

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 19, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 19, 1985 at 7:10 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 717: Rep. Steve Waldron, District #58, sponsor of the bill, appeared and offered testimony in support of the bill. This bill provides for the award of joint custody to parents when it is requested by both parents. Rep. Waldron said that the law is unclear as to exactly what joint custody is. Rep. Waldron further stated that in talking with a few attorneys on this issue, they informed him that joint custody, in cases where the parties are hostile towards each other, does not work very well. Consequently, he wrote the bill so that if both parties want the joint custody, then the court would award custody without order of preference according to the best interests of the child.

Nick Tomaski from Harlem, appeared and offered testimony in support of the bill. His written testimony was marked Exhibit A and attached hereto.

Bailey Molineux, representing the Montana Psychological Association and director of the Family Teaching Center, testified in support of the bill. He said that research is finding that joint custody is in the best interests of the children if certain conditions are met. The primary condition is if parents are able to cooperate.

There being no further proponents, Chairman Hannah asked if there were any opponents present to testify.

Anne Brodsky, representing the Women's Lobbyist Fund, spoke in opposition to the bill. She asked that the committee consider that custody cases are very individual ones, and that it is extremely difficult at present for one parent to obtain joint custody if the other parent opposes it. Most of all, the child's best interests should be the determining factor in any custody order. A copy of her written testimony was marked Exhibit B and attached hereto.

There being no further opponents, Rep. Waldron closed. He stated that this bill provides that the decision of joint

custody is left to the discretion of the court.

Rep. Krueger commented that he feels the bill would prohibit the court as an objective overseer. Following a few general questions, hearing closed on HB 717.

CONSIDERATION OF HOUSE BILL NO. 722: Rep. Jerry Nisbet, District #35, chief sponsor of the bill, testified. He said this bill deals with a 1939 statute which was designed to make people who make defamatory statements liable while not punishing an innocent radio broadcaster. Since 1939, there have been obvious changes in the communication world. This bill would simply extend that same provision to television and cable casters. The concern arose because Great Falls and Missoula are in the process of looking at some public access channels on the local cable systems. There may be a situation where a city or some other governmental entity might have some problems in that area.

Bob Vermillion, attorney from Great Falls, spoke in favor of HB 722. A copy of his written statement was marked as Exhibit C and is attached hereto.

Jerry Loendorf, representing the Montana Broadcasters Association, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Nisbet closed.

The floor was opened to questioning.

Rep. Addy wondered if Section 2 of the bill was a blatant infringement of the first amendment. Mr. Vermillion responded by saying that he feels the bill is doing just the opposite. He feels that it will encourage more freedom of expression.

There being no further discussion, hearing closed on HB 722.

CONSIDERATION OF HOUSE BILL NO. 738: Rep. Addy, District #94, chief sponsor of the bill, testified. This bill is a clarification of the Medical Legal Panel Act. Rep. Addy pointed out some of the changes that have been made which are indicated in the bill. He stated that the administrative remedy is really working well in that it has really cut down the number of lawsuits that have been filed in court.

Jerry Neely, representing the Montana Medical Legal Panel, testified in support of this bill. He prepared an explanation of the proposed amendments to the Montana Medical Legal Panel, and submitted the copies to the committee members. The explanation was marked Exhibit D and attached.

Bill Leary, president of the Montana Hospital Association, appeared in support of HB 738.

Rep. Keyser, District #74, also wished to appear as a proponent of this bill.

There being no further proponents or opponents, the hearing on HB 738 closed.

The floor was opened for questions.

Rep. Krueger was curious to know the reason for placing two administrators on the panel as opposed to two physicians. Mr. Neely said that the hospital association feels it is important that they have good representation on the panel. A lot of the time, the cases are not clear-cut medical matters as a surgery situation. He feels those administrators have a good comprehension of the medical problems that are involved. He further feels that it is important to get good, intelligent people who are willing to listen to these cases.

In response to a question asked by Rep. Montayne, Mr. Neely stated that nurses did not wish to be covered, and it would require their active interest to be included in the panel.

Rep. Eudaily was concerned with the language in subsection (4). He said it seems to him that the original purpose of setting up the panel was to take care of the situations between the health care provider and the patients. He wondered why we are moving into this other area. In response to Rep. Eudaily, Mr. Neely said the attorneys who represent certain individuals don't know whether they do or don't have to come before the panel. So they file it in the court, and the defense attorney moves for dismissal because it should be brought before the panel.

In response to a question asked by Rep. O'Hara, Mr. Neely said that 100 claims were filed in 1984. From 1977 to 1983, 264 claims have been filed against 280 physicians, 101 hospitals and two nursing homes. He further pointed out that these figures are increasing.

Rep. O'Hara asked who pays for the attorneys and physicians who sit on the panel. Mr. Neely said that their fees are paid out of the assessment funds.

There being no further questions, hearing closed on HB 738.

CONSIDERATION OF HOUSE BILL NO. 795: Rep. Compton, District #17, chief sponsor of the bill, testified. He informed the committee that the bill was requested by some immigration and naturalization and custom officers up on the United States-Canadian border.

There being no further proponents or opponents, Rep. Compton closed.

The floor was opened for questions.

Rep. O'Hara asked whether or not these officers could make a citizen's arrest. Rep. Compton said they could, but they don't like to do that.

In response to a question from Rep. Darko, Rep. Compton said the only time an officer is on duty is when the office is open.

There being no further discussion, hearing closed on HB 795.

CONSIDERATION OF HOUSE BILL NO. 742: Rep. Jack Sands, District #90, co-sponsor of HB 742, testified before the committee. He said this bill makes a mandatory 24-hour jail term for a "per se" violation of the DUI law. The reason for doing this is because a law was passed during the last legislature requiring that a person convicted of DUI would have a mandatory 24-hour jail sentence. At the same time, a law was passed that created a "per se" violation. He stated that the reason why this bill is so important is if you really want to impose a mandatory jail sentence, you have to have it in both cases. Ordinarily, parties are charged with both the "per se" violation and the DUI.

There being no further proponents or opponents, Rep. Sands closed.

There being no questions from the committee, hearing closed on HB 742.

CONSIDERATION OF HOUSE BILL NO. 726: Rep. Gould, District #61, and sponsor of this bill, testified. Rep. Gould said his intention is not to weaken the laws as far as drunk driving is concerned; however, he did see one flaw in the present law -- that is if an individual is picked up for his first DUI, and the officer requires the blood test, and if you don't take the test there is no way that he can get a probationary driver's license to drive to work. This bill would provide the district courts authority to authorize the issuance of a restricted probationary driver's license. Another detail Rep. Gould pointed out is the penalty section in the bill which provides that if a person violates the terms of the restricted probationary license, the penalty will be exactly the same as the third conviction.

Rep. Dave Brown wished to go on record as supporting this bill.

There were no further proponents, and Chairman Hannah asked for opponents to testify.

Al Goke, from the Highway Traffic Safety Division Department of Justice, testified as an opponent to the bill. He stated that the real difficulty they see with implied consent provisions is the intent of the implied consent law. He feels that the loss of license should be made a mandatory penalty

on a normal DUI. He also pointed out that he has some problems in understanding how the federal government works, in relating when this bill might ever become effective. He feels like it may never become effective. If the federal law which was enacted in 1981 were ever changed, it would require the department of transportation to go through a real tedious process.

Bill Furois, chief of the Driver Improvement Bureau of the Department of Justice, testified. He informed the committee that they are talking about 1,700 drivers a year who refuse the first time implied consent law. Three people refuse for every ten convictions. He feels that section 1 actually opens up and says the division shall, if ordered by the court, issue a probationary license for people whose licenses are suspended under 61-5-206. In implied consent law, your license is not suspended under 61-5-206.

There being no further opponents, Rep. Gould closed. He pointed out again that this bill will only apply to people who can prove that they have to have a provisional license in order to drive and retain their job.

In response to a question asked by Rep. Addy, Mr. Goke stated there were 1,700 first refusals and 260 second refusals. Rep. Addy further asked of those people who refuse, how many are subsequently convicted of DUI. Mr. Goke didn't have the figures on the last question.

Following a brief period of general questions, hearing closed on HB 726.

CONSIDERATION OF HOUSE BILL NO. 837: Rep. Pavlovich, District #70, testified in support of this bill as its sponsor. He informed the committee that the language of the bill came from Washington state law. He said that police dogs cost a lot of money to train, and they are very valuable to the police department. This bill seeks protection for these valuable dogs.

Detective Joe Lee, Undersheriff for Butte-Silver Bow County, appeared and offered testimony in support of HB 837. He feels that some type of protection for police dogs is needed. He said that due to lack of manpower and because of the high risk situations officers get into, police dogs are very valuable. He said that police dogs are being used more and more in the police department. He further said that he would be willing to compromise on the penalty provision if the committee wished to do so.

There being no further proponents or opponents, Rep. Pavlovich closed.

Rep. Darko asked the question if it is uncommon to have contracts out on these dogs. Mr. Lee said that he wasn't

aware of any contracts out on the dogs, although he said it is very possible.

In response to a question asked by Rep. Eudaily, Mr. Lee stated the bill specifically addresses the use of police dogs in section 1. They are used for the sole purpose of law enforcement.

There was some discussion as to what it costs to train the dogs. Mr. Lee continued by saying that these police dogs are owned by the police department, and that any costs incurred if the dog is injured are taken care of by the county.

There being no further questions the hearing on HB 837 closed.

RE-CONSIDERATION OF HOUSE BILL NO. 366: Chairman Hannah informed the committee that HB 366 was brought back to committee for purposes of reconsidering previous action.

ACTION ON HOUSE BILL NO. 366: Rep. O'Hara moved that HB 366 DO PASS. Rep. Brown made a substitute motion that HB 366 BE TABLED. The motion was seconded by Rep. Hammond and it carried 10-8. (See roll call vote.)

ACTION ON HOUSE BILL NO. 726: Rep. O'Hara moved that HB 726 DO NOT PASS. The motion was seconded by Rep. Miles. Rep. Brown made a substitute motion for a DO PASS. The motion was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Gould feels the bill provides an adequate penalty provision.

Rep. Grady spoke in favor of the bill. He feels that without the bill, people would be illegally driving to their place of employment.

However, it was Rep. O'Hara's opinion that this bill will just be poking a hole in the present law.

Rep. Rapp-Svrcek feels this bill strikes a good balance. He stated he especially felt good with it because of how much research and work the sponsor has done with the issue.

Rep. Mercer stated his support for the bill. However, he suggested that on page 7, line 7 "district" should be stricken and "justice" should be inserted in its place. Rep. Mercer moved the above amendment, and Rep. Addy seconded it.

Rep. Krueger made a substitute motion to leave "district" as is but to further insert "justice court". He feels that both courts should be included. Rep. Brown seconded the motion.

Rep. Keyser spoke against the motion to amend because he feels by allowing justice courts in the bill, it would weaken the process. He stated he could not support the bill with this particular amendment.

Rep. Miles, too, spoke against the motion to amend. Rep. Gould spoke against the motion by saying this bill only affects those people who can prove that they must have a license in order to work. There may be people going before the J.P. court with some flimsy argument, and if they figure they have to go in front of a district court, they will have some sound reasons to present.

The question was called on Rep. Krueger's motion to amend. It failed 8-10. (See roll call vote.)

Rep. O'Hara again stated that he feels the bill would relieve some of the hammering effect of recently enacted laws.

The question was called, and the motion for a DO PASS carried 16-2. (See roll call vote.)

ACTION ON HOUSE BILL NO. 795: Rep. Darko moved that HB 795 DO PASS. The motion was seconded by Rep. Eudaily and the question was called. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 742: Rep. Brown moved that HB 742 DO NOT PASS. Rep. O'Hara moved a substitute motion for a DO PASS. The motion was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Addy moved to table the bill. The motion was seconded by Rep. Mercer. However, Rep. Addy withdrew his motion to table for purposes of discussion.

Rep. Brown opposes the bill. He said we are trying to correct the public perception of why it is wrong to drink and drive. The remedy is to get people in tune with why they should not drink and drive.

Rep. O'Hara stated that by the time an individual has 0.10% alcohol concentration, he is affected. He feels this bill will bring the laws into conformity.

The question was called on the DO PASS motion, and the motion failed 3-15. (See roll call vote.)

Without objection, the vote was reversed on the do pass motion; thus, the committee reported the bill out as a DO NOT PASS.

ACTION ON HOUSE BILL NO. 837: Rep. Keyser moved that HB 837 DO PASS. The motion was seconded by Rep. O'Hara. Rep. Keyser said that even though he supports the bill, he feels the pen-

alty provision is too high. He moved to amend the bill by reducing the penalty from \$10,000 to \$5,000 and from 5 years imprisonment to 1 year.

The motion was seconded by Rep. Brown and further discussed.

Rep. Gould spoke against Rep. Keyser's motion to amend. He said that when costs are taken into account to train these dogs, the costs are quite substantial. He pointed out that the cost to train a guide dog is in excess of \$10,000. He feels the penalty should stay the way it is proposed in the bill.

Rep. O'Hara made a motion that the bill be amended to decrease the penalty from \$10,000 to \$5,000. Furthermore, the imprisonment penalty would be decreased from 5 years to 3 years. The motion was seconded by Rep. Rapp-Svrcek.

Rep. Krueger moved to table the bill. The motion was seconded by Rep. Brown, but it failed 4-14.

The question was called on Rep. O'Hara's motion, and the motion carried with Reps. Brown, Addy, and Montayne dissenting.

Rep. Keyser moved that the bill be further amended on line 19 of page 1 following "shoots," insert "or" and following "kills" strike ", or" through "means" on line 20.

The question was called on Rep. Keyser's motion to amend, and the motion carried unanimously.

Rep. Keyser moved that HB 837 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously.

ACTION ON HOUSE BILL NO. 722: Rep. O'Hara moved that HB 722 DO PASS. The motion was seconded by Rep. Gould.

Rep. Mercer moved to delete section 2 in its entirety. The title would be amended accordingly. Rep. Mercer feels this section is unconstitutional. Rep. Addy seconded it.

The question was called, and the motion to amend carried 10-8. (See roll call vote.)

Rep. Brown moved that HB 722 DO PASS AS AMENDED. The motion was seconded by Rep. Gould. The question was called, and the motion carried with Reps. Keyser, Montayne, Brown and Hannah dissenting.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 10:04 a.m.


REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/19/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
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	✓		