

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1983

The thirty-second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 1, 1983 at 10:15 a.m. in Room 325, State Capitol.

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

CONSIDERATION OF HOUSE BILL 355: Representative Sands advised that he was sponsoring this bill at the request of the Montana Supreme Court and the Montana Supreme Court Commission on the Rules of Evidence. The bill basically clarifies the laws relating to evidence. A major portion of HB355 is grammar and stylistic changes. Its second purpose is to make the statutes consistent with the new Montana Rules of Evidence adopted in 1977, eliminate those provisions which are duplicated and repeal those provisions which are unconstitutional. Finally, it eliminates those provisions which do not make sense.

PROPOSERS: J.C. Weingartner, representing the Executive Committee of the State Bar, advised that this bill had been the result of a study resolution requested by the previous legislature and he urged the Committee to give it favorable consideration.

Mike Abley, representing the Supreme Court, also testified in support of the bill.

There being no further proponents and no opponents, the hearing moved into executive action.

ACTION ON HOUSE BILL 355: Senator Mazurek moved SB355 BE CONCURRED IN. This motion passed unanimously.

CONSIDERATION OF HOUSE BILL 362: Representative Sands informed the Committee that he was introducing this bill at the request of the Task Force on Corrections. HB362 will make it clear that voluntary intoxication cannot be used as an excuse for the minimum sentencing provisions. Representative Sands emphasized that this bill is not designed to punish people that are intoxicated in such a manner that they do not know what they are doing as this type of person would not have the mental state necessary to form the criminal intent. He then advised that the House had added an amendment to the bill on the floor which provides that this law will only apply to the second offense. A proposed amendment was then distributed which would remove the exception for first offenses, as Representative Sands felt the current language creates an exception for the first offender (see Exhibit "A"). He also stated that there is plenty of flexibility available with the bill as it was originally introduced.

PROPOSERS: Rita Cabrin, a rancher north of Wolf Creek, testified in favor of the bill.

Chris Palmer of Wolf Creek, also testified in favor of the bill and supported the removal of the amendment added on the House floor.

OPPOSERS: Karla Gray, representing the Montana Trial Lawyers Association, testified in opposition as it is a matter of principle for the Trial Lawyers Association to oppose mandatory minimum sentence requirements.

There being no further proposers or opposers, the hearing was opened to questions from the Committee.

The Committee reviewed the sections which are referred to on page 1, lines 20 and 21. Chairman Turnage questioned if intoxication is a defense in a trial. Representative Sands advised that it can be used as a defense when the intoxicated condition destroys a person's ability to reason. The Committee then discussed the Cascade County case which instigated the drafting of this bill. Chairman Turnage also agreed that the House amendments do not make sense.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 370: Representative Sands advised that he was sponsoring this bill at the request of the Task Force on Corrections as they felt there is a need for a statement on correctional policy. This policy would be beneficial when sentencing a defendant and also to county attorneys. HB370 outlines the policy. It establishes appropriate punishment, provides that those committing crimes should be held accountable for their actions and that criminal offenses should be prosecuted. It also lists four criteria to be followed when sentencing. Restitution to victims and repayment of counsel costs are also addressed in this bill. Treatment and educational programs for the rehabilitation of an offender will be made available under the provisions of HB370.

There being no proposers or opposers, the hearing was opened to questions from the Committee.

Senator Berg asked if there was a fiscal note available and felt there would be a large expense in providing treatment and educational programs to rehabilitate offenders. Representative Sands advised that educational opportunities are currently provided and did not see an additional fiscal impact. Senator Berg was still concerned that enacting of this policy would cause a significant cost increase and possible court cases could arise from the rehabilitation procedures.

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The Committee also agreed that if this bill were passed there would be a need to coordinate the reference to restitution in House Bill 370 with Senate Bill 237.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 362: Senator Berg felt that the bill recently passed by the Committee which requires a judge to state his reasons for sentencing could have an affect on HB362.

Senator Crippen moved to adopt the amendments proposed by Representative Sands. This motion carried unanimously.

The Committee then discussed the case which instigated this bill and minimum sentence provisions were reviewed in the MCA. Chairman Turnage did not like the idea of "tinkering" with judges' discretion.

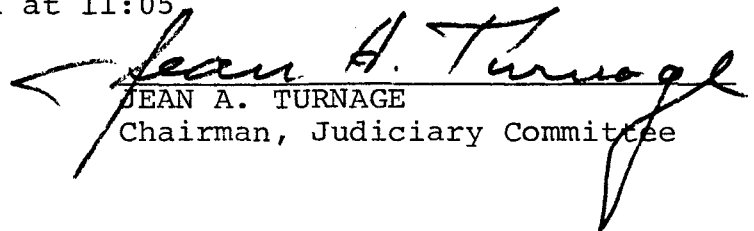
Senator Berg moved HB362 BE NOT CONCURRED IN as he felt it was created because of one bad decision. This motion failed with Senators Hazelbaker, Galt, Mazurek, Crippen and Brown voting in opposition.

Senator Crippen then made a substitute motion to TABLE SB362. This motion carried unanimously.

ACTION ON HOUSE BILL 370: The Committee discussed the financial impact this bill could cause. The constitutionality of making treatment and educational programs aimed at permanent rehabilitation of the offender available was discussed.

Senator Shaw moved to TABLE HB370. This motion carried with Senator Crippen voting in opposition.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:05


JEAN A. TURNAGE
Chairman, Judiciary Committee

DATE 3-1-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Mike Abley	Supreme Court	HB 355	✓	
J.C. WEINGARTNER	EX COMM - STATE BAR	HB 355	✓	

EXHIBIT "A"
March 1, 1983

[REDACTED] Amendments to HB 362

TITLE: Line 6.
Strike: "except when it is a"

Line 7.
Strike: "defendants first offense."

BILL: Page 2, line 4. following:
"however."
Strike rest of line 4,5,6,7,8.

Page 2, line 9.
Strike: "Condition. Then"

STANDING COMMITTEE REPORT

March 1 19 33

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 355

Sands (Mazurek)

Respectfully report as follows: That House Bill No. 355

third reading bill

BE CONCURRED IN

~~DO PASS~~

J.A.