

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 17, 1983

The eighth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 17, 1983 at 10:02 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Daniels who was excused.

CONSIDERATION OF SENATE BILL NO. 78:

AN ACT TO PROVIDE MANDATORY MINIMUM SENTENCES
FOR CERTAIN SEXUAL CRIMES AGAINST CHILDREN
LESS THAN 13 YEARS OLD AND TO PROVIDE FOR A
VIDEOTAPE PRESENTATION OF THE VICTIM'S TESTI-
MONY AT TRIAL; AMENDING SECTIONS 45-5-502,
45-5-503, AND 46-15-401, MCA."

Senator Dick Manning of Cascade County presented this bill to the Committee. He submitted that there is a need for law requiring mandatory prison sentences for sexual crimes against children less than 13 years old and a need to provide for a videotape presentation of the victim's testimony at trial. He stated that Karen Townsend of the Missoula County Attorney's Office had communicated to him that she supports SB78. She also suggested to him that perhaps the bill should be amended to include deviate sexual conduct in that part of the bill relating to videotaping.

There being no further proponents, the hearing was opened to the opponents of SB78.

Marc Racicot, representing the County Attorney's Association, spoke in opposition to this bill. He stated the Association recognizes that the need for protection of children is important, but didn't feel this type of legislation would do that. He informed the Committee that in 80% of the sexual crimes, the victim's offender involved a family member. Each case is different and very difficult. He felt that mandatory sentencing would be detrimental in encouraging the cooperation of the offender. He also pointed out that more victims will be required to go to trial which could be a long, drawn-out process with attendant publicity any may cause peer problems for the child at school. It is very difficult to get a conviction in these type of cases and the victims do not make good witnesses. On the norm, there have not been repeat offenses under the deferment program as it is used now. There are many intervention program available to the victim and offender and this has been the most effective method of handling the situation in the past.

Karla Gray, representing the Montana Lawyers Association, concurred with Marc Racicot. She stated these are very delicate matters of crime and that the sentencing should be left to the discretion of the trial court as they have all the facts and circumstances before them.

Senator Halligan questioned what usually happens in the case of deferrals. Marc Racicot informed him that the victim and the offender usually undergo an intensive mental health counseling program. It is the intention of the family to cease the activity, and not to cause a division of the family. There are strict requirements for probation which include continual monitoring of the offender.

There being no further proponents and opponents, hearing on SB78 was closed.

CONSIDERATION OF HOUSE BILL 15:

AN ACT TO MAKE RETROACTIVE AS WELL AS PROSPECTIVE THE PRESUMPTION THAT A REFERENCE TO A PROVISION OF THE MONTANA CODE ANNOTATED IS A REFERENCE TO THAT PROVISION AS IT MAY BE AMENDED OR CHANGED FROM TIME TO TIME; AMENDING SECTION 1-2-108, MCA."

Diana Dowling, Code Commissioner, presented this bill to the Committee. There are many cross-references in the Montana Code Annotated and each of the references is always to reflect the law as amended or changed. There is a need to clarify that the amendments or changes are always retroactive, as well as prospective.

Chairman Turnage questioned how this would affect the criminal laws. It was the consensus of the Committee that this law would have no ex post facto application to criminal statutes.

Senator Berg questioned the need for an effective date. Diana Dowling admitted this should definitely be considered when passing the bill.

Representative Ramirez, sponsor of the bill, appeared late because of the time specified on his Legislator Sponsor Notice, and stated that he wanted a favorable consideration of this bill.

There being no further proponents, and no opponents, hearing on HB15 was closed.

CONSIDERATION OF SENATE BILL 79:

AN ACT ESTABLISHING THE UNAUTHORIZED
ACQUISITION OR TRANSFER OF FOOD STAMPS AS
A CRIME AND PROVIDING PENALTIES THEREFOR.

Senator David Fuller introduced this bill to the Committee at the request of the Department of Social and Rehabilitation Services. At this time there is no ability to prosecute for the unauthorized acquisition or transfer of food stamps and there is a need for a statute to deal with this issue.

Pat Godbout of the Department of Social and Rehabilitation Services, spoke in support of this bill as it will enable the Department to properly administer the food stamp program. She cited several cases where food stamps were illegally obtained by ineligible people and the Department was not able to take action to prevent this.

Bill Harrington of the Department of Revenue and proponent of SB79, stated the Department of Revenue was responsible for the investigation of welfare fraud. He went on to say that the illegal transfer of food stamps was a real problem as they are a commodity that can be exchanged.

There being no further proponents, and no opponents, hearing on SB79 was closed.

CONSIDERATION OF SENATE BILL 83:

AN ACT TO BAR COMMENCEMENT OF A PROSECUTION
IN A DISTRICT COURT BY LEAVE TO FILE AN
INFORMATION IN THAT COURT IF THE DEFENDANT
HAS BEEN CHARGED BY COMPLAINT IN A JUSTICE'S
COURT AND HAS NOT WAIVED PRELIMINARY EXAMI-
NATION; AMENDING SECTION 46-11-201, MCA.

Senator Turnage presented this bill to the Committee and stated it was being introduced in order to hopefully correct abuse of the criminal process in the Justice of the Peace courts. The existing statute provides and allows for felony cases to be filed in J.P. court; however, the Justice of the Peace can only sit as an examining magistrate. When the criminal is brought before the Justice of the Peace he must be informed of his right to preliminary examination. In some instances, the defendant is being denied his right to preliminary examination. SB83 would require a preliminary examination in the Justice Court before leave to file an Information in the District Court could be granted. Senator Turnage stated he realizes the problems this bill could cause to the county attorneys, but he wished to address the abuse to the criminal

process. He also admitted that perhaps this bill may not be practical.

There being no proponents, the hearing was opened to the opponents of SB83.

Marc Racicot, representing the County Attorney's Association, spoke in opposition to this bill. He said he wouldn't deny there are presently abuses of the criminal process, but this type of legislation was not a good method for eliminating the problems. It was his feeling that by just drafting this bill, people have been made aware of potential abuses of the process and this will be beneficial in itself without disrupting the system as it is now.

Joe Miller, a Justice of the Peace and President of the Magistrate's Association, also spoke as an opponent to SB83. He informed the Committee of the additional costs involved to everyone if this legislation is enacted. He was not opposed to preliminary hearings but feels the county attorney could file directly into district courts. Some counties do not have the facilities for preliminary hearings and this could cause a burden in scheduling them.

Marcel R. Turcotte of the Magistrate's Association also stated he was in opposition to this bill. It was his feeling that most abuses now are caused due to laziness.

There being no further proponents and opponents, hearing on SB83 was closed.

Chairman Turnage announced that the Committee was now ready to consider executive action on several bills which had been heard.

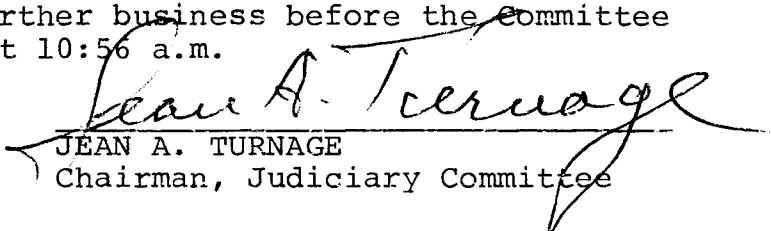
DISPOSITION OF SENATE BILL 83: Senator Mazurek moved that SB83 DO NOT PASS. This motion carried unanimously.

DISPOSITION OF HOUSE BILL 15: Senator Berg moved that HB15 be amended to provide for an immediate effective date in the title and body of the bill. This motion passed unanimously. Senator Berg then moved that HB15 BE CONCURRED IN AS AMENDED. This motion also passed unanimously.

DISPOSITION OF SENATE BILL 79: Senator Berg moved that SB79 be amended to provide for an effective date of July 1, 1983. This motion passed unanimously. Senator Brown moved that SB79 DO PASS AS AMENDED. This motion also passed unanimously.

Senate Judiciary Committee
January 17, 1983
Page 5

ADJOURN: There being no further business before the Committee
the meeting was adjourned at 10:56 a.m.


JEAN A. TURNAGE

Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-17-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		yes
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.

STANDING COMMITTEE REPORT

January 17,

19 83

PRESIDENT

MR.

Judiciary

We, your committee on

Senate Bill

having had under consideration Bill No. **83**

Senate

Respectfully report as follows: That Bill No. **83**

~~XXXXXX~~
~~DO PASS~~
DO NOT PASS

J.A.C.

STANDING COMMITTEE REPORT

January 17, 1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **House** Bill No. **15**

Respectfully report as follows: That **House** Bill No. **15**

(Third Reading)

be amended as follows:

1. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Page 2.
Following: line 8.
Insert: "NEW SECTION." Section 2. Effective Date. This act is effective on passage and approval."

And, as so amended,

BE CONCURRED IN

DO KASX

STANDING COMMITTEE REPORT

January 17, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 79

Respectfully report as follows: That Senate Bill No. 79

(Introduced)

be amended as follows:

1. Title, line 8.
Following: "THEREFOR"
Insert: "; AND PROVIDING AN EFFECTIVE DATE OF JULY 1, 1983"
2. Page 2.
Following: line 10.
Insert: "NEW SECTION. Section 3. Effective Date. This act
is effective on July 1, 1983."

And, as so amended,

DO PASS

MC