

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 30, 1997, at 10:00 a.m., in Room 108.

ROLL CALL

Members Present:

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

Members Excused: SEN. LORENTS GROSFIELD
SEN. SHARON ESTRADA

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 205, 01/22/97
SB 196, 01/22/97
SB 212, 01/23/97

Executive Action: SB 173, SB 172, HB 43, SB 196,
SB 205, SB 178, SB 168,
SB 201, SB 202

HEARING ON SB 205

Sponsor: SEN. WALTER MCNUTT, SD 50, Sidney

Proponents: Riley Johnson, Montana Broadcasters Association

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 10:00; Comments: .}

SEN. WALTER MCNUTT, SD 50, Sidney, stated SB 205 is a code commissioner bill brought about by a Supreme Court decision. The code needs to be changed to deal with the section on criminal law pertaining to criminal defamation and clarifying that truth is a complete and absolute defense.

Proponents' Testimony:

Riley Johnson, Montana Broadcasters Association, rose in support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 10:12; Comments: .}

SEN. SUE BARTLETT asked Greg Petesch, Code Commissioner, to explain the bill.

Mr. Petesch explained that Helfrich was a different case because there were allegations of both defamation and stalking. Mr. Helfrich was posting public signs in Bozeman which allegedly disparaged an individual. When he was charged with both defamation and stalking, he asserted that the material contained in the documents he was posting was true. The person who he was disparaging said even if they were true, his purpose was to harm him by posting the statements. He pled guilty for purposes of challenging the legality of the stricken material in this bill. The Supreme Court agreed with Mr. Helfrich in that truth has to be an absolute defense, but the material cannot be defamatory. The purpose for speaking the truth is irrelevant in an defamation action. They overturned his conviction based on a guilty plea in the defamation action and remanded the case for further proceedings on the stalking issue.

Closing by Sponsor: SEN. MCNUTT closed on SB 205.

HEARING ON SB 196

Sponsor: SEN. BRUCE CRIPPEN, SD 10, Billings

Proponents: Beth Baker, Department of Justice

Opponents: None

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, Billings, introduced SB 196, another code commissioner bill. This is an act authorizing the defense

of necessity when an individual acts to prevent death or serious or bodily harm to another.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:16; Comments: .}

Beth Baker, Department of Justice, stated the Department of Justice had concerns about this bill because they do not believe it is a bill that created a constitutional problem. In State v. Close the court pointed out that the defense of necessity had been combined with other common law defenses into the defense of compulsion. Close was a prison riot case in which the defendant claimed it was necessary for him to go to the cell block and take part in the riot because he was trying to protect one of the other inmates. If someone breaks into your house and attempts to kill your spouse, that would be covered under use of force in defense of a person, 45-3-102. It specifically provides the person is justified to use force to prevent imminent death or serious bodily harm to himself or another. The Supreme Court noted, in State v. Autwell, that Montana has abandoned the distinction between all of these various common law defenses. In Close, the court said they recognized that our statute represents a statutory amalgamation bringing together all the related defenses. They believe this bill is unnecessary and may cause confusion because of the existing statute of self defense. She asked that the bill be tabled.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 10:19; Comments: .}

SEN. REINY JABS commented that if this issue was already covered, why was this bill necessary?

Mr. Petesch explained this bill was suggested legislation. The purpose of suggested legislation is a function of the code commissioner position. The court has identified either a problem with the statute or some area of concern. The court felt the legislature should take a look at this. The court said Montana has amalgamated common law defenses. This is an opportunity for the legislature to look at this statute. Failure to pass this bill does not leave a constitutional defect on the statute which would be confusing to people.

SEN. MIKE HALLIGAN asked if there is any conflict between compulsion or any other defense?

Ms. Baker commented that there was not. In the defense of necessity, the difference under common law between duress and necessity was that necessity applied when the threat was from physical forces. If the captain of a ship violates an embargo

law because he pulled the ship into the harbor to protect his people from a threatening storm, he could use the defense of necessity.

SEN. JABS asked if this bill would help?

Ms. Baker said it could create some confusion about which defense applied. If you used force to protect someone from harm, it really is self defense. The statutes as written work fine.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 10:24; Comments: .}

SEN. CRIPPEN closed on SB 196.

EXECUTIVE ACTION ON SB 196

Motion/Vote: SEN. HALLIGAN MOVED SB 196 BE TABLED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 205

Motion/Vote: SEN. MCNUTT MOTION SB 205 DO PASS. MOTION CARRIED UNANIMOUSLY.

HEARING ON SB 212

Sponsor: SEN. WALTER MCNUTT, SD 50, Sidney

Proponents: Greg VanHorssen, State Farm Insurance
John Alke, Montana Defense Trial Lawyers
Chris Galls, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent Business

Opponents: Russell Hill, MTLA
Zander Blewett, Attorney

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD 50, Sidney, introduced SB 212. The intent of this bill is to require a unanimous verdict by a jury when determining punitive damages.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:27; Comments: .}

Greg VanHorssen, State Farm Insurance, rose in support of SB 212. The concept of punishment is one that has existed for ages in our criminal codes. There are several methods employed by society to exact punishment. One is incarceration. A second is penalties paid by the offending person against the state or society. That

penalty can be over and above compensation the victim receives, for the purposes of teaching the offender a lesson. Punitive damages in the civil forum is also a punishment tool. The concept of punitive damages is where a court or jury decides that the conduct which has taken place rises to the level to require additional payment by the guilty offender. There appears to be a discrepancy between the level of proof in the criminal sphere for exacting financial punishment versus the civil sphere in exacting punitive damages. In a criminal case, the decision by the jury must be unanimous. Senate Bill 212 requires the same proof if punishment is to be exacted in the civil sphere. This does not affect the issue of liability for compensatory damages.

John Alke, Montana Defense Trial Lawyers, rose in support of SB 212. He stated that punitive damages were unusual. Before the jury gets to the consideration of punitive damages, the jury has already made the plaintiff whole. To sustain an award of punitive damages there first must be an actual damages award and actual damages of a plaintiff have already been determined. There is then a second hearing on punitive damages. Because the plaintiff has already been fully compensated, the nature of the punitive damages is reflected at how mad the jury is at the defendant. This consideration has almost no objective boundaries and is causing a great deal of difficulty in the law. There have been a number of cases in the United States Supreme Court on trying to define a due process limit around punitive damages. An example is the case where an individual thought his paint job was bad on his new BMW. He received a \$4000 verdict and a multi-million dollar punitive damage award against BMW. This bill wants to make sure that the showing is so compelling that everyone agrees. In federal court, civil verdicts must be unanimous. This bill would make it the same in state court.

Chris Galls, Montana Chamber of Commerce, rose in support of SB 212.

Riley Johnson, National Federation of Independent Business, rose in support of the bill.

Opponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:37; Comments: .}

Russell Hill, MTLA, stated that this bill made it harder to punish a corporation than to punish an ax murderer. The comparison to criminal punishment is appealing on the surface. In a criminal case, the state government is the overwhelming powerful entity coming against an individual. The deprivation of liberty for an individual is the most fundamental right. In a punitive damage case, an individual plaintiff goes against the resources of huge defendants. You can't incarcerate a corporation. In a criminal case, if the verdict is not unanimous, a mistrial is declared and the state has the right to bring charges again to retry the case. The state has seen the

entire defendant's case and is now in a better position. In SB 212, if there is a hung jury, it's over. The defendant gets off. Punitive damages have been used by the legislature to punish very serious conduct and deterring that conduct. (EXHIBIT 1 - page 2) In 1995 there were bills on punitive damages which would have preserved the public policy of the damages. A huge portion of those damages would have been given to health care, education, or lowering taxes. They supported those bills. The corporate interests killed the bills. There is biblical support of punitive damages. In Exodus 22:9, you had to pay double when you were found guilty. The legislature is getting onto thin ice in trying to deal with these uniquely judicial procedural matters.

Zander Blewett explained that comparing this to federal court is wrong. In federal court, a unanimous jury verdict is required for every issue. If the plaintiff alleges he was damaged by the negligence or wrongful conduct of an individual who acted with malice, there has to be a unanimous verdict on every point. If the verdict is 5 to 1, the plaintiff does not lose. If the verdict is 1 to 5, the plaintiff does not lose. There is a retrial. This bill states a jury verdict determining that a defendant is liable for punitive damages must be unanimous. Plaintiff must be unanimous but if the defense is not unanimous the plaintiff still loses. The legislature has redefined malice and made it very difficult. They redefined fraud and made it extremely difficult. They changed the standard to clear and convincing evidence as compared to a preponderance of the evidence. In a bifurcated trial, this bill could have a 8 to 4 requirement for compensatory, liability, or proximate cause claims and in the same proceeding an unanimous vote on the rest. In a civil action you can collect money damages for fraud and punitive damages for fraud. It is extraordinarily difficult to get punitive damages from a jury.

{Tape: 1; Side: b; Approx. Time Count: 10:52; Comments: .}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 10:45; Comments: .}

SEN. HALLIGAN asked how many punitive damage awards there have been in the last few years?

Mr. Blewett stated the one he remembers is where three elderly people were defrauded by Equitable on their life insurance policies. Six million dollars was awarded for punitive damages. They proved malice and fraud.

Mr. Alke remembered another punitive damage award in a case involving an accident near Townsend wherein an employee of a beer distributor was drunk and caused an accident. The employee hit a highway patrol vehicle. The individual in the car sued. After being fully compensated, the jury awarded over a million dollars in punitive damages against the beer distributor. In that case

the punitive damage award exceeded the net worth of the company. There are not a lot of punitive damage cases. If the case is egregious, the plaintiff will get all twelve jurors.

Mr. Zander stated that in the Havre case, the vote was 9 to 3. Under this proposed rule, there would have been no punitive damages.

SEN. HALLIGAN felt that whether the jury was mad or not, they still needed to show malice and fraud which are the legal requirements involved.

Mr. Alke explained that in a fraud case, malice must be proven before there is an actual damages award. Before they get to punitive damages, the plaintiff has been fully compensated with actual damages. In the case of the drunk driving case, there is no fraud. There was an accident and the allegation was that the primary party's actions were so egregious that punitive damages were awarded.

SEN. STEVE DOHERTY commented that the BMW case was a Tennessee case and that there were apparently no boundaries in Tennessee. In Montana, we have heard of two instances of punitive damage cases. Given the difference between an 8/4 or 9/3 verdict and an unanimous verdict, how many punitive damage awards would this bill have affected in Montana in the last five years?

Mr. Alke did not know. Punitive damage awards are not frequent but this does not mean we should not try to strive for a reasonable balance.

SEN. DOHERTY felt that the levels of proof were inaccurate. We already require different levels of proof as far as punitive damages.

Mr. Alke felt the evidentiary standards on proof were the same. The jury instructions are different. There are no criminal evidentiary standards on punitive damages so there would still be all the standard instructions on the burden of proof in a civil trial.

SEN. DOHERTY asked how voir dire would be handled? Would there be legitimate grounds for a judge to excuse a juror for cause if that individual indicates that under no circumstances will they be willing to grant punitive damages?

Mr. Alke explained that he did not feel that this bill addressed what the standard for excusal for cause would be. Whatever the grounds are now will exist if this bill is passed. Anytime there is a potential juror who indicates in voir dire that they will not follow instructions given on the law, there would be grounds to have that juror stricken for cause.

SEN. DOHERTY asked what the judges would instruct as far as punitive damages? Will the jurors be told that the verdict must be unanimous?

Mr. Alke commented that it would be an instruction. They would be told if the vote is not 12/0 there would be no award of punitive damages. The jury will be fully knowledgeable. **Mr. Blewett** interpreted this bill as only being unanimous in favor of the plaintiff and it did not have to be unanimous in favor of the defendant. That was not the intent of the bill. In federal court it works both ways. The way to cure that is on page 1, line 30, the words "that a defendant is liable" could be stricken and the words "on a claim" inserted.

SEN. BARTLETT asked what the jury size would be in these cases?

Mr. Alke stated that in state district court there would be twelve but the parties could always agree to something smaller. In federal court it is six.

SEN. BARTLETT asked what the current standard for a guilty verdict or an award of punitive damages is in terms of how many jurors of the twelve are needed to vote in favor of the verdict.

Mr. Alke stated it was a 3/4 verdict in state court. A unanimous verdict in federal court both on actual and punitive damages.

SEN. BARTLETT, referring to the beer distributor case, felt that there were indications that the employer not only tolerated but also encouraged the employees to enjoy the product of the distributor.

Mr. Alke recollected that the plaintiffs put on evidence which suggested that to be true. The defendants put on evidence that that was not true. On actual damages, the distributor is fully liable for the damages caused by the driver under basic master/service. It is important that jurors understand that when they are looking at punitive damages they are looking at an extraordinary special creature. The higher requirement makes a great deal of sense.

SEN. BARTLETT stated that if an employer allowed their employees to drink on the job, why would it make a difference if it took twelve jurors rather than eight jurors to award punitive damages?

Mr. Alke explained that before they get to punitive damages, the plaintiff has been fully compensated. If four jurors wanted \$50 million in punitives, four jurors wanted \$1 million and four wanted it to be \$100,000, a unanimity requirement would cause those jurors to get to the point where they meet the verdict standard. They negotiate among themselves, and come to a reasonable result. He felt that this bill would be a limitation intentionally designed to control punitive damages. When you get to punitive damages, there are no standards. It is the feelings

of the jury which drive the end result. The feeling should be so strong that everyone agrees to punitives or not. If this bill is amended so this is symmetrical, it would work both ways.

SEN. BARTLETT stated that if one juror believed that the defendant had engaged in egregious conduct which caused considerable harm and did so knowingly and intentionally and that the plaintiff should be awarded \$15 million of punitive awards and the other eleven on the jury agreed to a damage award but would not go for \$15 million, the defendant would not suffer any form of punitive damages because that one juror hung the jury.

Mr. Alke felt that the plaintiff would be fully compensated on actual damages. Punitive damages are bonus coverage time. He did not feel hung juries were permitted in a civil trial.

Mr. Zander stated there would be hung juries every time they could not reach unanimity and it would have to be done over. In federal court, where it is unanimous, a 5/1 vote would mean the entire trial would have to be redone.

SEN. REINY JABS questioned **Mr. Hill's** reference to the bible wherein he talked about paying double for damages. He felt punitive damages were way more than double.

Mr. Hill commented that his reference to the bible was that you paid double regardless of punitive damages. He added that if the amendment which **Mr. Alke** mentioned was adopted, which would cause this to work both ways, they would feel comfortable with that amendment.

SEN. RIC HOLDEN asked what was wrong with giving plaintiffs punitive damages? He thought that punitive damages were awarded to the plaintiff from the personal assets of the defendant and that most insurance policies did not pay punitive damages.

Mr. VanHorssen stated that most insurance companies did not cover punitive damages unless they were bought as a separate and distinct coverage. State Farm asked him to support this bill for the philosophy of this bill. If we are talking about punishment, we should use the same standard. They should use the same jury requirements to exact punishment in the civil court as are used in the criminal court.

SEN. HOLDEN was concerned with the possibility of a widow paying punitive damages out of her personal assets.

Mr. Vanhorssen stated that could be the case.

SEN. HOLDEN stated that **Mr. Hill** targeted the corporations but he felt individuals could be assessed punitive damages.

Mr. Hill agreed.

SEN. AL BISHOP asked if the worth of the defendant was a part of the proof in the punitive damage phase.

Mr. Zander answered it was the pivotal part. The net worth of the company is pivotal on the amount of punitive damages.

SEN. BISHOP asked who set the standard as to how much of the worth of the defendant the jury be allowed to award?

Mr. Zander stated that the 1986 Legislature built in two safeguards. The district judge must review the 11 or 12 factors and make specific findings that each of those factors were met. The Supreme Court looks at it on review thereafter.

SEN. DOHERTY questioned the scenario where the jury awarded a billion dollars and the assets of the corporation were \$100,000. Wouldn't a district judge reduce that amount?

Mr. Alke felt that in the beer distributor case the district judge did reduce the damages and the Supreme Court reversed him.

CHAIRMAN CRIPPEN commented that if a juror felt that a plaintiff was not being properly compensated for actual damages, he could shift over to punitive damages.

Mr. Zander felt they could put that into compensatory damage.

CHAIRMAN CRIPPEN countered that in compensatory damages there were specific points which needed to be adhered to, but if a juror wanted the plaintiff to have more he could do so by a punitive damage award.

Mr. Hill stated that in the 1995 Legislative Session, the medical malpractice bill specifically stated they would not inform the jury of the cap because of the assumption that if they knew one area was capped, they will transfer damages.

Closing by Sponsor:

SEN. MCNUTT commented that there are a lot of corporations in this state which are small businesses. When punitives are justified they should be awarded. Referring to **SEN. BARTLETT'S** concern about one juror hanging the jury, he felt that if that juror was convinced that the defendant should be punished that juror could get that accomplished by coming into line with the rest of the jury. **EXHIBIT 2** - letter from Prof. Gregory S. Munro.

EXECUTIVE ACTION ON SB 173

Motion: **SEN. MCNUTT MOVED SB 173 DO PASS.**

Discussion: **SEN. DOHERTY** questioned if The Child Support Division had said anything regarding the bill?

SEN. MCNUTT stated they did not because if the person traded off a vehicle, they could put a lien on the next one. If brothers traded vehicles, they could put a lien on that vehicle.

{Tape: 2; Side: 1; Approx. Time Count: 11:28; Comments: .}

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON SB 172

SEN. HALLIGAN stated the interim committee on juvenile justice made major changes five years ago and one of the keys to that was the regional detention centers. Missoula should have built a detention center and now they have to transport youth to Kalispell. The Board of Crime Control will not be able to provide incentive to counties to transport youth. Instead, they are giving them an incentive to build.

Motion: SEN. HOLDEN MOVED SB 172 BE TABLED.

Discussion:

CHAIRMAN CRIPPEN was concerned about the first come first serve basis.

SEN. HALLIGAN felt that the Select Committee on Corrections would be looking at these issues and could address this issue.

Vote: The motion carried. SEN. HALLIGAN voted no.

EXECUTIVE ACTION ON HB 43

Motion: SEN. DOHERTY MOVED HB 43 BE CONCURRED IN.

Discussion:

SEN. DOHERTY explained this bill would redefine escape to change it to the status, as opposed to the laundry list. He thinks this is a good idea.

CHAIRMAN CRIPPEN stated there always had to be proof of an attempt to escape. The inmate had to elude and stay eluded. If a person went into Deer Lodge and became drunk, passed out and then came back three days later, that was not escape. There was no intent to permanently leave confinement. In this bill, that would be escape.

SEN. MCNUTT asked when escape happened in the situation of a prisoner who was out in front of the prison left for Deer Lodge?

CHAIRMAN CRIPPEN said that would be determined by the purpose of leaving.

SEN. DOHERTY stated that if his status included as a part of his being outside he was allowed to go into Deer Lodge for certain reasons, that would not be escape. Under this bill, if they said he could go into Deer Lodge to put gas into the truck to go to work and in addition to buying gas he stopped at the bar for a day, that would be an escape. He went outside his status. That was the situation when the individual was given a ten day furlough to find a job. He did not return at the end of ten days and that made him an escapee at that point.

CHAIRMAN CRIPPEN commented if the person went into town, picked up a six pack of beer and a hamburger, and parked somewhere and fell asleep with no intent to escape, he would be nailed under this bill.

SEN. DOHERTY said they would have to rely on the Powell County Attorney.

Vote: The vote carried with **SEN. BISHOP** and **CHAIRMAN CRIPPEN** voting no.

EXECUTIVE ACTION ON SB 178

Motion: **SEN. DOHERTY** MOVED SB 178 DO PASS.

Discussion:

SEN. DOHERTY explained this bill revised the offense of criminal syndicalism to criminal incitement. This brings the elements more in line with the constitutional prohibitions which are there. Prosecutors were able to convict on criminal syndicalism but under appeal they would have been in trouble. This would make existing law more in line with constitutional directives.

SEN. BISHOP felt this bill would call this type of conduct what it really is.

SEN. DOHERTY commented that the key factor was imminence. The factual element will change in every situation.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 168

Motion: **SEN. DOHERTY** MOVED SB 168 DO PASS.

Discussion: **SEN. DOHERTY** commented that this bill did have opposition during the hearing. He and **Ms. Lane** discussed the comma placement questioned during the hearing. There has to be an unlawful, violent act. The current editing is that the comma is in the right place. Their intention is not to separate it and make it two different things. The grey area of protected speech is a difficult matter. He usually believes in protecting speech,

even if it is offensive. He doesn't believe it is necessary to mention a specific unlawful act. In the new federal anti-terrorism statutes, they list the specific unlawful acts. What is not included, is excluded. He is attempting to draw the line where there is an unlawful, violent act against a person or damage to property for the purpose of influencing the policy or conduct of the state. He wished that we lived in a different time wherein this tool was not needed.

SEN. JABS asked if it was possible to lawfully damage something?

SEN. DOHERTY answered he could drive his vehicle into his garage. If he drove his pickup into another person's garage without permission, that would be an unlawful act.

SEN. HOLDEN felt this bill needed to be refined. The definition of unlawful, violent act was wide open.

CHAIRMAN CRIPPEN stated that he believed the unlawful, violent act applied both to persons and damaged property. An unlawful, violent act applies only to persons, but this bill does not read that way. He felt it should be amended to so read. The unlawful damage to property is too loose. People throwing blood against a courthouse should not be convicted of domestic terrorism. That is not a violent act. Storming a building and ripping a door off would be a violent act against property. He liked the bill as long as it could be amended.

SEN. DOHERTY questioned if they could have misdemeanor damage to property and felony damage to property?

SEN. HALLIGAN stated that criminal mischief would cover that issue.

SEN. DOHERTY questioned that if there was a damage to property which rose to the level of the felony, would that alleviate the concern? He stated that a felony damage to property for the purpose of influencing public policy is what he had in mind for this bill.

Ms. Lane explained that until a person had been convicted and sentenced for the crime, there would not be a determination of whether the act was a misdemeanor or a felony. She objected to the use of the word felony and felt it could be worded another way.

SEN. DOHERTY stated that he signed the fiscal note. However, this is the first time he has seen a bill which defines a crime have a fiscal note attached.

EXECUTIVE ACTION ON SB 201

Discussion: SEN. HOLDEN stated they had established a guideline that the death penalty can be given if the person caused the death of someone else.

Motion/Vote: SEN. HALLIGAN MOVED SB 201 BE TABLED.

Discussion: CHAIRMAN CRIPPEN clarified this bill would require the death sentence for sexual intercourse without consent.

SEN. HALLIGAN commented that they wanted to make sure criminals were treated with the highest sentence they could be given, but it costs about \$3 million to prosecute appeals all the way to the United States Supreme Court and about a half a million to keep them in jail for 40 years.

Vote: Motion carried with SEN. JABS voting no.

EXECUTIVE ACTION ON SB 202

Motion: SEN. HALLIGAN MOVED SB 202 BE TABLED.

Discussion: SEN. BISHOP questioned whether the death penalty would be given in a kidnapping case where the victim was killed?

SEN. HALLIGAN stated it was on the list of serious offenses in which 20 to 40 years could be added.

CHAIRMAN CRIPPEN stated if they crossed state lines, it would become a federal offense and that would include the death penalty.

SEN. DOHERTY believed the victim had to die in either kidnapping or any of the major felony crimes before someone could be charged with a capital offense.

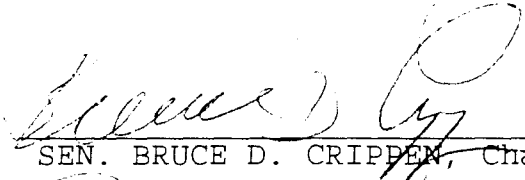
Vote: Motion carried with SEN. JABS voting no.

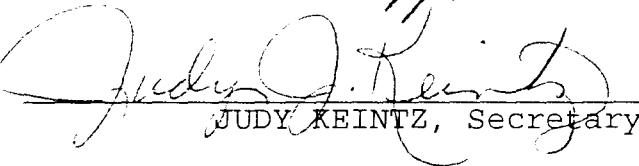
CHAIRMAN CRIPPEN stated that if this bill was brought out on the floor, he would move that it would be taken back to the committee for amendment.

EXHIBIT 3 - SEN. LORENTS GROSFIELD proxy votes.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:05.


SEN. BRUCE D. CRIPPEN, Chairman


JUDY KEINTZ, Secretary

BDC/JJK