

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 13, 1983

The sixth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 13, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 5:

AN ACT TO CREATE THE POSITION OF PUBLIC
DEFENSE COORDINATOR; TO PROVIDE FOR THE
COORDINATOR'S APPOINTMENT, QUALIFICATIONS,
REMOVAL, SALARY, STAFF, AND DUTIES; AND TO
PROVIDE FOR A COUNTY CONTRIBUTION TO THE
COSTS OF THE COORDINATOR'S SERVICES.

Senator Mazurek, sponsor of this bill, explained that it is being introduced at the request of the Joint Subcommittee on Judiciary. The Committee feels there is a need to create the position of public defense coordinator in order to provide counties with public defender training and competent staff attorneys. A program of this type would be very cost effective as it would eliminate the need for appointment of private attorneys as public defenders; private attorneys are usually inexperienced and sometimes unwilling. It would also cut down on a number of appeals which are brought to the Supreme Court on claims of the ineffective assistance of counsel.

Marc Racicot spoke in support of this bill on behalf of the County Attorney's Association. He feels that the appointment of counsel as it is done today is expensive to counties, and that attorneys appointed are inexperienced in the area of criminal defense. The county attorneys feel that a coordinator could eliminate the inexperienced defender appointments by providing information and staff attorneys trained in this area.

John Maynard, Assistant Attorney General, also spoke in support of the need for a public defense coordinator. The Attorney General's Office has noted an increase in appeals due to ineffective assistance of counsel and they feel a coordinator would eliminate many of these appeals.

Margaret Davis of the League of Women Voters also spoke as a proponent to this bill. They feel it is essential to have adequate counsel and this would be an effective way to get it.

Karla Gray, speaking for the Montana Trial Lawyers Association, addressed the committee as to the benefits of SB5.

Mike Stephens of the Montana Association of Counties, supported this bill. He felt this is a step in the right direction as far as saving time and money to individual counties.

Darryl Meyer of Cascade County supported the idea of the bill, but questioned how the method for appointment and time span of appointment of the coordinator would be handled. He also felt there should be a "watchdog" on the expenses of the program.

There were no further proponents, and no opponents.

Chairman Turnage questioned John Maynard as to the number of appeals in the past two years due to ineffective assistance of counsel and how many of the appeals were successful due to this issue. John Maynard will obtain this information for the Committee, along with a copy of an Opinion from the Attorney General. The question of duration of the appointment of the coordinator was also brought up and it was felt that there was a need to include a specific length of his term and how the budget would be handled in the bill.

There being no further discussion, hearing on Senate Bill 5 was closed.

CONSIDERATION OF SENATE JOINT RESOLUTION NO. 2:

A JOINT RESOLUTION OF THE SENATE AND THE
HOUSE OF REPRESENTATIVES OF THE STATE OF
MONTANA URGING THE MONTANA SUPREME COURT
TO ADOPT RULES OR RULE AMENDMENTS ALLOWING
THE SUPREME COURT TO REVIEW CIVIL CASES
AND TO DETERMINE BY WRITTEN ORDER WHICH
CASES WILL OR WILL NOT BE HEARD ON APPEAL.

Senator Aklestad presented this resolution to the Committee on behalf of the Subcommittee on Judiciary. The Committee feels there has been an overburdening workload for the Supreme Court because of appeals. SJR2 would provide the Supreme Court with discretionary power over which appeals will be heard.

Marc Racicot, representing the County Attorney's Association, was supportive of this resolution.

There being no further proponents, the hearing was opened to the opponents.

Karla Gray, speaking on behalf of the Montana Trial Lawyers Association, herself as an attorney and as a citizen, was strongly opposed to the passing of SJR2. She felt it is attempting and intending to resolve a problem which does not exist and she questioned what problems the Supreme Court is now having. It was her feeling that the Supreme Court has been expeditiously handling its caseload with the extra justices which were recently added. In her opinion, the review procedure would only create more work for the justices and the whole idea of them having the prerogative of turning down appeals would be tampering with the basic appeal process. This would limit access to appeals by the people and take away that right. She strongly urged the Committee to give SJR2 a do not pass.

Chairman Turnage introduced a letter from Justice Frank B. Morrison (Exhibit "A") and a letter from Justices Shea and Sheehy (Exhibit "B"), who are highly opposed to discretionary appeals.

Senator Aklestad re-emphasized the fact that this is a resolution and not a law. He strongly felt that frivolous and "junk" appeals were an abuse for the judicial system. It is the intention of this resolution to give the justices guidelines for which appeals they hear and not to try and take away the right of appeal.

There being no further proponents or opponents, hearing on SJR2 was closed.

CONSIDERATION OF SENATE BILL NO. 7:

AN ACT PERMITTING A DEFENDANT SENTENCED TO
DEATH TO BE CONFINED AT THE STATE PRISON
AT STATE EXPENSE PENDING EXECUTION; AMENDING
SECTION 46-19-103, MCA.

Senator Aklestad presented this bill at the request of the Joint Subcommittee on Judiciary. It was the Subcommittee's feeling that the state, rather than the county, should have the burden of housing those prisoners receiving only a death sentence.

John Maynard of the Attorney General's Office spoke as a proponent to this bill. He stated that there is no authority for the state paying for the housing of a defendant while he is awaiting execution and lengthy appeals cause a burden to the county. It is the Attorney General's opinion that there is a need for a provision to alleviate this burden.

Walter Hammermeister, Sheriff of Pondera County, strongly

supported SB7. He cited a case in which a prisoner attempted suicide in the state prison, thereby causing the county a substantial cost for prosecuting a capital punishment crime. He felt it was urgent that SB7 pass and become effective immediately.

Senator Crippen questioned the fiscal note attached to SB7, at which time Curt Chisolm of the Department of Institutions explained how the \$10 per day figure for housing a prisoner was arrived at.

Chairman Turnage inquired as to whether the county or the state was obligated to cover the medical expenses and Curt Chisolm advised the Committee that the major medical costs would be the burden of the county. It was felt that there was a need to clarify who covers what medical expenses in the language of the bill.

In closing, Senator Aklestad re-stated that the burden of the expense for housing death sentenced prisoners should be picked up by the state.

CONSIDERATION OF SENATE BILL NO. 74:

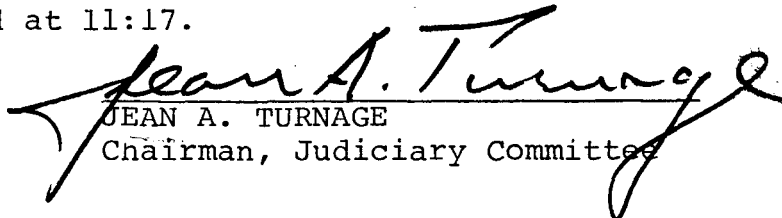
AN ACT TO PROVIDE FOR SUPPORT OF CHILDREN
RECEIVING PUBLIC ASSISTANCE DURING THE PENDENCY
OF CERTAIN COURT ACTIONS.

Senator Brown presented this bill at the request of the Revenue Oversight Committee. It was the Committee's feeling that there is a need for an act which would provide for the support of children receiving public assistance during the pendency of a court action, such as in the case of divorce. After the divorce is settled the court could order reimbursement from the obligated spouse. At this time the burden for the support of children has been placed upon the taxpayer through public assistance, where it is actually the obligation of one of the parents.

John Merideth of the Department of Revenue advised the Committee that this act would cause an initial hearing before the divorce settlement which would establish who would be responsible for the support of the children.

There being no further proponents and no opponents, hearing on Senate Bill No. 74 was closed.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:17.


JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-13-83

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

Each day attach to minutes

January 13, 1983

BILL NO. SB5, SB7,
~~SB74, SJR2~~

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Carol Harris	House Dist 41		
J.C. Weingarten	Exec. Comm. State Bar of Mont.		
John Meredith	DOR - Legal & Enforcement Div.		
Walter L. Hammermeister	- Sheriff S.B. 7	✓	
Margaret Shivers	League of Women Voters	SB5	
Mike Lytle	MT Assoc. of Co.		
Darrel Meyer	Cascade County	✓	
John Maynard	Assistant Attorney General		
Karla Gray	Montana Trial Lawyers Association		SJR
CURT CHISHOLM	DEPT OF INSTITUTIONS	SB5	
Nick Rotering	DEPT. OF INSTITUTIONS	SB 7	
MARE RACLOT	County Attorneys	X SB5	

(Please leave prepared statement with Secretary)

NAME: Walter L. Hammermeister DATE: Jan 13, 83

ADDRESS: P.O. Box 1153

PHONE: 4 278-3163 office 278-3923

REPRESENTING WHOM? Sheriff of Pondera Co.

APPEARING ON WHICH PROPOSAL: S.B. 7

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: In one specific case, I am familiar
with the ^{continuing cost of the} Board & Room & medical expense for
a suicide attempt in the State Prison is nearly
One Fifth the cost of the total cash
outlay ^{for the present time} for prosecuting the defendant.
So the room & board can be a
substantial cost to any county for
prosecuting a capital punishment crime.

I would suggest, if this bill is
approved for passage, that it be made ^(or amended if necessary)
effective immediately upon passage. ^(to be)

Thank you.

W. L. Hammermeister

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

RECENT INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

1981-82

<u>CASE NAME</u>	<u>COURT</u>	<u>ULTIMATE DISPOSITION OF CLAIM</u>
Schantle v. Russell	Ninth Circuit	Dismissed
State v. Gates	Montana Supreme Court	Dismissed
Petition of Giesen & Cork	Montana Supreme Court	Dismissed
Petition of Haase	U.S. District Court	Dismissed
Gone v. State	Montana Supreme Court	Pending
State v. Swan	U.S. District Court	Conviction Reversed
Olander v. Risley	Montana Supreme Court	Dismissed
Kubas v. Risley	U.S. District Court	Dismissed
State v. Morigeau	Montana Supreme Court	Conviction Reversed
McGuire v. Risley	U.S. District Court	Pending
Caryl v. 3rd Judicial Dist. Ct.	District Court	Pending
McNair v. Risley	U.S. District Court	Pending
Austad v. Risley	U.S. District Court	Pending
State v. LaValle	Montana Supreme Court	Pending
State v. Hall	Montana Supreme Court	Pending
Bashor v. Risley	Ninth Circuit	Pending
State v. Arbgast	Montana Supreme Court	Dismissed
State v. Dupre	Montana Supreme Court	Dismissed
Houghton v. State	U.S. District Court	Dismissed
Bretz v. Risley	U.S. District Court	Pending
Coleman v. State	Montana Supreme Court	Pending
Fitzpatrick v. State	Montana Supreme Court	Pending

SUBMITTED BY

John H. Maynard
Assistant Attorney General

EXHIBIT "A"
January 13, 1983
THE SUPREME COURT OF MONTANA



CAPITOL STATION
HELENA, MONTANA 59620
TELEPHONE (406) 449-2626

JUSTICE FRANK B. MORRISON, JR.

January 12, 1983

HON. JEAN TURNAGE
Chairman,
Senate Judiciary Committee
State Capitol Building
Helena, Mt. 59620

RE: Discretionary Appeals Legislation

Dear Senator Turnage:

I would like to express my opposition to any legislation which would make Supreme Court appeals discretionary. Presently our work load is not overwhelming but if we had to preform the additional duties attendant evaluating every case to determine whether jurisdiction should be accepted, our work load would increase tremendously.

In my opinion if this court had to assume the additional burden of reading petitions for certiorari, or any similar document, we would have less time to spend on opinion writing and the quality of the work would therefore suffer.

There is an oft quoted expression that: "If it ain't broke don't fix it." In my opinion our court is functioning well and, though the work load is heavy, we are able to process the work expeditiously and hopefully it is usually a quality product.

Thank you for giving me this opportunity to express my views to the Senate Judiciary Committee.

Sincerely,


Frank B. Morrison, Jr.

FBM/jjk

THE SUPREME COURT OF MONTANA
STATE CAPITOL
HELENA, MONTANA 59620
TELEPHONE (406) 449-2626

WE HAVE MOVED
Montana Supreme Court
Room 414 Justice Building
215 North Sanders
Helena, Montana 59620

FRANK I. HASWELL
CHIEF JUSTICE
JOHN C. HARRISON
L. C. Gulbrandson
~~GENE B. DALY~~
DANIEL J. SHEA
JOHN C. SHEEHY
FRANK B. MORRISON
FRED J. WEBER
JUSTICES

January 13, 1983

Hon. Jean Turnage, Chairman
Senate Judiciary Committee
State Capitol Building
Helena, MT 59620

Re: Discretionary Appeals

Dear Senator Turnage and Committee Members:

We are unalterably opposed to any legislation directed at taking away the appeal rights of any citizens of this great state. Unless one has been closely connected to litigation as a lawyer or as a litigant, one does not know how precious is the right to know that if a district judge rules against you, you have a right to take an appeal.

We do not believe that the legislature should in any way attempt to take away or limit the appeal rights as they now exist. This also means that the legislature should not give this Court the right to determine whether, in certain cases, we will hear an appeal. Human nature being what it is, it is too easy to make a mistake and decide that an appeal will not be heard. Perhaps that is precisely the case that should be heard.

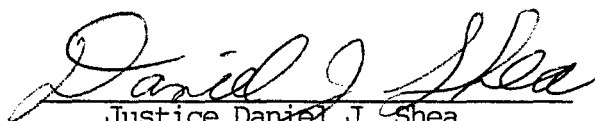
Although we have not talked to members of the bar, the bar should be opposed and we are sure the bar would be opposed to this legislation.

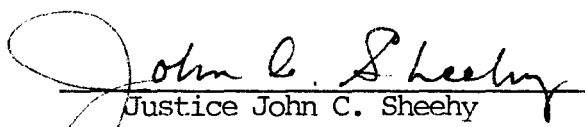
Time does not permit us to state the multitude of reasons for your committee to decide that Montana will not be one of those states which chooses to determine that a district court decision either shall not, or, in some circumstances, may not be reviewed by this Court. We hope that this committee will declare its unequivocal opposition to any legislation or resolutions aimed at

taking away the rights of the people of this state to appeal to this Court from an adverse district court decision.

We thank the committee for allowing us to express our sentiments on this most important subject.

Sincerely,


Justice Daniel J. Shea


Justice John C. Sheehy