

MINUTES OF THE JUDICIARY COMMITTEE
March 10, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 8:02 a.m. All members were present except Representative Seifert. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

SENATE BILL 4

SENATOR MAZUREK, District 16, Helena, Montana, stated that this bill was a product of the interim Judiciary Subcommittee, which was trying to do something about appellate delays, and there was a great deal of discussion about transcripts. He indicated that one of the things they heard was that they would not order transcripts promptly; this bill would require the appellant in a criminal appeal to order a transcript in writing and a notice of this order be sent to the clerk of the supreme court. He noted that the subcommittee had placed in a penalty if the transcript had not been ordered within ten days after filing the notice of appeal, then the attorney representing the defendant would be assessed the cost of transcript preparation; the Senate took this out as the Senator from Deer Lodge thought this would make this a "Mickey Mouse" bill.

There were no proponents and no opponents.

SENATOR MAZUREK closed.

There were no questions and the hearing on this bill closed.

SENATE BILLS 26 AND 52

SENATOR MAZUREK, District 16, Helena, noted that these bills could be considered together and, knowing that the committee had heard this previously, he pointed out the changes that were made in the Senate. Senate Bill 52 is an act to provide for a third district court judge in the First Judicial District, and Senate Bill 26 alters certain judicial boundaries and changes the number of judges in certain judicial districts. He said that Ms. Desmond has provided maps showing these changes. See EXHIBITS A, B, and C. He explained that in the First Judicial District and in the Seventh

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Judicial District, there were proposals made for additional judges during the last session. These bills did not pass and instead a resolution was passed, which called for an interim study, which was to look at the entire state before adopting additional judgeships. He indicated that the first change that was made in the Senate was in the Fourth Judicial District, which currently is Sanders County, Lake County, Mineral County, Missoula County and Ravalli County. He said that in the interim study, they had taken Ravalli County out and made it a separate judicial district; Senator Brown had suggested that instead of taking Ravalli County out, they should take Sanders and Lake Counties out and the Senate adopted that primarily because there is about 150 caseload-per-year difference and the amount of travel is significant - the road to Hamilton is better than the road to Polson or Mineral County. He commented that there was some concern over this by Judge Green, but they felt that this was a better move.

He explained the other change, which is in Yellowstone County, that the subcommittee felt that they should separate Stillwater County, Carbon County and Treasure from the Thirteenth Judicial District; but based on a letter they received from Neil Keefer and testimony from other witnesses from Yellowstone, the Senate Judiciary Committee put Stillwater and Carbon Counties back with the Thirteen Judicial District and the judge who had been added came back to Billings with those two counties, so there will be a fifth judge in Yellowstone County. He mentioned that one thing they considered was leaving Stillwater County in Big Timber, because it is close and this would relieve the caseload in Yellowstone County even more.

He continued that the other change was on line 9, page 2, wherein the Tenth Judicial District and the Fourteenth Judicial District were combined under the subcommittee's proposal to have a two-judge district. He explained that both of the judges from that district testified that it really would not help them that much and the problem is that Lewistown is the only city of any size there; so they will have two judges in Lewistown and the districts are left as they are currently.

He explained that Sections 3 and 5, which was in the bill formerly became unnecessary because the committee deleted

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the provision eliminating a judge in Silver Bow because it was shown that those judges had traveled substantially and, in addition, it was felt that since this would not be effective until 1989, then if the caseload drops way down, they can take action on Silver Bow then.

He also said there was some concern with the effective date, but they felt that it was O.K. and that this is how it was done in the past.

He indicated that he told proponents from out-of-town, since this bill was heard in the Senate, he did not think that it was necessary for them to come; and Steve Brown, representing the Montana Judges Association, wanted to be here in support of the bill but he was out of town, but wanted to be recorded as in support of this bill.

J. C. WEINGARTNER, representing the State Bar of Montana, stated that they support this bill.

PAT HOOKS, a practicing attorney in Broadwater County, testified that the chief justice has called out of retirement, former Judge Meloy to handle Broadwater County. He felt this was a bandaid approach to the problem.

CHAD SMITH, an attorney in Helena, informed the committee of a situation last year where one judge was conducting hearings as early as 7:00 a.m. and another judge conducting trials past 6:00 p.m. He said that there was so much pressure on the judges that they could not be expected to deliberate fully.

MARGARET DAVIS, representing the League of Women Voters, gave testimony in favor of the bill. See EXHIBIT D.

PAUL KELLER, an attorney in Helena, pointed out in Helena, they handle all the state cases and they need a third judge to handle just the state business.

RICK PARISH, an attorney in Helena, stated that he supported this bill and it is badly needed.

REPRESENTATIVE CURTISS said that she approved of this plan and that it is long overdue.

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There were no further proponents.

NICK MURNION, the County Attorney of Garfield County, stated that he was not going to speak against the bill but only a portion of it. See EXHIBIT E.

There were no further opponents.

SENATOR MAZUREK noted that the situation in Garfield County sounded like a legitimate one and he said that he had received a letter from Judge Martin, in which he did allude to this problem. He indicated that they tried to make their decisions in regard to trade areas, etc. and he would have no problem with taking Garfield County out of the Seventh Judicial District and putting it back in the Sixteenth Judicial District.

REPRESENTATIVE KEYSER questioned MR. MURNION asking if he understood him to say that he had only two or four district court cases. MR. MURNION responded that in 1982, they had two criminal actions - two felonies.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 409

SENATOR BERG, District 21 in Great Falls, said that this was introduced at the request of the Department of Justice and is a bill that clarifies the law regarding the revocation of a deferred or suspended sentence, requiring that a petition to revoke a deferred or suspended sentence be filed during the period of deferral or suspension.

MARGARET JOHNSON, Assistant Attorney General, said that the immediate cause of this bill was a case that was decided by the Supreme Court in 1981. See EXHIBIT E.

There were no further proponents and no opponents.

SENATOR BERG closed.

There were no questions and the hearing on this bill closed.

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SENATE BILL 352

SENATOR REGAN, District 32, stated that this bill was being introduced at the request of some foster parents; two years ago, they established a Foster Care Review Committee so that kids that were placed in foster care would not just be forgotten about, but that permanent plans would be made for them so that they would not find themselves just shifted from one foster home to another. She testified that the committee consisted of anywhere from four to seven members - a representative of the SRS, a representative of the youth court and anyone who was familiar with the needs of children. She felt that it was somewhat surprising to see that the foster parent was not included on this committee; so this bill does nothing more than say that when a particular child is under review, that foster parent shall sit as a temporary member of the committee.

There were no proponents and no opponents.

SENATOR REGAN closed.

REPRESENTATIVE HANNAH asked what the committee was reviewing. SENATOR REGAN replied they review what permanent plans shall be made for this child; kids who often are bumped and kicked from one foster home to another and they end up very much disturbed and probably in trouble with the law. She explained that this committee tries to make some orderly plans for what is going to happen to this kid.

REPRESENTATIVE HANNAH wondered what would happen if the foster parents decide they want to adopt the child. SENATOR REGAN responded that that does happen and someone from the department could probably tell you how often this happens.

NORMA VESTRE, Administrator of the Community Services Division, said that she did not know the statistics.

REPRESENTATIVE HANNAH wondered if the foster parent could become so attached to the child that they might not be able to inject good common sense. SENATOR REGAN answered that this could be a problem - there is always a risk, but when you have seven members on the committee, the other six have a disinterested view.

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SENATOR REGAN requested that Senator Jensen tote this bill on the House floor.

REPRESENTATIVE CURTISS asked what was the policy of the department as to foster parents opposed to adoptive parents. MS. VESTRE replied that if a child is placed in a foster home and is free for an adoption, and if the child has been there for any length of time, very often the foster home will be looked at as the first resource for adoption, but it depends on each individual case.

REPRESENTATIVE CURTISS wondered if it was the policy of the department to leave that child in the foster home rather than move him to another strange circumstance. MS. VESTRE replied that it is not an overall policy - it really depends on the circumstances of the child and of the foster parents. She continued that very often the child is left in a foster home because he is not free for adoption; sometimes the child is moved from a foster home into an adoptive home and they very often look at the foster parents as a resource for adoption.

REPRESENTATIVE CURTISS questioned who would have the preference if a person other than the foster parent had approached for an adoption before the foster parents. MS. VESTRE replied that the preference is not with either one; the decision is made on what is the best interest of the child and it may not be a foster parent and it may not be an adoptive parent. She explained that when they have a child who is free and ready for adoption they look at all the resources that are available for that child and they decide on what is the best interest for that child.

REPRESENTATIVE EUDAILY noted that on page 2, lines 17 and 18, it states, "The department shall adopt rules" and he wondered if there was a statement of intent. SENATOR REGAN replied that the bill you have before you is the law and the rules have already been adopted.

REPRESENTATIVE EUDAILY questioned if this would cover all the changes in this section. SENATOR REGAN responded that was correct.

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There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE BILL 352

REPRESENTATIVE KEYSER said that he questioned that there was a statement of intent made when this bill was passed that covered this rule, because this rule was just now being proposed.

REPRESENTATIVE ADDY replied that he could not see the need for a rule. CHAIRMAN BROWN clarified by saying that all they are adding is another member to sit on that committee and if they were adding something that the committee should consider, then there might be a different intent.

REPRESENTATIVE FARRIS moved that the bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

SENATE BILL 409

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JENSEN.

The motion carried unanimously.

SENATE BILL 4

REPRESENTATIVE ADDY moved that this bill BE CONCURRED IN, seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE EUDAILY wanted to know why the material they deleted on page 3 would not be a good addition to the bill. REPRESENTATIVE ADDY replied that he did not know.

REPRESENTATIVE JENSEN moved to amend the bill by reinserting the language on page 3, lines 3 through 9, renumber section and amend the title appropriately. REPRESENTATIVE CURTISS seconded the motion.

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REPRESENTATIVE RAMIREZ said that he has a little problem with this bill as the transcript will be assessed against counsel representing the defendant and he wondered what is the reasoning behind that. REPRESENTATIVE CURTISS responded that it was the thinking of the committee that they would do this more expeditiously if there were a penalty in there.

REPRESENTATIVE RAMIREZ said that he knew that everyone wants to speed up these appeals but the problem is there are sanctions that can be imposed, but they are not imposed. He said that the filing of the appeal is the most critical element and there are sanctions that the court can impose by dismissing or whatever and he felt that they were really singling out the lawyer who may not be the one who is dilatory and may not have gotten instructions from his client.

REPRESENTATIVE JENSEN said that he withdrew his motion.

REPRESENTATIVE SPAETH said that he saw a contradiction between paragraph (b) on page 3 and the first part of the bill.

REPRESENTATIVE HANNAH made a motion to amend the bill by reinserting the language on page 3, lines 3 through 9, renumber the section and amend the title, seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE HANNAH said we should address this problem; there are sanctions on the books now that the court may impose but the court has chosen not to do that and he felt that was the history of our legal process. He contended that it is the responsibility of the members of the legislature as elected representatives of the people who are upset by the long delays in the court process to (1) speed up these cases and (2) this will send a message to the courts that maybe they should start imposing the sanctions that they have a right to do. He thought that it would not hurt anyone, they have to make a decision and send a note and he thought it was a step in the right direction.

REPRESENTATIVE RAMIREZ asserted that you are punishing the lawyers for something that the judge is responsible for and that you are going to encourage, especially indigents, to go ahead and order that transcript right now, because they

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are not going to want to have the cost assessed against them. He stated that the delays in Montana are probably minimal compared to other states but he did not feel that the delays were caused by things of this kind, but the fact that we permit multiple appeals - appeals to the supreme court, through all the federal court system and there are a lot of abuses.

REPRESENTATIVE KEYSER said that in looking at the language in the part that was striken, he feels that all the work has been done; the client and the attorney have discussed this; they have decided that they want to appeal and he has surely talked to his client about that and he could see nothing wrong with reinstating the language.

REPRESENTATIVE CURTISS said that after listening to lots of testimony, the committee identified this and found that this is something that is used by defense attorneys to prolong the process.

REPRESENTATIVE SCHYE wondered if the lawyers are really going to care if the costs come back on them or not - they will just charge this to the client or it will ultimately come back to the state. He asked if the lawyer can just not make his bill to the client that much bigger.

REPRESENTATIVE KEYSER responded that it says that it may not be charged to the person appealing or to the county.

REPRESENTATIVE ADDY said that if an attorney is paid on an hourly rate as a public defender, it is sure easy to find extra hours in the library and he said he was not sure this would ever happen.

REPRESENTATIVE KEYSER exclaimed wouldn't that be unethical.

REPRESENTATIVE JENSEN indicated that that was why he withdrew his amendment and he felt that the attorneys are just going to pass this cost on one way or the other to somebody.

REPRESENTATIVE EUDAILY wondered if under the deleted language, would they have to produce the whole transcript or could they just request a part of it.

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MS. DESMOND replied that it seemed to her that they would access the cost of whatever parts of the transcript that they determined were necessary for the appeal and she did not feel that there was a conflict.

REPRESENTATIVE EUDAILY noted that they would not have to do the whole transcript. MS. DESMOND responded that she did not think so.

REPRESENTATIVE RAMIREZ said that he thought we should go ahead and vote; if we do adopt the amendment, it will have to go to conference committee and he did not think they would accept it.

A vote was taken on the amendment and it failed with 6 voting aye and 12 voting no. See ROLL CALL VOTE.

A vote was taken on the motion to BE CONCURRED IN. The vote was unanimous in favor of the bill.

SENATE BILL 26

REPRESENTATIVE ADDY moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE CURTISS.

REPRESENTATIVE CURTISS mentioned that John Ryan expressed his concerns about the matter in Garfield County - they came in late and were not able to participate.

REPRESENTATIVE KEYSER moved that "Garfield" be deleted on page 2, line 4 and inserted on page 2, line 23. The motion was seconded by REPRESENTATIVE HANNAH.

CHAIRMAN BROWN indicated that he hated to amend this bill, but that this was justice.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN, AS AMENDED. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE HANNAH moved that they take Stillwater County and put it over with Sweetgrass, taking it out of Judicial District 13 and move it into Judicial District 6. REPRESENTATIVE RAMIREZ seconded the motion.

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REPRESENTATIVE HANNAH explained that there is a mountain range there; there is also a continuity in the area of Big Timber, Livingston and Stillwater area, plus this is the largest growing area in the state. He then withdrew his motion.

REPRESENTATIVE SPAETH said that this could have been a good amendment or a bad amendment; this was the first time it came up this morning, when the sponsor suggested it; they are trying to get in touch with the legal folks in Stillwater County; and it may be something that they may seriously want to take a look at. He wondered if the committee would allow them the discretion of making that amendment on the floor, if the bill goes out without it. He felt, that as far as the caseload is concerned, it would not greatly burden the judge in the Sixth Judicial District, so it makes sense there; and it would take a little burden off the Thirteenth Judicial District, but not a burden in either district. He thought that Stillwater County should be allowed to gravitate too; and that is essentially what he is trying to find out right now.

REPRESENTATIVE ADDY informed the committee that he received a letter from Judge Wilson a few days ago; he has done a lot of coordinating on who wanted to be where; and he indicated that the people in Columbus were very happy remaining in the Billings trade area for political purposes. He stated that the letter they got from Park County earlier indicated that they did not want their judge on the road all that much.

REPRESENTATIVE SPAETH said that all these statements were made previously; and he thought that they want the bill the way it is now, but he wanted to make sure. He continued that he was contacted by the county commissioners in Lewis and Clark County (they probably have the same concern in Yellowstone County) because we are going to pass this bill; they need a third judge in Lewis and Clark County (they need a fifth judge in Yellowstone County) and the county commissioners have looked at the cost of remodeling the courthouse to come up with a new courtroom. He noted that judges do not like

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to share courtrooms; and if they are going to be busy, like we think they are, they will have to have their own courtroom. He explained that here in Lewis and Clark County, it is estimated that it will cost \$150,000.00; and this is at a time of extreme economic hardship, particularly on our county governments. He commented that we are imposing not only a new judge on them, but they have to come up with a new courtroom. He declared that he did not have any solutions other than going ahead with this bill.

REPRESENTATIVE DAILY noted, in response to that, that we just built that \$7 million building a couple of blocks over here and it seems to him that there is a lot of empty space in that building and maybe they could move one of the judges over there.

REPRESENTATIVE KEYSER emphasized that this committee has heard very extensive arguments and presentations on this proposal and he would hope that the members of this committee that are for this bill and who vote to pass this bill out of here, that in the House they would oppose any amendments that start coming from the House floor other than perhaps what they were speaking of.

CHAIRMAN BROWN said that he has talked to all the major delegations represented on the House floor from all the areas that are particularly affected by this bill and they have not had any objections. He explained that Representative Thoft from Ravalli County spent one weekend calming the people down in that area. He feels that the support is fairly strong, but he would hope that the committee will stand firm on the House floor.

REPRESENTATIVE RAMIREZ exclaimed that he agreed 100 per cent; but he wanted to get together with Representative Addy and Representative Spaeth on the question of how a courtroom is going to be provided in the Thirteenth Judicial District, which is a serious problem and he felt there was only one place. He thought that a conceivable solution might be to have a judge headquartered out of one of these other counties and that this would be the only kind of amendment that he would support, something that would help solve the housing problem, because the only alternative is to try to schedule the judges or to kick the county attorney out of the courthouse and use his quarters for building a new courtroom.

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REPRESENTATIVE ADDY said that he was sorry that he left Judge Wilson's letter upstairs, because he did address that point. He explained that the county attorney's office was originally designed so that it could be remodeled into a courtroom and this would entail moving the county attorney some place else; the commissioners want to expand the county jail from the eighth floor down to the seventh floor which means they won't have offices on the seventh floor and to put another courtroom on the fifth floor will create some pressure. He thought they would have to look at the expansion plans.

He commented that Judge Wilson said that that is what the judge would be doing is spending all his time roving; he would be in Billings three or four days a week or spend his time getting there; so they might as well staff him in Billings and have him go out one day a week.

REPRESENTATIVE RAMIREZ said that he knew there were problems and that the judges simply want the county commissioners to handle it; but if there was some way to help without giving them money, he would support it. He noted that the election would not be held until 1984 so this should give them some time.

REPRESENTATIVE SCHYE wanted to know if they had to act on this today - could they hold it and find out about the amendments.

CHAIRMAN BROWN replied that he would just as soon act on it but he would hold it for a day to give Representative Spaeth a chance to check it out.

REPRESENTATIVE EUDAILY asked how many of these judges will take office on the 1st Monday of January, 1984. REPRESENTATIVE ADDY replied that he thought all the new judges; in subsection 2 on page 4, it says it is up to the county commissioners - it would either be a county-wide election in 1983, or a general election in 1984.

REPRESENTATIVE EUDAILY wondered if this was only multicounty districts. REPRESENTATIVE ADDY said that it is a difficult question as you would have to have the county commissioners in each county agreeing to create a judgeship a year earlier.

REPRESENTATIVE EUDAILY said that this would help take care of the space problem because if they don't have the space, they are not going to ask for that judgeship.

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CHAIRMAN BROWN explained that the language in terms of the effective date is exactly as done in the past so there is no problem with that.

A vote was taken on the motion to BE CONCURRED IN AS AMENDED. The motion carried unanimously.

SENATE BILL 114

REPRESENTATIVE SPAETH explained that they did come up with an amendment that he is reworking and it should be ready tomorrow.

REPRESENTATIVE RAMIREZ indicated that they had found three articles concerning immunity if anyone was interested.

REPRESENTATIVE KEYSER moved that the meeting be adjourned. The time was 9:28 a.m.



DAVE BROWN, Chairman



Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 10, 1983

SPEAKER

MR.

SUBJECT

We, your committee on

SENATE

352

having had under consideration

Bill No.

third

reading copy (blue)

color

**"AN ACT TO INCLUDE AS A MEMBER OF A FOSTER CARE REVIEW COMMITTEE THE
POSTER PARENT OF THE CHILD WHOSE CARE IS UNDER REVIEW; AMENDING
SECTION 41-5-807, MCA."**

SENATE

352

Respectfully report as follows: That.....

Bill No.

BE CONCURRED IN

RECORDED

STATE PUB. CO.
Helena, Mont.

DAVE BROWN

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 10,

19 83

MR. **SPEAKER**

JUDICIARY

We, your committee on **JUDICIARY**,

having had under consideration **SENATE** Bill No. **409**,

third reading copy (blue)

color

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE; REQUIRING THAT A PETITION TO REVOKE A DEFERRED OR SUSPENDED SENTENCE BE FILED DURING THE PERIOD OF DEFERRAL OR SUSPENSION; CONTINUING JURISDICTION TO REVOKE IF THE PERIOD OF DEFERRAL OR SUSPENSION EXPIRES AFTER THE PETITION IS FILED; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

Respectfully report as follows: That **SENATE** Bill No. **409**,

BE CONCURRED IN

RECORDED

STATE PUB. CO.
Helena, Mont.

DAVE BROWN,

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 10,

19 83

MR. SPEAKER:

We, your committee on

JUDICIARY

having had under consideration

SENATE

Bill No. 4

third

reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE APPELLANT IN A CRIMINAL APPEAL TO ORDER IN WRITING A TRANSCRIPT OF THE TRIAL COURT PROCEEDINGS; REQUIRING THE APPELLANT'S ATTORNEY TO PAY THE COSTS OF PREPARING THE TRANSCRIPT IF IT IS NOT ORDERED WITHIN 10 DAYS AFTER FILING NOTICE OF APPEAL; AMENDING SECTION 46-20-302, MCA."

Respectfully report as follows: That

SENATE

Bill No. 4

BE CONCURRED IN

SENATE

STATE PUB. CO.
Helena, Mont.

DAVE BROWN,

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 11,

83

19

MR. SPEAKER.....

We, your committee on.....

SENATE.....

having had under consideration SENATE Bill No. 26.....

third reading copy (blue)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALTER CERTAIN JUDICIAL DISTRICT BOUNDARIES AND TO CHANGE THE NUMBER OF JUDGES IN CERTAIN JUDICIAL DISTRICTS; PROVIDING FOR THE ELECTION OF NEW JUDGES; PROVIDING ABBREVIATED TERMS OF OFFICE FOR CERTAIN JUDGES; AMENDING SECTIONS 3-5-101, AND 3-5-102, AND 3-5-203, MCA; AND PROVIDING A TERMINATION DATE AND EFFECTIVE DATES."

Respectfully report as follows: That..... SENATE Bill No. 26.....

BE AMENDED AS FOLLOWS:

1. Page 2, line 4.
Strike: "Garfield,"
2. Page 2, line 23
Following: "Garfield"
Insert: "Garfield,"

AND AS AMENDED,
BE CONCURRED IN

REMARKS

ROLL CALL VOTE -----

HOUSE JUDICIARY

COMMITTEE

	Date: 3/10 No: SB 4 Hannah's amendment	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	No				
ADDY, Kelly	Yes				
BERGENE, Toni	No				
BROWN, Jan	No				
CURTISS, Aubyn	Yes				
DAILY, Fritz	No				
DARKO, Paula	No				
EUDAILY, Ralph	Yes				
FARRIS, Carol	Yes				
HANNAH, Tom	Yes				
IVERSON, Dennis	No				
JENSEN, James	No				
KENNERLY, Roland	No				
KEYSER, Kerry	Yes				
RAMIREZ, Jack	No				
SCHYE, Ted	No				
SEIFERT, Carl					
SPAETH, Gary	No				
VELEBER, Dennis	No				

VISITOR'S REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL SENATE BILL 4

DATE March 10, 1983

SPONSOR SENATOR MAZUREK

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
John Maynard	Helena	Attny. Gen'l.	✓	

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 SENATE BILL 26

DATE March 10, 1983

SPONSOR SENATOR MAZUREK

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 **SENATE BILL 52**

DATE March 10, 1983

SPONSOR SENATOR MAZUREK

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

APPENDIX A: CURRENT JUDICIAL DISTRICTS

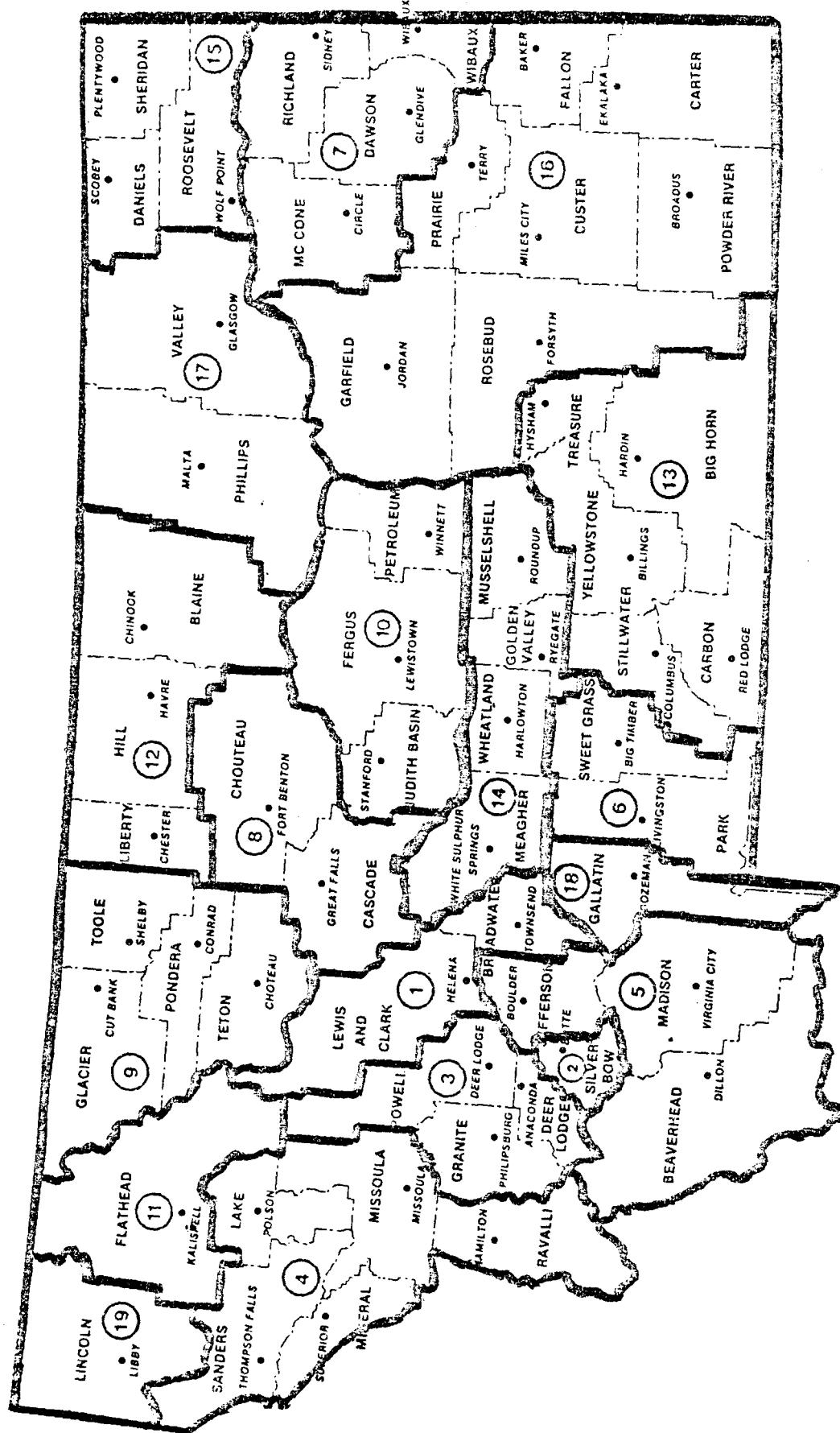
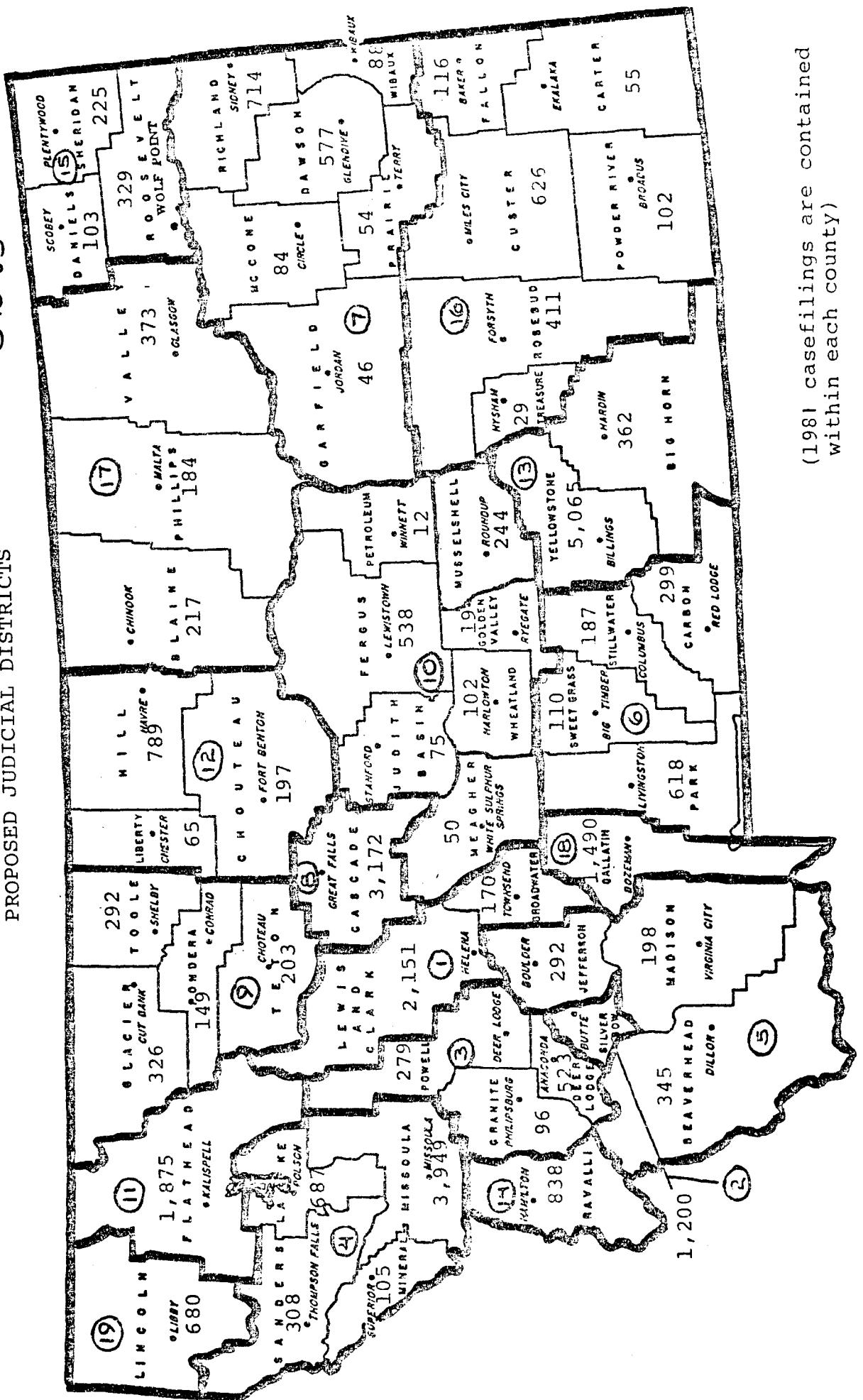


Exhibit B
SBallot 52
3-10-83

3-10-8

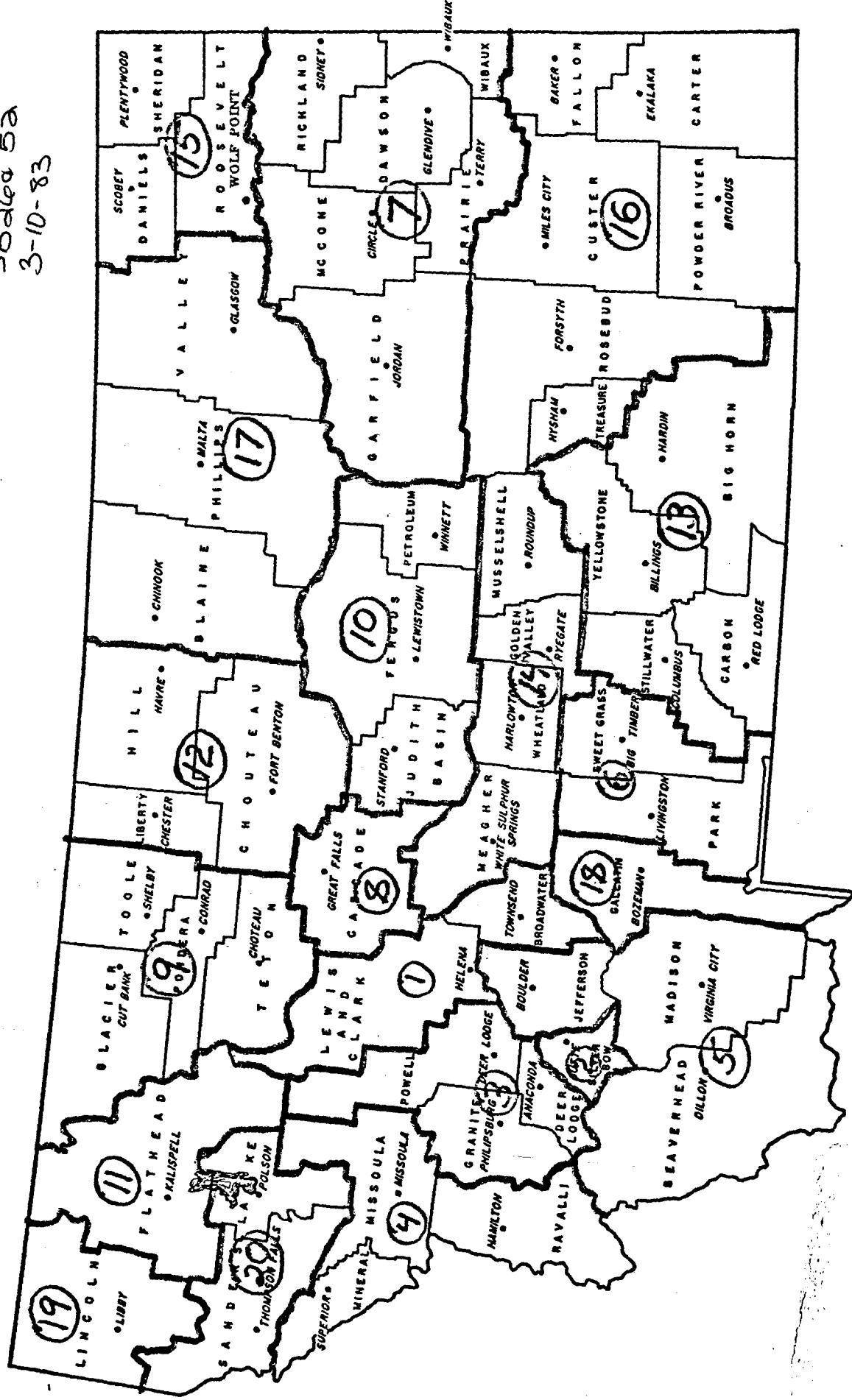
PROPOSED JUDICIAL DISTRICTS



(1981 casefilings are contained within each county)

SB 26 as Amended

Exhibit C
S Balance 52
3-10-83



Er D

WITNESS STATEMENT

Name Muriel S. Davis Committee On H. Judiciary
Address Helena Date 10 Mar 83
Representing League of Women Voters Support X
Bill No. SB 26 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The last judicial redistricting was 50 years ago.
2. The judicial system is presently out of balance as to case loads per judge.
3. The new plan addresses case loads, "windshield time" and important factors affecting the delivery of justice.
4. The Senate amendments fine tune the plan without disturbing the basic aims of the plan.

As the only citizen group that has followed judicial redistricting, the League acknowledged that this is a very conservative approach to allocating judges. Something is certainly better than nothing in this case.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Ex E

WITNESS STATEMENT

Name Nick Murnan Committee On Judiciary
Address Box 375, Jordan, Mt 59337 Date 3-10-83
Representing Garfield County Support
Bill No. SB 26 Oppose

Amend Remove Garfield County from
Judicial District 7; Put back in Judicial

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. District 16

Comments:

1. Proposal to put Garfield County in 7th Judicial District and to be served by Judge out of Sidney would be very costly and inconvenient to me as Garfield County Attorney and to residents of Garfield County. Sidney is over 140 miles from Jordan. Miles City is only 83 miles from Jordan.
2. Jordan's trade area is Miles City. Garfield County residents do almost all of their business in Miles City. Hardly any business is done in Sidney due to distances involved. Most residents of Garfield County are represented by attorneys in Miles City.
3. All social services are done by agencies in Miles City. Garfield County is served by the following agencies: Mental Health, Welfare, Drugs & Alcohol, Department of Institutions - Parole Officer. In addition, the County allows Garfield County to use its jail facilities.
4. Overall the current system is very efficient. In a criminal matter, the prisoner is housed in Miles City; the attorney is generally from Miles City, the judge is in Miles City. As county attorney I generally drive to Miles City for the convenience of the other parties. The Judge generally only comes to Jordan about twice a year.
5. Garfield County would not over-burden 16th Judicial District. Judge A.B. Weston in a letter to the committee has indicated Garfield County is not a burden. The 16th Judicial District has already been burdened by the removal of Powell County with 400+ cases per year and the addition of Teton County with about 25 cases per year.
6. Plan to transfer Garfield County to 7th Judicial District is also opposed by Garfield County Commissioners.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL SENATE BILL 409

DATE March 10, 1983

SPONSOR SENATOR CRIPPEN

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TESTIMONY OF MARGARET M. JOYCE JOHNSON
ASSISTANT ATTORNEY GENERAL
REGARDING SENATE BILL 409

Section 46-18-203 of the Montana Code Annotated in its present form permits a judge to revoke a suspended or deferred sentence "during the period of the suspended sentence or deferred imposition of sentence." That phrase was interpreted by the Montana Supreme Court in the 1981 case of FELIX v. MOHLER, 636 P.2d 830 (copy attached). The Court held that the filing of a petition to revoke the sentence during the period of the suspension or deferral was insufficient to vest the sentencing court with jurisdiction to revoke if the court was unable to act and hold a hearing before the sentence had run.

Although that interpretation of the statute certainly accords with the literal wording of the statute, brief analysis shows that it could not reflect the true intent of the legislature in enacting that provision. Such an interpretation effectively gives probationers serving a suspended sentence or for whom imposition of sentence was deferred, a carte blanche to violate the conditions of their probation at any time during the final days of their probation because the court will be unable to hold a hearing on the petition

even if a petition to revoke is filed during the period of suspension or deferral.

To rectify that situation, the Department of Justice has requested that Senate Bill 409 be introduced to amend Section 46-18-203 and remove from the statute the phrase "during the period of the suspended sentence or deferred imposition of sentence" which the Court interpreted in FELIX v MOHLER. The bill also adds a new subsection (2) to the statute specifically permitting a sentencing court to act upon a petition to revoke either a suspended sentence or a deferred imposition of sentence even after the period of suspension or deferral has run as long as the petition is filed within the period of suspension or deferral.

The act is entitled, "AN ACT TO CLARIFY THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE . . . etc.," to reflect that this bill is intended to clarify what has always been the only reasonable intent of the legislature regarding revocation of a deferred or suspended sentence, i.e., (1) that anytime a probationer violates the conditions of his probation during the period of deferral or suspension, he is subject to having that sentence revoked, whether or not the court in question is able to hold a hearing on the petition to revoke during the

period of suspension or probation and (2) that a probationer cannot with impunity violate the conditions of his probation in its final days simply because the sentencing court's calendar and the requirements of due process do not permit the holding of a hearing on the petition during the remaining days of the period of suspension or deferral. Failure to comply with the conditions of probation and prompt action by the State in petitioning the sentencing court to revoke the suspension or deferred imposition of sentence should suffice to permit the sentencing court to act on the merits of that petition and revoke the sentence if the claimed violations of probation are found to have occurred.

Aaron FELIX, Petitioner,

v.

**Mel MOHLER, Director, Swan River
Youth Forest Camp, for the State
of Montana, Respondent.**

No. 81-340.

Supreme Court of Montana.

Submitted on Briefs Oct. 22, 1981.

Decided Nov. 12, 1981.

Habeas corpus proceeding was brought to secure release of petitioner from restraint under district court order revoking a three-year deferred sentence and imposing a three and one-half-year sentence. The Supreme Court, Morrison, J., held that statute governing revocation of suspended or deferred sentence grants jurisdiction to courts to revoke suspended or deferred sentences only during the period of such sentences.

Writ granted.

1. Criminal Law \Leftrightarrow 982.9(2)

Action by judge, magistrate, or justice of the peace to revoke suspended or deferred sentence outside the provisions of statute governing revocation of suspended or deferred sentence is without jurisdiction. MCA 46-18-203.

2. Statutes \Leftrightarrow 190

If statute is plain, unambiguous, direct and certain, statute speaks for itself and there is nothing left for court to construe.

3. Criminal Law \Leftrightarrow 982.9(2)

Statute governing revocation of suspended or deferred sentence grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences only during period of suspended or deferred sentences, regardless of whether petition for revocation has been filed prior to termination of such sentence. MCA 46-18-203.

Patterson, Marsillo, Tornabene & Schuyler, Missoula, for petitioner.

Mike Greely, Atty. Gen., Helena, Edward P. McLean, Deputy County Atty., Missoula, for respondent.

MORRISON, Justice.

Petitioner, Aaron Felix, applies for a writ of habeas corpus stemming from an order of the Fourth Judicial District Court entered on May 27, 1981. This order revoked a three year deferred sentence given petitioner on May 22, 1978 and imposed a three and one-half year sentence at the Montana State Prison upon petitioner.

Petitioner was convicted of theft, a felony, in the District Court of the Fourth Judicial District, Missoula County. On May 22, 1978, he was given a three year deferred imposition of sentence on the condition that restitution be made.

On August 20, 1979, this deferred sentence was continued and petitioner was ordered to complete restitution by November 5, 1980. Petitioner failed to comply with this order by November 5, 1980, and a petition to revoke petitioner's deferred sentence was filed on January 16, 1981. A hearing on this petition was held May 27, 1981, three years and five days after the initial deferral.

At this hearing, petitioner moved to dismiss the proceeding on the grounds that the District Court was without jurisdiction. The District Court overruled petitioner's objection concluding that the Court retains "... jurisdiction (when) the petition is filed within the (deferral) time."

The District Court sentenced petitioner to three and one-half years in the Montana State Prison. Petitioner has been incarcerated since, either at the Montana State Prison or the Swan River Youth Forest Camp.

Petitioner raises the following issue:

1) Whether a District Court retains jurisdiction to revoke a deferred imposition of sentence beyond the time period of deferral if a petition to revoke is timely filed?

In *State v. Porter* (1964), 143 Mont. 528, 540, 541, 391 P.2d 704, 711, this Court stated that:

"[t]his state is committed to the doctrine that once a valid sentence has been pronounced, the court imposing the same is lacking in jurisdiction to vacate or modify the sentence, except as otherwise provided by statute . . ." (Emphasis added.)

[1] Section 46-18-203, MCA, is a specific procedural statute granting judges, magistrates, or justices of the peace authority to revoke a suspended sentence or impose sen-

tence following a deferred imposition of sentence. Section 46-18-203, MCA, provides:

"Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, *during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed*. He may also, in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing." (Emphasis added.)

This authority must be exercised in accordance with the precise provisions of this section; action by a judge, magistrate, or justice of the peace outside the provisions of

Section 46-18-203, MCA, is without jurisdiction. *State v. Porter*, *supra*.

The controlling language in Section 46-18-203, MCA, is "... during the period of such suspended sentence or deferred imposition of sentence..." Determining the meaning of this phrase disposes of this petition.

[2,3] It is well settled that if a "... statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." *Shannon v. Keller* (1980), Mont., 612 P.2d 1293, 1294, 37 St. Rep. 1079, 1081. Such is the case before this Court. The words "during the period" are extremely plain and unambiguous. The clear import is that a court is vested with jurisdiction to revoke a suspended or deferred sentence *only* during the running of the suspended or deferred sentence. Once such time has expired a court is without jurisdiction to decide petitions for revocation filed by the State.

The State requests this Court to construe Section 46-18-203, MCA, to mean that a timely filed petition for revocation vests jurisdiction in the Court, regardless whether the hearing on such petition is held after the suspended or deferred sentence has ex-

pired. The State relies on decisions from Nevada and Oklahoma in support of this contention. See *Sherman v. Warden, Nevada State Prison* (1978), Nev., 581 P.2d 1278; *Degraffenreid v. State* (1979), Okl.Cr., 599 P.2d 1107.

These authorities are not in point. Nevada and Oklahoma have statutory provisions which vest jurisdiction in the courts for purposes of revocation of suspended or deferred sentences upon the filing of a petition for revocation. Therefore a timely filed petition of revocation in these states vests jurisdiction in courts when the time of the suspended or deferred sentence has run.

Montana's statute pertaining to revocations of suspended or deferred sentences, Section 46-18-203, MCA, contains no language stating that a timely filed petition for revocation invokes a court's jurisdiction over these matters. It is axiomatic that this Court cannot insert what the legislature has not statutorily included. Section 1-2-101, MCA.

In conclusion, we hold that Section 46-18-203, MCA, grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences *only* during the period of the suspended or deferred sentences. This jurisdiction extends only through the running of the suspended or deferred sentence, regardless of whether a petition for revocation has been filed prior to the termination of the suspended or deferred sentence.

Therefore, petitioner's request for a Writ of Habeas Corpus is granted. It is hereby ordered that such writ issue immediately and that petitioner be discharged from the custody of the Swan River Youth Forest Camp.

HASWELL, C. J., and DALY, HARRISON and SHEA, JJ., concur.