

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 25, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, January 25, 1985 at 8:00 a. m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Gould who had been previously excused.

CONSIDERATION OF HB 69: Representative Addy moved to take HB 69 off the table. The motion was seconded by Representative Hammond. Representative Addy explained that he wanted to reconsider HB 69 because Representative Bradley has a few proposed amendments she would like to address before the committee today. A copy of her amendments were submitted and were marked as Exhibit A. Motion passed with Representatives, Hannah, Keyser, Grady and Krueger dissenting. Representative Bradley briefly addressed the proposed amendments she submitted.

In response to a question, Brenda Desmond, the committee's researcher stated that all abuse or sexual contact minor victims will not come within this bill. Those over 10 don't come within it, and those who are available for testimony at the trial don't come within it.

Mr. Marc Racicot, attorney from the office of the Attorney General, stated that the main change made by the amendments is to delete the definition of unavailability which is already defined in case law. He stated that he thinks the bill is constitutional on its face. He said this bill is really not the panacea that some of the witnesses thought it was. He feels the bill with the amendments will not go as far as he thought it was intended to.

Representative Addy wanted to know where the bill provides the defendant the opportunity to cross-examine. He stated that he didn't see that safeguard in the bill. Representative Bradley doesn't think there would be that much court abuse regarding this question. She said there is a very heavy burden upon the court to make the determination of availability and liability.

Representative Bradley feels that if an exception to the hearsay rule is not made in almost every single case where the child is five years or younger, you will never bring a case to court because that child can't remember that long.

Mr. Mike McGrath, county attorney for Lewis and Clark County, stated that once you have children at a very young age and who are unable to articulate what has happened to them perhaps in four, five, or six months prior, the guarantee that Representative Addy is looking for is well established in case law. There are presently 24 exceptions to the hearsay rule. This, in effect, would codify the 25th exception.

In response to a question asked by Representative Hannah, Mr. McGrath stated that the rules of evidence as we have it now in Montana, were new rules of evidence that were adopted by a court rule and ratified by the Legislature. They were based on federal rules of evidence that were adopted by the federal system. Historically, in this area of evidence, the courts have initially set the rules.

In response to a question asked by Representative Krueger, Mr. McGrath said the reason requested for striking chapter 3 is to allow the bill to apply in all youth court proceeding.

Representative Keyser stated he really has a problem accepting this amendment. He feels that S.R.S. and every other department connected with child abuse would have the power to use video-taping in so many different areas. By striking chapter 3, he feels it would be left wide open which is not a good idea.

Representative Mercer agreed with Representative Keyser on this issue. He feels by deleting chapter 3 would completely change the way things are handled. He feels it would waste both time and money. He also feels it is out of line for the Legislature to propose a rule of evidence of this kind. It may be appropriate by resolution to recommend or request the Supreme Court to adopt a rule. All the hearsay rules as they are now are Supreme Court rules. He further believes the whole bill is unneeded.

Representative Krueger agreed with Representative Mercer. He feels that the bill has been expanded to a much greater area than originally intended. He said that we are cutting across a lot of areas dealing with sexual abuse with the inclusion of video-taping in all proceedings such as dependancy and neglect.

At this time, Representative Krueger moved that HB 69 DO NOT PASS. The motion was seconded by Representative Grady. After further discussion, a vote was taken on the motion. The motion carried 10-7. (See roll call vote.)

CONSIDERATION AND ACTION ON HB 210: Representative Brown moved that HB 210 DO NOT PASS. The motion was seconded by Representative Krueger. Representative Brown said he is especially opposed to the bill with the amendments offered by the sponsor. Representative Brown referred to a letter received from Curt Chisholm from the Department of Institutions. The letter stated that there would be an increase in the workload of probation officers in addition to increasing the prison population.

Representative Brown feels there has been a substantial reduction in the number of DUI's since stricter laws dealing with DUI have been adopted. He feels this will also put an additional burden on police officers.

Representative O'Hara believes that tougher laws deter crime. Representative O'Hara also stated his support for the portion of the bill dealing with the preliminary screening test. He fully supports the bill.

Representative Brown stated in response to Representative O'Hara that he feels the bill is going well beyond its purpose. He further believes that the preliminary screening test would put an additional burden on the police officers.

Representative Keyser said during his experience as a police officer, there had to be a good reason for his pulling someone over. He thinks that the majority of the police officers will not abuse this law. He further stated that although he likes the preliminary screening test portion of the bill, he feels the penalties are too stiff and would therefore, be counter-productive.

Representative Connelly said that passage of this bill would provide stricter penalties to the person who caused serious bodily injury to another individual if he were convicted of DUI.

Representative Addy stated that there are all kinds of civil liability remedies available. He feels that penalties provided for in the "per se" DUI's should be left as is.

It was Representative Mercer's opinion that the portion of the bill dealing with negligent vehicular assault should be preserved. He further moved to amend HB 210 by eliminating the bill in its entirety with the exception of Section 1. The title would be amended by striking on line 6, all the language following the word, "ALCOHOL". The motion was seconded by Representative Keyser and discussion followed.

Representative Miles agrees with Representative Mercer's feelings that the portion of negligent vehicular assault should be preserved. She further agrees with Representative Brown's comments concerning the prison population problem. But she feels that overcrowded prison is a bad reason to determine whether or not there is criminal activity going on.

Representative Keyser looks at the chemical blood test as a tool. It provides a tool for the officer. He doesn't think it can be abused that much.

Representative Mercer moved to divide the question. He moved to amend section 1 as he proposed. The first question would be to delete sections 5 and 6 and amend section 1. The second idea would be whether or not to delete the whole idea of preliminary screening test.

Representative Keyser stated that the first motion basically is to adopt a new section of law--section 1 with amendments to that. Representative Keyser stated that Representative Mercer's sole motion so far is one motion to adopt section 1.

Representative Mercer made a substitute motion to change section 1 as specified and delete sections 5 and 6 and further adjust the title accordingly.

Representative Krueger made a substitute motion to delete everything from beyond section 1 i.e. 2, 3, 4, 5 and section 6. It was seconded by Representative Brown.

Representative Krueger further moved to revert to Representative Mercer's original motion which would make section 1 a misdemeanor and would further strike the remaining material in the bill. To provide the committee with some clarification and organization, Representative Krueger withdrew his substitute motion, and Representative Mercer withdrew his substitute motion.

Representative Mercer further moved to amend section 1 in the manner that was previously discussed. The title would not be included in that motion. The motion would also include striking the word, "because" on line 15 and inserting the word, "and". The motion was seconded by Representative Addy.

Representative Hannah clarified Representative Mercer's motion to amend section 1. On line 20 of page 1 after the word, "be", the following material would be inserted: "fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed six months, or both." The material following would be stricken in its entirety.

Representative Krueger made a substitute motion to insert "\$1,000" instead of the proposed \$500. Said motion was seconded by Representative Addy. The motion carried with Representatives Darko, Miles, Bergene, Eudaily, O'Hara, Hannah, and Grady dissenting.

Representative Bergene moved to amend the newly adopted amendment by inserting after "six months" the words, "to 1 year or less". The motion carried 10-6. (see roll call vote)

Representative Keyser moved to delete section 5 in its entirety. The motion was seconded by Representative O'Hara and passed unanimously.

Representative Miles moved that HB 210 DO PASS AS AMENDED. The motion was seconded by Representative Hammond.

Representative Addy made a substitute motion to delete sections 2, 3, 4 and 6 of the bill. This motion deals with the preliminary screening test. The motion was seconded by Representative Krueger and it failed 10-7. (See roll call vote)

Representative Brown moved to amend section 2, page 2, line 4 following the word, "content." by adding a new sentence, "The officers shall inform the offender that the preliminary screening test may be refused and that his license may not be revoked for refusal." The motion was seconded by Representative Keyser.

A brief discussion followed. Representative O'Hara feels that this amendment would do away with a lot of the intent. The question was called for and motion carried with Representative O'Hara dissenting.

Representative Addy further moved to strike on page 2, line 8, the following language, "In addition, or upon refusal to submit to this test, the officer may require testing under 61-8-402." The motion was seconded by Representative Mercer and carried unanimously.

Representative Brown stated that a fiscal note should be drawn up before the bill leaves the committee. Representative Brown further moved that HB 210 BE TABLED until an appropriate fiscal note can be drawn up. Representative Montayne seconded the motion, and it carried 12-4.

ADJOURN: Upon motion of Representative Keyser, and that motion being seconded, the meeting was adjourned at 10:20 a. m.



REPRESENTATIVE TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-25-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		<i>W</i>
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

January 25

19 85

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE**

Bill No. **69**

FIRST reading copy (**WHITE**)
color

ADMISSIBILITY OF STATEMENTS OF MINOR VICTIM OF ABUSE OR MOLESTATION

Respectfully report as follows: That **HOUSE**

Bill No. **69**

DO NOT PASS

~~DO PASS~~

Exhibit A
HB 69
1/25/85

Proposed Amendments to HB 69

1. Page 1, line 17
Following: "Title 41"
Strike: ", chapter 3"
2. Page 1, line 20
Strike: "safeguards"
Insert: "guarantees"
3. Page 1, line 24
Following: "unavailable"
Insert: "or disqualified"
Following: "witness"
Strike: ", but" through "statement" on page 2, line 1
4. Page 2, following line 12
Strike: subsection (4) in its entirety
5. Page 2, line 21
Strike: ", chapter 3"
6. Page 3, line 3
Following: "(2)"
Strike: "(a)"
7. Page 3, following line 6
Strike: subsection (b) in its entirety

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-25-85 BILL NO. HB 69 TIME 9:10

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Krueger moved that HB 69 DO NOT PASS. The motion
was seconded by Rep. Grady. Motion carried 10-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-25-85 BILL NO. HB 210 TIME 10:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Bergene moved to amend the newly adopted amendment
by inserting after "six months" the words, "to 1 year or less".
The motion carried 10-6.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/25/85 BILL NO. 210 TIME 10:10

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to delte sections 2, 3, 4 and 6
of the bill. This motion deals with the preliminary screening
test portion of the bill. The motion was seconded by Rep. Krueger
and failed 10-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/25/85 BILL NO. 210 TIME 10:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	✓
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown moved that HB 210 BE TABLED until an appropriate fiscal note can be prepared. Rep. Montayne seconded the motion, and it carried 12-4.