

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 7, 1997, at 9:00 a.m., in Room 104, of the State Capitol, Helena, Montana.

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: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 256, posted February 4
SB 277, posted February 4
Executive Action: SB 277, SB 256, SB 232, HB 122

HEARING ON SB 256

Sponsor: DON HARGROVE, SD 16, Bozeman

Proponents: John Conner, Department of Justice and Gallatin
County Attorney Marty Lambert
Mike Batista, Department of Justice
Pat Chenovik, Administrator, Montana Supreme Court
Bill Sleyter, Bozeman, Montana Peace Officers
Association

Opponents: None

Opening Statement by Sponsor: DON HARGROVE, SD 16, Bozeman, provided the Committee with an amendment, and said the bill creates felony assault (EXHIBIT #1).

Proponents' Testimony: John Conner, Department of Justice and Gallatin County Attorney Marty Lambert. The bill addresses 45-5-201 and -2-2, MCA, and is drafted as it is because it allows prosecution of offenders who take action against law enforcement of the Judiciary to not be prosecuted against a lesser offense. The essence is to implement the existing intent of the Legislature and add judicial officers as well as law enforcement officials.

Mike Batista, Department of Justice, stated his support of the bill.

Pat Chenovik, Administrator, Montana Supreme Court. I know of a judge who carried a weapon to court and wore a bullet-proof vest, and I know of threats to city judges.

Bill Sleeyter, Bozeman, Montana Peace Officers Association. I have been assaulted in a variety of ways. I believe judges and law enforcement have the right to be protected. County attorneys will be key decision-makers in this. I urge you to support this bill as it is of great benefit to law enforcement officers.

Opponents Testimony: None

Questions From Committee Members and Responses: SENATOR STEVE DOHERTY. We passed a very similar bill in a prior session which was killed in the House, but the House passed a bill dealing with assault on referees.

VICE CHAIRMAN LORENTS GROSFIELD. Are you concerned that a jury might decide on a lesser offense now? John Conner. There are court decisions which have run afoul of the name of the offense, but the jury is not supposed to be told. So some jurisdictions dropped the term "felony" from the definition of the offense in giving the jury instructions. There are different instructions for fines with misdemeanor offense, than for felony offense.

VICE CHAIRMAN GROSFIELD. We had a situation of assault last session on a legislator by a lobbyist. John Conner. It was not our intent to exclude a class of people, for example, the Legislature. There is still a misdemeanor assault charge available. A felony assault charge is not mandatory.

SENATOR REINY JABS. Why was the language pertaining to bodily injury stricken? John Conner. If the bill passes, we would need to take out the offense under existing law which includes detention officers, so this would clean up the statute.

{Tape: 1; Side: A; Approx. Time Count: #17.7; Comments: 9:29 a.m..}

SENATOR RIC HOLDEN. I am critical of passing more and more laws, and the criminalizing of people in Montana. What is the compelling argument for this legislation? **John Conner.** If the officer is badly beaten up, they have felt in the past that it is part of the process. The prior statute relates only to verbal threats, and has had very limited use in terms of prosecution. In every case the individual involved had a history of violence. A conviction of this would provide the officer with information ahead of time when they are called to a scene of violence.

SENATOR WALTER MCNUTT. Is the Jordan situation driving this thinking? **John Conner.** No.

SENATOR SHARON ESTRADA. Do the majority of officers have hassles in making arrests? **Sheriff Sleeyter.** Ninety-two percent of persons arrested for assault in 1996 were under the influence of drugs or alcohol.

SENATOR ESTRADA. If they're drunk, would they be considered to be knowingly committing assault? **Sheriff Sleeyter.** If they can walk and talk, I believe they know. We've never let this be an excuse in Montana. A lesser conviction is a slap in the face to these law enforcement officers.

CHAIRMAN CRIPPEN. I asked **SENATOR HARGROVE** to include judicial officers. Judge Pedro Hernandez in Billings was assaulted and the Courts ended up doing nothing.

SENATOR ESTRADA. What if they hit someone and then find out the person they hit is a judge? **CHAIRMAN CRIPPEN.** That would probably be covered under another statute. For example, the case in Hamilton/Darby on which the woman judge testified last session.

{Tape: 1; Side: A; Approx. Time Count: #34.9; Comments: 9:47 a.m..}

SENATOR HOLDEN. Section 45-5-202, MCA, doesn't specify "people" but says "a person". Why don't we extend this to insurance adjusters, bill collectors, and the citizens of Montana? **John Conner.** This is just a policy matter, as these officers are subject more to harm. We ask that those upholding the law be protected by the law.

CHAIRMAN CRIPPEN. Do the other statutes cover this? **John Conner.** It depends upon the severity. We could charge 201 or 202 (misdemeanor or aggravated assault).

CHAIRMAN CRIPPEN. The amendment would include juvenile probation officers. There is a trend in society to look at law enforcement more as adversarial than with respect. They're unique because of

their jobs, and so we need to provide specific legislation to deal with such assaulters. This bill would give more latitude to prosecutors.

Closing by Sponsor: SENATOR DON HARGROVE. The Montana Sheriffs and Peace Officers and I don't object to the amendments to include juvenile probation officers. I just don't want to weaken the bill's chances of getting through the House. I am eager to accept this legislation. I'm making reference to the police car being hit with bullets a few nights ago. I would like to see higher penalties. During my five years in drug enforcement, 2000 police officers and 400 judges were killed in Columbia relating to narcotics prosecutions.

HEARING ON SB 277

Sponsor: SENATOR SUE BARTLETT, SD 27, Helena

Proponents: Mike Murray, Lewis and Clark County Commissioner
Stephen McCue, Lewis and Clark County Small Claims Court
Mike McGrath, Lewis and Clark County Attorney

Opponents: None

Opening Statement by Sponsor: SENATOR SUE BARTLETT, SD 27, Helena. This legislation deals with the small claims function of the Justice Courts and District Courts, established in Lewis and Clark County, and makes a necessary adjustment to statute. It repeals the chapter describing procedure for small claims courts of the District Court and uses the procedure for Justice of the Peace Court instead.

Proponents' Testimony: Mike Murray, Lewis and Clark County Commissioner. The Lewis and Clark County Commissioners are probably the only county to use this court provision, and they do so for financial reasons. By contracting with the Master Judge, they save about \$85,000 of \$100,000 they would have to otherwise spend.

{Tape: 1; Side: B; Approx. Time Count: #8.0; Comments: 10:00 a.m..}

Stephen McCue, Lewis and Clark County Small Claims Court. I am the Helena attorney acting as the Small Claims District Court Judge, under the contract mentioned by Mike Murray. There is a \$3,000 jurisdictional limit. In the past, jurisdiction was limited to only contract cases. Right now, we can't hear fender-bender cases, but can hear tort cases. Also, only the defendant can demand a trial by jury, and this would be very expensive in my court. There can be a trial de novo. Then, we've had difficulty with removing a case. If only one party has an attorney I must dismiss, and the plaintiff file all over again in the District Court. If this filing is not accepted there, it can

be moved up to the Justice Court. Lastly, we currently require an appellate to file an appeal bond, and the Justice of the Peace Court does not require this.

We're trying to keep the process simple, informal and expeditious. We're currently operating under 1975 procedures, and I don't know why we must operate under this complexity.

Mike McGrath, Lewis and Clark County Attorney. The Small Claims Court System has become an effective way to resolve disputes up to \$3000. This frees up the court system. The County Attorney refers people to the Small Claims Court all the time, where they can resolve situations themselves without an attorney. I have looked at all the statutes we are proposing to repeal, and there are comparable provisions for each in the Justice Court procedures. This will work in other communities, as well as Lewis and Clark County.

Opponents Testimony: None

Questions From Committee Members and Responses: **SENATOR REINY JABS.** What is a Master Judge? **Mike Murray.** It is one contracted by the District Court. **Mike McGrath.** It is a term used by the County Commissioners to describe what Stephen McCue does. This procedure has been in law enforcement for many years. Lewis and Clark County is doing this because it is cheaper.

SENATOR JABS. Does every county have a Small Claims Court? **Mike McGrath.** Yes. It's usually the Justice of the Peace. The caseload for the Justice of the Peace in Lewis and Clark County has ballooned in past years, so we took the Small Claims Court burden away to allow for the Justice of the Peace to handle all the criminal cases.

SENATOR RIC HOLDEN. If we pass this bill, what will it do to Glendive? Do you understand this? **Valencia Lane.** I could easily show you so you could understand. Mike McGrath provided three copies of this (**EXHIBIT #2**).

SENATOR ESTRADA. Are all 56 counties uniform now? **Mike McGrath.** No. There are two types of small claims courts now: Each county has a Small Claims Justice of the Peace Court, but the law has always allowed the system that Lewis and Clark County is using now.

CHAIRMAN CRIPPEN. Whose amendments are these? **Stephen McCue.** These are mine. I haven't spoken to Valencia Lane about them yet, but I have submitted them to her.

Closing by Sponsor: **SENATOR BARTLETT.** Lewis and Clark County Commissioner Murray has presented this to MACO (Montana Association of Counties), and they are in agreement with it. Their director, Gordon Morris, is in another meeting and could not be present for this hearing. It is a cost-containment

measure. I suspect we may see other counties using this as well. I urge your favorable consideration.

EXECUTIVE ACTION ON SB 277

Amendments: sb027701.avl - EXHIBIT 3

Valencia Lane. The proposed amendments (sb027701.avl) are going into Chapter 34, MCA, and repeal most of those sections because they like the Justice of the Peace Court law in Chapter 35. No language is being changed anywhere. I believe the amendment is a good idea. The Code Commissioner would probably include an amendment similar to this, if it were not put in by the Committee now.

Motion: SENATOR MCNUTT MOVED SB 277 DO PASS.

Discussion: SENATOR BARTLETT. We will deal with the amendment in the House.

Vote: SENATOR MCNUTT'S MOTION THAT SB 277 DO PASS CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 256

Amendments: CHAIRMAN CRIPPEN. I have no problem with adding the amendments.

Discussion: SENATOR BARTLETT. A peace officer is any person empowered by virtue of public office to make arrests, while acting within the capacity of that authority (45-2-101, MCA). It can be a person sworn or unsworn for the care of a juvenile.

CHAIRMAN CRIPPEN. The Probation Officers did not come to testify on this. VICE CHAIRMAN GROSFIELD. The language on line 29 seems to already apply to probation officers.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED SB 256 DO PASS. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 232

Amendments: sb023201.avl - EXHIBIT 4

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED THE AMENDMENTS sb23201.avl BE ADOPTED.

Discussion: Valencia Lane. The change is from one to a three year statute of limitation, and addresses ten years from the date of the act, omission, or negligence.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION THAT THE AMENDMENTS BE ADOPTED CARRIED UNANIMOUSLY.

Motion: SENATOR ESTRADA MOVED SB 232 DO PASS AS AMENDED.

Discussion: SENATOR BARTLETT. Is this reasonably comparable to the statute of limitations for other professions? Valencia Lane. It is very similar to that for attorneys and doctors.

Vote: SENATOR ESTRADA'S MOTION THAT SB 232 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 122

Amendments: hb012201.avl, hb012202.avl, hb012203.avl

Valencia Lane. There are three sets of amendments. The most significant is SENATOR DOHERTY'S. SENATOR BARTLETT'S amendment (hb012201.avl) (EXHIBIT 5) is incorporated into SENATOR DOHERTY'S amendments (hb012202.avl) (EXHIBIT 6). The other is SENATOR LYNCH'S amendment (hb012203.avl) (EXHIBIT 7).

Discussion: SENATOR SUE BARTLETT. This is the same wording as in the 'gray' bill (EXHIBIT #8). A trial award made to an inmate would be subject to providing restitution to a victim via the Victim's Compensation Fund of Montana, which is a generalized pool for victims. The amendment says that \$1000 of \$2000 would go to the victim rather than to the general fund.

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO AMEND HB 122 - hb012201.avl and hb012202.avl.

Discussion:

SEN. DOHERTY explained this would include amendments to the title (#1 and #2), and #6-#13, as well as striking "a substantial amount of" from #6.

Valencia Lane. With regard to inheritances, awards, etc., we didn't think that \$500 would be gone after, but larger amounts would be.

VICE CHAIRMAN GROSFIELD. I believe a prisoner ought to pay on the balance no matter how small the award is.

SENATOR REINY JABS. What if they receive property and not money? CHAIRMAN CRIPPEN. We would really be treading on thin ice. Do you want that farm sold? What about the prisoner's heirs, partners, and \$40-\$42 per diem costs for imprisonment? I can't support this. When someone is sentenced for a crime, their liberty and freedom is taken away. Now we want to hit them twice and take away their assets. VICE CHAIRMAN GROSFIELD. But we keep talking about the taxpayer as the innocent third party.

VICE CHAIRMAN GROSFIELD. This doesn't change restitution already provided for. Valencia Lane. This bill doesn't address the time of sentencing. This only addresses future, unexpected windfalls.

CHAIRMAN CRIPPEN. What if an inherited property were held in joint tenancy? **SENATOR MIKE HALLIGAN.** The sentencing order would detail specific restitution. If he paid all those and were still in prison and received an inheritance, where would it go then? **Valencia Lane.** In the current version of the bill, lines 6-12, someone takes payments and what is still owed into account.

SENATOR AL BISHOP. What would happen if the prisoner were married and had children? Would the court order child support? **SENATOR HALLIGAN.** Probably, yes. The prosecutor would have to specifically ask for this.

VICE CHAIRMAN GROSFIELD. If we pass these amendments, I believe judges would sentence with this in mind. **SENATOR HALLIGAN.** We just had a case where the son died, but the dad had to pay \$40,000 in back support.

SENATOR BARTLETT. There's a questions about how effectively attachment of wages is carried out under the supervision of the Department of Corrections. The Department needs a reminder about child support.

{Tape: 2; Side: A; Approx. Time Count: #37.4; Comments: 11:07 a.m..}

SENATOR SHARON ESTRADA. Where do the fines go?

Vote: SENATOR GROSFIELD'S MOTION TO ADOPT THE AMENDMENTS CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATOR CRIPPEN WHO VOTED NO.

Amendments: Valencia Lane. **SENATOR DOHERTY** wants to get rid of Section 1. In the title it should have stricken line 14 up to "proceed".

Discussion: **CHAIRMAN CRIPPEN.** So, if this amendment is stricken, we would go back to the original intent of the bill? **SENATOR BARTLETT.** How realistic is it for the Legislature to say the Court may not issue a writ of habeas corpus without doing other things first? **CHAIRMAN CRIPPEN.** If you look at Subsection (2), this is an effort by the Department of Corrections to shift costs.

{Tape: 2; Side: B; Approx. Time Count: #3.2; Comments: 11:14 a.m..}

SENATOR HALLIGAN. I believe this language needs to stay in the bill to prevent frivolous suits.

CHAIRMAN CRIPPEN. Is amendment #14, on page 4 of the 'gray' bill striking all of Sections 4 and 5? **Valencia Lane.** These are two different things.

SENATOR HALLIGAN. There are plenty of cases where doctors are sued because prisoners were badly treated while incarcerated. **Valencia Lane.** There may be a constitutional problem, as well.

VICE CHAIRMAN GROSFIELD. What if the incident being sued over took place before incarceration?

Motion/Vote: **SENATOR HALLIGAN MOVED TO STRIKE SECTION 4. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS AND HOLDEN WHO VOTED NO.**

SENATOR HALLIGAN. The problem is the way the federal courts cater to these guys who file frivolous suits.

Motion/Vote: **SENATOR HALLIGAN MOVED TO STRIKE SECTION 5. THE MOTION CARRIED UNANIMOUSLY.**

SENATOR GROSFIELD. I supported the motion, but I hope the Department of Corrections will come up with better language for the Conference Committee. I have no problem with the amendments being retroactive to 1990. **Valencia Lane.** Retroactive applicability is on page 6, line 9, and applied only to Sections 2, 4, and 5 of the 'gray' bill.

Motion: **SENATOR HALLIGAN MOVED TO ADOPT AMENDMENT #18 TO PUT THE EFFECTIVE DATE UPON PASSAGE AND APPROVAL, AND TO STRIKE SECTION 9 IN ITS ENTIRETY.**

Discussion: **SENATOR ESTRADA.** Why amendment #18? **SENATOR DOHERTY.** Because we thought applying it retroactively would affect about ten cases already there.

Vote: **SENATOR HALLIGAN'S MOTION TO ADOPT AMENDMENT #18 AND STRIKE SECTION 9 IN ITS ENTIRETY CARRIED UNANIMOUSLY.**

Discussion: **SENATOR BARTLETT.** Is the language on page 5, lines 22-26 now unnecessary? **Valencia Lane.** I believe you are correct.

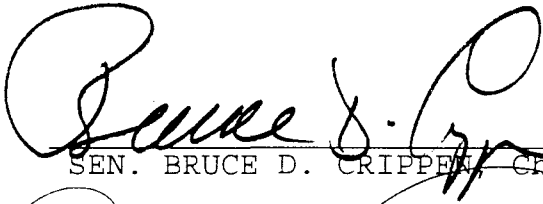
Motion/Vote: **SENATOR BARTLETT MOVED TO DELETE SUBSECTION (3) ON PAGE 5, LINES 22-26, AND TO STRIKE SECTION 6 (REMARKED SECTION 3 ON THE 'GRAY' BILL). THE MOTION CARRIED UNANIMOUSLY.**

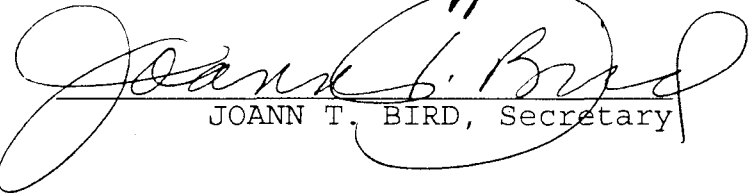
Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED HB 122 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT CHAIRMAN CRIPPEN WHO VOTED NO.**

VICE CHAIRMAN GROSFIELD was asked to CARRY HB 122.

ADJOURNMENT

Adjournment: 11:38 a.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB