

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 11, 1983

The fourth meeting of the Senate Judiciary Committee was called to order by Vice-Chairman Bruce D. Crippen on January 11, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except Chairman Turnage who arrived late after attending a meeting with the State Administration Committee.

CONSIDERATION OF SENATE BILL NO. 65:

AN ACT TO CLARIFY THAT WHENEVER A PERSON IS
FOUND GUILTY OF TWO OR MORE CRIMINAL OFFENSES
IN THE SAME PROCEEDING, ANY PERMISSIBLE SEN-
TENCE MAY BE IMPOSED FOR EACH OFFENSE;
AMENDING SECTION 46-18-201, MCA.

Senator Halligan, sponsor of this bill, explained to the committee that this would change the length of deferred sentences imposed against a defendant. It was designed for restitution cases and would allow the defendant a longer period of time in which to pay their restitution. It would also give the court more of an opportunity to revoke a sentence if the defendant did not pay his restitution.

Senator Hazelbaker moved that the title of the bill be amended to read "one" instead of "two" or more criminal offenses. The motion was passed unanimously.

There were no proponents and no opponents. Hearing on Senate Bill 65 was then closed.

CONSIDERATION OF SENATE BILL NO. 1:

AN ACT TO PERMIT A COUNTY ATTORNEY TO REQUEST
THE SENTENCE REVIEW DIVISION OF THE MONTANA
SUPREME COURT TO REVIEW A SENTENCE IN A CRIMINAL
CASE FOLLOWING CONVICTION; AMENDING SECTIONS
46-18-901 AND 46-18-903 THROUGH 46-18-905, MCA.

Senator Mazurek, sponsor of this bill, advised that it was proposed by the Joint Subcommittee on Judiciary. He explained that this bill would enact a provision whereby the state, in a criminal action, may appeal the sentence to the sentence review division. At this time only a defendant can request a sentence review. The county attorneys feel it would be appropriate for them to appeal where they feel the sentence was too lenient. This bill would allow the prosecutor that right to appeal and make the review process available to both sides.

Marc Racicot testified on behalf of the County Attorney's Association. It is the consensus of the Association members that there is a need for sentencing guidelines. There is a concern with the logistical problems of the sentence review process and they are therefore opposed to sentence review. They feel there is a need for the equalization of sentencing. They would support SB1 if another bill is not introduced to equalize sentencing by the use of sentencing guidelines.

John Maynard of the Attorney General's Office also spoke in support of this bill.

There were no further proponents and no opponents.

There being no further discussion, hearing on Senate Bill 1 was closed.

CONSIDERATION OF SENATE BILL NO. 39:

AN ACT TO REMOVE SPOUSAL IMMUNITY AS A
LIMITATION ON RECEIPT OF EVIDENCE IN CIVIL
AND CRIMINAL MATTERS; AMENDING SECTIONS
40-2-109 AND 45-5-604, MCA; AND REPEALING
SECTIONS 26-1-802 AND 46-16-212, MCA.

Senator Halligan, sponsor of this bill, advised the committee that this bill was intended only to allow one spouse to testify against another but had been drafted to also repeal spousal immunity from suit for certain acts in the State of Montana. Handouts were then distributed to the committee members (Exhibit "A") on the sections of the Code this bill would repeal. He also introduced a proposed amendment (Exhibit "B") to make the bill only apply to testimony. He explained that the original intent of spousal immunity was to foster family peace, but this has served to frustrate justice. The Federal and U.S. Supreme Courts have already done away with spousal immunity.

Marc Racicot advised that the County Attorney's Association is in support of this bill.

Glen Drake of the American Insurance Association questioned exactly what the intent of the bill is with the proposed amendment. He felt this may cause the cost of liability insurances to go up if husbands, wives and children were enabled to testify against each other. He questioned if the sanctity of the family was more important than family members collecting for losses.

Karla Gray of the Montana Trial Lawyers Association, spoke as an opponent to the bill. Her main objection was that total elimination of spousal immunity is a violation of the Montana Constitutions right to privacy provisions.

Senator Halligan rebutted that this bill is meant to deal with the admission of evidence ONLY and that there is a need for this bill as too many times a defendant will be acquitted as his spouse cannot testify. In respect to the right to privacy, he explained that there is also a right to speak.

Senator Daniels inquired as to where it has been cited that the Federal and U.S. Supreme Courts have enacted spousal immunity. Senator Halligan referred him to 445 U.S. 40 (1980).

Senator Halligan then moved to amend SB39 as proposed in Exhibit "B" and this motion was passed unanimously.

There being no further proponents or opponents to the bill, the hearing was closed.

CONSIDERATION OF SENATE BILL NO. 64:

AN ACT TO SUBJECT THE HOMESTEAD ALLOWANCE, THE EXEMPT PROPERTY ALLOWANCE, AND THE FAMILY ALLOWANCE TO SECURED CLAIMS AND TO FUNERAL AND ADMINISTRATION EXPENSES FOR PURPOSES OF ESTATE ADMINISTRATION; AND LIMITING CHILDREN WHO MAY CLAIM THE ALLOWANCES TO MINOR CHILDREN; AMENDING SECTIONS 72-2-801 THROUGH 72-2-803, MCA.

As sponsor, Chairman Turnage presented this bill to the committee. He explained that it is being proposed to amend the Montana version of the Uniform Probate Code as the statutes are unclear whether it is secured or unsecured debts which are exempt from claims against the decedent's estate and the intent of this bill is to clarify that.

Section 2 of this bill will grant the family allowance of exempt property to minor children and spouses.

Roland Pratt, Executive Director of the Montana Funeral Association, stated that the Association is in support of this bill.

There were no further proponents and no opponents.

There being no further discussion, hearing on Senate Bill 64 was closed.

FURTHER CONSIDERATION OF SENATE BILL NO. 9:

Marc Racicot appeared to testify on behalf of the County Attorney's Association in regards to the non-partisan election of county

attorneys. He stated that there is no real concensus among the county attorneys in regard to this bill. He felt that there was an erroding participation of the political process.

Ted Lympus, Flathead County Attorney, stated that there is a divergence of opinion among county attorneys as to the desireability of this bill. He believes in the two-party system and doesn't wish to weaken it; although, he strongly feels there is reason for county attorneys to be non-partisan as judges are.

There being no further proponents and no opponents, the hearing on Senate Bill 9 was closed at this time.

DISPOSITION OF SENATE BILL NO. 3:

Senator Crippen made a motion that Senate Bill No. 3 DO NOT PASS. His motion was seconded and carried seven to three with Senators Berg, Brown and Mazurek voting against the motion.

FURTHER CONSIDERATION OF SENATE BILL NO. 4:

Senator Halligan moved to amend Senate Bill 4 to include excusable neglect on the part of the attorney. This motion was passed unanimously.

Senator Berg then questioned that if by adding the amendment which will provide for excusable neglect, there would be further cause for delay in the appeal process, thereby defeating the purpose of the bill which is to help expedite the process.

Senator Halligan moved to PASS the bill with the amendment.

Further committee discussion ensued and it was the concensus of the committee that a second look should be taken at this bill and the proposed amendment. Senator Daniels then moved to reconsider the amendment and the committee voted unanimously that the amendment should be deleted.

Chairman Turnage then proposed a new amendment that all substantive changes other than those in subsection (1) be deleted and that the title be changed accordingly.

DISPOSITION OF SENATE BILL NO. 4:

Senator Halligan then withdrew his original motion to PASS the bill with the original amendment and moved that the bill DO PASS AS AMENDED by the new amendment. This motion carried nine to one with Senator Shaw voting in opposition.

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DISPOSITION OF SENATE BILL NO. 9: The chairman announced that the committee was ready to consider executive action on Senate Bill 9.

Senator Shaw moved Senate Bill 9 DO NOT PASS. This motion carried and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL NO. 65: Senator Halligan explained again the intent of SB65 There being no further question or discussion the hearing was closed.

FURTHER CONSIDERATION OF SENATE BILL NO. 1: It was suggested that there would be no need for this bill if the sentence review system was to be abolished as the county attorneys have proposed. The committee decided to hold the bill until this has been established.

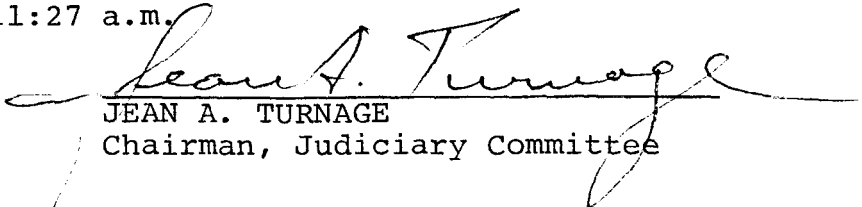
DISPOSITION OF SENATE BILL NO. 39: The chairman announced that the committee was ready to consider executive action on Senate Bill 39. He also stated that he agreed with Karla Gray and her reasons for opposition to this bill because of the right to privacy.

Senator Daniels moved that this bill receive a DO NOT PASS. A roll-call vote was taken and this motion carried eight to two.

FURTHER CONSIDERATION OF SENATE BILL NO. 64: Senator Mazurek felt the section of this bill which covers allowance should be left in it (Page 3, subsection (3)). Chairman Turnage suggested that the bill could be amended by striking Sections 2 and 3 in their entirety.

Senator Crippen moved to strike Sections 2 and 3 and to amend the title accordingly. This motion was passed with only Senator Shaw opposed. No further action was taken on SB64 at that time.

ADJOURN: There being no further business before the committee, the meeting adjourned at 11:27 a.m.


JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-11-83

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)	✓		

Each day attach to minutes.

January 11, 1983

BILL NO.

NAME _____

REPRESENTING

Check One	
Support	Oppose

Don Russell

Corrections Division

Sam Vorisga

MTW

Edwin Drake

Q L Q (SB 39)

Pat Melby

Aliance of American Indians (SB 39)

Karen Sedlock

Sentence Review

Patty Harris

Supreme Court

Pat Freden

Karla Gray

MTLA (SB39)

(Please leave prepared statement with Secretary)

SENATE COMMITTEE JUDICIARY

Date January 11, 1983 Bill No. SB 3 Time

NAME	YES	NO
Berg, Harry K.		✓
Brown, Bob		✓
Crippen, Bruce D.	✓	
Daniels, M.K.	✓	
Galt, Jack E.	✓	
Halligan, Mike	✓	
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.		✓
Shaw, James N.	✓	
Turnage, Jean A.	✓	

Richard Nordtvedt
Secretary

Jean A. Turnage
Chairman

Motion: Recommend DO NOT PASS.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date January 11, 1983 Bill No. 589 Time

NAME	YES	NO
Berg, Harry K.	✓	
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.	✓	
Galt, Jack E.	✓	
Halligan, Mike	✓	
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.	✓	
Shaw, James N.	✓	
Turnage, Jean A.	✓	

Nick Nordt
Secretary

Jean A. Turnage
Chairman

Motion: Recommend DO NOT PASS.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date January 11, 1983 Bill No. 5 B 39 Time

NAME	YES	NO
Berg, Harry K.		✓
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.	✓	
Galt, Jack E.	✓	
Halligan, Mike		✓
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.	✓	
Shaw, James N.	✓	
Turnage, Jean A.	✓	

Victor Nordmeat
Secretary

Jean A. Turnage
Chairman

Motion: Recommend DO NOT PASS.

(include enough information on motion--put with yellow copy of committee report.)

Part 2

Rules of Evidence for Criminal Cases

46-16-201. Applicability of civil rules. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.

46-16-203. Burden of the state in homicide trial. (1) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

(2) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004.

46-16-204 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.

46-16-212. Competency of spouses. Except with the consent of both or in cases of criminal violence by one upon the other, abandonment or neglect of children by either party, or abandonment or neglect of one by the other, neither spouse is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

History: En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011.

46-16-213. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable

non-profit corp.

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EXHIBIT "A"
EVIDENCE

26-1-705

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admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage, or otherwise.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-705. Effect of payment upon final settlement. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-706. Effect of payment on judgment. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against such judgment and shall be deductible from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments or on whose behalf such payments were made is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Part 8

civil **Privileges**

X **26-1-801. Policy to protect confidentiality in certain relations.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

X **26-1-802. Spousal privilege.** A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(1).

EXHIBIT "B"
January 11, 1983

Proposed amendments to Senate Bill 39:

1. Amend title, line 6

Following: "AMENDING"

Strike: "SECTIONS 40-2-109 AND"

Insert: "SECTION"

2. Page 1, lines 12 through 17

Strike: Section 2 in its entirety.

Renumber: All subsequent sections.

STANDING COMMITTEE REPORT

January 11, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **3**

Respectfully report as follows: That **Senate** Bill No. **3**

~~XXXXX~~
DO PASS

DO NOT PASS

W.C.

STANDING COMMITTEE REPORT

January 11, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 4

Respectfully report as follows: That Senate Bill No. 4

be amended as follows:

1. Title. Lines 7 through 9.
Following: "Proceedings;"
Strike: the remainder of lines 7 through 9 in their entirety.
2. Page 2, Line 18.
Following: (4)
Strike: the remainder of the line.
3. Page 2, Line 19.
Strike: "the"
Insert: "The"
4. Page 3, Lines 3 through 9.
Strike: all of lines 3 through 9 in their entirety.

And, as so amended,

~~DO-PASS~~

STANDING COMMITTEE REPORT

January 11, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **9**

Respectfully report as follows: That **Senate** Bill No. **9**

~~XXXX~~
~~DO PASS~~

DO NOT PASS

H.C.

STANDING COMMITTEE REPORT

January 11, 19 83

PRESIDENT
MR.

We, your committee on Judiciary

having had under consideration Senate Bill No. 39

Respectfully report as follows: That Senate Bill No. 39

DO PASS
DO NOT PASS