

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

February 13, 1987

The twenty-eighth meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on February 13, 1987, by chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 269: Senator Allen Kolstad, Senate District 7, introduced Senate Bill 269, which revises statutes relating to county coroners; defining and providing penalties for the offenses of failing to report a death and for unlawful release of a deceased's identity. Senator Kolstad said many families have told coroners they feel it is not just for governmental agencies to give names of the deceased to the media before proper notification of the family has been given. He distributed an amendment. (Exhibit 1) He stated the bill will have no additional cost to the counties. Valencia Lane gave the committee the statutes that would be effected by this bill. (Exhibit 2)

PROPOSERS: Charles Graveley, Montana Coroners Assn., supported the bill.

Mickey Nelson, Montana Coroners Assn., explained each section of the bill. He stated the new section about the unlawful release of identity of the deceased is trying to help the media have a clear picture of what happened to the deceased. He said the bill, in section 3, allows a clear-cut duty for the coroners to involve the county attorney and law enforcement people in a case that falls under the coroners' jurisdiction. He said the bill allows the coroner to be in charge of a civil death case, such as an industrial accident. He stated section 6 is important because it tells how the coroner will determine a death. Section 7 will allow coroners to subpoena people for information. Section 9 will allow coroners to take pictures of the deceased without a court challenge. He explained section 11 will clearly

state how to notify a family of a death. Section 14 is where the amendment would go. He said the amendment would provide the Chief Medical Examiner to approve pathologists so they can perform autopsies. He said section 16 will make sure an unbiased group is determining if the coroner is doing a good job as a coroner.

Lloyd Linden, Montana Funeral Directors Association, testified in favor of the bill.

OPPONENTS: George Moore, Montana Press Association, stated section 2 of the bill causes problems for the press. He explained how the press association has a very workable system involving the identity of a deceased person and that person's family. He thought section 2 was too broad. He said there are no guidelines that are fairly worked out for when the coroner will give permission to release a deceased person's home. He felt the "next of kin" should be defined. He felt friends or clergy should tell a family about a death of a loved one and not the coroner. He didn't think it was fair a clergyman could be fined for announcing a death to a congregation. He asked if the media would be in violation if they announce a death before the coroner gave permission. He felt there is constitutional problems with this. He commented that if the governor died, would the state have to wait until the coroner decided to release that information.

Mike Schafer, Montana Sheriffs and Peace Officers Assn., stated he didn't agree with section 2 because of the delay it would cause in police work. He said section 6 will allow the coroner, whether trained or not, to investigate a homicide. He said taxpayers pay thousands of dollars a year to train officers for investigating homicides. He felt there might be cost to the counties with this bill.

Tom Harrison, Montana Sheriffs and Peace Officers Assn., stated the bill is a bureaucracy growth bill. He said a coroner can cause a lawsuit against the county in a civil case if a coroner is not trained for an investigation, such as an industrial accident.

Terry Dwyer, Great Falls Tribune, disagreed with the bill because many coroners right now are not very cooperative with the media or law enforcement people. He said this bill just allows coroners to become even more distant from the media on death cases.

Rick Foote, Montana Standard of Butte, and Lee Newspapers, opposed the bill because of section 2 of the bill and because it has First Amendment problems.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked if the newspaper people would like the committee to strike all of section 2. Mr. Foote said the problem in section 2 allows the coroners to become police officers, and that is not right.

Senator Crippen inquired if on page 6, line 4, coroners were being obstructed by the police department before this bill. Mr. Nelson said many times a coroner is on the death scene the same time as other law enforcement agencies are, but that subsection wasn't meant to mean the coroners could tell the police officers to leave a death scene because the coroner had arrived.

Referring to page 13, line 17, Senator Crippen asked if this allows the coroners too much power. Mr. Nelson stated it is not broadening that power because it makes it easier for a family to receive from the coroner, a suicide note from a family member, through a written request. Senator Crippen did not agree, and said the County Attorney, under the present law, has the right to make the decision about the releasing of a suicide note to a family, but this bill allows the coroner to hold it. Mr. Nelson said the County Attorney can overrule the coroner on a suicide note if the family wishes to have it.

Senator Pinsoneault asked if the sheriffs were contacted about this bill. Mr. Harris said the sheriffs did not see the bill until it was printed.

Senator Mazurek questioned on page 5, subsection 10, if the coroners have this authority right now without going to court. Mr. Nelson said yes, coroners do. Senator Mazurek asked if coroners can request an inquest. Mr. Nelson responded that the County Attorneys have the right presently.

Senator Beck questioned why section 2 was even in the bill. Mr. Nelson said it is a precaution because people have heard of a loved one's death through the media.

Senator Kolstad closed the hearing on Senate Bill 269.

CONSIDERATION OF SENATE BILL 275: Senator Greg Jergeson, Senate District 8, introduced the bill, which requires that the financial resources of a youth and the parents of a youth charged with a felony be considered in determining eligibility for court-appointed counsel. He explained a good friend of his was shot by a youth and how it victimized the friend's family. He felt the parents will be aware of the children's behavior more if they know they might have to pay for the child's behavior later on.

PROPOSERS: Toni Hagen, Montana Association of Counties, supported the bill. (Exhibit 3)

OPPOSERS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock felt kids that do crimes such as shooting someone, have problems at home. He asked if a parent did have money but refuses to get counsel for the kid, will the kid still get court-appointed counsel. Senator Jergeson said the parent will have to give up their responsibility of the kid in the court to allow a court-appointed attorney, if the parents can pay for counsel.

Senator Beck inquired if the bill is described just for public defenders, or special counsel. Senator Jergeson replied it is mostly for public defenders.

Senator Mazurek asked if one can require a parent to pay for counsel. Senator Jergeson was not sure if there was a law against it.

Senator Jergeson closed the hearing on SB 275.

CONSIDERATION OF SENATE BILL 261: Senator Bob Brown, Senate District 2, introduced the bill, which increases the penalty for an adult convicted of a sale of a dangerous drug if the sale was to a minor, or within the proximity of a school. He said the bill doubles the minimum penalty for this offense from 2 years to 4 years. He explained each section, and said he thought it would deter adults from selling drugs to a juvenile.

PROPOSERS: Mark Murphy, Attorney General's office, and County Attorneys Association, supported the bill because many crimes are committed between an adult and a minor. He said a drug pusher is like a McDonald's building next to the school for walk-in business. He said the bill doubles all minimum penalties dealing with drug dealing to minors.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked what would happen to an 18 year old classmate who gets caught dealing drugs to a 17 year old classmate. Mr. Murphy replied the 18 year old would be subject to this bill and the consequences.

Senator Pinsoneault asked why the bill said 1,000 feet from the school instead of "close proximity". Senator Brown said the 1,000 feet is in the federal law. He explained a story about two men living across from Columbia Falls High School that were selling drugs.

Senator Beck asked if there is a certain amount of drugs that have to be sold to a minor before they can arrest the seller. Mr. Murphy said no volume requirement was in the drug sales statute.

Senator Blaylock asked what kind of drug was sold at the Columbia Falls High School. Senator Brown didn't know.

Senator Brown closed the hearing on SB 261.

ADJOURNMENT: The committee adjourned at 11:35 p.m.

  
\_\_\_\_\_  
SENATOR JOE MAZUREK, Chairman

mh

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB. 13<sup>th</sup>

| 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>              |         |        | Late<br>X |
|   |         |        |           |
|   |         |        |           |
|   |         |        |           |
|   |         |        |           |
|   |         |        |           |
|   |         |        |           |

Each day attach to minutes.



MONTANA  
CORONERS'  
ASSOCIATION

SENATE JUDICIARY

EXHIBIT NO. 1

DATE FEB. 13, 1987

BILL NO. SB 269

SB-269

AMENDMENT

Page 15; line 18 should read: practice medicine in the state which has been  
approved by the Chief Medical Examiner to perform it. Performance of----



1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4290; re-en. Sec. 4852, R.C.M. 1935; 16-3406, R.C.M. 1947; Ap. p. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3401, 16-3406, 25-236(part); amd. Sec. 4, Ch. 371, L. 1979; amd. Sec. Ch. 443, L. 1979.

**Cross-References**

Duty of Coroner to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

**7-4-2912. Coroner's register.** The county coroner shall keep an office register, to be labeled "coroner's register", as provided in 46-4-207.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R.C.M. 1921; re-en. Sec. 4854, R.C.M. 1935; R.C.M. 1947, 16-3407; amd. Sec. 21, Ch. 443, L. 1979.

**7-4-2913. Payment of costs of inquest.** Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement shall be sent to the department of corrections for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R.C.M. 1921; re-en. Sec. 4857, R.C.M. 1935; amd. Sec. 86, Ch. 199, L. 1965; R.C.M. 1947, 16-3410; amd. Sec. 22, Ch. 443, L. 1979.

**7-4-2914. Statement required before allowing accounts of coroner.** Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement in writing and verified by his affidavit, showing:

- (1) the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;
- (2) the disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R.C.M. 1921; Cal. Pol. C. Sec. 4288; re-en. Sec. 4851, R.C.M. 1935; R.C.M. 1947, 16-3404.

**7-4-2915. Dead bodies to be held pending investigation.** A dead body in the custody of a county coroner shall be held until such time as the coroner after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is not necessary to assist any local investigations.

History: En. Sec. 1, Ch. 378, L. 1979.

**7-4-2916. Removal of a dead body.** (1) If a county does not have a morgue or morgue facilities for the use of the county coroner, the coroner may use existing hospital facilities for such purposes.

(2) The person lawfully entitled to custody of the deceased person's remains shall be notified of the death as soon as is practicable, and at the same time the coroner shall obtain permission to release the body to the person's home.

(3) A post-mortem examination may be conducted at a funeral home if so ordered by the county coroner.

History: En. Sec. 2, Ch. 378, L. 1979.

- 46-4-205. Verdict of jury — form.  
 46-4-206. Recording and filing of testimony and proceedings.  
 46-4-207. Coroner's register.

**Part 3 — Investigative Subpoenas**

- 46-4-301. Issuance of subpoena.  
 46-4-302. Penalty for failure to obey.  
 46-4-303. Relief from improper subpoena.  
 46-4-304. Conduct of investigative inquiry.  
 46-4-305. Self-incrimination and immunity.  
 46-4-306. Applicability of other laws — costs.

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-13-87

BILL NO. S.B. 269

**Chapter Cross-References**

County Coroner, Title 7, ch. 4, part 29.

Witness fees — inquests, 26-2-503.

**Part 1**

**Investigation of Death — Autopsy**

**46-4-101. Jurisdiction — death and cause of death in different counties.** When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812.

**46-4-102. Investigation of suspicious deaths.** (1) Whenever a coroner is informed that a death was caused by other than natural causes or a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

**Cross-References**

Office of County Coroner, Title 7, ch. 4, part 29.

Property of deceased — suicide notes 7-4-2917.

**46-4-103. Autopsy — when conducted, record, scope.** (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(4) (a) A coroner who also serves as a peace officer may not inquire into the death of a person who:

- (i) died in a jail or penal institution;
- (ii) died while in the custody of a peace officer; or
- (iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county shall request a qualified coroner of a neighboring county to inquire. The expenses of a coroner fulfilling the request, including must be paid by the requesting county.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-81947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-81947; amd. Sec. 1, Ch. 343, L. 1983.

**Compiler's Comments**

1983 Amendment: Inserted (4).

Code Commissioner Correction: In (4)(b), the Code Commissioner inserted "(a)" after "under

subsection (4)" to precisely cite the referenced.

**Cross-References**

Jury of inquest defined, 3-15-105.

**46-4-202. Summoning and swearing in of jurors — instr**

(1) For holding such inquest, the coroner must summon a jury of more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict thereon, according to the evidence offered to him arising from the inspection of the body.

(3) The coroner must instruct the jurors as to their duties.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983.

**Compiler's Comments**

1983 Amendment: Inserted (3).

**Cross-References**

Jurors' fees, 3-15-203.

Jurors — competency and exemption, 3, ch. 15, part 3.

Jurors — penalty for nonattendance, 3-15-321.

Juries of inquest — summoning and swearing, Title 3, ch. 15, part 8.

**46-4-203. Subpoenaing of witnesses.** A coroner may issue subpoenas for witnesses, returnable immediately or at such time and place as he may designate, which may be served by any competent person. He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 250, L. 1979.

**Cross-References**

Witnesses at inquests, 26-2-503.

**46-4-204. Witness compelled to attend — examination.** A witness served with a subpoena may be compelled to attend and testify. A witness who fails to appear without excuse may be punished as upon a subpoena issued by a justice of the peace.

(2) The coroner shall and the county attorney may examine each witness, after which the witness may be examined by the jurors.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

**Compiler's Comments**

1983 Amendment: Inserted (2).

**Cross-References**

Punishment for disobedience to a subpoena, 3-10-401.

Witness fees — inquests, 26-2-503.

**46-4-205. Verdict of jury — form.** After inspecting the body and bearing the testimony, the jury must render its verdict, which shall be by majority vote, and certify the same in writing signed by them and setting forth who the deceased person is, when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act.

History: En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807.

**46-4-206. Recording and filing of testimony and proceedings.** The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808.

**46-4-207. Coroner's register.** The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

**Cross-References**

Coroner's register, 7-4-2912.

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-13-87

BILL NO. S.B. 269

**Part 3**

**Investigative Subpoenas**

**46-4-301. Issuance of subpoena.** Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1).

- bill simply asks that parental resources  
be considered in appointing counsel for  
minors.

Seems unfair to ~~to~~ assume  
all indigent who parents may well be able  
to assist in covering ~~to~~ should with costs,  
then passing those costs to the taxpayer as  
a whole.

Consistent severely impacted by H. Ct. costs  
this bill ~~could~~ <sup>could</sup> provide some relief in  
some ~~cases~~ cases.

Consist with policy with policy  
of ~~appointing~~ ~~them~~ <sup>equal</sup> relieving the <sup>general</sup>  
taxpayer if the person is not truly indigent,  
or if there are other sources of funding to assist in  
the costs.

NAME: Jim Lloyd Winder DATE: 2/13/89

ADDRESS: 314 N Rodney Helena

PHONE: 442-1234

REPRESENTING WHOM? MONTANA FUNERAL DIRECTORS ASSN.

APPEARING ON WHICH PROPOSAL: Senate 269

DO YOU: SUPPORT?  <sup>also</sup> AMEND?  OPPOSE?

COMMENTS: We support Senate Bill 269  
as the Clarifier, the intention of the  
Commission. It will help them to  
give better service to the families  
of the Deceased

I urge you to give Senate  
Bill 269 a Do Pass  
recommendation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: George W. Moore DATE: 2/13/87

ADDRESS: 1900 W. Main, Helena

PHONE: 443-2850

REPRESENTING WHOM? ND Press Assn.

APPEARING ON WHICH PROPOSAL: 269

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.





