

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 9, 1991, at 1 p.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Messmore and Rep. Brooke

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 364

Motion: REP. NELSON MOVED SB 364 BE CONCURRED IN.

Discussion: REP. MEASURE asked John MacMaster if the judge already has the authority to exclude the crime victim already for personal appearance in this area? Mr. MacMaster said he didn't think so.

REP. MEASURE stated that he opposes the bill. It is one thing to try and spare the feelings and sensitivities of a young child. It is probably necessary in sex offenses to get a good candid statement from the victim. On the other hand, there are reports that many people who were abused get coaching on the part of the

counsellors who then question these individuals. Sixteen years of age seems to be an extreme extension of what we presently have.

REP. WHALEN stated that he also opposes the bill. "I have sympathy for victims in these situations, but I also have a lot of concerns about people charged with these crimes and have not been found guilty by a jury of their peers. There is a big difference between a videotaped deposition of the young person and having them appear in court."

Motion/Vote: REP. BROWN moved to amend SB 364 with the coordination instruction handed out by John MacMaster. EXHIBIT 1 Motion carried unanimously.

Motion/Vote: REP. BROWN MOVED SB 364 BE CONCURRED IN AS AMENDED. Motion carried 16 to 3 with Rep's Whalen, Measure and Boharski voting no.

EXECUTIVE ACTION ON SB 170

Motion: REP. DARKO MOVED SB 170 BE CONCURRED IN.

Motion/Vote: REP. LEE moved SB 170 be amended with a coordination amendment to SB 51 recommended by John MacMaster. Motion carried 17 to 1 with Rep. Measure voting no.

Motion/Vote: REP. DARKO MOVED SB 170 BE CONCURRED IN AS AMENDED. Motion carried 18 to 1 with Rep. Measure voting no.

EXECUTIVE ACTION ON SB 249

Motion: REP. LEE MOVED SB 249 BE CONCURRED IN.

Discussion: REP. BOHARSKI stated he has some concerns with the new language of the bill. He said it was his concern that it should say the right to privacy outweighs the right to public disclosure and the bill says the exact opposite.

Motion: REP. BOHARSKI moved to amend SB 249.

Discussion: REP. BOHARSKI stated his amendment would insert "the merits of public disclosure clearly exceed" on page 10, line 3, after "that" and strike the underlined language on lines 3 and 4.

REP. MEASURE stated that this is already the language of the constitution and all they want is the ability to share this information without invading someone's privacy, why are we passing the bill?

John MacMaster explained that the section of the bill that is being amended sets out when you can disseminate it and when you can't. Without this in there, the District Court cannot allow someone to look at.

Vote: Motion carried unanimously.

Motion/Vote: REP. LEE MOVED BE CONCURRED IN AS AMENDED. Motion carried 15 to 4 with Rep's: Russell, Whalen, Measure, and Brown voting no.

EXECUTIVE ACTION ON SB 204

Motion: REP. MEASURE MOVED SB 204 BE CONCURRED IN.

Motion: REP. MEASURE moved to amend SB 204 by striking section 3 and section 7 and changing the title appropriately.

Discussion: REP. MEASURE stated his amendment is for the same reasons we have talked about regarding immunity all session.

Vote: Motion carried 11 to 9. EXHIBIT 2

Motion: REP. GOULD moved to amend SB 204 and asked John MacMaster to explain it to the committee.

Discussion: John MacMaster stated that the amendment would be on page 1, line 6, after the word "for" put in the word "first". On line 22, after the word "eight" and before the word "measure" put in the word "first". On page 4, it states the length of time you will lose your license on second and subsequent convictions and will have to be amended to apply to any conviction except for the first.

CHAIRMAN STRIZICH stated that we should try and allow some alternatives by limiting it to first offense it really crimps the effective use of this kind of a law. He stated he thought we should leave it the way it came in.

Vote: Motion failed.

Motion: REP. BROWN moved to amend SB 204 on page 1, line 22 after "a" insert "felony" and line 6 after "4", insert "felony".

Discussion: REP. BROWN stated that this penalty just applies to felony offenses. REP. BROWN emphasized he didn't want to make this kind of counselling mandatory for minor misdemeanor possession.

Vote: Motion carried 13 to 6. EXHIBIT 3

Motion/Vote: REP. LEE MOVED SB 204 BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Gould voting no.

EXECUTIVE ACTION ON SB 58

Motion: REP. BROWN MOVED SB 58 BE CONCURRED IN.

Motion: REP. RICE moved to amend SB 58 with the Department of

Institution's amendments.

Discussion: John MacMaster stated that his interpretation of the amendments the way he reads the provisions will say the Department of Institutions does not have to pay. But, it does not say who is going to pay. If you don't say who is going to pay it, you are leaving a vagueness in the law.

REP. BROWN raised the question as to why should the local government pay those medical costs.

REP. TOOLE stated that it has been done that way for years and years.

REP. BROWN stated that it seems if you believe the state should assume the cost of the District Court, then some of these other expenses should also be taken off the back of the counties and put back on the state as well.

REP. TOOLE noted that if this cost is shifted, we are talking a lot of money. There are a lot of people on probation and counties have paid it all along and it should stay that way.

Vote: Motion passed 13 to 7 with Rep's: Brooke, Wyatt, Whalen, Russell, Darko, Measure, and Brown voting no.

Motion: REP. BOHARSKI moved to amend SB 58.

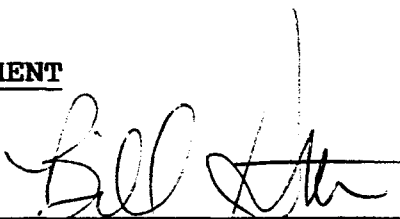
Discussion: REP. BOHARSKI described his amendment as stating that the state has to pay whatever the local cost is on a reasonable basis or actual cost. It will be a conceptual amendment for John MacMaster.

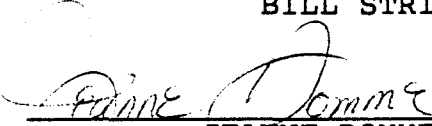
Vote: Motion passed unanimously.

Motion/Vote: REP. BROWN MOVED SB 58 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 2 p.m.


BILL STRIZICH, Chair


JEANNE DOMME, Secretary

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-9-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR			/
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE			/
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 364 (third reading copy -- blue) be concurred in as amended.

Signed: 

Bill Strizich, Chairman

Carried by: Rep. Darko

And, that such amendments read:

1. Page 1.

Following: line 23

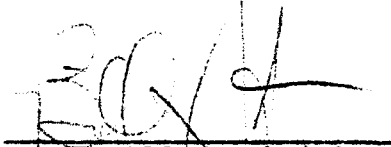
Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 51 is passed and approved and if it includes a new section entitled "Videotaped testimony", which appears at page 177, line 10, of the second reading yellow copy, then that section is amended by inserting in the first sentence, after "45-5-507", the words "or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age" and [section 1 of this act], amending 46-15-401, is void."

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 170 (third reading copy -- blue) be concurred in as amended .

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Cody

And, that such amendments read:

1. Page 2.

Following: line 14

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 51 is passed and approved and if it includes a section amending 46-18-111, then 46-18-111 is amended by the insertion of the following language at the end of subsection (1) of 46-18-111 and [section 1 of this act] is void:

"The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of institutions. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the department of commerce under Title 3, chapter 5, part 9."


Renumber: subsequent section

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 249 (third reading copy -- blue) be concurred in as amended.

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Boharski

And, that such amendments read:

1. Page 10, line 3.

Following: "that"

Insert: "the merits of public disclosure clearly exceed"

2. Page 10, lines 3 and 4.

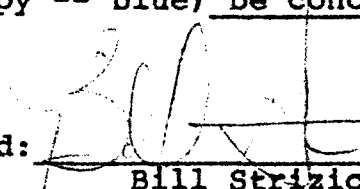
Strike: "do not clearly exceed the merits of public disclosure"

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 204 (third reading copy -- blue) be concurred in as amended.

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Boharski

And, that such amendments read:

1. Title, line 6.

Following: "FOR"

Insert: "FELONY"

2. Title, lines 7 and 8.

Strike: "PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN
CIRCUMSTANCES;"

3. Page 1, line 22.

Following: "drug"

Insert: "felony"

4. Page 4, line 20 through page 5, line 10.

Strike: section 3 in its entirety

Renumber: subsequent sections

5. Page 8, line 25.

Page 9, line 3.

Strike: "through 4"

Insert: "and 3"

6. Page 9, lines 4 through 7.

Strike: section 7 in its entirety

12:43
3-12-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 58 (third reading copy -- blue) be concurred in as amended.

Signed: 

Bill Strizich, Chairman

Carried by: Rep. Rice

And, that such amendments read:

1. Title, line 12.

Following: "TOWNS"

Insert: "AND AN EXCEPTION FOR THE DEPARTMENT OF INSTITUTIONS"

2. Page 2, line 17.

Following: "the county."

Insert: "Medical expenses for an inmate detained as a probation violator may not be charged to the department of institutions."

3. Page 3, lines 14 and 15.

Strike: "AS AGREED UPON BY THE ARRESTING AGENCY AND THE DETENTION CENTER"

Insert: "at a rate agreeable to the detention center and covering the reasonable confinement costs"

4. Page 3, line 22.

Following: "the county."

Insert: "Costs of confining a probation violator may not be charged to the department of institutions."

EXHIBIT 1
DATE 3-9-91
~~SB~~ 364

Amendments to Senate Bill No. 364
Third Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
March 7, 1991

1. Page 1.

Following: line 23

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 51 is passed and approved and if it includes a new section entitled "Videotaped testimony", which appears at page 177, line 10, of the second reading yellow copy, then that section is amended by inserting in the first sentence, after "45-5-507", the words "or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age" and [section 1 of this act], amending 46-15-401, is void."

EXHIBIT 2
DATE 3-9-91
#B 204

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-9-91 BILL NO. SB#204 NUMBER _____

MOTION: Measure move OPA Amendment

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	<i>mw</i>
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	<i>My</i>	<i>✓</i>
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	11	9

EXHIBIT 3
DATE 3-9-91
HB 204

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-9-91 BILL NO. SB 204 NUMBER _____

MOTION: Brown amended

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO	/	
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	/
TOTAL	13	6