

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 6, 1983

The second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 6, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

David Niss distributed copies of reports prepared by the Joint Subcommittee on Judiciary regarding The District Court's, Indigent Defense and Prosecutorial Services in Montana (Exhibit "A") and Appellate Court Delay in Montana (Exhibit "B").

CONSIDERATION OF SENATE BILL NO. 4:

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 PRE-  
PARING THE TRANSCRIPT IF IT IS NOT ORDERED  
WITHIN 10 DAYS AFTER FILING NOTICE OF APPEAL;  
AMENDING SECTION 46-20-302, MCA.

Senator Mazurek, sponsor of this bill, advised that this bill was proposed by the Joint Subcommittee on Judiciary. This bill would tighten the rules for criminal appeals and eliminate the problem of defense attorneys causing delays in court proceedings because transcripts were not prepared on time. It would also enable court reporters to have sufficient time for preparation of transcripts since they would be ordered within 10 days after filing the Notice of Appeal.

John Maynard, assistant attorney general, stated that we now have a problem with delays in criminal proceedings. He specifically referred to two instances in which the delay is advantageous to the criminal (1) in capital punishment cases and (2) in cases where there is every likelihood the defendant would obtain a reversal. SB4 will assure that a transcript is ordered in a timely fashion and while the trial is still fresh on the defense attorney's mind. It will also protect the defendant from negligence on the part of his attorney.

Senator Mazurek was dismissed at this point to attend a meeting with the State Administration Committee.

Senator Berg questioned how the defense attorneys will be made aware of this bill, at which time Chairman Turnage advised that it would become effective October 1, 1983 when laws become effective.

Chairman Turnage then inquired if there was any way to allow the Supreme Court to make a finding on due cause when there is an excuse for the attorney not being timely in requesting a transcript. He brought it to the committee's attention that

there was no provision written into the bill which would allow for excuseable neglect on the part of the attorney, and suggested an amendment for that purpose.

Senator Shaw questioned how an excuse could be established and Chairman Turnage replied that it would be up to the Supreme Court. Senator Crippen thought this would be beneficial as it would give new attorneys some leeway. He went on to say that the word "shall" in line 5 could be changed to "may". David Niss was then asked to prepare an amendment.

Senator Daniels expressed his disgust for this type of legislation.

There were no further proponents and no opponents.

There being no further discussion, hearing on Senate Bill No. 4 was closed.

CONSIDERATION OF SENATE BILL NO. 9:

AN ACT AMENDING 7-4-2203, MCA, TO PROVIDE FOR  
THE NONPARTISAN ELECTION OF COUNTY ATTORNEYS  
AND SHERIFFS.

Senator Kolstad, co-sponsor of this bill, explained that it is being proposed by the Joint Subcommittee on Judiciary. He further explained that it was the purpose of the committee to make the elected positions of county attorneys and sheriffs non-partisan as they are not political in nature. They would then conform with the election of judges which are now non-partisan positions. Representative Curtiss, also a co-sponsor and proponent to the bill, was noted not present.

Chairman Turnage inquired as to what the concern of the subcommittee was when drafting the bill and expressed concern that other elected officials may request election in the same non-partisan status. Senator Kolstad replied that the subcommittee felt law enforcement personnel deserved special treatment.

Senator Berg expressed his desire to hear from the county attorneys and sheriffs.

Sheriff Chuck O'Reilly, sheriff of Lewis and Clark County and member of the Peace Officer's Association, spoke as a proponent to the bill. He stated that no where is it more urgent that an individual be non-biased than a sheriff since they have such power over people. The Peace Officer's Association is very supportive of this bill.

Senator Shaw addressed the problem the voters would have in knowing the philosophies of the candidates if party affiliation was not declared. He stated he was definitely against a bill of this nature. Senators Daniels and Galt concurred with him.

Chairman Turnage stated the political system screens parties such as sheriffs and county attorneys and that if this law was enacted there could be "strange personalities" on the ballot. It was also clarified that party affiliation was not necessary in the election of district court judges as there are requirements they must fulfill, such as being lawyers, which helped screen the people which sought election to these positions.

Senator Crippen disagreed that law enforcement should be required to be partisan.

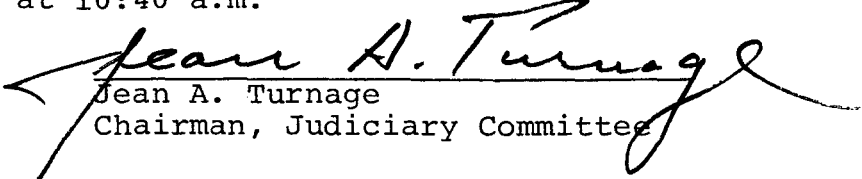
Senator Mazurek was noted as returning from his State Administration meeting at this time. Chairman Turnage then excused himself to attend the State Administration meeting and Vice-Chairman Crippen was then called upon to chair the meeting. Senator Mazurek was then brought up to date as to the discussion which had transpired in his absence.

It was then decided that the committee would wait for further action on this bill until the county attorney's association could be contacted for their input.

There were no further proponents and no opponents.

There being no further discussion, hearing on Senate Bill No. 9 was closed.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:40 a.m.

  
Jean A. Turnage  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-6-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		



EXHIBIT "A"  
January 6, 1983

# **THE DISTRICT COURTS, INDIGENT DEFENSE, AND PROSECUTORIAL SERVICES IN MONTANA**

## **A REPORT TO THE FORTY-EIGHTH LEGISLATURE**

**Joint Subcommittee  
On Judiciary**

**December 1982**



Published by  
**MONTANA LEGISLATIVE COUNCIL**  
Room 138  
State Capitol  
Helena, Montana 59620  
(406) 449-3064

EXHIBIT "B"

January 6, 1983

# **APPELLATE COURT DELAY IN MONTANA**

## **A REPORT TO THE FORTY-EIGHTH LEGISLATURE**

**Joint Subcommittee on Judiciary**

**December 1982**



Published by  
**MONTANA LEGISLATIVE COUNCIL**  
Room 138  
State Capitol  
Helena, Montana 59620  
(406) 449-3064