

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 20, 1981

The thirty-third meeting of the Senate Judiciary Committee was called to order by Jess O'Hara, Vice Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 272:

Senator Mazurek moved that the bill be amended according to the attached Committee Report. His motion carried unanimously. He then moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 246:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion carried unanimously. Senator Olson moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 253:

Senator Mazurek moved that the bill be amended as shown on the attached Committee Report. His motion carried over Senator Olson's opposition. Senator Berg moved that the bill DO PASS AS AMENDED, and this motion carried with Senator Olson opposing.

DISPOSITION OF SENATE BILL 240:

David Niss outlined the areas of the bill in which he felt there were problems and conflicts. Following discussion on the points he raised, Senator Olson moved that the bill receive a DO PASS AS AMENDED, with David doing the amending. Senator Anderson made a substitute motion that the bill do pass as amended, with David Niss working with Senators Mazurek and Anderson on the amendments. This motion passed unanimously. Senator Berg then moved that this action be reconsidered in order to consider the two amendments presented by the State Insurance Department. His motion passed unanimously. Senator Berg moved adoption of the two amendments, and this motion passed unanimously. Senator Olson then moved that the bill do pass as amended, and his motion passed over Senator Mazurek's objection.


DISPOSITION OF SENATE BILL 219:

Senator Mazurek presented Exhibits A and B, attached to these minutes, which came from the Attorney General's office. Chris Tweeten, of the Attorney General's office, discussed ramifications of this bill with the committee.

Senator Mazurek moved that the amendments shown on the attached Committee Report be adopted, and his motion carried unanimously. Senator Olson then moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 182:

Senator Halligan moved to place the bill on the table, and the motion passed with Senators Mazurek and Berg opposing.



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Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Feb 20, 1981

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
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.

*Exhibit A*

*section 16-702*  
**46-20-103. Scope of appeal by state.** (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

- (a) dismissing a case;
- (b) modifying or changing the verdict as provided in 46-16-702(3)(c);
- (c) granting a new trial;
- (d) quashing an arrest or search warrant;
- (e) suppressing evidence;
- (f) suppressing a confession or admission; or
- (g) granting or denying change of venue.

~~(h) imposition of sentence.~~

*application of or*

*(h) deviation from the presumptive sentence required by under [Section]. " "*

*renumber;*

**46-18-903. Application for review.** (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The state may apply ~~to~~ to the review division seeking for review of any sentence to a term of one year or more in the state prison. The application must be made within 60 days ~~at~~ from the date sentence was imposed.

~~(2)(3)~~ The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

or the person sentenced when review is sought by the state.

~~(3)(4)~~ The review division may for cause shown consider any late request for review of sentence and may grant such request.

~~(4)(5)~~ The filing of an application for review shall not stay the execution of the sentence.

**46-18-904. Procedure upon review.** (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The ~~appellant~~ person sentenced may appear and be represented by

counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed.

(3) If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

DATE \_\_\_\_\_

COMMITTEE ON Judiciary

## VISITORS' REGISTER

[illegible]

# STANDING COMMITTEE REPORT

February 20, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 219

Respectfully report as follows: That SENATE Bill No. 219

be amended as follows:

1. Title, line 5.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "46-18-201"

Insert: "and 46-20-103"

2. Page 7.

Following: line 3

Insert: "Section 6. Section 46-20-103, MCA, is amended to read:

"46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;

(b) modifying or changing the verdict as provided in 46-16-702(3)(c);

ADO:RASS

continued

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- (c) granting a new trial;
- (d) quashing an arrest or search warrant;
- (e) suppressing evidence;
- (f) suppressing a confession or admission; ~~or~~
- (g) granting or denying change of venue; or
- (h) application of or deviation from the presumptive sentence  
required by [Section 1]."

Renumber: subsequent section

And, as so amended,  
DO PASS

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# STANDING COMMITTEE REPORT

February 19

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 246

Respectfully report as follows: That SENATE Bill No. 246  
be amended as follows:

1. Line 11.  
Following: "the"  
Insert: "actual".
2. Line 12.  
Following: "vehicle"  
Insert: "rather than its "book value""
3. Following: line 12  
Insert: "Actual replacement value is the actual cash value of the  
motor vehicle immediately prior to the damage."

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

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MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 253

Respectfully report as follows: That SENATE Bill No. 253

be amended as follows:

1. Page 8.

Following: line 16

Insert: "Section 4. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services. (1)  
The department of social and rehabilitation services and the county  
welfare department shall have the primary responsibility to provide  
the protective services authorized by this chapter and shall have  
the authority pursuant to this chapter to take temporary, ~~limited,~~  
or permanent custody of a child when ordered to do so by the court,  
including the right to give consent to adoption."

Renumber: subsequent section

2. Page 10, line 21.

Following: line 21

Insert: "(c) termination of the parent-child legal relationship;"

Reletter: subsequent subsections

And, as so amended,

DO PASS

*GA*

# STANDING COMMITTEE REPORT

February 20, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 272

Respectfully report as follows: That SENATE Bill No. 272

be amended as follows:

1. Page 5, line 7.

Following: "if"

Strike: ":"

2. Page 5, line 8.

Following: line 7

Strike: "(a)"

3. Page 5, lines 10 through 12.

Following: "requirement" on line 10

Strike: line 10 through line 12

And, as so amended,

DO PASS.

*Q.A.*

# STANDING COMMITTEE REPORT

.....February 20, 1931.....

MR. ....PRESIDENT:.....

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

having had under consideration .....SENATE. Bill No. 240.....

Respectfully report as follows: That.....SENATE Bill No. 240.....  
be amended as follows:

1. Title, lines 16 through 18.  
Following: "PENALTY"  
Strike: remainder of title

1a. Page 34, lines 15 and 16.  
Following: "Hearings" on line 15  
Strike: line 15 through "process" on line 16

2. Page 34, line 24 through line 22 on page 35.  
Following: "." on line 24  
Strike: line 24, page 34 through "." on line 22, page 35.

3. Page 35, lines 23 through 25.  
Following: "by" on line 23  
Strike: line 23 through "under" on line 25  
Following: "4" on line 25  
Insert: "and Title 33, chapter 1, part 7"

~~DO PASS~~

4. Page 36, lines 1 through 11.  
Strike: subsection (4) in its entirety

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5. Page 37, line 3.  
Following: "findings"  
Insert: "and conclusions"
6. Page 37, line 4.  
Following: "cause"  
Insert: "them"
7. Page 37, lines 5 through 9.  
Following: "organization" on line 5  
Strike: line 5 through 9] on line 9  
Insert: "as provided by law"
8. Page 37, line 19.  
Following: "violated"  
Insert: "in the manner provided by law for service of agency orders"
9. Page 37, line 20 through line 5 on page 38.  
Strike: subsection (3) in its entirety
10. Page 38, line 6.  
Following: "20."  
Strike: "Penalties"  
Insert: "Civil penalties"
11. Page 38, line 10.  
Following: "a"  
Insert: "civil"
12. Page 38, line 18.  
Following: "a"  
Strike: "fine"  
Insert: "civil penalty"
13. Page 38, line 20.  
Following: "a"  
Strike: "fine"  
Insert: "civil penalty"
14. Page 39, line 4 through line 2 on page 41.  
Following: "commissioner" on line 4  
Strike: line 4 through "state" on line 2, page 41.  
Insert: "as provided by 33-1-711"
15. Page 43, lines 3 through 5.  
Strike: Section 27 in its entirety  
Renumber: subsequent subsection

And, as so amended,  
DO PASS

QA.