

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 9, 1981

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

ROLL CALL:

All members were present except Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 6:

TO ALLOW THE STATE TO REQUEST AN
APPELLATE REVIEW OF THE DISPOSITION
OF A CRIMINAL CASE.

Rep. Keedy presented the bill, describing it as an attempt to balance the scales of justice a little, and saying that it would help to bring about a greater uniformity in sentencing. He asked that a mistake in the bill be corrected by striking "THE ATTORNEY GENERAL" in line 22, page 3, and inserting it in line 23, following "by".

Tom Honzel, representing the County Attorneys Association, said that his group supports the bill because it is fair. He said that Judge Bennett has recommended that something like this be enacted, and has made attempts to draft something himself. Mr. Honzel said that he does not feel there would be any constitutional problem because the state's appeal would be based only on the sentence, and there would therefore be no double jeopardy problem.

Senator Crippen asked if there are statutes in other states that provide this remedy. Rep. Keedy said probably there were not, because a supreme court decision allowing this action is very recent.

CONSIDERATION OF HOUSE BILL 12:

TO PROVIDE FOR INCREASED PUNISHMENT
OF PERSONS WHO HAVE BEEN CONVICTED
OF THREE SEPARATE FELONIES.

Rep. Gould, District 98, Missoula, presented the bill and explained that it more or less came out of HB 10. It is,

he said, an effort to convince an habitual offender that severe punishment awaits him. He added that this bill would not have a very large effect on prison population.

Curt Chisholm, Deputy Director of the Department of Institutions, said that the "persistent felony offender" designation is not used nearly as often by judges as records would indicate it could be, and supported the bill.

Karen Mikota, representing the League of Women Voters, spoke in opposition because the bill does not make a distinction as to when felonies increase from five to ten years. She said that HB 207 deals with the definition of "convicted", and asked that this committee hold off deciding on this bill until the hearing of HB 207.

Senator S. Brown asked Mr. Chisholm why there had been only eight "persistent felony offender" designations made by the courts. Mike Meloy offered the information that in the six years he has been involved in practice under Judge Bennett not a single county attorney has asked for this designation. Mr. Chisholm said that the allowance for this designation was passed in 1975, and then in 1977 the "dangerous" (as opposed to "non-dangerous") designation was made available -- and this latter designation has proven more popular with county attorneys.

Senator Olson asked why the maximum sentence was fixed at one hundred years, and Rep. Gould said that the language was taken from the persistent felon law.

CONSIDERATION OF HOUSE BILL 20:

TO PROVIDE THAT ADDITIONAL SENTENCES
FOR CRIMES COMMITTED WITH A DANGEROUS
WEAPON ARE TO RUN CONSECUTIVELY TO
THE SENTENCE PROVIDED FOR THE OFFENSE.

Rep. Gould presented the bill as an attempt to spell out the language more clearly than it is in the 1977 law. There were no proponents or opponents.

CONSIDERATION OF HOUSE BILL 9:

TO MAKE THE LAW RELATING TO GOOD
TIME ALLOWANCE MORE RESTRICTIVE.

Rep. Yardley, District 74, presented the bill and said that it is not connected with HB 10. He said that he felt some of the "good time" programs designated were biased against some religions. He felt that it was ludicrous to have good time accrue while a prisoner is on probation.

Rep. Gould supported the bill, stressing that good time should not be allowed to build while the prisoner is on parole. He also said that the good time program has gotten out of hand over the years, and that it should be brought back into conformity.

Karen Mikota said that the L.W.V. supports this bill.

Curt Chisholm said that the Department of Institutions supports the bill because it clarifies that persons on parole or probation do not earn good time. He then suggested an amendment on page 2, lines 13 and 14 which would insert the stricken language of subsection (f).

Rep. Yardley stated that he would oppose Chisholm's amendment.

Senator Mazurek asked why there is a distinction between different religions, with membership in some counting toward good time, and not in others.

Mr. Chisholm said that he did not understand this either, and would like to see it changed; but that he strongly felt that the inmates should be allowed good time for their participation in self-help groups.

Senator Mazurek asked Rep. Yardley if he would continue to object to the good time program if it were cleaned up and made more valid; and Yardley conceded that his main objection is to the way it is now administered.

CONSIDERATION OF HOUSE BILL 8:

TO REVISE THE LAWS RELATING TO
PAROLE ELIGIBILITY.

Rep. Yardley, District 74, presented the bill and said that a dangerous criminal serves an average of twenty percent of his sentence. Yardley felt that the public is a little confused as to why such a small portion of a sentence is served, and suggested that there should be more correlation between the length of sentence given, and the time served. He pointed out that the fiscal note accompanying the bill could present a problem in the bill's acceptance, but said that the statement of intent attached to the bill should get around the problem.

Speaking in opposition to the bill, Curt Chisholm said that a new bookkeeping system would have to be developed for all felons accepted in the prison. He added that if the bill's statement of intent is not followed by the judges the bill would have an enormous fiscal impact because of a possible twenty-five percent increase in the prison population.

In closing, Rep. Yardley said that the intent of the bill is

to correct a major problem in the sentencing process, not to increase the time served by convicts so much as to have sentences handed out that are more consistent with the time which will actually be served.

DISPOSITION OF HOUSE BILL 20:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 405:

Senator Mazurek moved to amend page 5, line 11, following "when", by inserting "it appears"; and following "applicant" by striking "alleges" and inserting "has suffered or may suffer". His motion passed unanimously. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 9:

Senator S. Brown moved that the bill be amended on page 2, line 13, by inserting the stricken language of subsection (f), and relettering it "(e)". His motion passed unanimously. He then moved that the bill BE CONCURRED IN AS AMENDED, and his motion also passed unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 403:

Senator Halligan moved that the bill be amended according to Rep. Keedy's proposed amendment on page 1, line 18, following "46-14-201", by inserting "or raises the issue of his fitness to proceed,". His motion passed unanimously. Senator Mazurek moved to amend page 2, line 14, by inserting "or his counsel" following "defendant". The motion passed over Senator Crippen's objection. Senator Crippen felt that the obligation of the prosecutor and the judge to the defendant should include their duty to raise the question of the defendant's mental competence.



Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 9, 1981

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.

NAME :

DATE: 3-9-81

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

✓

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Curt Chisholm DATE: 3/9
Ed Hall

ADDRESS: Dist Institution

PHONE: 5932

REPRESENTING WHOM? Institution

APPEARING ON WHICH PROPOSAL: 70 15 20

DO YOU: SUPPORT? 12, 20 AMEND? 9 OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(38)

NAME: R. Budd Gould DATE: 3-9-81

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Dist. 98

APPEARING ON WHICH PROPOSAL: H.B. 9

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 9, 1981COMMITTEE ON JUDICIARY

HB 6

HB 20

HB 9

HB 12

HB 8

VISITORS' REGISTER

NAME

REPRESENTING

BILL #

Check One
Support Oppo

Karen Mulcata

League of Women Voters

6

20

12

9

8

6

39

12.20

✓
[initials]

✓

✓

✓

Tom Hensel

County Attorney

Jan Brown

Mt Assn of Churches

Ed Hall

dist. teachers

STANDING COMMITTEE REPORT

..... March 9, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 405
KEDDY (MAZUREK)

Respectfully report as follows: That HOUSE Bill No. 405 ,
third reading copy, be amended as follows:

1. Page 5, line 11.
Following: "when"
Insert: "it appears"
Following: "applicant"
Strike: "alleges"
Insert: "has suffered or may suffer"

And, as so amended,

~~DO PASS~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

March 9, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 20

GOULD (BROWN)

Respectfully report as follows: That HOUSE Bill No. 20

DO PASS
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 9 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 9

YARLEY (BROWN)

Respectfully report as follows: That HOUSE Bill No. 9

third reading copy, be amended as follows:

1. Page 2, lines 13 and 14.

Following: line 12

Insert: "(e) 5 days per month for those inmates participating in self improvement activities designated by the department."

And, as so amended,

~~DO PASS~~

BE CONCURRED IN