

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 15, 1983

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 15, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 394: Senator Brown, principle sponsor of the bill, advised that SB394 would allow a person under the death sentence to have a choice between hanging or a lethal injection. Hanging has been abandoned by other states as it can be considered a cruel and unusual punishment when a person is not hung correctly. A person hung incorrectly can strangle for up to 20 minutes before dieing. Also, under current law, the sheriff of the county in which the defendant was convicted must perform the execution. SB394 would give the authority for execution to the warden of the state prison.

PROPOSERS: John Maynard, Assistant Attorney General, distributed his written testimony and a proposed amendment (Exhibit "A"). He stated that the bill and proposed amendments would provide an alternative method of execution, change the place of execution to the state prison and provide for retroactive application of law and an immediate effective date. John Maynard felt that the risk in transporting prisoners to the county where the execution takes place and the legal issue of cruel and unusual punishment were two good reasons to consider the passing of this bill. He then addressed the common objections to SB394 but didn't feel the objections outweighed the reasons for passing.

OPPOSERS: Curt Chisholm, Deputy Director of the Department of Institutions, opposed the bill as it would be the responsibility of the Department to carry out the sentence. He acknowledged that Montana State Prison is the logical place for execution, but could see a possibility of problems with the other prisoners. Rather than giving the warden the authority to delegate the task of execution, Mr. Chisholm felt this responsibility should be delegated to a specific person. He also expressed concern for the involvement of a licensed practitioner in this practice as their first obligation is to preserve life.

Senator Brown closed by stating all other states provide that executions take place at the penitentiary. He also felt the identity of the executioner should be kept confidential.

CONSIDERATION OF SENATE BILL 388: Senator Blaylock, sponsor, advised that this bill would set up procedures by which the Judicial Standards Commission investigates complaints. Upon their own motion, or a written complaint, the Judicial Standards Commission could instigate an investigation. SB388 provides the Commission with a method of operation and requires them to obtain a verified written complaint and to inform the judicial officer who is to be investigated of what the charges are against him. Senator Blaylock stressed that the rights of the person to be investigated must be protected. The Commission could not take any action against the official, but would investigate and refer their investigation to the Supreme Court if warranted. This procedure would give the people of the state some small way to voice their complaints.

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

The Committee was specifically concerned with confidentiality prior to a hearing. Senator Blaylock advised that no investigation would become public information until the Supreme Court makes a disposition.

The use of a verified complaint was discussed and Senator Blaylock explained the need for this. The Committee was concerned that the Commission could instigate an investigation upon its own motion. It was suggested that there should be some threshold requirement for the commission to act on its own motion.

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

CONSIDERATION OF SENATE BILL 386: Senator Halligan, sponsor, advised that this bill deals with contempt of court. It's purpose is to expand the kinds of contemptuous conduct by a litigant or his attorney.

PROPOSERS: Judge Jim Wheelis, District Judge of the 4th Judicial District, supported the bill. He advised that it is aimed more at a litigant rather than his attorney. It is his opinion that in the "presence of court" should be expanded to include different forms of communication and a variety of places. He also sees a need for a stiffer fine and/or imprisonment of persistent offenders.

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

CONSIDERATION OF SENATE BILL 388: Senator Daniels, sponsor, advised that his witness was not available to testify at the hearing scheduled for this date and asked that the hearing be rescheduled. The Committee acknowledged this request.

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

ACTION ON SENATE BILL 203: Senator Crippen moved SB203 DO PASS. He stated that the allowing of retired judges to assist in jurisdictions which are overloaded is an important addition to SB26. The Committee discussed voluntary versus involuntary retirement as a proposed requirement in this bill. Length of terms served, experience and acceptance by the voters were reviewed. The Committee was made aware that there is a package of bills in the House which deal with judges and retirement. Senator Mazurek felt the judges should be tied to some number of years of service rather than voluntary retirement. The Committee decided they could not sway from the retirement qualification and keep those judges who had been defeated on election from participating. It was the consensus of the Committee that judges who were "involuntarily retired" (i.e., not re-elected), should also be included in the pool of available talent. Senator Crippen then withdrew his original motion and moved to amend SB203 as follows: Page 1, following "justice" strike the remainder of line 14 through 16 in their entirety, insert "who has retired after not less than eight years of service." This motion passed unanimously. Senator Crippen then moved SB203 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 225: Senator Mazurek moved to adopt the amendments as proposed by the Department of Institutions, Counsel advised the language of the proposed amendment needed rewording and that the amendment should also be inserted in the provisions on page 3 applying to minors. Senator Mazurek moved to amend SB225 as suggested by Committee counsel. This motion passed unanimously. Senator Mazurek then moved SB225 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 261: The need for plain language contracts was discussed. Senator Mazurek didn't see the reason for legislating this type of language and moved to TABLE SB261. This motion carried with Senator Halligan voting in opposition.

ACTION ON SENATE BILL 313: The Committee discussed the authority SB313 gives to an officer to immediately suspend or revoke a drivers license. Senator Crippen moved SB313 DO PASS. Senator Halligan emphasized the abuse of the system as it is now, which provides that a license is suspended for only 60 days for failure to submit to a chemical test. He stated he was willing to bend a little if the Committee feels six months is too long for the suspension. Convictions without a chemical test were discussed. The Committee questioned if habitual offender points are accumulated for failure to submit to a chemical test. Sections 61-5-205 and 61-11-203 were reviewed. It was ascertained that six points are assessed against a driving record for driving with a license suspended, but there was no provision dealing with failure to take a chemical test. A roll-call vote

was taken on Senator Crippen's do pass motion. A tie vote was recorded. Senator Crippen then moved to TABLE SB313. A roll-call vote was taken and this motion carried with Senators Halligan and Mazurek voting in opposition.

ACTION ON SENATE BILL 351: The bill, as previously amended, was ready for consideration by the Committee. Senator Mazurek moved SB351 DO PASS AS AMENDED. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 354: The Committee discussed how SB354 gives priority to agisters' liens through many examples. The consensus was that there would not be a problem with small repairs, but larger amounts could be dangerous. Senator Berg suggested inserting a dollar limit. Concern arose with subsection (2) and the wording "30 days after payment is due." The Committee agreed that the language deleted from page 1, lines 14 and 15 should be reinserted. Various suggestions were given for the time period for notice. Senator Crippen moved to reinsert the original language on page 1, lines 14 and 15 and to increase the current 10 day provision to 30 days. This motion passed unanimously. The Committee felt the saving clause was appropriate as it now reads. Senator Mazurek moved SB354 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 373: The Committee agreed that SB373 is a good relief bill for title insurance companies. Senator Mazurek moved SB373 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 371: The intent of SB371 was discussed. It would allow a 14-year-old child to express their desires as to which parent they are placed with. It was agreed that a judge would not be bound by this provision. Senator Mazurek moved SB371 DO PASS. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 381: The Committee discussed the need to refer to "a grandparent" so that all grandparents of a child could be granted visitation rights, rather than "one or both grandparents" as stated in the bill. Senator Hazelbaker moved to amend the bill to refer to "a grandparent." This motion passed unanimously. Senator Brown then moved SB381 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 386: Senator Mazurek moved SB386 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 391: It was agreed that there is a need to raise the felony threshold from \$150 to \$500 to provide for inflation and to ease the burden on district courts. The Committee felt the remainder of the bill was unnecessary. Senator Crippen moved to amend SB391 by retaining everything through section 8 and deleting

section 9 through 20 in their entirety. He also moved to provide for an immediate effective date and to reflect all these changes in the title accordingly. This motion passed unanimously. Senator Brown then moved SB391 DO PASS AS AMENDED. This motion also passed unanimously.

The Committee agreed that all future amendments to bills should reflect these changes in the title automatically.

FURTHER CONSIDERATION OF SENATE BILL 388: SB388 was referred to counsel for amending to delete the commission's authority to act upon its own motion.

ACTION ON SENATE BILL 394: The Committee felt that appeals on the basis of cruel and unusual punishment would be eliminated by the enactment of this bill. Senator Brown stated that John Maynard's suggestion to amend SB394 to become retroactive was advisable. He then moved to amend the bill to provide for a retroactive effective date. This motion passed unanimously. Senator Brown further moved that SB394 DO PASS AS AMENDED. This motion also passed unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:00.



JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-15-83

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

SENATE

Judiciary

COMMITTEE

BILL SB386, 388, 393 & 394

4 VISITORS'

REGISTER

DATE _____

2-15-83

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE Bill No. 394

TESTIMONY OF
JOHN H. MAYNARD
ASSISTANT ATTORNEY GENERAL

I. SB 394, with the attached amendments would do three things:

A. Provide an alternative method of execution, lethal injection, at the election of the defendant.

B. Change the place of execution from the county in which the defendant was convicted to the state prison.

C. With the suggested amendments, provide for retroactive application and an immediate effective date.

II. Source of SB 394 provisions

1977 Oklahoma

Texas

New Mexico

Idaho

Washington

hanging or lethal injection
sodium thiopental

"A"
2-15-83

(2)

Massachusetts - electrocution or lethal injection
Utah - pending

Hanging -

Delaware

Montana

Washington - alternative

III. Reasons to pass SB 394

A. Legal issue - cruel and unusual punishment
State v. Frampton, Wash., 627 P.2d 922 (1981).

B. Security

1. risks in transporting

2. local facility security

C. Removes political exploitation

IV. Common Objections - on balance don't outweigh reasons to pass.

A. Place - Jail

county in which crime was committed.

county where trial took place - all have had venue changed.

B. Place - Prison - security

prison personnel - anonymity

most secure re. access etc.

"A"
2-15-83

3

C. raise expost facto issue

1. alternative
2. Ex parte Granviel, 561 S.W.2d 503 (1978)
3. Dobbert v. Florida, 432 U.S. 282 (1977)

D. lethal injection and physician's oath

1. others are qualified
 - a. medics
 - b. emergency medical technicians
 - c. California paramedics
 - d. trained persons
2. Compare with experienced hangmen

VI. Conclusion

"A"
2-15-83

SUGGESTED AMENDMENTS TO SB 394

1. Page 1, line 9 strike "AND"
2. Page 1, line 10 following "REQUIREMENTS;" insert
"PROVIDING FOR APPLICATION TO DEATH SENTENCES
IMPOSED BEFORE AND AFTER ITS EFFECTIVE DATE; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE;"
3. Page 6, line 23 following "that" insert "the"
4. Page 9, line 22, insert new section 7:

Section 7. Applicability. This act applies to the
execution of death sentences whether first
pronounced before or after its effective date. The
legislature intends this act to apply retroactively
under 1-2-109.
5. Insert new section 8:

Section 8. Effective date. This act is effective
upon passage and approval.

"A"
2-15-83

1. Petitioner's sentences of death by hanging were imposed in violation of his rights under the Eighth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Montana, to be free from cruel and unusual punishments, because hanging is a cruel and torturous method of execution.

Facts Supporting The Claim That Execution By Hanging Is Cruel And Unusual Punishment.

i. Only Montana, Washington, and Delaware retain hanging as the method of execution. Hanging has been rejected as a method of execution in every other American jurisdiction, and in all European jurisdictions, because it is excessively and unnecessarily cruel.

ii. Persons executed by hanging die slowly, usually by strangulation, and suffer extreme pain in excess of that inherent in the mere extinguishment of life.

iii. No experienced or competent hangman is available in the State of Montana, or anywhere in the United States, to competently administer an execution by hanging. Lacking competent administration, executions by hanging often fail to end life even in the prolonged period ordinarily required, and result in extreme torture, prolonged suffering, and often in the mutilation of the body of the person executed.

iv. No valid state interest is served by the excessive pain and torture involved in execution by hanging.

NAME: John H. Maynard DATE: 2/15/02

ADDRESS: 215 No. Sanders

PHONE: 449-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: SB 394

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE COMMITTEE JUDICIARY

Date February 15, 1983 Bill No. SB 313 Time

NAME	YES	NO
Berg, Harry K.	✓	
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.		✓
Galt, Jack E.		✓
Halligan, Mike	✓	
Hazelbaker, Frank W.		✓
Mazurek, Joseph P.	✓	
Shaw, James N.		✓
Turnage, Jean A.		✓

Richard Nordhuet
Secretary

Jean A. Turnage
Chairman

Motion: Senate Crippen's motion to DO PASS.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date February 15, 1983 Bill No. SB313 Time

NAME	YES	NO
Berg, Harry K.	✓	
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.	✓	
Galt, Jack E.	✓	
Halligan, Mike		✓
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.		✓
Shaw, James N.	✓	
Turnage, Jean A.	✓	

Nicki Nordtvedt
Secretary

Jean A. Turnage
Chairman

Motion: Senate Crippen's motion to TABLE.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 15, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 203

Towe

Respectfully report as follows: That Senate Bill No. 203

introduced bill, be amended as follows:

1. Title, lines 5 and 6.
Strike: "WITH 12 YEARS OR MORE OF SERVICE"
2. Title, line 6.
Strike: "BEFORE AGE 65"
Insert: "AFTER 8 YEARS OF SERVICE"
3. Page 1, line 14.
Following: "justice"
Strike: remainder of line 14 through "service" on line 16.
Insert: "who has retired after 8 years of service"

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

February 15, 19 83

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, be amended as follows:

1. Title, line 5.
Following: "EXTEND"
Strike: remainder of line 5 through line 7.
Insert: "FROM 5 TO 10 DAYS THE PERIOD OF TIME FOLLOWING A REQUEST FOR RELEASE IN WHICH A PERSON VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY MAY BE DETAINED FOR EVALUATION; PROVIDING THAT SUCH DETENTION IS ALLOWED ONLY IF THE PERSON HAS REQUESTED RELEASE DURING THE FIRST 15 DAYS OF HIS VOLUNTARY"
2. Page 2, line 15.
Following: "release"
Insert: ", if the written request is made within the first 15 days following admission"

Continued on Page 2

XXXXX
DO PASS

J.C.

February 15, 1983

Re: SB225

Page 2

February 15, 1983

3. Page 3, line 12.

Following: "53-21-111(3)"

Insert: ", if the written request is made within the first 15
days following admission"

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

February 15, 1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **351**

Halligan

Respectfully report as follows: That **Senate** Bill No. **351**

introduced bill, be amended as follows:

1. Title, lines 6 and 7.
Strike: "MENTAL HEALTH PROFESSIONAL"
Insert: "EXPERTS"
2. Title, lines 7 and 8.
Strike: "SECTIONS 46-14-212 AND"
Insert: "SECTION"
3. Page 1, line 11.
Strike: Section 1 in its entirety
Renumber: subsequent sections.

Continued on Page 2

And, as so amended,

DO PASS

M.C.

4. Page 2, line 6.
Strike: "mental health professional"
Insert: "expert"
5. Page 2, lines 12 and 13.
Strike: "mental health professional"
Insert: "expert"
6. Page 2, line 20.
Strike: "He"
Insert: "The expert"
7. Page 2, lines 24 and 25.
Strike: "mental health professional"
Insert: "expert"
8. Page 3, line 2.
Following: "have"
Insert: ", at the time the offense was committed,"

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

February 15,

19 83

PRESIDENT

MR.

Judiciary

We, your committee on

having had under consideration Senate Bill No. 354

Christiaens

Respectfully report as follows: That Senate Bill No. 354

introduced bill, be amended as follows:

1. Page 1, line 15.
Following: "property,"
Insert: "within 30 days from the time of receiving the property,"
2. Page 1, line 23.
Following: "service"
Strike: remainder of line 23 through "and" on line 25.
Insert: "service"

And, as so amended,

DO PASS

g/c

STANDING COMMITTEE REPORT

February 15, 19

83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 373

VanValkenburg

Respectfully report as follows: That Senate Bill No. 373

introduced bill,

DO PASS

J.C.

STANDING COMMITTEE REPORT

February 15, 1983

MR. PRESIDENT

Judiciary

We, your committee on

having had under consideration Senate Bill No. 371

Fuller

Respectfully report as follows: That Senate Bill No. 371

introduced bill

DO PASS

STANDING COMMITTEE REPORT

February 15, 19 83

PRESIDENT

MR.

Judiciary

We, your committee on

Senate

having had under consideration Bill No. 381

Hager

Senate

381

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

introduced bill, be amended as follows:

Page 1, line 13.

Strike: "one or both grandparents"

Insert: "a grandparent"

~~And, be so amended,~~

DO PASS

H.C.

STANDING COMMITTEE REPORT

February 15,

19 83

PRESIDENT

MR.

Judiciary

We, your committee on

Senate

having had under consideration Bill No. 386

Halligan

Senate

Respectfully report as follows: That Bill No. 386

introduced bill,

DO PASS

STANDING COMMITTEE REPORT

February 15, 1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **391**

Eck

Respectfully report as follows: That **Senate** Bill No. **391**

introduced bill, be amended as follows:

1. Title, line 7.
Following: "INCREASED"
Strike: remainder of line 7 through "COUNTIES" on line 11.
2. Title, line 13.
Strike: "46-8-112, 46-8-113, AND 46-18-201,"
3. Title, line 13.
Following: "MCA;"
Strike: remainder of line 13 through "MCA;" on line 14.

Continued on Page 2

And, as so amended,

DO PASS

yc.

4. Title, line 14.
Following: "AN"
Insert: "IMMEDIATE"
5. Page 11, line 22.
Strike: Sections 9 through 19 in their entirety.
Renumber: subsequent sections.
6. Page 21, line 20.
Strike: "July 1, 1983"
Insert: "upon passage and approval"

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

February 15, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 394

Brown

Respectfully report as follows: That Senate Bill No. 394

introduced bill, be amended as follows:

1. Title, line 9.
Strike: "AND"
2. Title, line 12.
Following: "MCA"
Insert: "; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED
BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE"
3. Page 6, line 23.
Following: "that"
Insert: "the"

Continued on Page 2

And, as so amended,

DO PASS

y/c.

February 15, 1983

4. Page 9.

Following: line 21.

Insert: "NEW SECTION. Section 7. Applicability. This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109.

NEW SECTION. Section 8. Effective date. This act is effective upon passage and approval."

And, as amended,

DO PASS

41C