

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN AL BISHOP**, on January 30,
1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing: SB 220, SB 229
Executive Action: SB 220, SB 229, SB 109
SB 66, SB 167

HEARING ON SB 229

Opening Statement by Sponsor:

SENATOR DON HARGROVE, Senate District 16, Belgrade, presented SB 229. The past procedure in Montana in illegal substance trafficking convictions was to then proceed with a civil case to seize assets which were involved in that trafficking. A district court ruled that that was double jeopardy. This bill is designed to change that situation.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, voiced his support of SB 229. This bill is the product of an effort by the County Attorneys Association resulting from a decision by the Ninth Circuit Court in U.S. vs. \$405,089.23 U. S. Currency in which that court stated you could not have a criminal prosecution for dangerous drug offenses and a subsequent civil forfeiture action in two separate actions because that constituted double jeopardy. In Montana, law enforcement officials are unable to do both forfeitures and criminal prosecutions for drug offenses. They have to make a choice. In 1979 the Legislature passed the forfeiture statutes. This is a very serious threat to the forfeiture efforts in Montana. Mr. Connor presented the written testimony of Karen Townsend, **EXHIBIT 1**.

Marty Lambert, Chief Deputy County Attorney for Gallatin County, stated he was one of the two people responsible for drafting SB 229. There is a drafting concern in the first paragraph. Lines 13 and 14 of the bill state "person possesses, owns, uses, or attempts to use property when the person knows that it is subject to criminal forfeiture under this section." The defendant simply has to say that he had no idea that they passed a law making this criminal forfeiture. He recommended the committee change the language as follows, line 13: "to criminal forfeiture if the person "knowingly" possesses, owns, uses, or attempts to use property" and to strike the words "~~when the person knows~~". The first sentence would be changed to read, "A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture". He prosecuted a gentlemen from the state of California who had moved to Bozeman. He was making methamphetamine in a motel. They were able to apprehend him with over nine ounces of methamphetamine in various stages of manufacture. He had \$8500 in a roll in his back pocket. Investigation revealed that he was driving a new truck and they learned that he bought the truck with a sackful of money. He was convicted of possession with intent to sell. The option that was available with the truck, money, and handgun was to file a civil forfeiture proceeding. The defendant stipulated to forfeiture of that property. Under the current Ninth Circuit decision, he would have had to elect whether to file criminal charges or forfeiture proceedings, but he could not do both. This bill is designed to remedy that situation. The protections built into the civil forfeiture bill are still contained in this bill. It provides that the owner's interest in real property is not subject to forfeiture unless it can be proven that it was with the express consent of that owner that the property was either used or purchased with proceeds derived from a criminal drug transaction. An innocent person who had some type of claim or ownership in real estate is protected under this bill.

Lisa Leckie, Lewis and Clark County Attorney's Office, stated she prosecutes drug offenses in this county. This bill is one of the major deterrents against drug activity in Montana. They are now

faced with the alternative of either criminal charges or forfeiture. They cannot do both. Drug dealers know they can serve six months in prison and then walk out and go back to their bank account. Their jail time is their cost of doing business. The drug dealers are now able to keep the money they make on drug deals. When someone is prosecuted for robbing a bank, he is not told to keep the bank's money. A burglar is not told to keep the goods he has stolen. It is unprofitable for them to continue in that criminal activity. Montana is a hub for drug activity. If Montana does not allow forfeitures in addition to the criminal prosecutions, the drug traffickers are going to move to Montana. The forfeiture bill will make sure the drug dealers will not want to stay here. If their money is taken away, it will be unprofitable for them to stay here.

Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers Association, stated that this is also a taxpayer's bill. The monies obtained from the forfeitures go into drug investigation funds. The funds are used for various task forces and buy money in drug investigations.

Jim Oberhofer, Montana Chiefs of Police Association, stated they support SB 229.

Mike Batista, Administrator of Law Enforcement Services, Dept. of Justice, announced their support of the bill. There is a real movement by drug dealers away from the larger metropolitan areas to more rural areas such as Montana. This bill will take away the financial gains from the drug market.

Troy McGee, Montana Police Protective Association, stated they support this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN questioned how the forfeiture would be charged in the complaint. **Mr. Lambert** stated this would become another count in the indictment.

SENATOR STEVE DOHERTY asked if this bill was modeled after the federal criminal forfeiture statute. **Mr. Lambert** stated that the language is taken from our civil forfeiture bill which is in Title 44. There are two main statutes that the federal authorities use to forfeit property. They simply wanted to deal with crimes related to the sale, possession, or conspiracy to sell dangerous drugs. **Senator Doherty** further questioned if they were attempting to avoid the precedents which have come down. **Mr. Lambert** stated that he was unaware of the case law he was referring to. The specific intent of this bill was to avoid the reach of U. S. v. \$405,089.23 U. S. Currency. Currently, when

someone who is in possession with intent to sell drugs also has a lot of property derived from drug dealing, they can either take the property or prosecute him criminally but not do both.

SENATOR LORENTS GROSFIELD questioned what happened to the money they would be able to recover. He assumed that the money would go into the special revenue account which is partially statutorily appropriated for training and so on. The statutory appropriation is \$125,000 of which they have never gone over \$80,000. **Mr. Lambert** stated the money is probably not going to change significantly. This allows them to do what they have been doing before the Ninth Circuit decision.

SENATOR RIC HOLDEN asked how forfeiture would affect the wife of a drug dealer who had no idea of what was going on. **Mr. Lambert** stated she would be subject to the innocent owner defenses. Before a final award could be entered forfeiting property to the State of Montana, she would have the right to defend herself and if the property was ordered to be forfeited there would have to be a sale and half the proceeds, or whatever the court would think was appropriate, would have to be paid to the spouse under those circumstances. This is contained in 205 and 206 which is referenced in the first paragraph of the bill.

SENATOR GROSFIELD further questioned if there would be more money for the fund. **Mr. Lambert** stated they have been seizing money on state forfeitures for a number of years. The money should remain fairly constant. **Ms. Leckie** stated that the drug dealers know right now that she cannot do anything more to them than jail time. Right now she cannot touch what they have gained from dealing drugs.

SENATOR SUE BARTLETT, in referring to the written testimony from Karen Townsend, questioned whether this action repeals the civil forfeiture law which was the subject of the Ninth Circuit case. **Ms. Leckie** stated they were merely providing a mechanism to continue forfeitures in Montana until the United States Supreme Court makes a decision on the Ninth Circuit case. **SENATOR BARTLETT** stated that if this bill passed, we would then have available to law enforcement and county prosecutors both the criminal statutes on possession, sale and forfeiture and also civil forfeiture statutes. **Ms. Leckie** stated that was correct. **SENATOR BARTLETT** asked for an instance in which they might prefer to pursue civil forfeiture and not pursue the criminal side. **Ms. Leckie** stated in the case of a person who was dealing drugs who was also terminally ill, it might not be in the best interest to jail that person. **Mr. Lambert** added that he has done so for a variety of reasons. He chose to protect an informant who was very valuable to the local law enforcement people. He had provided valuable information in drug cases as well as violent crime cases.

SENATOR BISHOP asked about the insertion of the word "knowingly". It seemed that if the word "knowingly" was left out, it would be

a lot easier to prove a case. **Mr. Lambert** stated that in order to convict someone of a crime, they have to show specific proof of a criminal mental intent. "Knowingly" and "purposely" are found throughout the criminal code. Purpose, knowledge, or negligence would have to be included in this bill to prescribe a crime. **SENATOR BISHOP** further questioned what procedure they would have to go through to forfeit the drugs. **Mr. Lambert** stated the drugs are contraband. This bill addresses property beyond that to include property that is derived from the drug dealing.

Closing by Sponsor:

SENATOR HARGROVE stated that drug trafficking is a tremendous drain on many facets of the economy of this country. His experience with the seizure program at the federal level tells him that this is the thing that is most feared by the traffickers because it takes away their tools.

HEARING ON SB 220

Opening Statement by Sponsor:

SENATOR BARTLETT, Senate District 27, Helena, presented SB 220, which establishes that our court systems have the option of keeping their records through a form of electronic storage rather than in docket books. This is not mandatory. It does not replace the ability to retain documents in paper form, but provides another option to our court system to enable them to keep up with the technology which is in common use around the country. Sections 1 and 2 are the new sections.

Proponents' Testimony:

Patrick Chenovich, Administrator of the Montana Supreme Court, stated this bill is a very important part of the court's effort to automate all courts in Montana. It will allow people to file electronically. It is not mandatory. This would allow a case filed in a court of limited jurisdiction to be transferred electronically on appeal. There are provisions in the bill to have the Supreme Court adopt uniform storage rules so that a file is stored the same way at every court location. The court records are stored in ledger books which are susceptible to time and age constraints. **Mr. Chenovich** read a statement on behalf of **Bob Gilbert, Montana Magistrates Association of the Montana Clerks of District Court.** They support this bill and the intent of the bill which allows the courts of Montana to better serve the public by modern technology.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR DOHERTY questioned if there would be any changes in fax filing. He also questioned the status wherein a clerk of court chose not to accept electronic filing. SENATOR BARTLETT answered that the intent of the bill was to make this an option and not to require mandatory electronic filing. It may be more effective for small counties to continue to use docket books. Mr. Chenovick stated the provisions of this bill covers fax filing. Each district court clerk is an elected official and has control over their records.

SENATOR LINDA NELSON asked if all the counties have equipment for electronic filing. Mr. Chenovick stated that all the counties do not currently have equipment to accept electronic filing or electronic storage. SENATOR NELSON questioned electronic filing becoming mandatory. Mr. Chenovick stated the court has been hesitant about ordering electronic means of record keeping and filing because of the costs. They have been trying to automate the courts since 1988 and the Supreme Court has not mandated any court to do electronic storage or filing.

Closing by Sponsor: SENATOR BARTLETT offered no further remarks in closing.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON 220

Motion/Vote: SENATOR HALLIGAN moved SB 220 DO PASS. The MOTION CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON 229

Motion: SENATOR DOHERTY moved to AMEND SB 229.

Discussion: Valencia Lane stated the amendment was proposed by Mr. Lambert. On page 1, line 13, following the first person, insert "knowingly". On page 1, lines 13 and 14, following property on line 13, strike the remainder of line 13 through "knows" on line 14. SENATOR DOHERTY stated that it moves the language more in line with the traditional criminal law.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: SENATOR DOHERTY moved SB 229 DO PASS AS AMENDED.

The MOTION CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON 109

Motion: SENATOR GROSFIELD moved SB 109 DO PASS.

Discussion: SENATOR GROSFIELD stated this is the constitutional amendment to give the legislature the authority to set and establish the legal age for gambling.

SENATOR SHARON ESTRADA stated she didn't have a problem raising the age. She questioned why the age 21 is not on the bill. SENATOR GROSFIELD stated that 21 is not on the constitutional amendment for drinking either. This gives the legislature the authority to set the age. He has not heard anyone talking about any age other than 21. SENATOR ESTRADA stated she has no problem raising the age from 18 to 21, if that is what it was going to be. SENATOR CRIPPEN stated that as long as the drinking age is 21, he couldn't see the legislature using another age. Raising the age for gambling to a higher age would only compound the problem when the drinking age is 21.

SENATOR LINDA NELSON stated that she did not like the bill. Eighteen is the age of responsibility. We are dictating to these people that they can't make choices for themselves. If we want to get at gambling for moral reasons, we should do that.

SENATOR DOHERTY stated that there are compelling arguments against gambling by people of any age. He didn't hear any compelling argument about why we should be able to restrict the rights of people between 18 and 21. By passing this, we endorse the idea that we ought to be able to restrict their rights. Once we get into the business of restricting the rights of a certain class of citizens, there needs to be a compelling argument for doing that.

SENATOR BISHOP stated the compelling part of the hearing was that they were concerning themselves with the rights of individuals who didn't seem to have any problem with it themselves. These individuals did not testify against the bill.

SENATOR ESTRADA commented that she sat in the Health Committee the other day and the bill before them affected doctors. The doctors did not know that bill was going to be heard that day. They didn't have time to get up here to testify for or against that bill.

SENATOR GROSFIELD stated that no one could guarantee that the legislature would pass a bill setting the age of 21. Every single bill in the legislature deals with restricting someone's rights. This usually involves tradeoffs. Seventy to eighty percent of 18 year olds are still in high school, that may be

where a lot of them were during the hearing on this bill.

Vote: The MOTION CARRIED on roll call vote with SENATORS DOHERTY, HALLIGAN, and NELSON voting "NO".

EXECUTIVE ACTION ON SB 66

Discussion: Valencia Lane stated the main amendment is amendment 13 which makes some crimes three strikes instead of two strikes. Subsection 1 (a) has the two strike crimes which are deliberate homicide, aggravated kidnapping or sexual intercourse without consent. The new (b), which is inserted, lists the three strike crimes. She suggested the committee pay attention to the first few lines of new (b). The two strike crimes are two strikes only for those crimes. The three strike crimes are three strikes for any combination of the two or three strike crimes. If you take one two-strike crime and one three-strike crime, you have returned to the way the bill was drafted.

SENATOR DOHERTY stated he supports the bill, however, perhaps there needs to be a warning, "passage of this bill may increase your taxes."

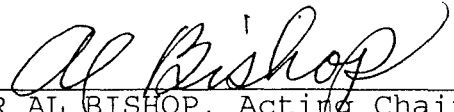
SENATOR GROSFIELD commented that the amendments as drafted do exactly what the committee intended.

EXECUTIVE ACTION ON SB 167

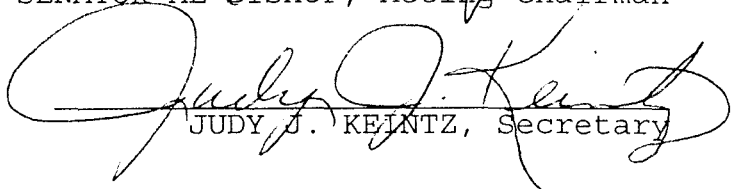
Discussion: Valencia Lane explained that Beth Baker asked for an amendment. Starting on page 2, line 29, she inserted a new subsection (h) that reads, "Nothing in this act may be construed to create a private cause of action." She was concerned that the state could be sued by private individuals if they didn't take actions to avoid federal mandates.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:40 a.m.



SENATOR AL BISHOP, Acting Chairman



JUDY J. KEINTZ, Secretary

BC/jjk

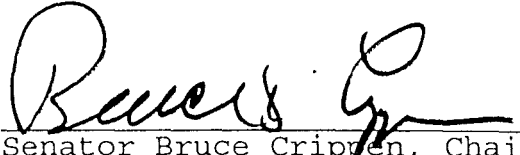
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
January 30, 1995


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 109 (first reading copy -- white), respectfully report that SB 109 do pass.

Signed:


Senator Bruce Crippen, Chair

 Amd. Coord.

 Sec. of Senate

251332SC.SRF


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 30, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 220 (first reading copy -- white), respectfully report that SB 220 do pass.

Signed: 
Senator Bruce Crippen, Chair

 Amd. Coord.

Sec. of Senate

251308SC.SSB 220

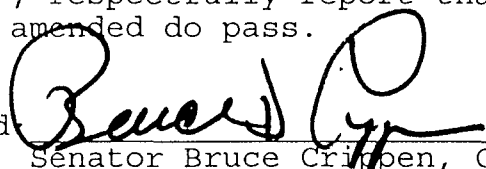
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 30, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 229 (first reading copy -- white), respectfully report that SB 229 be amended as follows and as so amended do pass.

Signed


Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 13.

Following: first "person"

Insert: "knowingly"

2. Page 1, lines 13 and 14.

Following: "property" on line 13

Strike: remainder of line 13 through "knows" on line 14

3. Page 1, line 14.

Following: "that"

Strike: "it"

-END-



Amd. Coord.
Sec. of Senate

251329SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/30/95 BILL NO. SB 109 NUMBER _____
MOTION: Senator Grosfield
SB 109 DO PASS

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON		✓

SB 229

**TESTIMONY IN SUPPORT OF SB 229
PRESENTED BY KAREN S. TOWNSEND
DEPUTY COUNTY ATTORNEY FOR MISSOULA COUNTY**

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1/30/95
BILL NO. SB 229

My name is Karen S. Townsend and I am a deputy county attorney for Missoula County. I have worked as a deputy county attorney for Missoula County, an Assistant Attorney General assigned to the County Prosecutor Services Bureau, and a Director of Training for the National College of District Attorneys since my graduation from the University of Montana Law School in June, 1976. Since July 1, 1990, when I returned to the Missoula County Attorney's Office from Texas, I have prosecuted almost all of the drug cases in Missoula County and have also been responsible for handling all of the drug forfeiture actions which were filed in connection with those criminal prosecutions.

I have been convinced, both in my work in Missoula and in my contacts with the National College of District Attorneys, that drug forfeiture is a powerful tool which can be used in combatting the distribution of illegal drugs. Since 1990, our office has made use of the forfeiture statutes to secure for the Missoula City Police Department or the Missoula County Sheriff's Department or the Montana Narcotics Investigation Bureau assets from drug offenders. We have secured cash, personal property including vehicles, guns, and other forms of personal property. These agencies, in return have made use of their forfeiture fund to help our office acquire equipment that all of us can use in trial presentation, have made their funds available to fund training for some of the lawyers, and have contributed to the budget in our office to support prosecution for drug offenses.

Last fall, the 9th Circuit Court of Appeals reached a decision in a civil

forfeiture case in which they held that in federal court, US Attorney's offices could not proceed separately on a criminal prosecution and a separate civil forfeiture action seeking to forfeit property associated with the criminal conduct because to do so would be a violation of double jeopardy. They further held that in order to pursue forfeiture, the US Attorneys would have to proceed by means of criminal forfeiture, which is permitted under their laws, thus having one action which accused a person of a crime and also sought forfeiture of any relevant property. Although that decision is being challenged by the federal government, and there may be a reversal by the entire 9th Circuit, or by the United States Supreme Court, at this point, the law in the 9th circuit suggests that we may no longer be able to proceed in Montana in separate actions for criminal prosecution and civil forfeiture. In fact, I am currently briefing the question in the Fourth Judicial District where a defendant was convicted in federal court of drug offenses based on a county investigation, and where we filed civil forfeiture against guns, property and cash. The defendant is claiming that our forfeiture action is barred by the double jeopardy clause based on the 9th Circuit decision.

If the 9th Circuit decision is accepted by our Supreme Court, unless SB 229 is passed, prosecutors in Montana will be forced to make an election between proceeding on a criminal conviction or on forfeiture of assets. This bill will not require the prosecutor to proceed this way, since there may be cases in which the prosecutor simply does wish to elect one way or the other. Then, the current forfeiture proceedings can be followed. This bill will allow us to do both in one proceeding, which, under current law, we cannot do. I truly believe that the ability

EXHIBIT 1
DATE 1-30-95
SB 229

to combine criminal convictions with forfeiture of the profits from distribution of drugs acts as a deterrent in the fight against illegal drugs. Without this bill, one of our weapons could be taken away.

This bill does not take away any rights from persons, but in fact provides additional protections for persons whose property is sought. The burden of proof becomes beyond a reasonable doubt instead of preponderance of the evidence, and the Defendant is entitled to a jury trial on the issue of forfeiture, something not permitted under current Montana forfeiture laws.

I would ask the committee for support of this bill, because, by inaction, we are in danger of losing the ability to forfeit property which either facilitates the distribution of illegal drugs, or is acquired by means of distribution of illegal drugs.

Karen S. Townsend

DATE 1-30-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 220
SB 229

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Check One

Name	Representing	Bill No.	Support	Oppose
John Connor	MT County Attys Assn	SB229	✓	
Patrick Chenovich	MT Supreme Court	SB220	✓	
Chuck O'Reilly	MT Sheriffs & Peace Officers	SB229	✓	
Marty Lambert	Gallatin County Atty	SB229	✓	
Lisa Leckie	Lewis & Clark County Attorney	SB229	✓	
Troy McGee	Mont Police Protective Assoc Mont Police Protective Assoc	SB229	✓	
Charles R. Brooks	Yellowstone County	SB 220	✓	
Kathy McGowan	MSPOA	229	✓	
Jim Oberhofen	MCOPA	229	✓	
JOE ROBERTS	Ut. Cty. Attys Assoc	229	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY