

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

March 17, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 17, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 102:

Rep. Cobb moved that SB 102 BE CONCURRED IN. Rep. Cobb moved amendments and explained them. (Exhibit A). He stated this bill will have no effect on in-stream flows and the flow rate and volume will be used only when the judge requires it. The passage of the amendments will stop a lot of the objections on volume in irrigation rights. Rep. Gould asked Rep. Cobb if he has run the amendments pass the sponsor of the bill and he stated that he has. Rep. Eudaily asked Rep. Cobb to explain the fourth amendment. Rep. Cobb pointed out that this amendment has to do with stock ponds and reservoirs that have never been historically measured by flow rate. They have been measured by volume. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Cobb moved that SB 102 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Mercer questioned the Statement of Intent and Rep. Cobb stated the statement should be left off and changed on the House floor. Rep. Cobb stated the substance of the law is actually in the statute and in the first two amendments. SB 102, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 108:

Rep. Darko moved that SB 108 BE NOT CONCURRED IN. Rep. Miles agreed with the motion and stated they have to go through an election anyway. Rep. Hannah further agreed with the motion. Question was called and a voice vote was taken. The motion CARRIED 10-7. SB 108 BE NOT CONCURRED IN.

ACTION ON SENATE BILL NO. 96:

Rep. Miles moved that SB 96 BE CONCURRED IN. Reps. Mercer and Meyers stated they feel the penalty is quite severe. Rep. Eudaily stated the penalty for subsection (1) is the

same as it is for the first part of subsection (2), but it does not apply to the second part of subsection (2). Rep. Eudaily pointed out that technically it should be alright. Question was called and a voice vote was taken. The motion CARRIED 12-4. SB 96 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 114:

Rep. Brown moved that SB 114 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 114 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 306:

Rep. Giacometto moved that SB 306 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 306 BE CONCURRED IN.

SENATE BILL NO. 261: Sen. B. Brown, District No. 2, sponsor, stated this bill increases the penalty for a person 21 years or older convicted of a sale of dangerous drugs if the sale was to a minor or within proximity to the real property comprising a school. He pointed out that the Senate amended the bill by deleting the term "adult" so that the bill would apply to someone 21 years or older. If someone is convicted of the sale of a dangerous drug included in schedule I or schedule II, and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000.00, or both. He explained the point of the bill is that most young people do not manufacture dangerous drugs and they do not cultivate dangerous drugs, so in most cases, they get them from adults.

PROPOSERS: MARK J. MURPHY, Montana County Attorneys Association, stated this bill recognizes that the dangerous drug business is just that, a business. This bill protects the young school children by protecting certain areas, the school area and it does this by increasing the mandatory minimum sentences if each one of the conditions is met.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 261: Rep. Hannah asked Mr. Murphy why the language was changed and the word "adult" was deleted. Mr. Murphy stated the Senate felt there might be a group of people within the high school that are in fact adults but have not yet reached 21 years of age. He pointed out an adult is anyone who has turned the age of 18.

Rep. Brown questioned Mr. Murphy on how the Senate came up with the 1,000 feet measurement. He stated that it was an arbitrary choice that works out to be about a block away from the school.

Rep. Eudaily asked Mr. Murphy about the change stating that the term "or both" is used, which makes it possible to double the prison time plus double the fine. Mr. Murphy stated it was his belief that the fine was present in all the areas of the bill but stated Rep. Eudaily appears to be correct in the fact that the fine is listed in the area of the bill dealing with the criminal sale of dangerous drugs.

Mr. Murphy closed the hearing on SB 261 for Sen. Brown.

SENATE BILL NO. 275: Sen. Jergeson, District No. 8, stated this is a straight forward bill that requires the financial resources of a youth and the parents of a youth charged with a felony to be considered in determining eligibility for court-appointed counsel. He stated he hopes the bill will in some measure provide an incentive for parents to keep a better handle on their kids.

PROPOSERS: GORDON MORRIS, Montana Association of Counties, went on record in support of SB 275 stating it is a very simple bill requesting and authorizing the determination of parental resources in a determination of eligibility of indigent defense.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 275: Rep. Mercer asked Sen. Jergeson about the language used in the wording which states "charged with a felony", and questioned if that is the correct terminology. He stated he is not sure if the language is absolutely correct but the Senate Judiciary did struggle with it and decided to leave the language as it is written. Rep. Mercer asked Sen. Jergeson if it was his intention that every youth charged in youth court with an offense that would be a felony if they were an adult, that this law should apply to them. He stated that was correct.

Sen. Jergeson closed the hearing on SB 275 by stating this is a serious bill and if there are any suggestions towards properly amending it he is prepared to accept the judgement of the House Judiciary Committee.

SENATE BILL NO. 289: Sen. Van Valkenburg, District No. 30, stated this bill comes by request of the Missoula Sheriff's Office. Presently Montana does not have a procedure to recognize the validity of pre-signed waivers of extradition

agreements and this authorizes the return to another state of a person arrested in this state for violation of bail, probation or parole agreements. Extradition is a procedure that is in the United States Constitution and is very important but needs some modification. He explained that section 1 says if an individual has signed a pre-signed waiver of extradition and in almost all cases, in order to get permission to leave another state one has to do this, then the judge can order the person transferred. This bill will save considerable jail time in county jails.

PROPOSERS: THOMAS FULLERTON, Missoula County Sheriff, stated that SB 275 allows the sheriff's office to return fugitives without a formal proceeding and he urged support. He stated this bill will encourage all states to adopt uniform policies and procedures so as to facilitate the extradition of fugitives from justice. He submitted written testimony. (Exhibit A).

JOHN NORTH, Governor's Office, stated this is a cost saving measure for local governments. He urged support for this legislation.

CURT CHISOLM, Deputy Director for the Department of Institutions, went on record in support of SB 275.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 289: Rep. Rapp-Svrcek asked Sen. Van Valkenburg if defendants must sign the forms as a condition of their parole. Sen. Van Valkenburg stated, "that is correct". Rep. Gould stated we almost have to pass this bill or everyone will see the procedure has been done wrong in the past. Sen. Van Valkenburg stated that was also correct.

Sen. Van Valkenburg closed the hearing on SB 289.

SENATE BILL NO. 303: Sen. Halligan, District No. 29, stated this bill was partially submitted at the request of SRS and contains provisions of Sen. Mazurek's bill. He pointed out that SB 303 revises procedures to be followed in prosecuting child abuse cases, adding psychological care to the definition of adequate health care. This bill also authorizes petitions for permanent legal custody with the right to consent to adoption, providing for service by publication. Section 6, addresses appeals of court orders or decrees. These orders shall be given precedence on the calendar of the Supreme Court over all other matters, unless otherwise provided by law.

PROPOSERS: CAROLYN CLEMENS, Deputy County Attorney for Lewis and Clark County, stated many of the changes proposed in this bill have been discussed with Sen. Halligan and put into this bill at her suggestion. She pointed out the changes proposed in the bill are helpful and necessary to protect the children of this state.

JOHN MADSEN, Department of SRS, stated the Department supports this bill and he urged passage.

MRS. O. HALVORSON, Helena, pointed out that psychological care is a good addition to this bill and urged support.

There were no further proponents.

OPPOSERS: ROBERT FLESH, elected member of the Missoula County Democratic Central Committee, opposed this bill because he feels this bill is more abusive than the Soviet law on human rights. We should not consider giving the state more power than it already has, he said.

DONALD P. KELLEY, Helena Pastor, stated he objects to this bill, especially the section on psychological care because it is vague terminology.

WILLIS HODGES, Liberty County, agreed with the opponents testifying and urged a do not pass on SB 303.

DOROTHY DUNCAN, Liberty County, opposed SB 303 because this bill calls for adequate psychological care for a child but nowhere is either "adequate" or "psychological" defined. The implication is that this will be determined by the SRS Department without guidelines. She pointed out that this is not a police state but the way this bill is written, police state methods are used. She submitted written testimony. (Exhibit A).

BETTY TURNER, Chester, submitted written testimony (Exhibit B) and stated she opposed portions of the bill especially because she knows people who have had their children taken away just because they punished them or spanked them.

CAROL BANCROFT, submitted written testimony (Exhibit C). She stated children were given to parents and not to SRS to take away. She opposed the bill because children are taken out of the home when parents try to correct them and then the children report their parents for child abuse.

HELEN ADSIT, also submitted written testimony. (Exhibit D). She wondered if we are living in a country where SRS can take members of our family at their pleasure. She urged a do not pass on SB 303.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 303: Rep. Eudaily asked Sen. Halligan what was being accomplished by changing psychological care and putting it under health care. Sen. Halligan stated the Senate Judiciary Committee Researcher said it was in the wrong place so it was placed under section 1.

Senator Halligan closed the hearing on SB 303 by stating that he knows there are some serious questions that the opponents have raised in regard to child abuse and neglect but the Constitutional standards of privacy are in the bill. Those who oppose the entire bill are overlooking the appeal procedures in the bill that will help people. Many of the changes simply clean up the bill especially the publication of service. He stated the whole statute is designed to protect the children and the family.

SENATE BILL NO. 306: Sen. Mazurek, District No. 23, stated SB 306 is an act that requires the Board of Pardons to meet monthly at the Montana State Prison. Currently the Board meets twice a month and often the business can be accomplished in less time. He suggested this may save money.

PROPOSERS: THOMAS KEGAN, Attorney from Helena who is on the Board of Pardons, stated this bill was written at his request and the Board just simply does not need to meet twice every month and he urged support.

CURT CHISOLM, Deputy Director for the Department of Institutions, stated this is a good bill.

There were no further proponents, no opponents and no questions.

Sen. Mazurek closed the hearing on SB 306.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:55 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17, 1987

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

STANDING COMMITTEE REPORT

MARCH 17,

1937

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 132

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

1. Title, line 7.

Following: "REPEALING"

and adding "RETROACTIVE APPLICABILITY DATE AND"

2. Page 1, line 19.

Insert: "and"

3. Page 1, line 21 and 22.

Insert: "and" on line 21 and "and" on line 22

4. Page 1, line 23.

Following: "and"

Insert: "and" on line 23

5. Page 1, line 24.

Insert: "The laws hereinafter hereinafter repealed by volume"

of the laws of the State of Montana shall be deemed to be"

repealed by"

6. Page 1, line 25 through line 27 and page 2.

Insert: "and" on page 1, line 25 through "and" on line 27,

and

insert: "and" on page 2, line 15 through "and" on line 16,

and insert: "and" on page 2, line 17 through "and" on line 18,

and insert: "and" on page 2, line 19 through "and" on line 20,

7. Page 1, line 28.

Following: "and"

Section 2. APPLICATION. Section 2. Applicability. This act shall apply retroactively, within the meaning of 1-1-109, to all decrees issued by a water judge under Title 85, Chapter 2, part 2, after April 30, 1937."

Number: 132

ARRANGED BY: *Readable copy may be obtained from
Montana Historical Society Archives*

THIS reading copy (BILL) color

REP. KELLER WILL CARRY THE BILL!

STANDING COMMITTEE REPORT

MARCH 17,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 96

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

THIRD

reading copy (

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color

REP. MILES TO CARRY THE BILL!

STANDING COMMITTEE REPORT

MARCH 17,

19 37

Mr. Speaker: We, the committee on JUDICIARY
report SENATE BILL NO. 198

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

Chairman

TRIP

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_____ reading copy (_____)
color

STANDING COMMITTEE REPORT

MARCH 17,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 306

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

THIRD

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REP. GLACONETTO WILL CARRY THE BILL!

reading copy (_____)
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STANDING COMMITTEE REPORT

MARCH 17,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 114

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

THIRD

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REP. COMPTON WILL CARRY THE BILL!

AMENDMENTS TO SB 102
(Third Reading)

1. Page 2, line 19
Following: "right,"
Strike: "measured"
~~measured by flow rate~~
2. Page 2, line 21 through line 22
Following: "rights"
Strike: remainder of line 21 through "rate" on line 22
3. Page 2, line 23
Following: "as"
Insert: "stockpond and"
4. Page 2, line 24
Following: "rights,"
Strike: "that have historically been measured by volume"
Insert: "and for rights that are not susceptible to
measurement by flow rate"
5. Page 2, line 25 through line 1, page 3
Following: "that"
Strike: "remainder of line 21 through 'volume' on line 1,
page 3"
Insert: "a water judge determines require both volume
and flow rate to adequately administer the right"

AMENDMENTS TO SB 102

1. Page 4

Following: line 4

Insert: "NEW SECTION. SECTION 2. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all decrees issued by a water judge subsequent to April 30, 1982, pursuant to Title 85, chapter 2, part 2.

STATEMENT OF INTENT
Senate Bill 102

A
3-17-81
SB - 102

This bill provides that water rights should not be quantified in a temporary preliminary, preliminary or final decree except as historically defined in Montana, or except where a water judge determines that quantification of both volume and flow rate are required to adequately administer the rights. For example, most irrigation water rights have been commonly defined in Montana only by flow rate, reservoir rights have been commonly defined by volume, and hydropower rights have been commonly defined by both flow rate and volume. This bill retains the water court's discretionary powers to quantify water rights in terms of their historic definitions. It is the intent of the legislature that the water judges exercise their discretionary power on all existing and future decrees to reduce, to the extent possible, objections to water rights that have not historically been defined by volume.

A
3-17-87
~~289~~

PROPOSED RESOLUTION NO. 5
RESOLUTION PRESENTED TO THE NATIONAL ASSOCIATION OF
EXTRADITION OFFICIALS AT ITS TWENTY-SECOND ANNUAL CONFERENCE
DENVER, COLORADO
May 25-28, 1986

WHEREAS, it is the purpose of the National Association of Extradition Officials to encourage all states to adopt uniform policies and procedures so as to facilitate the extradition of fugitives from justice; and

WHEREAS, it is the purpose of the Uniform Criminal Extradition Act that it be construed liberally so as to effectuate its purpose of making uniform the laws of those states which have adopted it; and

WHEREAS, the Uniform Criminal Extradition Act authorizes the waiver of extradition by fugitives and provides that the waiver procedures specified in the Act are not to deemed exclusive; and

WHEREAS, several states have adopted policies, procedures and/or legislation requiring that persons execute a pre-signed waiver of extradition as a condition of probation, parole, bail, or other release; and

WHEREAS, appellate judicial decisions which have considered the legality of pre-signed waivers of extradition have, almost unanimously, upheld the validity of such pre-signed waivers of extradition; and

WHEREAS, several states have enacted legislation specifically providing that such pre-signed waivers of extradition should be honored; and

WHEREAS, numerous states have adopted the Interstate Compact for the Supervision of Parolees and Probationers (hereinafter referred to as the "ICSPP") whereby a probationer or parolee in one state may be supervised in another party state; and

WHEREAS, the ICSPP provides that in order to participate in the Compact, a parolee or probationer must sign a waiver of extradition to the sending state and further provides that no formal extradition proceedings shall be necessary to return a probationer or parolee to the sending state under the Compact; and

WHEREAS, appellate judicial decisions which have considered pre-signed waivers of extradition under the ICSPP have almost unanimously upheld their validity; and

WHEREAS, notwithstanding the validity of pre-signed waivers of extradition, the courts in some states have refused or are reluctant to permit the extradition of individuals under the terms of such pre-signed waivers of extradition; and

WHEREAS, pre-signed waivers of extradition are valid and should be recognized by the courts of the asylum state.

NOW, THEREFORE, BE IT RESOLVED, by the National Association of Extradition Officials at its Twenty-Second Annual Conference

in Denver, Colorado, that the Association recommends that all ²⁸⁹ states adopt appropriate procedures, policies and, if necessary, legislation recognizing the validity of pre-signed waivers of extradition and requiring the courts and all other appropriate officials within the asylum state to recognize and enforce such pre-signed waivers of extradition.

B

WITNESS STATEMENT

NAME John F. North BILL NO. 513 25
ADDRESS _____ DATE _____
WHOM DO YOU REPRESENT? Governor's Office
SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

2000

2000

able to judge
situation
my
...

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...

WITNESS STATEMENT

13
3-17-51

NAME L. J. [unclear] BILL NO. AP 33
ADDRESS [unclear] DATE 3/17/51
WHOM DO YOU REPRESENT? [unclear]
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am a parent of the
high school senior who had their
character card removed because they
opposed the [unclear] the [unclear]
[unclear] the [unclear] the child
did not say to beat them but to
beat them to [unclear] about [unclear]
[unclear] they is not applied when
they [unclear] spirit them [unclear]
[unclear] [unclear] the child what they
[unclear] [unclear] [unclear] [unclear]
[unclear] [unclear] [unclear] [unclear]
[unclear] [unclear] [unclear] [unclear]

Murphy

WITNESS STATEMENT

13th 11/81

NAME Carol Bancroft BILL NO. 3-3

ADDRESS Bass Hill DATE 1/7/81

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE _____ AMEND 1

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The children in need of justice to prevent not only our government but our country to take children away without any thought for the parents.

I had a 10 year old boy brought in from his home in the state of New York because he was not in compliance with the law where my son is being held. The situation is very serious. The school is having a hard time tracking children in the court system. There is a lot of concern there as to how we are going to report cases. Those who don't look upon all these cases with a question mark happen to appear & spill under hand to date.

Microfilm

WITNESS STATEMENT

NAME Helen Witt BILL NO. SB 30
ADDRESS Box 2, Box 20 DATE March 17
WHOM DO YOU REPRESENT? Myself & family
SUPPORT _____ OPPOSE oppose AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

My granddaughter was taken by the Social Service in Billings from the school she attends. When she did not come home on the bus that day, my daughter called the school, they did not know where she was so she called the police, evidently the police got a hold of social services, as they brought her home in a hurry after her call to police.

My daughter and family were harassed harassed by the social service several times after this incident happened about three months ago.

I just found out March 16, 1987 that the Social Service took my granddaughter from her school for 21 days time. I know no other details at this time as I was in Helena at the time the incident took place.

My son who is a Psychologist and has worked with school children for many years, and is very familiar with abused children cases, told me my granddaughter's case was very bizarre.

CS-34

M. Witt

(over)

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

303

DATE

March 17, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
ROBERT FLESH			X
Dorothy Danson			X
Mrs. D. Halverson			X
John Madson	SRS	X	
Willis Hodges			X
William Clemens		X	
DONALD P KELLEY			X
Betty Turner			X
Heleen Aderit	Myself Family		X
Erma Aderit			X
Joseph Aderit	Self		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE
BILL NO. 275

DATE March 17, 1987

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Gordon Mucci</i>	<i>MACO</i>	<i>✓</i>	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.