

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 20, 1987

The tenth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 20, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 88: Senator Fred Van Valkenburg, Senate District #30, Missoula, introduced SB 88, which extends the maximum prison term for burglary from 10 to 20 years. He said the bill also changes the definition of "aggravated burglary". He stated the change makes the definition of aggravated burglary broader to include entering a building to commit any offense, and not just a felony. He explained there is a necessity to prove under aggravated burglary that the individual who entered the dwelling had the intent to commit a felony. He did not understand why the revised criminal code of 1973 inserted this provision. He said the real problem is when a person is hurt during a burglary. He said the possession of a weapon during a burglary could inflict injury to anyone associated with the burglary. He said the requirement to prove the intent of a felony is a very substantial requirement because it leads to speculation. He stated you can't show precise intent in many of these cases, so lawyers won't try for burglary convictions in cases. He felt the entry with a weapon should cause the enhanced punishment, not the intent of committing a felony. He explained that the criminal code has a range of one year to death for offenses. He said felony theft and writing a bad check have a maximum sentencing of 10 years. He pointed out forgery is worth a maximum of 20 years in prison. He believed aggravated burglary should have the equal sentencing of forgery or felony theft because he believed it is as severe a crime as forgery or a simply theft. He said the prison population would have minimal change with this bill. He stated prior to 1973, in Montana the maximum punishment for burglary was 15 years; these were burglaries committed at night (1st degree). He stated 2nd degree burglary, committed in the daytime, had a maximum punishment of five years. He explained under the Federal law burglary is treated as a second degree felony or a "class B" felony which has 10 to 15 years maximum sentencing. He said with his experience he would say a burglar is as close as you can get to a "career criminal", because they know what burglary is risky in getting caught doing and what isn't. He felt this should deter the career criminals from doing aggravated burglary.

PROPOSERS: Marc Racicot, County Attorney's Association, supported the bill because burglars are the pointmen of criminal rings. He said there

is a risk to the victim and the burglar during the crime and, so you need to eliminate the felony requirement. He said if a burglar steals only \$250 in a house, which is not a felony amount, one can't charge aggravated burglary even if there is an injury or weapon involved.

OPPONENTS: None

TECHNICAL WITNESS: Kurt Chisholm, Department of Institutions, gave the committee an impact sheet on SB 88 (see Exhibit 1).

DISCUSSION ON SB 88: Senator Pinsonault inquired why the bill said criminal offense or illegal act. Senator Van Valkenburg responded that in the criminal code it defines offense as a criminal act.

Senator Blaylock asked if a burglar was sentenced to the full 20 years and was a model prisoner, what would be the minimum of the 20 years he would serve. Kurt Chisholm thought it would be a 5th of the original time.

Senator Crippen inquired wouldn't the Blaylock offender also be subjected to an additional penalty if he had a weapon. Senator Van Valkenburg replied that there is a separate sentence enhancing statute in the Codes that allows the additional sentence of a minimum of two years and a maximum of 10 years for the use of a weapon in a crime. Senator Crippen asked if some kids were stealing a bike from a garage and the owner comes out and trips over the bike and is injured, wouldn't that fall right in the middle of this bill. Senator Van Valkenburg said as long as the garage is attached it is a potential aggravated burglary. Senator Crippen said the bill is making such a change when taking felony out and putting in offense. He asked what the compelling reason was to change it to offense. He commented the reason an owner may fall down and get hurt is not because whoever broke into his garage says "I give up"; it is because they engaged in flight; engaged in resistance; and it is the additional act that poses a threat to the victim of the offense, the criminal or anyone who intervened. He said every situation will be treated differently by a judge. Senator Crippen stated the word felony has been there a long time and it should remain there.

Senator Beck questioned if this bill will really deter aggravated burglary. Senator Van Valkenburg felt it would deter some of the aggravated burglary.

Senator Van Valkenburg closed.

CONSIDERATION OF SB 94: Senator Ray Lybeck, Senate District #4 of Kalispell/Columbia Falls, stated Senator Conover had a bill last session that would place a printout on the back of your driver's license to show you were an organ donor, but his bill doesn't make the clerk, who accepts the

money for the driver's license ask people orally if they want to be an organ donor. He said this bill mandates the examiners to ask you if you want to be an organ donor. He commented that a "Gallup Poll" disclosed that 2/3 of Americans agreed with the organ tissue donation at death and half of them said they would donate. He pointed out only 19 percent of Americans are organ donors at present.

PROPOSERS: David Lackman, Montana Public Health Association, supported the bill (see Exhibit 2, written testimony).

Jim Ahern, Montana Hospital Association, stated the bill will provide more organs for transplants.

Larry Majerus, Motor Vehicle Division for the Department of Justice, testified in support because the department has been accused of not doing enough for the organ donations. He pointed out the department does give everyone a brochure on organ donations. He said volunteers printed the brochures. He stated when we didn't have the brochures about 50 percent of the people didn't know about the program. He said we have closed nine driver examination stations and have cut back hours on the remaining examination stations, so it has caused only lines and, thus, they felt the best thing to do is not require having the organ donation program in effect because they wanted to work people through as fast as they can. He said a verbal question gets more of a response than a written one.

OPPOSERS: None

DISCUSSION ON SB 94: Senator Pinsoneault questioned if there is a problem with the cost of moving the remains of a person from the hospital to the person's hometown for burial. He also stated only certain hospitals in this state can do transplants. He said there were donor waiting lists at several hospitals for live people to donate. Mr. Ahern stated that not every hospital can do transplants, but the creation of a team that can do transplants is a goal of most hospitals. He stated the cost of moving the remains of the body has to be worked out, but many times a transport team comes in and works on the body at the local hospital. Senator Pinsoneault asked if this bill was designed for young people to donate. Senator Lybeck responded that was discussed.

Senator Mazurek asked Larry Majerus why he couldn't just instruct his personnel to orally ask people about this, instead of making it a law. Mr. Majerus replied that he has not placed any additional burdens on his department because of all the fiscal cuts. He said starting February of this year the department will include this on a driving application.

Senator Lybeck closed by saying he was not asked about donating organs when he renewed his license. He said he asked the examiner why she did not ask him about donating organs, and she said she was not required to do so.

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CONSIDERATION OF SB 96: Senator Tom Rasmussen, Senate District #22, said HB 96 establishes additional penalties for people who are convicted of two or more incidents of elder abuse or exploitation. He point out on page 1, lines 20 through 25 of the bill it does change the misdemeanor to a felony for the second and succeeding offenses.

PROPOSERS: Joe Upshaw, American Association of Retired Person, supported the bill (see Exhibit 3, written testimony).

Charles Briggs, Governor's Office, testified that the Governor's Advisory Council on Aging supports SB 96. He thought under section 1, part 2(b), lines 23 through 25, it should have a definite maximum sentence. He gave the committee an amendment from the Legacy Legislature (see Exhibit 4, outlined in green).

Hank Hudson, Legal Service Developer in the Senior's Office, stated that elder abuse is a serious problem. He especially had concern about the exploitation of Senior citizens' savings. He commented on section 1, lines 23 through 25, that the language of "not less than one year" is compatible with the definition of a felony: a felony is a crime punishable by imprisonment exceeding one year.

Rose Skoog, Montana Health Care Association, stated that nursing homes are involved with reporting abuse and exploitation in the nursing homes by staff, friends and family. She said there has been cases of a staff person striking out at a patient. She presented an amendment dealing with this. She said they usually suspend the staff member that hit a patient and then have an investigation and if the investigation shows abuse, then the employee is terminated. She stated that if the county attorney doesn't prosecute that employee for abuse, the nursing home gets sued for unlawful discharge. She said the amendment would state that failure to prosecute does not mean the offense did not occur.

Mignon Waterman, Montana Association of Churches, supported the bill (see Exhibit 5, written testimony).

Betti Christie Hill, Montana Association of Homes for Aging, testified in support of the bill and the Skoog amendment.

Micki Nelson, Lewis and Clark County Coroner, stated he has had elder people's deaths due to abuse. He said he had two calls last year informing him of two elder deaths that were caused by abuse.

OPPOSERS: None

DISCUSSION ON SB 96: Senator Pinsoneault asked Senator Rasmussen if he has had specific incidents where elder abuse has occurred more than once and the punishment on the books wasn't sufficient. Mr. Upshaw answered

that these things are not reported very often so there is no experience factor to use. Senator Pinsoneault inquired if incidents of a staff member striking out at an elder person in a home is dismissed. Ms. Skoog stated sometimes a patient can be abusive, but still employees can't strike back. She pointed out if a patient is slapped, a nursing home can get sued because the county attorneys don't prosecute as much as they should.

Senator Mazurek felt that this amendment should not be put in the criminal code, because it deals with civil liability.

Senator Balylock asked if this bill will increase the reporting of elder abuse. Mr. Upshaw replied he felt it would increase the reporting. Senator Blaylock asked if this law will help in the area of verbal abuse. Mr. Upshaw answered that he did not know.

Senator Mazurek asked if Mr. Briggs would like to comment on any of these questions. Mr. Briggs said the bill was designed as a deterrent.

Senator Mazurek asked why the second offense, containing damage or value of more than \$300, was not included in this bill. Mr. Hudson expressed that he did not have statistics on convictions. He said he gets maybe one call a month on suspected exploitation. He felt there is reluctance on the part of the county attorneys when it involves family members because it is a gray area. He answered Senator Mazurek's question by saying that the legacy legislature had a dollar figure in their bill, but it didn't have \$300 in regards to exploitation and since no monetary value can be placed on abuse and neglect, the legacy legislature did not put one in.

Senator Pinsoneault questioned if there was a certain time frame before the second offense can occur. Mr. Hudson said it was not thought of during legacy legislature.

Senator Rasmussen closed by saying he would bring in the Skoog amendment to the committee.

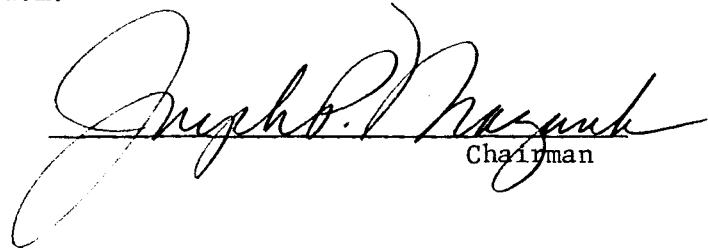
The committee adjourned the hearing to take executive action.

ACTION ON SB 88: Senator Blaylock said the major change is changing felony to offense. Senator Bishop agreed with the change. Senator Mazurek felt prosecutors should use discretion on (b) of the bill because it does contain gray areas, such as Senator Crippens's "garage story". Senator Pinsoneault commented on the fact that each judge is different and they are the ones that determine the sentencing. Senator Blaylock moved the bill DO PASS AS AMENDED. The motion carried with Senator Crippen voting no.

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ACTION ON SB 94: Senator Bishop felt the drivers' examination stations will ask for more people to work if this bill goes into law. Senator Mazurek still felt it should not take a bill to do this. Senator Brown thought it should be a resolution instead. Senator Bishop stated that many old people probably would not donate. Senator Halligan moved to TABLE the bill until Senator Mazurek talks with Senator Lybeck about taking the bill out of the committee and just put it in the job requirements of an examiners at the driving examination stations. The motion carried unanimously.

The committee adjourned at 11:45 a.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 20th

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		

X late because of another bill

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Pete Christie Hill	MT. Assoc of Home Builders	SB 96	X	
David LACKMAN	MT Public Health Assn.	SB 94	X	
MARC RACICOT	MT County Attorneys Assn	SB 88	X	
Deborah A. Ruggles		SB 96	X	
J. Amuz	MT Hospital Assn	SB 94	X	
Joe Upshaw	AARP	SB 96	X	
Richard Luchin	Mont. Sr. Citizens	SB 96	X	
Fred Patton	AARP	SB 96	X	
Molly Munro	AARP	SB 96	X	
Karl Mansfield	AARP	SB 96	X	
M.E. "Mickey" Nelson	L.L.C. Co. Carver	SB 96	X	
DEPT. OF JUSTICE	DEPT. OF JUSTICE	SB 88		
Charles Bruff	Governor's Office	SB 96	X	
Mignon Waterman	MT. Assoc. of Churches	SB 96		
Hank Hudson	Seniors Office	SB 96	X	

TITLE: SB-88 - A bill for an act entitled: 'An act extending the prison term for burglary; changing the definition of aggravated burglary; and amending Section 45-6-204, MCA:

INTENT: The intent of this bill is to considerably stiffen the penalties for burglary and to reduce the burden of proof for and extend the applicability of the charge of aggravated burglary. The bill would double the maximum sentence for burglary, from 10 to 20 years. The bill also would require prosecutors to demonstrate only that a person committing burglary while carrying a weapon intended to commit "an offense" rather than "a felony".

IMPACT: Small, assuming that the number of offenders receiving maximum sentences does not increase substantially, and also assuming that the effect of a doubled maximum sentence does not result in longer sentences for those receiving less than maximum sentences (See attached assumptions and calculations).

Program: No new programs will be required, nor should the predicted population increase affect program resources and capacities.

Population: The effect of the bill is estimated to result in a small population increase reaching a maximum of about 19 additional inmates in 1994.

Fiscal: See attached fiscal note.

Relationship to Division Goals: Determination of criminal behavior and related sanctions is a Legislative prerogative. The bill is estimated to have a minor impact on correctional resources and does not alter or impede Division goals.

Division Comment: This impact statement is based on two primary assumptions:

- 1) that the number of offenders sentences to maximum terms will not substantially increase, and,
- 2) that the bill will have no impact on non-maximum sentences.

SB-88 could have a more substantial impact on system resources and populations, particularly if the second assumption is violated. For example, if one-fifth to one-quarter of annual admissions sentences are increased a year or two, the average length of stay of the population would increase by several months. Such an increase would dramatically increase the size of the system population.

It may be wise to ask the sponsor(s) of this bill about its anticipated effect on sentencing practices, particularly of offenders not given maximum terms.

DOCUMENTATION: Ted Clack, Dick Petaja. Reviewed and discussed with Carroll South.

PREPARER: Ted Clack

LEGAL COMMENT: None sought.

SB-88 Impact Statement

Data, Assumptions and Calculations

1. Average admissions for Burglary FY 1981-1986 = 111.
2. Burglary admissions as % Total Admissions FY 1981 - 1986 = 23.2% Assume this trend continues.
3. Burglary Admissions receiving maximum sentences FY 1981-1986. Average = 14 per year. Assume this trend continues.
4. $14/111 = 0.126 = 12.6\%$ - proportion of burglary admissions receiving max or increased sentences. Assume this trend continued.
5. Assume 12.6% of burglary admissions receive increased sentences in future years. Further, assume these sentences average at 15 years.
6. $0.126 \times 0.23 = 2.8\%$ total admissions receiving a 50% increase in sentences.
7. If 3% (rounding up from 2.8%) of admissions receive 50% increases in sentences, then 100% receive an about 1.5% increase in sentences.
8. The anticipated length of stay under correctional jurisdiction is estimated to be 30.5 months in 1988.
9. $30.5 \times 1.015 = 30.96 =$ length of stay, in months, under correctional supervision, given passage of SB-88 and assumptions above.

Projected Total Adult Male
 Correctional Populations*

	Fiscal Year								
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
w/SB-88	1183	1213	1234	1250	1261	1270	1276	1280	1283
no SB-88	1183	1205	1222		1245		1257		1264
Difference	0	8	12		16		19		19

* Estimated using the "Quick Project" program of the IMPACT population projection software package.

Date: _____

To: _____

From: _____

Bill Number: _____

Would the above referenced Bill impact the Department fiscally or programmatically?

Yes []

No []

If the above referenced bill impacts the Department, please review the potential impact below:

Fiscal Impact:

1. FY86 Variable cost $4.66 \times$ Inflation factor $1.0784 = 5.02$ FY87 Variable cost

2. $5.02 \times$ Inflation factor $1.1291 = 5.67$ FY89 Variable Cost per inmate

3. (See SB-88 - Impact Statement) - 8 additional inmates are projected for FY89 only.

4. Variable medical cost for inmates $\$806$ per year
 $8 \text{ inmates} \times \$5.67 = 45.36 \times 265 = 16,536.40$
 $8 \text{ inmates} \times \$806 = 6,448.00$

Total FY89 Cost To the Gen. Fund 23,004.40

EXHIBIT NO. 2

DATE Jan. 20, 1987

BILL NO. SB 94

also SB 94
SB 6

BILL NO. _____

DATE 1/16/87
1/20/87

WITNESS STATEMENT

NAME DAVID LACKMAN

ADDRESS 1400 Winne Avenue , Helena, MT 59601 443-3494

WHOM DO YOU REPRESENT? Montana Public Health Association

SUPPORT XXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. SB6 Requiring Hospital Administrator to request anatomical gift. (Lybeck) 1/16/87 Senate Public Health
-Comments: 1:00 P.M. Room 410

1. There is an acute shortage of organs for transplantation; especially kidneys.. Recently a priest in our diocese died because a kidney was not available when needed. His condition deteriorated until it became too late for one..

2. The cost, to medicaid and medicare, of the kidney dialysis program is approaching two billion dollars per year. Increased transplantations would lower this cost dramatically.

We consider this to be ~~relatively~~ desirable legislation. It would result in making people more aware of the need for organs.

Mr Chairman, Members of the Committee,

I am Joe Upshaw of Helena, representing the American Association of Retired Persons. I am here today to support enactment of Senate Bill 96. The initial legislation was passed in 1985 and contained a good means of combating Elderly abuse. In the legislative process, the bill was amended to contain language that made the offense of elderly abuse punishable only as a misdemeanor. This was not the original intent of the legislation, as we feel that the ^{CONTINUED} abuse of an elderly person is nothing short of a felony. Elder abuse, like many other forms of domestic violence, is a hidden phenomenon affecting hundreds of thousands of older Americans. It cuts across all classes of society, occurs in both urban and rural areas, both homes and institutions, and among the rich as well as the poor. It affects both men and women. No precise figures on incidence rates are available, but a 1986 study by our national organization revealed that the number of reports of suspected or alleged elder abuse, reports of institutional abuse and/or neglect as well as reports of family and self abuse or neglect have all increased enormously in recent years. In 1981, an estimated one million older persons, or over 4% of the nation's older population, were victims of abuse and active or passive neglect. That figure has increased at the rate of approximately 100,000 new cases each succeeding year. Although some 82% of all adult abuse cases involve older Americans, only one in five cases of elder abuse is ever reported and a good proportion of these cases ~~are~~^{is} never pursued beyond the report stage.

Elder abuse is physical, ranging from deliberate infliction of bodily harm, to forced drug therapy, ~~to~~^{to} neglect of basic human needs. Elder abuse is financial, ranging from theft of the victim's personal possessions and money to schemes that literally deprive the victim of ^{EVERY} anything of value. Elder abuse is emotional, ranging from threats to place the victim in a mental institution or nursing home to actually depriving the victim of personal liberty.

Yes, members of the committee, elder abuse is certainly alive and kicking and is becoming more frequent and brutal with each passing day. Now is the time for us all to do everthing possible to stop, or at least, curtail it. We in Montana now have a law in place that ~~can that~~ is designed to accomplish this - but with the current "slap on the wrist" penalty provision - cannot be effective. Senate Bill 96 Provides for a reasonable and just punishment for abuse of elderly Montanans and the Association of Retired Persons in Montana earnestly urge you to take favorable action on it.

Thank you

LEGACY LEGISLATURE BILL NO. 8
SHORT NAME: ELDER ABUSE ACT - SUBSTITUTION-ON ADDITION TO
SECTION ON PENALTIES

1 A BILL FOR AN ACT ENTITLED: ELDERLY ABUSE ACT: SUBSTITUTION-ON
2 ADDITION TO SECTION ON PENALTIES.

3 A BILL FOR AN ACT TO PROVIDE: PENALTIES.

4 (2B) ANY INDIVIDUAL WHO PURPOSELY-OR-KNOWINGLY-ABUSES,
5 ~~NEGLECTS-OR-EXPLOITS-AN-ELDER-PERSON~~ IS CONVICTED OF A SECOND
6 OFFENSE IS GUILTY OF A FELONY IF THE VALUE-INVOLVED DAMAGE IS
7 GREATER THAN \$300.00. AN INDIVIDUAL CONVICTED OF A SECOND
8 OFFENSE UNDER THIS SUBSECTION MAY BE FINED IN AN AMOUNT NOT TO
9 EXCEED \$10,000 OR BE IMPRISONED FOR A TERM NOT TO EXCEED 10
10 YEARS.

11
12 SPONSOR(S): THOMSON

13 COMMITTEE ASSIGNMENT: JUDICIARY

14 SENATE JUDICIARY

15 EXHIBIT NO. 4

16 DATE Jan 20, 1987

17 BILL NO. SB96

Montana

Association of
Churches



MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 596

SENATE JUDICIARY

EXHIBIT NO. 5

DATE Jan 20, 1986

BILL NO. 5B 96

January 20, 1987

WORKING TOGETHER:

SENATOR MAZUREK AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

American Baptist Churches
of the Northwest

My name is Mignon Waterman and I am speaking on behalf of the Montana Association of Churches.

American Lutheran Church
Rocky Mountain District

The Montana Association of Churches supports a sentencing system which permits judges and others within the justice system latitude and discretion in dealing with individual offenders.

Christian Church
(Disciples of Christ)
in Montana

Certainly, we don't condone elder abuse and we applaud Senator Rasmussen's attempt to protect Montana's senior citizens, but we do believe the judge needs to evaluate the individual circumstances surrounding each case before arriving at a sentence.

Episcopal Church
Diocese of Montana

We are concerned that the use of the word shall on line 23 may not allow the judge the discretion needed to deal with an individual offender.

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls-Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
MT-N.WY Conference

United Methodist Church
Yellowstone Conference

Presbyterian Church (U.S.A.)
Glacier Presbytery

Presbyterian Church (U.S.A.)
Yellowstone Presbytery

STANDING COMMITTEE REPORT

January 20

19 87

MR. PRESIDENT

We, your committee on **JUDICIARY (SENATE)**

having had under consideration **SENATE BILL**

No. **85**

first reading copy (**white**)
color

Extend prison term for burglary; change definition of aggravated burglary.

Respectfully report as follows: That **SENATE BILL**

No. **88**

DO PASS

~~DO NOT PASS~~

Chairman.