

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 12, 1987

The fourth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on January 12, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All member were present.

CONSIDERATION OF SB 40: Senator Halligan, sponsor of SB 40, opened the hearing by stating SB 40 expands the Crime Victims Compensation Act Benefits section to allow, on page 4, line 18, the spouse, parent, child, brother, or sister of a victim who is killed to be reimbursed for mental health treatment received as a result of the victim's death. He gave an example of an incident in Missoula where a slain policeman's family had great difficulty in dealing with the grief. He said many other things were paid for because of the death, but family counseling treatment was not and he felt it should be included because it is most important. He stated the legislative intent of the Crime Victims Compensation Act is helping the victim, while this bill expands the aid beyond the victim and to the family. Senator Halligan told the committee on page 4, lines 22 through 25 he arbitrarily got the amounts of \$1,000 a person or \$5,000 for a family as payment toward treatment and the committee could do what they liked with the figures.

PROPOSERS: Hiram Shaw, representing Workers' Comp, told the committee the amendment will cost \$30,000 in additional funds, but it will not increase appropriations over current levels because the funds are available through federal grant funds.

Chuck O'Reily, Montana Sheriffs and Peace Officers Association, told the committee the Sheriffs Association for the last 1½ years has been active in victim/witness programs where they train local people in the care, treatment, and also involvement in the passage of laws to protect the victim or witness in criminal cases. Sheriff O'Reily said through this program he learned a great deal about the mental health aspect related to the victim or witness. He said when a victim or family member receives an impact of a crime, such as burglary, the material aspect leaves rather quickly compared to the mental health aspect, which can stay for life. He felt he has seen enough cases of victims' families destroyed by the impact of a crime.

Joy McGrath, Mental Health Association of Montana, supported the bill, but she felt it should be expanded beyond homicide cases and include cases of sexual abuse.

Holly Kaleczyc, representing Montana Psychological Association, gave her support for the bill. She said Montana Psychologists have numerous stories of victims or family members' of victims of crimes not being able to afford mental health treatment. She also felt the mental health treatment should be expanded to include sexual crime victims or family members' of the sexually abused victims.

Steve Waldron of the Mental Health Centers in Montana supported the bill because a murder in a family usually brings more anger into a family atmosphere. A family will withdraw and stop being active in things such as their church and their job. He also felt it should be expanded to include sexual abuse cases.

OPPONENTS: None

DISCUSSION FROM THE COMMITTEE: Senator Pinsoneault asked Mr. Shaw if there is a restriction on the government funds on how this money would be spent or is it just for homicide cases. Mr. Shaw answered it is fairly broad because the only restriction is it be a victim or family member of a victim of a crime.

Senator Mazurek asked if Mr. Shaw could clarify this program's funds. Mr. Shaw responded with 18% of the funds comes from highway fines, and the rest through the Crime Victims Act where the state receives approximately \$130,000 a year.

Senator Crippen asked how much increase would the fiscal note show if the committee did expand the bill to include sexual abuse cases. Mr. Shaw said it would exceed the available funds. He approximated about \$175,000 more would be needed. Senator Crippen inquired if expanded, would there be more claims and cases. Mr. Shaw said there probably will not be more additional claims by victims, but more by families' of victims. Senator Crippen wanted to know how much more money he would need since Mr. Shaw said the projected exceeded the available funds now. Mr. Shaw explained the program used all but \$3,000 of its state funds in fiscal year 1986 and the federal funds were not used because the law reads a program has to use all state funds first before using any federal funds. He said if the program was in affect and the \$30,000 estimate took place, they would have approximately \$100,000 in federal funds left over after the \$30,000 paid the new claimants. He estimated they still needed about \$175,000 to accomodate additional victims. Senator Crippen asked if additional victims were family members. Mr. Shaw responded yes. Senator Crippen asked if this included sexually abused cases. Mr. Shaw said he would have to calculate that into the fiscal note.

Senator Beck asked if there are not mental health programs available

through the counties and if so are we not duplicating services by passing this legislation. Steve Waldron responded by saying the state doesn't provide all what we need. He said there is no such thing as a "free lunch" because either the victim, the Crime Compensation Fund, or the state pays for services. He explained that some centers have up to an eight week waiting period to get services, and the law requires the centers not to deny anyone of services which are available. He said at some point there are not enough resources to fill the need, and this bill makes sure there is enough resources for at least one category of victims. The mental health center, he said, does charge a sliding scale fee to clients, but the centers can't give free services because it is to costly.

Senator Mazurek questioned how much of the 18% highway fines and the \$130,000 federal money is spent by the program each year. Mr. Shaw replied in fiscal year 1986, \$368,000 in state funds was allotted, and only \$365,000 was spent. He said they did not spend any federal funds, because they did not finish using the state funds. Senator Mazurek questioned if that represented the 18% highway fine fund. Mr. Shaw answered it did not represent all of the fund. Senator Mazurek asked if they expanded the program, would they get to use the federal funds. Mr. Shaw said yes.

Senator Blaylock asked if the committee expanded the bill and used the state and federal funds, would the program still be short by \$175,000. Mr. Shaw said by his estimates the program would be short.

Senator Halligan closed by saying Senator Beck had made a good point about duplicating services and if a program wants to pursue the sliding scale approach, they can and then be compensated later. He felt the committee could do what they pleased with the money amounts of compensation to the families for treatment. He told the committee the expansion of the bill to include sexual crime cases could cause a duplication of services because the "dependant neglect" statue states a child sexually abused is considered harm under the act, and is eligible for foster care, which puts the case under SRS and the treatment it gives. He felt homicides were the most dramatic of crimes, and the other crimes were under state funded programs already.

Senator Mazurek asked Senator Halligan to get statistics on how many sexually abused cases are outside the home, and how many are committed in the home. He felt it would be helpful to the committee.

CONSIDERATION OF SB 57: Senator Halligan turned the opening of SB 57 over to Kathy Good of Missoula, who represented Missoula County Sheriff's Office. She gave reasons for the changes in the procedures sheriffs take in civil matters (see Exhibit 1).

Section 1. It amends 7-4-2511 section to allow the completion of balancing and accounting procedures in the sheriff's office. She said this month, because of the holiday, they did not get their bank statement until the 8th of January, and it takes two days to go through bookkeeping process, so there is no way to get it to the treasure by the first Monday of the month.

Section 2. It amends 7-4-2512 section to be consistent with Section 1.

Section 3. It amends 25-13-404 section which changes time for return of a writ of execution from not less than 10 or more than 60 days after "its receipt" to the same time period after "receipt of the recovery by the sheriff following imposition of levy". She said that under the writ of execution the department has had several checks that have bounced including \$5,000 worth in the last two weeks. She stated if it wasn't for the 10 day holding period, the department would have to go through bad check procedure because they would have already distributed those funds.

Section 4. It amends 25-13-701 which removes the requirement for sheriff's deputies to know township boundaries where property may be located. She felt it would modify the code. She said the Sheriff's deputies have jurisdiction in the county and with the amendment they would not have to know the township boundaries.

Section 5. It amends 61-12-401 which removes the sheriff's liability in the case of vandalism of or theft from abandoned vehicles in sheriff's custody after impoundment and before sale. She stated it would change the word "preservation" to "storage" to relieve the sheriff's liability. She pointed out that most sheriffs don't have enough funds to hire a security guard to protect the impounded vehical lot.

Section 6. It amends 61-12-402 which keeps the codes consistant with section 5 for the impounded vehicals for sale and the personal property under execution.

Section 9. It amends 71-3-1203 which is the same as section 6, she said, as far as notification of sales regarding agisters' liens.

Section 10. It is a new section which she explained requires the party requesting service of an order for claim and delivery of personal property to provide a bond or other security to pay for all costs which may be incurred as a result of the sheriff's service of such order.

PROPOSERS: None

OPPOSERS: None

DISCUSSION FROM THE COMMITTEE: Senator Beck asked if Kathy Good had checked with the treasure's office to see if the change in section 1 would complicate their books. Kathy Good replied there was no difficulty with the treasure's office.

Senator Mazurek asked if section 3 is eliminating the requirement of the sheriff having a given number of days to levy. Kathy Good felt it did not eliminate the requirement. She felt the 60 days deadline should apply to the return of the writ, and the money is not to be distributed on the same day it is received. She gave cases of distributing funds to undeserving people in less than 10 days, which means the funds are not available to people who do deserve the funds.

Senator Bishop said the sheriffs could sit on a writ conceivably for a year if we amend it like this.

Senator Mazurek said the researcher should look into this area.

Senator Bishop stated if a writ is returned with no response, then a lawyer might have to issue a second writ. Kathy Good said that happens right now.

Senator Halligan closed on SB 57.

The Montana High School Association representatives attended the committee hearing to answer questions on SB 23 which would expand the open meeting law. Mr. Dan Freund said he would answer any questions the committee had.

Senator Blaylock said he hoped MHSA would show for the rehearing when the people from Missoula can be represented and hear the MHSA's response. He asked why the board was meeting in Las Vegas with school tournament funds paying for it, and why was the board making decisions on students' cases in Las Vegas. Mr. Freund said he apologized for not being at the first meeting for SB 23. He answered the question by saying the board eliminated a June meeting four or five years ago because most members attended the National Federation of State High School Association meeting, which is held in the summer. This saved cost for the Association and in Las Vegas the members allotted time to take up issues that were of emergency standard. He stated the students' issues taken up at the meeting dealt with petitions for waivers of the "transfer rule". He said principals of Red Lodge and Missoula were aware of the board taking action because if the petitions were not approved, then the students would have the right to appeal on a much quicker date. If the board would have waited until the September meeting to make a decision, and the students were denied, they would have to appeal, which takes more time into an extra activity. He said if the students were approved,

they would still have a three week waiting period before they could participate. He said that both schools contacted the parents about the meeting held, and both students were given the appeals process which neither student used.

Senator Crippen asked Mr. Freund about the minutes of the June 29th meeting in Las Vegas and if this was the first time the board discussed the two students cases. Mr. Freund said it was the first time.

Senator Mazurek asked if the two students would have appealed, would the board meet again and let the students testify. Mr. Freund answered yes.

Senator Crippen felt Las Vegas was too far away for the students and parents to come to a meeting on their cases. Mr. Freund replied that if the parents would have asked for a hearing in front of the board, which they knew it was available, then the board would have scheduled it to fit the students' and parents' needs. Mr. Freund said the board was given written documents by school officials and the parents showing that they all knew about the cases being heard in Las Vegas. Senator Crippen said Mr. Freund's letter of June 25, 1986 to Bev Henry stated there was no restriction in the law about meetings within the state boundaries. He questioned Mr. Freund about the holding of an open meeting in a place that would restrict travel of the public involved, and asked for Mr. Freund's opinion if the Las Vegas meeting was not in violation of the intent of the Open Meeting Law. Mr. Freund said if the two parties would have wanted to meet, then the board would have rescheduled, because the parents did know about the meeting before hand. He said it is the only meeting that the board goes out of the state to attend.

Senator Pinsoneault asked if there is a publication that he could pay for to get the schedule of meetings. Mr. Freund said that a notification is given to every school superintendent, every principal and every school board member of every school district that is a member of the association. He explained all notices go to newspapers also and he said the Great Falls meeting change from Helena was a statewide notice that was published. He said he would put anyone on a mailing list if they want.

Senator Crippen wanted to know if Mr. Freund would comment on the bill itself. Senator Mazurek said this is not a rehearing of the bill because the others are not here to represent themselves. Mr. Freund did state the board was not against the bill and will act accordingly to the law.

Senator Beck asked if the MHSA would object to the committee restricting in SB 23 any meetings being held out of the state. Mr. Freund said no it would not be a problem.

The committee adjourned the hearings at 11:00 a.m. so they could take executive action on some bills.

ACTION ON SB 23: The executive session on SB 23 opened with Senator Halligan wanting to amended subsection (a), line 17. He said "school districts" should be added. Senator Beck asked if publishing of meeting schedules would have to be in every county in Montana. Senator Blaylock commented the MHSA doesn't give notice changes. Senator Beck then asked if the MHSA really did oppose the bill. Senator Blaylock felt groups were the ones having the hardest problems getting notices of meetings. Senator Crippen asked Valencia Lane if the Legislature has power over the MHSA; and he felt many don't understand the MHSA and their dealings. He commented the schools should take care of this group of theirs'. Senator Mazurek explained to the committee the MHSA was created by the schools, and if a school does not belong to the MHSA, the school does not belong to any representing group for their districts. He stated that in the MHSA, no matter the size of the school, each has one representative. Senator Bishop thought the Montana School Boards Association should be included in the bill. Senator Mazurek replied it would bring them under the Administrative Act. Senator Brown believed the MSBA does regulate the schools quite a bit and felt they should be under the bill too, because of the power they do hold. Valencia Lane told the committee if they put "associations of school districts" in the bill it would become questionable in defining it in a court of law. Senator Mazurek stated the MHSA does have the power to determine who can participate and their organization is involved with public funds. Senator Blaylock said the administrators are the ones who grant the decisions. Senator Crippen asked if the bill would have an effect on the closed caucus system, which is used by the Legislature. Senator Yellowtail replied the MCA in chapter 3 states the Legislative caucus is exempt from this.

The discussion on SB 23 was closed until official amendments could be presented, and a rehearing date set.

ACTION ON SB 59: Senator Mazurek open discussion on SB 59. Senator Crippen liked the bill because it gave more freedom to the banker and the farmer in dealing with foreclosures. He felt the committee should take into consideration the problems of write-offs. Senator Crippen stated that he would like to see all real-estate land be covered under the bill. Senator Galt explained the subcommittee who drafted the bill had directed it toward agricultural land, not commercial or private land. Senator Crippen said banks don't like to hold any real-estate on their books. Senator Mazurek said the bill only applies to state banks, but the national banks have 10 years for a holding period, so why doesn't the bill, which has 15 years holding period, concurr with the national banks' holding period. Senator Beck responded by saying the faster a bank gets rid of land the better. He felt a bank would not

hold land for the whole 15 year period. Senator Galt moved DO PASS on SB 59. Senator Blaylock moved a substitute motion on SB 59 to be amended as follows:

1. Title, line 8.
Strike: "15"
Insert: "10"

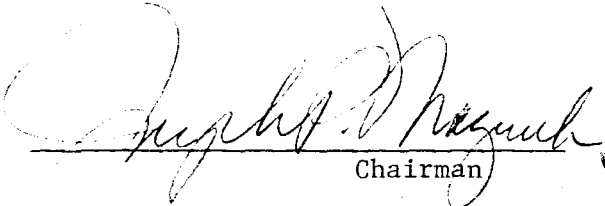
2. Page 3, line 7.
Strike: "15"
Insert: "10"

The substitute motion passed with nine voting yes and Senator Galt voting no. Senator Crippen moved a substitute motion to have SB 59 apply to all property and not just agricultural land. Senator Mazurek stressed to the committee to remember the agricultural subcommittee worked two years on the research and drafting of the bill and they might not like the idea of all property being put in the bill. Senator Pinsoneault felt it opened up a lot of delicate areas and it might cause more speculation of land if all property was involved. Senator Crippen stated again bankers don't like to hold land and he felt not many would want to speculate the land. The question was called for the substitute motion, which included residential land in the bill, and a roll call vote was taken (see Roll Call Vote Sheet). The motion failed because of a tie vote. Senator Yellowtail said he did not understand the benefits of the bill to agricultural barrowers and he was not sure the bill would protect agricultural land values because the bill dealt with only state chartered banks. Senator Galt said it will help the value of the land because it keeps it off the market. Senator Brown commented it will keep the farmer going longer because of the increased holding period. Senator Crippen didn't think five more years would be enough time for the banker to give the farmer more of a chance to survive in agriculture. Senator Beck says it protects some of the bankers. Valencia Lane commented that an ammendment on page 4, line 4 would have to be made to consistant with the other ammendment:

Strike: "2006"
Insert: "2001"

Senator Blaylock moved the ammendment and it carried unanimously. Senator Galt's motiion of DO PASS on the bill was brought forth and carried, with Yellowtail voting no (see Roll Call Vote Sheet).

The committee adjourned at 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 12th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X	-	
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jack O'Reilly	Mt. Sherriff & Peace Officers	SB 40	X	
Hiram Shaw	WORKERS' Comp.	SB 40	X	
Cheryl Burdand	Crime Victims Unit, W.C.D.	SB 40	X	
T. Gregory Hunt	Missouri Co. Sheriff Dept.	SB 57	X	
Katherine J. Good	"	SB 57	X	
JOHN CURTNEY	MT COUNTY TREASURERS	SB 57		
Hall, Sharon	MT Professional Assoc	SB 40	X	
Marvin Oye	Board of Crime Control	SB 40	X	
Mary LaFond	OBPP	SB 40	X	
Steve Waldron	Mental Health Center	SB 40	X	
Don McVint	Mental Health Assn	SB 40	X	
Mike Lavin	Bd. of Crime Control	SB 40	X	
T. Gregory Hunt	Missouri Co. Sheriff Dept	SB 40	X	

SUMMARY SB57

(Prepared by Senate Judiciary staff)

SB57 amends several section of existing law relating to sheriff's procedures in civil matters and adopts one new section allowing a sheriff to require security for costs incurred in the seizure of property under an order for claim and delivery.

Section 1. Amends 7-4-2511. Changes time requirements for paying fees into county treasury from the first Monday of each month to the 10th day in each month.

Section 2. Amends 7-4-2512. Same as section 1.

Section 3. Amends 25-13-404. Subsection (1) changes time for return of a writ of execution from not less than 10 or more than 60 days after "its receipt" to the same time period after "receipt of the recovery by the sheriff following imposition of levy". (Purpose = clarification.) New subsection (3) added to provide an alternative method for the return of a writ of execution. The new subsection allows return to the law firm from which the execution was received.

Section 4. Amends 25-13-701. In requirements of notice of sale of execution, changes publication of notice from "township or city" to "county". (Purpose = to remove the requirement for sheriff's deputies to know township boundaries where property may be located.)

Section 5. Amends 61-12-401. With regard to provisions relating to the taking of a vehicle into custody, changes the word "preservation" to "storage". (Purpose = To remove sheriff's liability in the case of vandalism of or theft from abandoned vehicles in sheriff's custody after impoundment and before sale.)

Section 6. Amends 61-12-402. Subsection (1) = same as section 5. Subsection (4),

page 8, line 15 and 16 makes notification requirements regarding impounded vehicles the same as those for sale of personal property under execution.

Section 7. Amends 61-12-403. Same as section 5.

Section 8. Amends 61-12-407. Same as section 5.

Section 9. Amends 71-3-1203. Regarding agisters' liens, makes notification requirements consistent with those for sale of personal property under execution.

Section 10. Creates new section to be codified in Title 27. chapter 17, part 2 relating to seizure of personal property . New section requires the party requesting service of an order for claim and delivery of personal property to provide a bond or other security to pay for all costs which may be incurred as a result of the sheriff's service of such order.

COMMENTS: None.

NAME: Kathy Good DATE: 1/12/87

ADDRESS: NW 5343 Teepee Dr., Florence, MT 59833

PHONE: 791-5700, ext 325

REPRESENTING WHOM? Missoula County Sheriff

APPEARING ON WHICH PROPOSAL: SB 57

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: To modernize and provide consistency in
Civil Process laws.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: T. Gregory Huntz / Underhill DATE: 1-12-87

ADDRESS: 201 W. Bije

PHONE: 721-5700 X 306

REPRESENTING WHOM? MISSOURI CO Sheriff Dept

APPEARING ON WHICH PROPOSAL: SB 40

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENTS: There currently are no available funds
for victims of traumatic incidents in the
victims compensation fund
Specifically Homicide victims need quick and comely
with Trauma Doctors for this service.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: T. Gregory Heaty / Underhill DATE: 1-12-87

ADDRESS: 201 W. Ave Missoula, MT

PHONE: 721-5200 EXT. 306

REPRESENTING WHOM? MISSOULA CO. Sheriff Dept.

APPEARING ON WHICH PROPOSAL: SB 57

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: To make necessary changes to update
Civil Process laws for Sheriff's in the state of
Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date January 12 1987 Bill No. SB 59 Time 11:45

NAME	YES	NO
Senator Joe Mazurek, Chairman		X
Senator Bruce Crippen, Vice Chairman	X	
*Senator Tom Beck	X	
Senator Al Bishop	X	
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Jack Galt		X
Senator Mike Halligan		X
Senator Dick Pineseault		X
Senator Bill Yellowtail		X

Mary T. Huber
Secretary

Senator Joe Mazurek
Chairman

Motion: An amendment to SB 59 to include all real estate land in the bill

The motion fails because of a tie vote.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date January 12 1987 Bill No. SB 59 Time 11:50

NAME	YES	NO
Senator Joe Mazurek, Chairman	X	
Senator Bruce Crippen, Vice Chairman	X	
*Senator Tom Beck	X	
Senator Al Bishop	X	
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Jack Galt	X	
Senator Mike Halligan	X	
Senator Dick Pinsoneault	X	
Senator Bill Yellowtail		X

Mary T. Huber
Secretary

Senator Joe Mazurek
Chairman

Motion: SB 59 Do Pass As Amended

Motion Carried.

STANDING COMMITTEE REPORT

January 12 1957

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration **SENATE BILL** No. **59**

first reading copy (white)
color

Allow banks to hold agricultural land for 15 years following foreclosure.

Respectfully report as follows: That **SENATE BILL** No. **59**

be amended as followed:

1. Title, line 8.

Strike: "15"

Insert: "10"

2. Page 3, line 7.

Strike: "15"

Insert: "10"

3. Page 4, line 4.

Strike: "2005"

Insert: "2001"

AS AMENDED

DO PASS

~~DO NOT PASS~~

Chairman.