

MINUTES OF THE JUDICIARY COMMITTEE
January 27, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in Room 224A of the Capitol. All members were present except Representative Curtiss, who was excused. Brenda Desmond, Legislative Council, was present.

HOUSE BILL 368

REPRESENTATIVE SANDS, sponsor, stated House Bill 368 will expand the scope of appeal by the state in criminal cases by allowing interlocutory appeals on controlling questions of law and allowing appeals following judgment on important questions of law. This bill was requested by the Task Force on Corrections.

REPRESENTATIVE SANDS stated he was not on the Task Force. This bill does not interfere with constitutional principles and rights. It is a modest bill providing to the state the right to have an interlocutory appeal in criminal cases. The need arises because of a conflict between two principles in criminal law. The first is double jeopardy which means if a person is acquitted for any reason that person cannot be tried again. The second is that interlocutory appeal is very limited. If an objection is made to the ruling of the trial court ordinarily that ruling cannot be appealed at the time it is made. The aggrieved party must wait until the final judgment and then appeal. The appeal must be upon the final judgment and not during the trial. This system normally works well except in criminal cases. In criminal cases the limitation on interlocutory appeals works as a disadvantage to the prosecutor. Once the case is finally decided the rule of double jeopardy comes into play and thus there is no purpose to appeal. This bill would be an equalizing process. If there is an error in the court proceedings, the defendant can appeal. This bill allows the state to appeal prospectively. It does not affect the individual case. The purpose of sub-paragraph 4 is to allow the state to exercise its purpose in criminal law. REPRESENTATIVE SANDS recommended that paragraph be eliminated from the bill because it might be unconstitutional. It would require the Supreme Court to make an advisory opinion. One body of government cannot tell the other body what to do. In the practical sense, if the prosecutor appealed, who would defend the case in front of the Supreme Court? A defendant who was acquitted would not hire an attorney to present the case. If an interlocutory appeal were available, then that would be the appropriate time to bring the issue before the Supreme Court.

The argument against sub-paragraph 3 is that it would interfere with the smooth operation of the court trial. He felt, however, this could take place in the middle of the trial. There would be only a 10 to 14 day delay, which is not unreasonable. The sixth amendment provides for the right to a speedy trial but this would not interfere with that right.

MARC RACICOT, proponent representing the County Attorneys, agreed about paragraph 4. This would not happen very often. The defendant always has the right to appeal a decision. It is very rare that a party in a criminal case would get an order during the middle of the trial and want to appeal. Many pre-trial issues may be appealed pursuant to a writ of supervisory control by the Montana Supreme Court. During the course of a trial, both the judge and prosecutor want to keep things moving. A continuance cannot be obtained if there is an adverse order that the prosecution or defendant believes is clearly wrong. RACICOT felt this bill would prevent abuses in this area. It takes a great deal of work to have a case reviewed by the Supreme Court. The prosecutor must decide if he is willing to put in that time, work and effort to appeal. Thus, he would not use the interlocutory appeal process in a frivolous manner.

The results of the bill are speculative. There are some very important cases that extend for weeks. RACICOT did not feel that a prosecutor would want to appeal on a regular basis.

There were no further proponents.

WES KRAWCZYK, American Civil Liberties Union of Montana, was opposed to the bill. KRAWCZYK stated this bill could lead to future malevolent decisions by the courts. It is a violation of the mootness principle. Our system of justice does not operate this way. Subsection 4 of the bill should be deleted. Even though it would not effect the rights of the defendant in that particular case, it would make him appear guilty even though he was acquitted. Thus, it becomes libelous.

There were no further opponents.

REPRESENTATIVE HANNAH asked if subsection 4 should be deleted because the attorney for the defendant wouldn't want to argue the case once the defendant is acquitted. REPRESENTATIVE SANDS stated under ordinary circumstances, if a party appeared before the Supreme Court and argued his case, they would most likely lose. In this circumstance the sponsor did not know why it was necessary because the prosecutor would have the right to interlocutory appeals during the court.

The equal protection argument is a concern. The defendant has the right to appeal throughout the process. The prosecutor does not, as it is limited by double jeopardy.

REPRESENTATIVE JENSEN asked if a trial were stopped for an interlocutory appeal and it took more than 14 days under subsection 3, what would happen. RACICOT replied the defendant can appeal at any time on an interlocutory decision, as can the prosecutor. An appeal of this type is, however, very rarely granted. The reason the court normally will not grant a defendant an interlocutory appeal is that he has a full right of appeal at the end of the trial. This is a very delicate balancing process from the prosecutor's point of view. RACICOT noted he has had only two cases in which he might have asked for an interlocutory appeal. One of the cases involved evidence that was almost a confession of guilt. The entire case hinged on that particular point, and it would have been beneficial for RACICOT to be able to have an interlocutory review of the issue.

REPRESENTATIVE ADDY asked how long it would take the Supreme Court to decide a case on appeal. RACICOT stated the court allows 30 days for the attorneys to prepare briefs, 15 additional days for each side to reply to the opposing attorney's brief. They can petition for more time. Some cases are determined in a short period of time by the Supreme Court, while in others, the court has taken considerable time.

REPRESENTATIVE ADDY asked if an interlocutory appeal would be taken after the jury has been chosen and a considerable amount of testimony has been given. He was told yes, this would be how it would happen.

REPRESENTATIVE RAMIREZ asked how the defendant could be granted a speedy trial since most decisions would not be made within 14 days unless it was an unusually clear-cut case. RACICOT replied that is a speculative question which he could not answer.

The hearing on the bill closed.

HOUSE BILL 369

REPRESENTATIVE SANDS, sponsor, stated this bill would require a judge to state his reasons for imposing a sentence. This bill is at the request of the Task Force on Corrections. A case was recently overturned by the Montana Supreme Court because the judge had not stated why he set a particular sentence.

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Pennsylvania, Louisiana, Illinois and Oregon all have statutes requiring the reasons for sentencing be stated in detail in writing. Iowa and New Jersey require this in their rules of procedure.

The desirability of this type of law is shown by a reading of Canon 19 of the Judicial Ethics. "In disposing controversial cases, a judge should indicate the reasons for his actions and his opinion showing that he has not disregarded or overlooked a series of arguments of counsel. He thus shall show he has full knowledge of the case, avoids the suspicion or arbitrary conclusions of the confidence in his intellectual integrity endangering his useful precedent to the oath of law."

This is important information to be considered by the sentencing review board. The American Bar Association standards call for this type of statement in connection with sentencing.

MARC RACICOT, County Attorneys was in favor of the bill. There has been much discussion about the sentencing discretion in this committee. The bill is ethically proper because (1) it forces the judge to explain his reasons to himself; (2) it is the basis for an appellate review; (3) it increases the understanding and acceptance of particular sentences by the public and (4) it creates a body of precedence.

WES KRAWCZYK, American Civil Liberties Union, was in favor of the bill and stated that a defendant is entitled to know the reason for his sentence.

There were no further proponents.

There were no opponents.

REPRESENTATIVE J. BROWN asked how the judges would feel about this bill. MARCELL TURCOTT stated most judges would not object.

REPRESENTATIVE SPAETH asked what way the bill is an amplification of a recent court ruling. The sponsor replied in the case of Montana v. Stumpf, 609 P2d 298 (1980), the Montana Supreme Court stated that the lower court's failure to specify any reason why the defendant was sentenced to prison for three years was an abuse of discretion. This bill would require the judge to not only give his reasons but also to write them down for possible review by a higher court.

REPRESENTATIVE JENSEN asked if this would apply to JP courts. While the sponsor thought it would apply, RACICOT thought it would not because JP courts are not courts of record.

REPRESENTATIVE SPAETH noted the wording "explicitly detailed" and wondered if there would be a problem in a judge not giving a reason that would comply with this. REPRESENTATIVE SANDS replied that could be a matter that the defendant could appeal.

The hearing on the bill closed.

HOUSE BILL 323

REPRESENTATIVE VELEBER, sponsor, stated this bill provides municipal court judges and city court judges be added to the group of incumbent judicial officers who are subject to approval by the voters when there is no election contest for their office.

MARGARET DAVIS, League of Women Voters, supported the bill.

There were no further proponents.

There were no opponents.

REPRESENTATIVE EUDAILY asked what would happen if the incumbent received a "no" vote. He was told that for district judge appointments, the Judicial Nominating Commission compiled a list of nominations. The Governor would then appoint a judge from the list. Municipal court vacancies would probably be filled this way also. Justice court vacancies created by this type of election would probably be filled by the county commissioners.

The hearing on the bill closed.

HOUSE BILL 280

REPRESENTATIVE HAND, sponsor, stated this bill will repeal 46-16-213, MCA, the law providing that an accomplice's testimony must be corroborated before a conviction can be based on that testimony. There is a severe problem with crime in Montana. REPRESENTATIVE HAND referred to a report of the Montana Board of Crime Control. Our safety is important.

MARC RACICOT, County Attorneys, was in favor of the bill. RACICOT read from EXHIBIT A as his testimony.

There were no further proponents.

KARLA GRAY, Montana Trial Lawyers, was opposed to the bill. Accomplice testimony is generally considered most unreliable as evidence. This is based on theories that the testimony may be the result of threats or that the accomplice hopes for leniency, or that he may be just frightened. GRAY felt the bill would not repeal the statute. Instead, it would state that some other evidence tends to connect the defendant to the crime. The statute provides a minimal protection. She urged do not pass.

WES KRAWCZYK, American Civil Liberties Union, was also against the bill. He believed the accomplice's testimony is justly regarded with a degree of suspicion.

There were no further opponents.

REPRESENTATIVE HAND stated that this is an opportunity for the Legislature to stop some of the repeated offenses.

REPRESENTATIVE ADDY thought a confession had to be corroborated before it could be the basis of a conviction. An accomplice's testimony would be even less reliable than a confession of guilt. RACICOT replied under section 46-16-213, a conviction cannot be had on the testimony of one responsible or legally accountable for the same offense unless the testimony is corroborated by other evidence. Accomplice testimony is less reliable than a confession.

REPRESENTATIVE RAMIREZ asked if there was a middle ground. RACICOT replied the jury weighs accomplice testimony.

The hearing on the bill closed.

HOUSE BILL 272

REPRESENTATIVE NILSON, sponsor, stated House Bill 272 is at the request of the Department of Institutions. Under existing law a judge can send a youthful offender between the ages of 16 and 18 to Swan River Youth Camp. For several years, however, the Department has been using that facility for offenders 18 to 25.

NICK ROTERING, Department of Institutions, was in favor of the bill. The Camp has not housed youths under the age of 18 since 1979. The facility is used mainly for first offenders under 25 years of age. This bill would simply prohibit a judge from sentencing a youth under 18 to the camp.

There were no further proponents.

There were no opponents.

In closing, REPRESENTATIVE NILSON stated youthful and adult offenders cannot be held in the same facility. If this were done it is possible that a civil rights action would be filed.

REPRESENTATIVE SEIFERT asked if in the past six to eight years youths and adults had been placed together. ROTERING replied it is true that judges in the past have tried to commit youths there. The Department has not allowed that because of their policy of keeping the two groups separate.

REPRESENTATIVE SEIFERT asked if first time offenders are being sent to the camp without having been evaluated first. ROTERING replied some judges have tried to do this.

ROTERING stated in 1975 there was a bill that was not requested by the Department that would have allowed direct commitment to the Swan River Camp. In rejecting the bill the Legislature made the decision that prior to commitment to Swan River a prisoner should be evaluated by the Department.

REPRESENTATIVE DAILY asked what type of training programs are available at the Camp.

DAN RUSSELL, Department of Institutions, replied there is vocational training that deals with work on small engines, electric machines, and big engines. A GED program is also available. REPRESENTATIVE DAILY further asked if funding is being requested for these programs. RUSSELL stated both the funding measures for these programs was deleted by the Legislative Fiscal Analyst. However, the Department is going to request funding.

REPRESENTATIVE SEIFERT asked if older offenders were sent to the Camp because there were not enough youth offenders there at the time. RUSSELL replied the Department has always had the ability to send prisoners up to age 25 to the Camp. In 1977 to 1979, youth were not in the facility because they did not have the capacity or need to do so. The present prison population is 768 while the capacity is 515. Many of the youth have been sent to Pine Hills School instead of the youth camp.

REPRESENTATIVE HANNAH asked why call it a youth camp. RUSSELL replied the Department refers to it as Swan River Forest Camp. Although it is in the statutes as Swan River Youth Camp, ROTERING could think of six other references to it as a youth camp that would have to be amended.

REPRESENTATIVE DAILY asked if the Department ever goes to the community to hear their reaction to the placement of offenders up to age 25 in the Camp. It was replied as a general rule, they do not. The runaways from the Camp are more likely to be the youthful offenders because if caught they will only be sent back to the Camp. Adult offenders are not likely to run away, however, because if they are caught they will be sent back to the prison. RUSSELL further stated that 90 to 95% of the crimes committed by the offenders placed in the Camp are not crimes against people. There is a screening procedure at the prison. The authorities evaluate each prisoner to determine if he should be sent to the Camp. There is a statute that prohibits the placement of offenders over age 25 in the Camp. This is because the type of training available at the Camp is geared to young people. The average age within the prison system is 30 years old.

REPRESENTATIVE KEYSER asked if when the Youth Camp idea was first thought of, wasn't the Camp intended to be for young people? It was replied yes. REPRESENTATIVE KEYSER asked if within one year of the establishment of the Camp, didn't the Department start to bring in people up to 25 years of age? RUSSELL stated that although he was not with the Department at the time, he did know that some adults that were placed there could function more effectively in the Camp. REPRESENTATIVE KEYSER asked why restrict it to 25 years of age. Maybe the Department would want to be able to place offenders who qualify for the Camp but are 26 or 27 years of age. RUSSELL stated he did not have a problem with that. He was concerned that the Department might be deceiving the residents of that area.

RUSSELL further stated the Department now strictly adheres to the age limit of 25. One time a person over the age of 25 was accidentally placed in the Camp. He was removed once the error was known.

REPRESENTATIVE EUDAILY asked if there are any federal funds used for the Camp. RUSSELL stated no; at one time there was a combination of vocational rehabilitation and general funds.

The hearing on the bill closed.

HOUSE BILL 292

REPRESENTATIVE SHONTZ, sponsor, stated this bill would add an additional judge to the seventh judicial district. The community and commissioners in this area are willing to pay the extra expense for an additional judge. This bill was proposed last

session but failed because the Legislature felt a study should be done on judicial districting in the entire state with a view towards redistricting. That study has confirmed another judge is needed in this district.

REPRESENTATIVE SHONTZ stated he has received a letter from Judge McDunna asking the bill be amended to allow the commissioners to approve the election of a judge in 1983.

According to the court reports, in 1982 the 7th Judicial District had the highest caseload - 1,470. The judge in this single-judge district not only handled the most caseloads, but also traveled the most. He traveled an equivalent of a one-way trip half way around the world.

The sponsor asked that the committee hold the bill until the Senate has taken action on the redistricting bill.

J. C. WEINGARTNER, State Bar of Montana, was in favor of the bill. He stated the judge in this district always drives with a tape recorder in his hands to dictate work. This is the only time he has to work.

There were no further proponents.

There were no opponents.

In closing, REPRESENTATIVE SHONTZ submitted a statement from MIKE ABLEY concerning caseloads.

REPRESENTATIVE ADDY asked whether Appropriations would fund a new judge. REPRESENTATIVE SHONTZ replied because of the expanding geographic area of this district, it would be appropriate for funding although he does not know what appropriations will do. The docket is full of criminal cases through April 1st. Civil cases must now wait for two years before being heard in court.

The hearing on House Bill 292 closed.

EXECUTIVE SESSION

HOUSE BILL 292

REPRESENTATIVE KEYSER moved the committee withhold action on this bill until the committee knows final action on the other bills

dealing with redistricting. REPRESENTATIVE SEIFERT made a substitute motion to TABLE the bill. It was seconded by REPRESENTATIVE KEYSER. All were in favor of tabling the bill.

HOUSE BILL 272

REPRESENTATIVE BERGENE moved DO PASS, seconded by REPRESENTATIVE J. BROWN.

REPRESENTATIVE SEIFERT stated Swan River Youth Camp was originally set up as a youth camp. Then some judges began sentencing first time offenders up to the age of 25 to the Camp. Adult and youth offenders were placed together, which caused problems such as pranks. The last few years only adult offenders have been at the Camp. REPRESENTATIVE SEIFERT was angry that the judges and the Department of Institutions send adult offenders to the Camp despite what the Legislature has passed as law.

All were in favor of the motion DO PASS except REPRESENTATIVE CURTISS, who voted no by proxy. REPRESENTATIVE EUDAILY voted yes by proxy.

HOUSE BILL 280

REPRESENTATIVE KEYSER moved DO PASS, seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE JENSEN made a substitute motion of DO NOT PASS, seconded by REPRESENTATIVE FARRIS.

REPRESENTATIVE ADDY stated that in the military there was no rule requiring corroboration of accomplice testimony. He stated he did have one case in which the accomplice testified. During the court hearing, the accomplice and the defendant got together and developed amnesia. Although REPRESENTATIVE ADDY objected, the jury found the defendant not guilty. Dealing with an accomplice is a hard thing to do. REPRESENTATIVE ADDY, therefore, supported the do not pass motion.

REPRESENTATIVE KEYSER stated a defendant must be found guilty beyond a reasonable doubt. Often times it is for a technicality that the defendant is allowed to go free. Even if this bill passes, the judge can and should inform the jury that an accomplice's testimony should be considered with caution.

REPRESENTATIVE SPAETH stated an informer is different from an accomplice. The repeal would not necessarily apply to the person who is being tried. To repeal the section would make a good statute.

REPRESENTATIVE JENSEN stated this bill covers the situation when only the accomplice's testimony is given. He was uncomfortable about this because of the lack of trust the public has towards an accomplice.

REPRESENTATIVE ADDY stated the bill draws clearly the rule of the courts and the rule of evidence. Are we searching for the truth or looking for a conviction? The conviction might be a result of the truth.

REPRESENTATIVE SPAETH stated the purpose of the act is not directed at the accomplice but towards the innocent person.

REPRESENTATIVE HANNAH was in favor of the bill. When a case is appealed to a higher court, that court does not have the opportunity to see and hear firsthand the information as presented. Instead they must review the case via court transcripts.

REPRESENTATIVE KEYSER stated cases are easier for the defense since it is the prosecution that must prove beyond a reasonable doubt that the party is guilty.

REPRESENTATIVE FARRIS stated the committee has heard a movement towards mandatory sentencing. There is an attitude for the death penalty to be reinstated. As an investigative reporter intern she learned that it is not hard to find out information and it is not hard to prove that information.

REPRESENTATIVE RAMIREZ was against the motion of do not pass. The attorney is allowed to cross examine and question the witnesses. The defendant also has the right to testify. The bill does not change those safeguards. We must realize the accomplice has an interest in the case that he tries to benefit himself. The jury takes everything into account. Facts are weighed on a case by case basis.

REPRESENTATIVE BERGENE asked when the Supreme Court does hold up corroboration, what has the prosecution done? REEPRESENTATIVE KEYSER replied the prosecution has probably introduced evidence other than just the testimony of the accomplice.

REPRESENTATIVE JENSEN withdrew his motion of DO NOT PASS.

REPRESENTATIVE ADDY made a motion to strike the sentence "The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." REPRESENTATIVE JENSEN was in favor of the motion as he felt it was a reasonable approach.

REPRESENTATIVE RAMIREZ was against the motion. He stated witness RACICOT was asked about that but did not feel there was any middle ground and by striking that wouldn't make any difference. REPRESENTATIVE RAMIREZ stated that under the Joint Rules the amendment could not be considered because the bill is to repeal the section.

REPRESENTATIVE ADDY withdrew his motion.

REPRESENTATIVE JENSEN moved DO NOT PASS. A roll call vote resulted. Those voting no were: D. BROWN, BERGENE, DAILY, EUDAILY, HANNAH, KENNERLY, KEYSER, RAMIREZ, SEIFERT. Those voting yes were: ADDY, J. BROWN, DARKO, FARRIS, JENSEN, SCHYE, SPAETH, and VELEBER. The motion failed 9 to 8.

REPRESENTATIVE KEYSER moved to reverse the vote to DO PASS. The motion carried 9 to 8. Those voting no on the above vote, voted yes. Those voting yes on the above vote, voted no.

HOUSE BILL 323

REPRESENTATIVE VELEBER moved DO PASS, seconded by REPRESENTATIVE KEYSER. All were in favor of the motion. REPRESENTATIVE CURTISS did not leave a proxy on this bill.

HOUSE BILL 369

REPRESENTATIVE HANNAH moved DO PASS, seconded by REPRESENTATIVE DAILY.

REPRESENTATIVE RAMIREZ moved to amend the bill by striking "clearly and explicitly in detail", seconded by REPRESENTATIVE ADDY. REPRESENTATIVE RAMIREZ was concerned that under the language of the bill as written, cases would be appealed because the judge did not state in detail why he handed down a particular sentence.

REPRESENTATIVE FARRIS made a substitute motion to leave the word "clearly" in.

REPRESENTATIVE KEYSER seconded the motion.

The substitute motion of REPRESENTATIVE FARRIS carried with REPRESENTATIVES SPAETH, RAMIREZ, and J. BROWN voting no.

REPRESENTATIVE DAILY moved DO PASS AS AMENDED, seconded by REPRESENTATIVE DARKO. All were in favor except REPRESENTATIVES SPAETH, RAMIREZ, and SEIFERT. REPRESENTATIVE EUDAILY voted yes by proxy.

HOUSE BILL 368

REPRESENTATIVE JENSEN moved DO NOT PASS, seconded by REPRESENTATIVE FARRIS. REPRESENTATIVE JENSEN did not feel the bill would accomplish anything. Time is the essence.

REPRESENTATIVE RAMIREZ supported the motion.

REPRESENTATIVE HANNAH was concerned with the question of time. It would be a mistake to go back to trial after a case is decided. This could go on and on.

REPRESENTATIVE KEYSER agreed with the motion. The prosecution should appeal. The prosecution does not have the right to appeal after the verdict is given. The defendant can make all the appeals he wishes. The time element is crucial. The Supreme Court is not able to review a case and have it back to the court in 12 days.

REPRESENTATIVE HANNAH stated if the Supreme Court can decide about a high school football game in a few days, they should be able to review a murder case quickly.

The motion of DO NOT PASS carried with REPRESENTATIVE HANNAH voting no.

HOUSE BILL 265

REPRESENTATIVE DAILY moved DO PASS with REPRESENTATIVE JENSEN seconding the motion.

CHAIRMAN BROWN moved to amend the bill by reinserting lines 19 through 23 on page 2; reinserting subsections g and h on page 3; strike "each" on line 5 page 4 and inserting "the condemning"; line 6 strike "commissioner he" and insert "commissioners." Strike lines 6 through 15. REPRESENTATIVE ADDY seconded the motion. BROWN proposed further amendments requiring that commissioners be residents. The condemning party would pay for the costs on appeal.

REPRESENTATIVE HANNAH was concerned with Canadian residents whose property extends into the U.S., and who live in the U.S. CHAIRMAN BROWN stated if he is a resident of that judicial district he should be able to have a say in that district even though he is of Canadian citizenship.

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The condemning would pay the cost of appeal regardless.

The amendment carried.

REPRESENTATIVE KEYSER moved DO PASS AS AMENDED. All were in favor of the motion. REPRESENTATIVE CURTISS and REPRESENTATIVE EUDAILY voted yes via proxies.

HOUSE BILL 331

It was stated the sponsor would prefer the bill be amended as the California law states. He also wants the fine reduced to \$500 and thus handled in Justice Court.

REPRESENTATIVE DAILY moved the bill DO PASS. REPRESENTATIVE DAILY moved the amendments be adopted as in compliance with Montana law.

REPRESENTATIVE RAMIREZ asked what "toleune" is as, the amendment states. It was replied that is a common colorless flammable liquid substance used in fingerpolish remover, paint thinners, etc.

CHAIRMAN BROWN felt the original bill would do the same as the proposed amendments.

REPRESENTATIVE DAILY withdrew his motion to adopt the amendments as under California law. He moved the fine by changed to \$500 from \$1,000.

All were in favor of the motion.

REPRESENTATIVE DAILY moved DO PASS AS AMENDED, seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE ADDY asked how this would be enforced. CHAIRMAN BROWN stated there has been a problem in Great Falls with people sniffing substances at an abandoned warehouse known as the Paint Palace. Law enforcement officers cannot arrest the people. They can only refer them to hospitals or health care facilities to obtain help. In Great Falls in 1982, 37 incidents resulting in 59 arrests for other offenses also involved abuse of this type of chemical. The exhibit from the testimony was referred to.

REPRESENTATIVE ADDY asked if the bill would really solve the problem. REPRESENTATIVE KEYSER stated there is no current statute that applies to this problem.

The motion of DO PASS AS AMENDED carried. REPRESENTATIVE J. BROWN and REPRESENTATIVE EUDAILY voted yes via proxies. REPRESENTATIVE CURTISS and REPRESENTATIVE IVERSON DID NOT LEAVE votes.

HOUSE BILL 376

REPRESENTATIVE DAILY moved DO PASS, seconded by REPRESENTATIVE DARKO.

REPRESENTATIVE ADDY moved the bill be amended as was presented in testimony.

BRENDA DESMOND stated there is a problem with children that are adopted and the natural grandparents still want connections with the child. The court must decide if allowing the grandparents visitation rights is in the best interests of the child. REPRESENTATIVE HANNAH felt that the grandparents love the child and they should not be hindered by what their children do.

The committee decided to hold action on the bill.

HOUSE BILL 234

REPRESENTATIVE FARRIS moved to DO PASS, seconded by REPRESENTATIVE BERGENE.

REPRESENTATIVE SPAETH felt the bill did not do much except make the school board members feel a bit better.

All were in favor of the motion except REPRESENTATIVES JENSEN and ADDY. REPRESENTATIVES DAILY, IVERSON, CURTISS and J. BROWN voted yes via proxies.

The meeting adjourned at 11:45 a.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

January 27, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **272**

First reading copy (**White**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE SWAN RIVER
YOUTH FOREST CAMP AS A PLACE OF COMMITMENT UNDER THE YOUTH COURT
ACT; AMENDING SECTIONS 41-5-103 AND 41-5-323, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **272**

DO PASS

STANDING COMMITTEE REPORT

January 27,

19 83

SPEAKER:

MR.

JUDICIARY

We, your committee on

having had under consideration **HOUSE** Bill No. **280**

First reading copy (**White**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE LAW PROVIDING
THAT AN ACCOMPLICE'S TESTIMONY MUST BE CORROBORATED BEFORE A
CONVICTION CAN BE BASED ON THAT TESTIMONY; REPEALING SECTION
46-16-213, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **280**

DO PASS

DAVE BROWN,

Chairman.

STANDING COMMITTEE REPORT

January 27,

19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **323**

First reading copy (**White**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT MUNICIPAL COURT JUDGES AND CITY COURT JUDGES BE ADDED TO THE GROUP OF INCUMBENT JUDICIAL OFFICERS WHO ARE SUBJECT TO APPROVAL BY THE VOTERS WHEN THERE IS NO ELECTION CONTEST FOR THEIR OFFICE; AMENDING SECTION 13-14-212, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **323**

DO PASS

STANDING COMMITTEE REPORT

January 27,

19 **83**

SPEAKER:

MR.

JUDICIARY

We, your committee on

HOUSE

having had under consideration Bill No. **369**

First reading copy (**White**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A JUDGE TO STATE HIS REASONS FOR IMPOSING A SENTENCE; AMENDING SECTION 46-18-102, MCA."

HOUSE

369

Respectfully report as follows: That..... Bill No.

BE AMENDED AS FOLLOWS:

1. Page 2, line 7.
Following: "clearly"
Strike: "and explicitly"
Following: "state"
Strike: "in detail"

AND AS AMENDED

DO PASS

DAVE BROWN,

Chairman.

STANDING COMMITTEE REPORT

January 27,

83

19.....

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **368**

First reading copy (**White**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF APPEAL
BY THE STATE IN CRIMINAL CASES BY ALLOWING INTERLOCUTORY APPEALS
ON CONTROLLING QUESTIONS OF LAW AND ALLOWING APPEALS FOLLOWING
JUDGMENT ON IMPORTANT QUESTIONS OF LAW; AMENDING SECTION
46-20-103, MCA."**

Respectfully report as follows: That..... **HOUSE** Bill No. **368**

DO NOT PASS

XXXXX
DO PASS

STANDING COMMITTEE REPORT

(1 of 2)

January 27,

83

19.....

MR. **SPEAKER:**

JUDICIARY

We, your committee on

HOUSE

265

having had under consideration Bill No.

First

reading copy (**White**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING CERTAIN QUALIFICATIONS FOR CONDEMNATION COMMISSIONERS IN EMINENT DOMAIN PROCEEDINGS AND PROVIDING FOR THEIR COMPENSATION; AMENDING SECTION 70-30-207, MCA; AND PROVIDING AN EFFECTIVE DATE."

HOUSE

265

Respectfully report as follows: That..... Bill No.

BE AMENDED AS FOLLOWS:

1. Page 2, following line 11.

Insert: "(3) Each commissioner shall possess the following qualifications: Renumber subsequent subsections

2. Page 3.

Following: line 5.

Insert: "(a) that he is possessed of sufficient knowledge of the English language; (b) that he is a resident of a county within the judicial district in which the action is pending; (c) that he is not related within the sixth degree to any party; and (d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party."

XXXXX
DO PASS

3. Page 4, line 3.

Following: "(4)"

Strike: "(a)"

4. Page 4, line 5.

Following: "."

Strike: "Each"

Insert: "The condemning"

5. Page 4, line 6.

Following: "of the"

Strike: "commissioner he"

Insert: "commissioners"

Following: "nominated"

Strike: remainder of line 6 and lines 7 and 8 in their entirety through
"parties" on line 8.

6. Page 4, following line 8.

Strike: Subsections (b) and (c) in their entirety.

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

January 27, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **331**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH THE OFFENSE
OF CRIMINAL POSSESSION OF A TOXIC SUBSTANCE."**

Respectfully report as follows: That **HOUSE** Bill No. **331**

BE AMENDED AS FOLLOWS:

1. Page 1, line 18.
Following: "convicted"
Strike: "of criminal possession of a toxic substance"
Insert: "under this section"

2. Page 1, line 21.
Following: "exceed"
Strike: "\$1,000"
Insert: "\$300"

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

January 27,

83

19.....

SPEAKER:

MR.

JUDICIARY

We, your committee on

HOUSE

234

having had under consideration Bill No.

First

reading copy (White)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE TRUSTEES
OF ANY SCHOOL DISTRICT WHEN ACTING IN THEIR OFFICIAL CAPACITY ARE
INDIVIDUALLY IMMUNE FROM LIABILITY FOR EXEMPLARY AND PUNITIVE
DAMAGES; AMENDING SECTION 20-3-332, MCA."

HOUSE

234

Respectfully report as follows: That..... Bill No.

~~DO PASS~~

DAVE BROWN,

Chairman.

	Date: 1/27 No: HB 272 Do Not Pass	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	No					
ADDY, Kelly	Yes					
BERGENE, Toni	No					
BROWN, Jan	Yes					
CURTISS, Aubyn	-					
DAILY, Fritz	No					
DARKO, Paula	Yes					
EUDAILY, Ralph	No					
FARRIS, Carol	Yes					
HANNAH, Tom	No					
IVERSON, Dennis	-					
JENSEN, James	Yes					
KENNERLY, Roland	No					
KEYSER, Kerry	No					
RAMIREZ, Jack	No					
SCHYE, Ted	Yes					
SEIFERT, Carl	No					
SPAETH, Gary	Yes					
VELEBER, Dennis	Yes					

HOUSE BILL 280

Exhibit A
HB 280
1/27/83

House Bill 280 would repeal section 46-16-213, MCA which provides that a defendant cannot be convicted on the testimony of a codefendant unless there is separate and additional evidence which establishes the defendant's identity and participation in the crimes.

For instance: In Billings Ray Warren was charged with murder arising out of a shooting that occurred on August 15, 1979. The defendant, Donald Warren, is the father of Ray Warren, and was charged with tampering with evidence because he gave a .22 caliber pistol apparently used in the shooting incident to Norman Hopkins and asked Hopkins to dispose of the gun. This occurred the day after the arrest of Ray Warren for deliberate homicide. Hopkins testified that the defendant told him the gun was unregistered and perhaps illegal. Instead of disposing of the gun, Hopkins retained it for almost 3 1/2 months when he turned it over to the police. The Montana Supreme Court found that Hopkins was an accomplice and applying section 46-16-213, MCA held that there was not separate and additional evidence supporting the conviction of Donald Warren. The case was therefore reversed and dismissed.

In November, 1978 four men, Case, Metcalf, Rick Worden and Ron Worden drove to Montana from California. During the trip, they discussed plans for robberies of roadside bars, purchased a gun and tape for restraining victims and "cased" a number of bars. On November 7, 1978 the Worden brothers robbed Mac's Bar in Wolf Creek while Case and Metcalf remained outside in the car. The victims described how they were placed face down on the floor and bound with tape while Rick and Ron Worden robbed them. Ron Worden testified that Case was the driver of the getaway car and how he shared in the spoils but, the victims could not identify Case at all. The next night on November 8, 1978 the four defendants robbed and killed three people in a bar in Loring, Montana. The Montana Supreme Court reversed the conviction of Case for the robbery at Wolf Creek because there was no separate and additional evidence other than that of the accomplice, Ron Worden, to support it.

In March, 1977, Kemp agreed to sell Schott \$12,000 worth of methamphetamine. Unable to finance the transaction, Schott contacted various persons to participate in the deal including a Bill Knutson from North Dakota. Knutson was to wire \$600 to Kemp's Livingston bank account. On March 16, 1977 Schott flew to Livingston and checked into the Sandarosa Motel. She later contacted Logan, her husband, and asked him to join her in Livingston. During

the evening of March 16, Kemp came to Schott's room with a sample of the drugs to be sold. After testing for quality, Schott gave Kemp the money and he left, returning a few hours later with a one pound sack of methamphetamines. Schott was later arrested and testified to the facts mentioned above. She also testified that she had other drug dealings with Kemp during the two months before the methamphetamine transaction. In January, 1977, in Livingston, she sold cocaine to Kemp and was paid with the proceeds of a check from Portia Fonda to Kemp. In February, 1977, in Helena, Schott purchased amphetamines from Kemp. Logan testified and verified the events as aforementioned. Richard Daem, a Livingston banker, testified that a \$600 money wire came to Kemp on March 17 from Knutson in North Dakota. Schott's ledger and her address book were also introduced. Kemp was convicted of criminal sale of dangerous drugs. The Montana Supreme Court reversed and dismissed finding that Schott and Logan were accomplices and that there was not separate and additional evidence supporting their testimony.

There have been approximately 20 Montana Supreme Court cases in the last four years dealing with accomplice testimony. It would be impossible to estimate how many others have not been filed or appealed because of the accomplice corroboration rule.

The rule established by this statute was enacted because the testimony of an accomplice has always been regarded with some degree of suspicion. The weakness of accomplice testimony lies in the lack of credibility of a self-confessed criminal who seeks to implicate another.

In addition to this rule, the courts in Montana have also established the rule that when an accomplice testifies, the judge must instruct the jury that his testimony should be viewed with caution and distrust.

The operation of these two rules together provides a refuge for criminal activity and most especially organized criminal activity. Where the crime involved is one of an intangible and highly secretive nature, normally the only evidence available is testimony of the corrupt participants in the crime itself. Usually defendants involved in multi-county and multi-state drug and stolen property rings take advantage of this rule.

House Bill 280 would eliminate one of these two rules aforementioned. The jury would still be instructed to view accomplice testimony with distrust and caution, but there would not be a legal requirement that, in addition to the codefendant's testimony, there must also be separate and supplemental evidence of the defendant's identity

and participation in order to obtain a conviction. Passage of House Bill 280 would bring Montana into conformity with the law in more than half the states and the federal courts and would eliminate this artificial advantage extended to highly organized and secretive criminal activity.

As the law stands, section 46-16-213 provides a remedy that extends beyond the wrong it was intended to correct and presents an unnecessary procedural hurdle for the prosecution. It inhibits the usefulness of accomplice testimony since its effect is complete withdrawal of accomplice testimony from the jury. Unless additional and separate evidence is produced, the case is taken away from the jury without an opportunity to determine whether the accomplice should be believed or not. This presents a situation where the cure is worse than the disease. Employing both rules regarding accomplice testimony flies in the face of good law enforcement goals especially where it is virtually all the evidence available of sophisticated criminal activity.

While we don't want our criminal justice system to provide a blank check for unjust convictions based on perjured testimony, we also don't want to provide sanctuaries for the guilty by utilizing procedures that obstruct, retard and delay the legitimate prosecution of crime.

Your decision regarding House Bill 280 hopefully will be made by weighing the likelihood of perjury sufficiently skillful to completely fool juries to produce unjust convictions against the harm of allowing the guilty to escape conviction because separate and additional evidence is unobtainable. In view of the fact that a court will still instruct a jury to view accomplice testimony with caution, House Bill 280 should pass.

If the likelihood of false testimony going undiscerned outweighs the harm of letting the guilty go free, then House Bill 280 is probably not a good idea. There is, however, no sound reason to mistrust the ability of a jury to determine whether an accomplice is lying when they already do that with virtually every other witness except the accomplice.

Exhibit B

HB 292

1/27/83

John Shontz

Bill # 7

~~1982~~

Case filings

1982

1470

1981

1463

1980

1203

~~1979~~

- now tied for the highest workload in the state in addition to having the most miles per judge traveled in the state. More than double the normal miles traveled

Michele Akley

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 292

DATE 1/27/83

SPONSOR Rep. Shontz

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 272

DATE 1/27/83

SPONSOR Rep. Nilson

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 280

DATE 1/27/83

SPONSOR Rep. Hand

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

JUDICIARY

COMMITTEE

BILL House Bill 323

DATE 1/27/83

SPONSOR Rep. Veleber

[illegible]

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WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

COMMITTEE

DATE 1/27/83

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 368

DATE 1/27/83

SPONSOR Rep. Sands

[illegible]

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WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.