

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, March 25, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with Rep. Krueger arriving later during the meeting.

CONSIDERATION OF SENATE BILL NO. 451: Senator Joe Mazurek, Senate District #23, sponsor of this bill, testified. This bill includes what is similar to a portion of the Federal Victims and Witnesses Act on the Montana level. Senator Mazurek said that Judge Henry Loble brought this to his attention, and it is something that Judge Loble has been practicing since he was elected as a district judge. The bill just makes an effort to make victims and witnesses aware of what goes on in the criminal process. It would keep the victim of a crime or witnesses involved in a crime aware of what is going on in the process. They would be consulted with respect to sentences and other things. Everything that is set forth in this bill is new and he explained the sections of the bill in fuller detail. Senator Mazurek feels this is a good bill, and he feels that victims and witnesses should be entitled to know what is going on in the process.

PROPOSERS:

Judge Henry Loble, district court judge from the 1st Judicial District in Helena, said that since he has been a judge, he has been practicing this -- he consults the victim before the sentence is implemented giving the victim the opportunity for input. He doesn't feel that the judge can understand what proper sentence should be given to that person until the judge hears from the victim. To his surprise, he found that he was not the only one interested in this aspect of criminal justice. He said that President Reagan's Task Force on the Victims of Crime is a very interesting document. The federal government has on the books a law very similar to SB 451 only that the federal law goes considerably further. It is called the Victims and Witnesses Protection Act of 1982. He said that many of us who have never been victims of a crime don't realize the trauma that a victim goes through. He feels that they are entitled to know what is happening in the system with regard to the crime they were involved in.

There being no further proponents, Chairman Hannah requested any opponents to testify.

OPPOSERS:

Robert Deschamps, Missoula County Attorney, representing the Montana County Attorney's Association, testified as being partially in opposition to this bill. He said that while he

is sympathetic to the needs of victims and witnesses, he said there is a real problem with trying to keep all those people apprised of all the things that this bill would mandate. He said that if this legislation passed, one more person would have to be hired in his office to take care of this. He pointed out that each time a pre-sentence investigation is ordered, there is a statement obtained from the victim of which information is put into the report and made available to the judges. Although he feels that the idea of the bill is good, he doesn't not support the mandatory measure of it.

Harriet Riley, speaking on behalf of the Missoula County Attorney secretarial staff, feels that it would be humanly impossible to be required to contact each of the victims and witnesses of crimes. She feels the process of contacting victims and witnesses is presently adequate.

There being no further opponents, Senator Mazurek closed. He said that the bill only applies to those people who want to take the time to give the county attorney their names and addresses in felony cases who wish to be apprised of the criminal proceedings of the particular case. He feels the concept is good and urged the committee to support it.

The floor was opened to questions from the committee.

Rep. O'Hara asked if there is a distinction between a major felony and a felony. Senator Mazurek said that a felony is a felony.

In response to a question with regard to section 11 asked by Rep. Addy, Senator Mazurek said this language is modeled after the federal act. He doesn't feel the county attorney should be held liable if he didn't contact a victim or witness due to honest oversight.

Rep. Addy asked how mandatory the bill is. Senator Mazurek said that if the county attorney didn't contact the person, he supposes that someone could claim that the county attorney is guilty of malfeasance in office.

Rep. Eudaily asked if the real thrust of the bill is for victims, and wouldn't it cut down a lot of work for the county attorneys if witnesses were deleted? Judge Loble feels that the victim is the more important part; however, he does think the witnesses should also have their rights protected.

In response to a question asked by Rep. Miles, Senator Mazurek said the rule-making authority was excluded because they felt it would save a little cost. He said there really wasn't a strong feeling about it one way or the other.

There being no further questions, the hearing was closed on SB 451.

CONSIDERATION OF SENATE BILL NO. 433: Senator Bill Norman, Senate District #28, sponsor of SB 433, testified. Senator Norman said SB 433 relates to unexplained death. More exactly, it relates to forensic pathology which relates to crime. He said the material on page 2 of the bill relates to the liability of the forensic pathologist. This has nothing to do with malpractice -- it is a matter of authority or jurisdiction. He said that the FBI has no device to order an autopsy -- certainly not to order a state forensic pathologist to do so. But, deaths do occur under federal jurisdiction, so they ask the forensic pathologist to do the autopsy which will provide an explanation for the cause of death. In so doing, the coroner is not included although he has to order the forensic pathologist to perform the autopsy. There remains a question of "who is liable?"

Chris Tweeten, assistant attorney general for the State of Montana, testified as a proponent. He said that at the request of the medical examiners, this legislation was proposed. The bill doesn't really do anything different from current law other than expand the protection of medical examiners into areas where the jurisdiction lies in the federal government as opposed to jurisdiction in the coroner's system.

There being no further proponents or opponents, Senator Norman closed.

The floor was opened to questions.

Rep. Keyser asked Senator Norman if he knew of another part of the law that defines medical examiner so we know exactly what type of medical examiner we are talking about. This may be too broad and covers perhaps other medical examiners that you don't intend to be covered. Mr. Tweeten said that Chapter 3, Title 44 does define the term "medical examiner". It is possible that if a pathologist were not a forensic pathologist and was called in to conduct an autopsy, it could be argued that he is not a medical examiner. He feels that this would be a highly technical argument.

Rep. Gould asked Mr. Tweeten under what circumstances could a medical examiner be sued. The medical examiner informed Mr. Tweeten that there are only two situations in which pathologists can get into that type of problem. One is where he does not conduct his autopsy in accordance with a reasonable medical stand. This bill doesn't address that problem. The other is a situation where the family of the deceased or whoever might be left an estate might bring action challenging the authority of the coroner or medical examiner who conducted the autopsy in the first place.

There being no further questions, the hearing was closed on SB 433.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 44: Rep. Cal Winslow, House District #89, sponsor of HJR 44, testified in support of the bill. This legislation calls for an interim study of juvenile detention facilities in the state. He said that this is a problem that is becoming more prominent in the state since recent federal regulations have required that juveniles be placed in separate facilities in the jails from where the adults are placed. Montana presently has no law saying that they have to be separate, but because of the recent federal court case in Oregon, D.B. v. Tewksbury, the federal government has now mandated that separate detention facilities be available for youth. There is no county in the state of Montana that has this type of facility to take care of its youth. This study just calls for developing a plan to look at what can be done for those serious offender youths. By 1987, if Montana does not have a plan, we have been told that we will no longer receive federal funds which are passed to the Board of Crime Control down to the counties. It is a serious problem that not too many people have looked at closely. He feels the following considerations should be looked into. What alternatives can be available for youth detention; a juvenile pre-trial release system; maybe a state subsidy program to help the local communities in supporting them in some of these programs, as well as developing some kind of a regional facility. The problem that is occurring now and will continue to occur, if this problem is not addressed is that the counties will start shipping their youths to Pine Hills School or Mountain View, and the State will end up paying for those costs. Rep. Winslow feels that we will be able to come up with the dollars for the study from some of the Board of Crime Control monies that are being passed down to the counties.

There being no further proponents or opponents, Rep. Winslow closed. The floor was opened to questions from the committee.

Rep. Brown asked if this relates to pre-trial, pre-sentencing circumstances. Rep. Winslow replied that it did. Rep. Brown said that he has a resolution ready to be introduced dealing with the convictions of serious youthful offenders and regional detention centers. Rep. Brown asked Rep. Winslow if he thought those kinds of studies are the type that could be combined into one study. Rep. Winslow felt they could be.

Rep. Winslow said that the Board of Crime Control is funded by some general fund and some federal dollars, however, it is mostly federal dollars. Rep. Brown said that when he talked to them about funding, there was considerable concern that the funds of the Board of Crime Control were stretched to the limit. Rep. Brown asked Rep. Winslow if he has talked to the Board about this. Rep. Winslow said he hasn't. He said the county

commissioners said they would be willing to kick in that proportion of their dollars that they receive from the Board of Crime Control because they are the ones that are at risk. He feels that the Board of Crime Control is interested because if they don't use the funds by 1987, some of the dollars they are presently operating with aren't going to be available.

There being no further questions, the hearing was closed on HJR 44.

CONSIDERATION OF SENATE BILL NO. 116: Senator Gary Aklestad, Senate District #6, chief sponsor of SB 116, testified. This bill deals with part-time county attorneys. It is an act to adjust the salary of part-time county attorneys; requiring the State to pay one-half of the salary of no more than two authorized deputy county attorneys; and providing funding by imposing a charge on persons convicted of criminal offenses or who forfeit bond or bail. Senator Aklestad gave the highlights of the bill and explained some of the amendments that have been made and will be proposed to the bill. He referred the committee to page 6, lines 7-9 where the salaries are being increased for second and third class part-time county attorneys. At the time the amendment was made, Senator Aklestad understood that there were no first class counties that had part-time attorneys but since that time understands there are some. He suggested the committee insert "first" on page 6, line 7 following "THE". He said the amendment on lines 6-9 was placed in the bill on the Senate floor by him because it had been inadvertently left out in the Senate committee. He said that they had inadvertently taken out fourth, fifth, sixth, seventh class counties that were supposed to be getting 50% of full-time county attorney salaries, and they went back to the original salaries which they were receiving. He submitted an amendment that would place these people back in at 50% which the Senate Committee originally had. Senator Aklestad said that another sponsor of the bill was concerned with the words "base salary." He was concerned that the base salary may take them back to a figure of \$36,000 when they are actually receiving more than that. Therefore, there may be a need to delete "base".

PROPOSERS:

Robert Deschamps, Missoula County Attorney, testified in support of the bill. He said there are other amendments to the bill he would like to see adopted. On page 1, lines 23 and 24 he asked that this deleted material be reinserted and further insert "part-time" following "for" and strike the words "~~their-deputies~~" and reinsert "deputy county attorneys." On page 3, he suggested that the stricken material on lines 24, 25 and on line 1 of page 4 be left in. He asked that the stricken material on page 7, lines 1-22 be reinserted with the following changes in that stricken language: On line 2 following "~~each~~" insert "part-time"; on line 7, following "~~each~~"

insert "part-time"; on line 12 following "~~each~~" insert "part-time"; on line 15 following "a" insert "part-time". On page 8, he asked that the stricken material be returned and also the stricken material on page 9.

Mr. Deschamps said the reason why this bill was introduced was because an interim committee studied problems involving county attorneys and their deputies and their general funding powers. That interim committee prepared a report which was marked Exhibit A and attached hereto. The interim report revealed some serious problems with county attorney turnover, funding mechanisms and various other problems in the county attorney offices. A number of bills were drafted by the interim committee, however, none of them were introduced. During this session, the county attorneys took those bills that the interim committee had generated and put them together into this particular SB 116. Mr. Deschamps pointed out that county attorneys' offices have a tough time competing with other state agencies and they need some sort of incentive to continue in their jobs. He stressed that this bill does not pertain in any way to the full-time county attorneys such as himself.

Gordon Morris, executive director for the Montana Association of Counties, said that the association supports this bill. He said that this is one of the few bills this session that would have a positive impact on county budgets.

Ed McLean, chief of the Criminal Division in the Missoula County Attorney's Office, spoke on behalf of the deputy county attorneys of the state in support of this bill. He said that the universal feeling among senior deputies in the state is that the county attorneys' offices are nothing but training grounds for deputy county attorneys to become trial attorneys involved in civil litigation. He said it is their feeling that the people of the state of Montana deserve more, and in deserving more, they would ask that the committee support this bill inclusive with Mr. Deschamps' amendments.

John Pratt, County Attorney from Musselshell County and also president of the Montana County Attorney's Association, testified as a proponent. He feels that this bill takes care of a serious problem that is now present in the state, particularly in regard to part-time county attorneys. In the last eight years, they have had a turnover of 37 county attorneys out of 56, and 30 of those have been from the smaller counties. Not one of those turnovers is the result of an election. He feels this bill would alleviate many of the problems with keeping part-time county attorneys in that it would make salaries commensurate with the work. They feel that it is a bill that is paid for by the people who cause the problems -- people who commit the offenses. In closing, he said that we are at a point right now where there is a desperate need for experienced people in the county attorneys' offices.

Scott Graham, representing the Missoula Police Department, spoke in favor of the bill. He briefly told the committee how difficult it is to retain part-time county attorneys. He said that a lot of cases have been lost because of inexperienced deputy county attorneys.

Ray V. Kalbfleisch, Toole County Attorney, said that the county attorneys are promoting this bill as an incentive to retain excellent county attorneys. He feels this will also save the Montanans money. He said the economical advantages are clear. One is that there is sufficient monies available to pay the longevity portion for both the county's portion and the state's portion. Another consideration could be a reduction of the longevity payment if this committee or the House deems it necessary. He said that they have submitted an amendment pertaining to the longevity portion on behalf of the department and the county attorneys.

Ed Laws, county attorney for Stillwater County, spoke in favor of the bill. He said he would like the members of this committee to think about the fact that the longevity portion for part-time attorneys is a two-way street. He further feels that it is important to retain good, experienced part-time county attorneys.

Don Ranstrom, Blaine County Attorney and treasurer for the Montana County Attorneys' Association, said he wanted the committee to be sure to understand the fact that the surcharge that would be levied is over and above the other fine that would normally be levied, and it would be divided as it is under the current law between the city and the state for any offenses that are handled in the cities and towns. Presently under law, the county attorney assumes all of the cost to perform its duties for any felony offenses that are committed within the boundaries of a city or town. So, in effect, there is no loss to the cities and towns in terms of revenue. In fact, they are simply assisting us bookkeeping-wise in keeping the funding separate, but the surcharge is over and above the monies that they would still retain under the present fine system.

There were no further proponents.

#### OPPONENTS:

Bill Verwolf, speaking on behalf of the city of Helena, said they do not disagree with the basic concept of the bill. Their concerns have to do with the funding mechanism. To place these fines on the kinds of offenses that go through a municipal court, in most cases result in a fairly large percentage of increase in the dollar value of that crime. He said that they understand that it doesn't affect the amount of money they keep out of the fine process, but in some cases involving a minor misdemeanor

(such as a parking ticket) a \$2.00 fine becomes a \$12.00 parking ticket. We are asking that municipal courts be exempt from the operations of this bill and that the \$10.00 additional fine be on those courts that the county prosecutor's office is involved with on a day-to-day basis.

Alec Hansen, representing the Montana League of Cities and Towns, spoke not so much in opposition to the bill, but in support of the amendments proposed by Mr. Verwolf. He said he is not sure what the financial ramifications are if municipal courts were exempted. But he thinks it is critically important that municipal courts are exempt because if they are not, this will just be another example of where city residents are contributing significantly to county programs. Another alternative would be that money collected in the municipal courts would be returned to the cities to fund city attorneys and city court costs. He feels that fairness dictates that the money collected in municipal court needs to be returned to the cities, or that the cities be exempted from the bill.

Jim Jensen, representing the Montana Magistrates' Association, said that they are not opposed to the idea of longevity and retention of the qualified prosecutors, but we are concerned and do oppose the new section 1 on page 2 of the bill -- the method of raising funds. There are three branches of government. We are talking about a surtax that will be collected and distributed by the courts. He feels the legislature needs to look very carefully at this provision and look at its own responsibility with levying taxes. With this bill, it will cost a lot of money for the justice of peace courts to handle just the bookkeeping involved. Mr. Jensen feels this is a bad precedent to set because he is not sure where it will end. It seems to him that a collection benefit of a strong, well-trained, well-paid prosecuting staff at the local level ought to be a shared responsibility by those people who are receiving the benefits. He feels that perhaps the judges are not going to assess the fines at a level as high as they might because of the way this particular legislation is written. The counties may receive a little less revenue than more when all is said and done.

There being no further opponents, Senator Aklestad closed. He again made the point that in order to retain good county attorneys their salaries will have to be increased.

The floor was opened to questions from the committee.

Rep. Gould asked Mr. McLean to comment on Mr. Verwolf's testimony pertaining to the \$2.00 parking tickets costing \$12.00 each. Mr. McLean said that it was an inaccurate statement. Parking tickets are not included under this. It starts with misdemeanors and goes to felonies. Rep. Addy asked Mr. Racicot from the Attorney General's Office, if he would object



non-severability clause being added to the bill. He is concerned that we have a funding mechanism at the beginning and an additional obligation at the end. If we lose the funding mechanism, I don't want to be stuck with the fiscal obligation.

Rep. Keyser asked what Mr. Deschamps thought of exempting municipalities from the bill. Mr. Deschamps said the problem is with the fiscal impact. If municipalities are exempt, he doesn't know what it will do to the revenue.

Rep. Brown wanted to know how Mr. Deschamps' amendments affect the fiscal note to this bill. Mr. Deschamps said that the cost will actually be reduced because the fiscal note was prepared with the idea that full-time county attorneys would be changed. Because the full-time is excluded, we will see a reduction in the fiscal impact. In response to another question, Mr. Deschamps said he has not seen the revised fiscal note of March 7th.

In response to a question, Mr. Racicot feels it is clear in this bill that a parking violation will not be affected by this legislation. However, Mr. Racicot can see where a parking ticket might apply if the person who receives the ticket refuses to pay the fee.

There being no further questions, the hearing was closed on SB 116.

CONSIDERATION OF SENATE BILL NO. 412: Senator Ed Smith, Senate District #10, chief sponsor of SB 412, testified. This is an act to require 30 days to be served under a sentence for committing certain criminal offenses amount to child abuse. He informed the committee that this legislation was brought about by the request of the Northeast Montana Child Sex Abuse Task Force. Some of the members of that Task Force would have liked to have testified on the bill but were unable to do so because of the long distance involved in coming from Plentywood. He told the committee how he got personally involved in this particular issue.

There were no proponents or opponents, and Senator Smith closed.

In response to a question asked by Rep. Miles, Senator Smith said that this legislation would force the judge to give the offender at least 30 days in jail. Rep. Miles asked if section 46-18-222 would apply to the mandatory 30 day sentence. It was the intention of the committee to clarify that this section does not apply to the first 30 days of such imprisonment.

There being no further questions, the hearing closed on SB 412.

EXECUTIVE SESSION:

ACTION ON HJR 44: Rep. D. Brown moved that HJR 44 DO PASS. The motion was seconded by Rep. Bergene. Rep. Gould requested that action on the bill be postponed. He said the Youth Court Justice did the same thing two years ago and he wants to check it out further.

Rep. Hannah said he would like to act on the bill today but the standing committee report will be held depending on what Rep. Gould finds out. The question was called, and the motion carried unanimously.

ACTION ON SENATE BILL NO. 433: Rep. Gould moved that SB 433 BE CONCURRED IN. The motion was seconded by Rep. Miles and discussed. The question was called, and the motion carried unanimously. Rep. Gould agreed to carry the bill on second reading.

ACTION ON SENATE BILL NO. 451: Rep. O'Hara moved that SB 451 BE CONCURRED IN. The motion was seconded by Rep. Addy and discussed. Rep. Hammond stated that he did not like the bill. He feels that it will create a nightmare for county attorneys by requiring them to notify all witnesses and victims in a criminal case.

Rep. Keyser moved that any reference made to "witnesses" throughout the bill be stricken so that it would just apply to "victims". Rep. O'Hara seconded the motion. Rep. Hannah said he would vote against this particular amendment because he feels that witnesses should also be notified of the court proceedings. He said that it is not only a courtesy to notify these people but only fair. He doesn't see where it would present an unusual burden to these people to be required to notify both witnesses and victims of crimes.

Rep. Addy doesn't feel that it is necessary that witnesses be notified. Rep. Keyser pointed out that when he was involved in law enforcement, the county attorney would notify those witnesses of date changes, etc. He feels that any good county attorney would do this anyway in order not to provoke his witnesses. In response, Rep. Hannah said that as long as they are doing this, witnesses should be left in.

Rep. Mercer didn't support the amendment. He thought it would be better to request that witnesses and victims leave their names and addresses if they so wish to be contacted. He further stated that he feels it is the victim's right to know when the offender has been arrested. Rep. Eudaily also feels this will be a burden on officers.

(Rep. Krueger appeared at the meeting.)

The question was called, and Rep. Keyser's motion failed on a

voice vote.

Rep. Addy moved to amend page 4, following line 13, by striking subsection (b) in its entirety. The motion was seconded by Rep. Mercer and carried unanimously. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Brown.

Rep. Mercer moved to amend page 4, line 9 following "who" by inserting "requests notification and". Rep. Hannah spoke against this amendment, and said it allows the county attorney to weasel out of this whole law. He again said that he doesn't feel it will create an undue hardship on anybody. Rep. Hammond seconded the motion, and it failed on a voice vote. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. Rep. Mercer moved a further amendment on page 3, line 7 by striking "routinely" and on page 3, line 20 by striking "routinely". He doesn't feel this language adds anything. The motion was seconded by Rep. Brown and carried with Rep. Bergene dissenting. Rep. Addy moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried on a voice vote with Rep. Hammond dissenting. Rep. Addy agreed to carry the bill on the House floor.

ACTION ON SENATE BILL NO. 412: Rep. Mercer moved that SB 412 BE CONCURRED IN. The motion was seconded by Rep. Darko and further discussed.

Rep. Mercer feels that if someone lacks the mental capacity to be convicted of an offense, that is one thing -- but if he/she have enough mental capacity to be convicted, then a judge ought to be able to sentence him/her. Rep. Mercer moved to delete on page 4, line 2 following "(7)" the word "Except" through "IF" because that is the section which removes the mandatory sentence. Furthermore, he wished to include in the bill that section 46-18-222 does not apply to the first 30 days of such imprisonment. He further wished to add the rape statute, §45-5-503 following §45-5-502(3), on line 5 of page 4. Furthermore, he wished to strike on page 4, lines 6 and 7 "if" through "old" because the reference to under 16 years old has moved up on lines 2 and 3. Therefore, it applies to any victim less than 16 years old. The amendments are really aimed at a person who gets a two-year deferred, two-year suspended, five-year deferred, five-year suspended sentence, commented Rep. Mercer. If the Court suspends a sentence, at least 30 days of it ought to be served in jail. The motion was seconded by Rep. Gould. The question was called on the motion to amend, and it carried unanimously. Rep. Mercer further moved that SB 412 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously. Rep. Nathe will carry the bill on the floor.

ACTION ON SENATE BILL NO. 116: Rep. Addy moved that SB 116 BE CONCURRED IN. The motion was seconded by Rep. O'Hara. Rep. Brown made a substitute motion that SB 116 BE NOT CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Brown feels that this bill is a revenue measure and goes well beyond the scope of what is generally acceptable. Rep. Brown also questioned if the bill is, in fact, constitutional. Rep. Mercer said he really doesn't think that it is unconstitutional because, presently, the Court is allowed to charge criminals -- once they are convicted -- for their court-appointed attorney and other court costs incurred. With this bill, all they would be charged is a \$10.00 fee if convicted on a misdemeanor charge.

Rep. Addy moved to add a non-severability clause to the bill. The motion was seconded by Rep. Brown. The question was called on the motion, and it carried unanimously. He further moved to amend page 2, line 10 following "imposed by " by striking "all courts of original jurisdiction" and inserting "district courts and justices' courts". The motion was seconded by Rep. Darko. Rep. Hannah said he feels this is a good amendment because the fiscal note will not be impacted at all according to the testimony given by Mr. Racicot. The question was called, and the motion carried unanimously.

Rep. Eudaily wondered with the above amendment whether or not they would really be eliminated out of the fiscal statement.

Brenda Desmond, staff attorney, raised the issue of an equal protection problem with the above amendment. Rep. Hannah asked if another problem will be presented as a result of dividing the court system up where fines will be imposed in some courts and not in others. Rep. Addy said that it will probably depend on the classes of the offense, too. He said he would want to look at the jurisdiction of the two courts to see whether it could be argued on a rationale basis for distinction. He feels that the revenue aspect would be one argument for a rationale basis. It would also depend on the types of offenses that would be treated in justice court vs. police court. So, his answer was a "maybe."

Rep. Kreuger said he thinks Brenda has raised a good point in terms of the equal protection problem this above amendment may present.

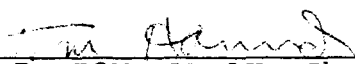
Without objection, the committee decided to postpone action on SB 116 until further amendment can be drafted and considered.

ACTION ON SENATE BILL NO. 321: Rep. Hammond moved that SB 321 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed. Rep. Mercer submitted a set of amendments

which were drafted by himself and Rep. Krueger. (See Exhibit B.) Amendments were also submitted by the Attorney General's Office (see Exhibit C). Rep. Hannah asked Rep. Mercer what the problem is with the bill in its present form that generates the need for the amendments. Rep. Mercer said it used to be if someone was sentenced to a jail term by a city court or a justice of the peace, that person had an automatic right to bail. Under this bill, the Court could deny bail if he/she felt the person was likely to flee or pose a danger to the safety of the community. It seems to Reps. Mercer and Krueger that a person should have an automatic right to bail if the conviction is appealed to the upper court.

At this point, it was Rep. Hannah's opinion that a gray bill is needed so each of these amendments may be carefully considered and voted on separately.

ADJOURN: A motion having been made by Rep. Keyser, the hearing adjourned at 9:50 a.m.

  
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REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/25/85

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	✓		

## VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL NO. SB 116 (Sen. Aklestad);  
 SB 412 (Sen. Smith);  
~~SB 433 (Sen. Norman);~~  
 SPONSOR SB 451 (Sen. Mazurek);  
~~HJR 44 (Rep. Winslow)~~

DATE March 25, 1985

NAME (please print)	<del>XXXXXXXXXX</del> REPRESENTING	SUPPORT	OPPOSE
Robert L. Deschamps III	Mont. Co. Atty. Assn.	116 ✓	451 ✓
Ed McLean	" "	116 ✓	
Scott Graham	Missoula Police Dept.	116 ✓	
Harriett Riley	Missoula Co. Atty.		451 ✓
Gerry M. Higgins	Golden Valley Co. Atty.	116 ✓	
John L. Pratt	Montana County Attorneys Assoc	116 ✓	
D. Gregory Smith	Carroll College Faculty		
Kathleen O'Connor	" "		
Chris D. Guntens	Attorney General	433	
Ed D. Jones	Stillwater Co. Atty.	116 ✓	
John Flynn	Broadwater Co. Atty.	116 ✓	
Jim Jensen	Mt. Magistrates Ass'n.	<del>116</del>	116
Ed Smith	Seneca, Montana	412 ✓	
G. Morris	MALCO	116	
Robert M. McGarvey	Butte-Silver Bow Co. Atty.	116 ✓	
Jan T. Zandoy	mt. judicial assn	433	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 25, 1985

BILL NO. SB 116

TIME \_\_\_\_\_

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 to TABEL SB 116. The motion

was seconded by Rep. Krueger and failed due to a tie vote 9-9.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# STANDING COMMITTEE REPORT

March 25

19 85

MR. ~~Speaker~~.....

We, your committee on .....Judiciary.....

having had under consideration .....House Joint Resolution..... Bill No. 44.....

First reading copy ( white )  
color

## INTERIM STUDY OF JUVENILE DETENTION FACILITIES IN MONTANA

Respectfully report as follows: That.....House Joint Resolution..... Bill No. 44.....

DO PASS.

# STANDING COMMITTEE REPORT

March 25

1935

Speaker:

MR. ....

Judiciary

We, your committee on .....

having had under consideration ..... Senate ..... Bill No. .... 112....

Third reading copy ( Blue color )

## MANDATORY 30 DAYS IN JAIL FOR CERTAIN CHILD ABUSE OFFENSES

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

1. Page 4, line 2.

Following: "(7)"

Strike: "Except" through "IF"

Insert: "IF"

2. Page 4, line 5.

Following: "45-5-502(3),"

Insert: "45-5-503,"

3. Page 4, line 6.

Following: "45-5-507"

Strike: "if" through "old" on line 7.

4. Page 4, line 8.

Following: "suspended."

Insert: "Section 45-18-222 does not apply to the first 30 days of  
such imprisonment."

DO-PASS

AND AS AMENDED,

BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 25

19 95

Speaker:

MR. ....

Judiciary

We, your committee on .....

Senate

having had under consideration ..... Bill No. 433

Third

Blue

reading copy ( ..... )  
color

LIMIT LIABILITY OF MEDICAL EXAMINERS PERFORMING AUTOPSIES FOR FBI

Senate

Respectfully report as follows: That..... Bill No. 433

BE CONCURRED IN  
ADDRESS

# STANDING COMMITTEE REPORT

March 25 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 451

Third reading copy ( Blue )  
color

PROVIDES FOR THE FAIR AND PROPER TREATMENT OF CRIME VICTIMS  
AND WITNESSES

Respectfully report as follows: That Senate Bill No. 451

be amended as follows:

1. Page 3, line 7.  
Strike: "routinely"
2. Page 3, line 20.  
Strike: "routinely"
3. Page 4, following line 13.  
Strike: subsection (b) in its entirety.

Renumber subsequent subsections.

AND AS AMENDED,  
BE CONCURRED IN  
~~DO PASS~~

Exhibit A  
3/25/85  
SB116

**DRAFT COPY**  
SUBJECT TO REVISIONS

## Prosecution Services in Montana

A Report to the Subcommittee  
on Judiciary

Prepared by:

Lois Menzies, Researcher  
Montana Legislative Council  
Helena, Montana

July, 1982

Proposed Amendments to SB 321      *Submitted by Rep. Mercer*

1. Title, line 7.

Strike: "AND BAIL CONDITIONS"

2. Title, line 9.

Following: "MCA"

Insert: "; AND REPEALING SECTION 46-9-101, MCA"

3. Page 1, following line 19.

Insert: "(a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail.(b)"

4. Page 1, line 22.

Following: "sentence"

Insert: "or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal,"

5. Page 2, lines 1 through 7

Strike: subsection (2) in its entirety.

Re-number subsequent subsection.

6. Page 2, following line 15.

Insert: "(1) sufficient to insure the presence of the defendant in a pending criminal proceeding;"

Re-number subsequent subsections.

7. Page 2, line 18

Following "sufficient to"

Strike: "assure" through "endangered" on line 20.

Insert: "protect any person from bodily injury"

8. Page 2, line 25.

Strike: "and"

9. Page 3, line 1.

Following: "record"

Strike: ", employment" through background" on line 2.

Insert: "; (7) considerate of the length of time defendant has resided in the community and of his ties to the community;

(8) considerate of the defendant's family relationships and ties; and

(9) considerate of the defendant's employment status"

10. Page 3, line 5.

Strike: "before conviction"

11. Page 3, line 13.

Following: "required"

Strike: "and" through "community," on line 14

Insert: "and to protect any person from bodily injury"

12. Page 3, line 20.

Following: "required"

Strike: "and" through "community," on line 21

13. Page 4, line 3.

Following: "crime"

Strike: the remainder of subsection (v)

14. Page 4, lines 17 through 20.

Strike: subsection (xi) in its entirety

15. Page 4, line 23.

Following: "of bail"

Insert: ", in addition to those set forth in subsection (1),"

16. Pages 4 and 5.

Following: line 24 on page 4

Strike: subsection (b) in its entirety and subsection (c) through  
"court;" on line 3 of page 5

17. Pages 5, following, line 6.

Insert: "Section 4. Repealer. Section 46-9-101, MCA is  
repealed."

Proposed Amendments to SB 321

Amendments 4 and 5. Page 1, line 20:

Insert: "(b) A person found guilty of an offense and awaiting imposition or execution of sentence or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may be admitted to bail only if the judge finds that the person is not likely to flee and does not pose a danger to the safety of any other person or the community."

Amendment 13. Page 4, line 2:

Subsection (v): "avoid all contact with an alleged victim of the crime and limit contact with potential witnesses who may testify concerning the offense, except that contact which is necessary to the preparation of the defense"



HOUSE JOINT RESOLUTION NO. 45

INTRODUCED BY

*Senately Paul Brown**John Tedesco Dan Brown**Adrian J. Brown**Behind K24566E**of Helena*

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN

INTERIM STUDY OF THE LAWS RELATING TO THE COLLECTION AND

DISPOSITION OF FINES, FORFEITURES, COSTS, AND FEES IN CIVIL

PENALTY AND CRIMINAL PROCEEDINGS.

WHEREAS, the law relating to the collection and

disposition of fines, forfeitures, costs, and fees in civil

penalty and criminal proceedings is complex, in many

instances unclear or contradictory, and dispersed throughout

the Montana Code Annotated; and

WHEREAS, the authority to impose, collect, and dispose

of fines, forfeitures, costs, and fees resides in numerous

types of courts and government agencies; and

WHEREAS, the disposition and use of fines, forfeitures,

costs, and fees varies widely according to, among other

things, the political subdivision in which the offense

occurs, the type of offense, the type of law enforcement

officer who arrests the person, the court or agency imposing

the fine, forfeiture, cost, or fee, and whether the offender

is an adult or a juvenile; and

WHEREAS, there is no coherent, coordinated, overall

1 plan for the disposition and use of fines, forfeitures,

2 costs, and fees.

3

4 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE

5 OF REPRESENTATIVES OF THE STATE OF MONTANA:

6 (1) That an appropriate interim committee be assigned

7 to study the laws relating to the structure, imposition,

8 collection, disposition, and use of fines, forfeitures,

9 costs, and fees in civil penalty and criminal proceedings.

10 (2) That if the study is not assigned to an interim

11 committee, the Legislative Council should consider directing

12 its staff to carry out the technical components of the study

13 and report to the Council the staff's findings, with

14 suggested alternative solutions, so that the Legislative

15 Council can, following any changes in and additions to the

16 staff study report that the Council may wish to make, submit

17 the report to the 50th Legislature, since:

18 (a) because of the cost of interim studies,

19 principally for legislators' per diem and expenses, only a

20 limited number of requested interim studies can be funded;

21 (b) the vast majority of work on the study will

22 consist of gathering information, searching the Montana Code

23 Annotated, and presenting information in a readily

24 understandable form, tasks the Legislative Council staff can

25 perform without the necessity of aid from the Legislative

1 Council;

2 (c) the study can be performed without hearings,  
 3 though the Legislative Council may, upon completion of the  
 4 staff report, wish to hold a hearing during one of its  
 5 regular meetings to consider and develop alternative  
 6 solutions and make suggestions to the 50th Legislature; and

7 (d) the study can thus be performed by the Legislative  
 8 Council at minimal cost.

9 (3) That the study should include at least the  
 10 following:

11 (a) an identification of every provision of the  
 12 Montana Code Annotated that provides for fines, forfeitures,  
 13 costs, or fees in either a civil penalty or criminal  
 14 proceeding;

15 (b) an identification and analysis of the various  
 16 methods used to determine the ultimate disposition of the  
 17 money;

18 (c) an analysis of the costs and administrative  
 19 problems involved in handling the money and remitting it to  
 20 the proper agencies;

21 (d) an analysis of the policy decisions made when the  
 22 statutes allocating the money were adopted;

23 (e) the problems involved in not disposing of the  
 24 money pursuant to an overall plan encompassing all  
 25 provisions relating to its disposal; and

1 (f) an unbiased set of alternative solutions to the  
 2 present complex and unintegrated system for the disposition  
 3 of the money.

4 (4) That the committee (or the Legislative Council)  
 5 submit a report of its findings, alternative solutions, and  
 6 any recommendations it wishes to make to the 50th  
 7 Legislature.

-End-