

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 20, 1983

The eleventh meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 20, 1983 at 10:00 a.m. in Room 331, State Capitol.

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

CONSIDERATION OF SENATE BILL 114:

Senator Thomas, sponsor of this bill, explained that it is being introduced in order to ensure that articles of personal property and suicide notes can be returned to the decedent's family in the event of an untimely death or suicide. The bill provides that the articles could be held by a state medical examiner or a coroner for investigative purposes or a 90 day period after receipt of the property. Senator Thomas acknowledged the need to amend the bill so as not to impede the investigation process. His intent is merely to establish some procedure for the return of property.

Sarah Harold stated that she requested the drafting of this bill because of her involvement with the Hospice Program at St. Peter's Hospital. She has worked with people in grief and has noted that because they were unable to ascertain the personal belonging of the decedent, their grieving was more intense. She felt there was a definite need to clarify our laws.

Pat Trafton, a psychological social services director with the Hospice Program, and Jim Palmer, a Hospice volunteer, also spoke in support of this bill and distributed Exhibits "A" and "B".

Phyllis Burke, whose husband had committed suicide, shared her experiences with the Committee. She was unable to obtain her husband's suicide note even though there was no investigation. After 9 months, a court order and many hours of attorney time and knocking on doors, she finally was able to have the note returned to her.

Justine Breckenridge, whose son had committed suicide, was also unable to obtain her son's last letter which had been addressed to her. It was very important for her to possess the original letter. She was very supportive of the need for this bill.

Marc Racicot, representing the County Attorney's Association, stated he had looked at the bill from an investigative standpoint. He could understand the delicate situation, but said there were legitimate law enforcement reasons for keeping the decedents' notes. Sometimes suicides turn out to be homicides. He has

therefore suggested an amendment (Exhibit "C") which he hopes will compensate for these situations and then voiced his support for the bill with the amendment.

Chuck O'Reilly, Sheriff of Lewis and Clark County, advised that he also supports SB114 with the amendments suggested by Marc Racicot.

Representative Jan Brown was also present and wished to go on record as supporting this bill.

There being no further proponents, the hearing was opened to the opponents of SB114.

Mickey Nelson, Lewis and Clark County Coroner, expressed his opposition to the bill. There were sometimes problems with insurance companies and double indemnity clauses which prevented him from relinquishing notes to the bereaved. The original note is essential for handwriting analysis. He enumerated several other reasons why the Montana Coroner's Association opposes SB114 and distributed a letter with those reasons to the Committee (Exhibit "D").

Charles Gravely, representing the Montana Coroner's Association and an ex-county attorney, also went on record as opposing this bill. He felt it did not effectively resolve the problem. He stated that there is sometimes a possibility of needing the original notes even after a case is closed if there is a petition for post conviction relief, as in the case of a homicide. He also pointed out that the bill requires that the personal articles of the decedent are always to be returned to the survivors and sometimes the survivors do not want them.

There being no further proponents and opponents, the hearing was opened to questions from the Committee.

Chairman Turnage questioned Charles Gravely as to how many homicide cases have been opened up after an assumed suicide. Gravely replied "several." Chairman Turnage felt that the past inflexible policies have made a bad situation and made the bill necessary, though it might not have been before.

Senator Thomas closed by assuring the Committee that the bill will address Gravely and Nelson's concerns with the adoption of the amendment. It is not his intention to impede the investigation process, but only to set guidelines to help the bereaved in the future.

Chairman Turnage questioned what the definition of "investigative agency" is. Marc Racicot admitted that he may have used a poor

choice of words in their amendment. Chuck O'Reilly advised that this is a proper term used by the forensic science statutes meaning "a law enforcement agency."

CONSIDERATION OF SENATE BILL 127:

Senator Hazelbaker, sponsor of this bill, advised the Committee that it was introduced at the request of the Board of Crime Control. The Board has adopted rules for the employment standards and educational requirements to be completed by peace officers, but there is a need to adopt them into the statutes.

Clayton Bain of the Board of Crime Control and proponent of SB127, advised that the County Attorneys have requested that the Board of Crime Control standards for peace officer employment should be converted to state statutes. He also advised the Committee that since the drafting of the bill they see a need for an escape clause which would allow extension of the time requirement for compliance with the standards of the bill.

Bill Ware, representing the Chief of Police Association, supported the bill and agreed with the recommendations for the amendment.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Chairman Turnage questioned if the enactment of this bill would change the current Board of Crime Control rules in any way. Clayton Bain informed him that the only change was to incorporate a rule that law enforcement people out of service for more than six months must again go through training.

Senator Hazelbaker was very supportive of the Law Enforcement Academy, the work they do there and the need for enactment of this bill.

CONSIDERATION OF HOUSE BILL 10:

Representative Curtiss, sponsor of this bill, presented it to the Committee at the request of the Joint Subcommittee on Judiciary. She explained the critical need for a county attorney training coordinator to act as special counsel to a county in the instances covered by the bill and the need for the provision requiring the county to pay for these special counsel services.

Marc Racicot, representing the County Attorney's Association, advised that he was available to answer questions from the Committee. He stated that the attorney general can currently provide services, but this bill would formalize that. He especially thought this bill would be helpful to a county attorney when a conflict of interests arises.

There being no further proponents, and no opponents, hearing on HB10 was closed.

CONSIDERATION OF HOUSE BILL 13:

Representative Curtiss, sponsor of the bill, advised that it was being introduced at the request of the Subcommittee on Judiciary. The Subcommittee felt that a checklist of legal errors or objections, which would be updated on a regular basis by the training coordinator for county attorneys, would be helpful in reducing errors and promote efficiency. This checklist would apply only to capital cases. She also emphasized that failure of the coordinator to use a checklist would not serve as a basis for appeals.

Marc Racicot, representing the County Attorney's Association, spoke as a proponent to this bill. He felt that the checklist would be a good triggering mechanism. He did advise that it would be necessary to hire a half-time attorney to help with the functions of preparing and updating the checklist.

Wes Krawczyk of the American Civil Liberties Union informed the Committee that he supported the concept of this bill.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Crippen voiced his disapproval of the state spending money for the defendant; he didn't see a need for HB13. Marc Racicot restated his support for giving assistance to county attorneys.

Chairman Turnage felt that the intentions of this bill were already covered in Section 44-4-403, MCA.

Representative Curtiss closed by citing several instances where the implementation of a checklist would have been beneficial to the expeditious disposition of cases. She stated that nobody is infalible and a checklist could help by giving direction and strengthen the system.

There being no further discussion by the Committee, hearing on HB13 was then closed.

The Chairman announced that the Committee was now ready to take executive action on several bills which had been previously heard.

DISPOSITION OF SENATE BILL 127:

SB127 was further discussed by the Committee. Senator Hazelbaker

again explained the need for the already existing rules of the Board of Crime Control to be adopted into Montana statutes. The need for an amendment to cover the time requirement for extensions was again discussed. Senator Berg moved for the adoption of the proposed amendment. This motion passed unanimously. Senator Berg then moved that SB127 DO PASS AS AMENDED. This motion also passed unanimously.

DISPOSITION OF SENATE BILL 65: The Committee counsel explained the proposed amendment covering restitution cases. The maximum time for suspension or deferral of a sentence would be increased when restitution is ordered. Senator Crippen moved to adopt the amendment as proposed. This motion passed unanimously. Senator Halligan moved that SB65 DO PASS AS AMENDED. This motion also passed unanimously.

DISPOSITION OF SENATE BILL 78: It was the concensus of the Committee that SB78 would address the world, but create more problems. Senator Crippen moved that SB78 DO NOT PASS. This motion carried seven to two with Senators Galt and Berg voting in opposition.

DISPOSITION OF HOUSE BILL 13: Senator Crippen moved that HB13 NOT BE CONCURRED IN. Senator Halligan questioned the possibility of an amendment as he felt the idea of a checklist could be significantly helpful. Senator Mazurek noted that the idea of a checklist could be carried through without the adoption of this bill. It was the concensus of the Committee that the intent of HB13 could be accomplished under the authority contained in Section 44-4-103. Senator Crippen's motion that the bill NOT BE CONCURRED IN carried seven to two with Senator Mazurek and Shaw voting in opposition.

DISPOSITION OF HOUSE BILL 10: Senator Brown moved that HB10 BE CONCURRED IN. This motion carried unanimously.

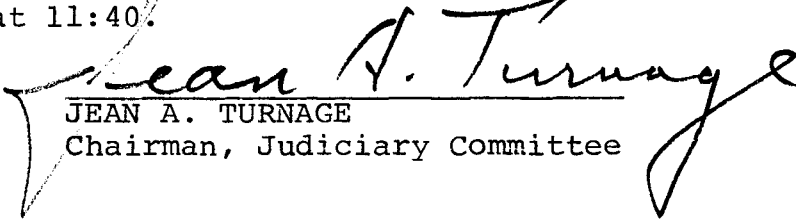
FURTHER CONSIDERATION OF SENATE BILL 114: The Committee again discussed the intent of SB114. They questioned how you could legislate common sense. The Committee then referred the bill to Committee counsel to review the amendments as proposed by the sponsors. They felt the decedent's property should be returned "upon request of the bereaved."

FURTHER CONSIDERATION OF SENATE BILL 93: The Committee discussed amendments for staggered terms of the board members and the restriction that only law enforcement be capable of accessing the information. Committee Counsel advised the Committee of the results of his research. This bill would be subject to existing law. The advisory board and its powers were again discussed. It was then decided that the needed changes should be communicated to Senator VanValkenburg for his opinions.

Senate Judiciary Committee
January 20, 1983
Page 6

DISPOSITION OF SENATE BILL 2: Senator Brown moved that SB2
DO PASS. This motion carried seven to two with Senators
Berg and Crippen voting in opposition.

ADJOURN: There being no further business before the Committee,
the meeting was adjourned at 11:40.



JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-20-83

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.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Douglas Burke ^{SB 114}	self	✓	
John Young ^{SB 114}	myself - Sen Thomas' intern	✓	
Karl York			
Karla May	MTLA		
De Scoote	MT UNIV SYSTEM		
Esther McDonald	Granite Coerter		
Trubley Datz	" "		
John Page	" "		
John			
Edward Pol	self		
William S. Humphrey	self	✓	
Betty S. Humphrey	self	✓	
John	self		
Chuck Reilly	Mont Sheriff + Peace officers	amend ✓	
Pat Trupton	Hospice of St. Peter's Hospital	✓	
M. S. McClain	Montana Carriers Assn		✓
Charley Gravelly	" " "		✓
Bruce Hansen	Mont Assn Fire and		amend
Mara Raicich	CP5	amend ✓	
John Maynard	A.G.		
William L. Van	mt Chiropractic Ass	amend	
Joe Kewczyk	A.C. L.V. of MT.	SB 127	
Clayton Bain	Board of Crime Control	HB 13	
		SB 127	

CYCLE OF GRIEF

LOSS →

RECOVERY →

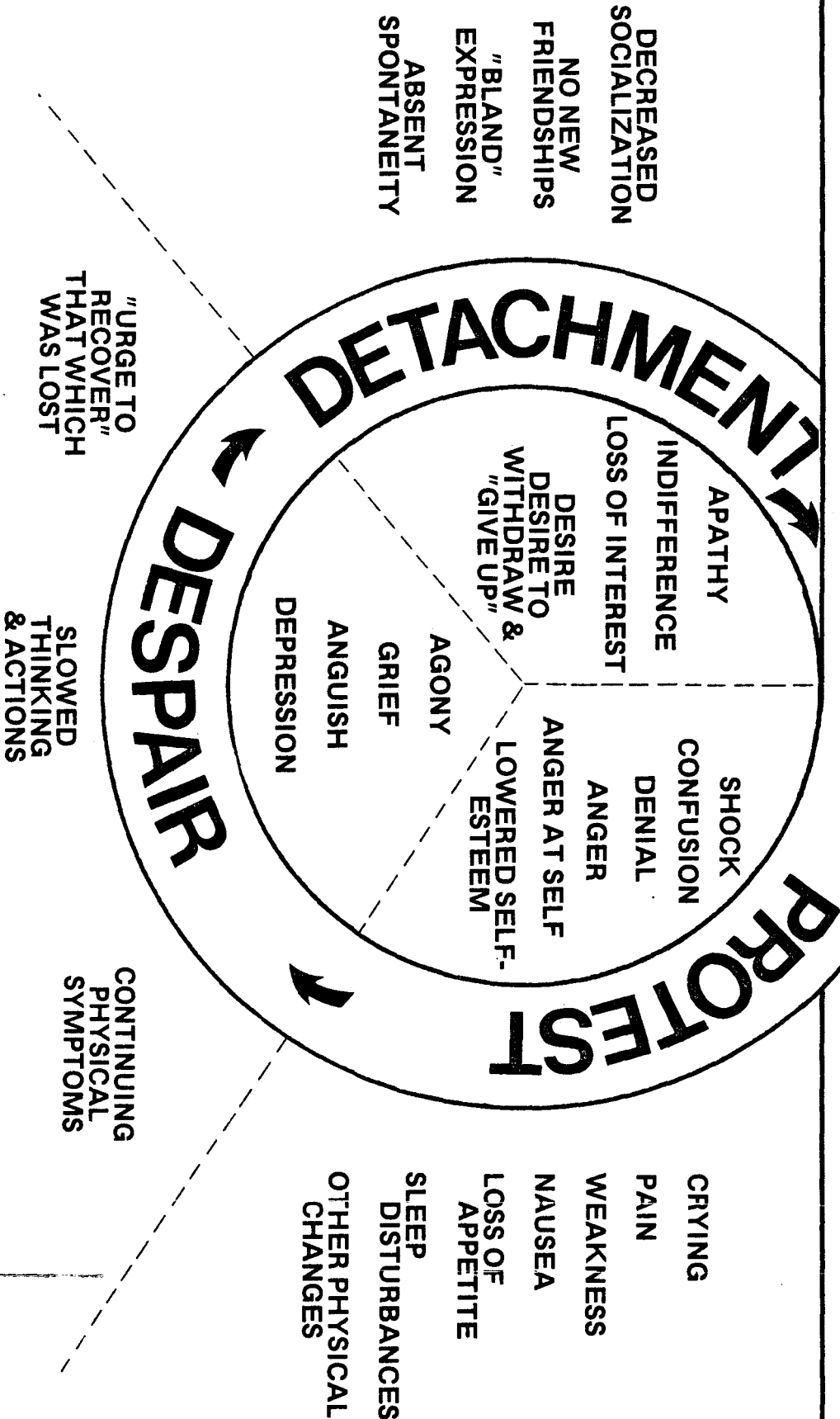



EXHIBIT "B"
January 20, 1983



HOSPICE
OF ST. PETER'S
COMMUNITY HOSPITAL

2475 Broadway · Helena, MT 59601

Grief Can Bring Growth



EXHIBIT "C"
January 20, 1983

AMENDMENT TO SENATE BILL 114

Introduced by: Senator Bill Thomas

Revised

Page 1, Line 19 - ADD after decedent: which is not considered evidence by the county attorney or the investigating agency and which is . . .

Page 2, Line 3 - OMIT: state medical examiner or a coroner
REPLACING with: ~~the~~ investigating agency

Line 4-5 - OMIT: or a 90-day period after receipt of the property has expired, whichever occurs first.

Line 24 - ADD after 15,: unless it is considered evidence by the county attorney or the investigating agency.

Line 24 - OMIT: If an investigation into the cause of death is to be made, or is in progress on October 1, through 1983, the property and any suicide note may be held by the state medical examiner or a coroner

Page 3, Line 3 until the investigation is completed or until January 1, 1984, whichever occurs first.

Page 3, Line 6 - OMIT: such 90-day REPLACING with: the
ADD after period: of investigation . . .

Line 8-10 - OMIT: At all times and in all persons' hands, the property and any suicide note remain subject to investigative subpoena.

EXHIBIT "D"
January 20, 1983



OFFICE OF THE CORONER

LEWIS AND CLARK COUNTY COURTHOUSE

228 BROADWAY

HELENA, MONTANA 59601

PHONE 406-442-7398

M. E. "MICKEY" NELSON
CORONER

18 January 1983

Senate Judiciary Committee
State Capitol
Helena, MT 59620

RE: SB-114

Dear Senator Turnage, Chairman,

On behalf of the Montana Coroners' Association we the coroners of Montana oppose SB-114; following are just some of the reasons why we oppose this bill.

1. This bill compels the coroner to release property to a personal representative or public administrator within 30 days; this time frame is unreasonable and what if the personal representative wishes not to receive it? I know that the public administrators don't want the suicide notes, and what do they do with them? I see no fees for this service and they are paid by fees.
2. All suicides are investigated in Montana and when any tests are conducted 90 days is again an unreasonable time as firearms tests normally take six months or more.
3. It is unreasonable and no way could a chain of evidence be kept if the next of kin were allowed to inspect the property held by the coroner. This would cost a great loss of time for the coroner and in many counties it would cost the county money as many coroners are paid by fees or by the hour. Also what rights would the person that the suicide note is address to, it may not be address to a member of the family and if so should they not be able to inspect it of receive it.
4. District courts have a backlog of cases and this bill would add to that as I'm sure most coroners would obtaine a court order barring inspection of the property.
5. What would prevent the person who receives the property and note from destruction of the same.
6. The retroactive section is not only unreasonable but will cost the counties of Montana a great amount of money and time and most next of kin do not want the property and suicide notes back.
7. What is a suicide note? They are not what most think they are and are not always wrote on paper with a pen. If they are wrote with a pen on paper only the original is of any value for any tests or finger prints. At this time most notes are not tested as it costs and when we have the original it can be tested at any time, however if this passes we would be compelled to test all notes a great cost to the taxpayers.

The above is just a summary of the reasons of why this bill should not pass many areas were not covered one of which is when is a suicide not a homicide? What would happen to suicide notes in homicide? What would happen to suicide notes in cases that the manner of death was ruled undetermined?

Truly,


M.E. "Mickey" Nelson, Coroner

TESTIMONY IN SUPPORT OF SENATE BILL 114 - By Jim Palmer

I do not have a medical background. I don't have a law background. I'm not a professional counsellor or psychologist. I am not a spokesman for Hospice.

My interest in this particular law is based solely on my experience as a Hospice volunteer. In this capacity I have, during the last year or so, come into intimate contact with a number of very emotional situations and observed a considerable amount of psychic suffering among terminal patients and their loved ones. I have seen first hand how vulnerable these people are.

There is nothing as powerful as the trauma of death itself to destabilize folks and challenge every human resource and strength that they possess. If any of you ladies and gentlemen have experienced the death of a loved one or a very close friend, or have confronted it yourselves, you know this is true.

Even the most comfortable of deaths frequently leaves residual feelings of guilt, anger, and profound sorrow for the survivors. In cases involving suicide these same responses are intensified.

I've found that the guilt associated with a suicide can be totally devastating. So much so in fact that the survivors sometimes become victims of the same impulses and seriously contemplate taking their own lives.

But even those who do not go that far are none-the-less placed in a situation of intense mental and emotional anguish. They live for indefinite periods in a Hellish kind of world that none of us would want to visit, let alone reside in.

I do not present this information in the role of an authority on suicide (if you will permit me one more disclaimer). However, I have interviewed extensively the only real authorities on this subject, the survivors. And I have been told incredible stories.

Not only do they have to contend with all of the misery associated with the loss itself, but they must also deal with reactions not experienced in most deaths. People they knew well often ignore them. Perhaps shun is a more accurate word since these former acquaintances literally look the other way when passing on the street, or even cross a street in an obvious attempt to avoid contact.

There is a stigma on families with suicides. The spontaneous outpourings of support and comfort, normally made available to other survivors is frequently lacking for the survivors of suicide.

It is because of these matters and others that such things as personal property

found on the victims and especially suicide notes are so important to remaining members of the families. They provide a sense of contact with the loved one and sometimes help them answer the questions they have about the reasons for it all.

But it is most important for them to have the original note. The note that was touched and handled and was the last creative act of this human being before he or she left this mortal coil. A facsimile, depersonalized by the zerox machine, provides no satisfaction.

When they are deprived of this, particularly at this critical point in their emotional upheaval, it only adds significantly more burden to an already overburdened soul. And what is the point?

If turning over this property when investigations are not in order, or when the investigations have been accomplished, satisfies a deeply felt need and provides some slight measure of comfort, why should they not have it?

I therefore respectfully encourage this committee to act favorably on this Bill. Thank you for your indulgence.



Louise M. Abel

CONSULTING CERTIFIED GRAPHOANALYST

Personality Profiles • Lectures • Conventions • Counseling • Qualified Document Examiner

PHONE 406/442-0289
2019 EAST 6th AVENUE
HELENA, MONTANA 59601

January 20, 1983

Senator Gene Turnage, Chairman
Senate Judiciary Committee
Montana State Legislature

Dear Senator Turnage,

RE: Senate Bill 114

I am Louise M. Abel, a practicing, certified Graphoanalyst for the last twenty-two years. I have my master's degree in Graphoanalysis and am qualified to do Questioned Document work.

Through the years I have appeared before five Helena judges in civil and criminal cases, have associated with many Helena lawyers, represented Montana institutions, and have even been on a case in opposition to Charles Gravely.

I have twenty-nine colleagues throughout the state. Of the eight Certified Graphoanalysts in Helena, three of us are Document Examiners.

In addition to the above information, it may be of interest to you and the committee that although it is desirable to have the original document, most of us do our examinations and determinations with copies.

Respectfully submitted,

Louise M. Abel
Louise M. Abel

cc: Crippen, Brown, Hazelbaker, Galt, Shaw, Berg, Daniels,
Halligan, Mazurek

Scientific Handwriting Analysis



NAME: Pat Tynan DATE: 1/20/83

ADDRESS: 2101 E. 5

PHONE: 442-1741

REPRESENTING WHOM? Nurses of St. Peter Hospital

APPEARING ON WHICH PROPOSAL: S. B 141

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Phyllis Burke DATE: 1/20

ADDRESS: 615 E State

PHONE: 443-5852

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 114

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

January 20, 19.....

PRESIDENT

MR.

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **127**

Hazelbaker/Manuel

Respectfully report as follows: That **Senate** Bill No. **127**

introduced bill, be amended as follows:

1. Title, line 10.
Following: "POLICE OFFICERS"
Insert: "; ALLOWING THE BOARD OF CRIME CONTROL TO GRANT EXTENSIONS TO THE TIME FOR COMPLIANCE WITH THOSE STANDARDS"

2. Page 4.
Following: Line 19.
Insert: "(6) The board of crime control may extend the 1 year time requirements of subsections (a) and (c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. Factors which the board may consider in granting or denying the extension include but are not limited to:

(continued on Page 2)

And, as so amended,

DO PASS

J/C

illness of the peace officer or a member of his immediate family; absence of reasonable access to the basic course or the legal training course; and an unreasonable shortage of manpower within the department. The board may not grant an extension to exceed 180 days."

Renumber: subsequent subsections accordingly.

/s/ Jean A. Turnage

J.A.

STANDING COMMITTEE REPORT

January 20, 19 83

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **Senate** Bill No. **65**

Halligan

Respectfully report as follows: That **Senate** Bill No. **65**

introduced bill, be amended as follows:

1. Title, line 4.
Following: "AN ACT"
Strike: lines 4 through 8 in their entirety.
Insert: "TO INCREASE THE TIME FOR WHICH SENTENCE FOR ANY OFFENSE
MAY BE DEFERRED OR SUSPENDED IF RESTITUTION IS IMPOSED;
AMENDING SECTION 46-18-201, MCA."
2. Page 1, lines 13 and 14.
Following: "an-offense"
Strike: the remainder of line 13 through "proceeding" on line 14.
Insert: "an offense"
3. Page 1, line 15.
Following: "court may"
Strike: ", with respect to each offense"

XXXXXX
DO-PASS

(continued on Page 2)

4. Page 1, line 18.
Following: "period"
Insert: ", except as otherwise provided,"
Following: "any"
Strike: "each"
Insert: "any"
5. Page 1, line 19.
Following: "any"
Strike: "each"
Insert: "any"
6. Page 2, line 2.
Following: "restitution"
Insert: ", as provided in subsection (2)"
7. Page 2, line 14.
Following: "the"
Strike: "each"
Insert: "the"
8. Page 3.
Following: line 2.
Insert: "(2) If restitution is imposed as a condition under subsection (1)(a) or (1)(b), sentence may be deferred or suspended for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed."
Renumber: subsequent subsections accordingly.

And, as so amended,

DO PASS

J.C.

STANDING COMMITTEE REPORT

January 20,

19 33

MR. **PRESIDENT**

JUDICIARY

We, your committee on

having had under consideration **Senate** Bill No. **78**

Manning

Respectfully report as follows: That **Senate** Bill No. **78**

(Introduced)

~~DO PASS~~
DO NOT PASS

..... **Jean A. Turnage,**

Chairman.

J.A.

STANDING COMMITTEE REPORT

January 20

19 83

PRESIDENT

MR.

JUDICIARY

We, your committee on

House

Bill No. **13**

having had under consideration

Curtiss

House

13

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

(Third Reading)

BE NOT CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

J.A.C.

STANDING COMMITTEE REPORT

January 20

19 83

PRESIDENT

MR.

JUDICIARY

We, your committee on

House

Bill No. **10**

having had under consideration

Curtiss

House

Bill No. **10**

Respectfully report as follows: That

(Third Reading)

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

STANDING COMMITTEE REPORT

January 20 19 83

PRESIDENT

MR.

JUDICIARY

We, your committee on

Senate

Bill No. **2**

having had under consideration

Aklestad

Senate

Bill No. **2**

Respectfully report as follows: That

(Introduced)

DO PASS

.....
Jean A. Turnage,

Chairman.

J.C.