WIND RIVER INDIAN)
RESERVATION IN WYOMING)

This is a proceeding to determine the heirs and to settle the estate of George Nagoramie, deceased Shoshone Allottee 955 of the Wind River Indian Reservation.

Upon receipt of the notice of death, a hearing was duly noticed and held on December 15, 1977, at Fort Washakie, Wyoming.

FINDINGS AND CONCLUSIONS based upon the evidence adduced are as follows:

The said George Nagoramie, whose last residence was in the State of Wyoming, was born February 1, 1906, and died intestate at Lander, Wyoming, on February 22, 1977.

At date of death the decedent was possessed of that trust or restricted property, real and personal, located on the Wind River Indian Reservation listed on the attached inventory and other reporting documents.

That George Nagoramie never married, never fathered nor adopted any children. That his father was Charles Nagoramie and his mother Wymo Nagoramie; both parents predeceased him. That all of his brothers and sisters predeceased him and left no issue. That the father of Charles Nagoramie is unknown; that his mother was Martha Makak, whose sole issue was Charles Nagoramie, and that the line of descent on the paternal side ceases with the decedent. That the decedent's maternal grandparents are Poneymopie and Nono. That Wymo Nagoramie, mother of decedent, had one brother of the whole blood, Pliney Pevoh, and one sister of the whole blood, Kawus. That Wymo Nagoramie had one sister of the half blood through her father, Poneymopie, that sister being Enipwany.



United States Department of the Interior

PROBATE
IP BI 561A 78

OFFICE OF HEARINGS AND APPEALS

Administrative Law Judge
Room 3337, 316 North 26th Street
Billings, Montana 59101

IN THE MATTER OF THE ESTATE OF :
ROY ROGERS SHAY, DECEASED :
UNALLOTTED SHOSHONE U-1334 OF : ORDER DETERMINING HEIRS
THE FORT HALL INDIAN RESER- :
VATION IN THE STATE OF IDAHO :

WHEREAS, Roy Rogers Shay, unallotted Shoshone U1334 of the Fort Hall Indian Reservation in the State of Idaho, died intestate possessed of trust or restricted property on September 21, 1977, at the age of 56 years, and

WHEREAS, a hearing was duly held at Fort Hall, Idaho, on August 9, 1978, for the purpose of ascertaining the heirs of said decedent:

At the time of the hearing a question arose as to whether Louis Dunn was the son of Joe Shay. I take official notice of Probate No. D-97-61 in the estate of Joe Shay wherein, in fact, it was determined that Louis Dunn is the son of Joe Shay.

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior by Section 1 of the act of June 25, 1910 (25 U.S.C. Section 372), and other applicable statutes, and pursuant to 43 CFR Part 4, I hereby find that the heirs of said decedent, determined in accordance with Idaho Uniform Probate Code, 1972, Section 15-2-103, and Wyoming Statutes, 1957, Section 2-37, and their respective shares in this decedent's estate are:

- | | |
|--|------------------------------|
| Sophronia M. Shay Poog,
unallotted Fort Hall U-1217, | first cousin, 1/16 or 24/384 |
| Ida Shay Murrillo,
unallotted Fort Hall U-1009, | first cousin, 1/16 or 24/384 |
| Irene Shay Williams,
unallotted Fort Hall U-1691, | first cousin, 1/16 or 24/384 |
| Louis Dunn,
Fort Hall Allottee 405, | first cousin, 1/16 or 24/384 |
| Ada Shay Paraquenah,
Fort Hall Allottee 248
(subsequently deceased), | first cousin, 1/16 or 24/384 |



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Administrative Law Judge
c/o Bureau of Indian Affairs
Billings, Montana 59101

PROBATE
IP BI 038A 72

IN THE MATTER OF THE ESTATE OF :
PIERRE (PETER) BIGSMOKE, DECEASED :
ALLOTTEE 17 OF THE KALISPEL : ORDER DETERMINING HEIRS
INDIAN RESERVATION IN WASHINGTON :

The matter of determining the heirs of Pierre (Peter) Bigsmoke, hereinafter referred to as Pierre Bigsmoke, deceased Allottee 17 of the Kalispel Indian Reservation in Washington, coming on for consideration before the Administrative Law Judge, Office of Hearings and Appeals, United States Department of the Interior, Billings, Montana, and the following findings having been made:

Pierre Bigsmoke died intestate on June 21, 1971, at the age of 60 years, possessed of trust real property in the State of Washington. He was not survived by a wife or issue.

The decedent was born on July 4, 1910, the son of Baptiste Bigsmoke, Kalispel Allottee 16, and Lucy Oyackena Bigsmoke, Spokane Allottee 58. When he was about two years old, he was adopted by John Pierre, Kalispel Allottee 65, and Louise Bigsmoke Pierre, Kalispel Allottee 66, by Indian custom. John Pierre died on August 16, 1938. Pierre Bigsmoke, the decedent in this case, inherited in the estate of John Pierre as an adopted son, Probate 66966-39.

By reason of Pierre Bigsmoke's recognition as an adopted son of John and Louise Pierre by the Department of the Interior in the distribution of the estate of his adoptive father John Pierre, Pierre Bigsmoke was recognized as the adopted son and sole heir of Louise Pierre, who died in 1955, Probate 8873-55.

The holding in the Louise Pierre estate was in accordance with the act of July 8, 1940 (effective January 8, 1941), 54 Stat. 746, 25 U.S.C. § 372a, which in pertinent portion, reads:

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of the deceased Indian by virtue of an adoption --

* * *

(2) Unless such adoption shall have been recognized by the Department of the Interior