

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 6, 1981

The thirty-seventh 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 except Senator B. Brown, who was excused.

CONSIDERATION OF HOUSE BILL 316:

TO SUBSTITUTE THE DEPARTMENT OF INSTITUTIONS FOR THE BOARD OF PARDONS WITH REGARD TO JURISDICTION OVER CERTAIN PRISONERS.

Rep. Gould, District 98, Missoula, presented the bill and described it as a simple word change.

Dan Russell, administrator of the Department of Institutions, introduced Nick Roterling, legal counsel for the Department of Institutions, who said that the bill's purpose was clarification.

Gary Broyles, of the Montana Board of Pardons, spoke in opposition to the bill and said that current statutes give adequate coverage. He added that the word change suggested in the bill would unnecessarily restrict the flexibility of the Board of Pardons.

Senator O'Hara asked for Mr. Russell's response to this objection, and was told that this objection had not been raised when the bill was in the House, and the Department of Institutions was unaware that the Board of Pardons had any objection to the bill.

CONSIDERATION OF HOUSE BILL 317:

TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO ISSUE WARRANTS OF ARREST AND RETURN OF PERSONS WHO ABSCOND FROM FURLOUGH OR COMMUNITY PLACEMENTS.

Rep. Gould presented the bill and called it a companion bill to HB 316. He described the intent as being that of making better use of settings such as Alpha House, Life Skills Center,

or various other furlough programs.

Nick Roterling, representing the Department of Institutions, spoke in support of the bill.

Karen Mikota, representing the League of Women Voters, opposed the bill as an infringement of separation of powers, and said that she felt the present law sufficed.

Mike Meloy, representing the Trial Lawyers Association, opposed because there is no precedent for allowing an administrative agency to issue warrants. He added that a warrant would not be necessary under the circumstances the bill is concerned with.

Senator Mazurek asked what authority exists for administrative agencies having the power of issuing warrants, and Nick Roterling said that the Department of Institutions has been granted this authority with respect to parole violators, adding that this would solve a problem specifically in the counties which have facilities of the type described in the bill. He said that sheriffs need a document in order to hold an escapee in the county jail, and this bill would provide it.

In closing, Rep. Gould said that this bill is a positive attempt to get prisoners back into the community.

#### CONSIDERATION OF HOUSE BILL 5:

##### TO PROVIDE A PLEA AGREEMENT PROCEDURE.

Rep. Yardley, District 74, presented the bill, saying that it would adopt language similar to Rule 11 of the Federal Rules of Criminal Procedure on plea agreements, which is not used throughout the United States in federal criminal cases.

Tom Honzel, representing the County Attorneys Association, opposed the bill. He said that although he supports the basic philosophy of the bill, he feels that it takes away the possibility for bargaining for immunity. He also felt that the language of "prior to the trial" on page 2, line 5, eliminated the possibility of a plea agreement during a trial. He also said that in the conditions covered under section 5, when a court rejects the plea agreement, the county attorney should have the same right as the defendant to withdraw the approval of the plea. He pointed out that under section 6, when a plea agreement is later withdrawn, the county attorney cannot use statements made at the time of the agreement for impeachment purposes.

In closing, Rep. Yardley left a copy of Rule 11 of the Federal

Rules of Criminal Procedure (attached Exhibit A) and said that the reason for the words "prior to trial" is an attempt to prevent the costly summoning of a jury for a trial that ends in plea agreement. He added that using statements obtained during a plea agreement for later impeachment might deter plea bargaining, and referred to existing perjury laws which would cover the situation.

Senator Anderson asked Rep. Yardley if he and the county attorneys had ever tried to get together on these issues, and was told that Rep. Yardley had not been on the subcommittee which had handled that phase.

CONSIDERATION OF HOUSE BILL 405:

TO PROVIDE FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS  
TO PROTECT A PERSON FROM ABUSE BY A SPOUSE.

Rep. Keedy, District 18, Kalispell, presented the bill and said that it was an outgrowth of the 1977 session, in which a joint resolution was passed which directed state agencies to study the problems and needs of battered spouses and their families, and make recommendations on those needs. One of the results was asking for the right to get protective orders without dissolution of the marriage, or filing criminal charges against the abusive spouse. Rep. Keedy cited domestic violence as a problem of enormous proportions, saying it is a leading cause of death to police officers, and one of the largest causes of death to women, as well as a threat to the safety and happiness of children. He said that the intent of the bill is to allow the salvaging of a marriage while providing relief for the victims.

Jonas Rosenthal, of the Task Force on Domestic Violence, supported the bill, saying that Rep. Keedy's remarks covered the subject pretty completely.

Donna Wirth, Helena, supported the bill as a battered spouse herself, and told the committee of injury and damage suffered by three women who had sought a restraining order without first dissolving their marriages. She said that had this type of protection been afforded, they would have possibly not suffered to the extent they did.

Carol Borchers, of the State Task Force on Spouse Abuse, presented a letter outlining their work (attached Exhibit B) and added her support to the bill.

Mike Meloy, representing the Montana Trial Lawyers Association, and Tom Honzel, of the County Attorneys Association, also spoke in support of the bill.

Senator Mazurek suggested that on page 5, line 11, "alleges"

be changed to "when it shall appear", or other language which would require more than someone alleging the abuse had occurred before a person could be forcibly removed from his home.

Senator S. Brown said that he wanted to be sure that the victim could still get a temporary restraining order, and Rep. Keedy said that the new language on page 3 would assure that.

CONSIDERATION OF HOUSE BILL 403:

TO PROVIDE THAT ONLY THE DEFENDANT IN  
A CRIMINAL ACTION MAY RAISE HIS LACK  
OF FITNESS TO PROCEED.

Rep. Keedy presented the bill, describing it as a by-product of HB 877, which attempted to eliminate the insanity defense in criminal cases. He stated that he would like this bill amended on page 1, line 18, following "46-14-201", by inserting "or raises the issue of his fitness to proceed,". He left a copy of this amendment with this committee (attached Exhibit C).

Tom Honzel, representing the County Attorneys Association, pointed out the language on the bottom of page 2 and the top of page 3, regarding who should pay for the commitment. He said that when a defendant is kept in a mental institution when he has been sent for an evaluation and adjudged not able to stand trial, the fees are charged to the county. He felt that since the state is liable for this cost when the defendant is institutionalized after a trial, it should stand the cost also under the first circumstance. For that reason, he opposed passage of the bill.

Karen Mikota, representing the League of Women Voters, opposed the bill because "with the advice of counsel" on line 14 of page 2 had been stricken.

In closing, Rep. Keedy said that those words had been stricken because they were felt to be unnecessary, since everything done by the defendant would be done on the advice of counsel in any event.

Senator Crippen questioned Rep. Keedy about the case where a county attorney notices during the course of his investigation that the defendant is obviously mentally incompetent but, under this bill, would not have the opportunity to raise that question. Rep. Keedy said that this would be the case, and rightfully so, since the question of guilt or responsibility for the crime should be determined by the adversary system in which the defendant is responsible for raising any defenses he may have.

**Senator S. Brown** pointed out that this would take away the right of the county attorney and judge to establish insanity in order to save the expense of a needless trial.

Senator Mazurek said that he shared Karen Mikota's concern about the stricken language on line 14 of page 2. He felt that if the defendant is the only one who can raise the defense of mental incompetence, and if he is so incompetent that he is not aware of this possible defense, then he may lose his right to that defense. Rep. Keedy responded that if this committee feels that the stricken language would prohibit the defense attorney from raising the defense of insanity, then the language could be changed to be sure he is included, since prohibiting the defense attorney from so acting was never the intent.

Rep. Keedy added that what he was trying to do was eliminate the possibility of having the sanity question brought up by the prosecutor, against the will of the defendant, with the result that the defendant was locked away in an institution even though it was never his wish to raise the issue as his defense.



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Mike Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 6, 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.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

37

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: 3/6/81

ADDRESS: 1610 Poplar Helena

PHONE: 443 - 3801

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: *H.B. 405*

DO YOU: SUPPORT? ✓ AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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NAME: Caryl Borchers DATE: 7 Mar. 6 / 81

ADDRESS: 3251 4<sup>th</sup> Ave South

PHONE: 761-0707

REPRESENTING WHOM? State Task Force on Spouse Abuse

APPEARING ON WHICH PROPOSAL: HB 405

DO YOU: SUPPORT? ✓ AMEND?        OPPOSE?       

COMMENTS:       

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tom Hope DATE: 3-6-81

ADDRESS: Helena

PHONE: 443-5554

REPRESENTING WHOM? County Attorneys

APPEARING ON WHICH PROPOSAL: HB 5, 403, 405

DO YOU: SUPPORT? HB 403-405 AMEND? \_\_\_\_\_ OPPOSE? HB 5

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

## Rule 11

## RULES OF CRIMINAL PROCEDURE

(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.

(d) Insuring that the plea is voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

### (e) Plea agreement procedure.

(1) *In general.* The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) *Notice of such agreement.* If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

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(3) *Acceptance of a plea agreement.* If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) *Rejection of a plea agreement.* If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) *Time of plea agreement procedure.* Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) *Inadmissibility of pleas, offers of pleas, and related statements.* Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) *Determining accuracy of plea.* Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) *Record of proceedings.* A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(Dec. 26, 1944, eff. Mar. 21, 1946, as amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; Act July 31, 1975, P.L. 94-64, §§ 2, 3(5)-(10) 89 Stat. 370, 371, eff. Aug. 1, 1975 and Dec. 1, 1975.)

#### NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule is substantially a restatement of existing law and practice. 18

Revised 11



January 24, 1981

*Exhibit B*

Senator Mike Anderson  
Chairman  
Seante Judiciary Committee  
Capitol Station

I am writing to ask you to support the continuation of the Domestic Violence Grant Program through the marriage license fee which Social and Rehabilitation Services has been administering since the 1979 Legislature, and to support (HB 405) (pertaining to restraining orders in Spouse Abuse Cases.)

Since the 1979 Legislature, the State Task Force Members have continued to do outreach to other Communities so that there are more 'support systems' in more Communities working on the problem of Domestic Violence throughout the State of Montana. I thought I would send along a more recent update for you. Asterisk denotes operating Shelter\*.

\*\*Great Falls has done outreach education and training recently to:

- A. Hingham, Gilford, Kremlin, Havre, Browning, CutBank, Shelby
- B. Choteau and Fairfield
- \* C. Butte-(who have been operating on a 'Safe Home-private home system' for several years, now have a Shelter rennovated and hope to have it operational by February 1981.)
- D. Several Counseling Workshops which included counselors from Region II.

\*\*Missoula has done outreach education and training recently to:

- A. Hamilton, Stevensville, Darby
- B. Workshop for Kalispell and Whitefish. Kalispell received a State Grant this year for their Domestic Violence Crisis Line and did outreach to:
- C. Libby

Helena has done outreach and education and training recently to:

- A. Townsend
- B. Boulder

Bozeman has done outreach and education and training recently to:

- A. Livingston- 6 weeks training course on Advocacy
- B. White Sulphur Springs

\*\* Billings Started their Shelter this past October 1980. Previously had "Safe Homes".

Twin Bridges, Dillon, and Hardin also received State Grants this year to continue their work in the field of Domestic Violence.

Glendive, Glasgow, Miles City- also received their 17-county State Grant and have done outreach to: Sydney.

In addition, the State Task Force is contracting with Manpower to write a 'training packet' on Domestic Violence. Task Force Members made a presentation to the State Mental Health Council to say that we would be happy to use this 'training packet' to present to the different Mental Health Regions if they would like us to. The State Task Force Members have been doing the education and training for 3 years on a volunteered time and money basis, including all of the State Task Force Meetings.

A Task Force Member also made a presentation to the County Attorney's Convention this summer.

Mid-January of this year, a State Workshop was held on Advocacy Training in Bozeman.

In June, the State Task Force made a presentation of a proposed 'Hospital Protocol for Spouse Abuse Assaults' which the State Hospital Administrator Board voted to have reviewed by one of their medical teams. The Medical Team from Columbus Hospital in Gt. Falls reviewed the protocol and in December the Hospital Administrators approved the Protocol and will have it operational in the 61 General Hospitals in Montana in January 1981. We plan to also present this Hospital Protocol to the Malmstrom Air Force Base Hospital and to the Federal Hospitals also for use on the Indian Reservations.


Our State Grant program for Domestic Violence (administered by Social and Rehabilitation Services) had requests for \$135,000 and could only fund \$68,000. We funded each Grant request but not for the amount needed obviously.

As a Shelter Director (Great Falls Mercy Home), I have seen many reasons why a Shelter can be an effective means to educate families on Domestic Violence in addition to preventing homicides.

- A. Domestic Violence calls are the number one cause of police officers' deaths since 1972 (FBI Statistics).
- B. 41% of female homicides are committed by husbands (Murray Straus, Sociologist).
- C. Kansas City Police Department found that in 89% of domestic Homicides police were called once prior to the murder and in 50% of the cases were summoned five times or more.

Violence is learned behaviour. Spouses who are forced to remain in abusive situations will in effect perpetuate the 'Cycle of Violence' as children learn violence is an acceptable way of life. Shelters and Domestic Violence Support Programs can help Families get counseling in addition to helping to educate Communities on this pervasive problem of Violence.

Sincerely yours,

  
Caryl Borchers, Chairman  
State Task Force On Spouse Abuse  
3251 4th Avenue South  
Great Falls, Montana 59405

Robert C

HB 403.

suggested amendment.

Page 1, line 18,

following: "46-14-201,"

insert: "or raises the issue of the fitness  
to proceed,"

Michael A. Keedy

DATE: March 6, 1981

COMMITTEE ON JUDICIARY

HB 316

HB 5                      HB 403

HB 405 HB 317

# VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Karen Tuleta	L.W.V. observing	317 403 317, 5, 405		✓ ✓
Jean Dwyer	Mt. Hope Ec. Church	405		
Carol Borchers	Domestic Violence Task Force	HB 405	✓	
Tom Gleason	CAS. CO. ELECTED OFF.	403		
Paul Clydes Davies	CyPI			
Jan Brown	self	HB 405	✓	
	Mt. Assn Churches	405	✓	