

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 22, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Greg Petesch and Valencia Lane (Legislative Council).

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

Announcements/Discussion: none

HEARING ON HOUSE BILL 915

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, said HB 915 addresses unlawful flight as a means of avoiding prosecution, and was requested by the Assiniboine and Sioux Tribes. She stated that the bill would also help the State, and that neither the Tribes nor the state are forced to extradite, but extradition would be the same as it is between the states.

Representative Cody advised the Committee that the attorney for the Fort Peck Reservation was unable to attend. She said the Tribes passed a resolution which is very similar to the Uniform Act, but more simplified. Representative Cody told the Committee she has a copy of that resolution.

Proponents' Testimony:

Pat Smith, Attorney, Confederated Salish and Kootenai Tribes, said the Salish and Kootenai have an extradition ordinance, and a very good working relationship with surrounding counties, so extradition is not much of a problem. He said the Attorney General was concerned that current language in statutes may have prevented him from honoring a tribal request for extradition, so this legislation would be helpful in the future.

Opponents' Testimony:

Jim Morsette, Tribal Councilman, Rocky Boy Reservation, told the Committee that two years ago the Attorney General agreed to work out extradition agreements with the Chippewa Cree Tribes. He explained that there is no agreement from the State to the Tribes concerning extradition, but there is from the Tribes to the State.

Mr. Morsette further explained that he submitted this to the Hill County Attorney two years ago, who said he was waiting for the Legislature to address extradition. Mr. Morsette advised the Committee that he called the Associate Dean of the Indian Law Clinic, who had been unaware of HB 915 and opposes it. He said he believes the state and the tribes can work together in compromise, rather than the confrontation designed by HB 915 (Exhibit #1).

Questions From Committee Members:

Chairman Pinsoneault asked if anyone from the Attorney General's office were present. Representative Cody replied that she didn't ask anyone from his office to appear, because the Attorney General is pleased with this legislation. She commented that the Rocky Boy Reservation is working on an agreement with the Attorney General, but no one opposed the bill in the House. Representative Cody said she believes any opposition to the bill is due to lack of understanding.

Chairman Pinsoneault asked Mr. Morsette if he had seen the resolution. Mr. Morsette replied he had not, but did talk to the Fort Peck Reservation judges, who advised him they are awaiting information from the Attorney General. Mr. Morsette stated he believes the process suggested by the bill would be unenforceable on the reservations, and that cooperative agreements with each tribe would work better.

Chairman Pinsoneault stated the Committee would check with the Attorney General before taking any action on the bill.

Senator Grosfield said he did not understand Section 2 of the bill. Greg Petesch replied it is the arrest section of the extradition agreement, and makes exception.

Closing by Sponsor:

Representative Cody told the Committee HB 915 is a fairly simple idea to put the tribes under the Extradition Act.

HEARING ON HOUSE BILL 618

Presentation and Opening Statement by Sponsor:

Representative Bergsagel, District 17, said HB 618 standardizes the time in which criminal and civil files are transferred to the district court, and provides district court judges with the teeth to require transfers within a specified time frame.

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee

Closing by Sponsor:

Representative Bergsagel made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 618

Motion:

Senator Halligan made a motion to approve the coordination instructions (Exhibit #2). The motion carried unanimously.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

Senator Halligan made a motion that HB 618 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

HEARING ON HOUSE BILL 631Presentation and Opening Statement by Sponsor:

Representative Scott McCulloch, District 96, said HB 631 provides for a mandatory sentence of two years for sexual assault of young children. He told the Committee he believes the present system is not working, and that punishment is a slap on the hand. Representative McCulloch stated current law provides for a maximum sentence of 20 years, plus a fine, but most sentences are for 30 days of treatment. He reported that almost 40 percent become repeat offenders.

Representative McCulloch commented that if sentences were more appropriate, he would not have introduced this bill. He explained that page 6, line 23 continues the flexibility of judges, but requires a written statement as to why a sentence is not imposed. Representative McCulloch advised the Committee that he believes in flexibility of sentencing, imputing prison sentences, and proper treatment for offenders. He said the fiscal note shows a small effect, and urged the Committee to pass the bill.

Proponents' Testimony:

Diane Sands, Executive Director, Montana Women's Lobby, said treatment programs are essential, but are not nearly as available as they need to be. She said the bill sends the intent to reduce child abuse.

Paul Johnson, representing the Montana County Attorneys Association, said John Connor could not be present because of a hearing in Deer Lodge this date. He stated that mandatory minimum sentencing can do some good in cases of sexual assault. Mr. Johnson explained that developing evidence and testimony concerning penetration is extremely difficult with very young children, and that often adequate testimony can't be developed. He said the bill provides an alternative charge of sexual assault, giving the prosecution the tool to go after these kinds of perpetrators. He urged the Committee to pass the bill.

Representative Thomas Lee, District 49, said the Committee should consider the bill "on justice rendered in relation to the offense", and that he supported this legislation.

Opponents' Testimony:

There were no opponents of HB 631.

Questions From Committee Members:

Senator Towe commented that there is some relief in Section 3, but he was not sure how exception (5) applies. He asked how this would apply in a normal situation (page 6, lines 20-22), and if, by adding (6), the bill adds another exception regarding why exception

should occur. Representative McCulloch replied, "I think so. Yes."

Senator Towe referred to page 1 of the bill, and said an 18-year-old had better not have sex with a 15-year-old. Representative McCulloch replied that is why (6) was added to Section 3.

Senator Towe asked if (6) was sufficient to cover such incidents. Representative McCulloch replied it is.

Closing by Sponsor:

Representative McCulloch told the Committee he teaches sixth grade. He said children are hurt and scarred for many years as a result of sexual assault. He asked the Committee to send a message that the State will not tolerate sexual abuse of children.

HEARING ON HOUSE BILL 747

Presentation and Opening Statement by Sponsor:

Representative Thomas Lee, District 49, said HB 747 is a companion bill to Representative Bradley's Community Corrections Act bill. He explained that the bill establishes a policy for alternatives to sentencing for non-violent offenders, and provides alternative sentencing procedures to judges.

Representative Lee stated that page 8 requires judges to consider sentencing people to a community-based treatment program. He explained that the new sections lay out the criteria of consideration.

Proponents' Testimony:

Harley Warner, Montana Association of Churches, said he supports the sentencing system, and agrees that the majority of offenders can be dealt with in communities.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Lee made no closing comments.

HEARING ON HOUSE BILL 131Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, District 56, explained that HB 131 is the Human Skeletal Remains and Burial Site Protection Act. She asked the Committee to please remember it is about respectful disposition of those remains. Representative Brooke told the Committee there were 19 proponents and no opponents at the House hearing. She reported that the bill was amended by a subcommittee, and passed the House by a considerable margin.

Representative Brooke advised the Committee that \$10,000 has been approved by House Appropriations, for a regulatory Board. She stated there is no current statute regulating unmarked burial sites and no consistency among county coroners in handling remains.

Proponents' Testimony:

Karen Atkinson, Attorney, Confederated Salish and Kootenai Tribes, said this is an issue of human dignity, and that there have been problems in the past with Indian burial sites outside the Flathead Reservation. She told the Committee there are 150,000 or more Indian remains in archeological institutions, and that Congress passed the National _____ and Repatriation Act, protecting human remains on reservations. She said they also passed an act for repatriation of 18,000 remains in the Smithsonian Institute, and that 33 states have passed similar legislation.

Ms. Atkinson advised the Committee that there is strong public policy in Montana protecting marked graves, but not unmarked sites, thus promoting excavation and looting of unmarked sites. She said the bill includes pioneers, settlers, and Indians, and applies to state and private lands, filling in the gap in federal law. She said the bill would codify the common law rule that a landowner does not own human remains on his or her lands, but these remains are held in trust for surviving family members.

Ms. Atkinson stated that a burial board would assume the responsibility of relocating remains, and would maintain a registry of burial sites within the state, as well as issue permits for scientific study. She said there would be 13 board members, comprised of tribal representatives, various state agencies, and a member of the public at large.

Ms. Atkinson further advised the Committee that the board would operate under specific time limits, making decisions within one week. She said the board can keep records confidential to prevent further harm to burial sites, and that the bill establishes criminal and civil penalties for removal and commercial use of remains.

Ms. Atkinson explained that it is hoped the board would become self-supporting through fees, grants, and donation. She said there

are amendments that the proposed board will not interfere with the duties of coroners, and to provide for confidentiality. Ms. Atkinson urged the Committee to support HB 131.

Patrick Lefthand, Tribal Councilman, Confederated Salish and Kootenai Tribes, told the Committee the Tribes have been working for a number of years to establish this protection. He explained that aboriginal territories would overlap each other, and that this bill provides for a system to handle this overlap. He stated this legislation has come a long way in its development.

Mr. Lefthand told the committee the bill would help tribes to have protection against grave hunters who sell items on the black market. He stated that graves are found quite regularly, that they can go back up to 14,000 years. Mr. Lefthand said the bill seeks protection for all burial sites, not just for Native Americans. He said the Tribes have worked with the counties on these matters, and just buried prehistoric remains in Southwestern Montana. He urged the Committee to support the bill.

Larry Summer, Director, Montana Historical Society, and State Art Preservation Office, stated his support of the bill. He read from prepared text (Exhibit #3).

Jim Morsette, Tribal Councilman, Rocky Boy Reservation, stated his support of HB 131.

Germaine Montier, Cultural Resources Protection Officer, Confederated Salish and Kootenai Tribes, told the Committee that even if remains are thousands of years old they deserve the same respect as other remains. She said the Montana Department of Highways and other agencies support this bill, and that this legislation is long overdue. Ms. Montier urged the Committee to support HB 131, and provided letters of support from Patrick Chief Stick, Sr., and Edwin Dahle (Exhibits #4 and #5).

Francis Auld, Kootenai Cultural Committee, urged the Committee to support HB 131. He said he was brought up with a great deal of respect for the dead, and that it saddens his heart when his children are taken to museums, and then ask why their ancestors' remains are in museums and not buried. He explained that his children do not understand this, but must say the Pledge of Allegiance in school each day.

Kathleen Fleury, Coordinator of Indian Affairs, said she speaks for all tribes in Montana. She said burial grounds of Indians are considered to be sacred sites, and urged the passage of HB 131 to protect Native American remains.

David Schwab, Montana State Archeologist, stated his support of the bill. He said he has been involved in negotiations with the Tribes, and believes the concerns of everyone are addressed in HB 131. Mr. Schwab told the Committee that the field of archeology is progressive, and is now finding that it was not sensitive to the

needs of tribal people. He urged the Committee to pass HB 131 (Exhibit #6).

Edrie Vinson, Environmental Section Supervisor, Preconstruction Bureau, Montana Department of Highways, said he studied the effect of the bill, and reported that of 30,000 sites in Montana only 63 or .002 percent are burial sites. He advised the Committee he believes the bill will have little impact on state agencies, and that he had no opposition to this legislation.

John Vollertsen, graduate student, University of Montana, told the Committee he recently witnessed the uncovering of a grave site by a construction firm, and asked his professor of archeology to look into it. He said that was more than a month ago but the Department of Fish, Wildlife and Parks has never received a report from either the construction firm or the University of Montana. Mr. Vollertsen said he doesn't believe that any one person or company should be responsible for determining how a burial site should be disposed of. He commented that it would be a great advantage for industry to know who to report to, as well as to get a timely response. Mr. Vollertsen advised the Committee that HB 131 is excellent, and solicited their support.

M.E. "Mickey" Nelson, Lewis and Clark County Coroner, read a letter of support from Steve Knecht, Judith Basin County Coroner and President of the Montana Coroners Association, commending the Tribes for their leadership role in this matter.

Paul Johnson, Assistant Attorney General, said he was appearing on behalf of the Attorney General and the Medical Examiner, both of whom support this balanced protection. He said the bill would promote integrity of the excavation system in dealing with remains in Montana.

Carol Dubay, Flathead Reservation, said she was speaking for herself, the Tribes, and all Indian people. She advised the Committee of an article in the National Geographic, Vol. 175, #3, March 1989, "Who Owns the Past" (concerning Indian burial grounds). Ms. Dubay stated that the Kentucky Legislature changed deliberate excavation of Indian burial sites from a misdemeanor to a felony. She said all people are equal, and asked the Committee to look into their hearts to see if they would like their relatives' remains moved.

Joann T. Bird, St. Regis, told the Committee that there are graves in a field on her father's farm near Lewistown, and that he plows around them each year, leaving them undisturbed. She said her mother's ancestors are buried in an unmarked corner of a field on family land near Grass Range. Mrs. Bird said she would not want to see those remains disturbed, and related a story from her college days. She said an excavator uncovered a burial site in Southcentral Montana (in 1968), which was estimated to be about 12,000 years old, and that archaeologists from Montana State University (MSU) removed many of the remains from that site. Mrs.

Bird advised the Committee that she was involved in the decision to report the site to MSU, and many years later came to understand the effect of this action. She explained that two years ago she refused an opportunity to care for a home in Anchorage, Alaska, partly because she was uncomfortable with the fact that the owner looted artifacts from burial sites all over the world.

Opponents' Testimony:

There were no opponents of HB 131.

Questions From Committee Members:

Chairman Pinsoneault asked if there was ever a practice of cremation among the tribes. Patrick Lefthand replied this was a practice of some tribes, particularly for chiefs, so they would not be disturbed by other tribes.

Senator Towe said he agreed with the purpose of the bill, and that it was about time this legislation was presented. He commended Ms. Atkinson and the Tribes on their work. He asked what the scope of the bill is as it relates to other than Indian burial sites, and said that early pioneers and settlers do not appear to be represented on the proposed board. Karen Atkinson replied there will be members from state agencies, and a member from the public. She stated that pioneer graves will probably be dealt with by the State Historical Preservation Office.

Senator Towe asked why board members would not be appointed by the Governor, instead of the Coordinator of Indian Affairs. He said he was surprised at Kathleen Fleury having all this authority. Karen Atkinson replied the drafters felt the Office of the Attorney General did not have the expertise to make those appointments, and said the Governor did not come up.

Senator Towe stated his brother-in-law was cleaning out from under an old barn to build onto it, and found a human skull. He asked if his brother would have had to immediately cease excavation under this bill. Karen Atkinson replied that, under current code, Senator Towe's brother would have to contact the county coroner. She said the proposed board would also have to be notified, and would make a field review. Ms. Atkinson commented that the bill allows for negotiations among interested parties. She stated that if the parties fail to agree, then control is vested in the proposed board in line with priorities in recently passed federal law (Section 7, page 11 of the bill). Ms. Atkinson further stated that the proposed board would remove the remains.

Senator Towe said he was concerned about the confidentiality section, and asked if a legitimate relative could receive information on remains. Karen Atkinson replied that location information is kept confidential, but she does not believe it would be a violation to release information to next of kin who have a legal right to this information.

Senator Yellowtail asked if there were anything in this act imposing obligations on persons who casually discover burial remains to report their location. Karen Atkinson replied they would be required to report this information to the county coroner, but the bill comes into action primarily where there is ground-breaking activity.

Senator Yellowtail asked if possession of material taken from a burial site is illegal. Karen Atkinson replied it is.

Senator Svrcek asked what the position is for people who now possess such artifacts. Karen Atkinson replied this applies to future acquisition, and that federal law provides for repatriation, but HB 131 does not.

Closing by Sponsor:

Representative Brooke told the Committee it has been a tremendous experience to sponsor HB 131. She said that in November 1990 three of her family members were buried in the Ronan cemetery, and that HB 131 would have a tremendous effect on the part of the Confederated Salish and Kootenai Tribes, as well as other tribes.

Representative Brooke stated there is a sacred trust in valuing those who go before us, and that the bill represents tying together the past and the future, as well as consensus and compromise on issues in this state. Representative Brooke commended Karen Atkinson and the others who worked on HB 131. She said Senator Gage was concerned with this issue and would carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 131

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe said he was concerned with confidentiality in the bill. He made a motion to insert "bonafide relative or descendent of the person thought to be buried therein", following "only to" on page 14, line 18 of the bill.

Karen Atkinson said she had no objection to the amendment.

Senator Crippen said he had no problem with confidentiality as it stands in the bill now. Senator Towe replied that it would be very frustrating if there were no access to information concerning a family burial site, and that he believes the intent of the bill

is to give first right to descendants to control. Karen Atkinson commented that the bill does apply to all unmarked graves, and that the ability to put names to graves is very slim.

Senator Rye said he objected to the amendment, and that he believes the bill is good as it is. He said "bonafide" leaves an opening for trouble.

The motion made by Senator Towe failed 4-7, in a roll call vote (attached). Senator Halligan was not present and did not leave a vote.

Recommendation and Vote:

Senator Svrcek made a motion that HB 131 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 915

Motion:

Senator Towe made a motion that HB 915 BE CONCURRED IN with the proviso to come back if the Attorney General has concerns.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Pinsoneault will carry HB 915.

EXECUTIVE ACTION ON HOUSE BILL 631

Motion:

Discussion:

Senator Towe said that if Sections 1 and 3 are read together, an 18-year-old having sex with a 14-year-old would be sentenced to two years, but could have his or her sentence deferred upon the findings of a judge that he or she be rehabilitated under local control.

Chairman Pinsoneault advised the Committee that they needed to have John Connor, Montana County Attorneys, present to provide more information.

Senator Crippen stated he was against taking discretion from judges. He said line 23 on page 6 provides an out, and asked what would happen if there was no ability to rehabilitate someone at the local level. He asked where the judge would be then. Senator Towe replied he believes the judge can suspend the sentence, and send the offender home (page 5, line 20).

Senator Crippen asked Representative McCulloch if that was his intent. Representative McCulloch replied that John Connor helped him to draft the bill, and that he assumed some type of program would be available at the county level. Representative McCulloch said the example cited by Senator Towe could happen, but would be rare. He said the bill is designed for the sexual abuse of younger children.

Amendments, Discussion, and Votes:

There were none.

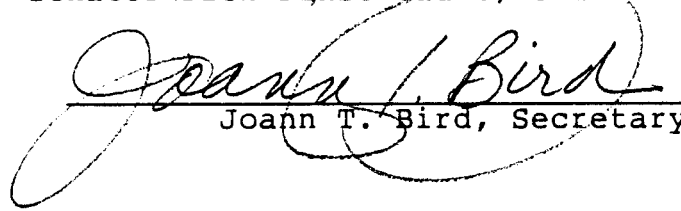
Recommendation and Vote:

Further action on the bill was delayed until March 23, 1991.

ADJOURNMENT

Adjournment At: 11:55 a.m.



Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 22 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 618 (third reading copy -- blue), respectfully report that House Bill No. 618 be amended and as so amended be concurred in:

1. Page 2, line 9.

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 51 is passed and approved and if Senate Bill No. 51 contains a section amending 46-17-311, then [this act] is void."

Signed: *W. J. Pinsonneault*

Richard Pinsonneault, Chairman

WJ 3-22-91
And. Coord.


CR 3-22-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22,- 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 131 (third reading copy -- blue), respectfully report that House Bill No. 131 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

191 3-22-91
Amd. Coord.


52 3-22 1:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 915 (third reading copy -- blue), respectfully report that House Bill No. 915 be concurred in.

Signed: 
Richard Plasseault, Chairman

AA 3-22-91
Amd. Coord.

SB 3-22 1:10
Sec. of Senate

3/22/91
HB 915

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 22 day of MAR, 1991.

Name: Jim Mesithe

Address: 1146 Rocky Bry mt

Telephone Number: 395 4282

Representing whom?

Chippewee Business Committee

Appearing on which proposal?

House Bill 915

Do you: Support? Amend? ✓ Oppose? ✓

Comments:

This Bill does not address
the Cooperative agreement need
to allow extradition proceedings
to take place between two
governments with separate jurisdictions

Ex #1
22 Mar 91
HB 915

EXTRADITION

PROPOSAL

OFFICE OF THE COUNTY ATTORNEY
County of Hill

Exhibit # 1
3/22/91 HB 915

312 THIRD STREET
HAVRE, MONTANA 59501-3534
265-4364

DAVID G. RICE
COUNTY ATTORNEY

PATRICIA JENSEN
DEPUTY COUNTY ATTORNEY

February 5, 1990

Mr. Jim Morsette
Tribal Prosecutor
Box 544
Box Elder, MT 59521

RE: Extradition Agreement

Dear Jim:

I had a chance to visit with the Deputy Attorney General I had contacted earlier concerning the extradition agreement I sent to you on January 17th. He had some reservations about our entering into that at this time. I'll relate those to you and suggest that we hold off on anything with that agreement until we hear from him.

He said that he had some questions about whether the district court in Hill County could legally entertain requests for extradition on tribal court warrants. Because of that concern, he said we should wait for a decision in the United States Supreme Court case which is currently pending. That case evidently deals with a similar issue and the United States Supreme Court will then state whether there's ability for these type of reciprocal agreements. If they suggest that there is, the Attorney General's Office will then seek legislation with the Montana State Legislature in 1991 to allow execution of these types of agreements.

In the meantime, I think we should continue our dialogue in order to keep the lines of communication open. I'll send copies of this letter to those involved in our earlier meeting so that they'll understand what's going on. I will instruct the Sheriff's Office to comply with the extradition proceedings set forth in your tribal code for those individuals who are subject to tribal court jurisdiction. We'll then deal with the issue of handling your wanted persons off of the reservation after the pending decision is released and some further agreement is made.

Very truly yours,



DAVID G. RICE
HILL COUNTY ATTORNEY

DGR:teb

cc: Hill County Commissioners
Hill County Sheriff
Bryce Johnson
Greg Szudera
Rocky Boy Tribal Council

OFFICE OF THE COUNTY ATTORNEY
County of Hill

Exhibit # 1
3/22/91 HB 915

312 THIRD STREET
HAVRE, MONTANA 59501-3534
265-4364

DAVID G. RICE
COUNTY ATTORNEY

PATRICIA JENSEN
DEPUTY COUNTY ATTORNEY

January 17, 1990

Mr. Jim Morsette
Box 544
Box Elder, MT 59521

Dear Jim:

I sent a copy of our proposal for extradition to the Attorney General's Office and asked them for their comments. I'm sending you a copy now so that you can look it over and let me know if it will fit in with current practices.

Very truly yours,



DAVID G. RICE
HILL COUNTY ATTORNEY

DGR:teb

Enclosure

EXTRADITION AGREEMENT

PROPOSAL

THIS AGREEMENT is made and entered into by and between the CITY OF HAVRE, MONTANA, a municipal corporation in the State of Montana, hereinafter referred to as "City", HILL COUNTY, a political subdivision of the State of Montana, hereinafter referred to as "County", and the CHIPPEWA CREE TRIBAL GOVERNMENT, ROCKY'S BOY RESERVATION, hereinafter referred to as the "Tribe".

The purpose of this Agreement is to provide for the extradition of persons sought pursuant to criminal arrest warrants issued by the City Court of the City and Justice and District Courts of the County, and by the Rocky's Boy Indian ~~Community~~ ^{Reservation} Tribal Court. It is also intended to promote cooperation between City, County and Tribal law enforcement officials, to obtain the assistance of each of the parties to conduct criminal investigations, and to insure thereby the health, safety and well-being of the citizens of the respective jurisdictions.

Authority for this Agreement is found in the State-Tribal Government Cooperative Agreements Act, Sections 18-11-101 through 18-11-111, Montana Code Annotated, and in the self-governing powers of the Tribe, as approved by the Bureau of Indian Affairs.

(This Agreement is required because the County may lack jurisdiction to enforce its criminal arrest warrants against any member of the Tribe who has fled to the Rocky's Boy Indian Reservation, Montana, and the Tribe may lack jurisdiction to enforce its criminal arrest warrant against any member of the Tribe who has fled from said Reservation.) It is additionally recognized

that each of the parties often requires the investigative assistance of the other in criminal matters..

In consideration of the mutual needs and benefits described above, and the agreements set forth hereinafter, the City, County and Tribe agree as follows:

→ 1. The City, County and Tribe recognize the authority of each other's law enforcement officials within their respective boundaries and the law enforcement personnel of each party shall remain under the supervision and control of their own agencies and shall not become the employees or agents of the other party in the performance of this Agreement.

2. (a) The City and County will recognize and execute any lawful criminal arrest warrant of the Tribal Court upon any member of the Tribe located outside of the boundaries of the Reservation and within the boundaries of the City and County, upon presentation of said warrant to the Havre City Court or Twelfth Judicial District Court, Hill County.

(b) The Tribe will recognize and execute any lawful criminal arrest warrant of the City, County Justice and District Courts on any member of the Tribe located within the boundaries of the Reservation upon presentation of said warrant to the Rocky's Boy Tribal Court.

(c) No person arrested upon a warrant may be delivered over to the city, county or tribal law enforcement officials demanding him unless he is first taken without delay before the Havre City Court, if he is arrested within the City, Twelfth Judicial District Court of Hill County if he is arrested within the County, or the

Tribal Court if he is arrested within the Reservation, which court shall inform him of the demand made for his surrender and of the crime with which he is charged. If the defendant states that he is not the person charged, the court shall set a hearing at which this issue shall be determined. When the hearing is scheduled, notice thereof shall be given to the law enforcement officials of the demanding party.

(d) The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into during any proceeding under subparagraph (c) above, except as relevant to identifying the person held as the person charged with the crime.

3. (a) Upon issuance of an order of the Havre City Court or Twelfth Judicial District Court for Hill County providing for the extradition of a member of the Tribe to the Reservation, law enforcement representatives from Rocky's Boy agree to promptly secure the defendant at the Havre City Court or Hill County District Court.

(b) Upon issuance of a Tribal Court order providing for the extradition of a member of the Tribe to the City of Havre or Hill County, law enforcement representatives from such City and/or County agree to promptly secure the defendant at the Rocky's Boy Tribal Court.

4. Each party warrants and guarantees that the arrest warrants it files and obtains and presents to the other party for execution or service will be valid and enforceable, and not defective for procedural, constitutional, or other reasons. Each party is thereby entitled to rely on the validity of the documents

presented to it by the other party.

5. The City, County and Tribal law enforcement personnel will assist each other, upon request, in the investigation of criminal activity and assist in locating and interviewing witnesses to crimes that are located within their respective geographic boundaries.

6. The jurisdiction over criminal matters which may be exercised by either party and the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country shall not be enlarged or diminished by this Agreement. This Agreement specifically does not authorize the Tribe to conduct law enforcement or other operations off of the Reservation, nor does it authorize the City or County to conduct law enforcement or other operations concerning Indians on the Reservation.

7. Only regular law enforcement employees of the City and County who meet the minimum training standards of the City, County and State of Montana, and regular law enforcement employees of the Tribe or the Bureau of Indian Affairs who meet the minimum training standards of the Tribe and the Bureau of Indian Affairs, will provide the assistance called for in this Agreement.

8. This Agreement may be modified only in writing and only upon the mutual agreement of the parties hereto.

9. This Agreement shall be renegotiated thirty (30) days after written notice to do so is received by either party.

10. This Agreement shall be terminated thirty (30) days after written notice to do so is received by either party.

11. This Agreement shall be of one (1) year's duration and shall automatically renew for additional one (1) year periods unless notice pursuant to paragraphs 10 or 11 is received thirty (30) days in advance of the anniversary date of this Agreement.

12. The City Police Chief, County Sheriff and the Chief of the Tribal Police (BIA Law and Order) shall be the representatives for each party relative to this Agreement, and shall receive any notices sent pursuant thereto.

13. An executed copy of this Agreement shall be filed with:

Secretary of the U.S. Department of the Interior
Hill County Clerk and Recorder
State of Montana, Secretary of State
City Clerk, Havre, Montana
Chippewa-Cree Tribe

DATED this day of , 1988.

Administrative Manager, Chippewa-
Cree ~~Indian Community~~ Tribal (SEAL)
Government

(SEAL)

, Chairman, Chippewa-Cree
~~Indian Community~~ Tribal Government

Business Committee

(SEAL)

Clerk of Tribal Court

(SEAL)

, Chairman
Hill County Commissioners

(SEAL)

Diane E. Mellem
Hill County Clerk & Recorder

(SEAL)

Donald X. Driscoll, Mayor
City of Havre, Montana

(SEAL)

Michael Mariani, City Clerk
City of Havre, Montana

APPROVAL BY THE ATTORNEY GENERAL

I, , the duly elected, qualified and acting
Attorney General of the State of Montana, do hereby approve the
foregoing Extradition Agreement on this day of ,
1988.

State of Montana Attorney General

CX#2
HB618
22Mar91

Amendments to House Bill No. 618
Third Reading Copy

For the Committee on Judiciary

Prepared by Greg Petesch
March 21, 1991

1. Page 2, line 9.

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 51 is passed and approved and if Senate Bill No. 51 contains a section amending 46-17-311, then [this act] is void."



State Historic Preservation Office

Montana Historical Society

Mailing Address: 225 North Roberts • Helena, MT 59620-9990

Office Address: 102 Broadway • Helena, MT • (406) 444-7715

March 21, 1991

Testimony on House Bill 131

by Lawrence Sommer, Director, Montana Historical Society

Mr. Chairman, I am pleased to come to today's hearing to tell you of the Montana Historical Society's enthusiastic support for House Bill 131.

I would highlight four summary, but very important reasons for the Society's support for this bill.

First, the need for it is well established: for far too long we have treated scattered burials at best haphazardly and often very callously.

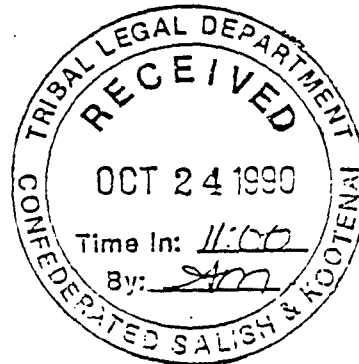
Second, it is simple and understandable. We've seen too many burial bills that will not solve any problems because the time periods involved and number of consulting groups involved are so great that the bills have created confusion not resolution.

Third, it leaves the right people involved at the right time. Coroners continue to play the critical role they now play--determining whether a burial is recent or potentially related to a crime. If a coroner so determines that, his call prevails and no other procedures are set in motion. If a burial has antiquity, disposition of it falls under the direction of a simple, straightforwardly comprised Board. And, the bill offers methods to resolve decisions about burials quickly--even in a state where distance can mean time. Since most of our random burials are Native American in origin, Board composition reflects that. But Board procedures offer a clear avenue for interaction among archaeologists and people representing a different historical background. It creates no new power roles or bureaucracies.

Finally and most important, House Bill 131 has evolved from 2 years of concentrated consultation among tribes, archaeologists, coroners, and agency personnel. We have been impressed with the consensus building that has occurred over the last two years. While there are professional archaeologists with whom we work who might like a somewhat different bill, the majority of the professional community has involved itself wholly in development of the bill and accepts the premises and needs on which this bill is built. In short, I believe that a number of people took your 1989 charge seriously and have developed for you a real consensus measure.

Thank you.

24 = 4
#B131
22 Mar 91



October 22, 1990

Karen J. Atkinson
Tribal Attorney
Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

RE: Montana Burial Legislation and Repatriation

Dear Ms. Atkinson:

I have reviewed the contents of the Montana Burial Bill and I cannot add anything to it because it is pretty well written.

Your memorandum specifically states you are going to shoot it to the Montana State Legislature. If the repatriation sections of the federal bill does not pass in Congress, this is also a good move.

The human skeletal remains and burials are most sacred, especially to my Tribe. We have to have some kind of protection, whether it is federal or state.

Repatriation is most important to all Indians in this state and if it has to be a separate bill, let's do it this way to satisfy our Indian people.

With best regards,


Patrick Chief Stick, Sr.

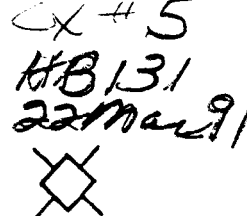


- WOHEHIV -
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



- WOHEHIV -
The Morning Star

January 10. 1991

RECEIVED

JAN 11 1991

Micheal T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P.O. Box 278
Pablo, Mt. 59855

CS & KT TRIBES

Dear Mr. Pablo:

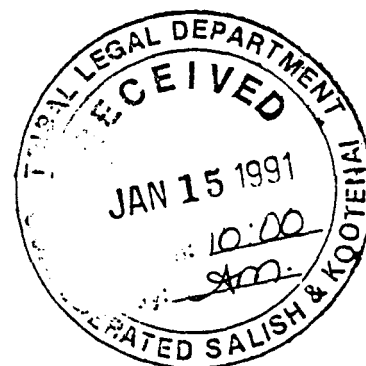
On behalf of the Northern Cheyenne Tribe I am writing this Letter of Support for the bill entitled: "The Human Skeletal Remains and Burial Site Protection Act."

The Northern Cheyenne Tribe fully supports this legislation, we also strongly support the provisions relating to the matter of disclosure of information relating to burial sites. We feel that information like this should be held confidential.

We also feel that this piece of legislation should exclude Indian Reservations. We feel we are fully capable of handling our own affairs relating to preservation of burial sites.

Sincerely,

Edwin Dahle, President
Northern Cheyenne Tribal Council



EX # 6
HB 131
22 Mar 91

NATIVE AMERICAN BURIALS IN MONTANA:
EXPECTATIONS AND INTERPRETATIONS

By

Gregory S. Newberry
Powers Elevations Co., Inc.

The purpose of this paper is to provide general background information that is thought to be germane to the reburial issue. Its intention is to provide base line data on the number of Native American burials in Montana, to describe the environmental contexts in which they are found, and to discuss briefly the problem of determining their tribal affiliation.

In Montana, reported burials of Native Americans are extremely rare. A search of the Montana State archeological site files revealed that of the 30,000-odd sites reported in the state, only 63 are confirmed burials of Native American people. These represent approximately .002 percent of all reported sites.

On the Northern plains, the scarcity of burials is a result of low population densities (generally <1 person per square mile) and interment practices. Known burials predating the Late Plains Archaic (ca. 400 B.C.) are so rare that it is impossible to describe any pattern of interment. Beginning in the Late Plains Archaic and continuing through the Historic Period, the dead were placed in a variety of contexts.

Based on information from site forms, interment took place in shallow graves (n=10), trees (n=1), on scaffolds (n=2), within shallow rock shelters or caves (n=5), talus slopes (n=6), rock crevices within outcrops (n=11), beneath rock piles (n=10) or in specially prepared cabins or monuments (n=2). This, as well as the ethnographic literature, demonstrate that interment practices among native plains groups were not as straight forward as among Euro-American populations. Following death, primary interment might take place in a shallow grave, rock crevice, tree or specially prepared scaffold. Burial in a tree or on a scaffold could be followed by secondary burial of the bones in a shallow grave, within a rockshelter or rock crevice or beneath a small pile of rock. Burial beneath piles of rock (cairns) is of particular interest since there appears to be a general misconception among both Native and Euro-American populations that many of these features contain burials.

Cairns are ubiquitous on the northern plains and a conservative estimate of their numbers would exceed 200,000. Although they are seldom the primary focus of professional archaeological investigation, research suggests they served a variety of functions. Parallel lines of cairns are frequently associated with procurement features (pounds or jumps) for bison

or big horn sheep, and single lines stretching for several miles may have served as trail, locational, or territorial markers (Frison 1981:133-147). Malouf (1962:1-5) believes that some larger cairns have a ceremonial significant and have been built up through accretion as people added stones to cairns as "acts of devotion" (Frison 1981:146-147). The use of cairns as points of primary or secondary inhumation is reported in the ethnographic literature for the plains (Lowie 1935:67 and Denig 1930:571), but is rarely encountered in the archeological record for the area (L. Loendorf, personal communication 1990). Small quantities of bone are often found in cairns, and this may account for the popular belief that these features frequently contain burials. However, the vast majority of bone recovered from cairns is non-human, and is thought to have been introduced by rodents who den in cairns and gnaw on bone in order to meet their high calcium requirements (S. Aaberg, personal communication 1990).

With the exception of caves, burials are generally not located in environments that are especially conducive to preservation, nor was preservation of the physical remains necessary within the context of traditional plains ideology. In contrast to Christian dogma, where preservation of the physical remains is often conceived as a prerequisite for the eventual reunification of the soul with a renewed and perfect body, Plains Indian ideology would contend that this is not necessary in order to live well and happily in the after life (see Hoebel 1960:86-87). These considerations suggest that many Native American burials have been destroyed by natural processes.

As the number of burials is small, and given the highly mobile nature of the Plains adaptation, attempts to tie burials to specific tribal groups are extremely difficult. At present, less than one-sixth (n=11) of the known burials have been identified as to tribal affiliation, and the prospects for doing better are poor. The primary obstacle to identification is intrinsic to the nature of the plains adaptation.

It has become almost an article of faith among plains archaeologists that human adaptation to the short grass environment is primarily a response to changes in the size and location of bison herds. Based on present interpretations of bison kill sites from Montana, Wyoming, Alberta, and Saskatchewan, it appears that bison populations have fluctuated dramatically during most of plains prehistory. The behavioral response to changes in herd size and location are thought to include, but are not limited to, movements of several hundred miles (but perhaps less) and associations among different local groups for the purpose of exploiting localized concentrations of bison. These responses imply the need to form extensive alliance networks and suggest that any attempt to maintain exclusive access to territory would, in the long run, be disadvantageous.

The implication for the reburial issue is that it is specious to attempt a determination of the tribal identity of a burial based

upon its geographic location in relation to historical or ethnographically defined tribal territories. Identification based on osteological or associated cultural materials is also problematic owing to the nature of micro-evolutionary changes in plains populations (Gill 1974:104), and the homogenization of artifact inventories as a result of a common adaptation to the plains environment (Kehoe 1973:199).

Were the implications for archaeological research not so ominous, the sometimes strident politicization of the reburial issue in Montana would be pointless. The facts of the matter are that neither of the state universities has Native American osteological materials from Montana in their collections, and burials make up a extremely small percentage (.002 percent) of the state's archaeological record. Moreover, finding a burial during the course of fieldwork is even less probable. On average, one site is found for every three surveys conducted. Therefore, the probability that a site is, or contains, a burial is .0006.

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Kehoe, Thomas F.

1973 The Gull Lake Site. Publications in Anthropology and History No. 1. Milwaukee Public Museum, Milwaukee, Wisconsin.

Lowie, R.H.

1935 The Crow Indians. Holt, Rinehart and Winston, New York.

Malouf, Carling

1962 Stone Piles. Archeology in Montana 3(4):1-5.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 27 Mar 91 Bill No. HB 131 Time 11:45 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan		
Sen. Harp		✓
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault		✓

4 . 7

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: (C) Towe - Amend.

DATE

3-22-91

COMMITTEE ON

Judiciary

131 HB 618 HB 747

VISITORS' REGISTER HB.

HB 631

HB 915

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John Vollerksen	Self	HB 131	✓	
Jim Morsette	Chippewee Tribe	HB 915		✓
STAR JAMISON	RAPE CRISIS CENTERS	HB 451	✓	
M.E. "Mickey" Nelson	Lac Co. Council	HB 131	✓	
Jim Morsette	Chippewee Tribe	HB 131	✓	
Maude Shiff	Montana Hist. Land	HB 131	✓	
Barbara Sommer	Nat. Historical Society	HB 131	✓	
Normaine A. Martin	CONFEDERATED SALISH & KOOTENAI TRIBES	HB 131	✓	
Edna Vanson	Dept Highway	HB 131	✓	
Paul Johnson	Attorney General ^{State} Medical	HB 131	✓	
HARLEY WARNER	MONT. ASSOC. EXCH. OF CHURCHES	HB 747	X	
Charlene Burke	Kootenai Culture Comm	HB 131	X	
Pat L. Johnson	2154 Kootenai TR. Bd Council	HB 131	X	
Francis Auel	Kootenai Culture Comm	HB 131	X	
Louise C. Burke	Kootenai " "	HB 131	X	
Lutisia Swindeman	Kootenai Cultural Program	HB 131	X	
David Schwab	Montana SHPD	HB 131	X	
Don Antiste	Kootenai	HB 131	✓	
Sue Antiste	Kootenai	HB 131	✓	
Wine Sands	Nat Lobby	HB 631	✓	
Karen Atkinson	CSKT	HB 131	✓	
Kathleen Fleury	COORDINATION OF INDIAN AFFAIRS	HB 131	✓	
Kathleen Fleury	COORDINATION OF INDIAN AFFAIRS	HB 131	✓	
Thomas N. Lee	HD 49	HB 747	✓	
Thomas N. Lee	HD 49	HB 131 HB 631	✓	
Paul Johnson	HB 631 County Attorneys	HB 631	✓	

(Please leave prepared statement with Secretary)