

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 20,
1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Bob Brown, Mike Halligan,
Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill
Yellowtail.

Members Excused: Senator John Harp

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 534

Presentation and Opening Statement by Sponsor:

Representative Chuck Swysgood of Dillon, House District
73, opened the hearing. He said the bill was an
amendment to the interstate compact on juveniles. The
reason the bill was requested was that, during
proceedings on juveniles, a juvenile cannot be
extradited who had not been adjudicated and "skips"
between the time of adjudication and the time of
hearing. This causes problems for county attorneys
because, if they wanted to have the youth brought back,
they had to have him declared an adult and go through
the procedures of adult extradition laws. Then, the
youth had to be tried under adult laws, according to
Rep. Swysgood. Thirty-eight other states have enacted
this law which extradites youths in an easier way and
allows them to be tried as youths once they're back in
the state.

List of Testifying Proponents and What Group they Represent:

Steve Nelson, Board of Crime Control

Bob Mullan, Director of the Department of Family Services

John Connor, Montana County Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Steve Nelson spoke in support of the bill. He entered into the record a letter from Dave Bennetts, the Interstate Compact Director (Exhibit 1).

Bob Mullan testified in favor of the bill.

John Connor voiced support of the bill. He said he also wished to voice support in the name of Tom Scott, the County Attorney from Dillon who was unable to attend the hearing.

Questions From Committee Members: Senator Crippen asked if the committee hadn't had a similar bill previously. He said the issue had not appeared before the legislature before.

Senator Crippen wondered how many times during a year the situation might come up where the bill would apply. Mr. Mullan said a couple of times. He said there was a case in Beaverhead County where a youth from another state committed a crime in Beaverhead County. He went to the state of Washington where his mother lived and it was very difficult to extradite him back to Montana, Mr. Mullan said.

Closing by Sponsor: Rep. Swysgood closed the hearing. He said he personally knew of a couple of instances in which this bill would have helped. He said the case in Beaverhead County involved sexual intercourse without consent. It was very difficult to go to the girl's family and tell them there was nothing that could be done about bringing the youth back for prosecution, he said.

DISPOSITION OF HOUSE BILL 534

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 534 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 649

Presentation and Opening Statement by Sponsor:

Representative Francis Koehnke of Townsend, House District 32, opened the hearing. He said the bill was to increase from \$1500 to \$2500 the amount of a claim that could be brought into small claims court. Small claims court was started in Montana in 1975 and, since then, there has been inflation. This will be a more realistic amount, he said. He urged passage of the bill.

List of Testifying Proponents and What Group they Represent:

Charles Brooks, Montana Retail Association, Montana Hardware Implement Dealers, Montana Tire Dealers, Montana Office Equipment Dealers
Don Ingels, Montana Chamber of Commerce
Bill Kearns, State Bank of Townsend
Bill Leary, Montana Banking Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charles Brooks supported the bill. He said the legislation would give his industry an opportunity to be cost effective in settling claims which seem to be continually increasing in number and in size. A few weeks ago an implement dealer called asking about small claims procedures and the limits that were established, he said. Because the claim was \$2200, it couldn't be settled in small claims court. He felt the raise in the limit would be good for both business and the public.

Don Ingels spoke in support of the bill.

Bill Kearns felt this would give greater access to the judiciary system.

Bill Leary supported the bill, saying it would particularly help the smaller banks.

Questions From Committee Members: Senator Halligan asked if anyone in the House had suggested raising the limit higher than \$2500. Rep. Koehnke said no.

Senator Yellowtail asked how many claims would be moved to the small claims court because of the raise. Rep. Koehnke said he had no idea.

Senator Mazurek wondered why the Magistrates of the state hadn't taken a stand on the bill. Wallace Jewell, lobbyist for the Montana Magistrates, said he was told not to comment on the bill. He felt they opposed the bill, he said. He said this bill, as drafted by the Law School, would affect the small claims courts of district court of which there are none in the entire state. When the hearing was held in the House in State Administration and Local Government committees, the Magistrates had a problem -- they didn't know whether to keep quiet and do nothing, or to let the committees know the problem. He said there was little difference between Justice court and Small Claims Court regarding the handling of these claims.

Closing by Sponsor: Rep. Koehnke said it would vary from county to county, but he felt the bill could relieve other courts. He closed the hearing.

DISPOSITION OF HOUSE BILL 649

Discussion: Discussion brought up the opposition of the Magistrates to the bill.

Senator Beck asked how many small claims courts existed and Senator Halligan said every justice's court was one.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 649 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 568

Presentation and Opening Statement by Sponsor:

Representative John Mercer of Polson, House District 50, opened the hearing. He said the bill would remove juveniles from jails by providing secure detention through a temporary arrangement with the state correctional schools while counties develop their own resources. The bill deals with detention after arrest but before trial, he said. There is a significant problem in Montana and the youths are sometimes held in jails. The bill attempts to recognize that the detention is the financial responsibility of the state government, but is the responsibility of the local government to best determine how the resources would be allocated. He said there was a 2-year delay in the implementation date to allow local governments to come up with a means of detention.

List of Testifying Proponents and What Group they Represent:

Rep. Bill Strizich, Great Falls, House District 41
Bob Mullan, Department of Family Services
Gordon Morris, Montana Association of Counties
Mona Jamison, Montana Juvenile Probation Association
Abe Demmis, Probation Officer
John Connor, Montana County Attorney Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Representative Strizich supported the bill's goals which reflected a mature, civilized society. State law passed a bill in 1987 that required all youth be held in a juvenile facility with delayed implementation to become effective July 1, 1989. He said a second area of concern was the Juvenile Justice Prevention Act which dates back to 1974. It requires removal of all youth from adult facilities by November of 1988, as a national policy. The state's receipt of grants requires progress towards this end. The third area of concern was federal case law, he stated. The Tuxberry decision from Oregon stated that jailing youth was a violation of due process and said that youth do not belong in jails. The fourth concern, he stated were the national standards brought forth by the National Association of Counties, the National Association of Sheriffs and the Bar which recognize that children should not be addressed by adult facilities. Separation is a very

serious issue, he said, urging support of the bill. None of the jails in the state provide the kind of separation required by law, he stated, and youths shouldn't be subjected to situations which might occur in adult facilities.

Steve Nelson said that predispositional youths are usually held at home, in foster care or in shelter care facilities. About 5% are held in jail, he said. A number of youths are sent to Pine Hills for 45-day evaluations. The youths that are currently in jail and in Pine Hills School number from 7 to 12 at any given time. He said a few years ago, there were approximately 2500 kids who were held in jail during a year's period. Last year, he stated, there were 300-400, so there is a decrease and a change in practice.

Bob Mullen presented written testimony to the committee.
(Exhibit 2)

Gordon Morris appeared before the committee. He suggested expanding the Statement of Intent to include an interim study on the subject of youth detention during the coming biennium. The liability issues that exist relating to the incarceration of youth sit squarely on the shoulders of county commissioners and county sheriffs, he said. He called attention to the effective date, saying the cost of evaluations would be born by the county upon the enactment of the act. He urged leaving the language intact. Otherwise, he said he would be in two years with a bill to leave the expense in the Department of Family services.

He said he felt Section 14 was confusing, in that it referred to Chapter 475 in the Session Laws of 1987, saying Sections 1 through 13 are effective in October 1, 1987. He said that the Session Laws {subsection (3)} refers to Section I of the 1987 session laws making the provision effective July 1, 1991. He said that was significant from the standpoint of the counties. He felt that changed the effective date and he supported that. He supported the bill as presented.

Mona Jamison appeared in support of the bill.

Abe Demmis said that in January, he had a 12-year-old female juvenile with a lengthy list of offenses. One was a serious assault against her parents. The judge ordered her to be held in a secure facility in Missoula and the county jail was the only facility that qualified. The teenager was denied access because the facility was full.

It was a dilemma for the youth officers as there is no proper facility for this type of youth.

John Connor said that county attorneys represent the counties in civil matters. For that reason, they strongly support this legislation.

Questions From Committee Members: Senator Jenkins asked if the department had full control of funding regarding the detention of youth. Rep. Mercer said it would give the department control over the state portion to the extent that it would start with the department. He thought "administered" might be a better word.

Senator Jenkins asked if there wasn't presently a law which didn't allow state-funded programs to shift their financial responsibilities to counties. Rep. Mercer said he didn't know if there was such a law but that this bill has state funding.

Closing by Sponsor: Rep. Mercer closed the hearing saying this was a problem that couldn't be ignored.

DISPOSITION OF HOUSE BILL 568

Discussion: Senator Halligan said he would like to request an interim study separate from the bill on youth detention.

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 568 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 511

Presentation and Opening Statement by Sponsor:

Representative John Mercer of Polson, House District 50, opened the hearing. He said the bill dealt with Montana Trust Indentures. The Senate did pass over to the House Senate Bill 313 which dealt with the same subject. He felt the issue could be addressed with Senate Bill 313 and urged that House Bill 511 be tabled by the committee.

List of Testifying Proponents and What Group they Represent:
None

List of Testifying Opponents and What Group They Represent:

George Bennett, Montana Bankers Association
Chip Erdmann, Montana Savings and Loan Institutions

Testimony:

George Bennett opposed the bill, even though Rep. Mercer had request its tabling. He said the Chunkapura Decision of 1987 was a critical issue to Montana and reversed some 25 years of judicial practice. The Small Tract Financing Act was passed in 1963 and provided 2 options on foreclosures of trust indentures: By advertisement and sale or the holder could go through the normal judicial proceedings resulting in a decree of foreclosure by the state. The supreme court turned those procedures, limiting them to simple, family, residential properties. It left unanswered a lot of questions which are answered in SB 313. He urged support of that bill.

Chip Erdmann supported the tabling of the bill.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Mercer closed.

DISPOSITION OF HOUSE BILL 511

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek MOVED that House Bill 511 BE TABLED.

HEARING ON HOUSE BILL 504

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily of Butte, House District 69, opened the hearing. He said the bill had been requested by the Montana County Attorneys Association. He said that in 1987, the legislature passed a bill that changed the statute of limitations. This bill

would provide that homicide prosecution may be started at any time.

List of Testifying Proponents and What Group they Represent:

John Connor Montana County Attorneys Association.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said this bill fell into the category of a housekeeping bill. He urged support.

Questions From Committee Members: None

Closing by Sponsor: Rep. Daily closed the hearing.

DISPOSITION OF HOUSE BILL 504

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Brown MOVED that House Bill 504 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION OF HOUSE BILL 495

Discussion: Chairman Crippen said that, though House Bill 495 had been passed out of committee, several people had shown concern with the bill.

Senator Mazurek said it had been called to his attention that, because the bill could include youths 18 years old, it would include many high school seniors. Senator Crippen said that Representative Strizich had commented that if it included 18-year-old youths, it would not be passed in the House. No motion was made to reconsider the bill.

DISPOSITION OF HOUSE BILL 425

Discussion: Valencia Lane explained the amendments: #1 amended the title, #2 requested by Boyd Andrews Center

regarding certified counsellors, #4 to conform to the bill passed out of committee regarding expungement of records. (Exhibit 3)

Amendments and Votes: Senator Mazurek MOVED that Amendments 1 and 4 be adopted by the committee. The MOTION CARRIED UNANIMOUSLY.

Senator Halligan MOVED that Amendments 2 and 3 be adopted. The MOTION CARRIED by a vote of 8 to 1 with Senator Beck voting NO.

Recommendations and Votes: Senator Halligan MOVED that House Bill 425 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj
minrj.320

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-20-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 534 (third reading copy -- blue), respectfully report that HB 534 be concurred in.

Sponsor: Swygood (Halligan)

BE CONCURRED IN

Signed: _____
Bruce D. Clifton, Chairman

scrhb534.326

*H.C.
3/20/89
3:03
P.M.*

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 649 (third reading copy -- blue), respectfully report that HB 649 be concurred in.

Sponsor: Koehnke (Yellowtail)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

*W.C.
3/20/89
B:*

3-20

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 568 (third reading copy -- blue), respectfully report that HB 568 be concurred in.

Sponsor: Mercer (Halligan)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

SCRB568.320

y.c.
3/20/89
B.

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 504 (third reading copy -- blue), respectfully report that HB 504 be concurred in.

Sponsor: Daily (Beck)

BE CONCORRED IN

Signed: _____
Bruce D. Crippen, Chairman

110-18
312015
3:05

SENATE STANDING COMMITTEE REPORT

March 26, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 425 (third reading copy -- blue), respectfully report that HB 425 be amended and as so amended be concurred in:

Sponsor: Vincent ()

1. Title, lines 17 and 18.

Following: "CONVICTION;" on line 17

Strike: remainder of line 17 through "EXPUNGED" on line 18

Insert: "PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE
EXPUNGED; RESTRICTING ACCESS TO THE RECORDS"

2. Page 5, line 10.

Strike: "PROGRAM"

Insert: "certified chemical dependency"

3. Page 5, line 24.

Following: "failure."

Insert: "As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor."

4. Page 6, lines 16 and 17.

Following: "THEN" on line 16

Strike: remainder of line 16 through "RECORD" on line 17

Insert: "all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

H.C.
3/31/89
3:03
P.M.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-20-89
BILL NO. HB 534

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

3/21/89

Testimony in support of House Bill 534

AN ACT TO AMEND THE INTERSTATE COMPACT ON JUVENILES
TO ALLOW THE EXTRADITION OF A YOUTH CHARGED WITH BEING A
DELINQUENT

Respectfully submitted
Dave Bennetts Interstate Compact Director
Montana

Ladies and Gentlemen:

Thank you for your time and careful consideration of Representative Swysgood's bill to amend the Interstate Compact on Juveniles. I would like to go on record as supporting this amendment. The amendment allows the state of Montana to actively seek the return of a youth who enters this state from another, commits a serious violation of Montana laws and then leaves to another state. If this bill is adopted Montana county attorney's will be able to seek the return of a youth charged with being a delinquent from any of the other 38 states that are now a party to the Rendition Amendment.

House Bill 534 will eliminates Montana's need to use the Uniform Extradition Act which is designed for adults and which, at times, may jeopardizes the rights of youths who are charged to appropriate treatment, detention and due process. Juveniles are afforded more protection under the law than adults and each time we use the Uniformed Extradition Act we place those rights in jeopardy.

The Bill as presented to this committee conforms to the federally recommended language of the Rendition Amendment in that it binds only those states that have adopted it into their state laws and allows adequate due process to protect the juvenile. I would therefore urge you to adopt this amendment as presented.

Juvenile Jail Removal Plan

Bob Mullen, Director
Department of Family Services

The short-term plan developed by the Juvenile Jail Removal Committee will remove juveniles from jails by providing secure detention through a temporary arrangement with the state correctional schools while counties develop their own resources. The Montana Board of Crime Control has made a commitment to assist local governments plan and implement community-based detention options.

The committee's recommendation that development of alternative programs, such as holdovers and attendant care programs, is of utmost importance. This recommendation is consistent with the philosophy of DFS, and other human service providers, that providing care for youth as close to home as possible and in the least restrictive setting is desirable. Providing services in the community setting is also seen as being less costly than providing services in a secure facility. The committee's approach will allow the time needed to begin developing, or using, community options and to continue to quantify the need for secure beds. Clearly, current youth detention data may not be an accurate reflection of the future needs once more affordable, alternative care is made available in the communities.

Under the proposed plan, the two youth corrections facilities will continue to offer detention/evaluation services for a two year period following the implementation of this legislation. The committee felt, and DFS agrees, that it is imperative that a fee for service be charged in an effort to encourage the development of community based alternatives. At the end of the two year period, the state youth correctional facilities intend to be out of the predispositional detention and/or evaluation business.

FUNDING:

It is the committee's intent to seek a state-wide funding mechanism which would generate slightly more than \$1 million.

Ninety percent of the collected funds will be distributed through DFS to

counties to provide for the predispositional needs of youth having contact with the justice system. The remaining ten percent will be retained by DFS for a grant in aid program to assist those communities experiencing activity above the norm and in funding department aftercare needs. The distribution formula will be based on youth population.

Counties will access their funds by developing a plan and submitting the plan to the Local Youth Services Advisory Councils for written review. The involvement of the Local Youth Services Advisory Councils is considered critical because the councils are responsible for planning for the provision of youth services in Montana.

DFS will release each counties allocation provided the plans meet minimal requirements. Funds thus distributed can then be used by the Youth Courts for purchasing services, either community based, regional, or during the transition period, from the state correctional schools.

Amendments to House Bill No. 425
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 16, 1989

1. Title, lines 17 and 18.
Following: "CONVICTION;" on line 17
Strike: remainder of line 17 through "EXPUNGED" on line 18
Insert: "PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE
EXPUNGED; RESTRICTING ACCESS TO THE RECORDS"

2. Page 5, line 10.
Strike: "PROGRAM"
Insert: "certified chemical dependency"

3. Page 5, line 24.
Following: "failure."
Insert: "As long as the alcohol information course and treatment
program are approved as provided in this subsection, the
defendant may attend the information course and treatment
program of his choice. The treatment provided, defendant at
a treatment program must be at a level appropriate to his
alcohol problem, as determined by the judge based upon the
recommendation from the certified chemical dependency
counselor."

4. Page 6, lines 16 and 17.
Following: "THEN" on line 16
Strike: remainder of line 16 through "RECORD" on line 17
Insert: "all records and data relating to the prior conviction
are confidential criminal justice information as defined in
44-5-103 and public access to the information may only be
obtained by district court order upon good cause shown"

Boyd
Andrew
Center

MAZUREK

to the

