

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 7, 1983

The twenty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 7, 1983 at 10:10 a.m. in Room 325, State Capitol.

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

CONSIDERATION OF HOUSE BILL 150: Representative Peck, sponsor of this bill, advised it was being introduced at the request of an organization referred to as H.E.L.P. Under this bill, jurisdiction would be given to the Justice Courts to handle first offense criminal possession of marijuana cases. HB150 would also change the penalties imposed for this offense.

PROPOSERS: Marc Racicot, representing the County Attorney's Association, supported the bill and stated it would relieve the district courts of the time spent on these violations and give the misdemeanor possession cases the attention they deserve.

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

Senator Galt expressed concern about the wording of the penalty. He asked Representative Peck if it is his intention that the first time offender should not be imposed a sentence. Representative Peck felt a sentence should be imposed with a deferred condition and Marc Racicot concurred with this assessment of the wording in the bill.

Chairman Turnage was also concerned with the wording of the penalty provision and felt there was an internal conflict between page 2, line 23 and page 3, line 19. He was also concerned with the wording on page 3, subsection (5), as he felt this may be interpreted to mean that a law enforcement officer has permission to smoke marijuana. He suggested changing this language to be more clear.

There being no further discussion by the committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 235: Representative Nilson, sponsor of this bill, advised it was being introduced at the request of the Department of Institutions to repeal those sections of the

the Code concerning an intensive rehabilitation center for adult offenders, as these sections are not needed since the rehabilitation center was never established.

PROPOSERS: Curt Chisholm, representing the Department of Institutions, supported this bill, and felt this is necessary to clear up the language in the law to prevent people from creating possible problems for the Department.

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

CONSIDERATION OF HOUSE BILL 251: Representative Sales, sponsor, advised that this bill is being introduced at the request of the Clerks of District Courts. It is their opinion that the law requiring five days residency before obtaining a marriage license is "silly." This law creates problems especially for those people getting married who are from out of state.

There being no proponents or opponents present, the hearing was opened to questions from the Committee.

Senator Shaw voiced his constituents' disapproval of removing the residency requirement and stated they feel it is important that there are five days in which to "head the marriage off."

ACTION ON HOUSE BILL 251: Senator Mazurek moved HB251 BE CONCURRED IN. This motion carried with only Senator Shaw voting in opposition.

CONSIDERATION OF SENATE BILL 303: Senator Mazurek, sponsor, advised that this bill is being introduced at the request of the State Tax Appeal Board. SB303 would give authority to the State Tax Appeal Board and Public Service Commission to appoint a hearing reporter to take notes at all proceedings and would enable the hearing reporter to charge a fee for preparation of transcripts. This will enable more accurate transcripts to be available in the case of adversary proceedings.

PROPOSERS: Helen Peterson, representing the State Tax Appeal Board, said she has become accutely aware of the need for adequate records of proceedings. It was her opinion that the best way to get an accurate report is to provide the hearing reporters with the same privileges as district court reporters.

Jim Steffeck, a "lame-duck" member of the State Tax Appeal Board, felt it would be more cost effective to prepare the transcript right the first time, as a district court could remand a case based upon an inadequately prepared transcript.

OPPONENTS: Bill Opitz, representing the Public Service Commission, stated he was neutral on this issue. He stated there was a difference in qualifications between a public service and tax appeal board reporter and a district court reporter; hence, the difference in their charging for transcripts. He felt it would be unfair to other state employees for the aforementioned reporters to charge for transcripts produced on state time when other state employees couldn't charge for state work. A letter from the attorney general was then distributed (Exhibit "A") which states his disapproval of the above.

Robert S. Raundal, Chairman for the State Tax Appeal Board, stated his opposition to this bill. He specifically noted its unfairness to other employees and its fiscal impact. He also voiced concern for the word "shall" on page 1, line 23 as it applies to the reporter attending all board hearings.

There being no further proponents or opponents, the hearing was opened to discussion by the Committee.

The Committee questioned how often weekend and evening hearings were held and were advised that this can be required quite often at which time the hearing reporters were paid overtime. Senator Mazurek asked if the hearing reporters ever hired private typists for transcripts and was advised that this seldom, if ever, happens.

The Committee questioned the salaries of district court reporters as compared with hearing reporters and the differences in qualifications. Senator Berg was concerned with the fiscal note, but Senator Mazurek advised it would not have that drastic of an impact and that the important point to consider was the accuracy in transcripts.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 245: Representative Addy, sponsor, opened his presentation by stating there are conflicting philosophies of the law about people entering into contracts. The purpose of HB245 is to allow people selling a business to agree not to compete with the new buyer, and to give force and effect to that agreement anywhere within the state.

There being no proponents or opponents present, the hearing was opened to questions from the Committee.

The Committee discussed how this bill would be applied to professionals, such as doctors, and Representative Addy explained that its intent is to deal with businesses and not professions. The Committee also discussed the geographical area the bill would encompass and Representative Addy advised that he would not object to flexible language in this area.

There being no further discussion, the hearing was closed.

ACTION ON SENATE BILL 26: Senator Mazurek explained the effective dates section of the bill. He then moved to amend SB26 in total as set forth in the "grey" copy. This motion passed unanimously. Senator Mazurek then moved that SB26 DO PASS AS AMENDED. This motion also passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 138: Senator Mazurek suggested taking out the provisions by which the Secretary of State's Office sets the fees for the Clerk and Recorders and also suggested putting back the sections which provide for buyer protection to farmers. Senator Turnage recommended taking out the non-uniform amendments referring to the Secretary of State's Office. The Committee felt that the UCC statutory filing fees should be left as they are since no problems have been relayed to them concerning the amount of this fee. Senator Mazurek then suggested that counsel work with Greg Petesch when preparing the amendments.

ACTION ON SENATE BILL 177: Counsel distributed amendments and reviewed them with the Committee. The critical language of the amendment was paragraph 4 which would limit the amount of wages subject to garnishment. This was discussed and the Committee felt that it was necessary to be consistent with federal law. Senator Crippen moved to adopt the amendments as proposed. This motion passed unanimously. Senator Crippen then moved SB177 DO PASS AS AMENDED. This motion passed with Senator Shaw voting in opposition.

ACTION ON SENATE BILL 248: Proposed amendments were distributed and explained by counsel. The main intent was to leave the prosecuting attorney with authority to raise the issue of fitness to proceed and to provide for disposition of those defendants found unfit to proceed. The Committee felt that John Maynard's concerns were being preserved and therefore Senator Berg moved to adopt the amendments as proposed. This motion passed unanimously. Senator Berg then moved SB248 DO PASS AS AMENDED. This motion carried with Senator Crippen voting in opposition.

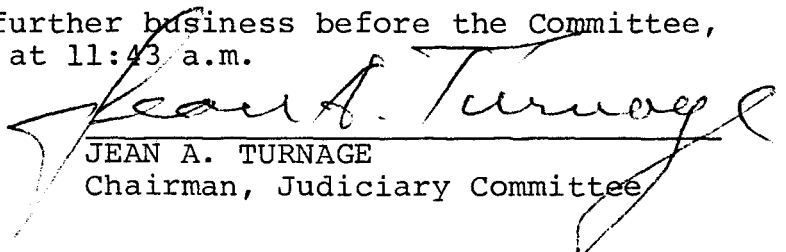
ACTION ON SENATE BILL 290: Senator Berg drew attention to the fact that Section 13-35-202, as cited in the bill, should be amended to read Section "13-25-202" in the title and on page 2, line 4. This motion was then proposed and adopted unanimously. Senator Brown discussed the philosophy of election of representatives versus senators and stated we would be the only state in the country to adopt different election standards if this bill were passed. He then moved that SB290 DO NOT PASS. Senators Galt, Hazelbaker, Crippen and Shaw opposed the motion. Senator Brown withdrew his motion and Senator Shaw moved SB290 DO PASS AS AMENDED. This motion carried with Senators Brown, Halligan, Mazurek and Berg voting in opposition.

ACTION ON SENATE BILL 326: The canons of judicial ethics violations and grounds for removal were discussed. Senator Turnage felt the constitution, as it is now written, covers action for any violations, and did not see the need for this bill. Senator Shaw moved SB326 DO NOT PASS. This motion carried with Senators Halligan, Crippen and Mazurek voting in opposition.

ACTION ON SENATE BILL 328: The Committee discussed the ramifications of adding clinical psychologists, as the bill proposes, and discussed the addition of the word "licensed" before their title. It was the consensus that this was an economic bill and after further discussion it was felt there was no real need for it. Senator Crippen moved SB328 DO NOT PASS. This motion carried with Senator Halligan voting in opposition.

ACTION ON HOUSE BILL 235: Senator Berg moved HB235 BE CONCURRED IN. This motion carried unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:43 a.m.



JEAN A. TURNAGE  
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 2-7-83

[illegible]

2-7-83

3B303 HB150 HB235  
HB245 + HB251

# VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John McLean	The General	SB 303	✓	
Jim McLean	Attorney General	SB 303	Neither	
Bob McLean	State Tax Appeal Bd.	SB 303	✓	
James A. McLean	Mont PSC	SB 303	Neutral	
Bill C. McLean	Pacific Power & Light	SB 303	"	
Gen. McLean	State Tax Appeal Bd.	SB 303	✓	
McLean	Mont PSC	SB 303	✓	

(Please leave prepared statement with Secretary)

EXHIBIT "A"  
February 7, 1983

SEP 23 1982

SW

STATE OF  
MONTANA  
ATTORNEY GENERAL  
MIKE GREELY

22 September 1982

Mr. Robert S. Raundal, Chairman  
State Tax Appeal Board  
1209 Eighth Avenue  
Helena, Montana 59601

Dear Mr. Raundal:

You have requested my opinion on the following question:

Whether a state employee with a job classification of "Hearing Reporter" may personally collect the fee authorized a court reporter under section 3-5-604, MCA, for copies of the stenographic record of oral hearings prepared as a part of the employment, for appeals to the District Court under section 2-4-702(4), MCA.

Hearing Reporters are clearly not authorized to be privately compensated for transcribing testimony taken in the course of their state government employment. Section 3-5-604, MCA applies only to court reporters appointed by a district court judge, as per sections 3-5-601, and 3-5-611, MCA. It does not authorize state employees to collect private fees. In addition, state employees that do collect private fees may be subject to criminal prosecution, as per sections 45-7-104(2), and 45-7-104(3), MCA.

Because of the clear statutory intent, I do not feel this is an appropriate matter for a formal Attorney General's opinion. However, if the State Tax Appeal Board, or the Department of Revenue needs further clarification of this matter, I will entertain your request.

Very truly yours,

  
MIKE GREELY  
Attorney General

cc: Department of Revenue  
STAB members



Bob - acct to 1 w/ org not  
Yng - servs provid, - 2 & less to 60  
to  
Mmk - med claim for servics - psychiatric valuar  
by lic. - psychiatric  
stat makes final determination

- A<sup>1</sup> 183  
2

Bob - similar to Welfare Industries  
non-profit org. to exist - require  
chrg fees to clients

cont operat or more, rec, from stat  
rec soc. sec. or sup lab. inc.  
audit & acct to stat

Shust - abj.

Yng - withdraw?

to  
Mmk - rat, cap. of 3/4 ton or more  
'80 Chevy Van & '72 Follmer & trailer  
amnd to complnt

15-6-261 (1) (~~1~~) (K) - 3/4 ton or less  
in regard to the power of law and withdraw

to  
Helen - custodial & educational (primarily)

to  
Mmk - clients learn useful trads

to  
Shust - three SRS contrb - not ndv contrb from fed  
fnds from tax revenues  
privat domains - less than 5%  
" findans - no

"A" 7-83

Yng - per month fee for room & bed  
Numb - fed aid - Title 20 - 25% stat & 75% fed  
stat pay more to share  
funds lost, to disabl,  
profits go back to corp. for admtl services  
financial records serv, by stat - gille  
control by stat - total & yr. end  
contbk submit, a beging of yr.  
apr, by Bd of Directors  
stat of mt pps legal docu—  
contbk dfr, for stat contbk  
agre, to terms of stat of mt.  
vehicles: '77 Dodge Van<sup>me</sup> daily transport—  
other " " & generic servicing  
→ '80 Chev. Van  
'77 trailer transports recyclable materials in working  
Centr  
'72 Fatline & Strick trailer  
materials use for process g  
grant, tax exempt on post  
serv, 6 yrs - never denied, tax exempt on  
post  
Shuster - obj - no relevance  
not probative to '82  
Yng - circumstances, & not chng  
'72 Fatline & Strick trailer - 3/19/81 - tax exempt

Helen - to write report, by tax funds <sup>2A" 7.83</sup>  
to  
Shuster - taking out of 1 phd & partly in assets

PI-82-237  
thru 280  
McBurney Group  
Hill Co.

Tape 060  
Side 2H 2

Tues., 1/25/83  
2:30 pm  
Cybroom  
Hane

Bob - 15-2-301 - Map of apels for Assoc. Inc. - Hill Co.  
apels & what list of values of property, by each &  
six, by 1/2 phd & Mc Burney - note of Inc.  
CB/den grant 13% on 1st group of apels  
in action to Govt 13% - apels to stat by Shuster  
w/atch

Shuster - 237 - 280 now for same group  
Rule 52 - lack of probative value  
~~2-4~~ 2-4-704, MCA  
den of agency basis on verbal record  
lack of value for den under  
real estate study takes foundation  
on foundation - power of den  
after by 1st party - sufficient foundation  
admission and not take note  
Rule 201 of Mt Rules of evidence  
admission & then consider by Bol  
movement <sup>to change</sup> Rule 12 & 41 civil procedure

SEAL # 75

From: Rep. Les Nelson

Re: H.R. 5335

This Bill REPEALS 53-30-107

~~Section~~ Through 53-30-109 MCA

AS far as I know, there  
is ~~not~~ proposal to fund.  
any such center in the nation  
#5335  
~~there~~ has no fiscal impact  
~~on H.R. 5335~~. I urge your  
favorable consideration  
Thank you!

Closing

these paragraphs provide  
that the Dept of Institutions,  
to provide for the operation  
and use of an intensive rehabili-  
tation center for adult  
offenders, the center has  
never been ~~established~~ established  
because ~~and~~ funds have never been  
provided. The reference  
to such a center must be  
deleted to avoid potential  
Civil Rights action from  
states.

the bill  
the paragraphs were enacted  
in 1969 with H.R. 5331. The Dept.  
of that is asking that they be  
repealed.

# STANDING COMMITTEE REPORT

February 7

19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 251

**Sales (Halligan)**

Respectfully report as follows: That House Bill No. 251

**(Third Reading Bill)**

BE CONCURRED IN

~~DO PASS~~

*J/C*

# STANDING COMMITTEE REPORT

February 7, 19 93

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 235

Nilson (Halligan)

Respectfully report as follows: That House Bill No. 235

BE CONCURRED IN

XXXXXXXX  
DO PASS

J. C.

# STANDING COMMITTEE REPORT

February 7, 19 83

PRESIDENT

MR. ....

Judiciary

We, your committee on .....

Senate

having had under consideration ..... Bill No. 26

Mazurek/Curtiss

Senate

Respectfully report as follows: That ..... Bill No. 26

introduced bill, be amended as follows:

1. Title, line 9.  
Following: "3-5-101"  
Strike: ", "  
Insert: "AND"
2. Title, line 10.  
Strike: "AND 3-5-203,"  
Strike: "A TERMINATION DATE"
3. Title, line 11.  
Strike: "AND"
4. Page 1, line 22.  
Strike: "Lake,"

Continued on Page 2

And, as so amended,

DO PASS

*J. A.*

5. Page 1, line 23.  
Strike: "Sanders"  
Insert: "Ravalli"
6. Page 2, line 1.  
Strike: ", Stillwater, Carbon,"
7. Page 2, lines 9 and 10.  
Strike: "Meagher, Wheatland, Golden Valley, Musselshell,"
8. Page 2, line 15.  
Following: "Yellowstone"  
Insert: ", Stillwater, Carbon,"
9. Page 2, line 18.  
Strike: "Ravalli County"  
Insert: "Meagher, Wheatland, Golden Valley, and Musselshell Counties"
10. Page 3, line 1.  
Strike: ". " "  
Insert: "; "
11. Page 3.  
Following: line 1  
Insert: "(20) 20th district: Lake and Sanders Counties."
12. Page 3, line 6.  
Strike: "6th," and "10th,"
13. Page 3, line 10.  
Strike: "and 13th district"  
Insert: "district"  
Strike: "each"
14. Page 3.  
Following: line 10  
Insert: "(4) in the 13th district, five judges;"  
Renumber: all subsequent subsections
15. Page 3, line 12.  
Strike: section 3 in its entirety  
Renumber: all subsequent sections
16. Page 4, line 8.  
Strike: section 5 in its entirety  
Renumber: all subsequent sections

Continued on Page 3



Senate Judiciary Committee

Page 3

Re: SB26

February 7, 1983

17. Page 4, line 13.  
Strike: section 6 in its entirety  
Renumber: all subsequent sections
18. Page 4, line 25.  
Strike: ":"  
Insert: ", "
19. Page 5, line 1.  
Strike: "(a) section 1 is"  
Insert: "Sections 1 and 2 are"
20. Page 5, lines 2 and 3.  
Strike: lines 2 and 3 in their entirety
21. Page 5, line 6  
Strike: "4(2)"  
Insert: "3(2)"
22. Page 5, line 7.  
Strike: line 7 in its entirety
23. Page 5, line 8.  
Strike: "4 through 7"  
Insert: "3 and 4"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 7, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **177**

**Van Valkenburg**

Respectfully report as follows: That **Senate** Bill No. **177**

introduced bill, be amended as follows:

1. Title, line 6.  
Strike: "NOT"
2. Title, line 7.  
Following: "SUPPORT"  
Insert: "ONLY TO THE EXTENT ALLOWED BY FEDERAL LAW"
3. Page 1, line 20.  
Strike: "No earnings"  
Insert: "Earnings"
4. Page 1, line 22.  
Following: "child support"  
Insert: "only to the extent allowed by 16 USC §1673"

Continued on Page 2  
And, as so amended,

DO PASS

J.C.

5. Page 2, line 4.

Following: "section,"

Insert: "except to the extent that these words include a person  
covered by a judgment or order under subsection (2),"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 7

19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **248**.

**Towe/Addy**

Respectfully report as follows: That **Senate** Bill No. **248**

introduced bill, be amended as follows:

1. Title, lines 6 through 8.

Strike: "PROVIDING" through "OFFENSE;"

Insert: "ALLOWING A COUNTY ATTORNEY TO RAISE THE ISSUE OF A CRIMINAL  
DEFENDANT'S LACK OF FITNESS TO PROCEED WITH TRIAL; PROVIDING  
FOR THE DISPOSITION OF THOSE DEFENDANTS FOUND UNFIT TO  
PROCEED; CORRECTING A REFERENCE IN PRIOR LEGISLATION  
DESCRIBING A MENTAL DISEASE OR DEFECT;"

2. Title, line 8.

Strike: "SECTIONS 46-14-201,"

Insert: "SECTION"

Strike: "AND"

Continued on Page 2

And, as so amended,

DO PASS

3. Title, line 9.  
Strike: "46-14-312,"
4. Title, line 9.  
Strike: "; AMENDING"  
Insert: "AND"
5. Title, lines 10 and 11.  
Following: "1979"  
Strike: the remainder of line 10 through "MCA" in line 11
6. Page 1, line 14.  
Strike: section 1 in its entirety  
Renumber: all subsequent sections
7. Page 3, lines 9 through 14.  
Following: "future, the"  
Strike: the remainder of line 9 and lines 10 through 14 in their entirety  
Renumber: all subsequent subsections
8. Page 3, line 16.  
Strike: "(4)"  
Insert: "(3)"
9. Page 3, lines 16 through 18.  
Strike: "court" in line 16 and lines 17 and 18 in their entirety  
Insert: "county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions."
10. Page 4, line 4.  
Strike: section 3 in its entirety  
Renumber: all subsequent sections
11. Page 6, line 18.  
Strike: section 5 in its entirety

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 7, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **290**

**E. Smith**

Respectfully report as follows: That **Senate** Bill No. **290**

introduced bill, be amended as follows:

1. Title, line 8.  
Strike: "13-35-202"  
Insert: "13-25-202"
2. Page 2, line 4.  
Strike: "13-35-202"  
Insert: "13-25-202"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 7 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 326

Blaylock

Respectfully report as follows: That Senate Bill No. 326

(Introduced Bill)

DO NOT PASS

~~DO NOT PASS~~

9/10

# STANDING COMMITTEE REPORT

February 7, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 328

Towe

Respectfully report as follows: That Senate Bill No. 328

(Introduced Bill)

DO NOT PASS

~~DO NOT PASS~~