

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1983

The twentieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 2, 1983 at 10:05 a.m. in Room 331, State Capitol.

ROLL CALL: All members were present.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

FURTHER CONSIDERATION OF SENATE BILL 155: Senator Berg moved that SB155 DO NOT PASS. The Chairman reviewed the intent of the bill and the problems addressed by its proponents. A letter was received from the Highway Department which provided the information requested by the Committee at the January 26 meeting (See Minutes, January 26, for letter). It was the consensus of the Committee that the problem the proponents of SB155 are facing is federal in nature; however, it was agreed that something should be done to help these people. The Chairman suggested amending the bill to change its application from the "contiguous owner" of the property for sale to "the people in the same position as an original owner or successor in interest." Senator Berg withdrew his motion and the bill was referred to staff counsel for researching the proposed amendment.

ACTION ON SENATE BILL 179: Since there is currently a House bill pending which better deals with the conflicts between the antidiscrimination and nepotism laws, Senator Crippen moved to TABLE SB179. This motion passed unanimously.

ACTION ON SENATE BILL 194: Counsel distributed copies of the proposed amendment to the Committee for review. Senator Mazurek pointed out that Section 20 of the bill allocates mineral interest earned on trust for unlocatable mineral interest owners to be credited to the district court fund rather than the county general fund. The Committee felt this section should be stricken in its entirety. Senator Mazurek then moved the proposed amendments along with this deletion which passed unanimously. Senator Brown moved SB194 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 236: Counsel distributed copies of the amendment as proposed and the Committee discussed the reasons for adding rebuttable presumption. They felt this would expand on the property to be forfeited. Senator Mazurek questioned the language referring to burden on lending institutions. After reading the amendment further it was found that the later language clears up this question. It was also pointed out that

section 44-1-102 as referred to in number 4 of the amendment should be changed to 44-12-102. Senator Mazurek then moved to adopt the amendments. This motion passed unanimously. Senator Crippen moved that SB236 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 201: Chairman Turnage referred the Committee to the letter written by Judge Harkin which summed up the intent of this bill. Senator Shaw moved that SB201 DO PASS. This motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 203: The Committee agreed that the intentions of this bill are good; however, they felt that the bill, as worded, would prevent a judge who was defeated during an election from serving. Action was therefore deferred so that this fact could be taken into consideration.

ACTION ON SENATE BILL 218: Senator Crippen moved that SB218 DO PASS. Senator Berg inquired as to the definition of "disturbed or inebriated" as referred to in the bill. The Committee agreed that these words would give the sheriff some discretionary latitude. The motion for a DO PASS recommendation was then voted on and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 248: John Maynard of the Attorney General's Office, distributed a handout which explains his position on the bill (Exhibit "A"). This information had been requested by the Committee at the January 31 hearing. It was the concensus of the Committee that the bill was not acceptable for passing; however, there were some provisions which needed saving. The 90 day review of fitness to proceed and provision which allows the state to raise this issue were decided to be important. It was also agreed that it is necessary to correct the reference to section 10, which had been incorrectly referred to as section 9 by the past legislature. Counsel questioned if the Committee intended to include a provision for disposition of highly dangerous people who were unfit for further criminal proceedings. The Committee advised they felt a provision of this nature is necessary and referred the bill to counsel for work.

ACTION ON SENATE BILL 196: The Committee was concerned with the automatic cost-of-living adjustment provision of this bill. They felt that if this was passed for the court reporters, other county and city employees would request the same. The salary increase as proposed was again discussed. Senator Crippen suggested reducing the minimum base salary to \$16,000 since their overall increase in salary is approximately 30%. Senator Halligan moved the adoption of the above. This motion passed unanimously. The Committee also felt that "for purposes of perfecting an appeal" should be deleted from page 4, line 5,

so as to eliminate any question of whether the reporter would prepare the appeal transcript for other purposes. The Committee also thought the wording which ties the transcript rates to the U.S. judicial conference rates should be deleted. Senator Berg moved to adopt these proposals. This motion passed unanimously. Senator Crippen then moved that SB196 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 220: The Committee discussed the Department having the authority to approve restoration of good time. It was agreed that this authority should remain with the Department and that the bill was acceptable as drafted. Senator Crippen moved that SB220 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 225: The Committee reviewed the bill and the effects of increasing the time period for holding a voluntary committal an additional five days. Senator Berg moved SB225 DO PASS. This motion carried with Senators Halligan, Mazurek and Crippen voting in opposition.

FURTHER DISCUSSION OF SENATE BILLS 23, 37 and 41: The Committee reviewed the intent of the proposed bills and amendments. It was their understanding that the major intent is to promote the streamlining of the water adjudication program. The constitutionality of giving the powers of a district court to a water judge was discussed. The Committee also expressed concern over giving the water courts administrative review powers. Taking jurisdiction from the district courts and putting it solely with four water judges was also a concern. Senator Galt suggested that Judge Lessley should be contacted so as to refresh the Committees' memories as far as his reasoning for some of these requests. It was agreed that action should be deferred until Judge Lessley has been contacted.

FURTHER CONSIDERATION OF SENATE BILL 26:

The Committee reviewed testimony from the January 21 hearing and concurred that they should try to act accordingly. It was agreed that Ravalli County should continue to be included in the 4th Judicial District and that Lake and Sanders Counties should be severed to create their own 20th Judicial District. Senator Shaw moved to amend SB26 accordingly. This motion passed unanimously.

Senator Daniels moved to delete Stillwater and Carbon Counties from the 6th Judicial District and to include these counties with Yellowstone in the 13th Judicial Districts, as suggested at the January 21 hearing. This motion passed with Senator Berg voting in opposition. The Committee agreed that the issue

of the new judge would be dealt with in a later portion of the bill. Senator Berg expressed concern for the caseload on the one judge in the 6th Judicial District.

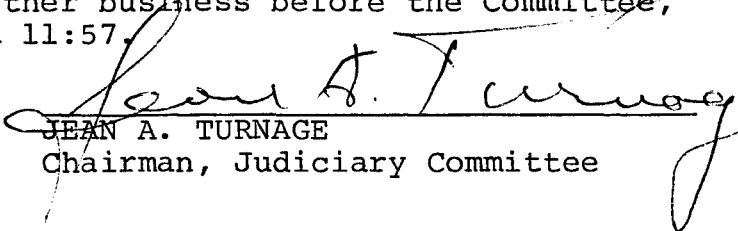
The effects of adding Meagher, Wheatland, Gold Valley and Musselshell Counties to the 10th Judicial District were discussed. The Committee agreed that it would be to their best interests to be included in the 14th Judicial District since Ravalli would be included with the 4th District. Senator Berg moved to amend the bill so as to keep the 10th and 14th Judicial Districts as they are now. This motion passed unanimously.

The Committee then dealt with Section 2 of the bill which distributes the judges. Senator Berg moved to delete the 6th and 10th Districts from subsection (1). This motion passed unanimously.

Senator Berg moved to delete the 13th District from subsection (3) on page 3, line 10 and to create a new subsection (4) which would allocate five judges to the 13th District. This motion passed unanimously.

Senator Daniels moved to strike Section 3 in its entirety and to renumber accordingly. This motion carried unanimously. Senator Berg moved to strike Sections 5 and 6 in their entirety as there was a constitutional question as to limiting the term of judges to less than six years. This motion passed unanimously. Senator Mazurek felt that the termination provision should be eliminated and could foresee problems with effective dates and assigning of hold-over judges. The Committee felt that the Supreme Court should make the assignment. The bill was then referred to counsel and Steve Brown, who consented to work further on the bill.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:57.


JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-2-83

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)	✓		

LINE OF ACCOUNTABILITY

TRADITIONAL
VERDICTS WITHOUT
ALLEGATION OF
MENTAL DISEASE
OR DEFECT

NOT GUILTY	GUILTY
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PRE-1979

NOT GUILTY	NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT RENDERING DEFENDANT "UNABLE TO APPRECIATE CRIMINALITY OF HIS CONDUCT OR CONFORM HIS CONDUCT TO REQUIREMENTS OF LAW"	GUILTY
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CURRENT LAW

NOT GUILTY	NOT GUILTY BY REASON OF LACK OF MENTAL STATE	GUILTY BUT UNABLE TO APPRECIATE CRIMINALITY OF CONDUCT OR TO CONFORM CONDUCT TO THE REQUIREMENTS OF LAW.	GUILTY
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DISPOSITION:
DISCHARGEDISPOSITION:
46-14-301DISPOSITION:
46-14-311DISPOSITION:
Title 46, ch. 18

GUILTY BUT INSANE

NOT GUILTY

GUILTY BUT INSANE

GUILTY

GUILTY BUT MENTALLY
ILL

NOT GUILTY

GUILTY BUT UNABLE
TO APPRECIATE
CRIMINALITY OR TO
CONFORM CONDUCT

GUILTY

SB 248 - GUILTY BUT
SUFFERING FROM MENTAL
DISEASE OF DEFECT

?

STATE
OF
MONTANA

**ATTORNEY GENERAL
MIKE GREELY**

215 N. SANDERS, JUSTICE BUILDING, HELENA, MONTANA 59620
TELEPHONE (406) 449-2026

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE

FROM: JOHN MAYNARD *John*
Assistant Attorney General

DATE: 2 February 1983

RE: SENATE BILL NO. 248

Senate Bill 248 is an act to generally revise the laws relating to a claim of mental disease or defect in criminal proceedings and provides for a verdict of "guilty but suffering from a mental disease or defect at the time of the offense." There are provisions within the bill that should be enacted because they clarify areas of the law for which some clarification is needed. However, other portions of the bill make changes that are not needed and should not be made.

On page 1 of the bill, line 16, the phrase "and judgment" should be retained. On page 2 of the bill, lines 1 through 8 should be retained and the language which is added, "the jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense," should be struck.

The attempt to include in Montana's law a verdict of guilty but suffering from mental disease or defect at the time of the offense initially suggests one of two common approaches to the insanity defense utilized in other states. Neither of the alternatives is consistent with abolishing the defense to the extent permitted by the Constitution, the apparent intent of the 1979 Legislative Assembly.

In the first instance if a verdict of guilty but suffering from mental disease or defect is included in Montana law to permit a finding of guilt without proving the intent element of the crime, the verdict would be unconstitutional under the Fifth and Fourteenth Amendments. It would relieve the State of its

2 February 1983

EXHIBIT "A"
February 2, 1983

constitutional burden of proving every element of the crime charged beyond a reasonable doubt.

In the alternative approach a verdict of guilty but suffering from mental disease or defect requires that a standard other than the standard currently provided in Montana law must be applied to defendants raising the issue of their state of mind at the time they committed the offense. In states which have adopted this approach to the guilty but mentally ill verdict the American Law Institute standard of accountability is required. That standard states that a person is not responsible for criminal conduct if at the time of committing the offense "he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Readopting that standard in Montana would be a step backward and would raise the problems that the 1979 law sought to resolve.

The amendment on page 2 line 13 including the county attorney among those who can raise the issue of the defendant's fitness to proceed, should be retained. In a number of instances defense counsel have refused to raise the issue of a defendant's fitness to proceed thereby using the issue for leverage in the plea bargaining process.

The next amendment, page 3 beginning at line 4 through line 11, addresses a potential problem with the constitutionality of our current fitness to proceed law and adequately remedies that problem. The United States Supreme Court has held that indefinite commitments based on unfitness to proceed violate due process. Jackson v. Indiana, 406 U.S. 715, 730 (1972).

Turning to page 4, the amendments referring to a verdict of guilty but suffering from mental disease or defect should be deleted and the current provisions in the law should be retained. The amendment on line 18 of page 5, amending the 1979 session law, clarifies an issue that has been raised in these types of proceedings relative to a typographical error that was made during the conference committee process during the 1979 legislative session.

On page 6, lines 18 and 19, the sections suggested for repeal should be retained. Section 46-14-102, MCA, provides that the only evidence that is relevant at the guilt phase of a trial involving an issue of mental disease or defect excluding responsibility is whether "the defendant did or did not have a state of mind which

2 February 1983

EXHIBIT "A"
February 2, 1983

is an element of the offense." This statute precludes a defendant from offering the oftentimes confusing testimony of psychiatrists and psychologists relating to whether or not he appreciated the criminality of his conduct or was able to conform his conduct to the requirements of law. By narrowing the scope of the inquiry in such proceedings to cognitive, as opposed to volitional matters, the Legislature abolished the traditional insanity defense. Now the only instances in which a person might be successful in raising the defense in Montana are those instances in which the state of mind which is an element of the offense charged cannot be proved beyond a reasonable doubt.

Following some discussion with Senator Towe and Harold Hanser, Yellowstone County Attorney, I understand the major concern underlying SB 248 to be the dispositional alternatives contained in sections 46-14-301 through 46-14-304, MCA. However, those statutes only apply to a defendant who is found "not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged." If the State does not prove a state of mind that is an essential element of the offense charged it has not sustained its burden of proving every element of the crime charged beyond a reasonable doubt.

Usually, in cases where the state has not proven its case beyond a reasonable doubt, a defendant is entitled to be released. However, if he raised the issue of mental disease or defect affecting state of mind the court can order the defendant committed to the custody of the superintendent of Warm Springs state hospital if the defendant cannot be released without danger to others. Following this commitment the burden of proof is on the defendant to show that he may be safely released. As another alternative in cases where a defendant is found not guilty by reason of lack of mental state, the county attorney can seek civil commitment as provided in Title 53, chapter 21, MCA. In any event, the defendant need not be released absent a judicial determination that it is safe to release him.

Against this backdrop, there appears to be no reason to adopt a verdict of "guilty but suffering from a mental disease or defect at the time of the offense."

STANDING COMMITTEE REPORT

February 2,

19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate**

Bill No. **194**

Aklestad

Respectfully report as follows: That **Senate**

Bill No. **194**

introduced bill, be amended as follows:

1. Title, lines 7 through 11.
Following: "COURT;"
Strike: the remainder of line 7 through "FUND;" on line 11.
2. Title, line 15.
Following: "25-7-209,"
Insert: "AND"
3. Page 2, line 21.
Strike: "district court"
Insert: "general"
4. Page 3, line 12.
Strike: "district court"
Insert: "general"

(continued on page 2)

And, as so amended,

DO PASS

J.A.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 236

Crippen

Respectfully report as follows: That Senate Bill No. 236
introduced bill, be amended as follows:

1. Title, line 6.
Following: "LAWS;"
Insert: "TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO
PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE
REBUTTED;"
2. Title, line 8.
Following: "44-12-102,"
Insert: "44-12-203 THROUGH"
3. Title, line 9.
Strike: "44-12-205,"

(continued on page 2)

And, as so amended,

DO PASS

Re: SB236

February 2, 1983

4. Page 3.

Following: line 16

Insert: "Section 2. Section 44-12-203, MCA, is amended to read:

"44-12-203. Procedure Presumption -- procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

~~{1}~~ (2) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court ~~shall hear evidence on the charge of unlawful use of the property and~~ upon motion may must order the property forfeited to the state.

~~{2}~~ (3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure."

Section 3. Section 44-12-204, MCA, is amended to read:

"44-12-204. Proof required or permitted at hearing. ~~{1}~~ At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged. In order to rebut the presumption of forfeiture: (1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged.

(2) an owner of property listed in 44-12-102(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent.

~~{2}~~ (3) A claimant of a security interest in the property who has a verified answer on file may must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner,

(continued on page 3)

purchaser, or person in possession of the property when it was brought to such person.""

Renumber: subsequent sections

5. Page 3, line 20.

Following: "charged,"

Insert: "and that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner,"

6. Page 3, line 23.

Following: "charged,"

Insert: "and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner,"

7. Page 4, lines 14 through 23.

Strike: subsection (b) in its entirety.

Renumber: subsequent subsections

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

February 2, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **218**

Van Valkenburg

Respectfully report as follows: That **Senate** Bill No. **218**
(Introduced Bill)

DO PASS

J.A.C.

STANDING COMMITTEE REPORT

February 2, 1983

PRESIDENT

MR.

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **201**

Turnage

Respectfully report as follows: That **Senate** Bill No. **201**
(Introduced Bill)

DO PASS.

J.A.

STANDING COMMITTEE REPORT

February 2,

19 83

MR. **PRESIDENT**

Judiciary

We, your committee on

having had under consideration **Senate** Bill No. **196**

VanValkenburg

Respectfully report as follows: That **Senate** Bill No. **196**

introduced bill, be amended as follows:

1. Title, line 5.
Strike: "AND FOR AN ANNUAL COST OF LIVING INCREASE"
2. Page 1, line 16.
Strike: "\$18,000"
Insert: "\$16,000"
3. Page 1, line 19 through line 6 on page 2.
Following: "works." on line 19.
Strike: line 19 through "years." on line 6 on page 2.
4. Page 4, line 5.
Strike: "For the purpose of perfecting an appeal"
5. Page 4, lines 9 through 11.
Strike: "or at the maximum" on line 9 through "greater" on line 11.

And, as so amended,

DO PASS

41c.

5. Page 4, line 11.
Following: "commissioner"
Insert: "with the approval of the court"
6. Page 4, line 19.
Following: "commissioner"
Insert: "with the approval of the court"
7. Page 5, line 5.
Following: "commissioner"
Insert: "with the approval of the court"
8. Page 13, line 23.
Strike: Section 20 in its entirety.

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

February 2, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **220**

Daniels

Respectfully report as follows: That **Senate** Bill No. **220**

(Introduced Bill)

DO PASS

STANDING COMMITTEE REPORT

February 2, 1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **225**

Daniels

Respectfully report as follows: That **Senate** Bill No. **225**

(Introduced Bill)

DO PASS