

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 2, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 2, 1987, at 10:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Daily who was excused.

HOUSE BILL NO. 413: Rep. Brandewie, District #49 sponsor, explained that at the present time, in order to convict somebody, intent to sell has to be proven and you have to catch him with one kilogram or 2.2 pounds of marijuana. This inhibits law enforcement and it makes conviction hard to come by. Rep. Brandewie is removing the requirement of 2.2 pounds in order to prove they are trying to sell it.

SUPPORTERS: Mark Murphy, Montana County Attorneys Association, stated that the intent to sell is proven entirely separate from the amount of the drug someone presents. It is presented to a jury in the form of how marijuana or other drug is packaged, what kind of equipment the individual may possess such as scales and baggies, and you show intention to sell without resorting to the amount of drug that is present.

No further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 413: Rep. Addy questioned Mr. Murphy stating that presently someone can not be charged with possession with intent to sell unless they hold one kilogram. Can you charge them with sale of marijuana with less? Mr. Murphy stated that you can. Rep. Addy stated that the situation being considered is a case where there is no evidence of sale, other than either the amount or the manner in which the person possessed the marijuana that is found to be his possession. Mr. Murphy explained that if you make the seizure of the marijuana prior to the time an actual sale has occurred, you would then charge possession with the intent to sell. If the transfer has not occurred there may be evidence that the sale was going to occur. It would be charged as attempted sale or with enough marijuana it would be a charge of possession with attempt to sell. Rep. Addy asked Mr. Murphy how many cases this law made impossible to prosecute within the last year or two. He answered that within his own personal knowledge, at least one half dozen.

Rep. Eudaily asked Mr. Murphy if marijuana was defined as a dangerous drug. He stated that it is defined as a dangerous drug.

Rep. Miles asked Mr. Murphy what was the penalty for felony possession. He answered that it is 0-5 years. A misdemeanor possession is a standard six months, \$500 and that is less than 60 grams.

REP. BRANDEWIE closed the hearing.

HOUSE BILL NO. 435: Rep. Brandewie, District #49, sponsor, stated that the purpose of this bill is to raise the penalty for selling dangerous drugs. He explained that on the bottom of page two, top of page three, the penalty should be raised. He stated that the Federal Government uses the process of putting all money and everything of value that is confiscated in a fund to be used to fight the drug battle.

SUPPORTERS: Gary Carrell, Criminal Investigation Bureau Chief with the Dept. of Justice, stated that we need tools to put people in prison and taking property that has been used to manufacture or sell drugs will detour drug dealers. This bill will let people know we are serious about this problem.

Mark Murphy, County Attorney Association, stated the Association is very much in favor of this bill. The kinds of property that can be seized and forfeited are expanded and in this area we have seen several cases. This bill allows the state to seize property used for cultivation of drugs expands the states power to penalize and it takes the profit motive out of the raising of dangerous drugs.

No further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 413: Rep. Addy asked Rep. Brandewie if it was his intent to make property owned by people charged with possession subject to forfeiture too or is it only for sale. He stated that his intent is for people who are dealing in drugs. He is not looking for the user but the person who is dealing in dangerous drugs. He stated that this can be amended to make sure the person who does not sell or grow will not lose his property.

Rep. Rapp-Svrcek asked Mr. Carrell about a person with 20 acres who is growing a few pot plants way in the back of the acreage, will all his property and house be taken. Mr. Carrell referred the question to Mr. Murphy. Mr. Murphy stated that at the Federal level the whole ranch would be seized. This particular bill can be limited to possession with intent to sell or actual sale, some problems might be

eliminated. In this bill on line 21 it eliminates the small amounts and allows forfeiture for the two joint operation. Currently the District Court orders forfeiture under State law. Chairman Lory asked Mr. Murphy if we amended the bill on page 3, second line, with an insert of intent to sell, would this control it? Mr. Murphy cautioned against limiting the types of crimes the individuals have already been convicted of but this amendment should handle it.

Rep. Brandewie closed the hearing by stating that the prisons are full. This bill will act as a deterrent.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 235: Rep. Addy moved DO PASS. Rep. Bulger called question. A voice vote was taken and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 322: (Amendment attached) Rep. Daily submitted amendments. Rep. Daily moved DO PASS on the amendments. Rep. Eudaily supported Rep. Daily's amendments. Question was called and a voice vote was taken. The motion carried unanimously. Rep. Eudaily requested that he be able to amend the bill to delete new section 3, renumber subsequent sections, and that would also delete the necessity for a statement of intent. Rep. Addy asked Mr. MacMaster to respond on the rule making authority. Mr. MacMaster stated that the Department of Fish and Wildlife does not have rule making authority so they do need an extension. Question was called. A voice vote was taken on Rep. Eudaily's amendment and the amendment carried unanimously. Rep. Eudaily moved HB #322 DO PASS AS AMENDED. A voice vote was taken and all member voted in favor except Rep. Brown and Rep. Gould who opposed. HB #322 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 326: (Amendments attached) Rep. Addy moved DO PASS. Rep. Bulger moved to amend. Question was called. A voice vote was taken with all members voting in favor of the amendments with the exception of Rep. Cobb, Rep. Addy, Rep. Hannah and Rep. Brown voting in opposition. The amendment carried. Rep. Brown moved DO PASS AS AMENDED. A voice vote was taken and the motion carried unanimously. HB # 326 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 70: (Amendments attached) Rep. Miles moved amend #1, 2, 4, 5, 7, and 8. Question was called and a voice vote was taken and amendments #1, 2, 4, 5, 7, and 8 PASSED. Rep. Mercer moved to table the bill. He stated that he felt there are several things that are not clear in this bill concerning civil cases. Rep. Addy requested that the committee discuss the bill further. Rep. Mercer withdrew his motion. Rep. Hannah moved amendment #3.

Question was called and a voice vote was taken. All members voted in opposition with Rep. Addy in favor of Amendment #3. The motion FAILED. Rep. Hannah moved amendment #6. Question was called. A voice vote was taken and the vote was 6-4. Amendment #6 PASSED. Rep. Daily moved to change line 18, striking "must" and inserting "may". Questions was called. A voice vote was taken with all members voting in favor of the motion except four. The motion Passed. Rep. Miles moved DO PASS AS AMENDED. Rep. Mercer made a substitutive motion DO NOT PASS AS AMENDED. A voice vote was taken and the substitute motion PASSED 9-8. HB #70 DO NOT PASS AS AMENDED.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 11:50 a.m.



REP. EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 2, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓	<i>lll</i>	
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓	<i>lll</i>	
JOAN MILES (D)	✓	<i>lll</i>	
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓	<i>lll</i>	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓	<i>lll</i>	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

February 2, 1937

Mr. Speaker: We, the committee on Judiciary

report HOUSE BILL NO. 70

do pass be concurred in as amended
 do not pass be not concurred in statement of intent attached

Chairman

1. Title, line 7.
Strike: "MANDATORY,"

2. Title, line 9.
Following: "DATE"
Insert: "AND A TERMINATION DATE"

3. Page 1, line 13.
Strike: "mandatory,"

4. Page 1, line 17.
Following: "27-5-114,"
Insert: "and except for a proceeding covered by Title 70,
chapter 30,"

5. Page 1, line 18.
Strike: "must"
Insert: "may"

6. Page 1, line 20.
Strike: "each plaintiff"
Insert: "all plaintiffs"

7. Page 2, line 14.
Following: "case"
Insert: "after giving each party the opportunity to
strike one person from the list"

8. Page 2, line 19.
Following: "court"
Insert: "and send a copy to each party"

9. Page 3, line 10.
Following: "de novo"
Insert: "and to be granted to an appellant who improves
his position"

10. Page 3.
Following: line 15

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FEBRUARY 2, 1987

PAGE TWO

HOUSE BILL NO. 70

DO NOT PASS AS AMENDED

FEBRUARY 2,

19 87

Insert: "Section 7. Records of arbitrated cases. (1) The clerk of the district court shall for each year beginning October 1 keep a record of:

- (a) the number of cases submitted to arbitration;
- (b) the number of cases in which a trial de novo is held;
- (c) the number of cases in which a de novo appellant improves his position; and
- (d) the number of cases in which a de novo appellant does not improve his position.

(2) The clerk of the district clerk shall keep separate records under subsection (1) for mandatory and permissive arbitration cases."

Renumber: subsequent sections

11. Page 3.

Following: line 24

Insert: "Section 10. Termination. This act terminates October 1, 1991."

STANDING COMMITTEE REPORT

February 2, 1937

Mr. Speaker: We, the committee on Judiciary

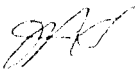
report HOUSE BILL NO. 235

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman



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STANDING COMMITTEE REPORT

February 2,

19 **87**

Judiciary

Mr. Speaker: We, the committee on _____

report HOUSE BILL NO. 322

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

1. Title, line 7.

Strike: "VESSELS"

Insert: "SAILBOATS"

2. Title.

Following: line 8

Insert: "ATTACHED TO MOTORBOATS"

3. Page 1, line 23.

Strike: "vessel"

Insert: "sailboat"

4. Page 1, line 24.

Following: "device"

Insert: "attached to a motorboat"

5. Page 3, line 18.

Strike: "(a)"

6. Page 4.

Following: line 14

Strike: section 3 of the bill in its entirety

Remember: subsequent sections

AHB322a/JN/JM1


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STANDING COMMITTEE REPORT

February 2,

19 87

Judiciary

Mr. Speaker: We, the committee on

HOUSE BILL NO. 326

report

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

1. Title, line 5.

Following: "PROVIDE"

Insert: "THAT A JUDGE HAS DISCRETION TO GRANT"

2. Title, line 7.

Strike: ", UNLESS THE SENTENCING COURT ORDERS OTHERWISE"

3. Page 3, line 10.

Strike: "is"

Following: "set"

Insert: "may, at the discretion of the judge, be granted as"

4. Page 3, line 11.

Strike: "unless the court orders otherwise"

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