

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By REP. MATT DENNY, CHAIRMAN, on February 7,
1995, at 2:00 PM.

ROLL CALL

Members Present:

Rep. Matt Denny (R)
Rep. Deb Kottel (D)
Rep. Daniel W. McGee (R)

Members Absent:

None

Staff Present: John MacMaster, Legislative Council
David Ohler, Department of Corrections and Human
Services (DCHS)
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Subcommittee for the purpose of combining HB 214
and HB 157.

{Tape: 1; Side: A}

Discussion: REP. DEB KOTTEL asked REP. MATT DENNY and REP.
DANIEL MC GEE if it was their understanding that the committee
liked the bills and just wanted them merged.

REP. MC GEE said that was his understanding and did not sense any
opposition to the two bills, that since they speak to the same
issues, they should develop a committee bill.

John MacMaster said they had to decide which bill they were going
to keep.

REP. DENNY recalled that Mr. MacMaster had said that since HB 157
didn't modify as many of the same portions of the registration
parts of the statutes that the changes in HB 157 be integrated
into HB 214 somehow.

Mr. MacMaster said that would be the easiest way because HB 214
is broader.

REP. KOTTEL asked if the committee would be trying to cover:

1. sex offenses and violent offenders,
2. life sentences for sex offenders only,
3. lifetime registration for both,
4. the immunity provision out of HB 157 and the no-release-of-confidential-criminal-justice information without judicial order language [except for the name],
5. preserve the method of notifying victims if someone is petitioning to come off the registration, that language to come out of HB 214,
6. and then merge the bills.

REP. DENNY said that except for the violent offenders, this amendment of HB 157 would take care of everything they talked about.

Mr. MacMaster said they wouldn't have to eliminate one of the bills. His thought was to put what they could of HB 157 in HB 214 and leave the rest of HB 157.

REP. KOTTEL repeated back to leave HB 214 just to say violent offenders, strike everything else out of HB 214 that didn't refer to violent offenders.

Mr. MacMaster said looking at the first section of HB 157, it had the lifetime sentence to DCHS until section 6. By leaving the first five sections of HB 157 alone, it would remain a bill. Then he took the members of the committee through sections 6 through 9 of HB 157 to make the necessary modifications and merges.

REP. KOTTEL asked if they took out deviant behavior.

Dave Ohler said that was one of the amendments they had talked about and was part of the amendments before the committee and was consistent with the council's interpretation.

REP. MC GEE asked, "Which council?"

Mr. Ohler replied, "The Governor's Council on Corrections and Criminal Justice Policy, they're the ones who proposed the concept of HB 157."

REP. MC GEE asked if then sexual deviancy would not be subject to either of the two bills.

Mr. MacMaster continued to take the committee through the sections and recommended the appropriate changes. He said that

both bills amend 46-23-506, MCA. The difference he saw from the Kottel bill was on page 6, line 30.

Mr. Ohler explained the council's feeling on the issue of the jurisdiction for petitions to be relieved of the duty to register and reviewed the wording of HB 157.

Mr. Ohler said there was another difference in "506" on page 7, line 3 of HB 157. The amendment should be that the county attorney should mail a copy of the petition.

REP. KOTTEL questioned the possibility that they both would not pass. If they were in one bill together, then it would be clean. She was concerned that one might pass and the other not pass. She preferred to see one bill.

REP. MC GEE concurred.

REP. DENNY was concerned that the victim's (violent offender's) language in Kottel's bill might be more of a reason to defeat the bill than the sex offender language. He thought they all agreed that they wanted the sex offender legislation to pass.

Mr. MacMaster said they could make both bills read the same with respect the sections they were talking about. Then let them both go through and if they both passed with each bill amended the same.

REP. KOTTEL said, "Except HB 214 would include violent offenders and HB 157 would not. Otherwise they would be absolutely identical?"

Mr. MacMaster said HB 157 had the higher penalty and the lifetime placement.

REP. DENNY said he was thinking along the same lines to get everything they could together and only have the differences of the violent offender and lifetime sentencing for sex offenders. The rest of the differences could be worked out.

REP. MC GEE said his only reservation was not having any recourse to the perpetrator to go back to the court with a petition to have the registration requirement removed. He could only see the possibility of an argument against the bills if it was for a life period without any recourse back to the judiciary. By leaving the paragraphs in, they would cover the potential for somebody to go back to court to get it removed if it were appropriate to do so. He asked if there was a feeling that anyone would have opposition to it.

REP. DENNY said he did not.

REP. KOTTEL spoke from a civil liberties standpoint that it seemed more discriminatory to only do lifetime registration for

sex offenders than from a public policy standpoint to do lifetime registration for all violent offenders. She felt it held up better constitutionally to be broader.

Mr. Ohler disagreed because it was an equal protection analysis and there was a rational basis for distinguishing sexual offenders because it is a lifetime disease while violence is not a lifetime disease. Many people may commit only one act of violence.

REP. KOTTEL felt that there were arguments to prove that there are repetitive addictive violent behaviors as well.

Mr. Ohler said there are those, but did not feel they could say that all of them are lifetime violent offenders.

REP. MC GEE said his perspective was that having the provision in the bill for petition for release from the lifetime registration would give the court discretion in sorting that out. He felt they needed to make sure there were adequate civil liberties for all persons involved including the perpetrator.

REP. KOTTEL wanted to know if these were combined into one bill and if they were having problems on the floor of the House, could they have amendments ready that would take the violent offender out.

Mr. MacMaster said they were not supposed to do that because if they combined the bills together and that one is tabled, there is rule that says they cannot introduce a bill to do the same thing as one that has gone down.

REP. MC GEE believed that if the bill was voted down in the House, they could call it back for reconsideration with the proposed amendment to eliminate the violent offender.

REP. DENNY asked if it was anticipated that the Governor might have a problem with it.

Mr. Ohler said he could not speak for the Governor but thought if the bill passed and the only addition was violent offenders, the Governor would sign it.

REP. KOTTEL asked **Mr. MacMaster** if it was possible to do everything they had talked about to HB 157 so that it was a complete bill and then let HB 214 be just the violent offender portion and pass them concurrently on the House floor.

Mr. Ohler thought the best way to handle it was to resolve all the differences except for the violent offenders, leave both bills out and pass one or both.

REP. MC GEE still saw no problem making them into one bill but would defer.

REP. DENNY just wanted to be sure that they clearly dovetailed if they were both to be presented in the House.

There was considerable continuing discussion about the two options. Between Mr. MacMaster and Mr. Ohler the conforming of the language of bills was discussed and agreed upon.

REP. DENNY brought up the issue of retroactivity.

REP. KOTTEL told why it was included in her bill.

Mr. Ohler was concerned that it was ex post facto because they were increasing the penalties for failing to register.

There was continuing conversation and interpretation about how to handle the retroactive portions of the bills.

REP. MC GEE suggested wording it in such a way that those who had not adhered to this law would still be subject to the tenets of the law, but not the penalty of the law.

REP. KOTTEL said that when they were convicted, this was not part of their sentence, so to retroactively put them under that obligation would increase their burden.

Mr. Ohler reminded them that the Montana Constitution says that once the sentence is served, they are restored to full rights.

REP. KOTTEL said they had to go from this point forward and not include a retroactive clause.

Mr. Ohler said that the 10-year registration for sex offenders had been on the books about seven to eight years. He did not know how it would apply in relation to this bill for those who committed their crime prior to its enactment but were released from prison after its enactment. He suspected it would be litigated for a determination.

Mr. Ohler said he would draft the amendments based on these discussions. He asked that the penalty clauses be determined.

The members discussed their various philosophies regarding the setting of penalty clauses and came to compromised language for the provision to strike the words, "90 days" and insert "not more than five years or may be fined not more than \$10,000 or both."

REP. MC GEE mentioned the top of page 6 in regard to amending it to reference computer imagery. There was further discussion about how to be sure this concept was included in the bill.

REP. DENNY questioned the changes on page 5 of HB 157. It was determined that those changes were just a matter of style.

REP. MC GEE felt lines 16 - 21 were redundant on that page.

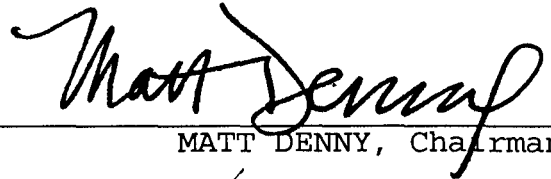
REP. DENNY said there could be no victim directly identifiable. The first part of the section talks about child pornography. They were satisfied to leave it in the bill as it was.

REP. MC GEE had a question on page 3 of HB 157 which allowed for indecent exposure offenders being sentenced for life as an option for a third or subsequent offense. The committee members discussed this section and settled its application to this bill.

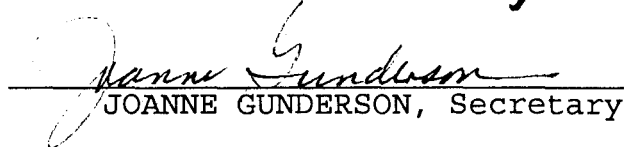
The committee members agreed that the amendments discussed were satisfactory and the meeting was adjourned.

ADJOURNMENT

Adjournment: The meeting was adjourned at 2:45 PM.



MATT DENNY, Chairman



JOANNE GUNDERSON, Secretary

MD/jg