

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 5, 1987

The thirty-sixth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 5, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: All members were present except for Senator Brown.

CONSIDERATION OF HB 235: Representative Kelly Addy of House District #94 introduced HB 235. He said it addresses a problem that involves two people in a commission of an offense, or one who has an accomplice in an offense. He said you give immunity to the smaller one involved to catch the bigger one in court and when the smaller one, or accomplice, refuses to testify against the bigger one because of certain reasons, what procedure do you provide. He felt this bill provides that procedure.

PROPOSERS: Mike McGrath, Lewis and Clark County Attorney and Chairman of the Montana County Attorneys Association, testified in support of the bill because county attorneys grant immunity but even after granting immunity, they still refuse to cooperate. He said under the present law if you refuse to cooperate, then that is punishable by contempt, but there isn't any procedure to follow. He stated that the bill states a person who, after being granted immunity, refuses to testify then is brought before a judge who issues the subpoena and explains the problem and then the judge has to advise the person of their rights, advise them they were granted immunity, advise them if they refuse to cooperate they could be held in contempt. He said the prosecutor questions the person in front of the judge and the if the person still refuses to testify then that person can be punished under civil contempt procedure. He pointed out this shows they did not commit a criminal offense but is in contempt under civil procedures. Mr. McGrath explained the story of the Butterys shooting in Helena last year where a man shot two women in the Butterys parking lot. He said there was no evidence of who it was that did this and several months later the girlfriend to this man told a friend who informed "Crime Stoppers". He explained they brought the girlfriend in and she refused to testify; so immunity was given and she still refused. He said the county was stuck at this point and finally ended up putting her in jail for three weeks, where after that time she finally testified and now the man is behind bars. He felt this bill would clarify what to do in situations like this.

OPPOSERS: None.

DISCUSSIONS ON SB 235: Senator Crippen inquired if it is easier to work

Judiciary Committee
Minutes of the meeting
March 5, 1987
page 2

under civil procedures than criminal procedures. Mr. McGrath answered if it is a civil attempt, it is acted on immediately, but if it is a criminal contempt then a complaint has to be filed. Senator Crippen asked if there are any examples in the law where one uses civil over criminal contempt procedures. Mr. McGrath said anytime a court order is not followed, then civil contempt is used over the criminal one.

Senator Halligan asked what the maximum penalty is under the civil contempt. Mr. McGrath felt there was no specific penalty. Valencia said the fine in under section 3-1-519, which said \$500 or five days in jail. Senator Halligan wondered if the five days will put someone on the spot.

Representative Addy closed.

Senator Pinsoneault moved the bill BE CONCURRED IN. Senator Beck asked if anyone can deny the person in question immunity. Representative Addy said the court can grant it or deny it. The motion CARRIED.

CONSIDERATION OF HB 236: Representative Kelly Addy of Billings presented HB 236 (see Exhibit 1).

PROPOSERS: Margret Davis, League of Women Voters, supported the bill.

OPPOSERS: None.

DISCUSSION ON HB 236: Senator Crippen asked what will happen when Justice Morrison is done; when would be the effective date on this. Representative Addy said as soon as possible.

Representative Addy closed.

CONSIDERATION OF HB 326: Representative Kelly Addy of Billings presented HB 326 to the committee (see Exhibit 2).

PROPOSERS: Curt Chisholm, Department of Institutions, said the House Judiciary did terrible things to this bill. He said the Montana State Prison has about 450 admissions every year and about 25 percent of those are suspended sentences cases. He said there is a provision in the law that says these people do not get time credited toward the time served on the "street". He said his department has to keep going back to the courts to get a clarification on if the judge wants the person they send us at the prison to get credit for the time he spends or not. He said the House Judiciary decided to strike "jail time" out of the bill and the Department of Institution needs that in the bill to avoid law suits.

DISCUSSION ON SB 326: Senator Halligan commented that he had trouble allowing some of these people credited time while on the "streets" where

Judiciary Committee
Minutes of the meeting
March 5, 1987
page 3

they are probably still breaking the law. Mr. Chisholm said the introduced bill would not give "point blank" credit, the judge has to make a clear decision on this.

Representative Addy closed.

The committee adjourned for executive action.

ACTION ON HB 236: Senator Crippen asked what is defined as "notice". Senator Mazurek asked to whom does one give notice to. Senator Yellowtail said on line 23 and 24 for notice it refers to after the resignation day has been verified by the Chief Justice. Senator Crippen moved to have an effective date of "on passage and approval". The motion CARRIED.

Senator Mazurek asked Valencia to talk to Bill Leaphart Sr. about how the judicial nomination committee works.

ACTION ON HB 326: Senator Crippen agreed with Mr. Chisholm to put the bill back in its original form. Senator Crippen moved to put the bill back in its original form before the House Judiciary amended it. The motion CARRIED. (see STANDING COMMITTEE REPORT) Senator Crippen moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HB 53: Senator Crippen said the bill repeals the fund to keep maintenance of the Old Supreme Court Chamber up. The committee decided to work on this bill, because of that repealer.

ACTION ON HB 37: Senator Halligan said if interested parties don't go through the computers for records, they will be going to the county attorney and the justice of the peace to get them, which will cause more problems. Senator Pinsoneault didn't think the bill would accomplish anything, but it wouldn't hurt. Senator Pinsoneault decided to move the bill BE CONCURRED IN. The motion CARRIED with Senator Halligan and Senator Galt voting no.

ACTION ON HB 95: Senator Halligan moved the bill NOT BE CONCURRED IN. Senator Mazurek said the problem with the bill is the elimination of the annual accounting procedure except with people over 65. The motion CARRIED unanimously.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 5

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.

NAME: Mrs Tavis DATE: 5 June 57

ADDRESS: 516 Government Helena 59607

PHONE: 443-3487

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: HB 236

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: WVMT supports making the
judicial nominating process more
responsive & effective in cases of a
judicial resignation.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE March 5, 198

BILL NO. HB 236

SUMMARY OF HB236 (ADDY)

(Prepared by Senate Judiciary Committee staff)

HB236 amends the statutes relating to the procedures of the judicial nomination committee. Under current law, the committee is to meet immediately after a vacancy occurs in a supreme court or district court position and submit a list of 3 to 5 nominees to the Governor. This bill would require the commission to meet within 15 days before a vacancy occurs, if a resigning judge gives notice of resignation, or as soon as possible after a vacancy occurs, if there is no notice. The procedures remain the same from that point on. Other changes made by the bill are in terminology only. References to "appointment" by the Governor are changed to "nomination" by the Governor to conform with language in the 1972 Constitution which provides in Article VII, Section 8, that "The governor shall nominate a replacement from nominees selected in the manner provided by law . . ." (emphasis added).

COMMENTS: None.

C:\LANE\WP\SUMHB236.

SENATE JUDICIARY

EXHIBIT NO. 2

DATE March 5, 1980

BILL NO. HB 326

SUMMARY OF HB326 (ADDY)

(Prepared by Senate Judiciary Committee staff)

HB326 is by request of the Department of Institutions and amends the law dealing with imposition of sentence in criminal cases. Under current law, when a deferred or suspended sentence is revoked, elapsed time, except jail time, is not credited against the sentence unless the court orders otherwise. As drafted, the bill would have provided that elapsed time is a credit against the sentence unless the court orders otherwise. As amended by the House, elapsed time may, at the discretion of the judge, be granted as a credit against a sentence.

COMMENTS: None.

C:\LANE\WP\SUMHB326.

STANDING COMMITTEE REPORT

March 5

19 37

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration..... **HOUSE BILL** No. **95**

Third reading copy (**blue**)
color

Eliminate annual accounting by guardians and conservators.
Addy (Halligan)

HOUSE BILL

95

Respectfully report as follows: That..... No.....

~~DO PASS~~

BE NOT CONCURRED IN

~~DO NOT PASS~~

.....
Senator Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 5

37

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

HOUSE BILL

37

having had under consideration.....

No.....

Third

blue

reading copy ()

color

~~XXXXXXXXXX~~

Defendant's record expunged upon dismissal of charges.

R Bradley (Pinoneault)

Respectfully report as follows: That.....

HOUSE BILL

37

No.....

BE CONCURRED IN

~~XXXXXXXXXX~~

DO PASS

~~XXXXXXXXXX~~

DO NOT PASS

.....
Senator Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 5

19 57

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

HOUSE BILL

No. 235

having had under consideration.....

Third reading copy (blue)

color

Clarify penalty for failure to obey subpoena.
Addy (Crippen)

HOUSE BILL

No. 235

Respectfully report as follows: That.....

No.....

~~DO NOT PASS~~

BE CONCURRED IN

~~DO NOT PASS~~

.....
Senator Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 5

37

19

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

HOUSE BILL

326

having had under consideration

No.

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color

Credit for time served on sentence when probation is revoked.

Addy (Halligan)

HOUSE BILL

326

Respectfully report as follows: That

No.

be amended as follows:

1. Title, lines 5 and 6.

Following: "PROVIDE" on line 5

Strike: the remainder of line 5 through "GRANT" on line 6

2. Title, line 8.

Following: "OTHERWISE"

Insert: ", UNLESS THE SENTENCING COURT ORDERS OTHERWISE"

3. Page 3, lines 11 and 12.

Following: "not" on line 11

Strike: the remainder of line 11 through "AS" on line 12

Insert: "is"

4. Page 3, line 13.

Following: "otherwise"

Insert: "unless the court orders otherwise"

~~XXXXX~~

DO PASS

AND AS AMENDED

~~XXXXXXXXX~~

DO NOT PASS

BE CONCURRED IN

Senator Mazurek

Chairman.